Book 368

Bank of America

February 21 - March 20, 1940

Bank of America

BANK OF AMERICA
NATIONAL TRUST & SAVINGS ASSOCIATION
SAN FRANCISCO CALIFORNIA

Mayflower Hotel,
Washington, D.C.
February 21, 1940

Honorable Preston Delano,
Comptroller of the Currency,
Washington, D.C.

Dear Comptroller Delano:

At our meeting yesterday you requested a statement of our position in United States Government securities as of a recent date.

On December 30, 1939, we held $412,337,000 par value United States Government and Guaranteed Issues. on February 20, 1940, we held $368,972,925 par value, representing a net reduction of $43,365,075 par value.

Kind regards,

Very truly yours,

/s/ L. M. Giannini
L. M. Giannini, President
Bank of America N.T.& S.A.

7-2-40

RESPONSE TO MEMORANDUM PRESENTED
BY OFFICIALS OF
BANK OF AMERICA, N. T. & S. A.

* * * * *

1. Bank is to increase its capital stock by $35,000,000. Within thirty days is to get a commitment from the RFC to underwrite any or all of the issue; (this underwriting commitment may be reduced in a sum equal to the aggregate par value of the stock sold to private interests). The terms and conditions of the proposed amendments to the bank's articles of association shall be agreed upon by April 15, 1940 by the bank and the committee and also by the RFC if any part of the funds are to be made available through the RFC for the purchase of any of the new capital stock. The increase in capital stock is to be consummated within ninety days, if possible, but in no event later than June 30, 1940.
2. On or before the date of the increase in capital stock, the bank is to set up an unallocated reserve of $7,400,000, such reserve not to be reduced if the Comptroller of the Currency objects thereto. (See memo. attached)
3. All bond profits must be kept in a special reserve account to take care of losses in bonds, and amortization of bond premiums, until the total of that reserve account shall equal the total bond premium. If in any given semi-annual period the total added to the reserve is insufficient to cover amortization of bond premiums for the period, then such reserve must be augmented, in the amount of the deficit, from current earnings.
4. Furnish the Comptroller complete information, satisfactory to him, with respect to the original cost of each banking premises, including future and former premises, and the depreciation which has been taken thereon. Adequate depreciation will then be determined and any necessary adjustment

will then be made.

5. Charge off all items classified as loss in the last report of examination, not otherwise discussed herein, which have not heretofore been charged off. Future losses, except those reserved for, must be charged out of future earnings; and presently existing undivided profits, as well as any amount that may later be released from reserves herein established, may not be used for any purpose except the setting up of reserves and charging out of losses not provided for by future earnings.

6. Bank is to obtain from California Lands, Inc., and Capital Company sufficient additional collateral, satisfactory to the Comptroller, to assure the discharge of the obligations of these corporations to the bank, including the agreement of Capital Company covering the future and former bank premises now carried by Merchants National Realty Corporation. In any event, the value of such additional collateral will be equal to 25% of the remaining balance due under the contracts plus 25% of the carrying value of future and former premises.

7. Continue to treat real estate currently acquired by foreclosure, or in satisfaction of debt, as Other Real Estate, and carry the same at cost or appraised value, whichever is the lower, and in no instance is the carrying value of Other Real Estate to exceed the book value of the loan at the time of foreclosure.

8. Eliminate the amount of investment in stock under option at a rate not less than the program now in effect.

9. Bank is to continue program of liquidation with regard to all commitments

of Transamerica and its subsidiary and related companies at substantially the same rate as has been accomplished in the past year.

10. Bank is to eliminate, as soon as possible and within a reasonable period, any loans carried in excess of the legal limits.

11. Bank is to give vigorous attention to the elimination of any real estate holdings or real estate loans that may not conform to statutory requirements.

12. The bank shall initiate steps, satisfactory to the Comptroller, to ascertain whether it is entitled to recover any part of the sums paid by the bank to Transamerica General Corporation in connection with fidelity losses and if it is concluded that the bank is entitled to recover, it shall take steps satisfactory to the Comptroller to recover the same.

This memorandum is submitted without prejudice to the right of the Comptroller of the Currency to require full and complete compliance with his criticisms and suggestions previously specified in reports of examination and in letters to the bank, to resort to sanctions provided by law, or to continue to list in reports of examination assets that are subject to criticism, until such criticisms have been corrected or eliminated. Neither this memorandum or its contents shall be used by the bank or anyone else on its behalf for any purpose except for its information unless and until the provisions hereof are accepted and complied with by the bank.

Memorandum Covering Unallocated Reserve of
$7,400,000, referred to in Item 2.

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This reserve is made up of losses estimated on

Occupied Premises	$6,926,000.00
Future Premises (Phoenix & Roolings Bldg.)	488,500.00
	$7,414,500.00

Losses estimated in the August report of $585,000 on future and former bank premises carried in Merchants National Realty Corporation as provided for in Item 6 of the agreement.

For Discussion February 22, 1940

2-22-1940

Confidential

1. As soon as possible in any event not later than April 15th add $35,000,000 actual new capital by the issuance of common or preferred stock or both, with the understanding that by March 15th the board of directors of the Bank will have approved the entire program herein outlined and the Bank will have obtained the approval of the Comptroller of the Currency to such increase. In the event any part of said increase is to be obtained by the sale of preferred stock to the R.F.C. a commitment from the R.F.C. on such terms as the Secretary of the Treasury will request it to purchase such stock must be obtained and an agreement with the R.F.C. and the Comptroller of the Currency upon the terms of the amended articles of association, including its terms governing the disposition of earnings, retirement of preferred stock, etc. must be had by March 15th.

2. Immediately upon obtaining the new capital the Bank will set up an allocated reserve of $4,926,845.36 against the carrying value of the individual banking premises criticised in the report of examination of August 31, 1939, including those shown on the Bank's books and in its investment in Merchants National Realty Corporation. At the end of one year this reserve shall be used to reduce the carrying values of such banking premises or the carrying value of the Bank's investment in Merchants National Realty Corporation, as the case may be, unless in the

meantime the Bank shall have furnished to the Comptroller of the Currency complete information satisfactory to him with respect to the actual cost of each such banking premise to the Bank or any of its affiliated, associated or related companies when originally acquired whether by the Bank or by any of its affiliated, associated or related companies, any capital expenditures which have been made, and the depreciation which has been taken upon each such premise. Upon furnishing such evidence within the one year, the reserve shall be used to reduce the carrying value of each such banking premise by the amount of adequate depreciation during the ownership of the building by the Bank or any of its affiliated, associated or related companies, not previously taken, which should have been taken in accordance with sound banking practices, and by the amount of any "write-ups". The remainder of such reserve, if any, may be returned to the undivided profits account. All depreciation on buildings, furniture, fixtures and equipment shall be calculated on the basis of depreciation allowed the Bank by the Treasury Department for income tax purposes.

5. Future and former banking premises and all other real estate now carried as Other Real Estate and real estate hereafter acquired by foreclosure or in satisfaction of debt will be treated as Other Real Estate and carried at cost or appraised value, whichever is lower. This will not apply to the Rollins property.

6. The Bank will obtain additional collateral from California Lands, Inc. and Capital Company to secure their contracts with the Bank and of Capital Company to secure its contract with Merchants National Realty Corporation. Such additional collateral will be in an amount equal

in value to the difference between the unpaid purchase price upon the contracts and the valuation of the property thereunder as such valuation appears in the schedule contained in the report of examination begun August 21, [illegible]. All of such contracts will be eliminated from the Bank's assets by December 15, [illegible].

5. All bonds in the Bank's investment portfolio will be amortized out of current earnings to maturity or to call date if callable sooner. Current bond profits will be used to take care of current losses and any bond profits not so used will be placed to a reserve for losses of any character until such reserve is adequate in the judgment of the Comptroller of the Currency.

6. Loans to Transamerica Corporation and its allied interests will be brought within the legal limit allowed to one interest as soon as possible and not later than July 15, [illegible], except that this paragraph shall not apply to the contracts of the Bank with California Lands, Inc. and Capital Company, the contract of Merchants National Realty Corporation with Capital Company, and the option agreement of Transamerica with respect to the stock of National City Bank of New York acquired by the Bank, all of which are otherwise disposed of herein. The program of liquidation now in effect with regard to the commitments of Transamerica and its subsidiaries will be continued. The stock of any allied interest of Transamerica securing loans of Transamerica or any of its allied interests will be eliminated by July 15, [illegible] and no similar pledge will hereafter be accepted. Further extensions of credit by the Bank for the purpose of purchasing or carrying Transamerica stock will be discontinued and no

collateral value will be assigned to any such stock hereafter pledged to secure any loan made by the Bank.

7. The Bank will charge off all items classified as loss in the last report of examination not otherwise discussed herein which have not heretofore been charged off.

8. The Bank will eliminate the amount of investment in stock under option on the basis of the program now in effect, the annual reduction amounting to $848,380.

9. The Bank will give vigorous attention to any real estate holdings or real estate loans that may not conform to statutory requirements.

10. The Bank will initiate steps to ascertain whether the Bank is entitled to recover any part of Transamerica General Corporation's reserve for fidelity losses and to recover any part thereof to which the Bank may be entitled.

RE BANK OF AMERICA

February 23, 1940.
11:30 a.m.

Present: Mr. Bell
Mr. Delano
Mr. Seymour
Mr. Foley
Mr. Folger
Mr. Sherbondy
Mr. Mulroney

H.M.Jr: What is it, as of today?

Bell: Well, as I told you, we submitted a program to these - to the Bank and Giannini and his counsel came back with a counter program which we were to take and study and which satisfied no one. We have been together the last two days trying to get a minimum program that would be agreeable to the three agencies and when we left here yesterday afternoon we thought we had one pretty well in the rough, and that was to be written up last night and go to Delano and Crowley this morning.

Delano: You mean Eccles and Crowley.

Bell: Excuse me, Eccles and Crowley. I understand from Mr. Delano when he came in that Eccles called up and isn't quite satisfied yet.

Delano: He wants some further changes in the thing. He wants the adoption of that alternative, rather than the one that we took of that alternative, the thirty and five, as opposed to our thirty-five and six, nine, and then move something. That is all technical, Mr. Secretary, but inasmuch as that still remains now, we haven't a completely unified front. He wants that change and I think we will have to see him again, we will have to talk further.

Bell: The Bank wanted to - we asked for 35 million capital and eight million reserve. The Bank came back with this 30 million capital and five million reserve. Eccles said his minimum program - that he would accept the 30 million capital and the five million reserve if they transferred six million of their undivided profits to the surplus account, which would make their present capital and surplus equitable, before they put in any capital, three million each.

Delano: It would also tie up their dividends to a certain extent.

Bell: Yes, I thought he changed around and said we would go back to our original 35 capital and six million nine reserve, which would tie it in with the banking property only.

Delano: He left it as rather an alternative.

Seymour: I understood him to be agreeable to put forward as the ultimate program whichever of those two we preferred, and we preferred the 35 million and the six million and no covering in the surplus and now he takes the view it is easier to negotiate on the other one, but I think if we have a reasonable preference in the matter that he could probably be persuaded to stick to what he said yesterday, at least I hope so.

H.M.Jr: Well, not having lived with this thing, but having the same privilege that you gentlemen have, I wouldn't attempt to comment as to - I mean, you people, living with this from minute to minute --

Delano: Mr. Secretary, we hoped to be able to give you that program this morning to discuss it and give you a recommendation on it, but I don't believe that we are in that position at the moment.

H.M.Jr: Just let me ask this: Bell said he was sending over a rough draft to Giannini last night. Did you do that?

Bell: We didn't get it ready. We are going to have this further meeting at 2:30 and then meet Giannini at 3:00. The reason we didn't - then we were going to have this conference with you, so we thought we had better not send anything to Giannini to study over night.

H.M.Jr: Just let me ask this thing that I was interested in. One of these talks I had - whatever the capital is, whether it is 30 or 35, the discussion as to whether it is to be preferred or common, is that clear?

Delano: Well, it has gone to this extent: We were very anxious - I think all our minds run the same. We preferred the preferred stock. We are in this position, Mr. Secretary in regard to that, that never, when we have asked a bank to increase its stock have we denied them the privilege of putting in common, as a matter of practice, and I didn't want to single this bank out to do that. There is only one case --

Bell: You have no right to require it, have you?

Delano: We really haven't got the legal right, no. I suppose we could make it a negotiatory right, but we haven't the legal right. We were trying to walk a path so they couldn't say we were singling them out in this manner. I appreciate the implications in this common stock thing, the SEC thing and all that, but we are up against practice. We have never done it, Mr. Secretary, except in the case of insolvency.

H.M.Jr: I would be the last one to suggest that you do anything that isn't the usual. Let me just ask you this. Leaving the optional to them, I also heard some discussion about the date. You spoke something about a date. I am interested in that.

Delano: The date we had in here was that they must have a commitment from the RFC underwriting whatever they do by April first.

H.M.Jr: Oh?

Bell: That is just a commitment, you see. In other words, the Board of Directors would have passed on it and the RFC will have passed on it and everything will be ready on April first.

Delano: It will be so sewed up in our judgment that it cannot be pulled back. We have to have about thirty days for the pure mechanics of it.

H.M.Jr: Thirty days of mechanics - what, up to April first, then?

Delano: That is right.

H.M.Jr: And then if they - let's say they got this on the 31st of March. Would they then have to go up to April first and then go before -- (Mrs. Klotz handed letter to the Secretary)

Where was I?

Upham: April first.

Seymour: There were two steps there that are contemplated in this program. Before April first, they must have the Bank Board approval, they must get the Comptroller to approve the increase in stocks, they must get a commitment from the RFC and they must agree on their articles, on the changes in their articles, and then, having done that before April first, they must actually get the capital into the Bank before June first.

Delano: And they have to have both the Directors' approval and the stockholders' approval within that period.

Seymour: No, the stockholders' approval would be the thing that came between April first and June first.

Delano: I understood the stockholders' approval came before April first.

Foley: Only the Directors'.

Delano: Do they need more than ten days?

Folger: Ten days.

Seymour: The opinion seemed to be that if they got all those things before April first there would be a pretty definite assurance that we would get the rest and it would be almost impossible to work faster than the months of April and May to get the whole thing in, and that is the reason June first was adopted. My own feeling is that if you had all those things that have to be done by April first done, you would be mighty sure that everything else would be done.

Folger: That is correct, I think.

H.M.Jr: The April first date is a new date to me.

Bell: That was decided on yesterday.

Seymour: That is to get everything done that is possible before the ninety days run, within which you have to wait to publish the report. Now, I think I ought to mention, or somebody ought to mention one thing to the Secretary about this: Eccles said that before the Bank was asked to agree to this, the Bank ought to be assured that the RFC and the Secretary would agree to their getting the funds from the RFC if that was what they wanted to do and what they proposed to do, apparently, is something which has not been a welcome thing to have done in the past, and that is they propose somehow to have the money borrowed not by the Bank but by the stockholders and have the stock put up as security, so that by no possibility will the RFC have any voice in the control or management. I think it is Eccles' notion that if there is any difficulty with that program that that ought to be stated to the Bank at this time.

H.M.Jr: Now, just the way Delano said, that we didn't want to do anything which wasn't usual as demanding that they take preferred stock, I insist that we won't do anything unusual when the RFC underwrites it. That cuts both ways. Now, the last time they did it was the matter of that famous December 15 thing. It was with the exception of a case back there in '33, I think it was, which was the case of the Anglo-California Bank, where they found a way of forming a corporation.

Foley: A September corporation.

H.M.Jr: In the Anglo-California Bank, and I didn't like that at all at that time and I would insist - and they might just as well know it now - that the RFC in underwriting whatever the security is, would follow exactly the same procedure that they do in every other bank and no exception be made. Those things have to cut both ways.

Delano: That is perfectly right.

H.M.Jr: They might just as well know that and I personally wouldn't change from that. I don't know if you know how this stock is done on the RFC.

Seymour: I have only a general idea.

H.M.Jr: The way it is done, the power is vested in the President of the United States, who gives me power of attorney for him, and I, acting as his agent, write a letter to the RFC, asking that they subscribe to this money. That is the procedure. The power is vested in him by Congress and I act as his agent. I make the move. I am not going to sign my name as power of attorney for the President of the United States on a thing like this except in the usual way and any way of trying to avoid that is just out and I wouldn't even argue about it.

Seymour: Well, I think that bridge ought to be crossed so that there won't be any misunderstanding about that before this proceeding is put to the bank.

H.M.Jr: I won't even argue about it.

Bell: In '38, was that a corporation or an individual matter?

Delano: Corporation.

Bell: The only time it came up was when we first started the meetings with the representatives of the bank. Giannini said that he thought he could sell ten or fifteen million dollars of stock, either capital or preferred, and we asked him if it would be done through any funny arrangements, if there were any of these corporations that they owned or controlled, and he said absolutely not, that they wouldn't be in any way involved. He intimated that he had some people who would underwrite it.

Delano: What they ultimately did was set up this dummy corporation and then the various stockholders were given preempted rights to work through the corporation.

Foley: That is what the Secretary objects to.

Delano: That is right, and that is very clear and I think we could tell that to Eccles, because I think they probably have some such scheme. We have got to make that clear.

Seymour: Would it be appropriate to suggest any discussion with the RFC, preliminary to coming back to find out what our position is on it? If the RFC should say, "You have got to do it this way," it would be better to have them say it, wouldn't it?

Foley: I think that there ought to be an understanding between Mr. Jones and the Secretary before they start talking to Mr. Jones and Mr. Jones says, "Why certainly, I will underwrite it through the corporation and you can peddle it." If he does that, then we are going to be over the barrel again.

Seymour: Yes.

Foley: So I think that before we go out and talk to them about giving them a firm commitment to put new capital into this bank on behalf of the RFC, we had better clear with the RFC the method that we are going to suggest, so that we won't get a division there.

H.M.Jr: That is right. But Jones can't do it, you know.

Foley: I know he can't do it, but I don't want him to say so until he knows your feeling about it.

H.M.Jr: And find the way it has been done before. I am not going to - after all, when I asked that the records be searched, we had to go back to the September corporation, which was in '33, and from that date there hasn't been any deviation from that.

Foley: Well, I think that definitely Mario has that in mind.

H.M.Jr: You mean the September corporation?

Foley: Sure, and I think he ought to be told that right now, so there won't be any misunderstanding and accusations on the part of the Bank that we broke faith with them. I think the use of the corporate method to get capital into this Bank will determine whether or not you are going to put - whether they are going to sell common or they are going to sell preferred. Now, if you tell them there is a flat commitment on the part of the RFC to purchase 35 million dollars of preferred stock in that Bank - but they have until the first of April to determine whether or not they can sell common without any commitment from the RFC. That means that they will have to go to the RFC and take down the commitment. On the other hand, if they feel that the commitment is such that they can set up a corporation and through the corporation peddle common stock by RFC help, they are going to try to do it that way and we are going to have the same difficulties about what we intended later on with them, and I think that bridge has got to be crossed now and I think we have got to have it out with Mr. Jones before we talk to the Bank and give them any program.

H.M.Jr: O. K. I am glad at least you got that out of this meeting.

Seymour: Well, it seemed to me that there ought to be no doubt about that.

H.M.Jr: Is there any question in your mind?

Delano: No.

H.M.Jr: Gus?

Folger: No. I think Mr. Foley is correct on that.

Bell: Is there any way that RFC could loan money to the individual stockholders so that they could subscribe to this preferred stock?

Upham: Sure, they do that.

Bell: That was mentioned in one meeting, I don't think for the Bank, but with the --

Delano: I don't understand the Secretary objects to that procedure.

H.M.Jr: I don't object to anything that has been done a number of times before. Just the way you said, we can't tell them they have got to have preferred stock. I don't want to do anything in this thing that, as I put it, if you look up the record - I said, "I want this thing handled the way 99 out of 100 times it has been handled and not the one time." Now, that is all. If there are precedents for any of these procedures in conducting this negotiation, that you can say this has been done a half dozen times, O. K., but if it is one in a hundred, no. And the September corporation is one in ten thousand. You made that search for me, Cy, remember?

Upham: Yes.

Seymour: The other general question that we might discuss while we are here is this program of laying down a minimum and telling the Bank - having all the agencies tell the Bank that they must take this program and that we are not going to sit around talking with proposals and counter proposals any longer.

Bell: In other words, this is final.

Seymour: And I asked Eccles yesterday whether that was what he was prepared to come to and he said yes and that is what he wanted to come to and so he is agreeable that whatever program we do finally agree on, it is to be on sort of a basis of take it or leave it. If you don't take it, then we will go ahead and take all the steps available, and the question I think we ought to settle here is whether we really want to proceed that way, because it is up to us to do it some other way if we want to.

Foley: Well, I think that we have reached the point now where we have to make that decision and I feel very strongly that that is the only thing for us to do. Now, before we give it to the Bank, I think we have got to have assurances from the Federal Reserve Board that - not Mr. Eccles and Mr. McKee, but the whole Board is willing to stand behind that irreducible program and that that is what they are going to tell - the Federal Reserve Board is going to tell this Bank when the Bank comes around and says, "What do we have to do to become a State bank member?" I think we ought to also have assurances that the FDIC agrees by action of its Board that that is an irreducible program and the Treasury should agree, the Comptroller of the Treasury, everybody, and I think that the RFC should be consulted in so far as the method is concerned as to putting new capital into this Bank.

H.M.Jr: And they have a Board.

Foley: And they have a Board, and we get a commitment from them and then when we give it to them, it is given to them as a final expression from all of the agencies concerned. I don't think we get anywhere by just talking to them.

H.M.Jr: I think we have been - well, certainly patient, if anything, over-patient, and sooner or later you have got to say, "This is it."

Seymour: I think the time has come.

Bell: Yes, I thought that maybe we were acting a little hasty, but after listening to the arguments yesterday morning in that meeting, I think probably they are right.

H.M.Jr: You think they are right?

Bell: Yes. Yesterday morning I didn't feel that way about it.

H.M.Jr: I think you will find, from my past experience with Mr. Eccles, unless you have it that way that he will keep trading with you indefinitely.

Bell: Well, he has threatened at about every meeting now to make this the last one and not come back. Nobody would care very much.

Delano: You had better go on and say what you said, Danny.

Bell: I asked him if that was a definite promise.

Foley: I asked Whitney if he wanted to say anything at this time about action that we might take if the Bank doesn't come along and agree with this program. Maybe that is premature.

Seymour: I think it is a little premature. Dean Bates is busily engaged in an accoutrement of his report and I think that will be out probably in the next couple of weeks and I think it would be - then we will pretty well know what the Bank's attitude is toward this ultimatum. I think it is time enough to decide. I feel very strongly that we ought not to do anything outside of the Treasury which would indicate that we propose to follow one course or the other prior to April 15. I mean, I don't think we ought to commit ourselves morally to anybody to side in with the Federal Reserve Board, for example, and thus give any encouragement to the Bank to feel that that which is the least dangerous from their point of view is the one we are going to adopt.

Foley: I agree with you.

H.M.Jr: And I think when we get to that point, when we get this report and everything else, I certainly would want to re-check with the

President at that time, provided that the Bank wouldn't go along or the Federal Reserve wouldn't go along, when we reach that point. I think at such a crucial point he ought to be consulted. So far, I haven't thought it necessary other than what I have kept him posted. When we reach that position, I think he ought to be consulted.

Delano: I have been asked by the Federal Reserve Board, and I think by Leo, too, as to what are the probable sanctions that might be withdrawn and I have said that so far as I was concerned, my mind was completely open and fluid and I didn't know.

Seymour: Well, if the Bank refuses to go along with this program, then the time has come for everybody to sit down and decide in what order they are going to let all the sanctions go, but I don't see how you can decide that now.

H.M.Jr: All right. Thank you all.

REPORT OF CONFERENCE HELD IN MR. BELL'S OFFICE
FRIDAY, FEBRUARY 23, 1940

Those in attendance were Messrs. McKee, Eccles and Dreibelbis from the Federal Reserve Board, Mr. Crowley from the Federal Deposit Insurance Corporation, Messrs. Bell, Seymour and Sherbondy, and Messrs. Delano, Upham, Folger and Mulroney.

The program drafted by the office of the Comptroller of the Currency as of February 22, 1940 and the program of the Federal Reserve Board dated February 23, 1940 were discussed. Copies of those programs are attached hereto. In item 1 the amount of new capital was reduced from $35,000,000 to $30,000,000. The meaning thereof was clarified, and mention of specific matters to be included in the articles of association were excluded. In item 2, the amount of the reserve was reduced to $6,900,000. Changes of items 3, 5 and 8 were made in the language only, having no material effect on the substance thereof.

During the meeting, Mr. McKee objected quite strenuously to the inclusion of the figure of $6,900,000, stating he had agreed to a reserve in the sum of $5,000,000. Mr. Eccles admitted that the figure of $6,900,000 odd originated in the Federal Reserve Board, and he was therefore precluded from making the same objections as voiced by Mr. McKee. There was apparently, except for the objection voiced by Mr. McKee, an agreement as to the substance of the final draft of the program, and after the meeting Messrs. Dreibelbis, Seymour, Folger, Upham, Williams, McLean and Mulroney prepared the final draft dated February 23, 1940, a copy of which is attached. Mr. Dreibelbis took several copies with him, and copies were given to Messrs. Sherbondy, Bell, and one copy was sent to Mr. Crowley.

February 24, 1940

AJM:VH

SEC WINS IN TIMETRUST COURT ORDER

Jul 24, 1940

Every Point at Issue Decided in Favor of Plaintiff

(BY JOHN S. PIPER
[illegible] Financial Editor)

The Securities & Exchange Commission won every point at issue in the technical motions involved in this phase of its case against Timetrust, Inc., in a court order issued today by Federal Judge Albert M. Sames of Tucson, Ariz.

The judge, who was called in to hear the arguments when all local Federal judges disqualified themselves, issued a decision which was not accompanied by a written opinion.

The court's order embraced the following points:

The court granted the motions of the plaintiff (the SEC) to strike and dismiss the further answers and cross complaints of A. P. Giannini, L. M. Giannini, Timetrust, Inc., Meredith Parker, Ralph W. Wood and H. E. Blanchett, defendants.

The court denied the motion of some of the defendants to dismiss the action and enter judgment by default in favor of the defendants on the ground that the plaintiff had failed to answer interrogatories. It denied the defendants' motion to require the plaintiff to describe any and all [illegible] of documents referred to in the interrogatories.

The trial of the SEC vs. Timetrust, Inc., and others, will begin in five or six weeks unless it is delayed by the [illegible] comptroller's office in Washington into affairs of the Bank of America.

X

X Very unfortunate at this time

Chk

February 24, 1940

MEMORANDUM FOR MR. BELL
Undersecretary of the Treasury

original filed

There are attached hereto, for your information, three copies of final draft dated February 23, 1940 of memorandum of requirements of the Comptroller of the Currency with respect to Bank of America, National Trust & Savings Association, San Francisco, California.

Preston Delano
COMPTROLLER OF THE CURRENCY

7/27/40

REQUIREMENTS OF THE COMPTROLLER

OF THE CURRENCY

1. As soon as possible, and in any event not later than June 1, 1940 the bank shall add ~~$35~~ 30,000,000 of additional capital stock by the issuance of common or preferred stock, or both, with the understanding that by April 1 the board of directors of the bank will have approved the entire program herein outlined and the bank will have obtained the approval of the Comptroller of the Currency to such increase. In the event that any part of said increase is to be obtained by the sale of preferred stock to the RFC, a commitment from the RFC, on such terms as the Secretary of the Treasury will request the RFC to purchase such stock, must be obtained, and an agreement with the RFC and the Comptroller of the Currency upon the terms of the amendments to the articles of association, including its terms governing the disposition of earnings, retirement of preferred stock (including a provision that this will only be done with the consent of the Comptroller), etc., must be had by April 1.

2. Immediately upon obtaining the new capital, the bank shall set up an unallocated reserve of ~~$6,[illegible]6~~ 6,900,000 against the carrying value of individual occupied banking premises criticised in the report of examination of August 31, 1939, including those shown on the bank's books and in its investment in Merchants National Realty Corporation. ~~At the end of~~ Within one year from April 1, this reserve shall be used to reduce the carrying values of such banking premises or the carrying value of the bank's investment in Merchants National Realty Corporation, as the case may be, to the

extent determined by the Chief National Bank Examiner of the Twelfth Federal Reserve District; and for the purpose of making that determination the bank agrees to furnish to such Chief Examiner all information and records respecting said banking premises which may be requested by him. The remainder of such reserve, if any, may be returned to the undivided profits account.

3. The bank shall obtain additional collateral, satisfactory to the Comptroller, to secure the contracts of California Lands, Inc., and Capital Company with the bank, and the contracts of Capital Company with Merchants National Realty Corporation. Such additional collateral shall be in an amount equal in value to the difference between the unpaid purchase price upon such contracts and the value of the property thereunder, as such value appears in the schedule contained in the report of examination begun August 31, 1939. All of such contracts shall be eliminated from the bank's assets by December 15, 1943.

4. All bonds in the bank's investment portfolio shall be amortized out of current earnings (other than bond profits) to maturity, or to call date if callable sooner. Current bond profits shall be used to take care of current losses, and any bond profits not so used shall be passed to a reserve for losses of any character until such reserve is adequate in the judgment of the Comptroller of the Currency.

5. The bank shall continue the program of liquidation now in effect with regard to the commitments of Transamerica and its allied interests. The stock of any allied interests of Transamerica securing loans of Transamerica or any of its allied interests shall be eliminated by July 15, 1945, and no similar pledge shall hereafter be accepted. No collateral for the commitments of Transamerica and its allied interests shall be withdrawn from the bank without payment to the bank of a sum equal to the value of such collateral on account of such commitments; nor shall substitutions or changes of collateral be made which reduce the value of the collateral securing any such commitments. Further extensions of credit by the bank for the purpose of purchasing or carrying Transamerica stock shall be discontinued, and no collateral value shall be assigned to any such stock hereafter pledged to secure any loan made by the bank.

6. The bank shall eliminate the amount of investment in stock under option on the basis of the program now in effect.

7. The bank shall give vigorous attention to the elimination or correction of any real estate holdings or real estate loans that may not conform to statutory requirements.

8. The bank shall initiate steps, ~~satisfactory to the Comptroller~~, to ascertain whether it is entitled to recover any part of the sums paid by the bank to Transamerica General Corporation in connection with fidelity losses, and if it is concluded the bank is entitled to recover, it shall

take steps, [redacted], to recover the same.

This memorandum is submitted without prejudice to the right to require full and complete compliance with the Comptroller's criticisms and suggestions, to resort to sanctions provided by law, or to continue to list in reports of examination assets that are subject to criticism, until such criticisms have been corrected or eliminated. Neither this memorandum nor its contents shall be used by the bank or anyone else on its behalf without the consent of the Comptroller, for any purpose except for its information, unless and until the provisions hereof are accepted and complied with by the bank.

Feb 22-1940

REQUIREMENTS OF THE COMPTROLLER

OF THE CURRENCY

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3/40

information and records respecting said banking premises which may be requested by him. The remainder of such reserve, if any, may be returned to the undivided profits account.

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February 23, 1940

Extra 32

7/27/40

REQUIREMENTS OF THE COMPTROLLER

OF THE CURRENCY

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RE BANK OF AMERICA

February 26, 1940.
10:00 a.m.

Present: Mr. Delano
Mr. Foley
Mr. Seymour
Mr. Upham
Mr. Mulroney
Mr. Sherbondy
Mr. Folger
Mr. Schwarz

H.M.Jr: I think I am going to take a minute to read this, if I may.

I have one question. Where I said, "A commitment from the RFC to purchase preferred stock in the amount of 30 million dollars must be obtained prior --" So you are definitely saying preferred stock?

Delano: We are using that as an underwriting medium, Mr. Secretary.

H.M.Jr: Supposing they wanted common stock.

Delano: They can go ahead and do that.

H.M.Jr: Does it say so?

Bell: The first sentence says, "common or preferred," but there must be a commitment to purchase, you see, in order to be sure.

H.M.Jr: You give them plenty of time to straighten out their loans with Transamerica, don't you, July 15, 1942.

Bell: That was the original understanding, wasn't it? That has been in the picture right along. It hasn't been changed.

Delano: They have been doing a pretty fair job, Mr. Secretary.

H.M.Jr: I think that is a very statesmanlike document. When you boil that down in the layman's language, what does that mean? If they carried out this thing just the way - how much dividend could they pay? Is the next dividend March 15?

Delano: Yes.

H.M.Jr: And after that what could they pay?

Delano: It would depend upon their earnings. This does put a mighty strong control on it. I think it is not as strong as the first one we had, but it is very close to it and I think Mr. Folger would speak on that point.

Folger: I think it is as strong as the first one, Mr. Delano.

H.M.Jr: What do you mean by the first one?

Folger: On that particular point.

Delano: First draft, he is talking about.

Foley: You don't mean the one that was agreed to in December, '38?

Folger: No.

Delano: The first draft out of our present conferences.

Bell: We had percentage figures in that first draft.

Delano: We froze the undivided profits and we prohibited bond profits to be used for any purpose except excess reserves. Setting aside the bond profits for the reserve - the technical people, Mr. Secretary, will give us a very strongly improved condition.

Seymour: As a practical matter, though, won't it enable them to pay, if their earnings continue, pretty close to the same dividend they have been paying?

Folger: That will depend upon their earnings. I don't think they could pay it if they have the losses they have been having.

Delano: Not if the picture remains the same as it has been.

Folger: I was speaking of freezing of the bond profits as being as strong as it has been.

Bell: Of course they have had pretty big bond profits in the past. They can't expect to have those year in and year out, either.

H.M.Jr: Well now, everybody, I take it, in the room, is in favor of this plan.

Bell: I think so.

Seymour: Well, I am in favor of it as a compromise. I think everybody recognizes that if you didn't have to compromise or you weren't considering a compromise with a united front, that something more than this might be demanded of the Bank.

H.M.Jr: Do you think that as a minimum it is all right?

Seymour: From the point of view of a compromise, I think it is.

H.M.Jr: Gus?

Folger: Yes, I think we have more in this than I expected to get.

H.M.Jr: What is that?

Folger: This is more than I really expected to get in the way of a compromise.

Seymour: You haven't got it yet.

Bell: You haven't got it, yet, Gus.

Folger: Well, the three agencies --

Bell: You mean between the agencies?

Folger: That is right.

Bell: Well, I think that is right.

Folger: And I think if the Bank accepted this in good faith, that we would have improved conditions a great deal.

H.M.Jr: You do?

Folger: Yes.

H.M.Jr: Cy?

Upham: I agree with that, with the necessity of getting everyone to agree on something. I think this is about all you could expect.

H.M.Jr: Ed?

Foley: It seems to me we haven't any alternative, Mr. Secretary, but to pick out the best possible arrangement between the three agencies and insist upon it. This is all right.

H.M.Jr: How about you?

Delano: I feel the same way. In all the circumstances, I think this is the best we could do.

H.M.Jr: Well, under those conditions, you can consider that I am favorable to it. I will have to commit the President to it unasked, and he will have to take my word for it.

Bell: What we plan to do is to let Mr. Delano deliver this to Mr. Cushing and Mr. Giannini right after this meeting. Have you got the FDIC yet?

Delano: Well, Leo and I have talked about it over the phone.

Bell: We will want that in the record. He will deliver this to the Bank's representatives in town.

H.M.Jr: You mean they will call on him?

Bell: We told them we would send up this program and if they wanted a meeting afterward, we would be glad to give it to them.

Delano: We think they ought to have a few hours on it before they come into a meeting.

H.M.Jr: Do they have to see that this sort of dissension on the part of the Federal Reserve is between --

Bell: No, they won't see any of it. They will just be told that the three agencies are together on this program and that the program has been passed upon by the Boards of the two agencies, plus the Secretary of the Treasury.

Delano: And they will be told this is a united front and a united demand.

Bell: And it is final.

H.M.Jr: And it is final.

Bell: Yes.

H.M.Jr: Will you say so in the letter?

Delano: I think what we will do is just drop this in on them and then when they come to talk to us --

H.M.Jr: I should think it ought to be final, wouldn't you?

Seymour: Yes, I should think so.

Bell: That has been the purpose of these last conferences.

H.M.Jr: I should think we are at that point now.

Seymour: I think that this action of the Reserve Board may indicate that we ought to reserve with them the right to go back to a higher capital demand in the event that the Bank comes down to a five million dollar reserve demand.

H.M.Jr: Well, that isn't indicated. Has it been by word of mouth?

Bell: We haven't answered that letter. You mean in the document between the Federal Reserve --

Seymour: No, I don't mean in the document at all. The Reserve Board reserves the right to favor the acceptance of a five million dollar reserve if the Bank offers that. Now, if the Bank comes back with that proposition, in view of the attitude of the Reserve Board, I think we ought to register with the Reserve Board a position that in the event we come to a five million dollar reserve, we have the right to insist on a 35 million dollar capital, or something of that sort, so that we don't get traded out of both the 35 million capital and the six million nine hundred thousand reserve.

Delano: Personally, I don't want to come down to a five million dollar reserve, anyhow, but I think Whitney's point is that if we decide to do that, as a trading point, we ought to increase the capital five million. That is just a question of opinion there. I would rather stick on the six, nine. How do you feel?

Bell: You might tell the Secretary of your conversation with Eccles, just so he will have the background on this five million.

Delano: Eccles called me last night and told me this letter was coming over and that the Board had passed this thing and that the reason they had made that five million exception in there was on account of John McKee. John McKee in all his conferences has been very insistent that the six million nine should be reduced by a million and he has been very much, if I may use the phrase, a bull on holding that point. He got himself so far out, according to Eccles, when he came down before, the Board didn't want to put him in the position of - the embarrassing position of not making his point. Now, Eccles said that he stood with us completely on the situation.

H.M.Jr: Did he?

Delano: Yes.

Bell: It is his figure, Mr. Secretary.

Delano: He said he wanted it understood that this was done just for John McKee rather than have him vote against the program and the Board. The Board thought it was better to do that. Eccles was quite sure in his statement that McKee was alone in the matter. The Board felt, as Eccles felt, that they didn't want to adopt that position to Mr. McKee's embarrassment and that is the reason for this reservation in there. Eccles said as far as he is personally concerned he will stand with us.

H.M.Jr: I think it is only due you gentlemen who have been working so hard on this thing to offer you my compliments that you have been able to arrive as far as you have and I am very much pleased that we have got an agreement amongst the three agencies. It is quite unique.

Bell: The only thing that worries me about that five million is that it will get back to the Bank.

Seymour: That is the point.

Bell: Then we will be back in the negotiation stage again.

Seymour: Against the possibility that somehow the Bank may have found out about this, it seems to me that it would be well to register with Mr. Eccles the point that if the Bank should come back with a five million dollar offer as the limit that they would go on this point and the Board should take the view that under this action we couldn't turn down the proposal, we ought to be free, if we then determine to do it, to renew our original insistence on 35 million as a basis for accepting that five million compromise.

Delano: It would be a question as to how the Secretary would feel, whether he would want us to do that or bring it to him again.

H.M.Jr: I will give you the latitude. I think that Whitney Seymour is making a good point. I think that the time to get Eccles committed would be this morning before the Giannini crowd have a chance to do anything.

Delano: You mean committed to the raising of the capital?

H.M.Jr: Yes, if you have to lower the six, nine. I think it is a good point. I think it should be done immediately.

Foley: You had better do it in writing by reply to that letter.

H.M.Jr: I think you could do it - don't you think you could do it verbally and then say if it is agreeable you can send it over? I will leave it to you to call him up. If you write him such a letter, would he accept it? You wouldn't want him to turn it down.

Delano: I will write it.

Bell: O. K.?

H.M.Jr: O. K.

REQUIREMENTS OF THE COMPTROLLER OF THE CURRENCY

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February 23, 1940.

February 26, 1940.

Hon. Preston Delano,
Comptroller of the Currency,
Washington, D. C.

Dear Sir:

I wish to acknowledge a copy of your proposal to be submitted to the Bank of America National Trust and Savings Association, San Francisco, California, with respect to certain of the bank's problems.

The proposal sets forth the requirements for correction which have been developed after a series of conferences in which I participated, and with which I am in accord. This matter has been considered also by my associates in the Federal Deposit Insurance Corporation and it meets with their approval.

If the bank will take steps to meet these requirements in a proper spirit, I believe that substantial improvement in its condition will result.

Very truly yours,

(Signed) Leo T. Crowley

[illegible]:EFD Chairman.

C O P Y

February 26, 1940

Mr. Chester Morrill, Secretary,
Board of Governors,
Federal Reserve System,
Washington, D.C.

Dear Mr. Morrill:

I have received your letter of February 26, 1940, enclosing a copy of the resolution adopted by the Board on February 24.

In view of the second paragraph of the resolution, I wish to confirm my understanding with Chairman Eccles over the telephone today that if, for any reason, it should become necessary to consider the acceptance of less than the requirement of $4,900,000 in paragraph (2) of the statement of requirements, this office reserves the right to insist upon $35,000,000 in lieu of $30,000,000 as stated in paragraph (1) of the requirements. If $35,000,000 is insisted upon, under these circumstances, we presume we shall have the support of your Board in that regard.

Very sincerely yours,

/s/ Preston Delano
Comptroller of the Currency

ack 2-26-40

COPY COPY

BOARD OF GOVERNORS
of the
FEDERAL RESERVE SYSTEM

February 26, 1940

Honorable Preston Delano
Comptroller of the Currency
Washington, D. C.

Dear Mr. Delano:

Chairman Eccles asked me this morning to send you a copy of the resolution which the Board adopted during its meeting on Saturday and I am attaching one herewith in the form as it was written up at the time of the Board's action.

Very truly yours,

s/d Chester Morrill

Chester Morrill,
Secretary.

Enclosure

February 24, 1940

The Board authorizes its representatives to join with the representatives of the Federal Deposit Insurance Corporation, the Treasury, and the Comptroller of the Currency in agreeing upon the proposed requirements of the Comptroller of the Currency and in presenting a united front in support of these requirements.

The Board, however, requests its representatives to advise the Comptroller of the Currency that the Board feels that the proposed requirements should not be allowed to fail in case the Bank of America is unwilling to agree to the requirement of $6,900,000 in paragraph 2, but is unwilling to accept a requirement of some other amount in lieu thereof which is not less than $5,000,000.

In connection with this action, the Board understands that if the representatives of these agencies should agree upon any material modification of the Comptroller's requirements the matter will be brought back to the Board for further consideration.

Federal Reserve Board

February 26, 1940

Honorable Marriner S. Eccles,
Chairman, Board of Governors,
Federal Reserve System,
Washington, D.C.

My dear Mr. Chairman:

In accordance with our conversation over the telephone this morning, I hand you herewith copy of a letter with its enclosure which was delivered to Mr. L. M. Giannini this morning at the Mayflower Hotel.

Very sincerely yours,

Preston Delano

February 26, 1940

Honorable Leo T. Crowley, Chairman,
Federal Deposit Insurance Corporation,
Washington, D.C.

My dear Mr. Chairman:

In accordance with our conversation over the telephone this morning, I hand you herewith copy of a letter with its enclosure which was delivered to Mr. L. M. Giannini this morning at the Mayflower Hotel.

Very sincerely yours,

Preston Delano

COPY

February 26, 1940

Mr. L. M. Giannini, President,
Bank of America National Trust and
Savings Association,
San Francisco, California.

My dear Mr. Giannini:

I send you herewith, without prejudice to the position heretofore taken by this office, a statement of minimum requirements for the correction of conditions in the Bank of America National Trust and Savings Association which must be complied with by the Bank.

This statement of minimum requirements has been agreed upon by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation and the Treasury Department. If an adjustment of the differences between the Bank and this office is to be made, it must be made promptly upon the terms set forth in this statement.

Very sincerely yours,

COMPTROLLER OF THE CURRENCY

Forwarded to Mr. Giannini
c/o Mayflower Hotel,
Washington, D.C.

REQUIREMENTS OF THE COMPTROLLER

OF THE CURRENCY

1. As soon as possible, and in any event not later than June 1, 1940, the bank shall add $30,000,000 of additional capital funds by the issuance of common or preferred stock, or both, with the understanding that by April 1 the board of directors of the bank will approve the entire program herein outlined and the bank will obtain the approval of the Comptroller of the Currency to such increase. Any preferred stock sold must be issuable at par and be retirable at par. A commitment from the RFC to purchase preferred stock in the amount of $30,000,000 must be obtained prior to April 1, and if preferred stock is to be sold, an agreement with the Comptroller of the Currency upon the terms of the amendments to the articles of association must be reached by April 1.

2. Immediately upon obtaining the new capital the bank shall set up an unallocated reserve of $6,900,000 against the carrying value of individual occupied banking premises criticised in the report of examination of August 31, 1939, including those shown on the bank's books and in its investment in Merchants National Realty Corporation. Within one year after this reserve is set up it shall be used to reduce the carrying values of such banking premises or the carrying value of the bank's investment in Merchants National Realty Corporation, as the case may be, to the extent determined by the Chief National Bank Examiner of the Twelfth Federal Reserve District; and for the purpose of making that determination the bank agrees to furnish to such Chief Examiner all

information and records respecting said banking premises which may be requested by him. The remainder of such reserve, if any, may be returned to the undivided profits account.

3. The bank shall obtain additional collateral, satisfactory to the Comptroller, to secure the contracts of California Lands, Inc., and Capital Company with the bank, and the contracts of Capital Company with Merchants National Realty Corporation. Such additional collateral shall be in an amount equal in value to the difference between the unpaid purchase price upon such contracts and the value of the property thereunder, as such value appears in the schedule contained in the report of examination begun August 31, 1939. All of such contracts shall be eliminated from the assets of the bank and Merchants National Realty Corporation by December 15, 1943.

4. All bonds in the bank's investment portfolio shall be amortized out of current earnings (other than bond profits) to maturity, or to call date. Current bond profits shall be used to take care of current losses, and any bond profits not so used shall be passed to a reserve for losses of any character until such reserve is adequate in the judgment of the Comptroller of the Currency.

5. Loans to Transamerica Corporation and its allied interests not otherwise provided for herein shall be brought within the legal limit allowed to one interest, as soon as possible and not later than July 15, 1942. The stock of Transamerica or any of its allied interests securing loans of

Transamerica or any of its allied interests shall be eliminated by July 15, 1945, and no pledge of such stock shall hereafter be accepted. Further extensions of credit by the bank for the purpose of purchasing or carrying Transamerica stock shall be discontinued, and no collateral value shall be assigned to any such stock hereafter pledged to secure any loan made by the bank.

6. The bank shall eliminate the amount of investment in stock under option on the basis of the program now in effect.

7. The bank shall give vigorous attention to the elimination or correction of any real estate holdings or real estate loans that may not conform to statutory requirements.

8. The bank shall initiate steps to ascertain whether it is entitled to recover any part of the sums paid by the bank to Transamerica General Corporation in connection with fidelity losses, and if it is concluded the bank is entitled to recover, it shall take steps to recover the same.

This memorandum is submitted without prejudice to the right to require full and complete compliance with the Comptroller's criticisms and suggestions, to resort to sanctions provided by law, or to continue to list in reports of examination assets that are subject to criticism, until such criticisms have been corrected or eliminated. Neither this memorandum nor its contents shall be used by the bank or anyone else on its behalf without the consent of the Comptroller, for any purpose except for its information, unless and until the provisions hereof are accepted and complied with by the bank.

February 23, 1940

IRA CLERK

FIRST VICE PRESIDENT
FEDERAL RESERVE BANK OF SAN FRANCISCO

Mr. Clerk would like you to read this before the 10:30 meeting

LOANS SECURED BY STOCK OF TRANSAMERICA CORPORATION 3,508,269.30
(See page 8, insert 6, March 31, 1939)

These loans are numerous and widely scattered throughout the various branches and many of the individual loans, so secured, are classified in the branch reports of examination. The amount as shown represents, in the aggregate, the extension of credit dependent upon the stock of Transamerica Corporation. In the majority of cases they are loans made in prior years and many are workout problems dependent entirely on the security and are carried in an attempt by the management to effect a recovery on partially charged off assets through market appreciation in the value of Transamerica Corporation stock. The following is a comparative schedule of the total amount of loans secured by this stock:

COMPARATIVE SCHEDULE OF LOANS SECURED BY STOCK OF TRANSAMERICA CORPORATION

Date of (ex)amination	"A"	Shares Pledged	"B"		Shares Pledged	Shares Pledged "C"
c.31-29	$40,064,358.69	1,697,165	$17,057,610.19	*	453,650	No record kept.
n.10-30	26,683,141.24	1,500,318	12,496,757.48	*	361,680	do
b.28-31	20,941,703.76	1,609,120	30,413,252.16	*	822,536	do
g.31-31	15,104,423.35	1,609,553	10,271,027.96		863,937	141,161
r.31-32	11,010,253.77	1,418,385	9,524,571.37		816,025	115,041
v. 9-32	9,594,093.07	1,389,460	7,916,201.29		658,342	218,552
r.10-33	8,831,763.24	1,386,502	8,155,215.68		808,806	252,549
p.18-33	7,418,552.89	1,197,656	6,936,943.43		780,793	192,610
n.22-34	5,110,770.65	997,685	4,634,967.39	**	701,936	234,849
b.11-35	3,984,154.79	804,396	4,499,748.47	**	684,794	257,161
t. 7-35	3,840,856.30	778,195	3,950,531.21	**	542,068	181,830
r.27-36	5,828,887.81#	972,383#	3,575,540.49	**	429,300	264,437
t.14-36	6,026,140.94#	938,663#	2,798,243.26	**	330,449	232,599
r.20-37.	5,684,086.31	[illegible],984	3,203,483.49	**	350,105	195,925
c.31-37	1,370,361.05	156,852	4,786,941.33	***	530,976	***
r.28-38	564,803.17	101,013½	4,252,420.82	***	522,373	***
v.21-38	674,261.49	110,600	4,037,044.77	***	501,525	***
r.31-39	772,975.92	132,130	2,735,293.38	***	441,493	***

"A" Loans secured by Transamerica Corporation stock only.

"B" Loans secured by Transamerica Corporation stock and other collateral. Dollar amount represents balance of loans dependent upon Transamerica Corporation stock.

"C" Shares of Transamerica Corporation stock held as collateral, upon which no portion of the loan is dependent.

(*) Indicates total loans which are secured by Transamerica Corporation stock and other collateral, and not the balance of loan dependency upon Transamerica Corporation stock as indicated above under "B".

Transamerica Corporation and Subsidiaries Loans Line - cont'd.

(**) Basis for figuring the dependency of the loan upon Transamerica Corporation stock held as collateral changed to the proportion: That the value of the Transamerica Corporation stock has to the total value of all the collateral securing the loans, instead of, as formerly used, figuring the entire uncovered balance of the loan as dependent upon TAC collateral.

(***) Now includes proportionate amount dependent upon TAC stock regardless of the collateral position with respect to other securities held as collateral.

(#) It is significant that, contrary to announced policy in regard to loans made upon Transamerica Corporation stock, both the number of shares and the dollar amount increased during 1936, when the stock market experienced accelerated activity and a decided market value enhancement for Transamerica Corporation stock.

[illegible]

Attended by: Under Secretary of the Treasury Bell
Governor [illegible] of the Federal Reserve Board
Comptroller of the Currency Delano

L. M. Giannini, President, Bank of America
[illegible], Counsel, Bank of America
[illegible], Counsel, Bank of America

Late in the afternoon Mr. Giannini advised the Comptroller that his daughter had been operated on and that he was leaving on the eleven o'clock plane for San Francisco. This meeting was, therefore, hastily called in order to permit consideration of the several points which remained unsettled as a result of the meeting on February [illegible], 194[illegible].

Mr. Delano presented a re-draft of the proposed requirements of the Comptroller of the Currency which had been worked out in conjunction with the Federal Reserve and after consultation with Mr. Crowley on the telephone. A copy of the proposed requirements is attached.

In regard to item one, Mr. Giannini raised the question of procedure, and it was explained to him and his colleagues that the Treasury would request the RFC to increase the capital funds of the Bank in the amount of $[illegible],000,000 as stipulated. Mr. Bell stated that after such a request had been made it was assumed that representatives of the Bank would discuss with the RFC the details and the method to be employed. Whether the matter should be handled by the RFC making a direct purchase of the preferred stock from the Bank or whether the RFC would make a loan or loans to prospective purchasers would be settled in conversations between the RFC and representatives of the Bank. Whatever was worked out in these conversations would be satisfactory to the Treasury, subject only to the Treasury's right, acting through the Comptroller of the Currency, to pass upon the articles of association. Mr. Forward raised the question that some of these articles of association contained requirements which would be repugnant to the Bank and asked that the projected articles of association should conform in spirit and letter to the agreement now under consideration between the parties.

At this point Mr. [illegible] entered the meeting and answered several technical questions concerning the articles of association.

In general, assurances were given to the Bank's representatives by Messrs. Bell, [illegible] and Delano that the articles of association would be the usual and customary articles and would not depart from the ordinary practice which would be employed in meeting any similar situation with any other bank. This was agreeable all around, and it was understood that after the Treasury had forwarded its request for new capital to the RFC, the Bank's representatives would immediately contact the RFC to initiate discussion on this point.

Discussion concerning item two centered around the procedure outlined in 5 (a) and 5 (b) which bear on the same subject.

There was practically no discussion concerning item three, the only change from the edition of February 23, 19[illegible], being the substitution of the word "security" for "collateral" wherever it occurred in item three of the February 23rd draft. It was pointed out that this broadened slightly the provision and permitted, subject to the Comptroller's discretion, the pledging of real estate and other assets which could not be included as "collateral". Inasmuch as the entire matter rests within the discretion of the Comptroller, no change of importance or of a fundamental nature is involved.

Item four. The Bank's representatives accepted the Comptroller's requirements in the matter of setting up a reserve for bond profits and limiting charges to such a reserve to losses until in the opinion of the Comptroller such a reserve should be adequate. There was agreement, however, to place a ceiling on this reserve to the extent that it need never exceed the total premium account after deduction of the amortization reserve. This represents no change in principle as it had previously been understood but not explicitly stated in the draft of February 23.

Items 5(a) and 5(b) indicate the procedure to be followed in setting up charges against the unallocated reserve of $6,000,000 provided for in item two. The Bank asked for one change and an interpretative ruling as to the practice to be followed in determining the valuation of the bank premises herein involved. Mr. Giannini requested that consideration be given to amending the provision of 5(b) to permit an appeal to the Comptroller from the findings of the proposed committee. It was pointed out to Mr. Giannini and his associates that while there was no objection should he really desire such an amendment that this would again place the matter in the hands of the Comptroller without securing for the Bank a binding decision of a board which included representatives of the Federal Reserve and the FDIC. After some debate Mr. Giannini and his attorneys agreed that they would prefer to accept the language as drawn and permit a decision of the majority of the members of the committee to be binding without appeal to higher authority.

The second point raised by Mr. Giannini involved procedure and was a request that the committee should be appointed and start to function immediately, with the understanding that any of its findings which were complete could be taken into consideration when the unallocated reserve was set up after obtaining the Bank's new capital. In other words, the committee provided for in 5(a) should immediately start work and if by the time the Bank had secured its new capital decision had been reached as to the write-offs that should be taken in the case of any of the bank premises under discussion the amount of the unallocated reserve should be adjusted in accordance with the committee's findings. Messrs. Bell, McKee and Delano agreed that the committee should start immediately, and furthermore that the unallocated reserve, when set up, could be adjusted in accordance with the committee's interim findings, provided always it was understood that the unallocated reserve should not only be reduced in case the committee found for the Bank in any particular case but also should be increased whenever the committee decided that any charge-off as set up by the examiner was insufficient.

There was extended debate concerning item six and inasmuch as Mr. Giannini was forced to leave to catch his plane it was agreed that further discussion concerning this item should be put over until Monday morning, March 4. The Bank's representatives objected to the use of the word "obligations" instead of "loans" throughout this item and also to the direct limitation of these obligations to Transamerica Corporation and its subsidiaries to 10% of the Bank's capital and surplus by July 15, 1942. It was argued by them that this provision was in conflict with item three providing that the contracts of California Lands, Inc., and Capital Company should be eliminated by December 15, 1943. Mr. Giannini was of the opinion that there were certain statutory exemptions to this limitation of 10% which were very important and which included specific exemption of agricultural paper. The matter was left for final determination at a future meeting.

March 8, 1940

Final Draft - 2
March 1, 1940

REQUIREMENTS OF THE

COMPTROLLER OF THE CURRENCY

1. As soon as possible, and in any event not later than June 30, 1940, the Bank shall add $30,000,000 of additional capital funds by the issuance of common or preferred stock, or both, with the understanding that by April 1, 1940 the Board of directors of the bank will approve the entire program herein outlined and the bank will obtain the approval of the Comptroller of the Currency to such increase. A commitment from the RFC to purchase preferred stock in the amount of $30,000,000 shall be obtained prior to April 1, 1940, and if preferred stock is to be sold, an agreement with the Comptroller of the Currency upon the terms of the amendments to the articles of association shall be reached by April 1, 1940.

2. Immediately upon obtaining the new capital the Bank shall set up an unallocated reserve of $6,900,000.

3. The Bank shall obtain additional security satisfactory to the Comptroller to secure the contracts of California Lands, Inc., and Capital Company with the Bank, and the contracts of Capital Company with Merchants National Realty Corporation. Such additional security shall be in an amount equal in value to the difference between the unpaid purchase price upon such contracts and the value of the property thereunder, as such value appears in the schedule contained in the report of examination begun August 31, 1939. All of such contracts shall be eliminated

from the assets of the Bank and Merchants National Realty Corporation by December 15, 1943.

4. All premiums on bonds in the Bank's investment portfolio shall be amortized out of current earnings (other than bond profits) to maturity, or to call date, if any, and amortization previously reserved on bonds sold at book value or higher may be returned to the undivided profits account. Current bond profits shall be used to take care of current losses, and any bond profits not so used shall be passed to a reserve for losses of any character until in the opinion of the Comptroller such reserve is adequate. However, this reserve for losses, plus the amortization reserve, need not exceed the total premium account.

5(a) The Bank shall, as soon as possible, furnish to a committee composed of the Vice President in Charge of Examinations of the Federal Reserve Bank of San Francisco, or some officer of the bank designated by him, the Supervising Examiner of the Federal Deposit Insurance Corporation for the Twelfth Federal Reserve District, and the Chief National Bank Examiner for the Twelfth Federal Reserve District, all obtainable records and information with respect to the acquisition of each banking premise criticized in the report of examination of August 31, 1939, including those shown on the Bank's books and in its investment in Merchants National Realty Corporation, dating back to the time such premise was acquired either by the Bank of America or any member (either bank or company) of the group presently or then comprising the Transamerica organization.

(b) The committee shall consider the fair value of each premise at the time of such acquisition, and the special conditions which had to be met in fixing the price paid. From these considerations, the committee shall determine the amount which shall be used by the committee as the estimated cost amount of each premise to the Bank. The value of each premise shall then be established at such estimated cost amount, plus the amount of any expenditures subsequent to acquisition found by the committee to have been appropriately capitalized less the appropriate amount of depreciation at the depreciation rate allowed by the Bureau of Internal Revenue for each year of ownership. The unallocated reserve set up by the Bank shall be reduced by the difference between the present carrying value of each such premise and the value of such premise as determined by the committee in the manner hereinabove stated. The decision of a majority of the members of the committee shall be binding. The remainder of such reserve, if any, may be returned to the undivided profits account.

6. The aggregate amount of obligations of Transamerica and its subsidiaries to the Bank will be brought within the limitation of ten per cent of the Bank's combined capital and surplus by July 15, 1942. Any existing obligations of Transamerica or its affiliates or its subsidiaries will be eliminated by July 15, 1945.

As long as the Bank of America is deemed to be affiliated with Transamerica, any obligation of Transamerica or any of its affiliates or subsidiaries will be in strict conformity with the Statutes governing loans to affiliates. No new loans will be made secured by the stock of the affiliates or subsidiaries of Transamerica.

The Bank reserves the right to accept Transamerica shares as security for small loans to its customers for business purposes where the borrower demonstrates a capacity to liquidate the loan otherwise than through the sale of such shares. No speculative loans will be made on the security of such shares.

7. The Bank shall eliminate the amount of investment in stock under option on the basis of the program now in effect.

8. The Bank shall give vigorous attention to the elimination or correction of any real estate holdings or real estate loans that may not conform to statutory requirements.

9. The Bank shall initiate steps to ascertain whether it is entitled to recover any part of the sums paid by the Bank to Transamerica General Corporation in connection with fidelity losses, and if it is concluded the Bank is entitled to recover, it shall take steps to recover the same.

This memorandum is submitted without prejudice to the right to require full and complete compliance with the Comptroller's criticisms and suggestions, to resort to sanctions provided by law, or to continue to list in reports of examination assets that are subject to criticism, until such criticisms have been corrected or eliminated. Neither this memorandum nor its contents shall be used by the Bank or anyone else on its behalf without the consent of the Comptroller for any purpose except for its information, unless and until the provisions hereof are accepted and complied with by the Bank.

March 1, 1940

FINAL DRAFT 716 |

REQUIREMENTS OF THE COMPTROLLER OF THE CURRENCY

1. As soon as possible, and in any event not later than June 1, 1940, the bank shall add $30,000,000 of additional capital funds by the issuance of common or preferred stock, or both, with the understanding that by April 1 the board of directors of the bank will approve the entire program herein outlined and the bank will obtain the approval of the Comptroller of the Currency to such issuance. A commitment from the RFC to purchase preferred stock in the amount of $30,000,000 shall be obtained prior to April 1, and if preferred stock is to be sold, an agreement with the Comptroller of the Currency upon the terms of the amendments to the articles of association shall be reached by April 1.

2. Immediately upon obtaining the new capital the bank shall set up an unallocated reserve of $4,900,000.

3. The bank shall obtain additional security, satisfactory to the Comptroller, to secure the contracts of California Lands, Inc., and Capital Company with the bank, and the contracts of Capital Company with Merchants National Realty Corporation. Such additional collateral shall be in an amount equal in value to the difference between the unpaid purchase price upon such contracts and the value of the property thereunder, as such value appears in the schedule contained in the report of examination begun August 31, 1939. All of such contracts shall be eliminated from the assets of the bank and Merchants National Realty Corporation by December 15, 1943.

4. All premiums on bonds in the bank's investment portfolio shall be amortized out of current earnings (other than bond profits) to maturity, or to call date, if any, and amortization previously reserved on bonds sold at book value or higher may be returned to the undivided profits account. Current bond profits shall be used to take care of current losses, and any bond profits not so used shall be passed to a reserve for losses of any character until such reserve equals the amount of the premium account.

5. (a) The bank shall, as soon as possible, furnish to a committee composed of the Vice President in Charge of Examinations of the Federal Reserve Bank of San Francisco, or some officer of the bank designated by him, the Supervising Examiner of the Federal Deposit Insurance Corporation for the Twelfth Federal Reserve District, and the Chief National Bank Examiner for the Twelfth Federal Reserve District, all obtainable records and information with respect to the acquisition of each banking premise criticised in the report of examination of August 31, 1939, including those shown on the bank's books and in its investment in Merchants National Realty Corporation, dating back to the time such premise was acquired either by the Bank of America or any member (either bank or company) of the group presently or then comprising the Transamerica organization.

(b) The committee shall consider the fair value of each premise at the time of such acquisition, and the special conditions which had to be met in fixing the price paid. From these considerations, the committee shall determine the amount which shall be used by the committee as the estimated cost amount of each premise to the bank. The value of each premise shall then be established at such estimated cost amount, plus the amount of any expenditures subsequent to acquisition found by the committee to have been appropriately capitalized, less the appropriate amount of depreciation at the depreciation rate allowed by the Bureau of Internal Revenue for each year of ownership. The unallocated reserve set up by the bank shall be reduced by the difference between the present carrying value of each such premise and the value of such premise as determined by the committee in the manner hereinabove stated. The decision of a majority of the members of the committee shall be binding. The remainder of such reserve, if any, may be returned to the undivided profits account.

4. The aggregate amount of obligations of Transamerica and its subsidiaries to the bank will be brought within the limitation of ten per cent of the bank's combined capital and surplus by July 15, 1942. Any existing obligations of Transamerica or its affiliates or its subsidiaries will be eliminated by July 15, 1943.

As long as the Bank of America is deemed to be affiliated with Transamerica, any obligation of Transamerica or any of its affiliates or subsidiaries will be in strict conformity with the Statutes governing loans to affiliates. No new loans will be made secured by the stock of the affiliates or subsidiaries of Transamerica.

The bank reserves the right to accept Transamerica shares as security for small loans to its customers for business purposes where the borrower demonstrates a capacity to liquidate the loan otherwise than through the sale of such shares. No speculative loans will be made on the security of such shares.

7. The bank shall eliminate the amount of investments in stock under option on the basis of the program now in effect.

8. The bank shall give vigorous attention to the elimination or correction of any real estate holdings or real estate loans that may not conform to statutory requirements.

9. The bank shall initiate steps to ascertain whether it is entitled to recover any part of the sums paid by the bank to Transamerica General Corporation in connection with fidelity losses, and if it is concluded the bank is entitled to recover, it shall take steps to recover the same.

This memorandum is submitted without prejudice to the right to require full and complete compliance with the Comptroller's criticisms and suggestions, to resort to sanctions provided by law, or to continue to list in reports of examination assets that are subject to criticism, until such criticisms have been corrected or eliminated. Neither this memorandum nor its contents shall be used by the bank or anyone else on its behalf without the consent of the Comptroller, for any purpose except for its information, unless and until the provisions hereof are accepted and complied with by the bank.

March 1, 1940

5. Any loans to Transamerica or its affiliates or its subsidiaries that may not conform to statutory requirements will be brought into conformity by July 15, 1942. Any existing loans to Transamerica or to its affiliates or subsidiaries will be eliminated by July 15, 1945, and any new loans to Transamerica or to any of its affiliates or subsidiaries will be made in strict conformity with and secured as required by statute, and so long as the Bank of America may be deemed to be affiliates with Transamerica, no new loans will be made secured by the stock of affiliates or subsidiaries of Transamerica. The Bank reserves the right to accept Transamerica shares as security for small loans to its customers for business purposes where the borrower demonstrates a capacity to liquidate the loan otherwise than through the sale of such shares. No speculative loans will be made on the security of such shares.

Note: Above was dictated by Mr. Eccles during the meeting in the Comptroller's office on February 28, 1940, and the principle received general approval although it was agreed that the language would have to be slightly changed.

Conference held in the offices of the [illegible]

Attended by: Under Secretary of the Treasury Bell
Chairman Eccles of the Federal Reserve Board
Governor [illegible] of the Federal Reserve Board
Chairman Crowley of the F. D. I. C.
Comptroller of the Currency Delano
E. H. Foley, Jr. General Counsel

L. M. Giannini, President, Bank of America
G. K. Cushing, Counsel, Bank of America

Mr. Cushing opened the meeting by stating that the Bank desired to secure an interpretation of several items in the proposed agreement which had been sent to them and further explanation of its phrasing. The agreement was read and discussion ensued on a number of points involved.

There was early disagreement over the question of preferred stock, the Bank objecting to the provision that such stock must be sold at par and retired at par as they obviously desired to sell at a premium and put a portion into surplus. It was agreed that both the method of issuance and all details concerning the same should be left to the RFC, the Bank to take these matters up direct with the RFC. In the matter of approving articles of association, which still remains a responsibility of the office of the Comptroller, assurances were given the Bank that there would be no unusual or capricious provisions required.

Item 2 - The Bank was willing to leave the determination as to the reduction in carrying value of bank premises to the judgment of the Chief National Bank Examiner of the Twelfth Federal Reserve District but desired that a formula be devised to guide him in making that judgment. Messrs. Clark and Dreibelbis of the Federal Reserve Board, Folger and Mulroney of the Comptroller's office, and Layman and Stedmayer of the Bank of America were delegated a committee to draft this formula. They worked well into the evening in an attempt to reach an agreement and reassembled the following morning to continue the drafting of such a formula.

Item 3 - The word "collateral" was changed to "Security".

Item 4 - There was extended debate, particularly in the afternoon session which was held in the Comptroller's office and at which were present:

Chairman Eccles of the Federal Reserve Board
Governor McKee of the Federal Reserve Board
Chairman Crowley of the F. D. I. C.
W. N. Seymour, Counsel for the Comptroller's office
Comptroller of the Currency Delano

L. M. Giannini, President, Bank of America
O. K. Cushing, Counsel, Bank of America
L. M. Ferrari, Counsel, Bank of America

There was agreement that any amortization which had been set aside against bonds purchased at a premium and later sold at a profit should be recaptured and returned to current earnings. There was no agreement on the proposal of the Bank that the retirement of preferred stock as well as the dividends thereon should be payable out of the reserve set up in item 4.

The language of Item 5 was redrafted and practically agreed to although final determination was left to a future meeting.

Items 6, 7 and 8 were not changed.

February 29, 1940

February 29, 1940

REQUIREMENTS OF THE COMPTROLLER

OF THE CURRENCY

1. As soon as possible, and in any event not later than June 1, 1940, the bank shall add $30,000,000 of additional capital funds by the issuance of common or preferred stock, or both, with the understanding that by April 1 the board of directors of the bank will approve the entire program herein outlined and the bank will obtain the approval of the Comptroller of the Currency to such increase. Any preferred stock sold must be issuable at par and be retirable at par. A commitment from the RFC to purchase preferred stock in the amount of $30,000,000 must be obtained prior to April 1, and if preferred stock is to be sold, an agreement with the Comptroller of the Currency upon the terms of the amendments to the articles of association must be reached by April 1.

2. Immediately upon obtaining the new capital the bank shall set up an unallocated reserve of $6,900,000 against the carrying value of individual occupied banking premises criticised in the report of examination of August 31, 1939, including those shown on the bank's books and in its investment in Merchants National Realty Corporation. Within one year after this reserve is set up it shall be used to reduce the carrying values of such banking premises or the carrying value of the bank's investment in Merchants National Realty Corporation, as the case may be, to the extent determined by the Chief National Bank Examiner of the Twelfth Federal Reserve District; and for the purpose of making that determination the bank agrees to furnish to such Chief

Examiner all information and records respecting said banking premises which may be requested by him. The remainder of such reserve, if any, may be returned to the undivided profits account.

3. The bank shall obtain additional collateral, satisfactory to the Comptroller, to secure the contracts of California Lands, Inc., and Capital Company with the bank, and the contracts of Capital Company with Merchants National Realty Corporation. Such additional collateral shall be in an amount equal in value to the difference between the unpaid purchase price upon such contracts and the value of the property thereunder, as such value appears in the schedule contained in the report of examination begun August 31, 1939. All of such contracts shall be eliminated from the assets of the bank and Merchants National Realty Corporation by December 15, 1943.

4. All bonds in the bank's investment portfolio shall be amortized out of current earnings (other than bond profits) to maturity, or to call date. Current bond profits shall be used to take care of current losses, and any bond profits not so used shall be passed to a reserve for losses of any character until such reserve is adequate in the judgment of the Comptroller of the Currency.

5. Loans to Transamerica Corporation and its allied interests not otherwise provided for herein shall be brought within the legal limit allowed to one interest, as soon as possible and not later than July 15, 1942. The stock of Transamerica or any of its

allied interests covering loans of Transamerica or any of its allied interests shall be eliminated by July 15, 1940, and no pledge of such stock shall hereafter be accepted. Further extensions of credit by the bank for the purpose of purchasing or carrying Transamerica stock shall be discontinued, and no collateral value shall be assigned to any such stock hereafter pledged to secure any loan made by the bank.

6. The bank shall eliminate the amount of investment in stock under option on the basis of the program now in effect.

7. The bank shall give vigorous attention to the elimination or correction of any real estate holdings or real estate loans that may not conform to statutory requirements.

8. The bank shall initiate steps to ascertain whether it is entitled to recover any part of the sums paid by the bank to Transamerica General Corporation in connection with fidelity losses, and if it is concluded the bank is entitled to recover, it shall take steps to recover the same.

This memorandum is submitted without prejudice to the right to require full and complete compliance with the Comptroller's criticisms and suggestions, to resort to sanctions provided by law, or to continue to list in reports of examination assets that are subject to criticism, until such criticisms have been corrected or eliminated. Neither this memorandum nor its contents shall be used by the bank or anyone else on its behalf without the consent of the Comptroller, for any purpose except for its information, unless and until and the provisions hereof are accepted and complied with by the bank.

February 23, 1940 ____________________

COPY

February 26, 1940

Mr. L. M. Giannini, President,
Bank of America National Trust and
Savings Association,
San Francisco, California.

My dear Mr. Giannini:

I send you herewith, without prejudice to the position heretofore taken by this office, a statement of minimum requirements for the correction of conditions in the Bank of America National Trust and Savings Association which must be complied with by the Bank.

This statement of minimum requirements has been agreed upon by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation and the Treasury Department. If an adjustment of the differences between the Bank and this office is to be made, it must be made promptly upon the terms set forth in this statement.

Very sincerely yours,

COMPTROLLER OF THE CURRENCY

Forwarded to Mr. Giannini
c/o Mayflower Hotel,
Washington, D.C.

February 23, 1940

REQUIREMENTS OF THE COMPTROLLER

OF THE CURRENCY

1. As soon as possible, and in any event not later than June 1, 1940, the bank shall add $30,000,000 of additional capital funds by the issuance of common or preferred stock, or both, with the understanding that by April 1 the board of directors of the bank will approve the entire program herein outlined and the bank will obtain the approval of the Comptroller of the Currency to such increase. Any preferred stock sold must be issuable at par and be retirable at par. A commitment from the RFC to purchase preferred stock in the amount of $30,000,000 must be obtained prior to April 1, and if preferred stock is to be sold, an agreement with the Comptroller of the Currency upon the terms of the amendments to the articles of association must be reached by April 1.

2. Immediately upon obtaining the new capital the bank shall set up an unallocated reserve of $6,500,000 against the carrying value of individual occupied banking premises criticized in the report of examination of August 31, 1939, including those shown on the bank's books and in its investment in Merchants National Realty Corporation. Within one year after this reserve is set up it shall be used to reduce the carrying values of such banking premises or the carrying value of the bank's investment in Merchants National Realty Corporation, as the case may be, to the extent determined by the Chief National Bank Examiner of the Twelfth Federal Reserve District, and for the purpose of making that determination the bank agrees to furnish to such Chief

Examiner all information and records respecting said banking premises which may be requested by him. The remainder of such reserve, if any, may be returned to the undivided profits account.

3. The bank shall obtain additional collateral, satisfactory to the Comptroller, to secure the contracts of California Lands, Inc., and Capital Company with the bank, and the contracts of Capital Company with Merchants National Realty Corporation. Such additional collateral shall be in an amount equal in value to the difference between the unpaid purchase price upon such contracts and the value of the property thereunder, as such value appears in the schedule contained in the report of examination begun August 31, 1939. All of such contracts shall be eliminated from the assets of the bank and Merchants National Realty Corporation by December 15, 1943.

4. All bonds in the bank's investment portfolio shall be amortized out of current earnings (other than bond profits) to maturity, or to call date. Current bond profits shall be used to take care of current losses, and any bond profits not so used shall be passed to a reserve for losses of any character until such reserve is adequate in the judgment of the Comptroller of the Currency.

5. Loans to Transamerica Corporation and its allied interests not otherwise provided for herein shall be brought within the legal limit allowed to one interest, as soon as possible and not later than July 15, 1942. The stock of Transamerica or any of its allied interests securing loans of

Transamerica or any of its allied interests shall be eliminated by July 15, 1945, and no pledge of such stock shall hereafter be accepted. Further extensions of credit by the bank for the purpose of purchasing or carrying Transamerica stock shall be discontinued, and no collateral value shall be assigned to any such stock hereafter pledged to secure any loan made by the bank.

6. The bank shall eliminate the amount of investment in stock under option on the basis of the program now in effect.

7. The bank shall give vigorous attention to the elimination or correction of any real estate holdings or real estate loans that may not conform to statutory requirements.

8. The bank shall initiate steps to ascertain whether it is entitled to recover any part of the sums paid by the bank to Transamerica General Corporation in connection with fidelity losses, and if it is concluded the bank is entitled to recover, it shall take steps to recover the same.

This memorandum is submitted without prejudice to the right to require full and complete compliance with the Comptroller's criticisms and suggestions, to resort to sanctions provided by law, or to continue to list in reports of examination assets that are subject to criticism, until such criticisms have been corrected or eliminated. Neither this memorandum nor its contents shall be used by the bank or anyone else on its behalf without the consent of the Comptroller, for any purpose except for its information, unless and until the provisions hereof are accepted and complied with by the bank.

COPY

February 26, 1940

Mr. Chester Morrill, Secretary,
Board of Governors,
Federal Reserve System,
Washington, D.C.

Dear Mr. Morrill:

I have received your letter of February 26, 1940, enclosing a copy of the resolution adopted by the Board on February 24.

In view of the second paragraph of the resolution, I wish to confirm my understanding with Chairman Eccles over the telephone today that if, for any reason, it should become necessary to consider the acceptance of less than the requirement of $6,900,000 in paragraph (2) of the statement of requirements, this office reserves the right to insist upon $35,000,000 in lieu of $30,000,000 as stated in paragraph (1) of the requirements. If $35,000,000 is insisted upon, under these circumstances, we presume we shall have the support of your Board in that regard.

Very sincerely yours,

Comptroller of the Currency

COPY COPY

BOARD OF GOVERNORS
of the
FEDERAL RESERVE SYSTEM

February 26, 1940

Honorable Preston Delano
Comptroller of the Currency
Washington, D. C.

Dear Mr. Delano:

Chairman Eccles asked me this morning to send you a copy of the resolution which the Board adopted during its meeting on Saturday and I am attaching one herewith in the form as it was written up at the time of the Board's action.

Very truly yours,

s/d Chester Morrill

Chester Morrill
Secretary

Enclosure

The Board authorizes its representatives to join with the representatives of the Federal Deposit Insurance Corporation, the Treasury, and the Comptroller of the Currency in agreeing upon the proposed requirements of the Comptroller of the Currency and in presenting a united front in support of these requirements.

The Board, however, requests its representatives to advise the Comptroller of the Currency that the Board feels that the proposed requirements should not be allowed to fail in case the Bank of America is unwilling to agree to the requirement of $6,000,000 in paragraph (2), but is willing to accept a requirement of some other amount in lieu thereof which is not less than $5,000,000.

In connection with this action, the Board understands that if the representatives of these agencies should agree upon any material modification of the Comptroller's requirements the matter will be brought back to the Board for further consideration.

Federal Reserve Board

[illegible]

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON

February 26, 1940

Hon. Preston Delano
Comptroller of the Currency
Washington, D. C.

Dear Sir:

I wish to acknowledge a copy of your proposal to be submitted to the Bank of America National Trust and Savings Association, San Francisco, California, with respect to certain of the bank's problems.

The proposal sets forth the requirements for correction which have been developed after a series of conferences in which I participated, and with which I am in accord. This matter has been considered also by my associates in the Federal Deposit Insurance Corporation and it meets with their approval.

If the bank will take steps to meet these requirements in a proper spirit, I believe that substantial improvement in its condition will result.

Very truly yours,

s/d Leo T. Crowley

Leo T. Crowley
Chairman

COPY COPY

February 26, 1940

Honorable Leo T. Crowley, Chairman,
Federal Deposit Insurance Corporation
Washington, D. C.

My dear Mr. Chairman:

In accordance with our conversation over the telephone this morning, I hand you herewith copy of a letter with its enclosure which was delivered to Mr. L. M. Giannini this morning at the Mayflower Hotel.

Very sincerely yours,

Preston Delano

February 2[illegible], 19[illegible]

Honorable Marriner S. Eccles,
Chairman, Board of Governors,
Federal Reserve System,
Washington, D.C.

My dear Mr. Chairman:

In accordance with our conversation over the telephone this morning, I hand you herewith copy of a letter with its enclosure which was delivered to Mr. L. M. Giannini this morning at the Mayflower Hotel.

Very sincerely yours,

Preston Delano

REPORT OF CONFERENCE HELD IN MR. BELL'S OFFICE

FRIDAY FEBRUARY 23, 1940

Those in attendance were Messrs. McKee, Eccles and Dreibelbis from the Federal Reserve Board, Mr. Crowley from the Federal Deposit Insurance Corporation, Messrs. Bell, Seymour and Sherbondy, and Messrs. Delano, Upham, Folger and Mulroney.

The program drafted by the office of the Comptroller of the Currency as of February 22, 1940 and the program of the Federal Reserve Board dated February 23, 1940 were discussed. Copies of these programs are attached hereto. In Item 1 the amount of new capital was reduced from $35,000,000 to $30,000,000. The meaning thereof was clarified, and mention of specific matters to be included in the articles of association were excluded. In item 2, the amount of the reserve was reduced to $6,900,000. Changes of items 3, 5 and 8 were made in the language only, having no material effect on the substance thereof.

During the meeting, Mr. McKee objected quite strenuously to the inclusion of the figure of $6,900,000, stating he had agreed to a reserve in the sum of $5,000,000. Mr. Eccles admitted that the figure of $6,900,000 odd originated in the Federal Reserve Board, and he was therefore precluded from making the same objections as voiced by Mr. McKee. There was apparently, except for the objection voiced by Mr. McKee, an agreement as to the substance of the final draft of the program, and after the meeting Messrs. Dreibelbis, Seymour, Folger, Upham, Williams, McLean and Mulroney prepared the final draft dated February 23, 1940, a copy of which is attached. Mr. Dreibelbis took several copies with him, and copies were given to Messrs. Sherbondy, Bell, and one copy was sent to Mr. Crowley.

February 23, 1940

REQUIREMENTS OF THE COMPTROLLER

OF THE CURRENCY

1. As soon as possible, and in any event not later than June 1, 1940, the bank shall add $30,000,000 of additional capital funds by the issuance of common or preferred stock, or both, with the understanding that by April 1 the board of directors of the bank will approve the entire program herein outlined and the bank will obtain the approval of the Comptroller of the Currency to such increase. Any preferred stock sold must be issuable at par and be retirable at par. A commitment from the RFC to purchase preferred stock in the amount of $30,000,000 must be obtained prior to April 1, and if preferred stock is to be sold, an agreement with the Comptroller of the Currency upon the terms of the amendments to the articles of association must be reached by April 1.

2. Immediately upon obtaining the new capital the bank shall set up an unallocated reserve of $6,900,000 against the carrying value of individual occupied banking premises criticised in the report of examination of August 31, 1939, including those shown on the bank's books and in its investment in Merchants National Realty Corporation. Within one year after this reserve is set up it shall be used to reduce the carrying values of such banking premises or the carrying value of the bank's investment in Merchants National Realty Corporation, as the case may be, to the extent determined by the Chief National Bank Examiner of the Twelfth Federal Reserve District, and for the purpose of making that determination the bank agrees to furnish to such Chief

Examiner all information and records respecting said banking premises which may be requested by him. The remainder of such reserve, if any, may be returned to the undivided profits account.

3. The bank shall obtain additional collateral, satisfactory to the Comptroller, to secure the contracts of California Lands, Inc., and Capital Company with the bank, and the contracts of Capital Company with Merchants National Realty Corporation. Such additional collateral shall be in an amount equal in value to the difference between the unpaid purchase price upon such contracts and the value of the property thereunder, as such value appears in the schedule contained in the report of examination begun August 31, 1939. All of such contracts shall be eliminated from the assets of the bank and Merchants National Realty Corporation by December 15, 1943.

4. All bonds in the bank's investment portfolio shall be amortized out of current earnings (other than bond profits) to maturity, or to call date. Current bond profits shall be used to take care of current losses, and any bond profits not so used shall be passed to a reserve for losses of any character until such reserve is adequate in the judgment of the Comptroller of the Currency.

5. Loans to Transamerica Corporation and its allied interests not otherwise provided for herein shall be brought within the legal limit allowed to one interest, as soon as possible and not later than July 15, 1940. The stock of Transamerica or any of its allied interests securing loans of

Transamerica or any of its allied interests shall be eliminated by July 15, 1943, and no pledge of such stock shall hereafter be accepted. Further extensions of credit by the bank for the purpose of purchasing or carrying Transamerica stock shall be discontinued, and no collateral value shall be assigned to any such stock hereafter pledged to secure any loan made by the bank.

6. The bank shall eliminate the amount of investment in stock under option on the basis of the program now in effect.

7. The bank shall give vigorous attention to the elimination or correction of any real estate holdings or real estate loans that may not conform to statutory requirements.

8. The bank shall initiate steps to ascertain whether it is entitled to recover any part of the sums paid by the bank to Transamerica General Corporation in connection with fidelity losses, and if it is concluded the bank is entitled to recover, it shall take steps to recover the same.

This memorandum is submitted without prejudice to the right to require full and complete compliance with the Comptroller's criticisms and suggestions, to resort to sanctions provided by law, or to continue to list in reports of examination assets that are subject to criticism, until such criticisms have been corrected or eliminated. Neither this memorandum nor its contents shall be used by the bank or anyone else on its behalf without the consent of the Comptroller, for any purpose except for its information, unless and until the provisions hereof are accepted and complied with by the bank.

REQUIREMENTS OF THE COMPTROLLER
OF THE CURRENCY

1940

1. As soon as possible, and in any event not later than June 1, the bank shall add $35,000,000 of additional capital stock by the issuance of common or preferred stock, or both, with the understanding that by April 1 the board of directors of the bank will have approved the entire program herein outlined and the bank will have obtained the approval of the Comptroller of the Currency to such increase. In the event that any part of said increase is to be obtained by the sale of preferred stock to the RFC, a commitment from the RFC, on such terms as the Secretary of the Treasury will request the RFC to purchase such stock, must be obtained, and an agreement with the RFC and the Comptroller of the Currency upon the terms of the amendments to the articles of association, including its terms governing the disposition of earnings, retirement of preferred stock (including a provision that this will only be done with the consent of the Comptroller), etc., must be had by April 1.

2. Immediately upon obtaining the new capital, the bank shall set up an unallocated reserve of $6,926,845.36 against the carrying value of individual occupied banking premises criticised in the report of examination of August 31, 1939, including those shown on the bank's books and in its investment in Merchants National Realty Corporation. At the end of one year this reserve shall be used to reduce the carrying values of such banking premises or the carrying value of the bank's investment in Merchants National Realty Corporation, as the case may be, to the

extent determined by the Chief National Bank Examiner of the Twelfth Federal Reserve District; and for the purpose of making that determination the bank agrees to furnish to such Chief Examiner all information and records respecting said banking premises which may be requested by him. The remainder of such reserve, if any, may be returned to the undivided profits account.

3. The bank shall obtain additional collateral, satisfactory to the Comptroller, to secure the contracts of California Lands, Inc., and Capital Company with the bank, and the contracts of Capital Company with Merchants National Realty Corporation. Such additional collateral shall be in an amount equal in value to the difference between the unpaid purchase price upon such contracts and the value of the property thereunder, as such value appears in the schedule contained in the report of examination begun August 31, 1939. All of such contracts shall be eliminated from the bank's assets by December 15, 1943.

4. All bonds in the bank's investment portfolio shall be amortized out of current earnings (other than bond profits) to maturity, or to call date if callable sooner. Current bond profits shall be used to take care of current losses, and any bond profits not so used shall be passed to a reserve for losses of any character until such reserve is adequate in the judgment of the Comptroller of the Currency.

5. The bank shall continue the program of liquidation now in effect with regard to the commitments of Transamerica and its allied interests. The stock of any allied interests of Transamerica securing loans of Transamerica or any of its allied interests shall be eliminated by July 15, 1945, and no similar pledge shall hereafter be accepted. No collateral for the commitments of Transamerica and its allied interests shall be withdrawn from the bank without payment to the bank of a sum equal to the value of such collateral on account of such commitments; nor shall substitutions or changes of collateral be made which reduce the value of the collateral securing any such commitments. Further extensions of credit by the bank for the purpose of purchasing or carrying Transamerica stock shall be discontinued, and no collateral value shall be assigned to any such stock hereafter pledged to secure any loan made by the bank.

6. The bank shall eliminate the amount of investment in stock under option on the basis of the program now in effect.

7. The bank shall give vigorous attention to the elimination or correction of any real estate holdings or real estate loans that may not conform to statutory requirements.

8. The bank shall initiate steps, satisfactory to the Comptroller, to ascertain whether it is entitled to recover any part of the sums paid by the bank to Transamerica General Corporation in connection with fidelity losses, and if it is concluded the bank is entitled to recover, it shall

take steps, satisfactory to the Comptroller, to recover the same.

This memorandum is submitted without prejudice to the right to require full and complete compliance with the Comptroller's criticisms and suggestions, to resort to sanctions provided by law, or to continue to list in reports of examination assets that are subject to criticism, until such criticisms have been corrected or eliminated. Neither this memorandum nor its contents shall be used by the bank or anyone else on its behalf without the consent of the Comptroller, for any purpose except for its information, unless and until the provisions hereof are accepted and complied with by the bank.

Feb 22 1940

REQUIREMENTS OF THE COMPTROLLER OF THE CURRENCY

1. As soon as possible, and in any event not later than June 1, the bank shall add $35,000,000 of additional capital stock by the issuance of common or preferred stock, or both, with the understanding that by April 1 the board of directors of the bank will have approved the entire program herein outlined and the bank will have obtained the approval of the Comptroller of the Currency to such increase. In the event that any part of said increase is to be obtained by the sale of preferred stock to the RFC, a commitment from the RFC, on such terms as the Secretary of the Treasury will request the RFC to purchase such stock, must be obtained, and an agreement with the RFC and the Comptroller of the Currency upon the terms of the amendments to the articles of association must be had by April 1.

2. Immediately upon obtaining the new capital, the bank shall set up an unallocated reserve of $6,926,845.36 against the carrying value of individual occupied banking premises criticized in the report of examination of August 31, 1939, including those shown on the bank's books and in its investment in Merchants National Realty Corporation. At the end of one year this reserve shall be used to reduce the carrying values of such banking premises or the carrying value of the bank's investment in Merchants National Realty Corporation, as the case may be, to the extent determined by the Chief National Bank Examiner of the Twelfth Federal Reserve District; and for the purpose of making that determination the bank agrees to furnish to such Chief Examiner all information and records respecting said banking premises which may be requested by him. The remainder of such reserve, if any, may be returned to the undivided profits account.

3. The bank shall obtain additional collateral, satisfactory to the Comptroller, to secure the contracts of California Lands, Inc., and Capital Company with the bank, and the contracts of Capital Company with Merchants National Realty Corporation. Such additional collateral shall be in an amount equal in value to the difference between the unpaid purchase price upon such contracts and the value of the property thereunder, as such value appears in the schedule contained in the report of examination begun August 31, 1939. All of such contracts shall be eliminated from the assets of the bank and Merchants National Realty Corporation by December 15, 1945, the reduction in all of such contracts to be not less than $4,000,000 in any one year.

4. All bonds in the bank's investment portolio shall be amortized out of current earnings(other than bond profits) to maturity, or to call date if callable sooner. Current bond profits shall be used to take care of current losses, and any bond profits not so used shall be passed to a reserve for losses of any character until such reserve is adequate in the judgment of the Comptroller of the Currency.

5. The stock of any allied interest of Transamerica securing loans of Transamerica or any of its allied interest shall be eliminated by July 15, 1945, and no similar pledge shall hereafter be accepted. Further extensions of credit by the bank for the purpose of purchasing or carrying Transamerica stock shall be discontinued, and no collateral value shall be assigned to any such stock hereafter pledged to secure any loan made by the bank.

6. The bank shall eliminate the amount of investment in stock under option on the basis of the program now in effect.
7. The bank shall give vigorous attention to the elimination or correction of any real estate holdings or real estate loans that may not conform to statutory requirements.
8. The bank shall initiate steps, satisfactory to the Comptroller, to ascertain whether it is entitled to recover any part of the sums paid by the bank to Transamerica General Corporation in connection with fidelity losses, and it is concluded the bank is entitled to recover, it shall take steps, satisfactory to the Comptroller, to recover the same.

This memorandum is submitted without prejudice to the right to require full and complete compliance with the Comptroller's criticisms and suggestions, to resort to sanctions provided by law, or to continue to list in reports of examination assets that are subject to criticism, until such criticisms have been corrected or eliminated. Neither this memorandum nor its contents shall be used by the bank or anyone else on its behalf without the consent of the Comptroller, for any purpose except for its information, unless and until the provisions hereof are accepted and complied with by the bank.

Federal Reserve

Feb
22

Conference held in the office of the Under Secretary of the Treasury on February 22, 1940 for further discussion of the Bank of America situation.

Attended by: Under Secretary of the Treasury Bell
Chairman Eccles of the Federal Reserve Board
Chairman Crowley of the F. D. I. C.
J. P. Dreibelbis, Federal Reserve Board
W. E. [illegible], Attorney
Comptroller of the Currency Delano

Mr. Foley was invited but unable to attend.

The discussion centered around a memorandum presented by Mr. Eccles which was an attempt to provide a modification of the Comptroller's requirements in the light of the proposal made by the Bank on February 20, 1940. Copy of Mr. Eccles' memo (marked Exhibit 1) is attached, as is also a memorandum prepared in the office of the Comptroller of the Currency drafted for the same purpose (Exhibit 2).

Mr. Eccles expressed the opinion that, as a matter of negotiation, it would be wise to accept the Bank's proposal for a $30,000,000 capital increase and a $5,000,000 reserve against losses in bank premises but that in return we could demand the transfer of $4,000,000 from undivided profits to surplus account which would have the effect of freezing that much of undivided profits. However, after considerable debate Mr. Eccles' proposal for a $35,000,000 increase in capital and a reserve of $6,500,000 without any transfer to surplus from undivided profits was agreed upon, and a memorandum embodying these changes and some others discussed during the day was prepared in the afternoon in the Office of the Comptroller with Mr. Dreibelbis present. Copy of that memorandum (Exhibit 3) is attached.

February 23, 1940

REQUIREMENTS OF THE COMPTROLLER
OF THE CURRENCY

1. As soon as possible, and in any event not later than June 1 1940 the bank shall add $35,000,000 of additional capital stock by the issuance of common or preferred stock, or both, with the understanding that by April 1 the board of directors of the bank will have approved the entire program herein outlined and the bank will have obtained the approval of the Comptroller of the Currency to such increase. In the event that any part of said increase is to be obtained by the sale of preferred stock to the RFC, a commitment from the RFC, on such terms as the Secretary of the Treasury will request the RFC to purchase such stock, must be obtained, and an agreement with the RFC and the Comptroller of the Currency upon the terms of the amendments to the articles of association, including its terms governing the disposition of earnings, retirement of preferred stock (including a provision that this will only be done with the consent of the Comptroller), etc., must be had by April 1.

2. Immediately upon obtaining the new capital, the bank shall set up an unallocated reserve of $6,926,845.36 against the carrying value of individual occupied banking premises criticized in the report of examination of August 31, 1939, including those shown on the bank's books and in its investment in Merchants National Realty Corporation. At the end of one year this reserve shall be used to reduce the carrying values of such banking premises or the carrying value of the bank's investment in Merchants National Realty Corporation, as the case may be, to the

-3-

extent determined by the Chief National Bank Examiner of the Twelfth Federal Reserve District; and for the purpose of making that determination the bank agrees to furnish to such Chief Examiner all information and records respecting said banking premises which may be requested by him. The remainder of such reserve, if any, may be returned to the undivided profits account.

3. The bank shall obtain additional collateral, satisfactory to the Comptroller, to secure the contracts of California Lands, Inc., and Capital Company with the bank, and the contracts of Capital Company with Merchants National Realty Corporation. Such additional collateral shall be in an amount equal in value to the difference between the unpaid purchase price upon such contracts and the value of the property thereunder, as such value appears in the schedule contained in the report of examination begun August 31, 1939. All of such contracts shall be eliminated from the bank's assets by December 15, 1943.

4. All bonds in the bank's investment portfolio shall be amortized out of current earnings (other than bond profits) to maturity, or to call date if callable sooner. Current bond profits shall be used to take care of current losses, and any bond profits not so used shall be passed to a reserve for losses of any character until such reserve is adequate in the judgment of the Comptroller of the Currency.

5. The bank shall continue the program of liquidation now in effect with regard to the commitments of Transamerica and its allied interests. The stock of any allied interests of Transamerica securing loans of Transamerica or any of its allied interests shall be eliminated by July 15, 1945, and no similar pledge shall hereafter be accepted. No collateral for the commitments of Transamerica and its allied interests shall be withdrawn from the bank without payment to the bank of a sum equal to the value of such collateral on account of such commitments; nor shall substitutions or changes of collateral be made which reduce the value of the collateral securing any such commitments. Further extensions of credit by the bank for the purpose of purchasing or carrying Transamerica stock shall be discontinued, and no collateral value shall be assigned to any such stock hereafter pledged to secure any loan made by the bank.

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take steps, satisfactory to the Comptroller, to recover the same.

This memorandum is submitted without prejudice to the right to require full and complete compliance with the Comptroller's criticisms and suggestions, to resort to sanctions provided by law, or to continue to list in reports of examination assets that are subject to criticism, until such criticisms have been corrected or eliminated. Neither this memorandum nor its contents shall be used by the bank or anyone else on its behalf without the consent of the Comptroller, for any purpose except for its information, unless and until the provisions hereof are accepted and complied with by the bank.

Feb 22-1940

RESPONSE TO MEMORANDUM PRESENTED
BY OFFICIALS OF
BANK OF AMERICA N.T. & S.A.

* * * * * * * * *

1. Bank is to increase its capital stock by $35,000,000. Within thirty days is to get a commitment from the RFC to underwrite any or all of the issue; (this underwriting commitment may be reduced in a sum equal to the aggregate par value of the stock sold to private interests). The terms and conditions of the proposed amendments to the bank's articles of association shall be agreed upon by April 15, 1940 by the bank and the committee and also by the RFC if any part of the funds are to be made available through the RFC for the purchase of any of the new capital stock. The increase in capital stock is to be consummated within ninety days, if possible, but in no event later than June 30, 1940.
2. On or before the date of the increase in capital stock, the bank is to set up an unallocated reserve of $7,400,000, such reserve not to be reduced if the Comptroller of the Currency objects thereto. (See memo. attached).
3. All bond profits must be kept in a special reserve account to take care of losses in bonds, and amortization of bond premiums, until the total of that reserve account shall equal the total bond premium. If in any given semi-annual period the total added to the reserve is insufficient to cover amortization of bond premiums for the period, then such reserve must be augmented, in the amount of the deficit, from current earnings.

4. Furnish the Comptroller complete information, satisfactory to him, with respect to the original cost of each banking premise, including future and former premises, and the depreciation which has been taken thereon. Adequate depreciation will then be determined and any necessary adjustment will then be made.
5. Charge off all items classified as loss in the last report of examination, not otherwise discussed herein, which have not heretofore been charged off. Future losses, except those reserved for, must be charged out of future earnings; and presently existing undivided profits, as well as any amount that may later be released from reserves herein established, may not be used for any purpose except the setting up of reserves and charging out of losses not provided for by future earnings.
6. Bank is to obtain from California Lands, Inc., and Capital Co. sufficient additional collateral, satisfactory to the Comptroller, to assure the discharge of the obligations of those corporations to the bank, including the agreement of Capital Co. covering the future and former bank premises now carried by Merchants National Realty Corporation. In any event, the value of such additional collateral will be equal to 25% of the remaining balance due under the contracts plus 25% of the carrying value of future and former premises.
7. Continue to treat real estate currently acquired by foreclosure, or in satisfaction of debt, as Other Real Estate, and carry

the same at cost or appraised value, whichever is the lower, and in no instance is the carrying value of Other Real Estate to exceed the book value of the loan at the time of foreclosure.

8. Eliminate the amount of investment in stock under option at a rate not less than the program now in effect.

9. Bank is to continue program of liquidation with regard to all commitments of Transamerica and its subsidiary and related companies at substantially the same rate as has been accomplished in the past year.

10. Bank is to eliminate, as soon as possible and within a reasonable period, any loans carried in excess of the legal limits.

11. Bank is to give vigorous attention to the elimination of any real estate holdings or real estate loans that may not conform to statutory requirements.

12. The bank shall initiate steps, satisfactory to the Comptroller to ascertain whether it is entitled to recover any part of the sums paid by the bank to Transamerica General Corporation in connection with fidelity losses and if it is concluded that the bank is entitled to recover, it shall take steps satisfactory to the Comptroller to recover the same.

This memorandum is submitted without prejudice to the right of the Comptroller of the Currency to require full and complete compliance with his criticisms and suggestions previously specified in reports of examination and in letters to the bank, to resort to sanctions provided by law, or to continue to list in reports of examination assets that are subject to criticism, until such criticisms have been corrected or eliminated. Neither this memorandum or its contents shall be used by the bank or anyone else on its behalf for any purpose except for its information unless and until the provisions hereof are accepted and complied with by the bank.

Memorandum Covering Unallocated Reserve of
$7,400,000, referred to in Item 2.

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This reserve is made up of losses estimated on

Occupied Premises	$6,926,000.00
Future Premises	488,500.00
	$7,414,500.00

Losses estimated in the August report of $585,000 on future and former bank premises carried in Merchants National Realty Corporation is provided for in Item 6 of the agreement.

Chairman Jones' Memo
Confidential

For discussion February [illegible], 1940

1. As soon as possible in any event not later than April 15th add $25,000,000 actual new capital by the issuance of common or preferred stock or both, with the understanding that by March 15th the board of directors of the Bank will have approved the entire program herein outlined and the Bank will have obtained the approval of the Comptroller of the Currency to such increase. In the event any part of said increase is to be obtained by the sale of preferred stock to the R.F.C. a commitment from the R.F.C. on such terms as the Secretary of the Treasury will request it to purchase such stock must be obtained as an agreement with the R.F.C. and the Comptroller of the Currency upon the terms of the amended articles of association, including its terms governing the disposition of earnings, retirement of preferred stock, etc., must be had by March 15th.

2. Immediately upon obtaining the new capital the Bank will set up an unallocated reserve of $[illegible] against the carrying value of the individual banking premises criticized in the report of examination of August 31, 1939, including those shown on the Bank's books and in its investment in Merchants National Realty Corporation. At the end of one year this reserve shall be used to reduce the carrying values of such banking premises or the carrying value of the Bank's investment in Merchants National Realty Corporation, as the case may be, unless in the meantime the Bank shall have furnished to the Comptroller of the Currency complete information satisfactory to him with respect to the actual cost of each such

banking premises to the Bank or any of its affiliated, associated or related companies when originally acquired whether by the Bank or by any of its affiliated, associated or related companies, any capital expenditures which have been made, and the depreciation which has been taken upon each such premises. Upon furnishing such evidence within the one year, the reserve shall be used to reduce the carrying value of each such banking premises by the amount of adequate depreciation during the ownership of the building by the Bank or any of its affiliated, associated or related companies, not previously taken, which should have been taken in accordance with sound banking practices, and by the amount of any "write-up". The remainder of such reserve, if any, may be returned to the undivided profits account. All depreciation on buildings, furniture, fixtures and equipment shall be calculated on the basis of depreciation allowed the Bank by the Treasury Department for income tax purposes.

3. Future and former banking premises and all other real estate now carried as Other Real Estate and real estate hereafter acquired by foreclosure or in satisfaction of debt will be treated as Other Real Estate and carried at cost or appraised value, whichever is lower. This will not apply to the Rollins property.

4. The Bank will obtain additional collateral from California Lands, Inc., and Capital Company to secure their

contracts with the Bank and of Capital Company to secure its contract with the Merchants National Realty Corporation. Such additional collateral will be in an amount equal in value to the difference between the unpaid purchase price upon the contracts and the valuation of the property thereunder as such valuation appears in the schedule contained in the report of examination begun August 31, 1939. All of such contracts will be eliminated from the Bank's assets by December 15, 1943.

5. All bonds in the Bank's investment portfolio will be amortized out of current earnings to maturity or to call date if callable sooner. Current bond profits will be used to take care of current losses and any bond profits not so used will be passed to a reserve for losses of any character until such reserve is adequate in the judgment of the Comptroller of the Currency.

6. Loans to Transamerica Corporation and its allied interests will be brought within the legal limit allowed to one interest as soon as possible and not later than July 15, 1942, except that this paragraph shall not apply to the contracts of the Bank with California Lands, Inc., and Capital Company, the contract of Merchants National Realty Corporation with Capital Company, and the option agreement of Transamerica with respect to the stock of National City Bank of New York acquired by the Bank, all of which are otherwise disposed of herein. The program of liquidation

with regard to the commitments of Transamerica and its subsidiaries will be continued. The stock of any allied interest of Transamerica securing loans of Transamerica or any of its allied interests will be eliminated by July 15, 1945 and no similar pledge will hereafter be accepted. Further extensions of credit by the Bank for the purpose of purchasing or carrying Transamerica stock will be discontinued and no collateral value will be assigned to any such stock hereafter pledged to secure any loan made by the Bank.

7. The Bank will charge off all items classified as loss in the last report of examination not otherwise discussed herein which have not heretofore been charged off.

8. The Bank will eliminate the amount of investment in stock under option on the basis of the program now in effect, the annual reduction amounting to $543,360.

9. The Bank will give vigorous attention to any real estate holdings or real estate loans that may not conform to statutory requirements.

10. The Bank will initiate steps to ascertain whether the Bank is entitled to recover any part of Transamerica General Corporation's reserve for fidelity losses and to recover any part thereof to which the Bank may be entitled.

Feb 20

Conference held in the office of the Under Secretary of the Treasury [illegible] Bank of America situation.

Attended by: Under Secretary of the Treasury Bell
Chairman Eccles of the Federal Reserve Board
Governor McKee of the Federal Reserve Board
Chairman Crowley of the F.D.I.C.
Comptroller Delano

Mr. Foley entered the meeting later

L. M. Giannini, President of the Bank of America
C. E. Cushing, Counsel for the Bank of America

The meeting was opened by Mr. Cushing, who presented a memorandum outlining the position of the Bank of America in regard to the current discussions between the Bank and the Committee representing the Treasury, the Federal Reserve Board, and the Federal Deposit Insurance Corporation. (Copy of Mr. Cushing's memo is attached). The memorandum was read by Mr. Cushing. The discussion which followed was confined to inquiries as to its provisions and further explanation of the Bank's position.

Mr. Cushing and Mr. Giannini left the meeting with the understanding that the Comptroller would call Mr. Cushing on the telephone when the Treasury was ready to continue the discussion with them. After Mr. Cushing and Mr. Giannini left the meeting, there was a rather extended exchange of views between the representatives of the three agencies, Mr. Sopper entering the meeting at this point. Mr. McKee of the Federal Reserve Board presented a memorandum which he had prepared commenting on Mr. Cushing's memo (copy of Mr. McKee's memo is attached).

Mr. Eccles informed the conference that he had spent considerable time with Mr. Giannini since the last meeting and had dissuaded Mr. Giannini from returning to California last week. Mr. Eccles further expressed the opinion that both Mr. A. P. Giannini and Mr. L. M. Giannini felt very strongly that they were being singled out for harsh treatment and that if a program was not evolved which they could accept without losing prestige among their stockholders and in California banking circles generally, they would refuse to go along and would simply let the Federal authorities apply whatever sanctions they desired. Mr. Eccles felt that we should try to make it possible for them to accept a program. Mr. Seymour pointed out that there was a question of policy here in regard to the preparation of our next proposal as to whether it should be considered a negotiatory document or a final minimum which we should present as an ultimatum. Mr. Foley preferred that it should be presented as our final position and one which we would not further modify.

There was general discussion of the three major questions of new capital, dividend control and the loss item set up by the Comptroller to depreciate the value of bank premises as carried on the Bank's books. These questions were considered in the light of the memorandum presented by the Bank and the possibility of reconciling the Comptroller's requirements with the Bank's position was explored at some length. It was agreed that the various agencies would review the matter with their own staffs during the next day, Wednesday, February 21, and meet again the morning of Thursday, the 22nd, for a further exchange of views.

February 21, 1940

**Response to Items Presented by
the Committee with Regard to
Bank of America N. T. & S. A.**

Upon acceptance of the following as a program, and with the express understanding that the matters pending before the S.E.C. will be disposed of at the same time, the President of the Bank will recommend to its Board of Directors that the Bank:

1. Increase its capital structure by $30,000,000, to be done within 90 days, if possible, but in no event later than June 30, 1940. This will be done by the issuance of common or preferred stock or part common and part preferred as may be decided upon by the Bank. Steps to this end will be initiated promptly. Amendment to the Bank's articles of association for this purpose shall be agreed upon by the Bank and the Committee, and also by the R.F.C. if any part of the funds are to be made available through the R.F.C. either by way of purchase of any such stock or by making loans on the security thereof.

2. Immediately upon obtaining the new capital, set up an unallocated reserve of $5,000,000.

3. Amortize bond premiums in accordance with statutory provisions and regulations of the Comptroller applicable to all national banks.

4. Furnish to the Comptroller complete information with respect to the actual cost to it of each banking premise,

including future and former premises, and the depreciation which it has taken thereon, such information to cover the history of each banking premise from the time of its acquisition by the Bank. Adequate depreciation from the time of acquisition will then be determined and any necessary adjustment will be made through the unallocated reserve. All depreciation on buildings, furniture, fixtures and equipment shall be calculated on the basis of depreciation allowed the Bank by the Treasury Department for income tax purposes.

5. Charge off all items classified as loss in the last report of examination not otherwise discussed herein which have not heretofore been charged off. (For your information, this has already been done.)

6. Insist that California Lands and Capital Co. furnish property to additionally secure their contracts. Such property will be in an amount equal to the difference between the unpaid purchase price under the contracts and the valuation of the property thereunder as such valuation appears in the schedule contained in the report of examination begun August 31, 1939. (For your information, sales of real estate to California Lands and Capital Co. under contract were discontinued as of June 1, 1938.)

7. Continue to treat real estate currently acquired by foreclosure or in satisfaction of debt as Other Real Estate and carry the same at cost or appraised value, whichever is lower.

8. Eliminate the amount of investment in stock under option on the basis of the program now in effect, the annual reduction amounting to $543,360.

9. Require continuation of the program of liquidation now in effect with regard to the commitments of Transamerica and its subsidiaries.

10. Eliminate, within a reasonable period, any loans carried in excess of legal limits if any such exist. (It is the Bank's policy not to permit loans to exceed legal limits.)

11. Give vigorous attention to any real estate holdings or real estate loans that may not conform to statutory requirements.

12. Initiate steps to ascertain whether the Bank is entitled to recover any part of Transamerica General Corporation's reserve for fidelity losses and to recover any part thereof to which the Bank may be entitled.

The foregoing response is presented as an expression of the Bank's sincere desire to cooperate constructively in arriving at an understanding. It shall not be deemed or construed as admitting any statement or implication in the Committee's memo or assenting to anything therein except as herein expressed, or as admitting that there is any legal requirement or factual necessity for any change suggested therein or herein. This memo is not to be used for any other purpose or by any other agency.

Response to Memo Presented by the Committee with regard to Bank of America N. T. & S. A.

Upon acceptance of the following as a program, and with the express understanding that the matters pending before the S.E.C. will be disposed of at the same time, the President of the Bank will recommend to its Board of Directors that the Bank:

1. Increase its capital structure by $30,000,000, to be done within 90 days, if possible, but in no event later than June 30, 1940. This will be done by the issuance of common or preferred stock or part common and part preferred as may be decided upon by the Bank. Steps to this end will be initiated promptly. Amendment to the Bank's articles of association for this purpose shall be agreed upon by the Bank and the Committee, and also by the R. F. C. if any part of the funds are to be made available through the R.F.C. either by way of purchase of any such stock or by making loans on the security thereof.

Comments upon Bank's Response to Comptroller's Proposed Requirements

1. Offer of capital increase, either common or preferred, in the total amount of $30,000,000 capital funds. Amount seems inadequate in consideration of entire program offered.

(a) Would suggest preferred stock for any increase in capital, whether sold to shareholders, the public, or the Government, because (1) it should be cheaper capital and would provide more cushion from earnings for other corrections, and (2) the sale of preferred stock would create less problem with respect to representations than would the sale of common stock, and (3) preferred stock carries with it certain rights or privileges of retirement and conversion which are to the advantage of the management and the common stockholders.

2. Immediately upon obtaining the new capital, set up an unallocated reserve of $5,000,000.

2. Interpose no objection to unallocated reserve of $5,000,000 for a correction of write-ups and inadequate depreciation as determined by a complete survey and analysis of the banking premises, including future and former premises, with the understanding that in case the facts as subsequently developed indicate that $5,000,000 is inadequate, the deficiency will have to be met out of current earnings.

3. Amortize bond premiums in accordance with statutory provisions and regulations of the Comptroller applicable to all national banks.

3. No comment if it is understood that amortization applies to entire portfolio. In addition one-half of net bond profits to be set aside as additional reserves to accelerate the elimination of the premium account until such reserve is adequate as determined by the Comptroller's office.

4. Furnish to the Comptroller complete information with respect to the actual cost to it of each banking premise.

4. See No. 2

5. Charge off all items classified as loss in the last report of examination not otherwise discussed herein which have not heretofore been charged off. (For your information, this has already been done.)

5. No comment.

6. Insist that California Lands and Capital Company furnish property to additionally secure their contracts. Such property will be in an amount equal to the difference between the unpaid purchase price under the contracts and the valuation of the property thereunder as such valuation appears in the schedule contained in the report of examination begun August 31, 1939. (For your information, sales of real estate to California Lands and Capital Co. under contract were discontinued as of June 1, 1938.)

6. Proposed additional collateral consisting of free assets of these companies should be in an amount equal in value to at least 25% of the unpaid balance of their respective contracts with the bank.

7. Continue to treat real estate currently acquired by foreclosure or in satisfaction of debt as Other Real Estate and carry the same at cost or appraised value, whichever is lower.

7. No comment, provided "costs" are defined and understood by committee. Prefer "book value of loan" to "cost."

8. Eliminate the amount of investment in stock under option on the basis of the program now in effect, the annual reduction amounting to $543,360.

8. No comment.

9. Require continuation of the program of liquidation now in effect with regard to the commitments of Transamerica and its subsidiaries.

9. We still recommend the treatment of large lines substantially as suggested in the Comptroller's original requirements, with proper safeguarding language.

10. Eliminate, within a reasonable period, any loans carried in excess of legal limits if any such exist. (It is the Bank's policy not to permit loans to exceed legal limits.)

10. No comment.

11. Give vigorous attention to any real estate holdings or real estate loans that may not conform to statutory requirements.

11. No comment.

12. Initiate steps to ascertain whether the Bank is entitled to recover any part of Transamerica General Corporation's reserve for fidelity losses and to recover any part thereof to which the Bank may be entitled.

12. No comment.

The foregoing response is presented as an expression of the Bank's sincere desire to cooperate constructively in arriving at an understanding. It shall not be deemed or construed as admitting any statement or implication in the Committee's memo or assenting to anything therein except as herein expressed, or as admitting that there is any legal requirement or factual necessity for any change suggested therein or herein. This memo is not to be used for any other purpose or by any other agency.

The Bank's response, to which the foregoing comments have been directed, does not cover the following points, which should be included:

1. The Bank should take immediate steps through Merchants National Realty Company to obtain the pledge by Capital Co. of collateral equal in value to at least 25% of the amount of the contracts between it and the Realty Company. To cover any deficiency in additional collateral, the Bank shall set up a reserve from its undivided profits in an equivalent amount.

2. Other real estate carried as such on the books of the Bank. There should be set up an additional reserve from undivided profits equivalent to 25% of the carrying value of such other real estate.

THE WHITE HOUSE
WASHINGTON

March 4, 1940

MEMORANDUM FOR

HENRY MORGENTHAU, Jr.

FOR PREPARATION OF REPLY.

F. D. R.

Enclosure

United States Senate

COMMITTEE ON FOREIGN RELATIONS

Washington, D. C.,
February 24, 1940.

My dear Mr. President:

The controversy that has been raging for over a year between the Treasury Department and A. P. Giannini relative to his banks is having its repercussions among the Italians and others of my State. The Giannini interests established the First National Bank of Nevada at Reno, Nevada, two or three years ago. This bank now has several branches throughout the State. This bank has about 35,000 stockholders, and deposits around $32,000,000. This is quite a large banking institution for a State of 100,000 population. Giannini's stockholders and depositors have been peculiarly loyal to him. Without regard to the merits of the controversy, they sincerely believe that Giannini is being persecuted. I of course do not believe anything of the kind.

The dispute, as I understand it, involves a construction of our banking law. I believe that the law provides that in the event of a controversy over an order made to a bank the Secretary of the Treasury may direct the Comptroller to refer the controversy to the Federal Reserve Board for adjudication. Would not such reference result in the final settlement of the matter? This matter should certainly be settled because the controversy has already resulted in great loss to the stockholders of the banks and has threatened the solidity of the Bank of America National Trust and Savings Association.

I know the dominating character of Giannini and the harsh language he frequently indulges in, and I don't blame Henry for being sore.

I hope that you are getting a good rest, and enjoying your association with a different kind of fish.

Sincerely,

The President,
The White House.

March 6, 1940 No. 4

REQUIREMENTS OF THE COMPTROLLER OF THE CURRENCY

1. As soon as possible, and in any event not later than June 30, 1940, Bank of America National Trust and Savings Association will add $30,000,000 of additional capital funds by the issuance of common or preferred stock, or both, and the Bank will, prior to April 1, 1940, apply for the approval of the Comptroller of the Currency to such increase. The Bank will endeavor to obtain a commitment from the Reconstruction Finance Corporation to purchase or lend upon preferred stock in the amount of $30,000,000 prior to April 1, 1940, and if preferred stock is to be sold, will endeavor to obtain an agreement with the Comptroller of the Currency upon the terms of the amendments to the articles of association by April 1, 1940.

2. Immediately upon obtaining the new capital the Bank shall set up an unallocated reserve of $6,900,000.

3. The Bank shall obtain additional security satisfactory to the Comptroller of the Currency to secure the contracts of California Lands, Inc. and Capital Company with the Bank, and the contracts of Capital Company with Merchants National Realty Corporation. Such additional security shall be in an amount equal in value to the difference between the unpaid purchase price upon such contracts and the value of the property thereunder, as such value appears in the schedule contained in the report of exam-

ination begun August 31, 1939. All of such contracts shall be eliminated from the assets of the Bank and Merchants National Realty Corporation by December 15, 1943.

4. All premiums on bonds in the Bank's investment portfolio shall be amortized out of current earnings (other than bond profits) to maturity, or to call date, if any, and amortization previously reserved on bonds sold at book value or higher may be returned to the undivided profits account. Current bond profits shall be used to take care of current losses, and any bond profits not so used shall be passed to a reserve for losses of any character until in the opinion of the Comptroller of the Currency such reserve is adequate. However, this reserve for losses, plus the amortization reserve, need not exceed the total premium account.

5. The Bank shall, as soon as possible, furnish to a committee composed of the Vice President in Charge of Examinations of the Federal Reserve Bank of San Francisco, or some officer of the bank designated by him, the Supervising Examiner of the Federal Deposit Insurance Corporation for the Twelfth District, and the Chief National Bank Examiner for the Twelfth Federal Reserve District, all obtainable records and information with respect to the acquisition of each banking premise criticised in the report of examination of August 31, 1939, including those shown on the bank's books and in its investment in

Merchants National Realty Corporation, dating back to the time such premise was acquired either by the bank or any member (either bank or company) of the group presently or then comprising the Transamerica organization.

The committee shall consider the fair value of each premise at the time of such acquisition, and the special conditions which had to be met in fixing the price paid. From these considerations, the committee shall determine the amount which shall be used by the committee as the estimated cost amount of each premise to the bank. The value of each premise shall then be established at such estimated cost amount, plus the amount of any expenditures subsequent to acquisition found by the committee to have been appropriately capitalized, less the appropriate amount of depreciation at the depreciation rate allowed by the Bureau of Internal Revenue for each year of ownership. The unallocated reserve set up by the bank shall be reduced by the difference between the present carrying value of each such premise and the value of such premise as determined by the committee in the manner hereinabove stated. The decision of a majority of the members of the committee shall be binding. The remainder of such reserve, if any, may be returned to the undivided profits account. A partial release of the reserve, or a decrease in the amount of the reserve to be set up, may be made as soon as that procedure is justified, in the opinion of the committee.

6. The aggregate amount of obligations, as defined in Section 5200, United States Revised Statutes, of Transamerica Corporation and all subsidiaries in which it owns or controls a majority interest, to the bank, will be brought within the limitations and exceptions of Section 5200, United States Revised Statutes, for any one borrower by July 15, 1942, and thereafter the aggregate amount of such obligations will not be permitted to exceed such limitations and exceptions. The existing obligations of Transamerica or its subsidiaries now held by the bank will be eliminated by July 15, 1945, and no new loans will be made to Transamerica or its subsidiaries secured by the stock of subsidiaries of Transamerica. This paragraph shall not apply to obligations of Capital Company and California Lands, Inc. arising out of real estate sales contracts, which contracts are covered in numbered paragraph (3) hereof.

The bank may accept Transamerica shares as security for small loans for business purposes where the borrower demonstrates a capacity to liquidate the loan otherwise than through the sale of such shares. No loans for speculative purposes will be made on the security of such shares.

7. The bank shall eliminate the amount of investment in stock under option on the basis of the program now in effect.

8. The bank shall give vigorous attention to the elimination or correction of any real estate holdings or real estate loans that may not conform to statutory requirements.

9. The bank shall initiate steps to ascertain whether it is entitled to recover any part of the sums paid by it to Transamerica General Corporation in connection with fidelity losses, and if it is concluded the bank is entitled to recover, it shall take steps to recover the same.

10. The Board of Directors of the bank will approve the foregoing by April 1, 1940.

This memorandum is submitted without prejudice to the right to require full and complete compliance with the Comptroller's criticisms and suggestions, to resort to sanctions provided by law, or to continue to list in reports of examination assets that are subject to criticism, until such criticisms have been corrected or eliminated. Neither this memorandum nor its contents shall be used by the bank or anyone else on its behalf without the consent of the Comptroller of the Currency for any purpose except for its information, unless and until the provisions hereof are accepted and complied with by the bank.

For the Federal Reserve System

For the Federal Deposit Insurance Corporation

For the Comptroller of the Currency

E. H. Foley Jr.
D. W. Bell

RE BANK OF AMERICA

March 6, 1940.
2:30 p.m.

(This discussion took place during the Open Market meeting but was transcribed separately for clarity of the record)

Present: Mr. Bell
Mr. Seymour
Mrs Klotz

H.M.Jr: Seymour has asked to see me. I have got him outside.

I want you to take this thing over and tell Eccles there is a possibility of my asking the President and saying, "Now, Mr. President, this has been a long fight and we have accomplished it and I think it would be nice if you would receive Mr. Delano and Mr. Eccles and myself and Mr. Jones, at which time we can explain conditions, before my letter goes to Mr. Jones. I would like to do it in your presence. You can ask us and we will say, 'All right, Jesse, it is up to you to do this whole thing.'" I think that would be swell, have a meeting there of the agencies, including Jones and maybe Frank. I could say, "Now, we have accomplished this thing. I expect this trouble and therefore I think - I never could have got it if I had had Jones in. I have accomplished what you wanted through these people all working together so beautifully. In order to bridge this thing, I want to do it in your office," and it is worth the President giving us a half an hour, if necessary.

Bell: Yes, because you really want his approval anyhow.

H.M.Jr: Just think that over, see. I think we ought to have a little window dressing, put on a little act in front of the President.

(Mr. Seymour entered the conference)

I was a little bit late but Mr. Eccles was telling me how you have done.

Seymour: Oh.

Bell: He was talking about the RFC.

H.M.Jr: I was just telling Dan in view of everybody being so afraid of Jones, I think the thing to do is when this is all signed and sealed and delivered, that I ask the President to receive the gentlemen who have been doing the work and that we walk over there and after all, I sign by authority of the President, plainly saying to him - and have Jones there, see, and do it in front of the President and prepare the President so that he can give Jones a little talk and say, "I want this to be kept secret."

Seymour: I should think that ought to do it.

H.M.Jr: These are the agencies that have done what is wanted. "Now, it is up to you, Jesse, to lend the money, but using this agreement as the basis. You can't change the agreement. That is the jumping off spot."

Bell: Also you thought it might be well to have the SEC there.

H.M.Jr: Possibly. I don't know. They might consider they are being high-pressured.

Seymour: I think that ought to be done separately.

H.M.Jr: I don't know.

Bell: Aside from that suggestion, what I thought we might do --

H.M.Jr: On second thought, I don't think the SEC should be there. They are two separate cases.

Seymour: I don't think you ought to give any recognition to the bank's position.

H.M.Jr: On second thought, no, but if we do go over to the President, I ought to have on top of his desk a piece of paper explaining what I want him to say to Jesse, see, just a summary and just have it on top of his desk so he can read it.

Bell: You don't think he will hold it up and say, "This is what I am supposed to say," do you?

H.M.Jr: He never has. Don't worry.

Bell: I thought we might do this: After we get this understanding this afternoon, go back to our original basis of our meetings and call in the whole group, including the SEC and say that we had gone through these negotiations now and so far as the Treasury and the other two bank examination agencies and the bank are concerned, we have come to an agreement on the points at issue and we are willing to give a copy of our memo on which the agreement is based to the SEC for its information and from here on it is up to them to negotiate with them.

H.M.Jr: I personally am just thinking --

Bell: They were in the original meetings, you know.

H.M.Jr: That is all right, but I think it would be a mistake to take SEC over to see the President, because after all, we haven't been negotiating with the offices of Transamerica. We have been negotiating with the offices of the Ban k of America. Is that right?

Seymour: That is right, and counsel for the Bank.

Bell: And they have had separate attorneys, too.

H.M.Jr: I think it perfectly proper to have SEC over here and explain to them when we go to the President for this little show I don't think they ought to be there. I am throwing my own idea down.

Bell: Well, you threw it out for consideration.

H.M.Jr: Now, you had something in mind.

Seymour: I came up because Ed and I pretty well agree that the point has been reached where there isn't any use in my staying around any more. The next steps are all inter-agency steps and involve personnel that a simple retired Notary Public doesn't know anything about, so therefore it would be all right for me to go up to New York, with the understanding that I come back on call if anything came up that you should want me to come back on, so on that basis I wanted to come in and tell you how much I appreciated the opportunity to come down and work with you on this thing and that it has been a most agreeable experience to have the splendid cooperation that I have had everywhere, especially from the lawyers, and I know you realize how fortunate you are in having such a wonderful legal staff.

H.M.Jr: Well, my only regret is that I haven't had a chance to get personally acquainted, but everybody has been so busy. I have carefully kept myself in the background because the Gianninis have built me up into a character which is just --

Seymour: It is very hard to live up to.

H.M.Jr: I felt inasmuch as they felt I was just - had this persecution complex, the best thing was to let them work with people who worked for me and work it out, so I very carefully kept myself in the background. I have never met them except once in '33, so I am sorry that I haven't had a chance to get better acquainted.

Seymour: It has been my loss, but I have had a very good time.

H.M.Jr: But everybody has been very enthusiastic about the work that you did.

Seymour: I feel that a trial lawyer begins to taper off in his value after the days of the trial are over and I think I will get back and I will come back whenever you --

H.M.Jr: You are staying here until this is finished?

Seymour: I have to go up to New York this afternoon, but on the definite understanding that any time you want me back, I will come back.

H.M.Jr: Well, I certainly appreciate your help.

Seymour: Goodbye.

(Mr. Seymour left the conference)

H.M.Jr: Well, the financing is done and this is done and the more I think of it, Dan, I think we had better have a little show before the President.

Bell: Well, let us think about it a day or two before we - we have got to talk procedure this afternoon anyhow. This isn't going to be a signed document, you know, because of the condition they put on it in respect to the SEC. We can explain to them that we just can't go along on that. We will agree on everything else that is in our shop, but on something that is out of our shop, we have nothing to do with it.

H.M.Jr: I've seen Jesse a thousand times and what he wants to do is show that he is just as important as I am, but the thing to do - but he will do just what the President tells him to do, so the thing is to get it to the President what we want him to tell him. I had Jesse for lunch yesterday and he was very, very grim.

Bell: Really?

H.M.Jr: Oh, yes.

Bell: Not over this; over many things, I suppose.

H.M.Jr: He says he is tired.

Bell: I can believe that.

H.M.Jr: He says he has taken a terrible beating on the Hill to get all this stuff through and he is tired, but I imagine he is sore because I think some day it is going to come out that he was as much behind Hanes on Associated Gas as anybody.

Bell: Was he?

H.M.Jr: Oh, yes. I think --

Bell: Well, I would expect that.

H.M.Jr: You have always got to remember that Jesse always wanted this job and never got it and there is all this jealousy business and all that, but it is --

Klotz: It is Washington.

H.M.Jr: Yes. You see, this is the first time there has been a big bank job that the negotiating was done here and not by Jesse.

Bell: Of course, this involved a great many more questions than just --

H.M.Jr: This is the way it always should have been done.

Bell: ....than just the capital stock. It has involved many other criticized items in the balance sheet in which Jesse is not concerned.

H.M.Jr: The answer is, it looks as though we have done our job. We have got Eccles all sweetened up, and so forth.

Bell: Well, I think the agencies are tickled to death with it and I think they will go along. I think we will get their initials this afternoon.

H.M.Jr: Well, you have got --

Bell: I will let you know if anything develops.

H.M.Jr: O. K.

Conference held in the Office of the Under Secretary of the Treasury at 3:30 P.M., March 6, 1940 for further discussion of the Bank of America situation.

Attended by: Under Secretary of the Treasury Bell
Chairman Eccles of the Federal Reserve Board
Governor McKee of the Federal Reserve Board
Chairman Crowley of the F. D. I. C.
Comptroller of the Currency Delano
E. H. Foley, Jr., General Counsel

The attached draft of the requirements of the Comptroller of the Currency, embodying various changes which grew out of the discussion of March 5, 1940 between the representatives of the Bank and the Comptroller, was submitted to the meeting. It was stated by Mr. Delano that the Bank's representatives now in Washington had given approval to all of its provisions. Final approval from Mr. Giannini in San Francisco had not yet been obtained but Mr. Cushing and Mr. Ferrari felt that Mr. Giannini was in essential accord. The draft as submitted was signed and approved by Messrs. Bell, Foley and Delano for the Treasury, by Mr. Crowley for the Federal Deposit Insurance Corporation, and by Messrs. Eccles and McKee for the Federal Reserve.

Mr. Bell stated that in discussing the next step with the Secretary of the Treasury the Secretary had suggested it might be advisable to have a meeting with the President which would include representatives from the Federal Reserve, Federal Deposit Insurance Corporation, the Treasury, and from the Reconstruction Finance Corporation, with the idea of bringing the President up to date and securing his approval of the $30,000,000 addition to the Bank's capital structure. After a rather extended debate, the committee agreed to recommend to the Secretary an alternative procedure, the first step of which would be for the Secretary to clear with the President the program which had been evolved by this committee in consultation with the Bank's representatives. The President would then be asked to approve a request for additional capital to be made by the Secretary of the Treasury to the Reconstruction Finance Corporation. This would be followed by the Bank's application to the Reconstruction Finance Corporation for such capital, the Comptroller's office to examine and approve the amendments to the articles of association.

Mr. Eccles stated he had discussed the matter of new capital for the Bank with the Secretary of the Treasury and had been assured that the Secretary was willing to leave to Mr. Jones the method and details of how this was to be handled. Mr. Delano pointed out that the Comptroller's office had a statutory responsibility in the matter of amendments to the articles of association, and that while every assurance had been given to the Bank's representatives that there would be no unusual or arbitrary conditions imposed in the projected articles, at the same time he felt that his office must have a voice in what these articles would be. It was generally agreed that this viewpoint was the correct one, and that as a matter of practice Mr. McIreney of the Comptroller's staff would be included in the conversations on this subject between the representatives of the Bank and the Reconstruction Finance Corporation, and the whole matter adjusted contemporaneously.

There followed general discussion as to what action should be taken by the committee or by the Secretary of the Treasury in notifying the Securities & Exchange Commission as to the progress made to date in the negotiations between the Bank of America and the Office of the Comptroller. It was the sense of the meeting that the Bank's representatives must make their own approach to the Securities & Exchange Commission if they desired to compose their differences with that body but that it would be entirely proper for representatives of the Treasury to inform the Commission of the impending understanding between the Office of the Comptroller of the Currency and the Bank.

PD
DWB

March 7, 1940

March 4, 1940

REQUIREMENTS OF THE COMPTROLLER OF THE CURRENCY

1. As soon as possible, and in any event not later than June 30, 1940, Bank of America National Trust and Savings Association will add $30,000,000 of additional capital funds by the issuance of common or preferred stock, or both, and the Bank will, prior to April 1, 1940, apply for the approval of the Comptroller of the Currency to such increase. The Bank will endeavor to obtain a commitment from the Reconstruction Finance Corporation to purchase or lend upon preferred stock in the amount of $30,000,000 prior to April 1, 1940, and if preferred stock is to be sold, will endeavor to obtain an agreement with the Comptroller of the Currency upon the terms of the amendments to the articles of association by April 1, 1940.

2. Immediately upon obtaining the new capital the Bank shall set up an unallocated reserve of $6,900,000.

3. The Bank shall obtain additional security satisfactory to the Comptroller of the Currency to secure the contracts of California Lands, Inc., and Capital Company with the Bank, and the contracts of Capital Company with Merchants National Realty Corporation. Such additional security shall be in an amount equal in value to the difference between the unpaid purchase price upon such contracts and the value of the property thereunder, as such value appears in the schedule contained in the report of examination begun August 31, 1939. All of such contracts shall be

eliminated from the assets of the Bank and Merchants National Realty Corporation by December 15, 1943.

4. All premiums on bonds in the Bank's investment portfolio shall be amortized out of current earnings (other than bond profits) to maturity, or to call date, if any, and amortization previously reserved on bonds sold at book value or higher may be returned to the undivided profits account. Current bond profits shall be used to take care of current losses, and any bond profits not so used shall be passed to a reserve for losses of any character until in the opinion of the Comptroller of the Currency such reserve is adequate. However, this reserve for losses, plus the amortization reserve need not exceed the total premium account.

5. The Bank shall, as soon as possible, furnish to a committee composed of the Vice President in Charge of Examinations of the Federal Reserve Bank of San Francisco, or some officer of the Bank designated by him, the Supervising Examiner of the Federal Deposit Insurance Corporation for the Twelfth District, and the Chief National Bank Examiner for the Twelfth Federal Reserve District, all obtainable records and information with respect to the acquisition of each banking premise criticized in the report of examination of August 31, 1939, including those shown on the Bank's books and in its investment in Merchants National Realty Corporation, dating back to the time such premise was acquired either by the Bank or any member (either bank or company)

of the group presently or then comprising the Transamerica organization.

The committee shall consider the fair value of each premise at the time of such acquisition, and the special conditions which had to be met in fixing the price paid. From these considerations, the committee shall determine the amount which shall be used by the committee as the estimated cost amount of each premise to the Bank. The value of each premise shall then be established at such estimated cost amount, plus the amount of any expenditures subsequent to acquisition found by the committee to have been appropriately capitalized, less the appropriate amount of depreciation at the depreciation rate allowed by the Bureau of Internal Revenue for each year of ownership. The unallocated reserve set up by the Bank shall be reduced by the difference between the present carrying value of each such premise and the value of such premise as determined by the committee in the manner hereinabove stated. The decision of a majority of the members of the committee shall be binding. The remainder of such reserve, if any, may be returned to the undivided profits account. A partial release of the reserve, or a decrease in the amount of the reserve to be set up, may be made as soon as that procedure is justified, in the opinion of the committee.

6. The aggregate amount of obligations, as defined in Section 5200, United States Revised Statutes, of Transamerica Corporation and all subsidiaries in which it owns or controls a majority interest, to the Bank, will be brought within the limitations and exceptions of Section 5200, United States Revised Statutes, for any one borrower by July 15, 1942, and thereafter the aggregate amount of such obligations will not be permitted to exceed such limitations and exceptions. The existing obligations of Transamerica or its subsidiaries now held by the Bank will be eliminated by July 15, 1945, and no new loans will be made to Transamerica or its subsidiaries secured by the stock of subsidiaries of Transamerica. This paragraph shall not apply to obligations of Capital Company and California Lands, Inc. arising out of real estate sales contracts, which contracts are covered in numbered paragraph (3) hereof.

The Bank may accept Transamerica shares as security for small loans for business purposes where the borrower demonstrates a capacity to liquidate the loan otherwise than through the sale of such shares. No loans for speculative purposes will be made on the security of such shares.

7. The Bank shall eliminate the amount of investment in stock under option on the basis of the program now in effect.

8. The Bank shall give vigorous attention to the elimination or correction of any real estate holdings or real estate loans that may not conform to statutory requirements.

9. The Bank shall initiate steps to ascertain whether it is entitled to recover any part of the sums paid by it to Transamerica General Corporation in connection with fidelity losses, and if it is concluded the Bank is entitled to recover, it shall take steps to recover the same.

10. The Board of Directors of the Bank will approve the foregoing by April 1, 1940.

This memorandum is submitted without prejudice to the right to require full and complete compliance with the Comptroller's criticisms and suggestions, to resort to sanctions provided by law, or to continue to list in reports of examination assets that are subject to criticism, until such criticisms have been corrected or eliminated. Neither this memorandum nor its contents shall be used by the Bank or anyone else on its behalf without the consent of the Comptroller of the Currency for any purpose except for its information, unless and until the provisions hereof are accepted and complied with by the Bank.

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MAR 7 1940

MEMORANDUM FOR THE PRESIDENT:

In accordance with the request contained in your memorandum of March 4, 1940, I return herewith Senator Pittman's letter regarding the Bank of America and a draft of reply for your signature.

Copies to: Miss Chauncey
Mr. Foley

DWB:ce
2-6-40

DWB
F.H.-FL

HMJr

MAR 7 1940

Dear Key:

I have your letter of February 24, 1940, regarding the matters under discussion between the Treasury and the Bank of America.

While the matter which has been under discussion for sometime involves more than the construction of our banking laws as indicated by you, I am advised by Henry that during the past month negotiations have been progressing satisfactorily and it is hoped that an understanding can shortly be reached.

It would take a long letter to give you all the details on this whole controversy so I have asked Henry to discuss the matter with you in person sometime when you visit the Treasury.

Sincerely yours,

Honorable Key Pittman,

United States Senate.

Copies to: Miss Chauncey
Comm. Harrell

DWB ENF
DHB:cc

Conference held in the office of the [illegible]

Attended by: Under Secretary of the Treasury Bell
Comptroller of the Currency Delano

G. E. Cushing, Counsel, Bank of America

Mr. Cushing opened the meeting by stating he had been in communication with Mr. L. M. Giannini, and had been assured that all provisions of the attached memorandum were acceptable to the Bank and that the Bank would proceed to put them into effect just as promptly as it could compose its differences with the Securities & Exchange Commission.

Mr. Cushing requested that the matter be left on this informal and suspended basis until the Bank's representatives had a full opportunity to negotiate for a settlement with the Securities & Exchange Commission, and further stated that he would keep Mr. Delano informed as to the progress of such negotiations. Mr. Bell assured him the matter could be held in suspense for a few days, and expressed the hope that it would be cleared by the first of next week.

Mr. Cushing raised the question as to the "escrow" paragraph at the close of the memorandum, stating it was his assumption that, in case the entire matter was closed, this paragraph would be withdrawn from the documents finally exchanged. He was given assurance that this would be done.

It was pointed out to Mr. Cushing that in the meeting of February 20, 1940, the Bank presented a memorandum which included in its opening paragraph a reservation as follows:

> "Upon acceptance of the following as a program, and with the express understanding that the matters pending before the S.E.C. will be disposed of at the same time, the President of the Bank will recommend to its Board of Directors that the Bank:. . ."

and a concluding paragraph as follows:

> "The foregoing response is presented as an expression of the Bank's sincere desire to cooperate constructively in arriving at an understanding. It shall not be deemed or construed as admitting any statement or implication in the Committee's memo or assenting to anything therein except as herein expressed, or as admitting that there is any legal requirement or factual necessity for any change suggested therein or herein. This memo is not to be used for any other purpose or by any other agency."

and further that these reservations had been orally introduced by Mr. Giannini and Mr. Cushing into most of the succeeding conferences. Mr. Bell and Mr. Delano wished it understood that the Treasury could not accept any such conditions; in other words, it was the Treasury's position that negotiations with the Bank could not properly be made contingent upon the Bank's clearing up its differences with the Securities & Exchange Commission.

There was some discussion as to the new capital which it was proposed to add to the Bank's structure and as to the procedure to be followed in the matter of amendments to the articles of association. In this connection Mr. Delano asked Mr. Cushing if he had any idea what the Bank contemplated in the matter of a new stock issue to secure the $30,000,000 of additional capital funds. Mr. Cushing stated he had no definite information but that he understood the Bank had in mind adding convertible preferred of $7,500,000 par value which would be sold at $30,000,000, thus putting $22,500,000 into surplus. This convertible preferred of a par value of $12½ would then be exchangeable share for share for common, or to put it another way, conversion would become profitable whenever the common passed a price of $50 per share. Mr. Bell and Mr. Delano reserved judgment as to this plan but expressed the opinion that this was too heavy a cutback and placed too large a proportion of the new funds into surplus. They pointed out that this would freeze the total of capital and surplus at $124,000,000 instead of $130,000,000 as previously intended, and they expressed the hope that the Bank would not expect by this means to avoid the necessity of building up capital and surplus out of earnings to a minimum of $130,000,000.

Mr. Bell stated that he understood the Secretary of the Treasury was to have luncheon today with Chairman Frank of the

Securities & Exchange Commission concerning another matter, and that he would suggest to the Secretary that at that time Mr. Frank should be informed of the progress of these conversations between the Bank's representatives and the Comptroller's office; further, that a copy of the memorandum attached herewith should be given to Mr. Frank for his information. Mr. Cushing thought this would be helpful and left with a request for such assistance in the SEC matter as we could properly extend.

March 7, 1940

HWB

March 8, 1940

HM,Jr told this to Ed Foley and Bell.

"I said to the President, last night, that we have come to an agreement with the Bank of America and that I thought it would be nice if the President would have Crowley, Eccles, Bell, Delano and myself over at the time we present the recommendations and my letter to Jones, which would be in a different form because it would be a recommendation from me to the President for the President's approval instead of my signing it by direction of the President. I said I thought it would be worth fifteen minutes of his time to put on a little show. Frank had told him about the Bank of America and the President knew that the Gianninis were not going to settle until they settled with S.E.C. I told him as far as we were concerned, Trans-America was an entirely different proposal, but he left me with the felling that he had said something to Frank that he wanted this thing taken care of."

RE BANK OF AMERICA
(Closing Agreements were also discussed during the course of this meeting.) Transcribed separately

March 8, 1940.
9:30 a.m.

Present: Mr. Bell
Mr. Sullivan
Mr. Foley
Mrs Klotz

H.M.Jr: What is the next move on the Bank of America thing?

Bell: The Bank is supposed to contact the SEC today and start negotiations. Now, they have asked us to hold up sending a letter to Jesse, but --

H.M.Jr: Who is "they"?

Bell: The Bank. I think that in the meantime they have talked to Eccles and he has convinced them they shouldn't waste any time, that they should go ahead with their negotiating with Jesse at the same time they negotiate with the SEC. I told Marriner that I didn't think it made a lot of difference to us, but we were prepared to hold it up for two or three days if they wanted to. If they wanted to come in the first of the week and ask us to send it over, I don't think it makes much difference to us.

H.M.Jr: That is what I suggested in the first place. I would like to ask for an appointment Monday morning and have the President see this group and then have a letter ready and go over and make my report to the President and have the President approve the negotiating and what they have done will meet with his approval. "Now, I have written this letter which I am recommending and you may want to ask some questions before you approve it." It is a letter which I want to sign and which the President approves.

Klotz: To Jesse Jones?

H.M.Jr: Yes. I think the thing to do is Monday morning and not wait any longer.

Foley: Mr. Secretary, do you want to do it until the Bank indicates to you that it will go along with that program?

H.M.Jr: I thought they had.

Foley: No, they haven't.

Bell: I don't think you need to send it right away, even though you get it signed.

H.M.Jr: No, I am not going to - when I go in to the President of the United States, I want to say, "Mr. President, after two and a half years, we have come here and the bank examination agencies are negotiating with the Bank of America and have come to an agreement."

Bell: There is a condition on it, though.

H.M.Jr: Then I won't go to the President.

Foley: You see, the three agencies said that was entirely satisfactory. The Bank said they were going to hold it in abeyance until they had a chance to go to the SEC.

H.M.Jr: Up to now, I have been a hundred percent, but you can get word to these people that when this thing comes to me, I won't accept any conditions and they ought to know that. I will not accept any conditions and I think you ought to tell O. K. Cushing that. Don't leave it so later on he can say, "Well, this is a repetition of December, '38. Why didn't Mr. Morgenthau say that?" I think O. K. Cushing ought to know that today. I positively will not accept any condition affecting another --

Bell: I think the thing to do is to - on the understanding between the agencies and the Bank --

H.M.Jr: I think O. K. Cushing ought to know that I will not accept any conditions.

Bell: You are not accepting them. Well, we have reserved our rights on that. We told them we wouldn't accept any conditions, that we couldn't accept any agreement.

H.M.Jr: Are you sure?

Bell: Oh, yes, every conference we have had on the thing. Isn't that right?

Foley: Well, I haven't attended all the conferences, but I signed that agreement because it is unconditional, but this reservation that was attached to it last night.--

Bell: It wasn't, Ed.

Foley: I know, Dan, it wasn't a part of it, but you had it tied on the outside and you said you wanted the SEC to know the whole thing.

Bell: That is right, and I don't think it would have been fair to take it over there without that to Jerry. Jerry didn't know that. It was there for Jerry's information. I think we have made our position clear.

H.M.Jr: Jerry must have known it.

Bell: We have made our position clear, Mr. Secretary, in every conference that we have been in that we cannot fight the Bank's battles before the SEC and we will not accept any conditions to this agreement; every conference where it has come up.

H.M.Jr: Well, Dan, just think this over. This is just a suggestion. Think it over in your own mind, if there can be any possible doubt in Mr. Cushing's mind. Would you restate it?

Bell: Sure.

H.M.Jr: Would you mind - if there could be any possible doubt, would you mind sending for Mr. Cushing and restate the position so that I won't find myself by any hook or crook in the position that I have to turn this thing down on account of this condition?

Bell: I said it to him only yesterday, again. He came in to thank me for the consideration we have given and the courteous treatment he had had and he said, "We are all right on the memorandum. We don't like the last statement you put on there where you reserved all your rights."

"Well," I said, "you understand our position in that," and he said, "I do, thoroughly." I said, "We don't like the condition you have attached but we have told you we couldn't agree with it and that is all there is to it. That is the reason we can't sign this thing." He said, "I understand fully the whole position."

H.M.Jr: Well, why don't you --

Bell: He said, "I will be glad to do it again."

H.M.Jr: I wish you would do it again. Why don't you do it this way, tell them that I am waiting to sign the letter of recommendation to the President's approval and to go over and see the President, but I have got nothing to take over to the President because I have no agreement.

Bell: Well, I said this to him --

H.M.Jr: No, I mean - you can bring me in, that I asked you today where is the agreement and you say you had no agreement.

Bell: It is an informal understanding is all.

H.M.Jr: Well, Dan, to protect me so I don't find myself in that same position, I think if you and Ed would see him once more today and have a - I am asking you this morning where is the agreement that I can take over to the President and you say we have none and that I won't accept any agreement with any conditions affecting SEC. If you don't mind, I wish the two of you would see him today, because otherwise, there is just that possibility that they will say, "Yes, see, it is the same thing that happened over again. We had everything ready and then Morgenthau turned it down." I don't want to find myself in that position.

Bell: I don't think you will.

H.M.Jr: Well, to protect me, will you and Ed see him once more today? Will you two?

Bell: Yes. And I asked him yesterday, even though he had put this condition on, if he were not able to get an agreement with SEC, does that mean that the whole thing falls through with. Could we get back here together again just on the agencies and the Bank, and he said that so far as he is concerned, they will always come back to us.

H.M.Jr: You see the thing I am worried about is, I am afraid from what you tell me that possibly Eccles or somebody, or Jones, somebody may have given him the understanding that it is all right. We can take care of the SEC. Now, I want to repeat once more. I have got a blood brother agreement with Bill Douglas on this thing which I am not going to - he and I started this thing and I am going to go through with it and I am not in any way going to put any pressure on SEC to compromise on Transamerica so we can put this thing through, so I want that thing explained and I don't want it - anybody put - Eccles or Jones or Frank, putting pressure on me to squash the Transamerica business. It is none of my business.

Foley: Jerry said just what you are saying last night. He said, "Well, you are bringing this over and you are dumping it on our lap. All the agencies have agreed and now it is up to the SEC," and I said, "Certainly not, and if I thought that was the situation I would not have approved the agreement. I am not putting any pressure on you at all. What you do is your business."

H.M.Jr: I want this thing stated, because I am afraid that these fellows may have jockeyed me into the position and that when the thing blows up they will again say, - and may have some justification to say - "Well, we understood that Morgenthau, that so and so, killed it once before," and I think today is the day to do it, if you two people could see him. Will you?

Bell: Sure.

H.M.Jr: And you can - and I would say to him that I am waiting to take this over to the President and I will walk it over tomorrow, today, but not with any conditions on it.

Foley: If the Bank will tell us that they will accept without reservation.

H.M.Jr: Yes.

Bell: Well now, of course they won't.

H.M.Jr: Then there is no agreement, Dan.

Bell: I am sorry they haven't made it plan all along, but I think I have said every time on this thing --

H.M.Jr: (Speaking on telephone to Colonel Watson).

Hello, Pa. How is your liver this morning? Got your suspenders on? ....

Keep them on. ....

All right. ....

The President saw him last night and he would like to see Arnold and Towers and myself and Collins together over what the Allied Plane Purchasing thing is, see, this morning, if possible. ....

What? ....

There isn't? ....

Well, put it up to him, will you, and if not this morning, then Monday morning, but I would like to have it this morning. ....

Well, put it up - and then also ask him whether he wants Edison and Woodring there. ....

Yes. Well, I -- ....

Well, either this morning or Monday morning. ....

Towers and Collins. ....

Thank you. (End of telephone conversation)

Well, then we just say this: You say - you kept telling me that there was to be an agreement, but you have at no time suggested to me that I should accept it with any conditions.

Bell: No, certainly not.

H.M.Jr: And I have at no time intimated to you that I would accept it.

Bell: You have not.

H.M.Jr: But I think, the more I talk and the more I am thinking hard, I think it is very important that you send for Mr. Cushing. I would like to have a stenographer present and I would like you to make our position very clear and that I am getting a little restless.

Foley: I think we ought to tell them time is running against them, because we have got to take some action on this thing. We have got to take some action with respect to this Examiner's report that is being prepared now.

Bell: Well, I think they know that the time is running against them and that April 15 is certainly the deadline. After that, you have got to decide what you are going to do. I don't agree that you have to take any action on the March 15 dividend.

Foley: I don't say we do. We can mention to them that we are considering it.

Bell: Well, these negotiations have been very friendly and on a nice basis and I think when you start that you get them right back into the cat and dog fight again, Ed. If you want to put them on that basis, okay, but I don't think you do.

H.M.Jr: Well, it gets down to - if this thing means, Dan, - we are all vague - that they are going to hold us at arms' length until they settle Transamerica, I won't be any party to it. I won't be a party to it.

Bell: You mean you don't want to hold up this thing for a few days to see what they can do?

H.M.Jr: A few days? Yes, but not - but I don't want to lose whatever our schedule is. I don't know what the time schedule is.

Bell: April 15 is the deadline. We have given them until April 1 in the agreement, but April 15 is the 90 days, or somewhere around there.

Foley: We will have to have a little time before that to determine what we are going to do.

Bell: You have allowed yourself 15 days.

Foley: You mean from the first of April?

Bell: Yes. They have got to have all these commitments made and approved by the Board of Directors and this understanding. The only thing we told them was that there would be a few days allowed here for these negotiations. If it looks as though they can't get together over there --

H.M.Jr: Want me to make a little prophesy? Want me to make a little prophesy?

Bell: There have been a lot of them made in these negotiations.

H.M.Jr: Well, I will make a prophesy. I will make a prophesy that they won't get anywhere with the SEC between now and the 15th of April.

Foley: Check.

Bell: That may be.

H.M.Jr: And we are just being kidded. I mean, I know that somebody talked to the President yesterday, but from the way he talked to me last night - now, when this thing blows up, by God, I'm not going to be the goat again and you had better protect us today.

Bell: I think we have. I think in this memorandum we have got our reservations reserving all our rights, which is drafted by the lawyers, and I think it is airtight.

H.M.Jr: Well, Dan, after this talk this morning, please send for O. K. Cushing.

Bell: Glad to.

H.M.Jr: And state the position and make it perfectly plain that I am waiting for an agreement, an unconditional agreement, and anything other than an unconditional agreement is useless.

Bell: Now, Jesse, of course, refuses to go ahead on any basis until he gets a letter from us.

H.M.Jr: That is all right.

Bell: Do you want him to not negotiate for this Articles of Association on an informal basis, allowing the Comptroller and people to look at it at the same time?

H.M.Jr: I don't understand it.

Bell: You see, after he gets your letter he has got to draft --

Foley: That will be all right, if he will do it.

Bell: He has got to draft Articles of Association which have to be approved by the Comptroller.

H.M.Jr: That would be a time saver, wouldn't it?

Bell: I should think so, but you see Jesse on the other hand says, "I won't negotiate with these people until I get a letter from the Treasury."

Foley: And we won't send the letter until the Bank tells us the program is accepted.

Bell: So we are at a standstill.

Foley: I don't think under any condition you ought to send that letter, Mr. Secretary, until they tell you they are going to accept the program and if you do, then you have got the letter over there and they can break off the negotiations and say that they can't get together with the SEC and this isn't binding on them and then we are out on a limb, because we recommended to the RFC that that new capital be put in there and then the thing breaks down.

Bell: Providing all these things are accepted.

Foley: And they say that we have agreed that to the reservation that they have made that they settle with the SEC. I feel that way. I know --

Bell: I feel there is a chance for settlement, if we want to.

H.M.Jr: I am glad I saw the President last night, because lots of things that I don't know - I have got a sixth sense and I didn't even know what you told me now, that Eccles saw the President and that is why the President sent for Frank.

Foley: Well, Mr. Secretary, I don't know that. After we saw Frank I put that together going home in the car last night.

H.M.Jr: Well, after I - after last night I got disturbed and I can see what is going on and I think we ought to put it right on the line this morning with Cushing. Right on the line.

Bell: I know that Jones saw the President. Whether about this or not, I don't know, but he saw the President yesterday morning.

H.M.Jr: Dan, you will do what I have suggested, won't you?

Bell: Sure, I will be glad to.

H.M.Jr: Let me just say this. I think I am going to call up Frank and ask him to come over here and I think I am going to restate my position to him on this thing (Bank of America).

Foley: Well, I don't think it is necessary, but I think it might be a good precaution, just so that you will --

H.M.Jr: Well, I just can't afford to get in another Associated Gas thing.

Klotz: Neither can we.

Bell: You would have to go away this time.

Klotz: No, I would take gas this time before we got started.

(Telephone conversation with Jerome Frank)

March 8, 1940.
10:00 a.m.

Jerome Frank: Yes sir.

H.M.Jr: Good morning, Jerome.

F: Good morning.

H.M.Jr: Jerome? Just so there can't be any possible scintilla of misunderstanding between SEC and the Treasury. I wonder if you'd, on this Bank of America case, I wonder if you would mind coming over this morning and getting it directly from the horse's mouth, meaning me.

F: Well can I - I can't this morning, because I've got a public hearing. Can I call you after I'm through?

H.M.Jr: Well I tell you, have you got three minutes now?

F: Yes.

H.M.Jr: What?

F: Yes.

H.M.Jr: Let me take, just let me take a minute now.

F: Yes.

H.M.Jr: Save time. I just want you to know that as Secretary of the Treasury I'm not going to be part of any agreement with the Bank of America, that has any conditions on it.

F: Yes.

H.M.Jr: See?

F: Yes.

H.M.Jr: And I am not going to sign any letter to Mr. Jones asking for any money as long as there are any conditions.

F: Yes.

H.M.Jr: By conditions, I mean the condition which they're talking about.

F: Yes, I understand.

H.M.Jr: Settlement, with you people.

F: Yes, I understand.

H.M.Jr: And just as long as they make conditions I consider we have no agreement.

F: Aye, sir.

H.M.Jr: And so that there can be no misunderstanding, Bell and Foley are seeing Cushing this morning.

F: Yes.

H.M.Jr: And stating their position.

F: Oh that's fine, that's a tremendous relief.

H.M.Jr: And also letting them know that the time - the time is running against them.

F: Yes.

H.M.Jr: Were you under any misapprehension that there might, we might be, how should I say, considering any conditions?

F: Well Ed told me, made it very plain, he showed me a little piece of paper that had some language about conditions and Ed made it very plain that you, your agreement had nothing to do with any such conditions.

H.M.Jr: That's right. And I - so that we don't have a repetition of December '38 Bell and Foley are going to see Cushing today and tell him.

F: Yes.

H.M.Jr: That we don't consider there is any agreement as long as there are any conditions attached.

F: Thank you very much for telling me.

H.M.Jr: And I want you to get that.

F: Thank you.

H.M.Jr: Goodbye.

H.M.Jr: Well, that clears that up and then if you will do the same thing with Cushing, then I will feel happy.

Sullivan: Excuse me.

H.M.Jr: Go ahead.

Sullivan: Had you finished?

H.M.Jr: Yes, go ahead.

CONFERENCE IN UNDERSECRETARY'S OFFICE
March 8, 1940 - 2:45 P.M.

PRESENT: D. W. Bell, O. K. Cushing and
E. H. Foley, Jr.

- - -

MR. BELL: Mr. Cushing, we asked you to come down so we could all understand what we had worked out on the case.

MR. FOLEY: We went over and saw Mr. Frank last night, Mr. Bell and I, and gave him the program which had been worked out by the three agencies. We told him the program was satisfactory to the three agencies. We told him also that we understood no action had been taken by the bank insofar as the agreement was concerned. We understood that so far as the people representing the bank were concerned, they had no further questions or suggestions in respect of it, but it had not been approved by the bank. We told Mr. Frank that insofar as we were concerned we were not in any way suggesting to him that a settlement of the difficulties between Transamerica and S. E. C. be influenced by this program. Insofar as we were concerned this program is what the bank had to do in order to adjust its difficulties with the Comptroller and the Treasury Department. The approval of the bank to the program, insofar as the Treasury is concerned, would have to be an unqualified approval. It could not be conditioned upon the outcome of the differences with S. E. C. The thing we want you to understand is this - there is no connection between the two agencies; that at the present time we are doing nothing; we will give the bank a reasonable time to decide what it wants to do in respect of that program. However, if at the meeting of the Board of Directors next Wednesday, I believe the 12th - Tuesday or Wednesday - this program is approved subject to a satisfactory adjustment of the differences with the S. E. C. insofar as we are concerned that will not be satisfactory. Before the meeting when this is submitted to the Board we want to be absolutely sure that you understand our position and that our position is presented to your Board of Directors. The program should not be put up to your Board so that the Board would get some idea that the program might be satisfactory to us provided arrangements could be made satisfactory to Transamerica with S. E. C.

MR. CUSHING: I think you referred in the early part of your statement to an agreement with reference -

MR. FOLEY: Program

MR. CUSHING: I will transmit this statement to the bank immediately so that they will know what you have said. I would like to ask this: Assuming that the Board of Directors did adjourn to a date later in the month further to consider the matter, would there be any objection to that?

MR. FOLEY: We are willing, as I said, to allow the bank a reasonable opportunity to make up its mind. The bank must realize that time is running against it, that there is a report in process of preparation by Examiner Bates that will require the attention of the Comptroller when it has been submitted to the Comptroller. If at that time there isn't something from the bank in the way of an unqualified approval of this program, the Comptroller will be free to take such action as the law permits.

MR. CUSHING: And what that action will be, do you care to indicate to me now?

MR. FOLEY: No, we are not in position to indicate that to you now.

MR. CUSHING: It is understood in our discussion here - we took the position from the first that adjustments were involved. So far as we were concerned any proposition or settlement which we arrived at would involve S. E. C. In other words we made no commitment to accept the program without

MR. BELL: I think we made our position clear that we could not be a party to the condition you attached.

MR. CUSHING: I think we presented that clearly on both sides.

MR. FOLEY: I think when you approve this program you should do so with the understanding that the program is on the four corners of that sheet of paper and there were no other conditions that were incorporated in the program.

MR. CUSHING: Except it was known by everybody here that it was the bank's position that settlement with S. E. C. would be necessary in connection with settlement with the Comptroller.

MR. FOLEY: We look on that as being the bank's affair. I want our position to be made perfectly clear, that so far as the Comptroller and the Treasury are concerned this is a program that must be approved by the Bank without reservation and it cannot be made conditioned upon settlement of matters with other agencies.

MR. CUSHING: I will transmit that statement to the bank.

MR. BELL: We don't have much control over the S. E. C.

MR. FOLEY: It isn't a question of control, I think it is a question of proper relationship between departments and agencies of the Government. That is an S. E. C. matter and not a Treasury matter and your relationship with S. E. C. must be independent of your relationship with the Treasury.

MR. CUSHING: That is the Comptroller's and the Treasury's position. If you will give me a copy of this statement - it is only fair that I should transmit to the Bank exactly what occurred here. I think you will agree with me that is fair. Do you want to take that under consideration?

MR. FOLEY: Yes.

MR. CUSHING: I wouldn't want to take a chance on carrying it in my memory.

MR. FOLEY: It is a simple statement.

MR. CUSHING: What reason is there that I shouldn't have a copy?

MR. FOLEY: I should like to talk that over with Mr. Bell.

MR. CUSHING: We have discussed this and made a record of what your position is and to keep it in your records without giving me a copy doesn't seem to be proceeding along the lines we have been proceeding along up to this time.

MR. BELL: It would have to be written up. I could give you a ring at your hotel.

MR. CUSHING: All right, I will wait to hear from you before I talk to my people.

- - -

Original to Mr. Delano ✓
Copies to: Mr. Cushing ✓ (Sent by Mr. Foley by messenger)
Mr. Foley ✓
Mr. Sherbondy ✓
Miss Chauncey ✓
Mr. Bell ✓

FEDERAL RESERVE BANK OF SAN FRANCISCO

MARCH 11, 1940

Mr. Preston Delano,
Comptroller of the Currency,
Washington, D.C.

Dear Mr. Delano:

There is enclosed a copy of a letter written today to Governor McKee, informing him of the steps which have been taken to carry out the provisions of Paragraph 5 of the "Requirements of the Comptroller of the Currency" submitted March 6, 1940, to the Bank of America N.T.& S.A.

With kind regards to you and your assistants with whom I had so many pleasant associations on the occasion of my recent stay in Washington,

Yours very truly,

Ira Clark /s/
First Vice President

FEDERAL RESERVE BANK OF SAN FRANCISCO

MARCH 11, 1940

Mr. John K. McKee,
Board of Governors of the
Federal Reserve System,
Washington, D.C.

Dear Governor McKee:

This is to inform you of the steps which have been taken in effecting arrangements to determine the value of the banking premises of the Bank of America N. T. & S. A. criticised in the August 31, 1939, report of examination.

On Monday, March 11, a meeting to discuss ways and means of undertaking the task was held with Mr. Irwin D. Wright, Chief National Bank Examiner of the Twelfth Federal Reserve District, Mr. W. P. Funsten, Supervising Examiner of the Twelfth District, Federal Deposit Insurance Corporation, and Mr. R. B. West, Vice President of the Federal Reserve Bank of San Francisco. The last named was designated by me to serve on the committee of three in accordance with Paragraph 5 of the "Requirements of the Comptroller of the Currency" dated March 6, 1940.

Vice President Russell Smith of the Bank of America N. T. & S. A. has informed me that a considerable amount of information already has been compiled for the guidance of the committee. As soon as the Comptroller of the Currency and the Chairman of the Federal Deposit Insurance Corporation instruct their respective representatives, the committee is ready to proceed with its duties. Chief Examiner Wright and Vice President West now are engaged in collecting information which is available to them independently of the records of the Bank of America N.T. & S.A.

A copy of this letter has been sent to Mr. Delano, and to Mr. Crowley.

Yours very truly,

Ira Clark /s/
First Vice President.

March 13, 1940 12:45 A.M.

Mr. Delano's telephone conversation with Mr. L. M. Giannini

Mr. Delano: This is Delano, Mario, and we have given considerable thought to the matter you discussed with me last evening over the telephone and we feel here that you ought to carefully consider the advisability of withholding a public statement until such time as you have obtained your commitment from the RFC and cleared with the RFC and the Comptroller's Office, at least a rough outline of the amendments to the articles of association. Now we do not anticipate any difficulties, you understand, on either of those two points, but, as a matter of precedent, the Comptroller's Office has never advised a bank to make public any details concerning these changes in its capitalization until this matter of a commitment and the necessary amendments to the articles of association have been discussed and essential agreement reached. We don't like to depart from that precedent, Mario, you understand. Of course, we understand the position you are in and we want to be of assistance rather than a drag in the matter but we do feel you might be put in a false position if there was publicity before these details have been settled.

Mr. Giannini: You can't give us a clearance now? We could say it is subject to the contingencies mentioned in the memorandum itself because in there it specifies that the Bank will endeavor to work out satisfactory articles and to get the approval of the Comptroller and a commitment.

Mr. Delano: That's true, but I am putting up to you the advisability of doing that and making such a contingent statement prior to having the other matters cleared. Don't you think we can all get busy on these other matters and get them cleared and have that firm behind you before you make that statement. Don't you think you would be in a stronger position?

Mr. Giannini: Well, A. P. thinks that if the statement is to be made, the logical time to make it is right after the meeting. They expect something and if you give it to them now, they've got it, and if you put it off for a few days they will begin to feel there was nothing done, nothing required. If we put it off for four or five days it just comes as an unexpected something. If it comes out now it would be expected.

Mr. Delano: May I suggest this? Mr. Cushing, as you know, has talked to us concerning this publicity phase, and you know it is difficult to talk about it 3000 miles over the telephone. I am wondering if we could not have Mr. Cushing come in, and, if possible, give us a draft of what you propose to say.

Mr. Giannini: Well, let me do this first. Let me talk to the committee. I haven't met with the committee, and it will take 3/4 of an hour to get up to San Francisco. Let me meet with them and if the committee favors the proposal we will prepare a form of release and then give it to you. It will only be four or five lines.

Mr. Delano: I understand you want to publish the requirements verbatim and that you will just introduce them with a statement.

Mr. Giannini: We will probably say something like this: After several weeks of discussion the differences between the Comptroller's Office and the Bank have been composed along the following lines as expressed in the following list of requirements of the Comptroller. The Board of Directors has accepted the program in principle and will proceed to work out the details as expressed in the memorandum.

Mr. Delano: What you propose to do now is to hold the meeting and see if your committee is willing to put this before the Bank's directorate right away.

Mr. Giannini: Yes.

Mr. Delano: Then if you decide to go along on this basis will you give me another ring?

Mr. Giannini: I will telephone you again. In any event I will not release anything without telling you about it.

Mr. Delano: Well, that's fine. I understand you will call me. Now, about this Cushing matter:

Mr. Giannini: I think that would confuse the matter. They are not up on what we are doing here, and I don't want them to be discussing it until the committee clears it.

Mr. Delano: You won't publish anything without further clearance from me. All right, I will await your further call.

-o0o- -0o0-

RE BANK OF AMERICA
(General discussion on pending matters occurred during this meeting and was transcribed separately)

March 13, 1940.
2:30 p.m.

Present: Mr. Bell
Mr. Sullivan
Mr. Foley
Mrs Klotz

H.M.Jr: Dan, at your service.

Bell: Well, last night at 12:00 o'clock Mario Giannini telephoned Delano.

H.M.Jr: At 12:00 o'clock?

Bell: 12:00 o'clock last night, saying that he had --

Foley: It is three hours earlier on the West Coast.

Bell: .... had discussed all day with his Board of Directors this memorandum of agreement and finally they had appointed a committee of directors, about seven or eight, to have a meeting today with their lawyers to determine what effect the acceptance by the Bank of the terms in this memorandum would have on their case before the SEC and they came to the conclusion that the acceptance of it would not in any way prejudice their case and he thought he could get the approval of the Board this evening on the whole memorandum. Then he asked the question, if that turns out the way he hopes it will, would we object to the publicity of that memorandum, saying that he would like to just say that they have had the conferences with the people in Washington on the matters in controversy during the past year or so and these are the results of the conferences held during the past six weeks and the Bank is going ahead and carry out this program. Delano said that he couldn't very well answer that at 12:00 o'clock at night and he would like to think about it and so would the people in the Treasury. So he called me this morning at home and I told him to get the committee together at 10:00 o'clock and I thought that we would catch you on the way back from the Capitol and we would tell you about it at the time we were discussing it.

Well, we went over it and thought it was rather encouraging to get this news and that we felt that we ought to tell them that there is no objection to the publication of the memorandum, but we certainly didn't want to have anything published that would have to be answered from Washington. In other words, the same thing we told them when they were here week before last.

By the way, I should have said that Delano promised to call him back before 1:00 o'clock, our time, because the meeting was set for 10:00 o'clock their time. It would be 1:00 o'clock here. So that was the reason we had to have the meeting this morning and get the information.

H.M.Jr: And you phoned them?

Bell: Yes, we phoned them about it at a quarter of 1:00. Then when Ed came back I talked to him and he thought we ought to tell them that we could not agree to the publication of the memorandum unless we saw what they were going to say in connection with this publication, but there is some feeling on the part of the committee that we ought to - should be very careful as to what we do about what they say or what we tell them they can say. We ought to put them on their honor and say that, "We don't want to have to answer anything from Washington that you say in San Francisco," but anyway, I told Delano that I thought he ought to call Mario and tell him that it was a little unusual for them to want to publish this memorandum before they have the whole agreement, the articles of association and their commitment from RFC, and that they have never in the past given any Bank advice other than to hold off on their publicity before they have the strings tied up.

He said, "Well, I think that is good -- " He told them that and he said, "I think that is good advice." He said, "I am on the horns of a dilemma out here --"

H.M.Jr: Who was that?

Bell: Mario. He said, "We have got this meeting going on and of course it is publicly known and all the stockholders know it and they are all anxious," and he said, "There is some feeling that something ought to be said after this meeting is over." But he said, "Anyway," he said - and then Delano said that he wanted to see what he was going to say in connection with the publicity and he said, "Well, I will tell you two things. One is," he said, "I won't do anything until I call you back."

H.M.Jr: Who is this?

Bell: Mario said this to Delano. He said, "We will go into this meeting at 10:00 o'clock," 10:00 o'clock their time, "and discuss it," and he said, "There won't be anything done until I talk to you further," and he said, "You can see anything that we say publicly," and that is the way it was left at 10:00 o'clock.

H.M.Jr: Well, there is one thing that strikes me right in the face. First is this, and that is, if I were Jesse Jones, if I were in his shoes, and this was done without asking him first, I would feel that all of the agencies were putting pressure on him, which wasn't fair.

Bell: Well, that was discussed this morning, too.

H.M.Jr: I mean, if I was Jesse, I would be good and sore.

Bell: We raised this question in our meeting this morning and felt that that was a point that we would have to clear up before they could go ahead and publish this, but everybody feels that they have got some commitment from Jesse.

H.M.Jr: Well, I know, but --

Bell: But I think there is a feeling that that should be cleared up.

H.M.Jr: If I had to sign this thing all alone, I would simply say that until they had made this commitment with Jones and had the stock and everything settled, they should wait.

Bell: Well, he has --

H.M.Jr: If I was running this thing alone, I would simply say, "Now, gentlemen, we have been at this thing for two and a half years and if there is any prospect of it being cleaned up, just as soon as you have got the money and everything else, that is the time. Now, if you people want to say or want us to say that we are making progress with the management, we are willing to say that. We have never said anything before. Or you can say it." But as to what is in that agreement, I would say no. That is the way I feel about it. I have got a committee set up to handle it, but I certainly think no matter what you do, Jesse Jones should be called up.

Bell: There was a feeling this morning that he should be kept advised.

H.M.Jr: Up to now, I can say to Jesse or anybody else, "Well, Jesse, the Bank examining agencies were doing the conferring and the dealing and you don't belong in this," and I can tell him that and tell him it was none of his business and he should keep out of it, but once it gets to the question of lending the money for preferred stock, that is his business.

Bell: That is right.

H.M.Jr: And that is mentioned in the publicity, so I think he ought to acquiesce.

Bell: Well, I think there was a feeling that he should be kept advised and he should know about this.

H.M.Jr: Personally, I am just telling you about this. You can't have more than one person or more than one group handling this thing. I would rather see no publicity than that.

Bell: Well, we are supposed to get another telephone call this evening after this meeting.

H.M.Jr: What do you think, Ed?

Foley: I agree. Dan raises the question about Jesse Jones, that Jesse won't take any position until we write him a letter and I still feel very strongly and

I told this to Dan that we should not write any letter to the RFC until we have an unqualified approval of the program from the Bank and I don't think Dan agrees with me on that.

Bell: No, I can't see --

Foley: My instincts tell me that is the only wise, conservative thing to do.

Bell: I don't think it makes much difference at this stage of the negotiations, but I can't see much harm in putting this thing up to Jesse, based on this memorandum as and when the Bank agrees to it.

H.M.Jr: But nothing in writing from me. I won't write any letter to Jesse until the Bank agrees.

Bell: That is a decision you have to make and I told him you wouldn't make that decision until you have to cross the bridge, because there might be circumstances --

H.M.Jr: No, because this letter is going to be different. It is going to be one of recommendation from me to the President, with the President writing approval across the bottom of it and when I get - I have just reviewed this thing and I am afraid that I can't be argued out of this. My position is this: When the Bank gives us an unqualified approval of this memorandum, then I want the people who wrote the memorandum to accompany me to the President, explain the memorandum to the President, and at that time I will present a letter addressed to the President, I mean addressed to Jesse Jones, with my signature, for the President to countersign, but I am not going to cross the street until I can say, "Mr. President, the Board of Directors of the Bank of America have approved this."

Bell: Well, I think it is unfortunate that we can't go on with these informal negotiations with Jones. Now, of course, it is unfortunate that Jones has taken the attitude he has, but this whole thing seems to me to be cleaned up and an agreement all ready to sign, and it would take but a few hours to finish it, but because of his attitude now, we are stymied.

H.M.Jr: No we are not. You asked me, riding to the airport, whether they could be getting ready incorporation papers, et cetera, and I said yes.

Bell: It is all right from your standpoint, but it isn't all right from his standpoint. You have never been the stumbling block in this thing.

H.M.Jr: Wait a minute, just so we understand each other. The time you and I and Ed rode to the airport Friday, from that time I haven't discussed this with anybody, so my position isn't a bit different than it was Friday afternoon after Cabinet and I haven't discussed it with Ed or anybody and I said at that time I wouldn't do it. I am not saying anything new. I haven't discussed it with anybody. I am just where I was Friday afternoon.

Bell: I appreciate that.

H.M.Jr: Have you talked to Jones since then?

Bell: No. Jones hasn't called me since the time I told you about it.

H.M.Jr: Do you want to make any contribution?

Sullivan: No, sir, I don't think I know enough about it.

H.M.Jr: I want you to know about it.

Bell: Well, there is nothing for us to do at the present moment until we hear from Giannini, then.

H.M.Jr: There is only one thing I might suggest. Either you or Delano call up Jones and say what is going on and we want to give him the courtesy of letting him know. Now, would he go along on the publicity, let this thing be released. Now that is my only suggestion.

Foley: Has he seen a copy of the program, Dan?

Bell: Well, not from us. At one time during the negotiations, about the middle of them, I had lunch with him and he pulled a copy of the program out of his pocket. Some representative of the Bank apparently gave it to him. He didn't get it from us.

H.M.Jr: You were fearful and had reason for being fearful, when I asked you to have that meeting with O. K. Cushing with a stenographer present, that that might upset the apple cart, but evidently it didn't.

Bell: No, I was only fearful of the stenographer, but I don't think it has made much difference.

H.M.Jr: Well, I think either you or Delano could tell Jones what has happened and ask him about the publicity and how he feels about it. Otherwise, I have no suggestions, but I think he ought to be told that.

Foley: Don't you think, Dan, that in view of what developed at the meeting of the Board yesterday, that conversation we had with Cushing didn't do any harm and it might have done some good?

Bell: No, I don't think it has done any harm.

Foley: And it might have resulted in the Board deciding that they couldn't equivocate and that they had to face this thing as a separate issue and either accept or reject the program, independently of what Transamerica and SEC work out.

H.M.Jr: That is the way it looks. It looks as though they saw that we weren't bluffing and that they had to fish or cut bait and SEC was a separate matter. That is the way it looks.

Bell: I think they feel that they are not going to settle their problems at the SEC.

Foley: I thought that all along.

Bell: And John McKee tells me this morning --

H.M.Jr: Well, does that cover the thing? Is that all right, Dan?

Bell: Yes, sir.

COPY

MARCH 14, 1940

L. M. GIANNINI,
PRESIDENT,
BANK OF AMERICA N T & S A,
SAN FRANCISCO CALIFORNIA.

YOUR WIRE DATED MARCH THIRTEEN NINETEEN FORTY RECEIVED STOP THERE IS NO OBJECTION TO STATEMENT AS OUTLINED THEREIN STOP UPON RECEIPT OF FORMAL APPROVAL OF PROGRAM ON THE PART OF YOUR BOARD OF DIRECTORS THE TREASURY WILL INITIATE STEPS WITH THE RECONSTRUCTION FINANCE CORPORATION LOOKING TOWARD A COMMITMENT FOR ADDITIONAL CAPITAL AS CONTEMPLATED BY THE PROGRAM.

PRESTON DELANO
COMPTROLLER

TREASURY DEPARTMENT
TELEGRAPH OFFICE

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San Francisco California March 13 1940

HON PRESTON DELANO
COMPTROLLER OF THE CURRENCY

PURSUANT TO THE UNDERSTANDING BETWEEN MR CUSHING OUR COUNSEL AND YOUR OFFICE THAT NO PUBLICITY WOULD BE RELEASED BY EITHER SIDE WITHOUT FIRST SUBMITTING IT TO THE OTHER I WISH TO ADVISE YOU THAT WE HAVE CALLED AN ADJOURNED MEETING OF OUR BOARD OF DIRECTORS FOR NINE THIRTY TOMORROW MORNING. AT THAT MEETING WE PROPOSE TO SUGGEST THAT A PRESS RELEASE BE AUTHORIZED AFTER APPROVAL BY THE BOARD OF THE PROGRAM SUBMITTED TO US AS BEING QUOTE REQUIREMENTS OF THE COMPTROLLER OF THE CURRENCY UNQUOTE. THE RELEASE WILL BE IN THE FORM OF A STATEMENT BY ME AS FOLLOWS QUOTE IN LINE WITH OUR POLICY TO TAKE THE PUBLIC INTO OUR CONFIDENCE I AM PLEASED TO ANNOUNCE THAT AFTER SEVERAL WEEKS OF DISCUSSION THE DIFFERENCES BETWEEN THE COMPTROLLER'S OFFICE AND THE BANK HAVE BEEN COMPOSED ALONG THE LINES AS EXPRESSED IN THE ATTACHED LIST OF REQUIREMENTS OF THE COMPTROLLER. THE BOARD OF DIRECTORS ON RECOMMENDATION OF ITS SPECIAL COMMITTEE HAS ACCEPTED THIS PROGRAM AND WILL DO ITS PART TO WORK OUT THE DETAILS AS OUTLINED THEREIN UNQUOTE. FOLLOWING THIS INTRODUCTORY PARAGRAPH WE PROPOSE TO INSERT IN FULL THE QUOTE REQUIREMENTS OF THE COMPTROLLER OF THE CURRENCY UNQUOTE WITH THE EXCEPTION OF THE CAVEAT. WILL YOU PLEASE CONSIDER THIS AND LET ME HAVE THE BENEFIT OF YOUR OPINION BEFORE THE BOARD MEETING IF YOU CAN. REGARDS.

L M GIANNINI PRESIDENT
BANK OF AMERICA N T & S A

738 A

March 6, 1940 No. 4

REQUIREMENTS OF THE COMPTROLLER OF THE CURRENCY

1. As soon as possible, and in any event not later than June 30, 1940, Bank of America, National Trust & Savings Association will add $30,000,000 of additional capital funds by the issuance of common or preferred stock, or both, and the Bank will, prior to April 1, 1940, apply for the approval of the Comptroller of the Currency to such increase. The Bank will endeavor to obtain a commitment from the Reconstruction Finance Corporation to purchase or lend upon preferred stock in the amount of $30,000,000 prior to April 1, 1940, and if preferred stock is to be sold, will endeavor to obtain an agreement with the Comptroller of the Currency upon the terms of the amendments to the articles of association by April 1, 1940.

2. Immediately upon obtaining the new capital the Bank shall set up an unallocated reserve of $6,900,000.

3. The Bank shall obtain additional security satisfactory to the Comptroller of the Currency to secure the contracts of California Lands, Inc. and Capital Company with the Bank, and the contracts of Capital Company with Merchants National Realty Corporation. Such additional security shall be in an amount equal in value to the difference between the unpaid purchase price upon such contracts and the value of the property thereunder, as such value appears in the schedule contained in the report of examination begun August 31, 1939. All of such contracts shall be

eliminated from the assets of the Bank and Merchants National Realty Corporation by December 15, 1943.

4. All premiums on bonds in the Bank's investment portfolio shall be amortized out of current earnings (other than bond profits) to maturity, or to call date, if any, and amortization previously reserved on bonds sold at book value or higher may be returned to the undivided profits account. Current bond profits shall be used to take care of current losses, and any bond profits not so used shall be passed to a reserve for losses of any character until in the opinion of the Comptroller of the Currency such reserve is adequate. However, this reserve for losses, plus the amortization reserve need not exceed the total premium account.

5. The Bank shall, as soon as possible, furnish to a committee composed of the Vice President in Charge of Examinations of the Federal Reserve Bank of San Francisco, or some officer of the Bank designated by him, the Supervising Examiner of the Federal Deposit Insurance Corporation for the Twelfth District, and the Chief National Bank Examiner for the Twelfth Federal Reserve District, all obtainable records and information with respect to the acquisition of each banking premise criticised in the report of examination of August 31, 1939, including those shown on the Bank's books and in its investment in Merchants National Realty Corporation, dating back to the time such premise was acquired either by the Bank or any member (either bank or company) of the group presently or then comprising the Transamerica organization.

The committee shall consider the fair value of each premise at the time of such acquisition, and the special conditions which had to be met in fixing the price paid. From these considerations, the committee shall determine the amount which shall be used by the committee as the estimated cost amount of each premise to the Bank. The value of each premise shall then be established at such estimated cost amount, plus the amount of any expenditures subsequent to acquisition found by the committee to have been appropriately capitalized, less the appropriate amount of depreciation at the depreciation rate allowed by the Bureau of Internal Revenue for each year of ownership. The unallocated reserve set up by the Bank shall be reduced by the difference between the present carrying value of each such premise and the value of such premise as determined by the committee in the manner hereinabove stated. The decision of a majority of the members of the committee shall be binding. The remainder of such reserve, if any, may be returned to the undivided profits account. A partial release of the reserve, or a decrease in the amount of the reserve to be set up, may be made as soon as that procedure is justified, in the opinion of the committee.

6. The aggregate amount of obligations, as defined in Section 5200 United States Revised Statutes, of Transamerica Corporation and all subsidiaries in which it owns or controls a majority interest, to the Bank, will be brought within the limitations and exceptions

of Section 5200, United States Revised Statutes, for any one borrower by July 15, 1942, and thereafter the aggregate amount of such obligations will not be permitted to exceed such limitations and exceptions. The existing obligations of Transamerica or its subsidiaries now held by the Bank will be eliminated by July 15, 1945, and no new loans will be made to Transamerica or its subsidiaries secured by the stock of subsidiaries of Transamerica. This paragraph shall not apply to obligations of Capital Company and California Lands, Inc. arising out of real estate sales contracts, which contracts are covered in numbered paragraph (3) hereof.

The Bank may accept Transamerica shares as security for small loans for business purposes where the borrower demonstrates a capacity to liquidate the loan otherwise than through the sale of such shares. No loans for speculative purposes will be made on the security of such shares.

7. The Bank shall eliminate the amount of investment in stock under option on the basis of the program now in effect.

8. The Bank shall give vigorous attention to the elimination or correction of any real estate holdings or real estate loans that may not conform to statutory requirements.

9. The Bank shall initiate steps to ascertain whether it is entitled to recover any part of the sums paid by it to Transamerica General

Corporation in connection with fidelity losses, and if it is concluded the Bank is entitled to recover, it shall take steps to recover the same.

10. The Board of Directors of the Bank will approve the foregoing by April 1, 1940.

This memorandum is submitted without prejudice to the right to require full and complete compliance with the Comptroller's criticisms and suggestions, to resort to sanctions provided by law, or to continue to list in reports of examination assets that are subject to criticism until such criticisms have been corrected or eliminated. Neither this memorandum nor its contents shall be used by the Bank or anyone else on its behalf without the consent of the Comptroller of the Currency for any purpose except for its information, unless and until the provisions hereof are accepted and complied with by the Bank.

For the Federal Reserve System ______________________

For the Federal Deposit Insurance Corporation ______________

For the Comptroller of the Currency ______________________

RE BANK OF AMERICA

March 14, 1940.
10:10 a.m.

Present: Mr. Bell
Mr. Foley
Mr. Delano
Mrs Klotz
Mr. Schwarz

H.M.Jr: Professor Bell?

Bell: Well, as I told you yesterday evening, Giannini had called and said that he was having a meeting of this special committee and that they hoped to conclude last night whatever their recommendation would be and they also hoped that they could give out some publicity at the end of the board meeting, which was just adjourned until this special committee could have their meeting and get their recommendation. He called Delano late last night and said that he was sending a wire this morning as to what he intended to give out if the board approved this memorandum today, and they are going to have their meeting at 9:30, San Francisco time, which means 12:30 our time, and this is the telegram.

"Pursuant to the understanding between Mr. Cushing, our counsel, and our office, that no publicity would be released by either side without first submitting it to the other, I wish to advise you that we have called an adjourned meeting of our Board of Directors for 9:30 tomorrow morning."

That is this morning.

"At that meeting we propose to suggest that a press release be authorized after an approval by the board of the program submitted to us, as being 'requirements of the Comptroller of the Currency.' The release will be in the form of a statement by me as follows.

"'In line with our policy to take the public into our confidence, I am pleased to announce that after several weeks of discussion the differences between the Comptroller's office and the bank have been adjusted along the lines as expressed in the attached list of requirements of the Comptroller. The Board of Directors in recommendation of its special committee has accepted this program and will do its part to work out the details as outlined therein.'"

Then he says, "Following this introductory paragraph, we propose to insert in full the 'requirements of the Comptroller of the Currency,' with the exception of the caveat at the end."

The caveat, as you may remember, was the reservation that in signing this memorandum we don't give up any of our rights.

Foley: That was only to protect us in the event it was accepted.

Bell: Yes. Now, if the board is going to approve this, they want the caveat off.

H.M.Jr: They don't like the caveat?

Bell: "Will you please consider this and let me have the benefit of your opinion before the board meeting if you can. Giannini, President."

H.M.Jr: Wouldn't it be nice to have Delano in here?

Bell: Yes. I think probably Leo Crowley is in there, too.

H.M.Jr: Well, what do you think? What have you done about Jones?

Bell: I brought Jones up to date last night as to what we were doing and he still wants the request.

H.M.Jr: Jones wants to what?

Bell: Jones couldn't see that much harm would be done to the case if publicity went out, but I think he would prefer a request from you so he could go ahead and work and I don't think he is going to allow the informal negotiations to go along without the request.

(Mr. Delano enters the conference)

Delano: Leo hasn't shown up yet. I am wondering if we couldn't have him paged.

H.M.Jr: Well, this is after our 9:30 and I just was talking about this and Bell said you were waiting and I wanted the benefit of your advice. Well, the point that I made yesterday was that I wanted Mr. Jones brought up to date and Bell was just telling me - but does he object to this publicity in any way?

Bell: Well, he hasn't seen it, but I don't think he would object to some publicity, but I think we ought to clear that particular language with him before we say no objection to the bank. I don't think we want to approve that, do you, Ed? We will just say no objection.

Foley: I think that is right.

H.M.Jr: You want to say what?

Foley: No objection. We don't want to give an affirmative approval to that statement. Dan's feeling, I take it, is that that may precipitate some disturbance on the West Coast and it may result in actions and we wouldn't want to be tied in.

Bell: I don't think we ought to get in the habit of approving the publicity of any bank.

Foley: That is right.

Delano: That statement in the first line there isn't quite accurate. We didn't make an understanding with them that we would trade publicity.

H.M.Jr: I was going to ask about that.

Delano: That is not a direct statement. You remember what was discussed.

Bell: We told Cushing that we thought that the publicity on this matter, after it was accepted all around, should come from the bank and that the statement that the bank issued should be in such form that there would be no necessity for any answer from Washington on that statement and he fully agreed with that.

H.M.Jr: Well, now let me just digress a minute. Here I have in my hand a clipping, "Bank of America Votes Dividend for Two Quarters." How can they vote the dividend for $2.40 a share to be paid twice and still live up to this memorandum? How do they know that they can?

Delano: They have got enough in undivided profits to carry them that far, Mr. Secretary. They can do it that far. After that, it depends on the earnings.

H.M.Jr: Is that keeping faith to declare $2.40 dividends and then they declared two quarterly dividends now and then they come along and give you a memorandum to give out publicly? If they had done one quarterly dividend, that might be something, but to do the two.

Foley: They meet twice a year and each time - they meet in September and in March.

H.M.Jr: But it just makes me believe that they are not going to do anything different than they have ever done.

Foley: I think everybody expected that this March dividend would be declared and that this program wouldn't affect a March dividend.

H.M.Jr: But they are declaring March and June.

Foley: Well, that is their regular practice.

Bell: It is a semi-annual meeting and I think we all expected that would be done and we couldn't prevent it and if we had tried to prevent it, these whole negotiations would have fallen through.

H.M.Jr: If they are going to give this publicity, why don't they say, then, give it full force. This memorandum which they are talking about has been agreed to by the Board of Directors of the Federal Reserve and the Board of Directors in FDIC and the Comptroller. I think that certainly ought to be in there.

Bell: Well, of course this memorandum has been headed at all times, "Requirements of the Comptroller of the Currency."

Foley: That is right. This arrangement and the differences are between the Comptroller and the Bank. I think you would want to consider that, Mr. Secretary, tying in Fed and FDIC.

Delano: I am afraid that would somewhat impugn all responsibility and our prestige.

H.M.Jr: I am raising these points.

Delano: Don't you think so, Ed?

Foley: I do.

Bell: I wouldn't want the Treasury to be in the position of having publicly announced that we had had these other people in here.

H.M.Jr: I think that is right.

Bell: I think the differences are between the Comptroller and the Bank and not between the other agencies.

Foley: And the other agencies sat in in an advisory capacity and helped us work this out and approved it, but the settlement has to be between the Comptroller and the Bank.

H.M.Jr: I think that the chances are better than fifty-fifty that this publicity will be good.

Delano: I am going to say this. Down in our shop I just had our three fellows in on that and they just can't believe the Bank is going to do this. It just simply puts the Bank in a confessional, as far as we are concerned. I think it is darned good publicity from our standpoint.

Schwarz: It is the best possible means for them to be - as Mr. Delano says, it is an admission on their part.

H.M.Jr: They must be losing business.

Delano: Something is happening there. I just can't understand this.

Bell: There is one thing --

Delano: Something is happening. We are keeping a check on that, though, Mr. Secretary.

H.M.Jr: There must have been something happened.

Delano: I think what has happened, I think there is some dissension of the Board. I think they are being forced to do this.

H.M.Jr: How does it strike you, Public Relations?

Schwarz: It strikes me fine. On this basis, if we take the position that it was their original action which created the situation, that we merely called attention to it and said this wouldn't do - now, they are, after all this fussing and examination, they say, "All right, we have agreed to mend our ways." It puts us in a beautiful position.

Bell: I am just wondering if we can find out if there will be any talking on the side after this thing is --

Schwarz: You will see it soon enough in the papers.

Bell: There is one thing that happened yesterday that I am a little curious about and that is that this contract with Giannini came directly from Giannini and not through Cushing. Cushing has been the great moderator in this whole negotiation with Giannini and Ferari. He has done a great job and he doesn't know a thing about this.

Delano: Just before I came in here, Mr. Cushing called me and told me he had a copy.

Foley: He knows all about this, don't worry. That is a good game, too.

Bell: He didn't know a thing about it. He didn't tell us that, but he told John McKee he hadn't heard a thing about this special committee and he didn't know about this telephone call, because he had a date with John McKee.

H.M.Jr: Cushing called you?

Delano: About five minutes before I came in here. I didn't have a chance to tell you, Dan. He called me and said he had a copy of this thing and wanted to know how I felt about it and I said that I had no feeling.

H.M.Jr: There must be something there that I am not smart enough to see, but my guess is that it is all right.

Delano: It looks fine to me, Mr. Secretary. I think it puts us in an excellent position.

Bell: The thing that is worrying me a little, Mr. Secretary, they are going to make this public this afternoon, probably, after a couple of hours meeting of the Board and the President hasn't seen it or heard anything about it. You remember when we were in here that time and discussed the memorandum, the President was away. He said at that time --

H.M.Jr: I will just have to - I told you that I was satisfied and agreeable and I will take the responsibility. If the President is displeased, he will have to be displeased with me.

Bell: Do you object to this publicity before the President sees it?

H.M.Jr: No. I am taking full responsibility on this. It is between the President and me and I don't - I am just telling you, I will take responsibility for you (Delano) and for Bell.

Bell: This thing looks good at the moment.

H.M.Jr: I mean, if he says anything to me, I will say I thought it was all right and I am willing to take the responsibility. If he doesn't like it, he can be angry at me but the thing has got to go through.

Foley: You can explain that it came so quickly you didn't have a chance --

H.M.Jr: Oh, I wouldn't bother. It is just one of these things that I have got to go ahead on and do and he will be satisfied. Then if anything comes up between the White House - I will take full responsibility.

Delano: This thing lifts the weight off me.

H.M.Jr: After all, the other time when I wasn't satisfied in December, I went to the President and the President wasn't satisfied and I wasn't satisfied, but I am satisfied now and I am 99 percent sure he will be pleased.

Bell: Now, in saying that we have no objection to this publicity, should we say to the Bank that as soon as we have received formal notice that the Board has approved or accepted this program, we will then make the request to the RFC if the Bank so desires?

H.M.Jr: Yes, that has been my point. And I wouldn't move with the RFC until I knew that the Bank accepted first. Just as soon as the Bank has done it, then I will change my suggestion now in view of the fact that this will be given out. Then I am not going to bring the whole gang over because it is too late and I will simply walk over there, most likely with the four of us, and simply say, "Now, Mr. President, here is the thing. These are the men. I have approved this thing. Now, I am writing this letter and before it goes out, you might want to ask some question," but instead of taking the whole group over, we will do it this way.

Bell: That is all right.

Delano: Now, in drafting this thing to go out, I suppose it is to be a very simple statement, simply saying, "We are acknowledging your telegram of even date. We have no objection to the course of action you suggest."

H.M.Jr: Well, you three get together. I have no objection.

Delano: Do you want us to contact Mr. Jones first on this thing?

H.M.Jr: I don't know what Dan has done.

Foley: I think Dan ought to call him and read this telegram.

Bell: I think so, keep him up to date now.

H.M.Jr: I think so, that is the point I made Friday and I made it again yesterday, that Jones ought to be kept up to date - I told Dan yesterday I am willing to say publicly and privately as long as this was a bank examination business, it was none of Jones' official business, that this was a matter of the bank examining agencies negotiating, but once it gets to the state that it is the matter of money, I admit that it is his business.

Foley: He is directly involved in this statement also, because there is a reference to the RFC in this statement.

H.M.Jr: That is right, so I told Dan yesterday that he ought to tell Jones all about this thing and bring him up to date. I think you ought to see this thing is cleared. Up to now, Jones can't - there is nothing that he can object to. In fact, he ought to be tickled to death and I have stood for him in saying that I wouldn't write the letter until the Bank had formally approved it. Now, just as soon as the Bank formally approves it, if it happens today, I will ask for an appointment for him tomorrow morning before we go over to see the President. I am not going to do any congratulating yet.

-o-o-o-o-o-o-o-o-o-

(At 11:35 a.m. the following conversations took place:)

(Telephone conversation between Mr. Bell and Jesse Jones)

March 14, 1940.
11:35 a.m.

Dan Bell: Hello.

Operator: Mr. Jones. Go ahead.

Jesse Jones: Hello.

B: Jesse, I just wanted to read you the draft of telegram that we've prepared to go to Giannini.

J: All right.

B: Over Delano's signature.

J: Yes.

B: "Your wire dated March 13, 1940 received. There is no objection to statement as outlined therein. Upon receipt of formal approval of program on the part of your Board of Directors the Treasury will initiate steps with the Reconstruction Finance Corporation looking toward a commitment for additional capital as contemplated by the program." Is that all right?

J: Perfectly. Now, that's all right. I talked with Mario, he told me just a while ago.

B: Yes.

J: And I told him of your talk and that I was glad that they had - he calledme last night after I had gone to bed and I didn't answer. He did exactly what I asked him to do, suggest that he do, that is to say acceptance in the fewest words he could possibly say.

B: I see.

J: If one line would do it O.K. If it took two all right, but not to go more than two or three or four. That was my thought about it.

B: Oh I think they've been wise to do that.

J: Well now, he is hoping very much that there will be no publicity from this end regarding preferred stock because he's going to try to get his money otherwise.

B: Yes. Well we're not going to say anything here and we hope on the other end they will say nothing except what's in the statement.

J: Well that's what they'll say. Now I said to him, "What are you going to do when fellows ask you about this thirty million dollars?" "Well", he said, "we'll say that that's a matter for the stockholders to determine, we haven't yet decided. We could -" he said, he don't know what he will say in words, but he said that they can either sell it preferred stock, or common stock or whatever might go to the RFC. So anyway I think if we can, he'll be pleased to know and I know I suggested to him that he tell Friar. He's going to call Friar when they've finished their meeting and tell him to go on over and see Delano.

B: I see.

J: And I said, "Well now then let him request that no publicity be made from this end, about the preferred stock."

B: I see. Well we were going to call Cushing over and ask him to be sure that there'd be no publicity.

J: O.K. Well that's fine.

B: In either place.

J: O.K.

B: Thank you.

J: Goodbye.

Bell: He said Giannini called him last night and he told him to put this statement in as few words as possible, see, after they followed out his suggestion.

H.M.Jr: Well, he knew all about it. That is all the more reason for it.

Bell: Sure.

H.M.Jr: He knew all about it.

Bell: Sure. They all know about it. Everybody in town that has been connected with it knows about it.

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THE HON PRESTON DELANO

COMPTROLLER OF THE CURRENCY WASHN DC

I AM PLEASED TO ADVISE YOU THAT PURSUANT TO THE RECOMMENDATION OF ITS SPECIAL COMMITTEE THE BOARD OF DIRECTORS OF THE BANK OF AMERICA HAS TODAY APPROVED THE PROGRAM DESIGNATED REQUIREMENTS OF THE COMPTROLLER OF THE CURRENCY RESULTING FROM THE RECENT CONFERENCES HELD IN WASHINGTON

L M GIANNINI BANK OF AMERICA NT & SA

RE BANK OF AMERICA

March 15, 1940.
10:00 a.m.

Present: Mr. Bell
Mr. Schwarz
Mr. Tietjens
Mr. Sherbondy
Mr. Crowley
Mr. Delano
Mr. Folger
Mr. Upham
Mr. Mulroney
Mr. Foley
Mrs Klotz

H.M.Jr: Well, I just want to say, gentlemen, I think that this is the longest fight I have been in on the financial front and everybody here in the room that has lasted during this fight deserves a tremendous amount of credit. I am very happy and I am very proud of the people that have been associated with me. It has been a long fight. I say, "lasted" advisedly, because it took a different Comptroller - and I am going to say something here - it took a different Undersecretary in order to - and a different President of the Bank in San Francisco and a different Bank Examiner out there, to get this thing through and if it hadn't been for the people in the room and the changes which took place, we wouldn't have got what we have today and the last thing that Mr. Oliphant did as General Counsel before he died was to give us a letter on this thing. It was the last thing he did before he went to the hospital and Ed has carried on in the best tradition. I will never forget that night.

So, it is encouraging once in a while if a fellow stands up for what is right to know that he will come out on top. It is the people in the room here who have helped me, and nobody else. It was pretty tough going, too.

Bell: At times.

Foley: The lawyers over at SEC called up this morning to congratulate us. They said they thought it was a swell victory.

H.M.Jr: Well, when the lawyers congratulate us, it is something.

Klotz: You asked for it.

Bell: The publicity was very good. The Washington Post carried a little item that the dividend policy would be continued, but it wasn't a quote, and the other papers didn't carry it, so it must have been an assumption.

H.M.Jr: Well, after it is over I may do a little talking. I will wait until then. I will guarantee to be good until then, but I won't guarantee what I will say after that.

Crowley: Let them get the money in there first.

H.M.Jr: I have taken an awful lot.

Crowley: That is right. I will tell you, you took a lot, but you should have been in the filibuster we were in and all the conversation we listened to for days and days and days.

H.M.Jr: Well, Eccles called me up last night at a quarter of 4:00 and it is no secret, he said, "We are awfully glad --" because he had had a bear by the tail now for he didn't know how long and he didn't say it, but I could have said, "You didn't know whether the bear would eat you."

Foley: He could only see the bear's shadow. He didn't have him by the tail.

H.M.Jr: Eccles was so worried that the President might have some fault to find with us and I asked to see the President and bring you gentlemen over and the answer was that I should please go ahead and handle it. That was the purpose of this meeting, but I did want - I know what you fellows have been through and it has been hell.

Crowley: It is the first time that Giannini has ever recognized any authority in bank supervision. This is the first time.

H.M.Jr: Well, it ought to be a great thing for the permanent staff like what you (Folger) represent and down the line, and so forth and so on. When it is over we can do a little crowing, but I can afford to wait. It is a happy day for me.

We have got to get this letter out and I think it is now up to Cy to get busy.

Klotz: He doesn't know what you mean.

H.M.Jr: "Dear Mr. Jones:

"There is enclosed for your information a copy of the 'Requirements of the Comptroller of the Currency', dated March 6, 1940, with reference to the Bank of America National Trust and Savings Association, San Francisco, California. These requirements have been agreed upon by the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation, and have been the subject of recent conversations between the Comptroller of the Currency and the representatives of the Bank.

"As appears from the requirements, it is concluded that the capital structure of the Bank should be strengthened. With the approval of the President, I, therefore, request that the Reconstruction Finance Corporation make available to the Bank additional capital funds in the amount of $30,000,000. This request is made pursuant to the authority of Section 304 of the Act approved March 9, 1933 (Public No. 1 - 73rd Congress), as amended. This Bank appears on Schedule National No. 391.

"It is understood that, as is customary, the Bank will agree upon amendments to its articles of association satisfactory to the Reconstruction Finance Corporation and the Comptroller of the Currency. If the preferred stock is to be sold and to be retirable at a premium the usual condition should apply, namely, that in the financial statements of the Bank the preferred stock item will be followed by an explanatory note disclosing the dividend rate payable on such stock and the subscription price upon which dividends will be based and repayment made in the event of retirement or liquidation of the stock. This explanation should appear in all of the Bank's financial statements, including statements required to be made and published by law as well as statements made in counter-slips and in all other forms of advertising and publication."

Now, how much does this differ from the regular letter that goes?

Delano: I think it is practically the same thing with the exception of the introductory paragraph, isn't it, Ed?

Foley: Yes.

H.M.Jr: The introductory paragraph ties it in with this particular requirement. Otherwise, everything else is conventional.

Foley: And that statement in regard to the amendment to the articles of association is not a usual statement. Those two differences are the only differences.

Bell: But it is only putting in formal language what is --

Foley: ....is understood.

Bell: ....is understood in every other case, that it must be satisfactory to the Comptroller and the RFC.

H.M.Jr: Now, is everybody happy about this letter?

Foley: I think so. I think it covers everything that you usually do. Of course, you can go on the theory, Ed, that by your authority it is implied that you have that right, if you don't want to spell it out.

Foley: Well, I thought it would be a little better to put it right in here so there wouldn't be any doubt about it.

Crowley: They make all banks show this cut-back and carry

	this statement. I think you started that at the time of the California Bank, didn't you?
Upham:	Yes.
Delano:	That provision is purely conventional and it has been going on always.
H.M.Jr:	Well, I am impressed with the fact that in the last week or so that by getting a little tough it seems to be O. K. When I sign this, does the letter just go formally, or are you (Delano) going to take it?
Delano:	Well, we hadn't talked about it.
Bell:	Oh, I should think somebody in the Comptroller's office might deliver it.
Delano:	Then we will start some informal conversations.
H.M.Jr:	What I was thinking about, couldn't it be done in sort of an informal way? I mean, possibly Bell and Delano calling up Jesse and saying, "We have a letter and we would like to give it to you," or something like that.
Bell:	Sure.
H.M.Jr:	Wouldn't that be sort of a friendly way to do it, rather than just stick it in the mail?
Delano:	Yes.
H.M.Jr:	Don't you think so?
Bell:	We have been talking to him, so it is all right.
H.M.Jr:	There is no date limit mentioned in this thing.
Foley:	No, they are in the program, Mr. Secretary, which you made part of that letter.
H.M.Jr:	They have got until when?
Foley:	Until the first of April to make the commitment.

H.M.Jr: And --

Bell: June 30 to take it down.

H.M.Jr: I don't think you are going to have any trouble with Jones.

Bell: He didn't indicate it over the telephone when we were talking to him and Leo has since talked to him and he said he was quite pleased.

Crowley: I thought so last night. I met him in the hotel and I think he indicated that he was willing to cooperate.

H.M.Jr: I didn't hear what you said.

Crowley: I met Jones in the hotel last night and he indicated every willingness to cooperate.

H.M.Jr: Well --

Bell: There is one thing about this letter and I suppose it has to be this way, and that is, we asked for 30 million dollars of capital. What we want, more than anything else, is a commitment to buy 30 million dollars worth of stock. Now, it may be it will be something less than that if they sell half of it to the public or something like that. We will be authorized to say later on - maybe we had better give him another letter.

Foley: That says make available, Dan, which is a commitment.

Bell: Well, I say, that is what we want more than anything else, is a commitment. When they actually take the stock, it may be something less than 30 million.

Crowley: What you mean is that they may only want to borrow 20 from the RFC and furnish some themselves?

Bell: Yes.

Crowley: Well, you don't object if they go below your request. It is only to authorize them to go up to 30 million, isn't it?

Bell: That is right, but we want 30 million.

Foley: That is what that says, make available 30 million of new capital.

H.M.Jr: But they will have 30 million net, though.

Foley: That is right.

Bell: That is right.

H.M.Jr: Well, you say you don't look for any trouble?

Crowley: No, I think this, Mr. Secretary, your suggestion that Dan and Mr. Delano go over to Jesse Jones and then let his office get busy with the RFC right away and those articles of association --

H.M.Jr: It seems to me as though it would be a nice way to do it. It seems as though you two gentlemen (Mr. Bell and Mr. Delano) - you see, we had an appointment on housing over at the White House at 11:15 and that has been called off, so Jones was to have been there, so --

Delano: You would like to have us get in touch with Jones immediately?

H.M.Jr: I think so.

Chick, I think as far as we are concerned, I think we just have nothing to say.

Schwarz: That was our position last night.

Delano: I was called last night by a newspaper man and said there was no comment for them.

Schwarz: The announcement was made on the Coast and there is no occasion for us to - yet.

H.M.Jr: Yet. Well, thank you again, everybody.

March 15, 1940.

Honorable Jesse H. Jones,
Administrator, Federal Loan Agency,
Washington, D. C.

Dear Mr. Jones:

There is enclosed for your information a copy of the "Requirements of the Comptroller of the Currency", dated March 6, 1940, with reference to the Bank of America National Trust and Savings Association, San Francisco, California. These requirements have been agreed upon by the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation, and have been the subject of recent conversations between the Comptroller of the Currency and the representatives of the Bank.

As appears from the requirements, it is concluded that the capital structure of the Bank should be strengthened. With the approval of the President, I, therefore, request that the Reconstruction Finance Corporation make available to the Bank additional capital funds in the amount of $30,000,000. This request is made pursuant to the authority of Section 304 of the Act approved March 9, 1933 (Public No. 1 - 73rd Congress), as amended. This Bank appears on Schedule National No. 391.

It is understood that, as is customary, the Bank will agree upon amendments to its articles of association satisfactory to the Reconstruction Finance Corporation and the Comptroller of the

Currency. If the preferred stock is to be sold and to be retirable at a premium the usual condition should apply, namely, that in the financial statements of the Bank the preferred stock item will be followed by an explanatory note disclosing the dividend rate payable on such stock and the subscription price upon which dividends will be based and repayment made in the event of retirement or liquidation of the stock. This explanation should appear in all of the Bank's financial statements, including statements required to be made and published by law as well as statements made in counter-slips and in all other forms of advertising and publication.

Very truly yours,

(Signed) H. Morgenthau, Jr.

Secretary of the Treasury.

Enclosure

DJS/HMFJr/fm
Typed 3/14'40

no record on this kept
in files here - mas

222

March 15, 1940.

Honorable Jesse H. Jones,
Administrator, Federal Loan Agency,
Washington, D. C.

Dear Mr. Jones:

There is enclosed for your information a copy of the "Requirements of the Comptroller of the Currency", dated March 6, 1940, with reference to the Bank of America National Trust and Savings Association, San Francisco, California. These requirements have been agreed upon by the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation, and have been the subject of recent conversations between the Comptroller of the Currency and the representatives of the Bank.

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Very truly yours,

(Signed) H. Morgenthau, Jr.
Secretary of the Treasury.

ORIGINAL FORWARDED TO ADDRESSEE
FROM OFFICE OF ~~THE SECRETARY~~ Mr. Foley

Enclosure

This file lent to Jane Cullen
to make notation for her records -
mas

DJS/HMJr/fm
Typed 3/14'40

TO:

Mrs. Mannen

224

Attached is a copy of the one actually signed by M. S. Eccles, and Jno. K. McKee for the Federal Reserve System; Leo T. Crowley for the Federal Deposit Insurance Company; and Preston Delano, E. H. Foley, Jr., and D. W. Bell for the Comptroller of the Currency.

MR. FOLEY

March 6, 1940 No. 4

REQUIREMENTS OF THE COMPTROLLER OF THE CURRENCY

1. As soon as possible, and in any event not later than June 30, 1940, Bank of America, National Trust & Savings Association will add $30,000,000 of additional capital funds by the issuance of common or preferred stock, or both, and the Bank will, prior to April 1, 1940, apply for the approval of the Comptroller of the Currency to such increase. The Bank will endeavor to obtain a commitment from the Reconstruction Finance Corporation to purchase or lend upon preferred stock in the amount of $30,000,000 prior to April 1, 1940, and if preferred stock is to be sold, will endeavor to obtain an agreement with the Comptroller of the Currency upon the terms of the amendments to the articles of association by April 1, 1940.

2. Immediately upon obtaining the new capital the Bank shall set up an unallocated reserve of $6,900,000.

3. The Bank shall obtain additional security satisfactory to the Comptroller of the Currency to secure the contracts of California Lands, Inc. and Capital Company with the Bank, and the contracts of Capital Company with Merchants National Realty Corporation. Such additional security shall be in an amount equal in value to the difference between the unpaid purchase price upon such contracts and the value of the property thereunder, as such value appears in the schedule contained in the report of examination begun August 31, 1939. All of such contracts shall be

eliminated from the assets of the Bank and Merchants National Realty Corporation by December 15, 1943.

4. All premiums on bonds in the Bank's investment portfolio shall be amortized out of current earnings (other than bond profits) to maturity, or to call date, if any, and amortization previously reserved on bonds sold at book value or higher may be returned to the undivided profits account. Current bond profits shall be used to take care of current losses, and any bond profits not so used shall be passed to a reserve for losses of any character until in the opinion of the Comptroller of the Currency such reserve is adequate. However, this reserve for losses, plus the amortization reserve need not exceed the total premium account.

5. The Bank shall, as soon as possible, furnish to a committee composed of the Vice President in Charge of Examinations of the Federal Reserve Bank of San Francisco, or some officer of the Bank designated by him, the Supervising Examiner of the Federal Deposit Insurance Corporation for the Twelfth District, and the Chief National Bank Examiner for the Twelfth Federal Reserve District, all obtainable records and information with respect to the acquisition of each banking premise criticised in the report of examination of August 31, 1939, including those shown on the Bank's books and in its investment in Merchants National Realty Corporation, dating back to the time such premise was acquired either by the Bank or any member (either bank or company) of the group presently or then comprising the Transamerica organization.

The committee shall consider the fair value of each premise at the time of such acquisition, and the special conditions which had to be met in fixing the price paid. From these considerations, the committee shall determine the amount which shall be used by the committee as the estimated cost amount of each premise to the Bank. The value of each premise shall then be established at such estimated cost amount, plus the amount of any expenditures subsequent to acquisition found by the committee to have been appropriately capitalized, less the appropriate amount of depreciation at the depreciation rate allowed by the Bureau of Internal Revenue for each year of ownership. The unallocated reserve set up by the Bank shall be reduced by the difference between the present carrying value of each such premise and the value of such premise as determined by the committee in the manner hereinabove stated. The decision of a majority of the members of the committee shall be binding. The remainder of such reserve, if any, may be returned to the undivided profits account. A partial release of the reserve, or a decrease in the amount of the reserve to be set up, may be made as soon as that procedure is justified, in the opinion of the committee.

6. The aggregate amount of obligations, as defined in Section 5200 United States Revised Statutes, of Transamerica Corporation and all subsidiaries in which it owns or controls a majority interest, to the Bank, will be brought within the limitations and exceptions

of Section 5200, United States Revised Statutes, for any one borrower by July 15, 1942, and thereafter the aggregate amount of such obligations will not be permitted to exceed such limitations and exceptions. The existing obligations of Transamerica or its subsidiaries now held by the Bank will be eliminated by July 15, 1945, and no new loans will be made to Transamerica or its subsidiaries secured by the stock of subsidiaries of Transamerica. This paragraph shall not apply to obligations of Capital Company and California Lands, Inc. arising out of real estate sales contracts, which contracts are covered in numbered paragraph (3) hereof.

The Bank may accept Transamerica shares as security for small loans for business purposes where the borrower demonstrates a capacity to liquidate the loan otherwise than through the sale of such shares. No loans for speculative purposes will be made on the security of such shares.

7. The Bank shall eliminate the amount of investment in stock under option on the basis of the program now in effect.

8. The Bank shall give vigorous attention to the elimination or correction of any real estate holdings or real estate loans that may not conform to statutory requirements.

9. The Bank shall initiate steps to ascertain whether it is entitled to recover any part of the sums paid by it to Transamerica General

Corporation in connection with fidelity losses, and if it is concluded the Bank is entitled to recover, it shall take steps to recover the same.

10. The Board of Directors of the Bank will approve the foregoing by April 1, 1940.

This memorandum is submitted without prejudice to the right to require full and complete compliance with the Comptroller's criticisms and suggestions, to resort to sanctions provided by law, or to continue to list in reports of examination assets that are subject to criticism until such criticisms have been corrected or eliminated. Neither this memorandum nor its contents shall be used by the Bank or anyone else on its behalf without the consent of the Comptroller of the Currency for any purpose except for its information, unless and until the provisions hereof are accepted and complied with by the Bank.

Copied - vls
3/13/40

FEDERAL RESERVE BANK OF SAN FRANCISCO

March 16, 1940

Mr. Daniel W. Bell,
Undersecretary of the Treasury,
Washington, D. C.

Dear Mr. Bell:

You may be interested in the following, which was clipped from the San Francisco Examiner of March 16, 1940.

Business Peace

NORMAL business relations between all banks and industry and the public will continue with even greater confidence than before, now there has been an adjustment of the differences between the Bank of America and the Federal Treasury Department.

Interest in the actual terms of the settlement, for the most part involving technical bookkeeping procedure, is overshadowed by the satisfaction and cordiality with which the business world received this tangible evidence of the possibility of adjusting such controversies by negotiation.

Settlement of Bank Controversy Good Act

The biggest financial institution in the far West and the department of the Federal Government charged with regulation of banks have both gained in stature in the estimation of the public.

The thousands of customers of the Bank of America, fourth largest institution of its kind in the Nation, appear justified in considering the settlement of the dispute as a constructive force for all business and of mutual advantage from the clients' own personal standpoint.

For this adjustment San Francisco and all California should be thankful.

With kindest regards,

Yours very truly,

Ira Clerk
First Vice President.

This clipping sent to Mr. Bell.
Read by the Secretary 3/15/40.