Book 369

Bank of America

March 21, 1940 - January 10, 1941

Bank of America

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COPY

March 21, 1940

Dear Whitney:

Your letter of March 20, 1940, commenting on the composition of the differences between the Comptroller and the Bank of America was very gratifying to me.

I want you to know that we feel the satisfactory outcome of the controversy was due in large measure to the part you played in it. You took hold of the problem in a way which assured only the heartiest cooperation from the members of my staff with whom you were working and both they and I considered you one of us from the beginning.

When Dean Bates' report reaches a point where it will be worth while to have some one take a look at it, we shall get in touch with you for that purpose.

Sincerely yours,

(Signed) H. Morgenthau, Jr.

Whitney North Seymour, Esq.,
120 Broadway,
New York, New York.

Original Forwarded to Addressee
From Office of the Secretary

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3/21'40

File to Mr. Thompson

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SIMPSON THACHER & BARTLETT

120 Broadway

New York

March 20, 1940

Dear Mr. Secretary:

I was glad to learn from Ed Foley, and the announcements in the press from San Francisco, that the differences between the Bank and the Comptroller had been composed with apparent finality. The settlement seems to me highly satisfactory from the point of view of the Department.

As this outcome makes unnecessary my further participation in the matter (except, possibly, in connection with an examination of Dean Bates' report, if it is deemed desirable that I should examine that), I want to take this occasion to express my appreciation for the opportunity to work with you and your colleagues in the Department, and for the complete cooperation which was given to me by everyone. I especially appreciated the opportunity to work with your splendid legal staff, and the generous way in which they received me into the Departmental fold and gave me every possible assistance.

With kindest regards.

Sincerely yours,

/s/ Whitney North Seymour

Hon. Henry Morgenthau, Jr.,
Secretary of the Treasury,
Washington, D. C.

March 29, 1940

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

My dear Mr. Chairman:

For your information there is transmitted to you herewith copy of the following correspondence exchanged with the Bank of America National Trust and Savings Association:

March 25, 1940 - Letter from Mr. R.P.A. Everard, Secretary, to the Comptroller of the Currency

March 28, 1940 - Wire from Mr. R. P. A. Everard, Secretary, to the Comptroller

March 28, 1940 - Night letter from Mr. R.P.A. Everard, Secretary, to the Comptroller

March 29, 1940 - Letter from the Comptroller to Mr. Everard.

Very sincerely yours,

Preston Delano
Comptroller

March 29, 1940

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

My dear Mr. Chairman:

For your information there is transmitted to you herewith copy of the following correspondence exchanged with the Bank of America National Trust and Savings Association:

March 25, 1940 - Letter from Mr. R.P.A.Everard, Secretary, to the Comptroller of the Currency

March 26, 1940 - Wire from Mr. R.P.A.Everard, Secretary, to the Comptroller

March 28, 1940 - Night letter from Mr. R.P.A. Everard, Secretary, to the Comptroller

March 29, 1940 - Letter from the Comptroller to Mr. Everard.

Very sincerely yours,

Preston Delano
Comptroller

B A N K OF AMERICA
National Trust and Savings Association

San Francisco Headquarters

San Francisco, California

March 25, 1940

Comptroller of the Currency,
Treasury Department,
Washington, D. C.

Dear Sir:

I am enclosing certified excerpts from minutes of proceedings of meetings of the Board of Directors of Bank of America National Trust and Savings Association held on March 12, 1940, and on March 14, 1940.

Respectfully,

(Signed) R. P. A. EVERARD
Secretary of the Board of Directors

Enclosures.

VIA AIR MAIL

The President read to the meeting several communications received from the Chairman of the Board relating to the issues between the Bank and the Comptroller of the Currency, and requested Mr. Marshal Hale, Chairman of the Special Committee appointed by the Board of Directors on March 12, 1940, to render his report on the action taken by the committee at its meetings held on March 13, 1940.

Mr. Hale thereupon read to the meeting the report of the committee, a copy of which is as follows:

"San Francisco, California
March 13, 1940.

To:
The Board of Directors,
Bank of America N. T. & S. A.,
San Francisco, California.

Gentlemen:

The Committee appointed by the Board of Directors at its Regular Meeting held on March 12, 1940, for the purpose of analyzing and considering the latest requirements of the Comptroller of the Currency presented to the Board of Directors at said meeting by the President, held a meeting this day and discussed the subject.

The Committee recommend the acceptance of the requirements of the Comptroller of the Currency as presented to the meeting, and to the Board of Directors, after taking into consideration the recommendation of the Chairman of the Board and the statement of the President of the Bank that the acceptance of the program of requirements was strongly recommended by Messrs. Eccles, McKee, Crowley, Delano, and Jones.

The Committee discussed the desirability of giving publicity to the Comptroller's requirements, and now recommend that the requirements of the Comptroller be released to the press for publication. In arriving at this decision the Committee has taken into consideration the recommendation of the Chairman of the Board that such procedure be followed in keeping with the President's statement to the stockholders at their last Annual Meeting.

Respectfully,

MARSHAL HALE

Chairman - Special Committee."

Mr. Hale informed the Board in some detail of the committee's discussions; and following a general discussion by the Board of the committee's report, and the subject thereof, it was regularly moved, seconded, and carried, that said report be adopted and the requirements referred to therein be approved.

I, R. P. A. EVERARD, the duly elected and qualified Secretary of BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, a National Banking Association organized and existing under and by virtue of the laws of the

United States of America, and having its principal place of business in the City and County of San Francisco in the State of California, hereby certify and declare that the foregoing is a true and correct excerpt from the minutes of the proceedings of an Adjourned Regular Meeting of the Board of Directors of said Association held on March 14, 1940.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Association on this 25th day of March, 1940.

(Signed) R. P. A. EVERARD

Secretary of BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION

The President reported on his recent visit to Washington in company with Counsel, and the results of the several conferences which he and Counsel had had with members of the Comptroller's office, the Treasury Department, the F. D. I. C., and the Board of Governors of the Federal Reserve System. He read to the meeting the following communications:

Letter addressed to the Comptroller of the Currency by O. K. Cushing under date of February 14, 1940;

Letter addressed to O. K. Cushing by C. B. Upham, Deputy Comptroller of the Currency, under date of February 16, 1940;

Letter addressed to C. B. Upham, Deputy Comptroller of the Currency, by L. M. Giannini, President, under date of February 20, 1940.

He also read a memorandum of requirements with respect to Bank of America National Trust and Savings Association presented by the Comptroller's office at the first meeting, and the Bank's response to such memorandum. He then read a letter addressed to him, as President, by Preston Delano, Comptroller of the Currency, under date of February 26, 1940, and a memorandum of requirements of the Comptroller of the Currency which accompanied said letter of February 26, 1940, as a final proposal.

The President referred to a meeting on March 8, 1940, in the office of the Under-Secretary of the Treasury, in which he, Mr. Bell, Under-Secretary of the Treasury; Mr. Cushing, Counsel for the Bank, and Mr. Foley, Counsel for the Comptroller's Office, participated, and he read to the meeting a copy of a report of the meeting prepared by the Treasury Department.

The President referred to the proposed new issue of stock by the Bank and led a discussion on the subject of an underwriting for such issue.

He presented a statement indicating the estimated earnings of the Bank during the present year, and a forecast of future earnings over a considerable period, in which provision was made for the cost of servicing the new issue.

The requirements of the Comptroller of the Currency as presented by the President were discussed, and, following the suggestion of the President, on motion duly made, seconded and carried, a committee composed of the following members was appointed for the purpose of analyzing and considering said requirements, studying proposals for underwriting the new issue of capital stock, and making recommendations relating thereto to the Board of Directors at its next meeting, to be shortly convened:

Marshal Hale	C. N. Hawkins
Leon Bocqueraz	H. A. Mazzera
Dr. G. E. Cagliari	Wm. Wallace Mein
L. M. Giannini	

I, R. P. A. EVERARD, the duly elected and qualified Secretary of BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, a National Banking Association organized and existing under and by virtue of the laws of the

United States of America, and having its principal place of business in the City and County of San Francisco in the State of California, hereby certify and declare that the foregoing is a true and correct excerpt from the minutes of the proceedings of the Regular Monthly Meeting of the Board of Directors of said Association held on March 12, 1940.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Association on this 25th day of March, 1940.

(Signed) R. P. A. EVERARD

Secretary of BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION.

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1940 MAR 28 PM 7 07

HON PRESTON DELANO

WASHNDC

CERTIFIED COPY OF MINUTES APPROVING YOUR PROGRAM OF MARCH 6 AIRMAILED TO YOU MARCH 25. PLEASE CONSIDER THIS WIRE AS AN APPLICATION FOR YOUR APPROVAL OF THE PROPOSED INCREASE OF CAPITAL FUNDS AS PROVIDED IN THE REQUIREMENTS.

R P A EVERARD SECRETARY

BANK OF AMERICA NT AND SA

702p

WO1 M TWB FD 3 [illegible] 1940 MAR 29 AM 647

FBI SAN FRANCISCO CALIF MAR 28 1940 525 P

HON PRESTON DELANO
COMPTROLLER OF THE CURRENCY

WE HAVE TODAY WIRED RECONSTRUCTION FINANCE CORPORATION AS FOLLOWS QUOTE: PURSUANT TO AN UNDERSTANDING WITH THE COMPTROLLER OF THE CURRENCY APPLICATION IS HEREBY MADE ON BEHALF OF BANK OF AMERICA NT & SA TO YOU FOR A COMMITMENT TO PURCHASE OR LEND UPON PREFERRED STOCK OF THE BANK UP TO THIRTY MILLION DOLLARS IN CASE THE BANK SHOULD HAVE OCCASION TO CALL UPON YOU FOR THAT PURPOSE. AS WE MAY OFFER THE PREFERRED STOCK THROUGH AN UNDERWRITERS SYNDICATE WE REQUEST THAT NO PUBLICITY BE GIVEN TO THIS APPLICATION. ON MARCH 16 THE BANK LEFT WITH YOUR LEGAL DEPARTMENT PROPOSED AMENDMENTS TO ITS ARTICLES OF ASSOCIATION PROVIDING FOR THE ISSUANCE OF SIX HUNDRED THOUSAND SHARES OF PREFERRED STOCK OF A PAR VALUE OF $12.50 PER SHARE WHICH IT IS PROPOSED TO SELL AT FIFTY DOLLARS PER SHARE THUS PROVIDING ADDITIONAL CAPITAL OF SEVEN MILLION FIVE HUNDRED THOUSAND DOLLARS AND ADDITIONAL SURPLUS OF TWENTY TWO MILLION FIVE HUNDRED THOUSAND. SOME SUGGESTED CHANGES IN THE PROPOSED ARTICLES HAVE BEEN AIR MAILED TO YOU FROM SANFRANCISCO TODAY. WE SHALL APPRECIATE ACTION ON THIS REQUEST PRIOR TO APRIL FIRST. R P A EVERARD SECRETARY BANK OF AMERICA NT & SA UNQUOTE.

R P A EVERARD SECRETARY
BANK OF AMERICA NT & SA 840 a

12

March 29, 1940

Mr. R. P. A. Everard, Secretary,
Board of Directors,
Bank of America National Trust
and Savings Association,
San Francisco, California.

Dear Mr. Everard:

Permit me to acknowledge receipt of your letter dated March 25, 1940, enclosing certified excerpts from the minutes of the proceedings of meetings of the Board of Directors of Bank of America National Trust and Savings Association held on March 12, 1940, and on March 14, 1940.

It is noted that while the "Requirements of the Comptroller of the Currency" are referred to in the approving resolution passed by your Board, the text of the document in question is not spread upon the minutes. Inasmuch as there were several drafts before the final one of March 6, 1940, was adopted, I believe it would be desirable to have your next meeting of the Board spread upon the minutes the text of these final "Requirements of the Comptroller of the Currency" which was approved at your meeting on March 14, 1940, and which was later released to the press by your directorate. This will prevent any confusion, and I would appreciate having a copy of the minutes which thus amplify your resolution of March 14, 1940.

Very truly yours,

Preston Delano
Comptroller

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WESTERN UNION

AA332 18 SAN FRANCISCO CALIF 30 749P

1940 MAR 30 PM 11 35

HON JESSE H. JONES
FEDERAL LOAN ADMINISTRATOR
RECONSTRUCTION FINANCE CORPORATION WASH DC

THANK YOU FOR YOUR PROMPT ATTENTION TO OUR APPLICATION

WILL BE IN TOUCH WITH YOU SOON KINDEST REGARDS

L M GIANNINI

TREASURY DEPARTMENT
TELEGRAPH OFFICE

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SAN FRANCISCO CALIF MAR 30 1940 820p

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HON PRESTON DELANO
COMPTROLLER OF THE CURRENCY

IN RESPONSE TO OUR APPLICATION FOR COMMITMENT FROM R F C RECEIVED TODAY FOLLOWING TELEGRAM FROM HON JESSE H JONES QUOTE L M GIANNINI PRESIDENT BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION SAN FRANCISCO IN REPLY TO SECRETARY EVERARDS TELEGRAM OF MARCH 28TH BEG TO ADVISE THAT RECONSTRUCTION FINANCE CORPORATION WILL UPON REQUEST MAKE AVAILABLE TO YOUR BANK PRIOR TO JUNE 30TH 1940 CAPITAL FUNDS UP TO THIRTY MILLION DOLLARS THROUGH PURCHASE OF PREFERRED STOCK OR BY LOANS TO SATISFACTORY BORROWERS SECURED BY PREFERRED STOCK CONDITIONED THAT SUCH STOCK IS ISSUED PURSUANT TO AMENDMENTS TO BANKS ARTICLES OF ASSOCIATION . SATISFACTORY TO THE CONTROLLER OF THE CURRENCY AND THE R F C AND THAT ALL NECESSARY REQUIREMENTS FOR PROTECTION OF RFC'S INVESTMENT ARE MET SIGNED JESSE H JONES FEDERAL LOAN ADMINISTRATION UNQUOTE KINDEST REGARDS

R A EVERARD SECRETARY OF THE BANK OF AMERICA
NATIONAL TRUST AND SAVINGS ASSN.

818a

TREASURY DEPARTMENT
TELEGRAPH OFFICE

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SAN FRANCISCO CALIF APR 3, 1940   1940 Apr 4 AM 8 29

HON PRESTON DELANO

COMPTROLLER OF THE CURRENCY

UNDERSTAND OUR PEOPLE ARE NOW IN AGREEMENT WITH RFC AND CONSEQUENTLY WE NOW AWAIT ARTICLES AS REDRAFTED BY RFC AND YOUR OFFICE. HOPE THEY CAN BE FORWARDED PROMPTLY BY AIR MAIL. PRINTING BY RFC TO AWAIT OUR REVIEW. AM WIRING AS UNABLE TO REACH YOU BY LONG DISTANCE THIS AFTERNOON. REGARDS.

O. K. CUSHING

[illegible] a

THE UNDER SECRETARY OF THE TREASURY

WASHINGTON

April 4, 1940

MEMORANDUM TO THE SECRETARY:

As I advised you over the telephone, it appears that the RFC, the Bank of America, and the Comptroller of the Currency have reached an agreement on the fundamentals involved in the Articles of Association of the Bank making provision for an increase in its capital. Of the $30,000,000 additional capital, $12,000,000 will be in the form of preferred stock and $18,000,000 will be in the form of surplus, with the right of the Bank to convert the preferred stock into common stock. This then would put the Bank on a capital structure basis of $62,000,000 common capital and $62,000,000 surplus, or a total of $124,000,000 in capital account. This will be frozen and cannot be reduced without the consent of the Comptroller of the Currency. A draft of the Articles of Association will probably go to the Bank this evening. I do not expect any difficulties in getting them to agree, although there may be some minor changes in the language. Before it is finally approved the Bank will of course have to get authorization from its stockholders.

DWB

April 4, 1940

MEMORANDUM TO THE SECRETARY:

As I advised you over the telephone, it appears that the RFC, the Bank of America, and the Comptroller of the Currency have reached an agreement on the fundamentals involved in the Articles of Association of the Bank making provision for an increase in its capital. Of the $30,000,000 additional capital, $12,000,000 will be in the form of preferred stock and $15,000,000 will be in the form of surplus, with the right of the Bank to convert the preferred stock into common stock. This then would put the Bank on a capital structure basis of $62,000,000 common capital and $62,000,000 surplus, or a total of $124,000,000 in capital account. This will be frozen and cannot be reduced without the consent of the Comptroller of the Currency. A draft of the Articles of Association will probably go to the Bank this evening. I do not expect any difficulties in getting them to agree, although there may be some minor changes in the language. Before it is finally approved the Bank will of course have to get authorization from its stockholders.

(Initialed) D.W.B.

Sec'y
Cloister Hotel
Island Beach, Ga.

MAILED 4-4 1940

BY ~~SPEC. MESSENGER~~ pouch

FILE TO

COPY TO

DWB:ce

APR 8 1940

My dear Mr. Frank:

I have your letter of April 3, 1940 requesting certified copies of certain documents for use in connection with the 19(a)(2) proceedings instituted by the Securities and Exchange Commission against Transamerica Corporation. I note that the reports requested are for confidential use and not for publication.

In compliance with your request the Commission will be furnished such reports of earnings and dividends as have been filed with the Comptroller of the Currency by the Bank of America N. T. & S. A. and its predecessor, Bank of Italy N. T. & S. A. and by the First National Bank in Reno within the periods specified in your letter.

You will also be furnished certified copies of the articles of association of the Bank of Italy N. T. & S. A. and the Bank of America N. T. & S. A. including all amendments to date. However, your attention is called to the fact that amendments to the articles of association of the Bank of America N. T. & S. A. incorporating certain changes necessary to meet the requirements recently made by the Comptroller are now before the Bank and have not yet been acted on. A copy of these amendments will be forwarded to you upon request if and when adopted.

With reference to the by-laws requested, banks are not required to file their by-laws with the Comptroller and no copies are available which could be furnished you. I suggest that you may obtain the by-laws directly from the Bank.

Very truly yours,

(Signed) H. Morgenthau, Jr.

Secretary of the Treasury

Hon. Jerome N. Frank
Chairman
Securities and Exchange Commission
Washington, D. C.

ORIGINAL FORWARDED TO ADDRESSEE
FROM OFFICE OF THE SECRETARY 12.52 pm
By Messenger
APR 8 1940

NOT:s 4/8/40

File to Mr. Thompson

THE UNDER SECRETARY OF THE TREASURY

WASHINGTON

April 11, 1940

MEMORANDUM FOR THE FILES

Mr. Jesse Jones telephoned me today at about 12:30 p.m., saying that he had a press release which he wanted to read to me to see whether I had any objection to it. It started out by stating in effect that the Reconstruction Finance Corporation had agreed to loan the sum of $30,000,000 to the Transamerica Corporation for the purpose of permitting it to purchase that amount of preferred stock of the Bank of America. It then went on to give some statistics regarding the capital structure of the Bank and the proposed retirement of the preferred stock over a period of years. Mr. Jones then said that that was a matter of detail but what he really wanted my approval of was the last sentence in the statement which, in effect, said:

> "I am glad to say that with this additional capital the Bank of America will be in a strong capital position, with the controversy between it and the Comptroller of the Currency satisfactorily settled."

I told Mr. Jones that I was interested in the first sentence of his statement as well as the last; that I was quite surprised that the agreement he had made covered a loan to only one of the stockholders and that I could not clear the statement so far as the Treasury was concerned without first consulting the Secretary of the Treasury. Mr. Jones said that he was concerned with getting his money back and the Transamerica Corporation was the only stockholder that the Corporation would be willing to lend $30,000,000 or any part thereof; and, furthermore, he did not think the Treasury ought to interfere with what he considered to be the duty of the Reconstruction Finance Corporation.

I told Mr. Jones that we did not want to interfere, but here was a matter in which other branches of the Government service were vitally interested; that the Treasury had been working rather closely with the Securities and Exchange Commission on this whole set-up; and that while we had come to an understanding on our end, we did not think that another branch of the Government should do something that would interfere with the other branches. I thought that the announcement he proposed to make that the Reconstruction Finance Corporation was committed to make a loan to the Transamerica Corporation and to it only as a stockholder of the Bank of America might be used in the Securities and Exchange proceedings to the detriment of the Government. I did not think he would want to be in that position and I was quite certain the Treasury did not.

I asked him if he could not hold the issuance of the statement up until after lunch and he said he could not as he was catching a train to leave town shortly after one, and it must go out before one. I asked him then if he would hold it up until one o'clock so that I could see the Secretary and call him back. He said he would.

I then took the matter up with the Secretary and gave him the picture as outlined above. He called Mr. Jones and told him he had to consult the Securities and Exchange Commission and would he please hold the matter of issuing this statement up for a period of two or three hours. Mr. Jones said he was leaving town and he would hold it up until tomorrow morning.

The rest of the record concerning the matter has been recorded in the Secretary's office.

DWB

April 11, 1940
1:05 p.m.

Jerome Frank: Yes, sir.

H.M.Jr: Jerry, at twenty minutes to one Jesse Jones calls up Bell and tells him that he's going to leave town and that we -- he wants us to -- he reads a release to him. I'm going to try to tell it to you and if I can't Bell is sitting here, in which the stock, which is the money which is to go into the Bank of America, he -- R.F.C., is lending it to the Transamerica.

F: Lending it to Transamerica?

H.M.Jr: Yeah. And I'm taking this position that unless you or the board of the S.E.C. tell me that you approve of this, I'm going to disapprove of it.

F: Well, I'll get the Commission's reaction right after lunch. Of course -- offhand, now this is just a quick curbstone reaction, I don't know whether officially we could disapprove. In other words, Uncle Jess being a government agency can make any loans he wants to and we don't have to approve, so that I'm not sure that officially we can take any position. I think it's crazy as hell. I think that he's.....

H.M.Jr: Well, he's quoting that Bill Douglas, when Bill was Chairman, that he approved the idea. He's going back to that. Well, I don't.....

F: Well, I'll bet it isn't so.

H.M.Jr: Well, I'll bet it isn't so and.....

F: I'll find out by gosh!

H.M.Jr: Well, I wish you would.

F: All right, I will.

H.M.Jr: But unless the S.E.C. advises me that they approve of this, I'm going to disapprove of it.

F: Well, I -- I'll get their impression right after lunch and I think probably we can't go any further than to say -- we have no official power to disapprove but if we're asked as human beings we're not for it.

H.M.Jr: Well, I'm asking you as Secretary of the Treasury and I'll get -- Just a minute, Bell is here..... (Pause)

The R.F.C. admin......

F: Yes.

H.M.Jr: ......has agreed to make a loan to Transamerica Company for 30 million dollars. Of course, and now he wants the answer now. It's an outrageous thing.

F: It's crazy! It's an insane idea!

H.M.Jr: Well, and he must have known this now for weeks and he lets us know at twenty minutes of one.

F: Look at the position he's going to be in. We are -- we're still going on with our proceedings against them.

H.M.Jr: I know.

F: We may delist the securities and heavens only knows what. And the government of the United States puts money in that venture.

H.M.Jr: Yeah.

F: It's just absurd!

H.M.Jr: Yeah.

F: Well, I'll let you know as soon as I get the Commission together.

H.M.Jr: Well, I -- I heard this thing at -- ten minutes ago.

F: Yes.

H.M.Jr: And he called -- only called Bell at twenty minutes of one.

F: Very good. Well, I'll let you know just as soon as I can.

H.M.Jr: O. K.

April 11, 1940.
1:10 p.m.

H.M.Jr: Hello.

Operator: Mr. Jones.

H.M.Jr: Hello.

Jesse Jones: Hello.

H.M.Jr: Jesse?

J: Yes sir.

H.M.Jr: Dan is sitting here and he's told me about a proposed release and agreement.

J: Yeah.

H.M.Jr: Between the R.F.C. and Transamerica.

J: Yeah.

H.M.Jr: Well, I haven't had time to get the letter to find out what the letter stated which I wrote you, but I thought I wrote a letter asking the R.F.C. to lend money to the Bank of America.

J: No, we don't lend it. We -- we lend it on the stock.

H.M.Jr: Well, I mean, who does the borrowing?

J: The stockholder of the bank.

H.M.Jr: Well, I haven't got the letter but that isn't the normal way that you do it.

J: Huh?

H.M.Jr: I mean, normally I thought you did business with the bank.

J: We lend money -- we lend the money on -- to the stockholder on the stock.

H.M.Jr: That's the way......

J: That's the way it's always done, Henry - that is, where they borrow. In this case this was the strongest borrow that we could get. Now, if we didn't do it this way we would have to let them name a -- some other -- well, somebody without responsibility, and we wanted a good note, something we can get our money out of. I think I could settle this note before I get it.

H.M.Jr: Well, of course, just putting it up and saying -- now just what are you putting up to me as Secretary of the Treasury?

J: Nothing. The only thing I was putting up, Henry, was on the last -- the release that I read -- may I read you the whole release?

H.M.Jr: Please.

J: "The R.F.C. has authorized a loan of 30 million dollars to Transamerica Corporation for the purchase of preférred stock in the Bank of America N.T. and S.A. The loan will mature at the rate of 3 million dollars a year for 10 years and will bear interest at $3\frac{1}{2}$ per cent. Each stockholder will be allowed a reasonable time in which to determine whether he will subscribe for his pro rata share of the preferred stock. The stockholders will have a -- the stock will have a par value of 20 dollars and will be sold at 50 dollars per share and retirable at the latter figure. It will bear dividends at the rate of 2 dollars per share per annum. 12 million dollars will be added to the capital account and 18 million dollars to surplus and undivided profits. This will give the Bank 62 million dollars' capital, 62 million dollars' surplus, and more than 20 million dollars' reserve and undivided profits."

What I had in mind, Henry, in making this release be so in detail is to try and do the whole situation some good. Now -- to finish, "I'm glad to be able to say that with this added capital the Bank of America N.T. and S.A. will be in a very strong capital position with all controversy between it and the Comptroller's office satisfactorily adjusted."

Now, that last paragraph is what I wanted to submit to Dan.

H.M.Jr: Well, when Dan came in I called up Jerome Frank....

J: Yeah.

H.M.Jr: ......and asked him how he felt.

J: Yeah.

H.M.Jr: And he said without talking to his Board that he was greatly shocked to think that the R.F.C. was going to lend Transamerica any money, and that he would immediately take it up with his Board and let me know.

J: Yeah.

H.M.Jr: Now, I'm going to volunteer this information if you don't ask me.

J: Yeah.

H.M.Jr: I certainly, as Secretary of the Treasury, until I hear from the S.E.C., who have a very serious case pending against the Transamerica......

J: Yeah.

H.M.Jr: ....I'm going to ask you -- I don't know whether I have any authority or not -- but I'm going to ask you anyway, as both members of the same Administration, to postpone doing anything until we hear from the S.E.C.

J: Well, we got -- had a lot of trouble not long ago about the National Labor Relations Board, Henry. Letting them run our business.

H.M.Jr: Well, I don't know anything about that but......

J: Well, I do.

H.M.Jr: But I do know that I have written you a letter and......

J: We've complied with it. We're complying literally with your letter.

H.M.Jr: Well, that's what I want time to find out. I can't....

J: Well, I know we are.

H.M.Jr: Well, I want to satisfy......

J: Well, you needn't question my word about it. I know what I'm doing on it.

H.M.Jr: Well, I still say that as long as you've put the release up to us and you're lending 30......

J: Well, I didn't put -- the last paragraph is the only part I've put up to you.

H.M.Jr: Well, I'm volunteering it, Jesse, and I'm asking you, and you can do whatever you want. But I'm asking you to postpone consummating this deal of lending 30 million dollars to Transamerica......

J: Yes.

H.M.Jr: ......until I have time to hear from the S.E.C. Now you -- now I'm asking you that formally.

J: Yeah.

H.M.Jr: Now you can -- you can do what -- and I don't see where there's any harm in -- in waiting a couple of hours.

J: No, there's no harm in waiting a couple of hours.

H.M.Jr: And that's all that I'm asking.

J: I suppose then that you'll also go to the President and ask him to stop us from doing it.

H.M.Jr: No. No, I'm not going to go to the President. I don't think it's necessary. I -- as far as I know in my dealings with you I've never run to the President on anything.

J: Well, I don't see why you called Frank about it.

H.M.Jr: Why?

J: No, I don't see why you called.......

H.M.Jr: Because he had -- for a very good reason.

J: Why?

H.M.Jr: Because he happens to be the Chairman of the S.E.C. who have a -- under investigation the Transamerica which you propose to lend 30 million dollars to.

J: Yes, on good security. Henry, I'm trying to get a good note.

H.M.Jr: But supposing the S.E.C. decides to go ahead and Transamerica is delisted, et cetera, et cetera.

J: That won't hurt us. I'm fully aware of that.

H.M.Jr: Well......

J: We -- we've still got the note and the note is good even though they're delisted.

H.M.Jr: Well, if you haven't seen the ruling of the Judge here in the court in Washington where he talked about these various agencies all being a part of the same brain cell, and that one brain cell should help the other, I suggest that you read that. And that was in regard to this very particular company. It was with regard to the Comptroller making available to the S.E.C. information in regard to Transamerica and Bank of America.

J: I have a letter in my file from Bill Douglas, the Chairman of the S.E.C., saying that there is no reason in the world why we shouldn't make this loan. I'm following right along the way we've been doing all the time.

H.M.Jr: A letter from Bill Douglas?

J: Why certainly!

H.M.Jr: When could that have been written?

J: When he was Chairman of the S.E.C.

H.M.Jr: Well, a lot of water has gone over the dam.

J: Yes, I understand that. But it's the same kind of a deal we were working on a year ago -- a year and a half ago.

H.M.Jr: Well, it must have been certainly prior to January first '39.

J: It was -- it was. It was in December 1938, when we had this seance, long seance with the Bank of America.

H.M.Jr: Yeah. Well, this matter, having been brought to my attention, I -- I don't feel I can do anything else.

J: All right.

H.M.Jr: And -- but I don't see how a couple of hours where this thing has been going on for weeks could be a matter of life and death with you.

J: There's no -- no, it's not a matter of life and death at all, Henry. It doesn't make any difference whether -- I don't have to do it at all as far as that's concerned.

H.M.Jr: Yeah.

J: I think I was doing -- thought I was doing, and think I'm doing what is the right thing; what's to the benefit of the Administration.

H.M.Jr: Yeah.

J: That's what I'm trying to do.

H.M.Jr: Well, I'm thinking of the Administration and only of the Administration. Now, if the S.E.C. tells me that it doesn't make any difference as far as they're concerned then I'm perfectly happy.

J: It doesn't make a particle of difference to us whether they put -- whether they do -- what they do with this other fellow. I'm aware that they have got all this claim.

H.M.Jr: Well, talking for myself, I certainly wouldn't lend one dollar to a concern which was being sued by, let's say, the Department of Justice.

J: Yeah.

H.M.Jr: I wouldn't lend them a dollar. I certainly wouldn't lend it to them -- I can give you an example. I wanted to talk to the Aluminum Company of America the other day about whether they had enough aluminum for aeroplanes but before doing it I made sure that my talking to them wouldn't, in any way, interfere with the Department of Justice's anti-trust suit against Aluminum. Now that may be pretty far-fetched but still I did it just as a matter of -- of courtesy and cooperation. And that's all that I'm thinking of now. I've got nothing against Transamerica, but S.E.C. has.

J: Well, I don't know anybody who has cooperated any better than I have, Henry.

H.M.Jr: Well, then if you have why not continue and everybody would be happy.

J: Well, I don't -- I'm willing -- I won't make the release today.

H.M.Jr: All right.

J: And if I -- I want to make this now, if this isn't thing is going to be carried to the President I want to be present.

H.M.Jr: If I -- if I communicate in any way to the President in regard to this, you'll be with me when I do it.

J: O. K. And then I want -- if Jerry Frank does it, I also want a chance to answer.

H.M.Jr: Well, I'll tell Jerry what you say but I can only talk for the Treasury.

J: Yeah. O. K.

H.M.Jr: Thank you very much.

April 11, 1940.
2:20 p.m.

H.M.Jr: Hello.

Cy Upham:

H.M.Jr : Cy. . Did you know that Jones was going to make this thirty million dollar loan to Transamerica?

U: Yes.

H.M.Jr: You did.

U: Oh yes, last Friday.

H.M.Jr: Well, why didn't you tell somebody up on this end of why didn't you tell the Comptroller?

U: Well I don't know whether he knows it or not.

H.M.Jr: Well, how did you know it?

U: I saw a letter from the RFC.

H.M.Jr: From the RFC to whom?

U: To the Comptroller.

H.M.Jr: Is there a letter?

U: Let's see. I think I mentioned it to the Comptroller, I'm not sure about that.

H.M.Jr: A letter from the RFC to the Comptroller.

U: Yes.

H.M.Jr: Will you bring it in.

U: Surely.

H.M.Jr: Thanks.

April 11, 1940.
2:22 p.m.

H.M.Jr: Hello.

Jerome Frank: Hello Henry, - Jerome.

H.M.Jr: Right.

F: I've just talked to my colleagues.

H.M.Jr: Yes.

F: And officially, our answer is this. We can't approve or disapprove it, but regardless if Jesse should make that loan, it won't stop our proceedings one iota, and maybe he'll want to take that into consideration.

H.M.Jr: Well now, let me tell you my conversation with him, after I called you. Let me see. I told him that I had talked with you and that while I realized that he didn't ask you whether I approved or disapproved what he said in regard to the loan, that pending my hearing from the SEC that they had no objection. I did ask him to withhold doing any action, see?

F: Yes.

H.M.Jr: And he has agreed to do that. Now my position is this, I want to know whether the SEC - it's agreeable to them, that another agency lend Transamerica thirty million dollars.

F: No, but - you see we've - Henry, you'll appreciate why officially, we've got to be careful. If it should - Hello.

H.M.Jr: Yes.

F: If Giannini - if we should express ourselves as being against it Giannini came out and said we've opposed - interfered with his relations with another Governmental agency he'd have something to say. Now, technically and officially, we can't object to what Jesse Jones does.

H.M.Jr: Well, neither can I, as Secretary of the Treasury.

F: No. But now, but Jesse ought to know that if he does lend it, he may be embarrassed by having made a loan to a company and then having us go and expose all the facts about it, which we will. Because we're going on with our hearing whether he makes that loan or not.

H.M.Jr: But that doesn't help me in the position that I'm taking, is the one that I've always taken. I'm not going to be even an indirect party to any action which might embarrass the SEC.

F: Well that - but that's your conscious and your guide and maybe Jesse hasn't got one.

H.M.Jr: But I'm asking the SEC to advise me, because I wrote the letter to Jesse asking him to lend the money, you see?

F: But you asked him to lend it to the bank.

H.M.Jr: That's right.

F: Now if he's going to lend it to Transamerica, what are they going to do with the money?

H.M.Jr: He said he's lending it to them as a principal stockholder.

F: And what are they going to do with it?

H.M.Jr: They in turn are going to lend it to the Bank of America.

F: They're not - they're going to lend it or buy stock.

H.M.Jr: Buy stock.

F: Buy preferred stock.

H.M.Jr: Yes.

F: So that Transamerica becomes a preferred stockholder - the preferred stockholder of the bank.

H.M.Jr: Offhand I would say so.

F: Well now, it just - all of us have agreed, if you ask us as individuals what we think of it, you can imagine. You don't need to be told, but the SEC can't say anything to Jesse Jones, that's his business.

H.M.Jr: No, but you can say it to me.

F: Well I can tell you what I think personally.

H.M.Jr: Yes.

F: I think it's a God damned outrage.

H.M.Jr: (aside) Tell him to come in - Upham's outside.

F: Now - hello.

H.M.Jr: Yes.

F: You told me that Jesse quoted Bill as having approved this. I just spoke to Bill.

H.M.Jr: Yes.

F: He said he can recollect saying seeing no such thing and that whatever he said on the subject was said in your presence and he thinks you've got stenographic notes of it.

H.M.Jr: No, he says he has a letter from him.

F: A letter?

H.M.Jr: Yes.

F: Well, well I - you didn't tell me that. I'll check that immediately.

H.M.Jr: No he has a letter from him as Chairman of SEC. It ought to be in your files.

F: Certainly, it will be, - saying that he approved of a loan to Transamerica.

H.M.Jr: Yes.

F: Well I'll check that right away to phone you.

H.M.Jr: Now just a minute. Upham just brought in this letter written by Cooksey, Secretary of RFC to the Comptroller of the Currency. Let me read it to you. "Proposed that this Corporation make a loan to Transamerica upon security of shares and so forth and so on .... Corporation agrees - to make a loan to Transamerica in amount not to exceed thirty million under conditions amongst others.

And then they go on and make the conditions.

F: And they won't - in other words, they'll buy the stock with the thirty million and put that up as collateral with Jesse.

H.M.Jr: I guess that's it, yes.

F: It's pretty obvious that the purpose is to whitewash Transamerica.

H.M.Jr: Well that's - that was what flashed through my mind.

F: Of course that's his purpose.

H.M.Jr: But I - you see, I - I can't call back and say to Jones, well, the SEC Commission has no objections, that's the position I'm in now.

F: Well our position is that it's either objecting or - it certainly isn't approving and has no power to disapprove, but I'd better look at Bill Douglas' letter and call you back. Let me see if I can get that right away.

H.M.Jr: Will you do that?

RE BANK OF AMERICA

April 11, 1940.
4:15 p.m.

Present: Mr. Bell
Mr. Foley
Mr. Upham

H.M.Jr: Frank is coming over at 10:00 tomorrow. He couldn't come over this afternoon. Did Jones call you yet?

Bell: No.

H.M.Jr: Well, if he calls, tell him that Frank is coming over to see me at 10:00 o'clock tomorrow morning. Frankly, after reading this letter I don't see - unless Jerome Frank will change his position - Jerome Frank says the Board just doesn't want to take a position now.

Foley: The only difference between the situation at the present time and the position Bill took in that letter is that here all of the money, I understand, is being loaned to Transamerica, whereas the situation that was put up to Bill and that Bill and his Commission passed on was where a loan to the stockholders of the bank, which would include Transamerica, was secured by preferred stock. It is a difference of degree, that is all.

H.M.Jr: Well, I am not going to fight with these fellows.

Foley: I don't see how you can, Mr. Secretary.

H.M.Jr: I am not going to fight with them, but I want, for the record, to say, "Well, look, now I have taken this position until I hear from you fellows and where are you? Now, Mr. Jones referred to this letter and unless you tell me that you want me to tell Mr. Jones not to do this thing, I am just going to tell him that SEC tells me that they have no objection."

Foley: Well, that they don't want to take any action about it.

H.M.Jr: No, I am not going to do that. The SEC has not said to me that I should say to Mr. Jones that they have an objection. I want a clean cut answer. I am entitled to a clean cut answer. This is a clean cut statement of Bill Douglas'. There is no if, and or but about that. How the hell he ever wrote that letter is beyond me. To the stockholders of the Bank, which would include Transamerica. If they don't give a damn, why should I? I am not going to try to save the world.

Bell: I think it would be a lot better at this time if Mr. Jones didn't issue any statement, even though he eventually makes the loan to Transamerica. He has already announced, Cy says, that he is going to make --

Upham: Thirty million available.

Bell: At least he has made a commitment to that effect. He didn't say to whom. Now, that is enough.

H.M.Jr: May I just read this again, what I said?

(Reading telephone conversation)

I say here,

"I, certainly, as Secretary of the Treasury, until I hear from the SEC, who have a very serious case pending against the Transamerica --

"Mr. Jones: Yes.

"H.M.Jr: I am going to ask you - I don't know whether I have any authority or not - but I am going to ask you anyway that both members of the same Administration should postpone doing anything until we hear from the SEC.

"Jones: Well, we got in a lot of trouble not long ago about the National Labor Relations Board, Henry, letting them run our business.

"H.M.Jr: Well, I don't know anything about that.

"Jones: Well, I do.

"H.M.Jr: But I do know that I have written you a letter.

"Jones: We have complied literally with your letter."

And then it goes on and I say again,

"H.M.Jr: ....I am asking you to postpone consummating this deal and lending 30 million dollars to Transamerica.

"Jones: Yes.

"H.M.Jr: Until I have time to hear from the SEC. Now, I am asking that formally. Now, you can do - I don't see any harm in waiting a couple of hours.

"Jones: No, there is no harm in waiting a couple of hours.

"H.M.Jr: And that is all I am asking.

"Jones: I suppose then that you will also go to the President and ask him to stop us from doing it.

"H.M.Jr: No, I am not going to the President. I don't think it is necessary. As far as I know, in my dealings with you, I have never run to the President on anything.

"Jones: Well, I don't see why you called Frank about it.

"H.M.Jr: Why?

"Jones: No, I don't see why you called.

"H.M.Jr: For very good reasons. Because he happens to be Chairman of the SEC who handles the investigation of Transamerica, which you propose to lend 30 million dollars to.

"Jones: Yes, on good security. Henry, I am trying to get a good note.

"H.M.Jr: But supposing the SEC decided to go ahead and Transamerica is delisted.

"Jones: That won't hurt us.

"H.M.Jr: Well, if the --

"Jones: We have still got the note and the note is good, even if they are delisted.

"H.M.Jr: If you haven't seen the ruling of the Judge in the Court in Washington where it talks about these various agencies all being part of the same brain cell, and that one brain cell should help the other, I would suggest you read that and with regard to this particular company and with regard to the control of making available to the SEC information about Transamerica-Bank of America.

"Jones: I have a letter in my files from Bill Douglas, Chairman of the SEC, saying that there is no reason in the world why we shouldn't make this loan. I am following right along the way we have been doing all this time.

"H.M.Jr: A letter from Bill Douglas?

"Jones: Why certainly.

"H.M.Jr: When could that have been written?

"Jones: When he was Chairman of the SEC.

"H.M.Jr: Well, there has been a lot of water gone over the dam.

"Jones: I understand that, but it is the same kind of a deal we were working on a year ago and a year and a half ago.

"H.M.Jr: Well, it must have been certainly applied to January 1, '39.

-#-#-#-#-#-#-#-#-

"H.M.Jr: I don't see how a couple of hours - where this thing has been going on now for weeks, will be matter of life and death with you.

"Jones: No, it is not a matter of life and death at all. It don't make any difference. I don't even have to do it at all, as far as that is concerned.

"H.M.Jr: Well, I am thinking of the Administration only, as the Administration. Now, if the SEC tell me that it doesn't make any difference as far as they are concerned, then I am perfectly happy.

"Jones: It doesn't make a particle of difference to us whether they - what they do with this other fellow. I am aware that they have got all this claim.

"H.M.Jr: Well, talking for myself, I certainly wouldn't lend one dollar to a concern which was being sued by, let's say, the Department of Justice."

And I go on talking about it.

\#\#\#\#\#\#\#\#\#\#\#\#

"Jones: Well, I am willing - I won't make the release today.

"H.M.Jr: All right.

"Jones: And I want to say this now, if this thing is going to be carried to the President, I want to be present.

"H.M.Jr: If I communicate in any way with the President in regard to this, you will be with me when I do it.

"Jones: O. K. And then I want - on this Jerry Frank business, I also want Jerry's answer.

"H.M.Jr: Well, I will tell Jerry what you say, but I can only talk for the Treasury."

H.M.Jr: That is that. I am going to put it up to Jerry and if Jerry won't say that the SEC doesn't want this to go through, then my position is O. K. This wishy-washy business on their part, I am so sick and tired of it.

Bell: He has got a Commission that he has got to deal with and he can't control them very well.

H.M.Jr: That isn't it, Dan. What you say is perfectly true, but if they feel that they can go into Court and the fact that one of the Government agencies has loaned another one 30 million dollars - Transamerica will say, "Well, God damn it, here on the 15th of April, the Chairman of President Roosevelt's lending committee thought we were good enough to lend us 30 million dollars. We can't be so wicked. Well, they lend us 30 million dollars after the SEC had been investigating this two and a half years. I don't see that anybody has got anything to worry about."

If I was Judge, I would say I think they are right. Whose money are they lending?

Foley: It isn't before a Judge, you see, it is the Commission. They are the judges and the reason, I assume, that Jerry doesn't want to take the position and the Commission doesn't want to take the position is because certain charges have been made against Transamerica that are under investigation now and there is a hearing before a Commissioner who is taking testimony for SEC. Now, if SEC went to the RFC and said, "Don't make a loan," I suppose the Commission feels that that might be construed as prejudging the charges that have been made by SEC against Transamerica prior to the time when the matter was finally decided.

H.M.Jr: He could say if he wanted to do that, "Look, Jesse, if it doesn't make any difference to you, if you could make the loan to the Bank of America, it would make us very happy. Now, Jesse, that is on a strictly personal basis."

But he could, if he wanted to. But I am not there. I am not going to put any pressure on Jerome Frank. I want you fellows here, and if Preston Delano is here, I would like him here, too.

Upham: He will be in in the morning.

H.M.Jr: We will just talk it over with Frank and simply say, "Now look, Frank, that is what I did. I want you to advise me, because I have written this letter asking Jones to lend this institution money and this is the way he is going to do it. Now, have you any objection?" I want a yes or no.

Bell: He didn't give you that over the telephone.

H.M.Jr: He certainly did not.

Bell: He said, "We would rather they wouldn't, but we are not in a position to --"

H.M.Jr: He said as far as he, individually, is concerned, he said it was most outrageous, et cetera, et cetera, et cetera, but as a Commission, they don't want to take any position. If they don't want to take any position, O. K., Mr. Jones, go ahead.

Bell: You certainly shouldn't.

H.M.Jr: No. You are with me on this a hundred percent, aren't you?

Bell: Up to a certain point. I don't think you ought to fight their battles at all.

H.M.Jr: Who?

Bell: SEC. I think they ought to go to Jones.

Foley: I think the Secretary is right, Dan, in calling this matter to Jerry's attention, because Jerry might say afterwards, "Well, you and Jones worked this out and you never told me and if you had given me a chance I would have gone to the

President and I would have told him that this was the most outrageous thing I had ever heard of and it never would have happened, but you didn't tell me and it is your fault." That is what he would say.

H.M.Jr: Yes, and he and Ben Cohen, too. That is in the family, Ed. Sure they would and all the columns would have been full of it. "God damn it, Morgenthau sold us out. He knew about this thing." If they found out about that letter of April 4 - "He knew it April 4. Why didn't he tell us about it?" Then as you say, they would all get noble, not ignoble.

Bell: Well, I think you have done your duty, calling it to their attention.

H.M.Jr: I think --

Foley: Sure you have, and that is why he couldn't do anything else.

H.M.Jr: But I am floored by this Douglas letter.

Foley: Well, I think the explanation I have given is the only one you can make.

RE BANK OF AMERICA

April 12, 1940.
10:00 a.m.

Present: Mr. Bell
Mr. Foley
Mr. Upham
Mr. Frank
Mrs Klotz

H.M.Jr: Jerry, let me repeat what happened. Yesterday Mr. Jones called up Bell and read this statement to him, see, which he proposed to release. Did anybody read the statement to you?

Frank: Just summarized it on the phone yesterday.

H.M.Jr: And he only asked about the second part and not the first part where he was talking about lending 30 million dollars to Transamerica for the purchase of preferred stock in the Bank of America. He just wanted to know at the end where he talks about this would give the Bank 62 million dollars capital, more then 20 million dollars reserve undivided profits and he thought that was all right.

Now, what I said to him was this, "Well, I am thinking of the Administration, only the Administration. Now, if the SEC tells me that it doesn't make any difference as far as they are concerned, I will be perfectly happy."

Then he went on to say it didn't make a particle of difference to them whether the SEC does or does not.

Frank: Jones said that?

H.M.Jr: Yes.

"It doesn't make a particle of difference to us whether they put - what they do with this other fellow. I am aware that they have got all this claim."

And then he goes on and gives me hell because I talked to you, and wanted me to promise that if I went to see the President, I would take him along, and the same for you, and I said, "Well, I can't promise anything for Jerome Frank. I can promise for myself, but I will tell him that," and then he said he would wait and I said, "What difference does a couple of hours make?"

So, having started this thing and then, of course, he referred to this letter which he found in his files.

Frank: It was approved by the entire Commission.

H.M.Jr: So I just want to state my position. I started this thing with the SEC and while he hasn't asked me whether I approved, I stuck my neck out and said, "Now, until I talk to the SEC, I am going to ask you to withhold making any statement. Therefore, I have asked the SEC, through you as Chairman.

Frank: Well, having forgotten that letter - all of us did - I mean, you asked me the question and I canvassed the Commission and the conclusion was that we have no basis for approving or disapproving. It is officially none of our business. He is a coordinate branch of the Government and if he wants to make a loan on collateral and it is lawful, that is his business. Our concern is solely with the proceedings pending before us which will proceed regardless of whether he makes a loan. It is up to him to determine whether, having made it, the continuance of our proceedings with the possibility of disclosures of unfortunate character in those proceedings, may affect his prestige as a lending agency, but that is a matter for his judgment and not for ours.

Now, the President might concern himself with that, but we haven't any right to comment on that. I don't see how we have. It is his business. He knows what our proceedings are and I think that letter isn't quite as precise as I would have made it.

H.M.Jr: I don't see how the devil Bill ever wrote that letter.

Bell: It isn't quite as precise as Jesse made it out over the telephone, but nevertheless it is pretty strong.

Frank: What it says is simply that it is none of our business. Well, I think it could have said it in one sentence instead of three paragraphs, but that is what it says.

H.M.Jr: It is that stuff in the brackets, you see, there.

Frank: Well, he is stating Jesse's proposition which was that he had taken the matter up with the Commission and it is in no way germane to our proceeding and we are proceeding in an investigation and that therefore from our point of view there is no reason or policy which we can advance against them. It is true, it isn't our policy. It isn't a question affecting our policy. Our program and our investigations are based wholly and entirely on the statutes which we administer. Any such step as he proposes, therefore, has no bearing on the matters under our jurisdiction. That is literally true. I don't see what we could say. In other words, whatever our own judgment might be as individuals as to whether if we were running the RFC we would make such a loan is extraneous, so far as our functions are concerned. I do think that he might consider from the point of view of the RFC and from the point of view of the President whether a loan of that kind will be embarrassing when our proceedings go on, but that is up to him. I don't see that we can tell him any more than he - if he reciprocated and said, "I have chosen to make the loan, you ought to stop the proceedings," we would resent that, if he said it, as not being his business. Bill is literally correct, only I would just answer it in a sentence. I would say it is none of our business.

H.M.Jr: When I call him up, I want to say I talked to Jerome Frank and he says - what?

Frank: That it is not a matter of our concern, it is a matter for his decision or the decision of the RFC, one way or the other.

Bell: The Commission's concern.

Frank: The Commission's concern, not mine, and we can and do neither approve nor disapprove.

H.M.Jr: You what?

Frank: We do not disapprove nor approve, because we have no power to do so.

H.M.Jr: Disapprove --

Frank: Or approve, and in reaching his own decision, I think he should take into account the fact that our proceedings will continue --

H.M.Jr: I don't think that is up to you.

Frank: It may possibly embarrass him. If he asked me, that is what I would tell him.

H.M.Jr: I said I wouldn't do anything without talking to you. Now, I am going to say I talked with Mr. Frank and he said it is not a matter of the Commission's concern and they do not disapprove or approve.

Frank: That is right.

H.M.Jr: Now, I don't think it is up to me to tell Jones to talk to the President.

Frank: If the President were to ask me, I would say from the point of view of his Administration, he may be very embarrassed for the Federal Government to make a loan of 30 million dollars to a concern which is being investigated and whose dirty linen will be washed and published. That is not my business. That is Jesse's business and the President's business.

H.M.Jr: I mean, I am thinking of myself.

Frank: What reason is there for his making or doing the job this way? Do you know of any?

Foley: He could do it any one of several ways. I don't know precisely why he has elected this way. He said that this was the largest solvent stockholder and --

Bell: It is simpler from his standpoint.

Foley: It could give him solid security and simplify the problem.

Frank: Can't he buy preferred stock in the Bank?

Bell: You see, that gives him control or a part in the management of the Bank and they don't want that and he has gone along with them, because he can get it through this procedure. If you do something with this company which makes it look as though it is going to become insolvent, then he steps in and seizes the stock and then he is an owner of the stock and he becomes part of the management.

Foley: If he wanted to do it this way, he could create a separate corporation and they could transfer assets out of the Transamerica which could be put up as collateral in addition to the stock, et cetera, and he could make a loan to the corporation to underwrite the issue.

Frank: I doubt whether the company is insolvent.

H.M.Jr: Is insolvent?

Frank: Yes, I doubt it, but it may be. It is just possible. I am just talking now without going into it very much, that the result of the disclosures might prove contingent liabilities.

Bell: Not against the stock.

Frank: No, against Transamerica, which, of course, couldn't affect his collateral, but possibly it is a simultaneous transaction for value received. It is not a past debt, it is a present debt. So he is safe and it is merely therefore a question of convenience on the one hand and of appearance on the other. That is from the President's point of view, the latter.

Bell: I don't see how it can be embarrassing to Jesse.

I should think that it might be embarrassing to you people, if anybody.

Frank: Well, it might be.

Bell: Might be used in the hearings.

Frank: Yes. Of course, the answer would be then that just the one you have given, namely, that that shows no confidence on his part in Transamerica, because he is amply protected. I mean, he is safe as a banker and it doesn't make any difference. The morals of the borrower make no difference when you have got good collateral and you put it in a tin box.

Bell: He is safe.

Frank: Yes, he is perfectly safe.

H.M.Jr: If I was a lawyer for Transamerica and appeared before you on the 15th of April and one of Mr. Roosevelt's agencies loaned me 30 million dollars, I would rub it in so hard --

Frank: Oh, they will, but what can we say about it, Henry? For the SEC to say, "You are embarrassing our proceedings," that merely means that they are giving an emotional argument, newspaper argument, but it isn't relevant. How can we object? He has a right to make the loans if he gets appropriate collateral and the statute authorizes the loans.

Bell: They have this advantage, it is a hearing before the Commission and not before an outside Court or outside Judge and you might take that into consideration. You could ignore it in your consideration.

Frank: The headlines will carry it.

Foley: All of it will be tried in the newspapers as the evidence is brought out.

Frank: Why, long before the hearing, if he makes this loan, it will be publicized and the appearance will be created on the West Coast that Transamerica has got the blessing of the RFC. Already they have sent out a story that your adjustment with them has meant the dismissal of our proceedings. Indeed, that got into Standard Statistics, that our proceeding was at an end. Our boys caught that and notified Standard Statistics they had better get that out in a hurry. This, of course, will be used for that purpose. But I don't see what we can do about it, unless the President wants to do something about it. It is not our province to do it.

H.M.Jr: O. K., thank you.

(Mr. Frank left the conference)

H.M.Jr: When I call Jesse, would you say, "Jesse, if I were you I would certainly bring this to the President's attention before I did it," or wouldn't you offer that?

Foley: No, I don't think so, under the circumstances. I think that is implied. You told him how you feel about it and you discussed the thing with Jerome and he held it up as he agreed to and you can tell him what Jerome said.

Klotz: How does the President know, or does the President know?

H.M.Jr: It is up to Mr. Jones. He is responsible to the President direct.

Klotz: Somebody ought to tell him, not tell him what to do, but at least inform him.

H.M.Jr: That is up to Mr. Jones on all big loans and they do go to the President on all of them. Jones can snap back and say, "Well, Henry, I don't have to have you tell me when to go to the President." When, after this big fight I have got to back down, he is going to ride me with hobnails.

Upham: And not go to the President, because he won't go to the President just because you suggest it.

H.M.Jr: He will say, "Now listen, I don't need you to tell me what to do." It just gives him a chance to ride over me.

Foley: That is implied.

Bell: I wish you wouldn't make the statement - I don't care so much about the loan, because he is already committed on that, apparently, but to make the statement right at this time is not necessary at all. It is already announced publicly that he is going to make a loan.

Foley: He may ask you to say all right. You (Upham) don't like the paragraph about the Comptroller?

Upham: Well, I don't like to have Mr. Jones speaking for the Comptroller and saying that the differences are settled. If they are, it seems to me the Comptroller ought to be the one to say it, if it is said.

Bell: We have had no publicity.

Foley: They all aren't settled, are they?

Upham: But Jesse says lots of things.

Foley: But he has asked us whether or not we have any objection to that sentence and you said you would have to speak to the Secretary.

H.M.Jr: Which sentence?

Bell: The last sentence.

Foley: The last sentence about the Comptroller.

H.M.Jr: I haven't got it. You would rather have that left off?

Bell: I think we would prefer it. I don't think we would argue a lot about it, would we, Cy?

Upham: No.

(Telephone conversation with Jesse Jones follows:)

April 12, 1940
10:17 a.m.

H.M.Jr: Hello.

Operator: Mr. Jones is in Richmond and he happened to be on the line.

H.M.Jr: Good. Hello.

Jesse Jones: Hello, Henry.

H.M.Jr: Can you hear me?

J: Perfectly.

H.M.Jr: Jesse, Jerome Frank has just left my office.

J: Yeah.

H.M.Jr: And I asked him about that part of the statement that has to do with Transamerica, and he -- this is what he answered me. He said that it's not a matter of the Commission's concern and they do not disapprove or approve. So that's that.

J: Yeah.

H.M.Jr: So if that's the way they feel I'm not going to make any comment.

J: Well, Henry, when I was talking yesterday I was waiting to -- going to catch a train at 1:40.

H.M.Jr: Yeah.

J: There's no immediate hurry. As a matter of fact the end of the week -- what I was trying to do was to do a little bit of good for the Administration.

H.M.Jr: Yeah.

J: I don't care if he goes ahead -- I don't care what Frank does to Transamerica, you see?

H.M.Jr: Yeah.

J:	If he delists them and I've been trying to -- I've asked him any number of times why he didn't go ahead and delist.
H.M.Jr:	Yeah.
J:	And take his medicine, and take his licking and start over. Not a -- I don't intend it to be a matter of life and death.
H.M.Jr:	Yeah.
J:	But we felt this, if we had that note the way we were doing it, we'd get something -- we could sell our note and get our money, probably as soon as we want it.
H.M.Jr:	Uh-huh.
J:	And that it might show another -- it might also be another indication, Henry, that there was no longer any fight between the Administration and Giannini.
H.M.Jr:	Yeah.
J:	Now that's just the low-down of what was in back of my mind.
H.M.Jr:	Well,.......
J:	So anyway I'll do nothing about it until I get back. I won't get back until Sunday.
H.M.Jr:	Yeah.
J:	I'll see you Monday or talk or anything else.
H.M.Jr:	All right, that's fair enough. Now, while we're on it, the Comptroller's office and Bell feel that they'd a little bit rather that that last sentence referring to the Comptroller's office would be left off.
J:	Well, I -- I would -- that's entirely right. I prefer that myself. I've got no right to speak for them and I don't want to assume it.

H.M.Jr: Well, if you -- well then that will make them happy.

J: Yeah.

H.M.Jr: If you're around Monday and give me a ring I'd be delighted to see you.

J: O. K. What's the news this morning?

H.M.Jr: I don't feel so good about it, Jesse.

J: You don't huh?

H.M.Jr: No, I don't. It looks to me that the Germans are more than holding their own in Norway.

J: Uh-huh.

H.M.Jr: Yeah. Well, do I understand that before you give this out you're going to see us again or.....

J: Yeah, I'll talk to you Monday about it.

H.M.Jr: O. K.

J: I'm -- came down here to make a speech on Carter Glass last night.

H.M.Jr: Good.

J: And the old fellow seemed pretty good and he had a grand time.

H.M.Jr: Good.

J: He was the honor guest to a big dinner.

H.M.Jr: Good.

J: So we really had a very nice evening.

H.M.Jr: Fine.

J: Then I'll probably see you Monday.

H.M.Jr: Monday, yes.

J: O. K.

H.M.Jr: Thank you.

J: Goodbye.

Klotz: He is the smartest man in Washington and he is so smart --

H.M.Jr: Instead of his being mad - and I will tell you what is going through his head.

Klotz: It is the President. He is scared.

Foley: Because he knows he is wrong.

Klotz: He is so smart, you have got to admire him.

April 15, 1940 9:50 A.M.

MEMORANDUM

Mr. Paul Rosenthal of Landenburg Thalman Co., New York City, telephoned Mr. Delano asking for an appointment to discuss with the Comptroller a deal he is making with the Bank of America. He wanted to ask two questions:

(a) If the Comptroller knew of any reason why his firm should not do this job - subject, of course, to their usual investigation with a satisfactory result - because of anything the Comptroller might know in connection with their case here or with the SEC;

(b) If the Comptroller would be willing to discuss with him informally the terms and details of the deal they are making with the Bank.

Mr. Delano informed Mr. Rosenthal on both counts that he must decline to discuss the matter; that while he wished to be courteous it was quite impossible for the Comptroller to discuss the affairs of any national bank with anyone except the officers and directors of that bank.

April 13, 1940

MEMORANDUM

Mr. Cushing phoned the Comptroller at 1:15 P.M. saying they were in conference with the underwriters who wanted to insert some lengthy provisions in the articles of association of the Bank of America, with particular reference to protecting the preferred stockholders from dilution in the event of an additional stock issue by the bank. The Comptroller informed Mr. Cushing that he would want to talk with Mr. Mulroney and other technicians here before making any comment. Mr. Delano suggested they forward this office by airmail a draft of the said provisions.

With respect to the underwriters' proposition (which the bank evidently favors) Mr. Cushing said their arrangement with Transamerica obviously could not cover the entire issue but only about 40%; the other 60% (he understood) to be handled by the public underwriting. Regarding the pre-emptive rights of stockholders Mr. Cushing said the stockholders would have a limited time for purchase. Mr. Cushing said he felt that the bank had already proposed adequate protective rights for the preferred stockholders but that the underwriters wanted this protection largely increased. He further suggested that this office withhold forwarding its comments on the proposed changes in the articles contained in the bank's wire of April 9 until after the Comptroller had received a few other changes which they expected to forward within the next day or two.

April 19,1940

R.P.A.Everard, Secretary,
Bank of America National Trust and Savings Association,
San Francisco, California.

Re your night letter April eighteenth. Forms of proxy and of notice of shareholders' meeting as enclosed in your letter of April eleventh are satisfactory. It is noted that copy of proposed shareholders' resolutions and the amendments to articles of association are to accompany notice to shareholders of the special meeting. The inclusion in the notice to shareholders of an additional subparagraph in section two to include provision re fractional shares is unnecessary as language of subsection (b) of section two is adequate for purpose of notice. Answer to Mr. Cushing's telegram of April ninth has been delayed at his request pending consideration of additional suggested changes in proposed amendments to the articles of association which have just been received here at noon today. This office will advise you concerning these final proposed changes as promptly as possible. Pending this final consideration no notice of meeting should be formally given and in fixing a date for the special meeting of shareholders sufficient time should be allowed for the Reconstruction Finance Corporation and the Comptroller to consider and pass upon the suggested changes. Attention is called to the requirements that no director other officer or employee of the bank may act as proxy and that at least ten days notice of meeting be given by registered mail to shareholders.

Delano
Comptroller

initialed by LAK WPF HOT UPM

Concurred in by Mal by phone from New York

April 19, 1940

MEMORANDUM

Mr. Cushing phoned the Comptroller from San Francisco at 12:20. Mr. Cushing stated he hoped the bank's redraft of the articles of association delivered to the Comptroller this morning by Mr. Collins would be acceptable and that he could be advised today of the decision. He said the bank was working against time in the matter because they were anxious to get the money in the bank by May 31, 1940, and wanted to send a copy of the articles as finally approved with their notice of the stockholders' meeting. Mr. Delano advised Mr. Cushing that this was rather short notice; that Mr. Mulroney was out of town for the day and probably for the weekend, but that he would expedite the matter all possible.

Mr. Delano asked Mr. Cushing if he would send this office a copy of the agreement which the bank had made with the underwriters, suggesting it be sent by airmail this afternoon. Mr. Delano inquired as to whom the underwriters were, and Mr. Cushing informed him the syndicate would be headed by Otis and Company of Cleveland with between 40 and 50 firms to be in the group. Mr. Cushing stated that Otis and Company would underwrite 300,000 shares out of the 600,000, the balance to be taken by other stockholders or Giannini interests. The underwriters plan to sell the stock at $50 per share and will be compensated for their underwriting by a direct payment out of undivided profits. This payment out of undivided profits will amount to something more than $300,000, depending on how many of the stockholders exercise their pre-emptive rights. Mr. Cushing advised that he assumed the bank would have no objection to forwarding the Comptroller a copy of the agreement with the underwriters but that he (Mr. Cushing) had not received their permission to do so.

April 20, 1940

MEMORANDUM

Mr. Cushing called the Comptroller last evening at 10 P.M. and stated that in accordance with the telegram to Mr. Everard, copy of which is attached, the bank would leave out of its notice the proposed reference to fractional shares.

Mr. Cushing also informed the Comptroller that a copy of the proposed underwriting agreement with Otis and Company for the distribution of preferred stock would be furnished the Comptroller as requested.

April 19,1940

L.F.J.Everard, Secretary,
Bank of America National Trust and Savings Association,
San Francisco, California.

Re your night letter April eighteenth. Forms of proxy and of notice of shareholders' meeting as enclosed in your letter of April eleventh are satisfactory. It is noted that copy of proposed shareholders' resolutions and the amendments to articles of association are to accompany notice to shareholders of the special meeting. The inclusion in the notice to shareholders of an additional subparagraph in section two to include provision re fractional shares is unnecessary as language of subsection (b) of section two is adequate for purposes of notice. Answer to Mr. Cushing's telegram of April ninth has been delayed at his request pending consideration of additional suggested changes in proposed amendments to the articles of association which have just been received here at noon today. This office will advise you concerning these final proposed changes as promptly as possible. Pending this final consideration no notice of meeting should be formally given and in fixing a date for the special meeting of shareholders sufficient time should be allowed for the Reconstruction Finance Corporation and the Comptroller to consider and pass upon the suggested changes. Attention is called to the requirements that no director other officer or employee of the bank may act as proxy and that at least ten days notice of meeting be given by registered mail to shareholders.

Delano
Comptroller

initialed by IAK WPF BOT UPM

Concurred in by Bal by phone from New York

MR. BELL:

May 6, 1940

MEMORANDUM CONCERNING THE ISSUANCE OF PREFERRED STOCK BY THE BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION:

At a conference held April 30, 1940, attended by Mr. Russel Smith and Mr. Charles Collins, representing the subject bank, and Messrs. Mulroney, Post and Birge, the mechanics of closing all of the details of the re-capitalization program of the subject bank were discussed. It was brought out at that conference that the shareholders' meeting to authorize the issuance of $12,000,000 of preferred stock at the aggregate sale price of $30,000,000 will be held on May 13, 1940; that the preemptive rights of the shareholders to purchase the preferred stock will expire on May 27, 1940; that the underwriters of the preferred stock will be advised on June 2, 1940, or June 3, 1940, of the exact amount of stock they are to purchase; and that June 5, 1940, has been set as the date on which the preferred stock is to be issued, thus allowing the underwriters a period of 2 or 3 days in which to place in the hands of the public the underwritten preferred stock.

Numerous details were discussed, but the essential facts brought out in regard to the final payment for the preferred stock were that the cash to pay for the portion of the preferred stock subscribed for by the shareholders would be paid into the bank in San Francisco on or before May 27, 1940; that in the early morning of June 5, 1940, the underwriters would deposit in the Federal Reserve Bank in New York, to the credit of the subject bank, the cash to pay for their portion of the preferred stock; that the bank in San Francisco would be notified of the receipt of such payment in New York as soon as possible (which would probably not be before 9 o'clock California time or 1 o'clock daylight savings time in New York); that upon the receipt of such advice in San Francisco a certificate of payment covering the sale of the entire amount of preferred stock would be executed and delivered to Examiner Wright in San Francisco; that Examiner Wright would read such certificate of payment to this office over the telephone; and that upon receipt of such telephonic advice from Mr. Wright, the Comptroller of the Currency would issue his certificate approving the issuance of the preferred stock by the subject bank.

Later, Mr. Smith called from New York to ask if it would be satisfactory to this office if on June 5, 1940, the certificate of payment was handed to Mr. Gibbs Lyons in New York rather than to Mr. Wright in San Francisco, the reason for that request being that as of the evening of the fourth of June they would have collected in San Francisco the proceeds of the sale of stock at that point, and that the underwriters in New York would furnish cash for the balance. The underwriters' check would be available early on the morning of the fifth, and at that time a vice president of the bank would be in New York to execute the certificate indicating that the whole $30,000,000 had been paid into the bank. He was told that apparently there would be no objection to delivering to Mr. Gibbs Lyons the certificate of payment, rather than delivering it to Mr. Wright in California.

Preston Delano

BANK OF AMERICA N. T. & S. A.

San Francisco Headquarters

San Francisco, California

May 13, 1940

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

Dear Sir:

This will confirm my telegram to you of today advising you to the effect that a meeting of the shareholders of Bank of America National Trust and Savings Association was held today and proposed resolutions authorizing an increase in the capital stock of the Association by issuance of 600,000 shares of Convertible Preferred Stock and amending Articles of Association of the Association were adopted. I am enclosing a copy of the resolutions relating to the increase in capital stock and amendments of the Articles of Association as submitted to the meeting and adopted. Such resolutions are followed by a certification in the form prescribed by your office.

I also enclose a duly executed supplemental memorandum in the form prescribed by your office, with exhibits and schedule referred to therein attached.

We hope you will find the enclosures in proper order.

The meeting of the shareholders was adjourned to May 20 for the purpose of taking any further or corrective proceedings deemed necessary.

Respectfully,

(Signed) R. P. A. EVERARD

R. P. A. Everard,
Secretary.

Enclosures

VIA AIR MAIL

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TREASURY DEPARTMENT

Telegraph Office

MAY 14, 1940 8:35 A. M.

PO2 M TWS PD 3 MINS. . . DUPLICATE OF TELEGRAM TELEPHONED

PBI SAN FRANCISCO CALIF MAY 13, 1940 3:48 PM

HONORABLE PRESTON DELANO
COMPTROLLER OF THE CURRENCY

SHAREHOLDERS MEETING HELD TODAY AND PROPOSED RESOLUTIONS AUTHORIZING INCREASE IN CAPITAL STOCK BY ISSUANCE OF 600,000 SHARES CONVERTIBLE PREFERRED STOCK AND AMENDING ARTICLES OF ASSOCIATION OF THE BANK ADOPTED.

R P A EVERARD SECRETARY
BANK OF AMERICA NT & SA

May 29, 1940

MEMORANDUM TO: Mr. D. W. Bell,
Under Secretary of the Treasury

Confirming my phone advice of this morning, reports in the press indicate that the Bank of America and the underwriters have terminated their agreement for the public flotation of $30,000,000 Bank of America National Trust and Savings Association preferred stock.

Mr. Jesse Jones informs me that Mr. L. M. Giannini discussed the matter with him late last evening with a view to obtaining from the Reconstruction Finance Corporation the funds for the $30,000,000 preferred issue. Mr. Jones stated that he intended to discuss the matter with his Board but saw no reason why an arrangement should not be worked out on the basis of the commitment already made to the bank by the RFC. Mr. Jones stated further that he thought it would be better all around for the bank to obtain the funds from the RFC rather than through a public offering, and I agree with this point of view. If the funds are obtained from the RFC the bank will, of course, save the underwriting fee. I understand that if it is handled as a loan the rate of interest will be 3 1/2%, and if the preferred stock is purchased directly from the bank the rate will be 3%.

Delano
Preston Delano

Bank of America Defers Proposed $30,000,000—Offering of Preferred

5/29/40

Decision Taken in View of Present Conditions — Makes Other Arrangements for Program

From The Pacific Coast Wall Street Journal

SAN FRANCISCO—Bank of America N. T. & S. A. announced yesterday that it had agreed with all parties to the underwriting of its preferred stock issue that in view of the disturbed international conditions the time is not opportune for a public offering of the stock by underwriters, which is in line with action recently taken in connection with the underwriting of several large commercial issues.

It was further stated that, nevertheless, alternative arrangements will enable the bank through the cooperation of Transamerica Corp. and other stockholders of the bank to carry out its program to increase the capital by $30,000,000 as originally planned.

Termination of the $30,000,000 Bank of America, N. T. & S. A. underwriting was decided yesterday by the more than 50 investment banking firms involved. Adverse securities markets following extension of the European war was given as the reason.

It is understood that of the 400,000 shares of convertible preferred stock which had been made available to present common stockholders of Bank of America other than Transamerica Corp. only about 50,000 shares were taken up. This would indicate that approximately $17,500,000 of the offering was left in the hands of the underwriters at the end of the period in which common stockholders were allowed to exercise rights to subscribe to the new preferred shares.

Total issue amounted to 600,000 shares at $50 a share and carrying an annual dividend of $2 a share.

The financing was in line with an arrangement made with banking authorities at Washington which had insisted on an increase in the capital of the large West Coast institution. Before the present offering was made the Reconstruction Finance Corp. offered to supply the capital. Presumably that offer still stands and it is pointed out in local investment banking quarters that such a step might be taken.

As of December 31, 1939, 1,200,524 of the 4,000,000 common shares of Bank of America outstanding were in the hands of the parent corporation, Transamerica.

The deadline for exercise of common stock options was May 27. As of the close of trading in New York yesterday Bank of America common stock was quoted at 30¼ bid, 32¼ asked. This compares with 39½ bid, 41½ asked on May 9, just prior to the war extension. The preferred shares are convertible into common stock at a price of $32.50 a common share for the first year to end June 30, 1941.

The underwriting syndicate was headed by Otis & Co., Ladenburg, Thalmann & Co., and John J. Bergen & Co., Ltd.

TREASURY DEPARTMENT

COMPTROLLER OF THE CURRENCY

WASHINGTON

ADDRESS REPLY TO "COMPTROLLER OF THE CURRENCY"

June 10, 1940

Memorandum to the Undersecretary:

We have just been advised by Mr. Wright, District Chief National Bank Examiner at San Francisco, that the Bank of America has certified that it has received cash in the amount of $30,000,000 to cover the issuance by it of 600,000 shares of new preferred stock of $20 par value, sold at $50 per share, and carrying an annual dividend of $2 per share.

As the result of this advice the Comptroller is today issuing the usual certificate approving the issuance of preferred stock. This certificate will be forwarded to the bank tonight.

Mr. Wright informs us that pre-emptive rights were exercised by presently existing shareholders in the total amount of $1,023,200. Subscriptions by the public amounted to $1,500,000. The RFC furnished Transamerica $27,476,800 to complete the transaction. The RFC loan to Transamerica bears interest at the rate of 3½% and must be amortized at the rate of 10% per annum.

Preston Delano

Preston Delano
Comptroller of the Currency

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Memorandum for the Secretary:

In connection with your request that Mr. Delano furnish you with an explanation of what happened on Bank of America, he says he reported to Mr. Bell on June 10th, as per the attached memorandum. At that time he told Mr. Bell's secretary he thought the matter was important enough for you to know about it.

He will be glad to speak to you personally about it, should you wish him to do so.

n.m.c.

(He said his instructions have been to report to the Under-Secretary.)

June 10, 1940

Memorandum to the Undersecretary:

We have just been advised by Mr. Wright, District Chief National Bank Examiner at San Francisco, that the Bank of America has certified that it has received cash in the amount of $30,000,000 to cover the issuance by it of 600,000 shares of new preferred stock of $20 par value, sold at $50 per share, and carrying an annual dividend of $2 per share.

As the result of this advice the Comptroller is today issuing the usual certificate approving the issuance of preferred stock. This certificate will be forwarded to the bank tonight.

Mr. Wright informs us that pre-emptive rights were exercised by presently existing shareholders in the total amount of $1,023,200. Subscriptions by the public amounted to $1,500,000. The RFC furnished Transamerica $27,476,800 to complete the transaction. The RFC loan to Transamerica bears interest at the rate of 3½% and must be amortised at the rate of 10% per annum.

Preston Delano
Comptroller of the Currency

IMMEDIATE RELEASE FLA-31

FEDERAL LOAN AGENCY

WASHINGTON

June 11, 1940

STATEMENT BY JESSE JONES, FEDERAL LOAN ADMINISTRATOR

The Bank of America National Trust and Savings Association has today completed its capital increase through the issuance of $30,000,000 preferred stock, represented by 600,000 shares with a par value of $20 per share, retirable at $50 per share, and bearing dividends at the rate of $2 per share per annum, payable semi-annually.

Stockholders and others have presently subscribed for 50,464 shares of the new stock, at $50 per share, which amounts to $2,523,200, and the RFC has loaned Transamerica Corporation $27,553,800, secured by the remainder of the issue at $50 per share.

The loan is at 3-1/2% interest payable semi-annually, and is to be amortized at not less than 10% a year for ten years, but during the first year Transamerica may surrender to the RFC any unsold portion of the stock in payment of the balance due on the note.

A condition of the loan is that Transamerica will give the stockholders of the Bank further time in which to buy their pro rata shares of the preferred stock at its cost to Transamerica plus accrued dividends to the date of any such pruchase.

BANK OF AMERICA

NATIONAL TRUST AND SAVINGS ASSOCIATION

San Francisco Headquarters

San Francisco, California

June 14, 1940

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

Dear Comptroller Delano:

This is to acknowledge your letter of June 10 and the receipt of the certificate authorizing an increase in capital stock.

Steps have been initiated to obtain the increase in stock ownership of the Federal Reserve Bank of San Francisco as required under Section 5 of the Federal Reserve Act. Statements at the close of business June 8 and June 10 will be forwarded to you as soon as the branch figures are received and consolidated.

Yours very truly,

(Signed) R. G. SMITH

Executive Vice President

June 14, 1940

MEMORANDUM TO: Mr. D. W. Bell,
Under Secretary of the Treasury

Referring to the recently reported sale to the Bank of America by the Reconstruction Finance Corporation of $20,088,000 Metropolitan Water District of Southern California Colorado River Water Bonds, an opinion rendered by our legal staff holds the bonds to be general obligations of a political subdivision and to be supported by the general taxing power possessed by the district within its territorial boundaries. Taxing power is, of course, in addition to the revenues to be derived from the project. The bonds are, therefore, considered to be exempt from the 10% of capital and surplus restriction imposed by Section 5136, U.S.R.S.

The Reconstruction Finance Corporation previously has sold approximately $150,000,000 of these bonds to various underwriters, who in turn have distributed them to the public. These distributed bonds currently are selling in the New York market on a 3% to 3½% yield basis. They are rated "A" by Moody, and to all appearances constitute a satisfactory investment medium.

Preston Delano
PD

COPY

June 13, 1940

MEMORANDUM TO MR. REED DOLAN:

Re: Bonds Issued Pursuant to the Metropolitan Water District Act of the State of California.

This is in response to your request for our opinion upon the status under Section 5136 of Rev. Stat. of 1873, as amended (U.S.C. title 12, sec. 24), of bonds issued by a metropolitan water district organized and operating under the Metropolitan Water District Act, as amended, of the State of California.

In our opinion a metropolitan water district organized and existing under this Act is a political subdivision of the State of California. Such district is empowered to levy general property taxes if necessary to provide for payment of the principal of, and interest on, its outstanding bonds. All bonds issued by such district constitute general obligations thereof, and are supported by the general taxing power possessed by the district within its territorial boundaries.

/s/ D. B. HEXTER
Assistant Counsel

Approved:

T. V. ROBERTS,
Assistant Counsel

BANK OF AMERICA
NATIONAL TRUST AND SAVINGS ASSOCIATION

SAN FRANCISCO HEADQUARTERS

SAN FRANCISCO, CALIFORNIA

June 20, 1940

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

Dear Comptroller Delano:

As requested in your letter of June 18, we are enclosing herewith reports of condition of the Bank of America National Trust and Savings Association as of the close of business on June 6, 1940 and June 18, 1940.

We trust you will find these in order and satisfactory to your desires.

Yours very truly,

[illegible]

Cashier

REPORT OF CONDITION

BANK OF AMERICA N. T. & S. A.

SAN FRANCISCO, CALIFORNIA

At the Close of Business on June [illegible], 1940

ASSETS

Loans and discounts		720,664,582.35
U. S. Government obligations, direct and guaranteed		414,702,400.70
Obligations of States and political subdivisions		128,977,768.84
Other bonds, notes and debentures		29,514,986.79
Corporate stocks, including stock of Federal Res. bank		4,349,320.05
Cash, balances with other banks, including reserve balance, and cash items in process of collection		257,199,255.46
Bank premises owned $23,786,526.63, furniture and fixtures $7,900,788.31		31,687,314.94
Real estate owned other than bank premises		7,587,735.23
Investments and other assets indirectly representing bank premises or other real estate		19,632,435.04
Customers' liability to this bank on acceptances outstanding		1,336,488.36
Other Assets		4,781,304.02
TOTAL ASSETS		1,634,592,276.07

LIABILITIES

Demand deposits of individuals, partnerships, and corporations		409,767,389.10
Time deposits of individuals, partnerships, and corporations		787,418,510.36
Deposits of U. S. Government (including postal savings)		78,205,098.70
Deposits of States and political subdivisions		219,418,336.69
Deposits of banks		79,887,146.98
Other Deposits (certified and cashiers' checks, etc.)		14,700,005.19
TOTAL DEPOSITS	$1,490,736,488.42	
Bonds sold under Repurchase agreement		112,350.00
Acceptances executed by or for account of this bank outstanding		1,488,302.50
Other liabilities		20,323,340.46
TOTAL LIABILITIES		1,512,858,481.38

- 2 -

At the Close of Business on June [illegible], 19[illegible]

CAPITAL ACCOUNTS

Capital stock:	
Preferred, total par $ None , retirable value $	None
(Rate of dividends on retirable value is - %)	
Common stock, total par $50,000,000.00	50,000,000.00
Surplus	44,[illegible].00
Undivided profits	25,190,009.11
Reserves	2,023,786.38
TOTAL CAPITAL ACCOUNTS	121,713,795.49
TOTAL LIABILITIES AND CAPITAL ACCOUNTS	1,634,572,276.87

REPORT OF CONDITION

BANK OF AMERICA N. T. & S. A.

SAN FRANCISCO, CALIFORNIA

At the close of business on June 30, [illegible]

ASSETS

Loans and discounts	[illegible]
U. S. Government obligations, direct and guaranteed	413,[illegible]
Obligations of States and political subdivisions	151,249,217.39
Other bonds, notes and debentures	29,580,015.[illegible]
Corporate stocks, including stock of Federal Res. bank	4,349,300.83
Cash, balances with other banks, including reserve balance and cash items in process of collection	284,079,456.14
Bank premises owned $23,786,526.63, furniture and fixtures $7,903,509.05	31,690,035.68
Real estate owned other than bank premises	7,587,736.93
Investments and other assets indirectly representing bank premises or other real estate	19,[illegible]
Customers' liability to this bank on acceptances outstanding	1,[illegible]
Other Assets	[illegible]
TOTAL ASSETS	1,[illegible]

LIABILITIES

Demand deposits of individuals, partnerships and corporations	419,942,927.90
Time deposits of individuals, partnerships, and corporations	707,[illegible]
Deposits of U. S. Government (including postal savings)	[illegible]
Deposits of States and political subdivisions	217,[illegible]
Deposits of banks	[illegible]
Other Deposits (certified and cashiers' checks, etc.)	17,396,807.17
TOTAL DEPOSITS $1,500,953,804.78	
Bonds sold under Repurchase agreement	112,350.00
Acceptances executed by or for account of this bank outstanding	1,783,452.05
Other liabilities	18,[illegible]
TOTAL LIABILITIES	1,528,784,146.96

- 2 -

At the close of business on June [illegible]

CAPITAL ACCOUNTS

Capital stock	
Preferred, total par $12,000,000.00, retirable value $30,000,000.00	
(Rate of dividends on retirable value is 4%)	
Common stock, total par $50,000,000.00	
Surplus	62,000,000.00
Undivided profits	62,000,000.00
Reserves	18,791,063.24
	8,923,080.39
TOTAL CAPITAL ACCOUNTS	151,714,143.63
TOTAL LIABILITIES AND CAPITAL ACCOUNTS	1,674,418,290.59

7/1/40

THE WALL STREET JOU

Bank of America's Deposits, Capital Funds Set Record

Bank of America, California's statewide branch bank, again has achieved new high marks in deposits, loans, and capital funds, according to the bank's mid-year statement of condition as of June 29, 1940. Deposits total $1,496,022,000, an increase of $87,715,000 since June 30, 1939. Total resources stand at $1,676,641,300, a gain of $126,816,800 in the same period. Loans and discounts outstanding aggregate $724,574,700, which is $29,472,000 more than a year ago.

Capital funds, including capital, surplus, undivided profits and reserves, which now total $152,206,000 as compared with $118,853,000 reported on December 30, 1939 were increased $33,353,000 for the period, including $30,000,000 of convertible preferred stock issued June 10, 1940.

Earnings for the six months were $13,622,000, from which $1,970,000 was applied to reserves for depreciation on banking premises and amortization of bond premiums and $3,006,000 reserves applied to reduce carrying value of assets. From the balance, $2,860,000 was added to undivided profits and $493,000 to other reserves, after the payment of $4,868,000 in dividends at the annual rate of $2.40 per share on the common stock and 4% on the issue price of the preferred stock and after $425,000 in profit-sharing bonus to employes. An unallocated reserve of $6,900,000 was set up by a transfer from undivided profits account, and $1,000,000, also transferred from undivided profits, was placed in the preferred stock retirement fund.

July 15, 1940

MEMORANDUM TO THE UNDER SECRETARY OF THE TREASURY:

In accordance with your request, there is submitted herewith a progress report of the Bank of America's compliance to date with the program of March 6, 1940 as submitted by the Comptroller and known as "Requirements of the Comptroller of the Currency." For convenience, the "Requirements" are treated in detail with comment as to the progress realized in each instance.

(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.

Complete compliance. The certificate was issued June 10, 1940 approving the issuance of $12,000,000 par value of preferred stock retirable at $30,000,000. There were 600,000 shares of the par value of $20 sold for $50 each, thus providing the additional $18,000,000 for surplus and undivided profits.

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

Complete compliance. $6,900,000 has been transferred from undivided profits to unallocated reserves.

(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.

The Bank has submitted additional collateral which is not acceptable to the Comptroller. This matter is at the present time the subject of exchanges of correspondence between the Comptroller's office and the Bank of America.

(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.

In his report completed May 29, 1940 the examiner stated that the bank would, at the proper time, take the necessary action to comply with this requirement.

(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.

The committee created by this requirement is at work and will complete its findings as rapidly as possible.

(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.

The excessive loan to Transamerica Corporation is shown in the last report of examination at $13,174,868.37. Mr. Russell G. Smith, Executive Vice President, who was in the city on May 1, 1940, called the office and stated that the $1,500,000 loan to the Western States Corporation had been paid in full with cash, which would reduce the line to $11,674,868.37. (This reduction is not reflected in the report of examination completed May 29, 1940.) Since the injection of new capital funds, the bank's loaning limit is $12,400,000. The "large line" to Transamerica Corporation and subsidiaries was shown in the report of August 31, 1939 at $67,624,735.02, whereas it is shown in the current report at $58,588,186.98, or a reduction between examinations of $9,036,548.04.

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

The bank is eliminating the National City Bank stock in accordance with its "option to purchase." The examiner states that the option was exercised in part during examination by Transamerica taking up 11,320 shares at $48 a share. This leaves 22,640 shares (with 18,400 shares additional pledged to offset depreciation) carried at $1,086,720. The market value of these 41,040 shares at the bid price (7-15-40) of 24½ (asked 26) is $1,005,480, or a depreciation of $81,240.

(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.

There has been a reduction in illegal real estate loans since the examination dated August 31, 1939, of $4,215,555.89. There has been a reduction in the bank's real estate problem, representing investment in banking houses, furniture and fixtures, other real estate owned, and real estate sold under contract to Capital Company and California Lands, Inc. from $91,111,958.46 to $85,945,863.66, or $5,166,094.80. Of this amount, $3,761,671.28 represents a reduction in the contracts of Capital Company and $525,009.73 represents a reduction in the contracts of California Lands, Inc. The "other real estate" owned account has increased approximately $1,200,000 and is now carried on the books at $6,909,942.24.

(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.

The attorneys for the Bank have not yet completed their investigation or rendered any decision with reference to the right of the bank to recover sums paid to Transamerica General Corporation in connection with fidelity losses. The matter has been delayed due to the attorney's desire to inspect an old indemnity policy which the bank has had difficulty in locating. Mr. Russell G. Smith, Executive Vice President of the Bank, states that he anticipates an early opinion.

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

Complete compliance.

* * * * * * * * * * *

The recent examination of the Bank of America started January 31, 1940 and completed May 29, 1940, shows a decrease in the total of criticised and fixed assets from $157,060,714.24 to $143,301,517.33. It shows a decrease in criticised assets from

$116,163,041.74 to $104,714,185.68. It shows an increase in the adjusted capital structure from $100,922,892.28 to $107,778,900.44.

With the addition of new capital, the complete book capital structure of the bank, as of June 10, 1940, amounts to $151,714,143.63. Deposits as of June 10, 1940, amount to $1,500,953,804.78.

Preston Delano

Preston Delano

September 12, 1940
3:10 p.m.

MEMORANDUM

At a meeting in the office of the Secretary attended by Under Secretary Bell, Comptroller of the Currency Delano and Deputy Comptroller Upham, it was decided that further expansion of the Bank of America through the acquisition of new branches was distinctly against the public interest and that all applications for such branches should be rejected.

It was further decided that the same principle should be observed in handling requests for branches by other Giannini controlled institutions, such as the First National Bank of Portland and the National Bank of Washington, Tacoma.

Preston Delano
Preston Delano

DWB

Upm

September 12, 1940

MEMORANDUM: To the Secretary

The Giannini interests are asking us to approve nineteen additional branches.

Ten of these are for the Bank of America N. T. & S. A. of San Francisco.

Eight of them are for the First National Bank of Portland, Oregon.

One is for the National Bank of Washington in Tacoma.

Of the ten which the Bank of America seeks:

Two (Delano and Gonzales) should be denied because there is no need for additional banking facilities and because there is a record of attempts by the Bank of America to squeeze out other banking institutions.

One (at 43rd and Crenshaw) should be denied because there is no need for banking facilities at this point.

One (at Inglewood) should be denied because if any branch is to be established, the other competing institutions have a right of priority.

One (at March Field) should be denied because there is not sufficient need for banking facilities and competing institutions would be injured.

Two (at Army Posts) should be deferred until approval has been given by the Adjutant General and until an investigation of the need for banking facilities has been conducted.

One (at San Gabriel) should be denied unless a new investigation should reverse the findings of four years ago that there was no need for banking facilities.

One (at Sherman Oaks) cannot be acted upon because we have no formal application.

One (at Pico and Overland) can be granted unless there is some policy reason for rejecting it.

With respect to the branches for the First National Bank of Portland, for five of which we have formal applications and three informal applications, all of them being banks now owned or about to be bought by Transamerica Corporation:

All should be decided on the basis of policy with respect to Transamerica Corporation.

With respect to the single application for the branch of the National Bank of Washington in Tacoma, there is every reason for denying it.

- - - - - - - - - - - -

We favor the denial of all of these applications. We think any further expansion of the Giannini financial empire is against the public interest.

If applications are received to remove branches now in active operation to other locations, without

-3-

increasing the total number of branches, we would be disposed to treat such applications on their respective merits, irrespective of the general policy against expansion. This should not include removal of branches now dormant or inactive.

Preston Delano
Preston Delano

September 25, 1940

5 p.m.

Present:

Mr. Gaston
Mr. Bell
Mr. Foley
Mr. Schwarz

HM,Jr: (To Mr. Bell) Read that out loud.

Mr. Bell: (Reading United Press ticker)

"Atlantic City -- A. P. Giannini charged today that certain Federal officials were responsible for the withdrawal of Russell G. Smith as a candidate for Second Vice President of the American Bankers Association.

"Smith is Executive Vice President of the Bank of America, an institution which has been at odds with the Government in the past.

"In a formal statement issued at Convention headquarters, Giannini said that 'big Treasury officials' of the Federal Government sought to prevent any one connected with the Bank of America from being honored.

"I do not know what prompted the withdrawal of Smith's name,' Giannini said, 'but I do know that certain sychophantic satellities of the most arbitrary and bureaucratic departments of the Federal Government have been perniciously active lest the Bank of which Mr. Smith is a high officer, and which is linked with my name, be given appropriate recognition."

"Giannini then quoted the following excerpt from a Washington banking news service which said on Sept. 22nd, "The story circulating here is that Tom Smith, who was once an Assistant Secretary of the

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"Treasury, has been very busy on official suggestions received to prevent such an eventuality. There are various versions of the story, all of which coincide on Treasury dislike of ABA honors to officials of the Bank of America. There is no personal criticism of Russell Smith, himself.'"

HM,Jr: Now, your horseback opinion.

Mr. Gaston: The story is all right as it is.

HM,Jr: Let her ride?

Mr. Gaston: Let her ride. The story is perfect.

HM,Jr: I ask advice and I have to furnish it! Personally, I was going to get something out to Mr. A. P. Giannini -- what is this long word where a man is just a little screwy, thinks he's being persecuted?

Mr. Gaston: Psychopathic.

HM,Jr: "Certain Treasury officials think Mr. Giannini is a psychopathic case." You wouldn't say anything?

Mr. Gaston: No. Would you, Ed?

Mr.Foley: No.

HM,Jr: Would you, Dan?

Mr. Bell: I hate to get in this fight again and hate to see this thing -- I don't think anybody up there believes this. This is all in the organization.

HM,Jr; Well, Tom Smith could make a statement.

Mr. Foley: If anybody should make a statement, it's Tom. His name is the only one used. Say he has no connection with the Treasury; has received no direction in any way from the Treasury.

Mr. Gaston: He's not smearing anybody. He's smearing himself.

HM,Jr: Would you get Tom to say something?

Mr. Foley: You could talk to Tom and ask him what he thinks, but I don't think I would encourage him to make a statement.

Mr. Schwarz: The only question you can raise is where he makes the statement that somebody has been "perniciously active".

HM,Jr: Do you agree with all these boys that we should not do anything?

Mr. Schwarz: I don't like to see the story revived. You are lowering the Department down to his level.

Mr. Gaston: This is all there is to it right now. If there is any comeback it means another story, another day.

Mr. Schwarz: A much bigger story.

Mr. Gaston: A much bigger story than he can make it.

Mr. Foley: If we start saying anything now, he's going to go to Willkie......

Mr. Bell: Probably already has.

Mr. FoleY: .... and get the whole thing dragged out in the papers.

HM,Jr: This fellow Russell Smith is the fellow who was head of all the land companies.

Mr. Foley: He used to be a bank examiner. Was with the Comptroller's office. He's supposed to be the brains of the bank.

Mr. Bell: He's a very able fellow and if this statement is true that the ABA officials like Smith but they don't like his connections -- I heard this two weeks ago that they were using every means they could to get

Smith out of line. Had the same trouble down at Hot Springs last year.

HM,Jr: On the record, I have not talked to anybody about anything to do with any officer in the ABA and nobody has talked to me.

Mr. Schwarz: You will be asked about this tomorrow morning at your press conference.

Mr. Bell: I am sure no other Government official has talked about it.

Mr. Foley: I have not talked with anybody at any time.

Mr. Schwarz: Nobody in the Treasury.

HM,Jr: "I am not interested."

Mr. Bell: "It's their affair and you have no interest in who is head of it."

HM,Jr: "It's of no interest to me."

Mr. Bell: If the Secretary is asked about it tomorrow, what's wrong with him saying that so far as it concerns the Treasury, it's not a true statement and you have no interest in who is elected to an official position in the ABA. It's a private organization.

HM,Jr: I don't think I will mention Giannini by name. I will simply say, "I have taken no interest in who are officials of the ABA and neither does anybody connected with the Treasury and anybody says so, they are nothing but a God damn liar."

(The meeting broke up with much laughter.)

Bk of Am. 97

(3:53)

ATLANTIC CITY--A. P. GIANNINI CHARGED ~~TODAY~~ THAT CERTAIN FEDERAL OFFICIALS WERE RESPONSIBLE FOR THE WITHDRAWAL OF RUSSELL G. SMITH AS A CANDIDATE FOR SECOND ~~VICE-PRESIDENT~~ OF ~~THE AMERICAN BANKERS~~ ABA. ASSOCIATION.

SMITH IS EXECUTIVE ~~VICE-PRESIDENT~~ OF ~~THE~~ BANK OF AMERICA, AN INSTITUTION WHICH HAS BEEN AT ODDS WITH THE GOVERNMENT IN THE PAST.

IN A FORMAL STATEMENT ISSUED AT CONVENTION HEADQUARTERS, GIANNINI SAID THAT "BIG TREASURY OFFICIALS" OF THE FEDERAL GOVERNMENT SOUGHT TO PREVENT ANY ONE CONNECTED WITH ~~THE~~ BANK OF AMERICA FROM BEING HONORED.

"I DO NOT KNOW WHAT PROMPTED THE WITHDRAWAL OF SMITH'S NAME," GIANNINI SAID, "BUT I DO KNOW THAT CERTAIN SYCHOPHANTIC SATELLITES OF THE MOST ARBITRARY AND BUREAUCRATIC DEPARTMENTS OF THE FEDERAL GOVERNMENT HAVE BEEN PERNICIOUSLY ACTIVE LEST THE BANK OF WHICH MR. SMITH IS A HIGH OFFICER, AND WHICH IS LINKED WITH MY NAME, BE GIVEN APPROPRIATE RECOGNITION."

GIANNINI THEN QUOTED THE FOLLOWING EXCERPT FROM A WASHINGTON BANKING NEWS SERVICE WHICH SAID ON SEPT. 22:

"THE STORY CIRCULATING HERE IS THAT TOM SMITH, WHO WAS ONCE AN ASSISTANT SECRETARY OF THE TREASURY, HAS BEEN VERY BUSY ON OFFICIAL SUGGESTIONS RECEIVED TO PREVENT SUCH AN EVENTUALITY. THERE ARE VARIOUS VERSIONS OF THE STORY, ALL OF WHICH COINCIDE ON TREASURY DISLIKE OF ABA HONORS TO OFFICIALS OF THE BANK OF AMERICA. THERE IS NO PERSONAL CRITICISM OF RUSSELL SMITH, HIMSELF.'"

9/25--RS353P T

Mrs Chauncey

D-J 12:30
Sept. 1940

MORGENTHAU SAYS TREASURY TOOK NO PART IN A. B. A. ELECTION

Washn-Secretary Morgenthau said today that neither he nor any other ~~xxxxx~~ official of the Treasury Department has taken any part in the election of officers of the American Bankers Association at Atlantic City.

Mr. Morgenthau's statement was prompted by a remark of A. P. Giannini, Chairman of the Bank of America N. T. & S. A. yesterday that -certain sycophantic satellites- of the Federal Government were "perniciously active" in opposing the candidacy of Russel G. Smith for vice president of the A. B. A. Mr. Smith is executive vice president of the Bank of America.

"The Treasury had just as much to do with the election of A. B. A. officials" Secretary Morgenthau said "as with the election of American Legion Officers in Boston.

September 26, 1940
9:20 a.m.

Preston Delano: Good morning, Mr. Secretary.

H.M.Jr: How are you?

D: How are you, sir? I just came in from that Bankers Convention last night and I found this note that you had called me, and they told me - I talked to Danny this morning - he said it was about this Giannini blast, and I just wanted to say I saw Tom K. Smith just before I left.

H.M.Jr: Yeah.

D: And of course I don't think I need to assure you that as far as I'm concerned I've never done anything down there in the nature of trying to control those elections or having anything to do with it at all. I talked to Tom about it and he thought that we'd better not say anything, I mean, that was his advice in the matter.

H.M.Jr: Well, I won't say anything unless the press at 10:30 asks me about it and then I'm going to say that I had as much to do with influencing the people at the A.B.A. Convention as I did at the Convention at Boston of the American Legion.

D: (Laughs). Now, I think that would be appropriate. What Tom thought was - there was some debate down there - the thing made the officials of A.B.A. quite mad. I think A.P. did himself considerable harm by the way he's handled this thing down there.

H.M.Jr: Well, did you do anything at all?

D: Not a thing, Mr. Secretary, I mean, certainly as far as I'm concerned I never even opened my head about it. I would consider that it would be very improper for me to take any position on it.

H.M.Jr: I would too.

D: And I don't know about Tom. Of course, I think Tom is an A.B.A. man, but as far as it being done from any suggestion from the Treasury insofar as I'm concerned, why, there was nothing, absolutely. I wanted to give you that assurance. I thought possibly you might be quizzed about it, you see.

H.M.Jr: I will be.

D: Well, as far as I'm concerned, absolutely nothing.

H.M.Jr: O. K, I'm glad to get that.

D: And on this other thing, I'm going to get busy on that and try to find out about this bill now that Steagall's reporting out, and as soon as I get something further on that I'll get in touch with Danny on it.

H.M.Jr: Thank you.

D: Right, sir.

October 15, 1940
10:40 a.m.

H.M.Jr: Hello.

Operator: Mr. Frank.

H.M.Jr: Hello.

Jerome Frank: Hello, Henry.

H.M.Jr: How are you?

F: Pretty good - long time.

H.M.Jr: Right. Too long. Jerome, I was checking on this one - Jesse Jones saw Preston Delano and told him that he'd had Giannini in to see the President last week.

F: Yes.

H.M.Jr: Everything was to be fixed up. Have you heard about it?

F: Yeah. Yes, Jesse has had two or three talks with me and he's got me - I'm going to see the Boss at 12:15.

H.M.Jr: You're seeing the Boss.

F: Yes. Now, I'm telling - I've sent over a memo already that it just can't be done and that if any effort is made it'll just do the exact opposite of what's intended.

H.M.Jr: Right.

F: The only thing that I could do - I'm not sure I can do that - would be to adjourn the hearings for three or four weeks. What do you think - do you think that is desirable?

H.M.Jr: I?

F: Yes.

H.M.Jr: No.

F: You do not.

H.M.Jr: No. I think that you ought to go on business as usual.

F: Well, he's putting on every bit of pressure on me to do that and it may blow up right in our face because one of my colleagues may make a public statement if I do.

H.M.Jr: Well, if he does it, I think that they'd be stupid not to - your colleagues.

F: May I quote you to the Boss? Or would you rather not.

H.M.Jr: Yes. What - that I think it would be .....

F: Unwise.

H.M.Jr: Yes, you can quote me.

F: Well, I'm very glad of that.

H.M.Jr: Definitely and I think you ought to go on just the same, business as usual, and instead of being good politics I think it's the worst kind of politics.

F: Well, I do too. As a matter of fact, what they're trying is a squeeze play and they're just trying to take advantage of that threat and personally I don't think it amounts to a damn.

H.M.Jr: Well, what can he threaten?

F: Well, I mean, that that's going to - you know - have some effect on his people out there.

H.M.Jr: Well, if the polls are any .....

F: Doesn't make any difference.

H.M.Jr: ...... in California doesn't make any difference and even if I think it was close I think it's the worst kind of politics.

F: Oh, sure.

H.M.Jr: Now, what we've done here is - I don't know whether you know - we've held up all licenses for new branches.

F: Yeah. That's one of the things he's kicking about.

H.M.Jr: And I'm not going to give him any because I said it's a combination of bigness and badness.

F: (Laughs). In the worst possible way.

H.M.Jr: In the worst possible way.

F: It's got all the vices of both.

H.M.Jr: Exactly, and to give them those would be just to go against everything that I think the New Deal stands for.

F: Well, I'm delighted to get your assurance on it.

H.M.Jr: And I'm not going to do anything. As a matter of fact, Jesse, I don't think had had the nerve to broach it to me but he went around to see Delano and Delano said go see my boss.

F: Well, do you think the Chief really wants to do anything or is this just one of Jesse's ideas.

H.M.Jr: Well, my guess is that Jesse may have said, can I try and do something, you see, and the President may have sort of nodded his head or something and Jesse has taken that as a mandate. I think it's one of <u>them</u> things.

F: (Laughs). All right, thanks ever so much. I'll let you know.

H.M.Jr: I'd be curious to know after you've seen him if you'd care to drop over.

F: I surely will.

H.M.Jr: Give me a ring - that would help me.

F: O. K., fine. I surely will.

H.M.Jr: Thank you.

October 18, 1940

MEMORANDUM TO: Under Secretary D. W. Bell

Mr. L. M. Giannini called at my office this morning at ten o'clock. A general discussion of the relationship between the Bank of America and this office ensued. Mr. Giannini informed me that the bank was meticulously living up to its obligations outlined in the so-called "Requirements of the Comptroller of the Currency" which were approved by the bank's directorate on March 14, 1940. Additional collateral to support real estate contracts held by California Lands,Inc., and Capital Company have been furnished, Mr. Giannini informed me, to the satisfaction of the District Chief National Bank Examiner. The bank has secured opinions from Attorneys McNabb and Cushing on the question of the return from Transamerica to the bank of the self-insurance fund, and the bank will move very shortly to obtain either a court decision on the question or an adjustment with Transamerica based on the attorneys' opinions. I understood from Mr. Giannini that there was a difference of opinion between Attorneys McNabb and Cushing, Mr. Cushing believing that some $200,000 should be returned from Transamerica to the bank, Mr. McNabb holding that the bank was not entitled to any return. The reduction of National City Bank stock is proceeding according to schedule, as is the reduction of real estate contracts by California Lands, Inc., and Capital Company. The bank's deposits are remaining about stationary, the bank having paid off some $40,000,000 of governmental deposits and gained that much in private deposits. The bond premium remains between $17,000,000 and $18,000,000, and the bank has a paper profit of $3,000,000 in the Metropolitan Water District of Southern California, Colorado River Water Works Bonds purchased from the RFC at the time the additional $30,000,000 of capital was placed in the bank. Present earnings, after all operating expenses and losses, are approximating $1,500,000 per month. Concerning the matter of the real estate adjustment, for which a reserve of $6,900,000, was set up as one of the requirements of the Comptroller, the bank stands ready to go into conference with District Chief National Bank Examiner Wright as soon as the committee composed of Messrs. Wright, Funsten and Clerk complete their findings.

Mr. Giannini inquired as to the progress being made in our consideration of his requests for branches for the Bank of America, the First National Bank of Portland and the National Bank of Washington, Tacoma. He was informed that very careful consideration was being given to all of these requests but that no decision had been arrived at as yet. There followed a rather lengthy discussion of the merits of branch banking as opposed to so-called independent or unit banking in which Mr. Giannini strongly defended the extension of branch banking even in those areas adequately served by unit banking. This discussion was largely academic and did not touch on any of the specific requests for branches by the Bank of America.

Mr. Giannini frankly stated that his main reason for being here was to accomplish a settlement of the various matters pending between the Giannini interests and the SEC. Conferences with the SEC are now going forward and will be continued during the coming week. He stated that these conferences with the SEC grew out of an interview granted to Mr. A. P. Giannini by President Roosevelt in which the President had expressed himself as desirous that the pending controversy between the SEC and Transamerica should be brought to a conclusion.

Preston Delano
Preston Delano

according to Mr. L. M. Giannini the President assured Mr. A. P. Giannini that his requests for branches would receive favorable consideration — W

October 30, 1940

The White House informed the Secretary that A. P. Giannini came to see the President on October 2nd at 10:20 and left at 11:25.

October 29, 1940
2:10 p.m.

H.M.Jr: Hello.

Jerome Frank: Hello, Henry. Jerome.

H.M.Jr: I thought you'd forgotten about me.

F: What happened was after that incident I got sick, and then several things happened - I'll tell you in a minute just what happened but first before I forget - Arthur Goldsmith called this morning and he wants to get up a Committee of people on the street for the President and among others he thought of Earle Bailie.

H.M.Jr: Yeah.

F: I told him I didn't know how he'd stand but I thought you might.

H.M.Jr: Well, my guess is that he's about 101% for Willkie.

F: You do.

H.M.Jr: That's my guess.

F: They'd better lay off, eh?

H.M.Jr: Well, I'm positive his wife is and I'd be almost sure that he is.

F: Well, they'd better not touch him then.

H.M.Jr: Yes, from something that he said a couple of weeks ago my guess is that he's

F: On this other matter, what happened was this - I saw the President and Jesse had distorted the situation and all that the President thought was that if we could postpone the hearing until after election. Well, then I got into him. I said, well, what they want to do you know is to enjoin us. Well, he said, that's fine, let them enjoin you.

H.M.Jr: Yeah.

F: Well, I told that to Jesse who didn't like it. Then they came on here, we had a lot of talks with them and this got to be pretty technical stuff about our order for a hearing and whether it complied with the Court Order in that case they brought a year ago, so what we decided to do was to change the form of our order and meanwhile we've put off the hearing until December 2nd and then we're going right ahead, in which case they'll enjoin us.

H.M.Jr: I see.

F: But the President said if you begin your hearing right now and start it, you're going to drag the S.E.C. into politics and I don't think it's a good idea.

H.M.Jr: If you do what?

F: He said, I think you'll drag the Commission into the political campaign and I just don't think it's a good idea. But he didn't urge me to do a single one of the things Jesse wants.

H.M.Jr: Well, I'm sure he wouldn't.

F: I knew he wouldn't - he didn't even mention them. I had given him a full memo and told him all about it and he said, of course, on the merits - go right ahead.

H.M.Jr: Because when Hanes left here they lost - the Giannini's lost a real friend.

F: (Laughs). You know I've often laughed - it really was Johnny you know in the first place who brought us the Comptroller's report and at that time he urged us to go ahead. Two weeks later he was conspiring with Jesse to stop us.

H.M.Jr: I didn't know that.

F: Didn't you know that?

H.M.Jr: No, I didn't know that.

F: Oh, I'll tell you that story sometime.

H.M.Jr: I'd like to have that.

F: All right.

H.M.Jr: Well, I'd lay off Earle Bailie.

F: You would.

H.M.Jr: Yeah. I don't think you've got a chance.

F: All right. Thank you.

RE BANK OF AMERICA

October 30, 1940
10:20 a.m.

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

H.M.Jr: Jones tackled me at this meeting yesterday. He said he wanted to talk to me for five minutes and I said what about and he said it was about giving licenses to the Bank of America.

"The President told me to tell you he wants it," and I said, "Well, you had better come back some other time," so he is coming back at 3:00 this afternoon, and I just wanted to be brought up to date, because I had a conversation yesterday with Jerome Frank and he went to the President and he said the President had told Jesse no such thing with regard to Transamerica, absolutely the President denied ever having told Jones any such thing. So I wanted to just find out before Jones comes in at 3:00. I am going to tell him two things. Number one, I have been here seven years and I so far have never had the President ever tell a second party to tell me what to do; and number two, I am opposed to doing this anyway.

(Mr. Delano entered the conference)

How do you do. Our friend Jesse Jones asked to see me on the branches of the Bank of America. He told me that the President told him to tell me to do it, which I don't believe, because Jerome Frank told me that he got similar instructions. He went to the President about it and the President said, "I never told Jesse any such thing. I wouldn't think of telling him such a thing."

He says, "You go on the way you have. I wouldn't dream of giving you such an order."

Bell: There is a memorandum in your files dictated by Mr. Delano on this matter, and he wrote on the bottom of it in pen and ink - he didn't put it on his own official copy in his files - that Jesse did tell him that the President said that Giannini could have these branches.

H.M.Jr: Well, I am not going to bother the President, but Jerome Frank got a similar request. He went to the President and the President categorically denied it. In any event, I have been here seven years and the President has yet to delegate a second party to give me any orders.

Delano: Well, that was the thing that struck me as being absolutely absurd.

H.M.Jr: I have yet to get any orders through a second party and I am certainly not going to take them from Jones, of all people.

What is the story? Refresh my memory. I know you told me that Mario Giannini was coming in.

Delano: Well, Mario did come in. Well, I will start back.

Jesse called me up and asked me to come over and see him, so I did, and over there he told me that the President, after a Cabinet meeting, had come in and said that he had an interview with A.P. Giannini.

H.M.Jr: The President did?

Delano: Yes, the President had summoned Giannini down from the Atlantic City conference and he had had a meeting with him and he told him that he thought the time had come to wind up this squabble between the Government and the Bank of America and that he was going to ask Jesse to see that it was closed up, finished.

H.M.Jr: This is Jesse's story?

Delano: This is Jesse's story to me. And Jesse said that in pursuance of that he was going to talk with Jerome Frank and - that he had talked to Jerome Frank and he had Mario coming on to meet Jerome Frank and he succeeded in having Frank put off a certain suit which was to start that morning. It was about three Sundays ago.

H.M.Jr: I don't believe a word of it.

Delano: Mario was coming out to talk about it. In the meantime, the President had mentioned to Jesse that there were some branches that he wanted, and to fix it up.

H.M.Jr: The President had mentioned to Jesse?

Delano: Yes, that is Jesse's story, and that Jesse was to s ee if he couldn't fix it up so there would be an amicable adjustment of that phase of the situation. Now, says Jesse to me, "What branches are they? What is the situation in regard to that?" And I told him briefly that they had applications in here for branches, some eight from the First National Bank, some ten or eleven from the Bank of America, and one in Tacoma, and Jesse said, "Well, what about them?" And I said, "Well now, my personal opinion concerning these branches is that none of them should be granted, because I think the Bank of America and Giannini should not have any further expansion. I think they are plenty big enough and I think it is in the public interest. I think it rests within the discretion of the Comptroller to say there shouldn't be any more expansion of interests.

Jesse said, "Yes, but this is a political year," and I said, "Jesse, in previous discussions you have expressed yourself along the same lines, that the one thing about the Giannini thing that you didn't agree with was that they should go any further, so I think we are together on that." He said, "Yes, but this is a Presidential year and we may have to throw some bait out here in regard to this thing." Well, I said, "If there is to be any further discussion with me concerning this thing, I think you had better talk to the Secretary of the Treasury, because after all he is my superior officer and he is the proper person to talk to if there is some pressure from the outside about further branches of the Bank of America." He said, "Well, give me some data on these branches," and I gave him a brief - just laid out what they were, you see, and he said, "Well, I will talk to the Secretary of the Treasury about it."

That is the substance of the thing. I haven't had a word since then.

H.M.Jr: Well, he asked me yesterday and I am seeing him this afternoon. Now, did you see Mario?

Delano: Yes.

H.M.Jr: What happened at that meeting?

Delano: Well, when Mario came in he - we talked first at some length concerning the position of the bank and what they were doing to live up to the requirements of the Comptroller, and he outlined in detail how they brought down, along the line, somehow to 49 million dollars and the progress made with the bank stock --

H.M.Jr: When they are down to 49, how much is that down?

Delano: It is down from about 68.

H.M.Jr: To 49?

Delano: Yes.

H.M.Jr: And what about the National City Bank stock?

Delano: Well, that is progressing along according to schedule.

H.M.Jr: Are they selling some of it?

Delano: Yes. Transamerica has taken up their option from the bank in accordance with schedule.

H.M.Jr: I don't remember. Transamerica is going to buy it?

Delano: Is buying it.

H.M.Jr: Is buying the National City?

Delano: Yes. It headed up there to secure an obligation of Transamerica and had the obligation created with us to take it down at a certain rate.

Bell: That had a limit on it. Is that the one that had the limit on it of three years from the time we were discussing it? I think it was 42 they were to have entirely.

Delano: But they are making progress according to their schedule. As a matter of fact, we are in the bank now and we are making up a memorandum for you, Mr. Secretary, which will be in in a few days as to just what we find on these various requirements of the Comptroller.

Generally speaking, though, there has been a pretty good compliance. One thing that is pending at the moment, which isn't a matter for the bank - it is not criticizing the bank, but we haven't settled that real estate depreciation yet, and that is due to the fact that our committee, which is composed of the FDIC representative and our Chief Examiner and the Federal Reserve member, is in a squabble among themselves as to the amount. Our man and the FDIC man are standing out for a certain procedure and a certain amount, and the Federal Reserve man is on the other side of the fence.

Bell: That may be some pressure, too, because it has gotten back to Eccles and Eccles has called me and wants a meeting of the old committee, and he has Preston on this real estate proposition to see what has happened.

We sent out there this memorandum and set up this committee and told them that they had full authority and that we didn't want it to come back to Washington, we wanted them to determine what the amount would be and settle it with the bank. Now, it is - two people have decided what it should be, and the other man is on the other side and he is working back through the Board, apparently, to get some change.

H.M.Jr: What Board?

Bell: Federal Reserve Board. Mario didn't even mention it when he came in.

Delano: Except to say they were ready to sit down and talk with this committee whenever they made their determination.

H.M.Jr: What else did he say?

Delano: Then he said, "Well now, what about these permits for branches"? I said that they were here and that they were under very careful consideration and we had arrived at no decision, and from that point on he went on to argue the question more or less academically about branches and I was very glad to get into that field and we talked for ten or fifteen minutes about the relative advantages of branch banking and unit advancing.

H.M.Jr: Was he pleasant or ugly?

Delano: He was very pleasant.

H.M.Jr: How many branches for the bank itself?

Delano: There are either ten - I would have to check.

H.M.Jr: It doesn't say?

Delano: No, it doesn't say.

H.M.Jr: And what was the bank up there?

Delano: The First National Bank in Portland, which is a subsidiary.

H.M.Jr: How many do they want?

Delano: They want eight.

H.M.Jr: And those are the two things?

Delano: The eight could be given more easily than the others. The eight go down only on the basis of expansion. Some of the others, Mr. Secretary, we couldn't give anyway.

H.M.Jr: Eight up in --

Delano: In Oregon.

H.M.Jr: Might be given?

Delano: Might be given.

Foley: Didn't you mention Spokane?

Delano: No, Tacoma. We don't want to give that one.

H.M.Jr: But they own this bank in - where is it?

Delano: In Portland. Transamerica owns that bank, but it is run by a very good man, McNorton.

H.M.Jr: Well, I am just opposed to any expansion for them. We will just ask Eccles.

Bell: But the bank hasn't brought any pressure directly on you for these branches? The only thing they have done is ask you about them when they have seen you?

Delano: That is right. They have asked about them - they saw me when I was out at the Grove. Just in passing, they asked about them, and then Mario asked about them the other day. They seemed to be satisfied with the statement that we are considering it.

Bell: Yes.

H.M.Jr: California is safe, isn't it?

Delano: I think so. I understand it is almost two to one in California.

(The Secretary received word Mr. Eccles was out of town)

Bell: He hasn't come in yet.

Delano: That is just what that means.

H.M.Jr: Well, I am certainly going to tell him in a very nice way that in seven years the President hasn't had to have a messenger go between us, and in the second place, I am not going to do anything for these fellows and I consider it the worst combination of bigness and badness that I know of, so after election we will get in it and we will just turn them down, but what I think I will do is, when I do it I will have Crowley and Eccles here. There is no reason to have Jones sit in on it. He has nothing to do with it. But we will have a little meeting with Crowley and Eccles just to have them support me. I can't imagine anything worse than just a week before election doing something for Mr. Giannini.

Foley: It wouldn't do any good, anyway.

Delano: Well, that is bad politics as well as --

Foley: What can he do for you, give you a check?

H.M.Jr: That is about all.

Delano: I will tell you what the story is, Ed.

H.M.Jr: What is the story?

Delano: The story is that he has threatened to go on the radio and all that stuff.

Foley: He has already done all of that. Everybody in California knows how he feels about the Administration.

Delano: The appeasement is supposed to stop him.

Foley: Nothing that he could do in the last week before election could change that situation.

Delano: The point is, I think, Ed, that there was some story they threatened that he would go on the radio and run big ads in the newspapers and take a position very flamboyantly for Willkie, you see.

H.M.Jr: Well, I think it would be wonderful. I would ten times rather have my pal of Monday night, Pope, come out for Roosevelt, which he did, and let this Giannini come out for Willkie.

Delano: I don't think it is good politics to appease that fellow.

Foley: Well, he is for Willkie anyway, so what is the difference?

H.M.Jr: I can't do it, Preston.

Delano: That is right, you can't do it.

H.M.Jr: Any more than the SEC could do it. They are going right ahead with their suit and they explained to the President that they were going to bring - what do you call that word?

Foley: Enjoin.

H.M.Jr: Enjoin them in December, and the President said to just go right ahead. He said to thrust SEC into a thing like this was the worst kind of politics.

Foley: I not only think it is the worst kind of politics, Mr. Secretary, but I think if you have to make a deal you ought to get quid pro quo for the deal, and I don't see how you could get anything out of this one.

Delano: That is practically the way we feel.

Foley: On grounds of principle and on grounds of practicality, the answer has to be no.

Delano: Yes, I think you are right.

October 30, 1940
2:51 p.m.

H.M.Jr: Hello.

Ed Flynn: Henry.

H.M.Jr: Hello, Ed.

F: Henry, Giannini has been raising hell, of course, as you know out in California. Now, Malone was in today - I mean, he's threatening to do all sorts of things, and notify all his depositors and stockholders and everything else and he's going to start a riot.

H.M.Jr: Yeah.

F: Now he's telegraphing me - one of the main things, I mean, a thing that I don't know whether it can or can't be done, is the question of new branches for him in California. Can that be done or can't it?

H.M.Jr: I couldn't get that.

F: I say new branches for his bank in Southern California.

H.M.Jr: Well, Jones is coming in supposedly with a message for me at 3 o'clock on that very subject. We would normally have turned it down but rather than turning it down, we just held it in suspense.

F: Yeah.

H.M.Jr: But everybody in the Treasury, in the Comptroller's Office, is opposed to it. See?

F: Yeah.

H.M.Jr: And for about - oh, I don't know - it's been hanging fire for about two months.

F: Now, of course, he has a gun right up against our head and it's simply a case of trying to play a little politics with them - that's about all it amounts to. Now, he's sending me a list - he's telegraphing - in order to get the lay which is of course important, I'm having him telegraph me the list and I'm going to - hello?

H.M.Jr: Hello.

F: And I'm going to get the list and that will bring it in to Saturday or Sunday then we're all right then we can see - hello?

H.M.Jr: I'm not doing that - somebody else is doing that.

F: What's that?

H.M.Jr: Somebody is on the wire. It's all right.

F: But that is the thought that is in my mind.

H.M.Jr: Well, Ed, let me tell you this. He has sounded off and as far as I'm concerned - he's attacked me all over the country, see, and called me every name under the sun, so there is nothing as far as the Treasury or I am concerned personally that they do, and the interesting thing is - up to now no newspaper would carry it although he ran paid advertisements.

F: Yeah.

H.M.Jr: And what he's asking to do, frankly, I can't do so the best I could do was to do nothing - not to turn them down, just to let it go along. But, frankly .....

F: Well don't, for God's sake, get anything like that out.

H.M.Jr: Like what?

F: I mean, I'm going to put on the act of consulting with you and so forth and making progress.

H.M.Jr: I've got it under consideration.

F: All right.

H.M.Jr:	Is that all right?
F:	Yeah, and very good consideration also.
H.M.Jr:	And I'll keep my mouth shut.
F:	But get the word out that I've called you and so forth.
H.M.Jr:	Well, the easiest way to do it is to tell it to Jones and five minutes will get it to Giannini.
F:	Tell it to whom?
H.M.Jr:	Jesse Jones.
F:	Well, supposing you tell it to him.
H.M.Jr:	I'll tell Jesse that you called me and that you're putting all kinds of pressure on me.
F:	All right, fine.
H.M.Jr:	How's that?
F:	That's great.
H.M.Jr:	Thank you.
F:	All right. Good-bye.

October 30, 1940
3:25 p.m.

RE BANK OF AMERICA

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

H.M.Jr: I thought that I would report just what happened. At five minutes of three, I am sure it was purely coincidence, Mr. Jones arriving at three, Mr. Eddie Flynn called up and wanted to know if I couldn't do something for Giannini on the branches, so I said we had all talked about it and I was sure that we couldn't, so he said, "Well, for God's sake, I'm going to tell them I'm putting a little pressure on you. Get that word out and let people know it." I said the easiest way to get it out was to tell it to Jones and in five minutes Giannini would know it. He says, "Tell them I called you up and we are working on it like hell,"and we have got to hold it until Saturday.

So Jones came in. This is very interesting. Frank told me half the story. Frank called me and told me that he told Jesse Jones that he wouldn't do anything, that he had gone to see the President and the President told him he had never told Jones to see him and so forth and so on, and by God, he wasn't going to do anything. He would let the case go until the first of December and not mix it up with politics.

Now, what Jones says, Giannini came to see him and Giannini did see the President on October 2nd, A.P. He saw him for an hour and five minutes.

Bell: Did you check that?

H.M.Jr: Yes.

Foley: This is a Democratic talk, Dan, this isn't a monkey talk. (Laughter)

H.M.Jr: He nailed that one on you.

Bell: I don't get it?

Klotz: Don't you get it?

H.M.Jr: We are talking facts, Dan. He is a Democrat. He has never told me so, but I know it.

Bell: I am neutral.

Foley: He is from Hannibal, Missouri.

H.M.Jr: Well anyway, wherever we were, Jerome Frank gave me the impression he wasn't going to do anything. Now, Jesse said he had a note from the President to Jerome and that he got Jerome to postpone the thing first, a week, and then Jerome had a number of conferences with Mario and they agreed to postpone the thing until December, which is just as different as day and night with the record on my telephone. It is big stuff, how he spit in Jesse's eye and so forth and so on.

Klotz: That is right. It was wonderful.

H.M.Jr: This is just for the guidance - we are here and just so we have Jerome Frank's number, which I have had for some time.

Bell: I think you have, too.

H.M.Jr: Well, Jesse didn't say that the President asked him to see me, which is interesting. He said he had asked him to - he said Miss LeHand said, "You know, the President wants to see you." He said, "You know, Jesse, I can't remember what it is. Give me that basket." Jesse said, "Is it something to do with Ashurst?" He said, "No, that isn't it." He said, "Is it something for Giannini?" He said, "That is what it is."

Klotz: He was kidding you.

H.M.Jr: No, I have heard the President do that. He was very careful, because he knew I was going to check it.

Bell: It is a great town.

H.M.Jr: He said the President said to see Crowley and Eccles and the rest of them, but never mentioned me, and Jesse didn't say the President told him to see me.

Well, the President said to try to clean this thing up, so Jesse said Giannini had threatened to do this and that and they have got two million depositors and so on. "Oh yes," he said, "finally I told Jerome Frank that by God as the biggest creditor of trans-America, I demanded that he postpone this trial." He says, "They owe me 30 million dollars and I demand it." I felt like saying, "Are you boasting now that they owe you 30 million dollars?"

Well, so he said, "They have just got a couple of little things, can't you fix them?" "Oh, by the way," I said, "they are for Willkie, aren't they?" He said, "Oh, yes, but in a kind of quiet way. All the bankers are for Willkie. It is to keep them from getting aggressive, you know." I said, "They are for Willkie, aren't they?" "Oh, yes, they are for Willkie, but if you can slip them a few little branches, it will just be --"

Bell: What will they do, just keep quiet but they will still be for Willkie?

H.M.Jr: Well, they are not going to notify all their depositers how to vote.

Klotz: They have.

H.M.Jr: So after having Ed Flynn begging me to be a good boy, I said to Jesse, "Jesse, I will take it into consideration." Then his face all lit up. I said, "Now, don't misunderstand me, this is no commitment of any kind." I said, "Don't go out of here thinking I am making any commitments. I am going to talk it over." "But if you are going to do something, you had better do it today." I said, "I will think it over, but I am not promising to do anything." He wanted me to slip them a couple of branches.

Bell: Begging, isn't he?

H.M.Jr: Herbert, who is the elder of the group?

Gaston: Do you want me to say that you are recording your conversation with Flynn as accurately as possible?

H.M.Jr: You were in the room.

Gaston: I was in the room.

H.M.Jr: How was it?

Gaston: It was. I think it is a good idea to take that under careful consideration.

Klotz: Are you supposed to let him know today?

H.M.Jr: I didn't say a word.

Gaston: As for slipping him any branches, I am agin' it.

H.M.Jr: Today is Wednesday. If Jones calls, I am going to be out somewhere. How about you?

Bell: I agree with that. Just under consideration and no action.

Klotz: Well, Mr. Morgenthau, you did tell Eddie Flynn that you couldn't possibly do it, that you and your Treasury group were opposed to it.

Gaston: But that you would take it under consideration.

H.M.Jr: No.

Klotz: He said he couldn't possibly do it but you would give that impression. You would tell Jesse Jones that Flynn brought pressure to bear.

Gaston: That is right.

H.M.Jr: And that he, Flynn, would give the impression.

Bell: Oh, Flynn.

H.M.Jr: Flynn would give the impression that I was doing it favorably, but I told him - I said, "I can't do it."

Klotz: Definitely.

H.M.Jr: I said, "I can't do it." No, I didn't give an inch anywhere.

Bell: Well, I got that impression, that you weren't going to give an inch, but you were going to let Jesse give it out that the Treasury was going to give --

H.M.Jr: No, I said to Jones, "Now, when you walk out of here you have no commitment from me of any kind." Flynn said to me,"I am going to give the impression that you are going to give this favorable consideration," and I had no comment.

Klotz: No, but you did say that you were going to tell Mr. Jones - I don't know what --

Gaston: That Flynn was bringing pressure to bear on you.

H.M.Jr: That is right.

Klotz: And that Jesse Jones would let Giannini know immediately how it was.

H.M.Jr: Yes. I said, "All I have got to do is to tell Jesse that you called me up," and I said, "Jesse will take care of the rest."

Bell: And you did tell Jesse that Flynn --

H.M.Jr: I said, "Jesse, that is pretty smart, your having Flynn call me up five minutes before you come in here." "I had never spoken to him about it." I said, "I still think it is smart."

No, the record is very, very straight. Flynn said he would give it out that I was giving it favorable consideration and would I please let it be known that he had called me. I said, "All I have got to do is to tell Jesse," because of Flynn's conversation I have got a record. With Jones, I said I would take it into consideration but when he walked out of the room, to understand there was no commitment on my part.

Bell: Right. That is good.

H.M.Jr: Now, wait a minute. We haven't got Boss Flynn.

Foley: Don't call me that (Laughter).

H.M.Jr: Well, what about it, Bossy? Do you know what a Bossy is?

Foley: Yes. I lived in the country once.

H.M.Jr: Good. Come Bossy, come Bossy.

Foley: I think it is all right.

H.M.Jr: What do you mean, it is all right?

Foley: I don't think you ought to go any farther than that.

H.M.Jr: Would you give him a couple of branches?

Foley: I would not.

H.M.Jr: Okay. How about you, Mrs. Klotz? Just a couple?

Klotz: No sir.

H.M.Jr: Oh, just a couple.

Bell: You don't think he is just fixing to overrule us?

Foley: He just says, "I disagree with you."

H.M.Jr: When I overrule him, it just gets around that I disagree with him. What Jesse said was very funny. Jesse said, "You know, a couple of weeks ago things looked very close in California," and I said, "Yes." I pulled this out and I had it especially on my desk. "Do you know what the betting odds are in California?" He said, "No." I said, "Six to five on Roosevelt." I said, "I don't think even Giannini can upset that." He said, "I don't either." But I had this on my desk especially as window dressing.

Foley: What are the odds on the election on that thing?

H.M.Jr: This is as of yesterday. Eight to five, but how about my bookmaker?

Foley: You can't get any money. Two to one.

Bell: Two to one?

Foley: Yes.

H.M.Jr: This is Bookmaker Klotz. Odds not changed despite Kennedy's speech. I wish you would see Mrs. Klotz. She almost rolled out of her chair and upset me in doing it when I talked to Kennedy, welcome to America and congratulations on his speech. He was so pleased. She accused me of getting ready to succeed Kennedy. I didn't think it would do any harm.

Foley: It was a good speech.

H.M.Jr: That 9 children stuff. I am only sorry he didn't have 11.

Klotz: It was beautiful delivery, perfectly beautiful.

Foley: And the fact that he is a wealthy fellow, that he is --

H.M.Jr: Kennedy family --

Foley: That he is a Catholic, that he has been in England, that he is an appeaser, that he is supposed to be out of sorts with the President's foreign policy, all of that combined.

Gaston: The build-up was swell.

Foley: .... to give it a very, very good effect.

Klotz: I loved the fact that he said - what did he say, he was sponsored by the --

Foley: By the Kennedy family.

Bell: Who said that, did he say it?

Klotz: He said it himself.

Foley: The announcer, as soon as he finished.

H.M.Jr: When they started and when they finished.

Gaston: In other words, he is paying it himself.

Klotz: That is right.

Foley: The family paid for the broadcast.

H.M.Jr: No, I take it the family, because after all, he has a flock of children.

Foley: He can't pay for it himself. They have all got trusts. He deducted a little from each trust.

H.M.Jr: Poor Teddy had to put up $2,500. That is why he was looking for Teddy. "Where is Teddy?" he says.

Foley: It was his nine year old that wasn't down at the airport.

H.M.Jr: Teddy had to put up his two shares.

Gaston: Well, he was. He was down watching me depart when they were down there looking for him. He was down there at Gate 2 where they were supposed to have left from.

Klotz: The book his son wrote, I understand, is really quite wonderful, the book he referred to.

H.M.Jr: I have met the son. He never wrote that book.

Foley: You know Arthur Crock lost control of him.

H.M.Jr: Well, the only place I changed was as the result of Flynn's call, instead of telling Jesse to jump in the ocean I thought I would kid him on. I don't think I kidded him at all. But I thought I would --

Foley: Well, he feels better. He came over and talked with you and you said you would give it consideration and he can stall them until Saturday. That is all he wants to do. He was afraid that you were going to be tough with them.

H.M.Jr: Well, I would have been.

Foley: And then he would have to go home and wonder how he could face them.

H.M.Jr: Well, what I have done hurts nobody and they get no branches and - where I would have jumped on him was if he had said the President had told him to see me, which he didn't.

Foley: He was smart enough not to say that.

Bell: I don't believe that Jesse ever said the President told him to see you.

H.M.Jr: Delano told two different stories.

(Telephone conversation with Delano)

October 30, 1940
3:38 p.m.

H.M.Jr: Hello.

Operator: Mr. Delano.

Preston Delano: Hello, Mr. Secretary.

H.M.Jr: Preston, - hello?

D: Yes, sir.

H.M.Jr: Henry Morgenthau.

D: Yes, sir.

H.M.Jr: Jones left here a few minutes ago and came in, and he did not say that the President had asked me to see him - asked him to see me. Hello?

D: Yes.

H.M.Jr: So that question didn't come up. He asked me to give this thing - you know - he said, oh, give them a couple of little branches, so I took a leaf out of the book of the State Department and said I would take it under consideration.

D: (Laughs).

H.M.Jr: But, I said, don't leave this room Jones thinking that I've made any commitment of any kind. He said, I understand.

D: Fine.

H.M.Jr: Hello.

D: Yes, sir.

H.M.Jr: So between now and Tuesday I'm going to study it very, very carefully.

D: (Laughs). Right-o.

H.M.Jr: You're not going away anywhere are you?

D: No, sir. I'm going to be here.

H.M.Jr: Well, I mean, I thought if you would, then I couldn't reach you.

D: Well, I might possibly be considering a trip somewhere.

H.M.Jr: What's that?

D: I say I might possibly under second thought.

H.M.Jr: No, it's not necessary.

D: (Laughs).

H.M.Jr: But I'm going to think the matter over and I'm going to study the population and all the rest of that kind of stuff.

D: All right, Mr. Secretary.

H.M.Jr: And we'll all sit tight - with a smile.

D: Right-o.

H.M.Jr: With a smile.

D; I get it.

H.M.Jr: I mean, just let's stall, that's all.

D: Right, sir.

H.M.Jr: Thank you.

D: Good-bye.

Gaston: It is a very good idea to clinch that.

H.M.Jr: What?

Gaston: It is a very good idea to clinch that, but then I don't suppose he would be planning any branches without consulting --

H.M.Jr: Oh, he is scared to death. He won't move.

Bell: No, he didn't tell me that Jones said to see him. Jones said that the President said to see Delano. When he came to Delano, Delano said, "Well, the Secretary of the Treasury is my superior officer and I think you should see him."

H.M.Jr: Delano told me - this is the impression that he got from Jones, that Jones said he was to see me. It is unimportant.

Listen, Dan, after seven years in office I have never given in to pressure. I have always let the chips fall where they may.

To give you a little illustration, Bob Jackson talked to me yesterday when we were ready to draw these numbers. He says, "Henry, I want to ask your advice. We have the papers to deport Mrs. - the wife of the Communist leader - Mrs. Browder. She should be deported. What do you think I should do? Should I do it now or should I do it next week?" So I said, "Is it all right? All I can tell you, and I don't want to be - you know, up stage about it"- but I said, "In our own department when we have something that is ready to do, whether somebody says it is good or not good politics, I just do it, and I have been very lucky. If you are asking me, I would do it." "Well, don't you think I ought to talk to the President?" "Well," I said, "that is up to you, but if you have the answer there, I would do it. But that is what I have always done."

I wouldn't any more grant these branches than fly, and the President of the United States never has asked me to do it. I mean, after all, if I am going to stay here four years more, I am an ardent New Dealer, and let them try to stop me on the Gianninis and all the rest of these fellows and one of the main reasons I wanted to answer that thing of Willkie's when he said, "No ardent -" I wanted to go on record as being an ardent New Dealer. I don't want these fellows to say like they say about Hull, "You know he is all right, he is conservative, he is one of us." One of the principal reasons I wanted to get it out on the front page was that. I don't want them to say what they say about Hull and all the rest of the stuff.

Bell: If you are going to stay here four more years, you are going to become an ardent New Dealer, are you?

Foley: He is one now, Dan.

Bell: I thought that sort of confirmed it.

H.M.Jr: What I mean, the kind of things like going after chain banks and the rest of that kind of stuff, it is high time that we went after a bigness like the Bank of America, Trans-America, and these holding companies that don't give anybody a job, don't put any bread in anybody's mouth and don't put a roof over anybody's head.

Bell: I agree with you.

H.M.Jr: And the only way this Democracy will live, if we continue to move forward and move forward a great deal faster than we have in the last eight years. We have got to. That doesn't mean that a businessman can't make a reasonable profit and all the rest of the stuff. The two things are absolutely compatible.

Foley: Bigness and badness is what you said this morning.

Bell: I heard it said around town that if Roosevelt was elected for a third term, even the Treasury and the State Department ought to become New Deal. We ought to be convinced after eight years, hadn't we?

Foley: Well, I think there is much less of that talk insofar as the Treasury is concerned than there was before, Dan.

Gaston: Yes.

Bell: I never heard any of it. I just heard that one remark.

Foley: Well, I don't hear it so much any more.

H.M.Jr: Did today's Daily News - did you read that story? They gave one reporter $100 to bet on Roosevelt and another reporter $100 to bet on Willkie.

Foley: Who did?

H.M.Jr: The Daily News. They sent them out with $100 in their pockets. They both placed their bets at 7½ to one on Roosevelt. That is the odds on Roosevelt. That is the odds they got.

Foley: 7½ to five?

H.M.Jr: Yes.

Bell: That is on the National election, not just in New York.

Foley: I didn't know you could get any 7½ money.

H.M.Jr: They did yesterday.

Foley: Two to one.

H.M.Jr: You really ought to get hold of the Daily News. This reporter went right into the office of the Commonwealth and Southern and said, "I want to bet on Roosevelt." He couldn't get anybody to bet on Willkie.

Klotz: Oh no.

H.M.Jr: Oh, absolutely. No money around. Oh yes, at unfair odds, but not at the going odds.

Gaston: Their objection wasn't to betting, but they wanted big odds?

H.M.Jr: That is it.

Foley: They wanted two to one.

Well, Harry Durning called up a few minutes ago and he said, "I am beginning to get enthusiastic about New York for the first time."

H.M.Jr: I did yesterday.

Foley: I told him I did Monday. I said I was only up there one day and I was enthusiastic. He said, "Well, things are shaping up all right. The Kennedy speech helped." He said that John had a good audience this noon, that they had an overflow crowd. They had over 250 people and it was a representative crowd.

H.M.Jr: Where?

Foley: Downtown at the Athletic Club. And they had Hoey and they had Harry Durning and Willie Chandler of the Corporation Counsel up at the desk and they had people from the Comptroller's office and SEC and John Cahill's office and people from around Wall Street and even the ones that are going to vote for Willkie said they felt a little bit better about the New Deal afterward. John had a pain in his stomach afterward and he had to go back to Boston and I said he always got those after he got a little nervous, but that was all right.

H.M.Jr: Why does he always have to go to Boston?

Foley: He has got a doctor up there.

H.M.Jr: It is a good place to have a doctor. I have got one on the farm, too.

Foley: Harry says, "For God's sake, tell that fellow Norman Thompson to stop sending out those notices that if anybody takes more than two hours to vote they are going to take it off in annual leave." He says, "I got together with the Postmaster and we agreed not to distribute the stuff. Our people will go out and vote for Willkie if we do that." I think it is not a bad idea. Do we have to do that?

Bell: It has been done in every election, I think.

H.M.Jr: Our Norman Thompson?

Bell: It follows the precedent established by --

Foley: You can't vote in two hours, and if the people think they have to lose something off their annual leave, they won't vote.

H.M.Jr: Norman did that? Talk to him.

Klotz: Well, it is done.

Bell: I take it it is in line with what has been done in other departments.

Foley: Everything in New York is a holiday, you know. Nobody works except the Federal employees.

Bell: Well, they conform to State holidays.

Gaston: That is all right, Harry did all right.

Foley: Sure, he did all right and so did Norman.

H.M.Jr: You know what they have done? Don't let it go through the mails. (Laughter)

Bell: Why don't you stop it down here with Frank Walker?

H.M.Jr: I think that is marvelous. That is the best one. Just don't let it go through the mails. It is obscene.

Foley: It ain't right.

H.M.Jr: Get Huntington Cairns to rule it is obscene. It is wonderful.

All right.

October 31, 1940
11:26 a.m.

H.M.Jr: Hello.

Operator: Mr. Flynn.

H.M.Jr: Hello.

Ed Flynn: Hello, Henry.

H.M.Jr: I had somebody in the room and I couldn't talk. It was Nelson Rockefeller.

F: I see. I tell you, I got a telegram from Giannini and he listed a number of applications filed with the Comptroller of the Currency on which we have not received charters. The location in each case is followed by the date of application and then he goes on to mention about 20 of them I guess, dating back to 1936, 1937, 1938, 1939. I wonder if it's possible - I suppose you know where they all are - I wonder whether it's possible at all that you could issue one or two of them - do you know what I mean - or do you think you can't do anything with any of them?

H.M.Jr: Well, let me tell you - let me just explain. Jesse Jones came in yesterday. Now, he's taken ......

F: I can't hear you.

H.M.Jr: He's taken the trouble - he didn't come around to see me for two or three weeks, see?

F: Yeah.

H.M.Jr: Now, Jesse tells me that both Giannini's are for Willkie. Did you know that?

F: What?

H.M.Jr: They are both for Willkie.

F: Yes, but here, I don't care about them, but the idea is that he has a letter and a speech all prepared to all of his stockholders and every one of their depositors and the whole outfit in Southern California, and they're a tremendous group as you know, in which they're going to denounce the President and so forth and so on. Now, everybody out there advises me that it may be fatal to the whole proposition because while we're all right in California, we can't stand any mix-up.

H.M.Jr: I see. Well, I'll talk to the Comptroller again, yesterday I talked to him once and of course we've all .....

F: What did Jones say, Henry?

H.M.Jr: Jones said this that - I looked it up - he simply said that the President had asked him to see the various agencies - he didn't say he had asked him to see me - and see whether he couldn't finish up this Giannini business. Well, Jones had several conferences with S.E.C. and the best he could get out of them .....

F: Those things we could all - I mean, those things we could stave off and I've had Monroe look it up - look into it - Monroe Goldwater and take it up with Giannini's attorney and Giannini's attorney knows that those S.E.C. things and that things like that can't really be done, you know, so they've got those. But on these branch things they say that there is every reason to do it and that it's being held up for various and sundry reasons. Now, if we could show - I mean, if I could show good faith by saying that some of these things were done - you see what I mean?

H.M.Jr: Yeah.

F: It would just - in order to stop the thing until - hello?

H.M.Jr: Hello. I'm here.

F: Until after next week. You see?

H.M.Jr: Yeah.

F: I wish you would really get that list of their applications and really let me know what, if anything, you can do so that I - Giannini is going to call me today and they tell me out there that unless we get something out of it he's - of course he's sticking a gun up against us but, unfortunately, the gun if it explodes might kill us. That's what I'm afraid of.

H.M.Jr: Aren't you pretty sure of California?

F: No, I'm not. I'm not, I mean, I think it's all right, I haven't any question about it at the present time but any more rocking of the boat won't help the situation..

H.M.Jr: I see. Well, I'll take another look at it, Ed, and if there is anything that I can do I'll call you back.

F: All right. Fine. Good-bye.

H.M.Jr: Good-bye.

October 31, 1940
12:10 p.m.

H.M.Jr: I was just reading this folder while I was waiting to talk to the President and in this thing I see that you say the one in Pecos and Overland you recommend that.

Preston Delano: Well, that could be done except on the general theory that we would deny all branches.

H.M.Jr: Oh.

D: That's one that could be done except that we don't believe in any expansion, but the others - a lot of the others go out on the normal .....

H.M.Jr: Well, all the others are no, but Pecos and Overland - is that one town?

D: No, that's the name of two streets in Los Angeles sub-district. Pecos and Overland would be one branch.

H.M.Jr: That's a branch.

D: That's the least damaging of those for the Bank of America.

H.M.Jr: Now, in trying to read this thing, I can't find a description of the eight branches for the First National Bank of Portland. Have you got anything on that?

D: I've got that. I have to get that out of the file. In the general discussion at the first of the book you'll find a reference to those and that they all go out under the general rule of non-expansion.

H.M.Jr: Yeah. "With respect to the branch of the First National Bank for five of which we have formal applications, all of them being banks now owned or bought or about to be bought by Trans-American, all should be decided on the basis of policy with respect to Trans-American," but it doesn't give me an individual description of what they are.

D: I can get those for you.

H.M.Jr: Get them as fast as you can.

D: Right-o.

October 31, 1940
2:14 p.m.

H.M.Jr: Hello.

Operator: Mr. Flynn.

H.M.Jr: Hello, Ed.

Ed Flynn: Yeah.

H.M.Jr: The thing that you put up to me I thought was so important that I didn't want to take the sole responsibility so I walked across the street and saw the Boss and gave him as fair account as I could of our two conversations, and told him how I felt and how the rest of the people here felt.

F: Yeah.

H.M.Jr: So he said this. He said, tell Ed to try his best to kid this fellow along .....

F: You can't do it. I've been doing it now for four weeks.

H.M.Jr: Well, he said you could tell him anything that you want to, but he said that I didn't have to do anything before election.

F: Well, he said this. He said .....

H.M.Jr: Giannini.

F: Giannini said that he'd been - that unless I could give him something definite, he was through, so I can't kid him any longer, Henry, it's gotten beyond me. I mean, I've kept him going now for over a month. I had him come on to New York, I had him see the I did anything - I didn't bother anybody. I had Monroe go over and work with them for three or four days to try to keep them happy and everything else and now it has just reached this point, and he says that if something definite isn't done on this, he's through.

H.M.Jr: Well, I just went across and the Boss said that ......

F: Well, I think myself that if something - one of them even was done so as to - we'd set her up and say, well, here, now that's done, let me get to work on the others that it would be all right. I mean, pick out the one that you could do without anything .....

H.M.Jr: Well, they wouldn't be satisfied, Ed.

F: Well, at least I'd have an argument. I'd say, well, I'm getting something done now. Give me a chance at the rest of them.

H.M.Jr: Well, I told the President what you said that they were holding a gun at us and he said he isn't going to be held up between now and election on a thing like this.

F: Well, I don't care - I mean, it's immaterial but that's .....

H.M.Jr: Well, I wouldn't take it on my own, so I went across and he said as far as - you could tell them anything that you felt that you .....

F: No, I wouldn't - I'm through. I can't do any more with them. Christ, I've been kissing him for a month and I'm kissing so many people I'm sick and tired and you can do nothing for nobody. That's the whole God-damn trouble.

H.M.Jr: Yeah. Well, I'm sorry.

F: All right. We'll let it go at that then.

H.M.Jr: Good-bye.

October 31, 1940

MEMORANDUM FOR THE SECRETARY:

Reference is made to our discussion of branches for the First National Bank of Portland, Oregon. We have five formal applications for such branches and three informal ones. The formal applications could be granted immediately and we could, of course, commit informally as to the three others.

The applications on file for branch permits involve taking over banks already owned in their entirety (except for qualifying shares) by the Transamerica Corporation. If permits are issued in these cases, these individual banks will lose their identity and become branches of the First National Bank of Portland, which is also owned by the Giannini interests.

The five formal applications cover the following banks:

First National Bank, Forest Grove, Oregon
First National Bank, Cottage Grove, Oregon
Coolidge and McClaine Bank, Silverton, Oregon
Clattsop County Bank, Seaside, Oregon
Bank of Sellwood, Portland, Oregon

The informal applications cover:

First National Bank of Gardiner, Oregon
First National Bank of Corvallis, Oregon
Douglas County National Bank of Roseburg, Oregon

In addition to the above a letter has recently been received from President MacNaughton setting out reasons why it is desirable that the bank establish an additional branch in the City of Portland. He states that the parking facilities constitute quite a problem making it practically impossible for a great number of the bank's customers to call at the main office during business hours.

Assets of the First National Bank of Portland, Oregon, on a liquidating and sound value basis are satisfactory and the bank as a whole is in excellent condition. President MacNaughton is the controlling factor in the management, ably supported by the other officers. President MacNaughton has the confidence, support and fullest cooperation of all local directors who comprise the majority of the board. Transamerica Corporation owns through direct holdings and holdings of affiliated enterprises the controlling interest in this bank.

Preston Delano

Preston Delano

November 1, 1940

noted
DWB

MEMORANDUM TO THE UNDER SECRETARY OF THE TREASURY:

There is submitted herewith a report of progress of the Bank of America's compliance to October 22, 1940 with the program of March 6, 1940 as submitted by the Comptroller and known as "Requirements of the Comptroller of the Currency". For convenience, the "Requirements" are treated in detail with comment as to the progress realized in each instance.

(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.

Complete compliance. The certificate was issued June 10, 1940 approving the issuance of $12,000,000 par value of preferred stock retirable at $30,000,000. There were 600,000 shares of the par value of $20 sold for $50 each, thus providing the additional $18,000,000 for surplus and undivided profits.

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

Complete compliance. $6,900,000 has been transferred from undivided profits to unallocated reserves.

(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.

Complete compliance.

(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.

Compliance. The national bank examiner has advised that premiums on bonds in bank's investment portfolio are being amortized out of current earnings (other than bond profits).

(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.

The committee is nearing completion of its findings but the Bank has not yet been called in conference.

(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.

Compliance. The examiner reports that the aggregate amount of obligations to the bank as defined in Section 5200, U.S.R.S., of Transamerica Corporation and all subsidiaries of which it owns or controls a majority interest is now within the legal loaning limit. As of July 31, 1940 the aggregate amount of such indebtedness was $11,066,347.97 against a loaning limit of $12,400,000.

The "Large Line" to Transamerica Corporation and subsidiaries was shown in the report of August 31, 1939 at $67,624,735.02, whereas on October 22, 1940 it amounted to $49,136,217.74, or a reduction of $18,488,517.28. In the report of examination started January 31, 1940 (completed May 29, 1940) the total indebtedness was shown as $58,588,186.98, or a reduction of $9,451,969.24 between January 31, 1940 and October 22, 1940.

(Note: It should be understood that the so-called "Large Line" to Transamerica and its affiliates which at the present time amounts to some $49,000,000 does not violate the prohibition of Section 5200, U.S.R.S., although it exceeds 10% of the bank's capital and surplus. This "Large Line" is criticised on the basis of "undue concentration" rather than illegality. The reason that the $49,000,000 of the "Large Line", although exceeding the $12,400,000 of legal loaning limit, does not come under the statute is that the line is either specifically exempt from the operation of the statute or does not constitute a direct extension of credit as contemplated by the statute. Examples of this are the purchase money obligations of California Lands, Inc., and the Capital Company, and also the obligations of Transamerica in the form of a guaranty of certain assets of the bank which did not arise from any direct loans made by the bank to Transamerica or its affiliates.)

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

Compliance. The bank is eliminating the National City Bank stock in accordance with its "option to purchase". There are 22,640 shares (with 18,400 shares additional pledged to offset depreciation) carried at $1,086,720.00. The market value of these 41,040 shares at the bid price (10-29-1940) of 27½ (asked 29) is $1,128,600, or an appreciation of $41,880.

(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.

Compliance. Numerous sales of real estate owned have been effected since January 31, 1940, the date of the previous examination. However, many new parcels have been acquired which have increased the account from $6,909,942.24 on January 31, 1940 to $7,863,184.30 as of July 31, 1940. At the conclusion of the examination which is now in process, illegal real estate loans will show a substantial reduction over the amount reported January 31, 1940. The reduction in the amount of the California Lands, Inc., contracts between January 31, 1940 and October 22, 1940 amounted to $896,799.17; and the reduction in the Capital Company contracts during the same period aggregated $3,107,296.78. On October 27, 1940 the total remaining contracts of California Lands was $9,492,110.88, and the total indebtedness of Capital Company to the bank amounted to $18,141,840.31. The requirements of the Comptroller provide that all of these contracts are to be eliminated from the assets of the bank by December 15, 1943.

(Note: It should be understood that since the conclusion of the agreement real estate foreclosures have occurred and probably will continue to occur in some measure, the net result of which is to add to the total amount of real estate owned as carried on the books of the bank. This does not mean that the bank is not giving vigorous attention to the elimination and correction of any real estate holdings or real estate loans that may not conform to statutory requirements but simply that during a certain period real estate holdings newly acquired through foreclosure may exceed in dollar amount the liquidation for the same period.)

(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.

Recent advice from the President of the Bank is to the effect that they have decided not to resort to court action with reference to the right of the Bank to recover sums paid to Transamerica General Corporation in connection with fidelity losses, but to submit the matter to arbitration under the provisions of the California statutes, which provide for the arbitration of contracts in dispute. Under this provision of law, arbitrators may be appointed to determine the points in question and the parties may be bound by the decision of the arbitrators. Mr. Giannini stated that steps are being taken to put the procedure in motion to obtain an early decision.

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

Complete compliance.

* * * * * * * * *

The bank is now under examination and the report will be completed the latter part of December 1940. The last report in the file is dated January 31, 1940 (completed May 29, 1940)

Preston Delano
Preston Delano

November 1, 1940
10:42 a.m.

H.M.Jr: Hello.

Ed Flynn: Hello, Henry.

H.M.Jr: Yes, Ed.

F: I talked with the Boss last night after talking with California. He said for me to give this message out to Giannini.

H.M.Jr: Yeah.

F: He said to say to him that - hello?

H.M.Jr: Hello.

F: ..... that there was a little Irish in him and that he wouldn't have a gun against his chest and wouldn't be forced to do anything, but he said this. He said you tell Giannini that I will see him a week after election and that I will arrange that some of these things be granted. Now, I called Giannini and I told him that.

H.M.Jr: Yes.

F: Giannini says that he's been handling the thing with Jesse Jones and he'd like you to verify it so you can talk with the Boss and if you afterwards would get Jesse Jones, that would stall the thing over until Tuesday.

H.M.Jr: Now, let me just get this. What are you suggesting, Ed?

F: I suggest that you check with the Boss, you see, as to what he told me to tell him and then Giannini said that he'd like you to tell it to Jones and Jones in turn will tell it to him. See what I mean?

H.M.Jr: Well, now, let me make a counter suggestion because I don't want to bother the President, see?

F: Yeah.

H.M.Jr: Why don't - I don't want to call him. I don't even know where he is right now. Why don't you call Jesse and tell him of the conversation yourself and leave me out of it?

F: Well, what the hell - then Giannini says that you afterwards will say that there's nothing to it unless .....

H.M.Jr: No, no - the President - I'm working for Mr. Roosevelt and I'll talk to him after election, but I don't want to bother the President again.

F: No, I know. The only thing is he will rely on Jones, evidently, and rely on no one else.

H.M.Jr: Well, Jones will surely take your word. All you've got to do is to call him up and tell him.

F: I don't think it will do it - I mean, if you said to Jones that I relayed that message to you and that's what the Boss told me, even you say - you can say to Jones that you didn't talk with him but that I've given you that message and the same thing - saying that you're working for the Boss and .....

H.M.Jr: Well, could you do it this way - talk to Jones yourself and then ask Jones to call me?

F: I will, yeah. All right. I'll do that right away.

H.M.Jr: Thank you.

F: Good-bye.

November 2, 1940

(Dictated over the phone from the farm)

I just spoke to Jesse Jones, and he says that between Ed Flynn and the Chairman of the Democratic Central Committee of California and Giannini, they have him about worn out. He doesn't see what more he can tell them. He said that what Giannini wants is about 16 branches immediately, but Jones understood that the President did not want to do anything before election. I said that was right, and Jones told Giannini that I said I would carry out any order that the President gave me. Then Jones questioned me and he asked whether I would give the matter consideration without prejudice, and I answered, "Of course. I have never had any prejudice in connection with the Bank of America, and I would give it absolutely fair consideration." So he said he would call up Giannini and give him that message once more. He said that the last time he talked to Flynn was this morning. Flynn tried to get me last night and I didn't talk to him, and he tried this morning and I have made no effort to talk to him so far this morning. I feel it is useless to let him put all of this pressure on me because I am not going to do anything, and I don't see how Flynn can ask me to do anything if he listened to the President's speech last night, particularly that part which referred to holding companies.

November 2, 1940

MEMORANDUM TO: Under Secretary D. W. Bell

Mr. Jesse Jones called me on the telephone this morning to ask once more concerning branches for the Bank of America. He stated that Mr. Giannini wanted assurance that branches would be granted after the national election next Tuesday. Mr. Jones inquired whether I was recommending against the branches in question and I answered that I had already informed him that such was my position. He insisted that this was contrary to the wishes of the President as expressed to himself and to Mr. Flynn. I replied that I had no desire to oppose the President on any such issue but I must insist that instructions from the Chief Executive come to me through the Secretary of the Treasury who was my superior officer.

Preston Delano

Delano

NEW YORK HERALD-TRIBUNE - NOVEMBER 2, 1940

Bank Workers Vote for Change In Presidency

Bankamerica Club Sees New Administration as Necessity for the Nation

Bankamerica Club, a social organization of employees of Bank of America N. T. & S. A. of San Francisco, issued a statement yesterday saying that members of the club were "overwhelmingly of the considered opinion that a change in our national administration is necessary." The statement was made public here by Transamerica Corp., the holding company which owns the largest block of Bank of America stock.

Bank of America is the largest link in the chain of banking institutions formed by A. P. Giannini. Various units in the Giannini organization have been for more than two years engaged in controversies with the Comptroller of the Currency and the Securities and Exchange Commission. The statement criticized the "smear" tactics of the Administration and charged that the Administration had "sought to wrest control of our great democratic institution from us, who have created and built it up."

Workers Polled

Bank of America has 495 branches in 307 communities in California, plus the head office administrative departments in Los Angeles and San Francisco. Bankamerica Club polled representative workers of the bank, the statement said. The club spokesmen who issued the statement were F. A. Giuffra, president of the San Francisco chapter, and Bryce Clayton, member of the employee committee.

"On the eve of the Presidential election of 1940," read the statement, "we, as employees and stockholders of the Bank of America in 307 communities of California, take this occasion to indorse the vigorous policies of our management in defending our institution against political attack during the last two years, maintaining our integrity against the 'smear' tactics of political enemies and covetous interests, fighting off the efforts of the bureaucrats who have sought to wrest control of our great democratic banking institution from us who have created it and built it up.

Aid to State Alleged

"We believe that in pursuing its course our management has served the best interests of ourselves, our institution and our state, and that it is now our right and civic duty to do all we can to insure a continuation of the traditional policy of service to all of the people so well expressed in the slogan 'banking that is building California.' To that end and to the end of perpetuating the traditions of our great American Presidents we are overwhelmingly of the considered opinion that a change in our national administration is necessary and in that cause we pledge our individual efforts. We commend our course to all true Americans who believe in the preservation of free enterprise and freedom from our bureaucratic control."

This is the second declaration of support for Wendell L. Willkie to come out of the banking world in the last month. The Sept. 30 condition statement of First National Bank of Englewood, Chicago, carried the following statement: "In a last stand for democracy, every director and officer of this bank will cast his vote for Wendell Willkie."

American Banker 165
11-2-40

BANK OF AMERICA EMPLOYEES DECLARE FOR WENDELL WILLKIE

Heads of Employee Club Endorse Policies of Management In Poll.

San Francisco, Calif., Nov. 1. —Representative workers of the Bank of America N. T. & S. A. held a State-wide telegraphic poll yesterday, and as a result the staffs of the 495 branches in 307 communities of the State, plus the head office administrative departments in Los Angeles and San Francisco, decided to present to the public their own independent views on the Presidential election, according to spokesmen for the Bankamerica Club, a social organization of the Bank of America employees.

All permanent employees of the bank are partners in the institution through the ownership of stock. The spokesmen were J. A. Giuffre, president of the San Francisco chapter of the club, and Royce Clayton, member of the employee committee with which the idea originated. They declared that employees of the bank always have exercised complete freedom in determining their political preferences. Expenses of the poll were met out of the club's own treasury. Each branch and department voted separately.

The poll revealed an overwhelming opinion "that a change in our national Administration is necessary." A statement was adopted, declaring it to be their right and civic duty to defeat a national Administration which used "smear" tactics and "sought to wrest control of our great democratic institution from us who have created and built it up." The management of the bank was commended for its vigorous policies in defending it against the attacks of bureaucrats during the past two years, and the statement ended by calling upon all "true Americans who believe in the preservation of free enterprise and freedom from bureaucratic control" to join them in electing Wendell L. Willkie.

The full statement follows:

On the eve of the Presidential election of 1940 we as employees and stockholders of the Bank of America in 307 communities of California, take this occasion to endorse the vigorous policies of our management in defending our institution against political attack during the past two years, maintaining our integrity against the "smear" tactics of political enemies and covetous interests, fighting off the efforts of the bureaucrats who have sought to wrest control of our great democratic banking institution from us who have created it and built it up. We believe that in pursuing its course our management has served the best interests of ourselves, our institution and our State, and that it is now our right and civic duty to do all we can to insure a continuation of the traditional policy of service to all of the people so well expressed in the slogan—"Banking That Is Building California"—to that end and to the end of perpetuating the traditions of our great American Presidents we are overwhelmingly of the considered opinion that a change in our national Administration is necessary and that in that cause we pledge our individual efforts. We commend our course to all true Americans who believe in the preservation of free enterprise and freedom from bureaucratic control.

noted
DWB

November 14, 1940

MEMORANDUM: To Under Secretary D. W. Bell

The Giannini interests are asking us to approve twenty-one (21) additional branches.

Eleven of them are for the Bank of America National Trust and Savings Association of San Francisco.

Nine of them (four informal) are for the First National Bank, Portland, Oregon.

One is for the National Bank of Washington, Tacoma.

Of the eleven which the Bank of America seeks:

Two (Delano and Gonzales) should be denied because there is no need for additional banking facilities and because there is a record of attempts by the Bank of America to squeese out other banking institutions.

One (at 43rd and Crenshaw) should be denied because there is no need for banking facilities at this point.

One (at Inglewood) should be denied because if any branch is to be established, the other competing institutions have a right of priority.

One (at March Field) should be decided on the basis of policy with respect to Transamerica Corporation, as an application was received on November 6, 1940 from the Citizens National Trust and Savings Bank, Riverside, California, to establish a branch at or adjacent to March Field. There is to be a large increase in personnel in both the Air and Artillery forces and letters from the Commanding Officers of both of these branches of the service state that a branch bank at this location would be a great convenience to the officers and enlisted men.

Two (at Army Posts). Investigations have been made and Examiner and Chief Examiner recommended that these applications be declined.

One (at San Gabriel) should be denied unless a new investigation should reverse the findings of four years ago that there was no need for banking facilities.

One (at Sherman Oaks) is the same as application to remove dormant branch from 5636 South Broadway to the intersection of Van Nuys and Ventura Boulevards, which was rejected September 18, 1939.

One (at Pico and Overland) should be disapproved because it is a request for removal of a dormant branch. If an application is received to establish a new branch (and not a removal application) a new investigation should be ordered before reconsidering the application which has been previously disapproved.

One (at San Diego in the vicinity of Sassafras Street and Pacific Highway) received in a communication from Mr. C. C. Collins dated September 16, 1940. No action of any kind taken except to acknowledge Mr. Collins' letter on October 8, 1940.

There are formal applications on file for five branches for the First National Bank, Portland, Oregon, all of them being banks now owned by Transamerica Corporation:

First National Bank,	Forest Grove, Oregon
First National Bank,	Cottage Grove, Oregon
Coolidge and McClaine Bank,	Silverton, Oregon
Clattsop County Bank,	Seaside, Oregon
Bank of Sellwood,	Portland, Oregon

In addition, Mr. MacNaughton, President of the bank, stated in a conference held in this office on August 20, 1940, that Transamerica Corporation would probably buy three other banks in Oregon at a later date, which it would be their desire to operate as branches of the Portland bank:

First National Bank,	Gardiner, Oregon
First National Bank,	Corvallis, Oregon
Douglas County National Bank,	Roseburg, Oregon

In a letter from Mr. MacNaughton dated October 21, 1940, he states that they are desirous of establishing a branch "somewhere along or around Glisan Street" but are not submitting a formal application because of the fact that they do not have any definite space in mind and are not in position to negotiate for or obtain the same until reasonable assurance is obtained that permission for the establishment of the proposed branch will be granted. He says that the situation is such at the present time that parking in the block occupied by the bank is next to impossible during banking hours, and that the establishment of the proposed branch will relieve the congestion around as well as in their banking premises, and that greatly increased service will be rendered to the people of that district.

With respect to all nine of these applications:

All should be decided on the basis of policy, with respect to Transamerica Corporation.

With reference to the single application for the branch of the National Bank of Washington, Tacoma, there is every reason for denying it.

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We favor the denial of all of these applications. We think any further expansion of the Giannini financial empire is against the public interest.

Preston Delano

Preston Delano

November 15, 1940

ARMY POSTS — FORT ORD and CAMP CLAYTON

An investigation of these applications was made on September 23-24, 1940 by National Bank Examiner E.S. Williams who recommended that the applications be disapproved. This recommendation was concurred in by the Chief Examiner.

It appears that the Monterey County Bank and Trust Company, Salinas, California, made its application to the State Banking Department for a branch at Fort Ord early in the year and has gone ahead with its plans to establish such branch. Camp Clayton is now under construction and it is being planned as the principal headquarters of the entire reservation, which includes Fort Ord.

PICO and OVERLAND

(1) June 22, 1939 - Application received to remove dormant branch from 6425 Crenshaw.

(2) July 10, 1939 - Approval recommended by Examiner Palmer and Chief Examiner Wright.

(3) July 24, 1939 - Marked "Hold".

(4) November 8, 1940 - This application is a request for the removal of a "dormant" branch to a new location. As the bank has twenty-one "dormant" branches, the approval of the removal of one might, and probably would lead to other applications of a similar nature. At any rate, if consideration is to be given to this application, a new investigation should be ordered.

December 13, 1940
3:00 p.m.

RE BANK OF AMERICA

Present: Mr. Bell
Mr. Gaston
Mr. Foley
Mr. Sherbondy
Mr. O'Connell
Mr. Upham

H.M.Jr: Before we go any further, I hear you want to get left off this committee in the afternoon.

Upham: I wouldn't cry if I were left off. There are other things I would like to do.

H.M.Jr: Well, somebody told me you were doing a lot of work. You are losing your hair.

Foley: It is growing.

H.M.Jr: Growing?

Foley: Yes, he is getting it back. (Laughter)

Upham: Yes, I would appreciate that.

H.M.Jr: Why are there so few on the Bank of America? What is TNEC doing here?

O'Connell: I am pinch hitting for Mr. Tietjens.

Foley: It is in his shop.

H.M.Jr: Well, somebody, who is going to talk?

Upham: Are you going to talk?

Bell: No, I am going to let you do the talking. I want to say I called Mr. Delano, and he could hardly talk over the telephone. His voice is gone and Mrs. Delano also pleaded that he not come out this afternoon. She said he was really sick and just on the edge of pneumonia the first of the week.

Upham: Well, this memorandum of November 14 from the Comptroller indicated that we had applications for 21 branches, 11 from the Bank of America. Since the date of the memorandum, we have three more, so there are now 14 applications from the Bank of America, 9 from the First National Bank of Portland, which trans-America owns --

H.M.Jr: Which we will not consider today.

Upham: All right.

H.M.Jr: We will not consider those today.

Upham: And one from the National Bank in Washington, which is owned --

H.M.Jr: No, I only want to consider --

Upham: Just the Bank of America. Well, the Comptroller recommended on that day --

H.M.Jr: Are there any changes on that?

Upham: Three additional branches is all, 14 instead of 11.

H.M.Jr: This is for the Bank of America?

Upham: Yes, sir.

Bell: Well, you say the Portland is really part of the whole set-up.

Upham: He says we won't take that up today.

H.M.Jr: Well, the Portland thing goes to trans-America, the control flows to trans-America?

Upham: That is right.

H.M.Jr: Well, I am talking only about branches of the Bank of America.

Bell: All right. There are 11, then.

Upham: 14 applications.

H.M.Jr: I am not going to consider anything that has to do with trans-America until I have time to talk to some of the Senators and Congressmen as to what they want to do about bank holding legislation. Pending that I am going to --Until I have a chance to talk with a few people like Senator Glass and Senator Wagner, I don't want to do something that they might feel might hurt the chances of passing this legislation.

Foley: I thought the purpose of this meeting was to consider the framework of a bill to eliminate holding companies.

H.M.Jr: No, the purpose of this meeting is to consider applications for branches of the Bank of America.

Foley: Oh, I am sorry. I thought it was the legislation.

H.M.Jr: Applications for the Bank of America.

Bell: For additional branches.

H.M.Jr: Now, what is pending before the Comptroller on that?

Upham: May I say only this, that I agree with that, but I think I ought to tell you that Mr. MacNaughton, the President of the Portland bank, has told the Comptroller that his next year's plans will be affected by the decision on these 9 branches and the Comptroller has told him that he will do his best to get a decision before the end of the year.

H.M.Jr: Well, if I can get around to it and you fellows over here (indicating lawyers) know the story - do you know the story of trans-America so you can go and explain it to Carter Glass?

Foley: Right now?

H.M.Jr: Well, no, sometime next week.

Foley: I could know it, if you would tell me what it was next week. I would have the story, yes.

H.M.Jr: Well, I would like you to get somebody so that you would be familiar with the thing - I mean the story just to describe it. George Haas has done me a beautiful chart, with the help of SEC. I don't mean too much in detail. I mean just so that --

Foley: We helped on that. Donald (Sherbondy) worked on that. Donald knows the whole story.

H.M.Jr: All right, that I could call up Carter Glass and say, "Now look here, Carter, may I come over? I want some advice. Now, here is the thing. We have got these branches pending. Before we do anything, what we want to know is, what is your advice on this thing?" Do you know it?

Sherbondy: I think I do well enough that I could --

H.M.Jr: Well, you would know it by Monday, wouldn't you?

Sherbondy: Yes, I think I know it well enough now.

H.M.Jr: And do you know just what SEC's troubles are?

Sherbondy: Yes, I do, very well.

Foley: He has been following it all along. He has been following it from the very beginning.

H.M.Jr: That is all that is necessary. All right.

Foley: He worked on it with Whitney Seymour and went all the way through it.

H.M.Jr: You remind me next week and I will try to get hold of Carter Glass.

Upham: Then the only thing before us is 14 applications for branches for the Bank of America.

H.M.Jr: Yes, sir.

Upham: And the Comptroller's recommendation is that none of them be approved.

H.M.Jr: I see. None of them?

Upham: None of them be approved.

H.M.Jr: Why?

Upham: In his memorandum to you, he said, "We favor the denial of all of these applications. We think any further expansion of the Giannini financial empire is against the public interest." That is the end of your memorandum.

H.M.Jr: I thought he recommended one.

Bell: No.

H.M.Jr: Now, wait a minute.

Upham: The last paragraph.

H.M.Jr: What was that one that I thought he said was O. K.?

Upham: Well, he perhaps told you that if the decision were to give the Bank some branches, there were two of these that we could justify on a merit basis. If the policy were not to refuse all branches, there are two of these that could be granted on their merits.

H.M.Jr: Which two?

Bell: He told you that before election. When we had the conference he said if you wanted to do, something there were two or three branches.

H.M.Jr: Is this the one I had then?

Bell: Well, it is one brought up to date.

H.M.Jr: Did it have that thing on it, "We favor the denial ---"?

Bell: Yes.

Upham: Which two did he think?

Bell: Well, on page two, about the middle of the page it says one at Pico and Overland.

H.M.Jr: That is the one I was thinking of.

Upham: Now, that one, we think, is one of the few that we would give to anybody. Most of these branches we would turn down on their merits, no matter who the applicant was.

H.M.Jr: Pico and Overland is the one.

Upham: Pico and Overland could be given if we want to give them any branches.

Bell: And if somebody else were making the application, you would approve those, is that right?

Gaston: Not in California.

Upham: Yes. That is a street corner, Pico Street and Overland.

H.M.Jr: In Los Angeles?

Upham: It is only one branch.

H.M.Jr: In Los Angeles?

Upham: Yes, sir. Now, we have --

H.M.Jr: Just a minute. This is what he said, Herbert. "The one at Pico and Overland should be disapproved because it is a request for removal of a dormant branch. If an application were received to establish a new branch and not a removal application, a new investigation should be ordered for reconsidering the application which has been previously disapproved." In other words, he wants to use this charter, so to speak, for this one, to close this and open another one?

Upham: Yes.

Bell: That is what he said at that conference, too.

H.M.Jr: "We favor the denial of all applications. We think any further expansion of the Giannini financial empire is against the public interest." Well, who am I to fly in the face of the Comptroller?

Gaston: Then the only thing you have to consider is whether these do not represent expansion, if they merely represent transfer to a more favorable location, something of that sort.

H.M.Jr: Well, let me put it just a little bit differently. Let me put it a little bit differently. Are we wholly within the law to refuse any branches to the Bank of America?

Foley: Oh, I think we have absolute discretion.

Sherbondy: That is right, absolute discretion.

H.M.Jr: Well, before I take what might be determined by unfriendly persons as an arbitrary action, why wouldn't it be just as well to do this and trans-America before some of the Senators and Congressmen, and say, "Now, if I do this, is this - do you agree that this is in the public interest? This is what I want to do." I don't want to do anything without consulting members of the Banking and Currency Committee so I can feel that I have their support.

Foley: What kind of a reaction would you get from Henry Steagall on a thing like that?

H.M.Jr: I don't know and I - in the room, I don't give a damn, as long as I have got Glass and Bob Wagner with me. No matter what they did down there, if those fellows were with me, see.

Foley: Then you would have to pick the people that you --

H.M.Jr: No, I thought first - what I thought at first, I would go to Carter and just Carter alone and I would say, "Now, look, I want an hour and I want to lay a problem before you," and then after he has heard it and after I get his reaction, I would say, "All right, now what would you advise me to do from here?"

We can do that early next week.

Bell: I should think you might do it on the whole set-up.

H.M.Jr: On both, Dan, on both.

Bell: Yes, because --

H.M.Jr: On both.

Bell: After all, they are so closely tied in, I don't see how you can separate them.

H.M.Jr: No, on both. Is that agreeable with you?

Bell: Yes, sir.

H.M.Jr: Take a letter to Carter Glass.

"My dear Senator:

"At your convenience the Comptroller of the Currency and I would like to have an opportunity to lay before you a very important policy matter affecting bank holding companies and branch banking. It will probably take me at least an hour to discuss the matter adequately.

"Would you let me know what time and place would be convenient for you?"

The fellow I have got to get first is Carter Glass, don't you agree? After all, if Carter Glass is with me, he will tell Jesse where to head in. Jesse won't want to make the same mistake twice, going up against Carter and me - and Mr. Foley. (Laughter) It is a tough combination, Carter Glass, Ed Foley, and Morgenthau.

Bell: Morgenthau, Foley and Jones, that is pretty good.

H.M.Jr: No, it is Carter Glass, Foley and Morgenthau vs. Jesse Jones.

Bell: That is what I said. He is up against a tough combination.

Foley: It is three to one.

H.M.Jr: You were a little worried, though, a couple of times.

Foley: Don't you think I had reason to be? (Laughter)

H.M.Jr: Thank God for old Tijuana. It saved the day.

Upham: They speak in riddles.

Well, then, there is no reason to raise that other point, is there?

H.M.Jr: Tijuana saved the day.

TREASURY DEPARTMENT

INTER OFFICE COMMUNICATION

DATE

TO Secretary Morgenthau December 18, 1940

FROM E. H. Foley, Jr.

Re: Securities and Exchange Commission
Transamerica hearing.

You asked me to bring you up to date concerning the refusal of certain witnesses in the Transamerica set-up to testify as to matters concerning the Bank of America. The following report is submitted in accordance with that request.

When the hearing was reconvened in San Francisco, officers and employees of Transamerica Corporation, Capital Company, Pacific Coast Mortgage Company, and other associated interests in the Transamerica system, refused to testify relative to any matter concerning the Bank of America. Monday, December 16, officers of the Bank of America, including President L. M. Giannini, refused to testify. The hearing was recessed subject to call upon ten days notice.

The contention of Transamerica and the Bank of America is that the case of Bank of America v. Douglas holds that the office of the Comptroller of the Currency is the proper Government agency to investigate matters relative to the Bank and that the Securities and Exchange Commission is not the proper agency to obtain by hearings information concerning the Bank. The Securities and Exchange Commission, of course, does not agree with this interpretation of the Douglas case.

The Transamerica Corporation also filed with Trial Examiner Fitts a number of technical motions which will have to be passed upon by the Securities and Exchange Commission here in Washington. Those motions will be disposed of before any other action is taken in the case. It is probable then that a court proceeding will be initiated either in San Francisco or in the United States District Court for the District of Columbia to obtain an order compelling the witnesses to testify. A refusal to testify pursuant to such an order would subject the party refusing to punishment for contempt of court.

I shall continue to keep you informed.

E.H.F.Jr.

CONFIDENTIAL

December 18, 1940

OUTLINE OF SITUATION RELATIVE TO TRANSAMERICA CORPORATION AND THE BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION.

Transamerica Corporation was formed in 1928 for the purpose of bringing under one corporate structure the interests of Amadeo P. Giannini and his associates in banks and various other enterprises on the West Coast and in New York City (The Bank of America National Association, which was acquired by the National City Bank of New York in 1931). A. P. Giannini and his West Coast associates have continued to dominate Transamerica Corporation and its related enterprises from the inception of Transamerica Corporation to date, with the exception of a brief period, during 1930 and 1931, when Elisha Walker of New York City was in control.

The Transamerica group constitutes one of the most powerful financial aggregations in the United States and is in a dominating position on the West Coast. Transamerica Corporation owns or has a substantial interest in 9 national banks (in addition to owning approximately 10 percent of the stock of the National City Bank of New York), 9 State banks, (which banks have hundreds of branches), 1 bank in Italy, and 29 other corporations and companies, including life insurance companies, and concerns engaged in a wide variety of activities, such as fire insurance, security dealing, buying, selling and managing of farm and urban real estate, agricultural financing, manufacture of metal castings and forgings, lumber business, operation of a furniture exchange, furnishing of auditing and accounting services, and operation of a travel agency in Italy and San Francisco. (The stock of some of these concerns is carried in the name of subsidiaries or associated interests of Transamerica Corporation.)

The largest and most important unit in the Transamerica group, and the chief income producing unit, is the Bank of America National Trust and Savings Association. The Bank of America National Trust and Savings Association was created in 1930 by the consolidation of the Bank of Italy National Trust and Savings Association (which became a national bank in 1927) with the Bank of America of California (another Giannini bank organized under the laws of the State of California). The Bank of America at present has 495 branches, all in the State of California, and one branch in London. It is the fourth largest bank in the United States and has deposits of roughly $1,500,000,000, about 60 percent of which are insured by the Federal Deposit Insurance Corporation. The insured deposits of the Bank of America are approximately twice the total capital and surplus of the Federal Deposit Insurance Corporation.

Prior to July, 1937, Transamerica Corporation owned more than 99 percent of all the outstanding stock of the Bank of America. In 1937, Transamerica Corporation distributed as a stock dividend to the Corporation's stockholders sufficient of its Bank of America stock to reduce the holdings of the Corporation in the Bank to approximately 42 percent. The purpose of this distribution apparently was to attempt to remove Transamerica Corporation from the existing statutory definition of a holding company by reducing its holdings in the stock of the Bank below 50 percent. Transamerica interests still dominate the policies of the Bank, Transamerica Corporation itself owning in excess of 37 percent of the Bank's outstanding common and preferred stock. A. P. Giannini is chairman of the board of directors of

Transamerica and of the Bank. His son, L. M. Giannini, is president of the Bank.

Almost from the day this Bank came into the National Banking System it has constituted the most difficult single problem of the national bank examiners and the Comptroller of the Currency. From the very beginning there was little tendency on the part of the directors and the management of the Bank to cooperate with or to follow the suggestions and recommendations of the examiners and of the office of the Comptroller of the Currency. The Bank, under the domination of Transamerica Corporation and the Gianninis, engaged in a program of expansion by the taking over of national and State banks through the acquisition of their stock, and the conversion of such banks into branches of the Bank of America. The result was a heavy overhead and a dangerous concentration in relatively frozen assets, especially in real estate. At the same time the Bank, under the domination of Transamerica, endeavored to show a good earning condition in order to justify the payment of large dividends which, up to 1937, went almost exclusively to Transamerica Corporation, and a substantial part of which has gone to Transamerica Corporation since 1937. The result of the domination of the Bank by Transamerica Corporation was a policy of bleeding the Bank for the benefit of the holding group.

The frozen condition of the Bank, due largely to its enormous investment in real estate, resulted in a very critical situation in 1933. Prior to the emergency banking holiday, there was a constant stream of loans from the Federal Reserve bank in San Francisco, from the Reconstruction Finance

Corporation, and from correspondent banks, in order to keep the Bank open. After the closing of the Bank in March, 1933, it was a serious question whether the Bank should be reopened. However, because of the size of the Bank, its significance on the West Coast, and the nature of the whole national banking picture, it was reopened.

Although the general condition of the Bank improved after 1933, it continued to engage in unsafe and unsound banking practices, to violate the spirit and the letter of the national banking laws, and to flout the authority of the national bank examiners and the Comptroller of the Currency. The national bank examiners and the Comptroller of the Currency continued a constant policy of criticism and pressure upon the Bank. These efforts were unavailing, however, partly because of a lack of appropriate authority in the Comptroller of the Currency over the Bank, but primarily because of insufficient control over the holding group which dominated the Bank.

The remedies available to the Comptroller of the Currency with reference to the Bank were of such a character that he was reluctant to use them until absolutely necessary. Those remedies in brief were: (1) the appointment of a conservator for the Bank, which would probably have resulted in the closing of the Bank and a critical condition on the West Coast; (2) the publication of reports of examination of the Bank, which might have resulted in a run on the Bank and its closing; and (3) a proceeding before the Board of Governors of the Federal Reserve System to remove the officers or directors of the Bank, which would have resulted in a long drawn out proceeding with a strenuous court fight, probably terminating in the Supreme Court of the

United States, and might have resulted in heavy withdrawals by the larger depositors.

Nevertheless, it was finally decided that drastic steps had to be taken. It was the opinion of the office of the Comptroller of the Currency that in view of the unsatisfactory asset condition of the Bank, especially the large amount of real estate held directly or indirectly, and potential losses among the Bank's assets, that it was imperative for the Bank to discontinue its excessive dividend policy. Although the annual dividend rate of the Bank had been repeatedly criticised since 1933 that rate had been constantly increased from 4.5 percent in 1933 to 19.2 percent. Accordingly, in September, 1938, the Bank was warned that the continuance of that excessive dividend rate without an improvement in the asset condition of the Bank would constitute an unsafe and unsound practice and that the Comptroller of the Currency was prepared to exercise the sanctions conferred upon him to remedy the condition of the Bank. Regardless of that warning the board of directors of the Bank in September, 1938, declared the regular dividend at the rate of 19.2 percent. Since the market value of the stock of Transamerica Corporation, the holding company of the Bank, depended to a large degree upon the dividends received from the Bank, the holding company group was determined that the Bank dividend rate should not be reduced.

At about the same time that the situation between the office of the Comptroller of the Currency and the Bank was becoming critical a conflict was developing between Transamerica Corporation and the Securities and Exchange Commission. The Securities and Exchange Commission was of the opinion that the registration statement filed by Transamerica Corporation incidental to the listing of its stock on the exchanges contained false and misleading information with reference to Transamerica and various of its subsidiaries, including the Bank of America. To assist in its investigation the Securities and Exchange Commission requested that the Secretary of the Treasury make available to it information contained in the reports of examination of the Bank of America. Certain of the reports of examination were accordingly made available to the Securities and Exchange Commission, whereupon the Bank began a suit in the District Court of the United States for the District of Columbia to enjoin the Commission from using such reports. The District Court and the United States Court of Appeals both decided against the Bank, and no attempt was made to carry the case to the Supreme Court of the United States. After a recess, the Securities and Exchange hearings relative to whether the registration statement of Transamerica Corporation contains false and misleading information, and the Transamerica stock accordingly should be removed from listing on the exchanges, began again in San Francisco on December 9, 1940. A further recess was taken beginning December 16 because of the refusal to testify of certain officers of Transamerica Corporation and various of its subsidiaries who were subpoenaed as witnesses.

On September 23, 1938, April 14, 1939, July 31, 1939, and October 2, 1939, the office of the Comptroller of the Currency transmitted formal letters to the board of directors of the Bank of America criticising in detail the condition of, and the manner in which the Bank was being operated, and its domination by the Transamerica Corporation holding group. This policy of criticism and pressure being unavailing, it was finally decided that steps would have to be taken either to publish the report of examination of the Bank, thereby advising the depositors and stockholders of the Bank and the general public of the Bank's condition, or to begin a proceeding before the Board of Governors of the Federal Reserve System to remove officers and directors of the Bank. However, in order to give the Bank a final opportunity to present its case and to work out a program for improving its condition, representatives of the Bank were requested to appear at a hearing at the office of the Comptroller of the Currency, beginning on February 14, 1940. The hearing was to be held before a disinterested examiner, who was to make formal findings and recommendations as to the action which the Comptroller of the Currency should take. Henry M. Bates, Dean Emeritus of the University of Michigan Law School, was selected as examiner to preside over the hearing and to prepare the report to the Comptroller. Representatives of the Bank refused to attend the hearing, but did come to Washington and enter into negotiations with representatives of the Comptroller of the Currency.

After long and involved negotiations the Bank agreed to take some steps to improve its condition. Among other things, it agreed to increase its capital funds in the amount of $30,000,000 by the issuance of preferred stock. Over $27,000,000 of the $30,000,000 was advanced by the Reconstruction Finance Corporation. That increase in capital funds greatly improved the ratio between deposits and capital and gave increased protection to the depositors. The Bank also agreed to establish a reserve against certain losses set up by the national bank examiners, to reduce real estate holdings, to discontinue the practice of using unrealized write-ups in securities as a basis for the payment of dividends, and to take other specified steps to improve its condition.

Although the agreement of the Bank constituted a major victory in the efforts of the Comptroller of the Currency to supervise the Bank, and if faithfully carried out, will result in substantial improvement in the Bank's condition, the situation can never be properly supervised until Congress enacts adequate legislation to deal with bank holding companies such as Transamerica Corporation. So long as Transamerica interests continue to dominate the Bank of America and to use the Bank primarily as a source of revenue to bolster the value of the stock of Transamerica and as a convenient tool for facilitating the activities of the entire holding company group, it will be impossible for the regulatory authorities effectively to supervise the Bank and to assure that it will be operated in a safe and sound manner and for the benefit of its depositors. The Federal Government has at present no satisfactory control over bank holding companies, nor does existing legislation give the Comptroller of the Currency appropriate sanctions to assure that national banks will not pay excessive dividends, will write off losses, and will engage in safe and sound banking.

The arduous efforts of the office of the Comptroller of the Currency and of the Treasury Department have resulted in at least a temporary improvement in the condition of the Bank of America, but so long as this Bank is dominated by the Transamerica group there will be a constant effort on behalf of that group to use the Bank in a manner inconsistent with the best interests of the depositors and the general banking structure of the country. It is practically an impossible task to effectively supervise a bank of approximately 500 branches which is tied into a complicated holding company scheme in which the Bank is merely one of the creatures of the holding group and is operated for the benefit of that group. Already a program is under way to attempt a further expansion of the activities of the national banks dominated by Transamerica Corporation. There are now pending with the Comptroller of the Currency applications for 14 additional branches for the Bank of America, 6 additional branches for the First National Bank of Portland (owned by the Transamerica group), and a branch for the National Bank of Washington, Tacoma (also owned by the Transamerica group).

TREASURY DEPARTMENT

INTER-OFFICE COMMUNICATION

DATE December 19, 1940

TO Secretary Morgenthau

FROM Edward H. Foley, Jr.

CONFERENCE WITH SENATOR GLASS ON BANK HOLDING COMPANY LEGISLATION

Place of Conference: Senator Glass' apartment, Mayflower Hotel.

Time of Conference: 11:00 A.M. December 19, 1940.

Secretary Morgenthau, accompanied by Preston Delano and Ed Foley, called on Senator Glass at his apartment in the Mayflower at 11:00 this morning to discuss Bank Holding Company legislation, with particular regard to its application to the Transamerica Corporation.

Mr. Foley had sent the attached memorandum giving the background with respect to the difficulties encountered by the Comptroller of the Currency and SEC in their dealings with the Transamerica Corporation and Bank of America National Trust and Savings Association. Senator Glass indicated that he had read and digested the memorandum and was acquainted with the facts set forth in it. Secretary Morgenthau said he hoped to have Senator Glass' support and help in order to secure the passage of legislation to eliminate what he termed "bigness and badness" in connection with the Bank of America. Senator Glass said he was in full accord with Secretary Morgenthau's objectives and was prepared to reintroduce the bill, which he had held up at the request of Secretary Morgenthau and finally introduced in 1938, just as soon as Congress convenes. Secretary Morgenthau stated that he had discussed the matter with the President, and that the President was in sympathy with what he was doing. Senator Glass indicated that with the President's support it should be possible to secure the passage of legislation eliminating bank holding company control, although it would be a long and bitter fight.

Mr. Foley explained some of the difficulties SEC is encountering in connection with its proceedings to delist Transamerica stocks from the exchanges, and explained that this was just another evidence of the disposition of A. P. Giannini and his associates to defy the authority of the Federal Government to regulate or examine the Bank of America and Transamerica and its affiliates.

Mr. Foley pointed out that the bill Senator Glass introduced two years ago didn't go quite as far as the Treasury thought the situation warrants since it froze rather than eliminated existing evils. Mr. Foley said that the bill the Treasury had in mind would prevent a corporation which owned more than 10 percent of the voting stock of an insured bank from owning any stock in any other bank after June 30, 1944. He suggested that this bill be substituted for Senator Glass' old bill. It was agreed that Mr. Foley would provide Senator Glass with a summary of the Treasury's draft which would point out the differences between that draft and Senator Glass' bill and after Senator Glass had been given an opportunity to study the draft he would give Delano and Foley a chance to talk to him about it.

Secretary Morgenthau suggested that Mr. Delano and Mr. Foley prepare the legislation and go over it with Senator Glass in Lynchburg the latter part of next week.

Secretary Morgenthau told Senator Glass that he would like to discuss the meeting with Senator Wagner. Senator Glass indicated that this was perfectly agreeable with him.

After leaving Senator Glass, Mr. Foley telephoned Senator Wagner's office and left word that Secretary Morgenthau, Mr. Delano and Mr. Foley would like to have an opportunity to talk about bank holding company legislation with Senator Wagner at the Senator's convenience. It was left that the Senator would get in touch with Mr. Foley when he returns to Washington, which would probably be sometime the early part of next week.

E.H.F.L.

CONFIDENTIAL DEC 1 8 1940

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United States, and might have resulted in heavy withdrawals by the larger depositors.

Nevertheless, it was finally decided that drastic steps had to be taken. It was the opinion of the office of the Comptroller of the Currency that in view of the unsatisfactory asset condition of the Bank, especially the large amount of real estate held directly or indirectly, and potential losses among the Bank's assets, that it was imperative for the Bank to discontinue its excessive dividend policy. Although the annual dividend rate of the Bank had been repeatedly criticized since 1933 that rate had been constantly increased from 4.5 percent in 1933 to 19.2 percent. Accordingly, in September, 1938, the Bank was warned that the continuance of that excessive dividend rate without an improvement in the asset condition of the Bank would constitute an unsafe and unsound practice and that the Comptroller of the Currency was prepared to exercise the sanctions conferred upon him to remedy the condition of the Bank. Regardless of that warning the board of directors of the Bank in September, 1938, declared the regular dividend at the rate of 19.2 percent. Since the market value of the stock of Transamerica Corporation, the holding company of the Bank, depended to a large degree upon the dividends received from the Bank, the holding company group was determined that the Bank dividend rate should not be reduced.

At about the same time that the situation between the office of the Comptroller of the Currency and the Bank was becoming critical a conflict was developing between Transamerica Corporation and the Securities and Exchange Commission. The Securities and Exchange Commission was of the opinion that the registration statement filed by Transamerica Corporation incidental to the listing of its stock on the exchanges contained false and misleading information with reference to Transamerica and various of its subsidiaries, including the Bank of America. To assist in its investigation the Securities and Exchange Commission requested that the Secretary of the Treasury make available to it information contained in the reports of examination of the Bank of America. Certain of the reports of examination were accordingly made available to the Securities and Exchange Commission, whereupon the Bank began a suit in the District Court of the United States for the District of Columbia to enjoin the Commission from using such reports. The District Court and the United States Court of Appeals both decided against the Bank, and no attempt was made to carry the case to the Supreme Court of the United States. After a recess, the Securities and Exchange hearings relative to whether the registration statement of Transamerica Corporation contains false and misleading information, and the Transamerica stock accordingly should be removed from listing on the exchanges, began again in San Francisco on December 9, 1940. A further recess was taken beginning December 16 because of the refusal to testify of certain officers of Transamerica Corporation and various of its subsidiaries who were subpoenaed as witnesses.

On September 23, 1938, April 14, 1939, July 31, 1939, and October 2, 1939, the office of the Comptroller of the Currency transmitted formal letters to the board of directors of the Bank of America criticizing in detail the condition of, and the manner in which the Bank was being operated, and its domination by the Transamerica Corporation holding group. This policy of criticism and pressure being unavailing, it was finally decided that steps would have to be taken either to publish the report of examination of the Bank, thereby advising the depositors and stockholders of the Bank and the general public of the Bank's condition, or to begin a proceeding before the Board of Governors of the Federal Reserve System to remove officers and directors of the Bank. However, in order to give the Bank a final opportunity to present its case and to work out a program for improving its condition, representatives of the Bank were requested to appear at a hearing at the office of the Comptroller of the Currency, beginning on February 14, 1940. The hearing was to be held before a disinterested examiner, who was to make formal findings and recommendations as to the action which the Comptroller of the Currency should take. Henry M. Bates, Dean Emeritus of the University of Michigan Law School, was selected as examiner to preside over the hearing and to prepare the report to the Comptroller. Representatives of the Bank refused to attend the hearing, but did come to Washington and enter into negotiations with representatives of the Comptroller of the Currency.

After long and involved negotiations the Bank agreed to take some steps to improve its condition. Among other things, it agreed to increase its capital funds in the amount of $30,000,000 by the issuance of preferred stock. Over $27,000,000 of the $30,000,000 was advanced by the Reconstruction Finance Corporation. That increase in capital funds greatly improved the ratio between deposits and capital and gave increased protection to the depositors. The Bank also agreed to establish a reserve against certain losses set up by the national bank examiners, to reduce real estate holdings,

-4-

to discontinue the practice of using unrealized write-ups in securities as a basis for the payment of dividends, and to take other specified steps to improve its condition.

Although the agreement of the Bank constituted a major victory in the efforts of the Comptroller of the Currency to supervise the Bank, and if faithfully carried out, will result in substantial improvement in the Bank's condition, the situation can never be properly supervised until Congress enacts adequate legislation to deal with bank holding companies such as Transamerica Corporation. So long as Transamerica interests continue to dominate the Bank of America and to use the Bank primarily as a source of revenue to bolster the value of the stock of Transamerica and as a convenient tool for facilitating the activities of the entire holding company group, it will be impossible for the regulatory authorities effectively to supervise the Bank and to assure that it will be operated in a safe and sound manner and for the benefit of its depositors. The Federal Government has at present no satisfactory control over bank holding companies, nor does existing legislation give the Comptroller of the Currency appropriate sanctions to assure that national banks will not pay excessive dividends, will write off losses, and will engage in safe and sound banking.

The arduous efforts of the office of the Comptroller of the Currency and of the Treasury Department have resulted in at least a temporary improvement in the condition of the Bank of America, but so long as this Bank is dominated by the Transamerica group there will be a constant effort on behalf of that group to use the Bank in a manner inconsistent with the best interests of the depositors and the general banking structure of the country. It is practically an impossible task to effectively supervise a bank of approximately 500 branches which is tied into a complicated holding company scheme in which the Bank is merely one of the creatures of the holding group and is operated for the benefit of that group. Already a program is under way to attempt a further expansion of the activities of the national banks dominated by Transamerica Corporation. There are now pending with the Comptroller of the Currency applications for 14 additional branches for the Bank of America, 6 additional branches for the First National Bank of Portland (owned by the Transamerica group), and a branch for the National Bank of Washington, Tacoma (also owned by the Transamerica group).

DJSses typed 12.18.40

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12/18/40

Orig is filed in gen'l diary.
(This goes in Bk. Annex)

January 2, 1941

Secretary Morgenthau

Mr. Foley

Memorandum for the Diary

Re: Meeting with Senator Glass on
<u>Bank Holding Company Legislation</u>.

Messrs. Delano, Foley, and Sherbondy discussed the Treasury Department's draft of the bank holding company bill with Senator Glass in his suite at the Mayflower Hotel on Thursday morning, January 2, 1941, at 10:30.

Mr. Delano opened the discussion by explaining briefly the necessity for legislation to control adequately holding companies of banks, after which Mr. Foley pointed out the differences between the Treasury Department draft of the bill and S. 3575, introduced in 1939 by Senators Glass and McAdoo. A comparative summary of the Treasury draft, the Treasury draft bill and S. 3575 (a copy of each are attached to this memorandum) were left with the Senator.

Mr. Foley emphasized that the Treasury draft would require all companies to reduce their holdings of stock in insured banks to 10% by June 30, 1944, while S. 3575 would, in effect, freeze the existing situation in that it would not require holding companies to dispose of any stock in insured banks which they now hold.

Mr. Foley also pointed out that the Treasury draft contained a provision prohibiting insured banks from paying dividends over the objection of the Comptroller of the Currency with respect to national banks, and the Federal Deposit Insurance Corporation with respect to State insured banks. Mr. Delano stated that, although he was aware of the arguments against concentrating too much authority over banks in an administrative agency and he recognized that veto power over dividends paid by insured banks was a rather powerful sanction, he felt sincerely that such control was necessary if the problem were to be effectively met. He pointed out that such veto control over dividends was necessary prior to June 30, 1944, in order to prevent <u>holding</u> companies from bleeding banks prior to the date of the termination of holding company control, and that it was also needed as a general sanction of indefinite duration for the Comptroller of the Currency over all national banks. Mr. Foley emphasized that the dividend control was a negative sanction, and did not require the approval of all dividends paid by insured banks.

Mr. Foley carried original and attachments to Secretary's 9:30 meeting, 1/3/41.

At one point, Senator Glass stated that he was impressed by the fact that much of this expansion of holding company systems had been permitted by the various Federal banking agencies. In reply, Mr. Foley pointed out that, although the Comptroller of the Currency had certain sanctions, such as appointment of a conservator, publication of the report of examination of a national bank, and a proceeding before the Board of Governors of the Federal Reserve System to remove directors and officers, those sanctions were either too drastic or too cumbersome to be used.

Senator Glass indicated that he was entirely in sympathy with the purpose of the legislation, namely, to restrict the concentration of control of banks in the hands of a small group, and he stated specifically that no man should have the control over banking presently held by A. P. Giannini. He stated, however, that he was desirous of introducing a bill which would pass, and would not want to introduce a bill that would result in excessive opposition.

Mr. Foley pointed out that the Treasury draft had not been shown to anyone outside the Treasury Department, because it was desired to discuss it with Senator Glass first, since he might care to suggest certain changes. Mr. Foley informed Senator Glass that the matter had not, as yet, been discussed with Senator Wagner, pursuant to the understanding with Senator Glass, because Senator Wagner had not been available. The understanding was that Senator Wagner would return to Washington shortly after January 1, and that he would call and arrange to see Secretary Morgenthau, Messrs. Delano and Foley.

Senator Glass stated that he desired to discuss the legislation with Mr. Crowley and with Senators Wagner, Adams, and Byrnes. He indicated that he preferred that the Treasury Department not discuss the bill with persons outside the Department, until he indicated that the time to do so was appropriate. It was agreed, however, that when Senator Wagner telephoned the Treasury Department the general character of the problem would be discussed with him, but that he would not be given a copy of the Treasury draft of the bill.

In terminating the conference, Senator Glass said to Mr. Foley that it would appear from glancing at the Treasury draft that it was simpler than his bill.

(Initialed) E. H. F., Jr.

DJS:EHFJr.:vis - 1/2/41.

January 2, 1941 204

TREASURY DRAFT

S. 1975 - INTRODUCED BY SENATORS GLASS AND McADOO

…INITIONS

…pany" means any bank, corporation, …rtnership, association, joint stock …mpany, business trust or organized …oup of people, or any receiver, …ustee, or other liquidating agent … any of the foregoing. Sec. 2(1), …ge 1.

…OLITION OF HOLDING COMPANY CONTROL OF …SURED BANKS

In effect, abolishes holding companies, …ffective June 30, 1944, by providing …at, after June 30, 1944, it shall be …lawful (1) for any company to own, con…ol, hold, or acquire more than 10% of …e voting securities of an insured bank, … (2) for more than 10% of the voting …curities of an insured bank to be held … trustees for the benefit of the stock…lders of any one company, or (3) for any …mpany to control in any manner the election … he majority of the directors of an insured …nk or the management or policies of an insured …nk. (Thus holding companies would have to re…ce all their holdings in stock of insured banks

DEFINITIONS

"Control" defined as ownership of more than 10% of voting stock for electing directors, or domination of election of majority of directors, of an insured bank or any other company. Sec. 2(7), page 2.

"Holding company" of an insured bank defined as:

(1) Any company which "controls" insured bank.

(2) Any company which "controls" another Company which "controls" insured bank.

(3) Every company in a system of "controlled" and "controlling" companies, in which any company or combination of companies "controls" the insured bank. Sec. 2(8), page 2.

"Affiliate" of an insured bank defined as:

(1) Any "holding company" of the insured bank.

(2) Every company in a system of "controlling" and "controlled" companies in which any company is "controlled" by the insured bank or by the "holding company" of such insured bank or by any company or combination of companies in the system.

(3) Any company having one or more shareholders who own more than 50% of the voting stock for electing directors of both the company and the insured bank. Sec. 2(9), page 3.

RESTRICTIONS UPON HOLDING COMPANIES

Does not abolish existing holding companies, nor require them to dispose of any bank stock which they now hold, or which they may acquire before the effective date of the Act, but merely imposes the following restrictions upon holding companies and insured banks "controlled" by holding companies:

(1) Existing holding companies may not acquire any more voting stock of any insured bank, and no company may acquire sufficient voting stock of an insured bank to become a holding company.

(These existing holding companies are not abolished, although they may not acquire any additional voting stock in insured banks and no new holding companies may be established.) Sec. 4, page 4.

(2) An insured bank controlled by a holding company cannot make loans to or collateralized with securities issued by, purchase securities from, or invest in securities issued by, the holding company or any other "affiliate" of the bank. Sec. 3, page 3.

(3) An insured bank "controlled" by a holding company cannot establish any new or additional branches. Sec. 5, page 5.

(4) No "voting permit" to a holding company to vote the stock of a bank, under existing legislation, may be granted or extended by the Board of Governors of the Federal Reserve System without the consent of the Board of Directors of the Federal Deposit Insurance Corporation. Sec. 6, page 7.

DIVIDEND RESTRICTIONS

Insured bank may not pay any dividends to any holding company so long as such holding company holds any voting stock of such insured bank, or of any holding company of such bank, acquired in violation of this Act. (This section only prohibits payment of dividends to the holding company if it has acquired additional voting stock in the insured bank after the effective date of the Act, and has, accordingly, acquired the stock in violation of the Act. Otherwise, the section does not cut off dividends from insured banks on stock now held by holding companies or acquired by them prior to the effective date of the Act.) Sec. 10, page 8.

IVIDEND RESTRICTIONS

After the date of approval of the
t it shall be unlawful for any
tional bank to declare or to pay
y dividend over the objection of
e Comptroller of the Currency,
for any State insured bank to
clare or pay any dividend over the
jection of the Federal Deposit
urance Corporation. (This section
ll prevent holding companies from
eding insured banks through ex-
ssive dividends prior to the ter-
ation of holding company control
June 30, 1944, and will protect
ured banks against payment of
cessive dividends after June 30,
44, if groups of persons should devise
ns to circumvent this Act and con-
their control over insured banks.)
. 5, page 3.

SANCTIONS FOR ENFORCING ACT

Board of Directors of Federal Deposit Insurance Corporation can obtain injunctive relief from courts to enjoin violations of Act. Sec. 6(3), page 5.

Company violating Act subject to fine of not exceeding $100,000. Individual violating Act subject to fine not exceeding $10,000, or not exceeding five years' imprisonment, or both. Sec. 6(1), page 4.

Board of Directors of Federal Deposit Insurance Corporation may remove from office, after hearing, any officer or director of an insured bank, who is responsible for, or fails to disclose to proper authorities, any violation of the Act. Sec. 6(2), page 4.

ACT TO BE ADMINISTERED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION

SANCTIONS FOR ENFORCING ACT

Board of Directors of Federal Deposit Insurance Corporation can obtain injunctive relief from courts to enjoin violations of Act. Sec. 9, page 7.

If an insured bank or any holding company of such insured bank violates the Act, the insured bank may become ineligible to receive deposits of public funds of the United States, and may have its insurance terminated by the Federal Deposit Insurance Corporation. Sec. 11, page 9.

Violation of Act a misdemeanor. $5,000 fine for each violation by a company, and $5,000 or not exceeding one year's imprisonment, or both, for each violation by a natural person. Sec. 14, page 12.

ACT TO BE ADMINISTERED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION

January 2, 1941

A BILL

To regulate the control of insured banks by holding companies, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. This Act may be cited as the "Bank Holding Company Act of 1941".

Section 2. Definitions. When used in this Act unless the context otherwise requires—

(1) The term "company" means any bank, corporation, partnership, association, joint stock company, business trust, or organized group of persons, whether incorporated or not, or any receiver, trustee, or other liquidating agent of any of the foregoing in his capacity as such, but shall not be deemed to include the United States, a State, any political subdivision of a State, or any agency of the United States, of a State, or of any political subdivision of a State.

(2) The term "insured bank" means any bank the deposits of which are insured under the provisions of section 12B of the Federal Reserve Act, as amended.

(3) The term "voting security" includes any security entitling the owner or holder thereof to vote in the direction

or management of the affairs of a bank, either directly or through any other person or company, and any security issued under or pursuant to any trust, agreement, or arrangement whereby a trustee or trustees or agent or agents for the owner or holder of such security are entitled to vote in the direction or management of the affairs of a bank.

(4) The terms "own", "control", "hold", and "acquire", as applied to voting securities are intended and shall be deemed to include the receipt, possession or enjoyment, directly or through any other company, entity, device, or status whatsoever, of any legal, equitable, or beneficial right, title, or interest in any voting security.

(5) The term "Board" means Board of Directors of the Federal Deposit Insurance Corporation.

(6) The term "State" means any State of the United States or the District of Columbia.

The preceding definitions shall be broadly interpreted so as to prevent the evasion or circumvention by any device whatsoever of the provisions of this Act or of any rule or regulation thereunder.

Section 3. Prohibitions. After June 30, 1944, it shall be unlawful (a) for any company to own, control, hold, or acquire more than 10 per centum of the voting securities of an insured bank, or (b) for more than 10 per centum of the voting securities of an insured bank to be held by a trustee or trustees for the benefit of the shareholders, members or participants of any one company, or (c) for any company to control in any manner, either directly, or indirectly through any other company or individual, or otherwise, the management or policies of an insured bank, or the election of a majority of the directors of an insured bank.

Section 4. Exemptions. Notwithstanding the foregoing, the prohibitions contained in section 3 of this Act shall not apply to any company which is determined by the Board (a) not to control the management or policies of any insured bank, or (b) to control only incidentally the management or policies of one or more insured banks, the company being primarily engaged in business not closely related to banking, when such control will not, in the opinion of the Board, adversely affect the banking business or the public or be inconsistent with the general purpose of this statute. In addition, section 3 of this Act shall not be construed as prohibiting any company from acquiring in good faith any voting securities of an insured bank in satisfaction of debts previously contracted in the course of its business, but no voting securities so acquired in excess of the amounts prescribed in section 3 of this Act shall be owned, controlled, or held by such company for a longer period than six months.

Section 5. Dividend Restrictions. After the date of the approval of this Act, it shall be unlawful for any insured bank, over the objection of the Comptroller of the Currency if such bank is a national banking association, or a bank or trust company doing business in the District of Columbia, or over the objection of the Board if such bank is not a national banking association, or a bank or trust company doing business in the District of Columbia, to declare or to pay any dividend on any of its capital stock when, in the opinion of the Comptroller of the Currency or the Board, as the case may be, the declaration or payment of any such dividend would not be compatible with the best interests of such bank, its depositors or other creditors, or with the public interest.

Section 6. Sanctions. (1) Any company which knowingly violates any provision of this Act or of any rule or regulation thereunder, upon conviction thereof, shall be subject, for each violation, to a fine of not exceeding $100,000, and any individual who knowingly violates any provision of this Act or of any rule or regulation thereunder, upon conviction thereof, shall be subject, for each violation, to a fine of not exceeding $10,000, or to imprisonment for not exceeding five years, or to both, in the discretion of the court.

(2) Whenever, in the opinion of the Board, any officer or director of an insured bank is responsible for any violation of any of the provisions of this Act, or of any of the rules or regulations thereunder or, having knowledge of a violation, fails to disclose such violation to the proper authorities, the Board may cause notice to be served upon such director or officer to appear before the Board to show cause why he should not be removed from office. A copy of such order shall be sent to each director of the bank affected, by registered mail. If after granting the accused director or officer a

reasonable opportunity to be heard the Board finds that he is responsible for, or having knowledge thereof has failed to disclose to the proper authorities, any such violation, the Board in its discretion, may order that such director or officer be removed from office. A copy of such order shall be served upon such director or officer. A copy of such order shall also be served upon the bank of which he is a director or officer, whereupon such director or officer shall cease to be a director or officer of such bank. Any such director or officer removed from office as herein provided, who thereafter participates in any manner in the management of such bank, shall be deemed to have violated this Act and shall be subject to the penalties prescribed in subsection (1) of this section.

(3) Whenever it shall appear to the Board that any person is engaged in or about to engage in any acts or practices which constitute or will constitute a violation of any of the provisions of this Act, or of any rule or regulation thereunder, the Board may in its discretion bring an action, in any court granted jurisdiction in such cases by this Act, to enjoin such acts or practices and to enforce compliance with the provisions of this Act or of any rule or regulation thereunder, and upon a proper showing a permanent or temporary injunction or decree or restraining or mandatory order shall be granted without bond.

Section 7. Jurisdiction. The District Courts of the United States, and the United States Courts of any Territory or other place subject to the jurisdiction of the United States, shall have original jurisdiction over any proceedings instituted under any of the provisions of this Act or of any rule or regulation thereunder, and, concurrently with State and

Territorial courts, of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, any provisions of this Act, or of any rule or regulation thereunder. No costs shall be assessed for or against the Board in any proceeding under this Act brought by or against the Board in any court.

Section 8. Administration. (1) The administration of this Act is hereby vested in the Board which shall have authority to make, issue, amend and rescind such rules and regulations (including definitions of banking, technical and trade terms used in this Act) as may be necessary or appropriate to carry out the provisions of this Act.

(2) The Board, in its discretion, may investigate any facts, conditions, practices, or matters which it may deem necessary or appropriate for the purpose of determining whether any company or individual has violated or is about to violate any provision of this Act or of any rule or regulation thereunder, or for the purpose of aiding in the enforcement of the provisions of this Act, or aiding in the prescribing of rules and regulations thereunder, or in the obtaining of information to serve as a basis for recommending further legislation concerning the matters to which this Act relates. For the purpose of any investigation or any other proceeding under this Act, any member of the Board, or any officer thereof designated

by it, is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records which the Board, or any such member, or any such officer, deems relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in any State or in any Territory or other place subject to the jurisdiction of the United States at any designated place of hearing. In case of contumacy by or refusal to obey a subpoena issued to, any person, the Board may invoke the aid of any District Court of the United States or of any United States Court of any Territory or other place subject to the jurisdiction of the United States, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, contracts, agreements, or other records. Any such Court may issue an order requiring such person to appear before the Board, any member of the Board, or any officer thereof designated by the Board, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; and any failure to obey such order of the Court may be punished by such Court as a contempt thereof.

Section 9. Separability of Provisions. If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this Act and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

75TH CONGRESS
3D SESSION

S. 3575

IN THE SENATE OF THE UNITED STATES

JANUARY 5 (calendar day, MARCH 2), 1938

Mr. GLASS and Mr. McADOO introduced the following bill; which was read twice and referred to the Committee on Banking and Currency

A BILL

To provide for the regulation of bank holding companies and affiliates, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Bank Holding Company Act of 1938".

SEC. 2. (1) "Insured bank" means any operating bank, banking association, trust company, savings bank, or other banking institution, the deposits of which are insured in accordance with the provisions of section 12B of the Federal Reserve Act, as amended.

(2) "Person" means any individual, partnership, association of persons, or company.

(3) "Company" means any corporation, incorporated bank, banking association, insured bank, joint-stock company, business trust, or trustees of any voting trust.

(4) "Director" means any director or trustee of any company, or any individual who performs similar functions in respect of any company.

(5) "Securities" include notes, drafts, acceptances, bonds, debentures, capital notes, voting trust certificates, capital stock, treasury stock, warrants, and rights to subscribe to or certificates of deposit for any of the foregoing.

(6) "Capital stock" includes common and preferred stock, capital notes, and debentures.

(7) "Control" means the legal or equitable ownership or holding of more than 10 per centum of the total number or par value of the outstanding shares of capital stock or total number of voting rights for electing directors, or the domination, directly or indirectly, in any manner of the election of a majority of the directors of an insured bank or any other company, and wherever used in this Act the word "control" in any grammatical form shall have this meaning.

(8) "Holding company" of any insured bank means any company which controls the insured bank or controls any other company which in turn controls the insured bank, and every company in any series or succession of companies in any system of controlling and controlled companies, in which

any company or combination of companies control the insured bank.

(9) "Affiliate" of any insured bank means any company which with respect to the insured bank is a holding company, every company in any series or succession of companies constituting any system of controlling and controlled companies, in which any company is controlled by the insured bank or by such holding company or by any company or combination of companies in such system, and any company having one or more shareholders who have legal or equitable ownership of more than 50 per centum of the number or par value of the outstanding shares of capital stock or voting rights for electing directors of both the company and the insured bank: *Provided*, That notwithstanding the foregoing, any company engaged solely in the business of (a) operating a safe-deposit vault; or (b) holding or operating the building and premises occupied by any insured bank, shall not be an affiliate of the insured bank.

(10) "Effective date" means the date of enactment of this Act.

SEC. 3. It shall be unlawful for any insured bank, directly or indirectly or by any device whatever (1) to make any loan or extension of credit to any of its affiliates or to invest any of its funds or any funds administered by it, in any securities issued or guaranteed by any of its affiliates; or (2) to purchase any securities from any of its affiliates; or (3) to make any loan or extension of credit to any person secured by any collateral consisting of any securities issued or guaranteed by any of its affiliates. Notwithstanding the foregoing, any insured bank, which prior to the effective date, shall have made any loans, extensions of credit, or investments which by virtue of this section would constitute prohibited loans, extensions of credit, or investments if made after the effective date, shall have three years after the effective date within which to collect, sell, or otherwise dispose thereof. During said three-year period any such loans or extensions of credit may be renewed or extended, but no renewal or extension shall be given beyond said period. Within two years after the effective date, where necessary to save itself from loss, any such insured bank may accept securities issued or guaranteed by its affiliates, as payments to apply on or as collateral security for loans or extensions of credit made prior to the effective date to any person other than one of its affiliates, and in such event the insured bank shall collect, sell, or otherwise dispose of such securities within three years after the effective date.

SEC. 4. It shall be unlawful for any company to acquire any capital stock, or voting rights for electing directors, of any insured bank or of any holding company of any

insured bank, if such company is or upon such acquisition would become a holding company of any insured bank.

SEC. 5. No insured bank shall establish or operate or be permitted to establish or operate any new or additional branches while such insured bank is controlled by any holding company.

SEC. 6. Every company shall before the expiration of sixty days after the effective date cause to be filed with the cashier or secretary of every insured bank as to which it is an affiliate, an affidavit to be signed by one of its executive officers having knowledge of the facts, which shall set forth as of the effective date (1) the total number and par value of the outstanding shares of capital stock and total number of voting rights for electing directors of such insured bank, which such company owns or holds, the names of the persons in whose names such shares or rights are issued and a full description of any instruments evidencing such shares or rights; (2) the amount of any indebtedness of such company to the insured bank, direct and indirect, the maturity dates, and the person in whose name such indebtedness stands, if other than the company; and (3) an itemized statement of its assets and liabilities as of the last day of the preceding month and of its earnings for the current fiscal year to the last day of the preceding month, if the company be directly or indirectly indebted to the bank. Within twenty days after the close of each calendar month thereafter, if there has been any change in any of the matters covered in such affidavit, except item 3 thereof, during such month, the company shall file a like report, so long as it shall continue to stand in the relation of an affiliate to such insured bank. Every company shall file within thirty days after the last day of June and December of each year with the cashier or secretary of every insured bank as to which it is an affiliate a like sworn itemized statement of its assets and liabilities as of the last day of June and December of each year and of its earnings for the current fiscal year to the last day of June and December of each year. Every insured bank shall retain such affidavits and statements on file as a part of its records for at least three years.

SEC. 7. Every insured bank, holding company, and affiliate shall file with the Federal Deposit Insurance Corporation such annual, semiannual, quarterly, and other periodic and special reports, the answers to such specific questions and the minutes of such directors', stockholders', committees', and other meetings, as the Corporation by order may prescribe as necessary or appropriate for the proper consideration of the condition of any insured bank or for the proper supervision of the Federal deposit insurance system, and the Corporation may make such investigations of any insured bank, holding company or affiliate, and

the books and records thereof, as shall be necessary or proper to disclose the condition of any insured bank or the effect of the relations between any holding company or affiliate and any insured bank, upon the Federal deposit insurance system or any insured bank. And such investigations shall be made at the expense of the Corporation; and it shall be unlawful for any insured bank, holding company, or affiliate knowingly to make any false statement or report to the Corporation or to refuse authorized representatives of the Corporation access to any information required in connection with any such investigations.

SEC. 8. After the effective date, the Board of Governors of the Federal Reserve System shall not, without the consent of the Board of Directors of the Federal Deposit Insurance Corporation, grant or extend the operative effect of any voting permit to any holding company affiliate under the provisions of section 2 of the Banking Act of 1933, as amended (U. S. C., title 12, sec. 61).

SEC. 9. Whenever it shall appear to the Board of Directors of the Federal Deposit Insurance Corporation that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this Act, the Board in its discretion may bring an action in the proper district court of the United States or the Supreme Court of the District of Columbia, to enjoin such acts or practices and to enforce compliance with this Act, and upon a proper showing a temporary or permanent injunction, decree, or restraining order shall be granted without bond. The Corporation may transmit such evidence as may be available concerning such acts or practices to any United States attorney or to the Attorney General, who, in his discretion, may institute appropriate criminal proceedings under this Act. The proper district for the commencement of any injunction proceeding pursuant to this section shall be any district wherein any act or transaction constituting the violation occurred or in which the defendant is an inhabitant or transacts business, and process in such cases may be served in any district in which the defendant is an inhabitant or transacts business or wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 225 and 347 of title 28 of the United States Code, and section 7, as amended, of the Act entitled "An Act to establish a court of appeals for the District of Columbia", approved February 9, 1893 (D. C. Code, title 18, sec. 26). No costs shall be assessed for or against the Corporation in any proceeding under this Act brought by it in any court.

SEC. 10. It shall be unlawful for any insured bank to pay to any holding company, directly or indirectly, any dividend on any shares of its capital stock so long as such

holding company shall continue to hold any shares of the capital stock or voting rights for electing directors of such insured bank, or of any company which is a holding company with respect of such insured bank, acquired in violation of any provision of this act.

SEC. 11. Whenever the Board of Directors of the Federal Deposit Insurance Corporation shall determine, after reasonable notice to the company affected an opportunity for a hearing, that any insured bank or any company which with respect to any insured bank is a holding company has violated any provision of this Act, and that such action is necessary for the protection of the public or the safety and integrity of the Federal deposit insurance system, it may make a finding of the facts of such violation. Upon making such finding, the Board of Directors of the Federal Deposit Insurance Corporation may cause the same to be published in the Federal Register and thereafter the insured bank shall be ineligible to receive deposits of public funds of the United States or of any public officer, agent, or instrumentality of the United States. Upon making such finding, the Board of Directors of the Federal Deposit Insurance Corporation may proceed to terminate the insured status of the insured bank, in like manner as provided in subsection (i) of section 12B of the Federal Reserve Act, as amended. Upon notification in writing by the Board of Directors of the Federal Deposit Insurance Corporation to the Board of Governors of the Federal Reserve System of any such finding of such violation on the part of any holding company and request for such revocation, the Board of Governors of the Federal Reserve System forthwith shall proceed to revoke any voting permit theretofore granted to such holding company as a holding company affiliate under the provisions of section 2 of the Banking Act of 1933, as amended (U. S. C., title 12, sec. 61). The Board of Directors of the Federal Deposit Insurance Corporation shall have the right, upon such terms and conditions as may be consistent with the public interest, the safety and integrity of the Federal deposit insurance system and the purposes of this Act, to review, suspend, modify, or revoke any order or finding made pursuant to this section.

Sec. 12. Any person or party aggrieved by an order issued by the Board of Directors of the Federal Deposit Insurance Corporation under this Act may obtain a review of such order in the circuit court of appeals of the United States within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of said Board be modified or set aside in whole or in part. A copy of such petition shall be forthwith served upon any member of said

Board, or upon any officer thereof designated by the said Board for that purpose, and thereupon the said Board shall certify and file in the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part. No objection to the order of said Board shall be considered by the court unless such objection shall have been urged before said Board or unless there were reasonable grounds for failure so to do. The findings of the said Board as to the facts, if supported by substantial evidence, shall be conclusive. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before said Board, the court may order such additional evidence to be taken before the said Board and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. Said Board may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which, if supported by substantial evidence, shall be conclusive, together with its recommendation, if any, for the modification or setting aside of the original order.

The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of said Board shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 346 and 347 of title 28 of the United States Code. The commencement of proceedings under this section shall not, unless specifically ordered by the court, operate as a stay of said Board's order.

SEC. 13. It shall be unlawful for the individual directors, officers, or agents of any company to authorize, order, or do any act constituting in whole or in part a violation of the provisions of this Act by such company.

SEC. 14. Any person who knowingly violates any provision of this Act shall be guilty of a misdemeanor; any company which knowingly violates any provision of this Act, upon conviction thereof, shall be punished by fine of not exceeding $5,000 for each violation, and any natural person who knowingly violates any provision of this Act, upon conviction thereof, shall be punished for each violation by fine of not exceeding $5,000 or by imprisonment for not exceeding one year, or by both, in the discretion of the court.

SEC. 15. No provision in this Act shall apply to, or be deemed to include, the United States, a State, or any political subdivision of a State, or any corporation which is

wholly owned, directly or indirectly, by any one or more of the foregoing, or any corporation which is managed by a person or persons appointed pursuant to law by the President of the United States or the Governor of a State or the chief executive of any political subdivision of a State, or any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty or to any company which is determined by the Board of Directors of the Federal Deposit Insurance Corporation, on application for exemption or of its own motion, to be only incidentally a holding company and to be primarily engaged in business other than holding the stock of or managing or controlling banks, banking associations, savings banks, or trust companies, or to be only incidentally or temporarily an affiliate of any insured bank.

SEC. 16. If any provision of this Act or the application of such provision to any person or circumstances shall be held invalid, the remainder of the Act and the application of such provision to persons or circumstances other than those as to which it is declared invalid shall not be affected thereby.

Miss Chauncey
For your file
DWB

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January 10, 1941

Personal

Mr. W. P. Folger
Chief National Bank Examiner
Room 219 Treasury Building
Washington, D. C.

Dear Mr. Folger:

Wednesday I had an informal discussion with Russell G. Smith, Executive Vice President of the Bank of America National Trust and Savings Association, relative to a possible amicable settlement of the banking premises controversy. Mr. Smith has made the following proposal. However, it is entirely tentative and subject to acceptance by our office as well as the Executive Committee of the bank.

It appears that the total depreciation estimated by the American Appraisal Company on all banking premises of the bank, which include those criticised by our examiners and subject to Paragraph 5 of the "Requirement" list, aggregates something between $4,000,000.00 and $4,500,000.00. Smith proposes that the bank write off this amount, adhering strictly to the specific amounts and premises recommended by the American Appraisal Company, and by such action create a formula and precedent for this office.

If such proposal is agreeable to the Comptroller and the bank, Paragraph 5 will automatically be expunged from the "Requirement" list and the local Committee discharged, and throwing the responsibility for the write-offs back with this office.

The amount which Mr. Smith proposes to write off is not entirely adequate to suffice the needs as I see them. Nevertheless, if there were no other impedimenta to deal with, I am sure that we could spread the funds to satisfactorily cover needed depreciation. However, I do not favor the idea of being bound to the American Appraisal

Company's appraisements or compelled to take the charge-offs as recommended by the Appraisal Company. The idea of establishing a precedent for my examiners and successors is extremely odious, and I sincerely hope that no agreement will be reached with the Comptroller's office to include such a proposition. As you know, I have not been in sympathy with the so-called formula which Mr. Clerk of the Federal Reserve Bank avers was agreed upon in the Washington conference and up to this time I have not acknowledged that the Committee was bound by such a formula. Under the circumstances, I consider it entirely inconsistent to ignore one formula and adopt another one which is more vicious than the one submitted by Mr. Clerk.

Mr. Smith advises me that President Giannini is now en route East and will communicate with him from Chicago. I do not know if it is Mr. Giannini's intention to go to Washington before his return to the Coast. If he does, undoubtedly he will wish to discuss this latest development with you. Should you have a discussion with Mr. Giannini or any other members of the bank's staff regarding this phase of the banking premises, I will appreciate it very much if you will advise me the results of your conference.

Very truly yours,

(Signed) Irwin D. Wright
Chief National Bank Examiner
Twelfth Federal Reserve District