Book 366

Bank of America

January 1 - 20, 1940

Bank of America

January 2, 1940

At 4:10 p.m. Mr. R.P.A. Everard, secretary of the Board of Directors of the Bank of America N.T. & S.A. called me on the long distance telephone. He explained that since he understood Mr. Delano was out of the city, he was calling me.

Mr. Everard told me that since he had been advised by counsel that the contents of the Comptroller's letter of December 12th, addressed to Mr. A. P. Giannini, chairman of the board of the Bank, was libelous in character and that he should not assist in its distribution, he was unable to accede to the Comptroller's request that he distribute copies to the individual directors of the Bank. He asked that this office give him authorization by wire to make such distribution as the agent of the Comptroller rather than as agent for the board. He said that he would appreciate anything we might do to help him out of the embarrassing situation in which he finds himself.

I told Mr. Everard that I would "take a look at it" and let him know later in the day.

Following conferences with the Comptroller and Mr. Foley, and later in the Secretary's office, a telegram was dispatched by the Comptroller to Mr. Everard declining to appoint him as agent for the Comptroller to distribute the letters and informing him that the individual directors have been advised they could secure copies at our offices in San Francisco and Los Angeles.

When I reached home about 6:30 p.m. another call came from Mr. Everard, who had not yet received the telegram and who stated that he was very eager to have a reply promptly so that he could get the letters out to the directors as soon as possible. I told him that a wire had been dispatched to him by the Comptroller which he should have very soon and I indicated its contents to him.

Jpm

STRAIGHT WIRE

January 2, 1940
5:15 P. M.

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

Re your telephone conversation with Upham the Comptroller's communication of December 28 addressed to you requesting the distribution among the individual members of the Board of Directors of certain correspondence between the Comptroller and the Chairman of your Board was sent to you in accordance with the resolution of your Board of Directors of September 30, 1938 providing for the manner in which official communications from the Comptroller should be communicated to your Board STOP I am unable to accede to your request that I authorize you to distribute the communications as my agent STOP The individual members of your Board have been notified that sealed duplicate copies of the communication and enclosures are available to them at the offices of the National Bank Examiners in San Francisco and Los Angeles, in the event that they are unable to obtain them from you.

Comptroller of the Currency
DELANO

January 2, 1940
5:00 p.m.

RE: BANK OF AMERICA

Present: Mr. Delano
Mr. Upham
Mr. Young
Mr. Gaston
Mr. Foley
Mr. Schwarz
Mr. Bell

H.M.Jr: Tell us what it is about, will you?

Delano: A call came in from the Bank of America for me, which I did not take, and they got Mr. Upham subsequently and they asked Mr. Upham whether - this Everard, who is the Secretary of the bank, asked Mr. Upham whether he would designate, or the Comptroller of the Currency would designate Mr. Everard as the agent of the Comptroller for the distribution of these letters, because the letters were libelous and he didn't want the distribution placed on him as a representative of the bank, and Cy quite properly said he would take the matter up. This copy of a telegram is our answer.

H.M.Jr: "Re your telephone conversation with Upham the Comptroller's communication of December 28th addressed to you requesting the distribution among the individual members of the Board of Directors of certain correspondence between the Comptroller and the Chairman of your Board was sent to you in accordance with the resolution of your Board of Directors of September 30, 1938 providing for the manner in which official communications from the Comptroller should be communicated to your Board stop I am unable to accede to your request that I authorize you to distribute the communications as my agent stop The individual members of your Board have been notified that sealed duplicate copies of the communication and enclosures are available to them at the offices of the national bank examiners in San Francisco and Los Angeles, in the event that they are unable to obtain them from you."

I have got just one suggestion to make. The telegraph office permits us to use the word "period" without paying for it. You have to pay for the word "stop".

Dan, go ahead. From now on this is your worry.

Delano: Should I from now on report to Mr. Bell?

H.M.Jr: Would you?

Delano: Yes.

H.M.Jr: And I have asked Phil Young to help Bell and me and he is available also to you. I am going to try to keep track of your office, what the SEC does, and what the Labor Relations Board does. It is two-way traffic. If you have anything that you think Mr. Delano ought to know, you let him know, as well as Mr. Bell and me.

Young: Yes, sir.

Bell: This is in accordance with what we did here the other day?

Foley: Yes.

Bell: Except that I am not sure just how these copies went to the Secretary. Were they in sealed envelopes or were they just enclosed in his letter to distribute if he wanted to? As a matter of fact, we were afraid he wouldn't and that is the reason you sent them to the examiner, but there was a suggestion that they be sealed.

Foley: Either there is - there is an individual letter addressed to each member of the Board of Directors and I think that has been put in an individual envelope and sealed and all the envelopes put in a big envelope and sent to the Secretary, but I didn't attend to the mailing of it and I can't give you an affidavit that that is actually the way it went out. What is the difference, Dan, what is your point?

Bell: I was thinking that if this Secretary just takes the envelope and hands it over to a Director and the envelope is addressed to the Director, is that a passing of libelous material?

Delano: What do you mean, libelous?

Bell: That is what you are afraid of, as I understand it.

Foley: The whole thing is ridiculous. The whole thing is a privileged communication, an official in the line of his duty, and it couldn't possibly be libelous. These are just tactics they are assuming out there to delay and hinder the communication of information concerning the bank on the part of the Comptroller to the members of the Board of Directors.

H.M.Jr: That is the damndest thing I have ever heard of in my life.

Bell: Of course it is ridiculous, and you can't certainly authorize him to deliver them as your agent.

Foley: Certainly not. That is his responsibility. It was delegated to him by a resolution of the Board of Directors and that resolution was certified and communicated to us. Now, if he doesn't want to do his duty as a Secretary of the Board of Directors, that is a matter between him and the bank, but it isn't up to the Comptroller.

Schwarz: How does he know what is in the envelopes if they are sealed?

Delano: He has got a copy.

Bell: I think that is all right.

Foley: And there are five or six Directors that are officers of the bank that are right there with him.

H.M.Jr: I can't see that.

Bell: Looks all right to me.

H.M.Jr: Cy?

Upham: It is all right.

Bell: It is in line with what we agreed on last Friday.

Foley: It is the thing the Secretary foresaw might happen when he suggested we send copies to the examiner's office so that they would be available if they couldn't get them from the Director of the Board.

H.M.Jr: I guaranteed this young man (Mr. Young) an interesting twelve months.

Upham: Oh yes.

Bell: Will it last that long? It has been two years, hasn't it?

H.M.Jr: They are certainly counting each day. They figure I will be here twelve months and they are counting each day.

(COPY)

BOARD OF GOVERNORS

of the

FEDERAL RESERVE SYSTEM

Washington

January 3, 1940

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

Dear Mr. Delano:

At the request of the Board of Governors I am sending you herewith a copy of a letter dated December 29, 1939, addressed to the Board of Governors of the Federal Reserve System and signed "Bank of America, National Trust & Savings Association by Charles W. Collins, Counsel", together with a copy of a letter dated January 2, 1940, addressed to the Board of Governors of the Federal Reserve System and signed by Charles W. Collins, both relating to the Bank of America, National Trust & Savings Association.

Very truly yours,

(SIGNED) CHESTER MORRILL,

Chester Morrill,
Secretary.

Enclosures 2

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(COPY)

CHARLES W. COLLINS
National Press Building
Washington, D. C.

January 2, 1940

Board of Governors
Federal Reserve System,
Washington, D. C.

Gentlemen:

On December 29, 1939, upon instructions from Mr. L. M. Giannini, President of Bank of America, N.T. & S.A., San Francisco, I signed and mailed to you a letter by the Bank in which it, for reasons set forth therein, requested that you order an examination of its condition.

I have requested Mr. Giannini to bring this matter before the Board of Directors of the Bank at the next regular meeting for the purpose of the passage of a resolution which will ratify and confirm this action taken by me.

Respectfully,

(SIGNED) CHARLES W. COLLINS.

C O P Y

BANK OF AMERICA
Trust and
NATIONAL Savings ASSOCIATION

San Francisco, California

December 29, 1939

Board of Governors
Federal Reserve System
Washington, D. C.

Gentlemen:

We are taking the liberty by means of this letter of inviting your attention to a situation which appears to us to be of grave concern to the Board of Governors of the Federal Reserve System. It relates to the operations of our bank — Bank of America, National Trust and Savings Association — as a member bank in the Twelfth Federal Reserve District and to the responsibilities to the community which that membership entails.

We are fully aware that the Board of Governors is not directly concerned with the manner in which the functions of other agencies of the government are discharged. On the other hand, there may arise situations where, from whatever causes, a member bank may be so harassed and pursued with the publication of unproven and unadmitted charges of misconduct that its usefulness as a member bank may become jeopardized and the Federal Reserve System thereby adversely affected.

It is not necessary to give to your Board detailed statistical information as to the comparative status of this bank as a member bank of the Twelfth Federal Reserve District. It embraces in its assets about 30% of all of the Federal Reserve member bank assets of the Twelfth District. Its assets eligible for loans and discounts with the Federal Reserve Bank in San Francisco are approximately $1,183,000,000. Its reserves carried with that bank are $157,000,000. We have no doubt of the authority of your Board under the Federal Reserve Act to make its own investigation at any time, in order to inform yourselves for your own purposes under the law, of the condition of the assets of any member bank.

Up to the beginning of the spring of 1938 our bank enjoyed — as we believe the record will show — a normal relationship to the office of the Comptroller of the Currency. Later on that year the Comptroller's office appeared to assume a hostile attitude toward our entire institution, first evidenced by the examination completed April 28, 1938, and later by the letter signed by Deputy Comptroller Gough on September 13, 1938, upon the same day that the Secretary of the Treasury had by Departmental Circular #595 transferred to his office the entire legal staff of the Comptroller of the Currency; and the same day also that the telegram (referred to below) was sent by Acting Comptroller to the bank's directors respecting the dividend. Since that time our bank has been harried and threatened privately and publicly — and we think unfairly and unjustly — until ground is being laid for confusion in the public mind as to its condition and consequently occasion for gossip and rumor to the detriment of its welfare and that of the Federal Reserve System.

We shall call to your attention some of the incidents which give rise to those conditions. This is done not with any idea that your Board will concern itself with personalities, motives, or jurisdictional questions, but with the effect which may ultimately be produced by these attacks on the bank.

On September 13, 1938, the Acting Comptroller sent a telegram to be read by his examiner to the board of directors of the bank in which he threatened to cite the bank's officers and directors to your Board of Governors under section 30 of the Banking Act of 1933 on account of the declaration of the regular dividend. This action was taken without prior notice to or formal discussion with the bank. Following this action, President L. M. Giannini telegraphed your Board of Governors requesting that it set a date for hearing of the Comptroller's charges. He at the same time notified the Comptroller of this message to your Board.

On September 23, 1938, ten days later, the Acting Comptroller addressed a letter to our board of directors at their places of business without indication of its personal and confidential nature, making theretofore unheard of drastic criticisms of the affairs of the bank with a further threat to invoke section 30 of the Banking Act of 1933 before your Board and further to invoke the terms of section 5239 of the Revised Statutes. (This letter was answered in detail by the Board of Directors of the bank on October 11, 1938, and a conference with the Comptroller requested.)

On November 23, 1938, Comptroller Delano complied with the request of the board of directors for a conference with the management and President L. M. Giannini, with two other officers of the bank, arrived in Washington on December 5, 1938. After waiting three days, conferences were held from December 8th to December 15th with the Comptroller and members of the Interdepartmental Committee, invited in by the Comptroller, upon written agenda prepared and insisted upon by the Comptroller. On December 15th, a final agreement was reached and reduced to writing by the Treasury Department which bound the bank to a working program and which embraced such items submitted by the Comptroller for discussion as he desired to insist upon. This program, notwithstanding the circumstance that President Giannini thought its terms unduly harsh (as shown by his letter to the Comptroller), was accepted by the bank and was approved by the members of the Interdepartmental Committee who attended the conferences. Since that time we have consistently adhered to its terms although the Comptroller of the Currency has in his treatment of the bank acted as though no such conferences had ever been held.

Subsequent examinations of the bank have completely ignored the program of December 15, 1938, and have become more and more arbitrary and vindictive. This is clearly illustrated by the recent arbitrary valuations of banking premises by the examiner. And letters from the Comptroller following these examinations have become more and more threatening, captious, and discourteous in respect to the very items of the program of December 15th which he imposed upon the bank and under which it is operating, so far as those items are concerned.

Beginning with the events which came to pass on September 13, 1938, the Comptroller began to address letters to the board of directors in respect to the affairs of the bank instead of to the officers. While we do not question the right of the Comptroller to address whatever communications he may see fit to the board of directors, we make the comment here that, considering the history of the relationship of this bank to the Comptroller's office, the sudden shift from direct communication with the management to communication with the board of directors was unusual and in sharp contrast to the regular procedure. Under ordinary circumstances, its effect might have been to destroy the confidence of the board in the management. A statewide board of business men have thus been repeatedly called upon to re-examine their responsibilities under the national banking laws under thinly veiled threats that they would be proceeded against personally for failure to manage the bank properly. Such communications to the board of directors were made on the following dates: September 13, 1938 (two communications); September 23, 1938 (two communications); April 14, 1939; July 31, 1939; August 29, 1939; October 2, 1939; October 27, 1939; and November 15, 1939.

As indicated above the Comptroller on September 13, 1938, made his first threat or warning to invoke section 30 of the Banking Act of 1933 which provides for an investigation by the Board of Governors of the Federal Reserve System. We accepted this challenge and on September 20, 1938, requested your Board to set a date for a hearing. Subsequently the Comptroller threatened in several communications, namely, September 23, 1938, July 31, 1939, and October 2, 1939, to invoke section 30; and we again on July 21, 1939, August 5, 1939, November 2, 1939, and November 8, 1939, indicated our willingness and desire to have the questions raised by the Comptroller placed before your Board for determination. His last letter dated December 12, 1939, to Mr. A. P. Giannini goes so far as to state that our bank is guilty of unsafe and unsound banking practices and violations of law as though there has been an actual citation to and determination upon these questions by your Board.

Unfortunately personalities have entered into the situation. The record clearly shows that the Secretary of the Treasury, contrary to tradition and practice, has personally taken over from the Comptroller of the Currency the supervision of our bank and the unusual and extraordinary (and in some respects unlawful as already adjudicated) procedures which have been adopted are due to this situation. We have thus been put into a class to ourselves alone and our bank is not being examined and supervised as are other national banks. We have conferred with the Comptroller and with persons designated by him but we feel that we have received no fair and just consideration of our problems. Specifically we do not know who is directing in detail the supervision of our bank. It has now come to pass, after nearly sixteen months of this treatment, that all rational approach to the administration of the national banking laws in our case seems to have been lost.

The Secretary of the Treasury in the conduct of his proceedings against our bank, has, without our knowledge or consent, seen fit on more than one occasion to discuss the private and confidential affairs of our bank with other bankers who were not engaged in the service of the United States and who had no responsibility for the supervision of our bank. The mere statement of this fact would seem to condemn it as an improper method of bank supervision because it violates the fundamental principle that the affairs of a bank should be held in the strictest confidence by the supervising authorities.

The proceedings of the Securities and Exchange Commission against Transamerica Corporation which involved also the bank, have supplemented Treasury action. The great amount of unlawful publication of unproven charges against our bank by the Commission based upon unauthoritative but confidential data furnished from the files of the Comptroller of the Currency to the Commission by the Secretary of the Treasury, and the vicious methods pursued by the Commission in cooperation with the Secretary to condemn the bank in the eyes of the public on ex parte data without a hearing (now all a matter of court record), would have destroyed a bank whose good will was less strongly entrenched than is the case with our bank.

The proceedings of the Securities and Exchange Commission may be regarded as a passing phenomenon so far as the bank is concerned. But Treasury action is continuous and in the present state of affairs, the kind of examinations which are being conducted of our bank under the direction of the Secretary are not such as to reveal its true condition as a member bank, and your Board of Governors is not therefore correctly informed of its condition by these examinations.

Mr. A. P. Giannini, Chairman, and Mr. L. M. Giannini, President, came to Washington and with our counsel, Mr. Charles W. Collins, conferred with the Comptroller of the Currency and several Treasury lawyers on November 16, 17, and 18, 1939. We had never felt that there could be any serious disagreement between us and the Comptroller especially after the bank had accepted his program of December 15, 1938, and had put it in operation. But while the above mentioned conferences were in progress, the Comptroller dispatched a letter to our board of directors demanding that an item of $9,000,000 be immediately charged off or a republication of the last report of condition be made which would show the $9,000,000 as a loss. This was supposed to be the principal subject matter of the conferences. It involved a dispute between the bank and the examiner over the latter's arbitrary valuation of the bank premises. We had recent appraisals by the American Appraisal Company of these properties which showed that the bank was carrying them at figures below their appraisal values and therefore that the examiner's figures had no standing. The Comptroller knew we had the figures of these new appraisals. We cite this as an illustration of the spirit in which the Comptroller entered the conferences.

At the conclusion of the conferences, the Comptroller announced that his position remained unchanged but that he would consult with the office of General Counsel for the Treasury Department and would give the matters consideration. On December 12, 1939, he addressed a letter to Mr. A. P. Giannini in which he made accusations which we regard as grossly defamatory and libelous, and in which he appears to give notice that after ninety days from the date of the letter, he will publish the last report of examination of the bank, as authorized by section 5240 of the Revised Statutes.

Bank of America is by far the most important bank in the Twelfth Federal Reserve District. It is the fourth largest bank in the United States. Under the law the Federal Reserve Bank in San Francisco is charged with the responsibility of informing your Board of the condition of any member bank in the Twelfth District, if and when your Board requests. The situation set forth in this letter could possibly result in a grave financial disturbance which would involve the entire District. It would seem therefore that your Board has ample occasion to order the Federal Reserve Bank of San Francisco to make an examination of the bank for your information.

Our responsibilities in the Twelfth District are very heavy. In the state of California alone, our customers and stockholders number more than 2,500,000 persons, well over one-third of the population of the state. Our banking services reach directly and indirectly nearly every household in California. No other member bank has such an extensive and intimate contact with the community which it serves. We ought not to be left in a position where constant questions of our financial condition are fostered by the Treasury while at the same time completely ignoring our well authenticated answers to them. We appear to have reached an impasse.

We and our own board of directors are entitled to some consideration in this matter. One of the results of an investigation by your Board would be to give us the benefit of another point of view as to the condition of the bank.

For the reasons set forth above, we request that your Board of Governors upon its own responsibility under the law order an examination of the bank and determine for itself its condition.

Respectfully,

BANK OF AMERICA, NATIONAL TRUST & SAVINGS ASSOCIATION
By (Signed) Charles W. Collins
Counsel

1/3/40

Notes on the Bank of America N.T. & S.A.

(Source: Chronology File October 22, 1937, to May 11, 1939.)

Between the reopening of the Bank of America N.T. & S.A. after the banking holiday in 1933 and September 1938, the Bank of America was examined ten times by the Office of the Comptroller of the Currency. In each of those examination reports, the same general criticisms and the same recommended corrections were indicated. Running through every report was the criticism of the excessive and steadily increasing dividends that had been declared by the Bank (from a rate of 4.5% in 1933 to 19.2% in 1938).

Prior to July, 1937, over 99% of the stock was held by Transamerica Corporation so that the dividends declared by the bank were received by Transamerica. Since July, 1937, two million three hundred thousand shares or 57.5% of the total shares outstanding were distributed to the public in order that Transamerica might not be defined as a bank holding company affilate under the Federal Reserve Act. Repeatedly the examiners have recommended that all earnings should be devoted to the elimination of undesirable and illegal assets. Other oft repeated criticisms made by the bank examiners deal with the excessive amounts of loans for account of Transamerica Corporation and affilates, the contract relationships with affilates of Transamerica, the disproportionate investment in real estate loans, the so-called German credits, the large line of credit to A. O. Stewart, the writing up of Government bonds and other investment securities, loans against the stock of Transamerica, and the general lack of voluntary cooperation on the part of the bank, coupled with the sweetly persuasive tactics of the Government. (Index Tab No. 12.)

On January 28, 1938, Secretary Morgenthau insisted that prompt steps be taken with reference to Transamerica Corporation and the Bank of America N.T. & S.A. At that time Mr. Eccles and Mr. O'Connor saw no cause for alarm over the condition of the bank although Mr. Crowley suggested that there should be no more expansion by Transamerica and that no more branches should be granted to the Bank of America N.T. & S.A. (Item No. 6.)

In the meantime the SEC had made a preliminary survey of Transamerica in order to determine whether that corporation was an investment company within the preview of Section 30 of the Public Utility Holding Company Act of 1935. (Index Tab No. 3.)

At approximately the same time, Mr. Jones was asked to look at the Bank of America with a view to determining the sufficiency of its capital. (Index Tab No. 8.) During the months of January, February and March, 1938, a number of conferences were held between representatives of the Treasury and the SEC with respect to the program for SEC action against Transamerica. It was during this period also that the representatives of the various banking agencies were conferring upon group banking recommendations to be included in the President's message to Congress. Another examination of the Bank of America N.T. & S.A. was completed on April 20, 1938. (Index Tab No. 9.)

Between April and September, 1938, conferences were held between the Controller's Office and the Bank of America N.T. & S.A. as well as between the Comptroller's Office and the Secretary of the Treasury with a view to working out a housecleaning program for the bank. This proposed housecleaning program of September 8, 1938, outlined by Acting Comptroller Diggs, recommended that the dividend rate of the bank be reduced from 19.2% to not over 6%, that the bank charge off promptly losses estimated by examiners in semi-annual examinations, that the bank discontinue the practice of transferring other real estate to affilates by substituting therefor the form of contract now in use, and that the bank be given little, if any, authority to operate additional branches until its condition had been materially improved. (Index Tab No. 11.)

Due to the fact that the Bank of America N.T. & S.A. was to hold a board meeting in Los Angeles on September 13, 1938, at which time it was expected a dividend would be declared, it was decided at a meeting in the Secretary's office to send a warning telegram to the board meeting protesting any dividend action of the Bank of America N.T. & S.A. This telegram was sent over the signature of Acting Comptroller Diggs, to be read at the meeting of the Board of Directors of the bank. (Index Tab No. 15.)

Despite this telegram, the Board of Directors declared a dividend. Mr. Oliphant rendered an opinion that the telegram of December 13th constituted a sufficient warning to serve as a basis for certifying the facts with reference to the declaration of the dividend to the Board of Governors of the Federal Reserve System under Section 30 of the Banking Act of 1933. (Index Tab No. 25.)

During the month of November, numerous conferences and discussions were held concerning the action to be taken and the case to be drawn up under Section 30. On November 12, 1938, Mr. Duffield suggested the coordinated action of all three banking agencies. (index Tab No. 34.)

Because of the coordinated pressure of these agencies, a conference was arranged for December 8, 1938, between representatives of the bank and representatives of the Government. On December 15, 1938, Mr. Jones transmitted a letter to the Comptroller from L. M. Giannini submitting memorandum program of 17 points that he agreed to present to his Board with his recommendation for their acceptance. Major part of program was agreement to "effect and reasonably maintain a sound capital structure having a ratio to its entire deposits of 1 to 10"; to furnish as much additional capital as may be required for this ratio as determined by the Comptroller of the Currency after the result of the examination then in progress, the Board being free to declare a semi-annual dividend in March 1939 provided steps have been taken by the Bank to increase its capital as outlined above, the increased capital to be paid into the Bank as early as practicable but in no event later than June 30, 1939. No dividends to be declared after June 30, 1939, unless the sound capital structure bears a ratio to entire deposits of substantially 1 to 10. (Index Tab No. 51.)

With respect to the proposed agreement, Mr. Foley pointed out that it would have no binding legal effect and that there would be no way of enforcing it because of the fact that no letter of warning would be sent to the bank. (Index Tab No. 52.)

During the period between December, 1938, and March 14, 1939, there was considerable beating around the bush by Mr. Giannini although the latter agreed unwillingly to recommend the program outlined by the Comptroller to his Board of Directors. On March 14th the Directors of the bank appointed a special committee to work out details of the plan to increase capital, and they also voted the regular semi-annual dividend of 19.2%. (Index Tab No. 69.)

In the meantime a preferred stock plan for increasing the capital of the bank had been worked out. The RFC had agreed to lend to stockholders of the Bank of America the money necessary to enable them to subscribe for any increase in capital stock determined upon and approved by the Comptroller. (Index Tab No. 62.)

On April 3, 1939, Mr. L. M. Giannini wrote Mr. Jones that he would suggest the Bank increase its capital funds by $25,000,000 and that he would recommend to the directors of Transamerica that any dividend received on stock subscribed to by them in excess of the interest paid to the RFC would be remitted to the Bank. The FDIC, the SEC, the Office of the Comptroller, the Secretary of the Treasury, and the RFC agreed with respect to this $25,000,000 loan. (Index Tab No. 17.)

A further condition with respect to this RFC loan was that the bank should agree to declare no further dividend if, in the opinion of the Comptroller, the FDIC, and the Federal Reserve, the payment of such dividend would impair the capital stock of the bank or constitute an unsafe or unsound banking practice. (Index Tab No. 76.) Subsequently, President Roosevelt approved a change eliminating the Board of Governors of the Federal Reserve and the FDIC as agencies having veto power over the declaration of future dividends by the Bank of America. (Index Tab No. 84.)

The loan and preferred stock plan were opposed by Mr. Duffield on the grounds that the 25 million dollars of preferred stock to be issued was inadequate as the last banking examination indicated that 30 to 38 million dollars worth would be necessary to put the bank in a sound condition, that the Comptroller of the Currency had never made a formal determination of the exact amount of preferred stock which the bank should issue, that the proposed cut-back in the preferred stock value from a cash value of 25 million dollars to a par value of 10 million dollars was unjustified, that the RFC should not lend money to the Bank's common stockholders, that the Treasury should not approve a loan to Transamerica when that corporation was involved in litigations with the SEC. (Index Tab No. 78.

On May 11, 1939, Mr. L. M. Giannini telegraphed both Senator Wagner and Congressman Steagall requesting an investigation of the controversy with the bank. Both of the latter when consulted indicated that they approved the actions of the Treasury Department in this matter.

FQY.

C O P Y

TELEGRAPH OFFICE

January 4, 1940

SAN FRANCISCO, CALIF.

JAN. 3, 1940

HON. PRESTON DELANO
COMPTROLLER OF THE CURRENCY

YOUR TELEGRAM STATING YOU ARE UNABLE TO AUTHORIZE ME TO DISTRIBUTE AS YOUR AGENT CERTAIN COMMUNICATIONS SENT TO ME UNDER DATE OF DECEMBER TWENTY EIGHTH HAS BEEN RECEIVED. COUNSEL IS MAKING A FURTHER STUDY OF THE SITUATION AND WILL INFORM ME DEFINITELY BEFORE THE NEXT MEETING OF THE BOARD OF DIRECTORS, WHICH IS SCHEDULED FOR TUESDAY NEXT, JANUARY NINTH, WHETHER OR NOT I MAY TRANSMIT THE COMMUNICATIONS IN QUESTION TO THE DIRECTORS WITHOUT INVOLVING MYSELF AND THE BOARD IN POSSIBLE LIBEL PROCEEDINGS. THEREFORE I SHALL ADVISE YOU ON OR BEFORE JANUARY NINTH OF MY ACTION IN CONSEQUENCE OF COUNSELS FINAL OPINION IN THE MATTER.

R. P. EVERARD
SECRETARY BOARD OF DIRECTORS
BANK OF AMERICA N. T. & S. A.

January 4, 1940

We have received advice from our offices in San Francisco and Los Angeles that copies of the Comptroller's communications which Mr. Everard, Secretary of the Board of Directors of the Bank of America N.T. & S.A., was unwilling to transmit to the directors of that institution have been delivered by our own office in San Francisco to Director Bocqueraz and by our own office in Los Angeles to Director Marble.

Upm

1/6/40

Principal Items Concerning the Bank of America, N.T. & S. A.

(1) For general background purposes and resume of the basic matters which the Bank must correct to meet the Comptroller's criticisms and warnings, reference is made to a document titled "Summary of Situation Relative to Bank of America National Trust and Savings Association," prepared by Donald Sherbondy, dated November 6, 1939.

(2) For background on Transamerica Corporation and development of that company, reference is made to a document titled "Summary of Report on Preliminary Survey of Transamerica Corporation," dated January 26, 1938, prepared by Cy Upham from the preliminary survey made by the SEC. (Chronology File Index Tab No. 4.)

(3) For brief reviews of examiner criticisms of Bank of America in all examining reports for the period 1933 to 1936, reference is made to a memorandum from Cy Upham to Secretary Morgenthau, dated September 9, 1938. (Chronology File Index Tab No. 12.)

(4) For brief review of correspondence with Bank of America from 1933 to 1938, see memorandum from Upham dated September 12, 1938. (Chronology File Index Tab No. 13.)

(5) Because of the fact the Bank had disregarded all recommendations as to dividend policy, on September 13, 1938, a warning telegram was sent over the signature of Acting Comptroller Diggs to Examiner Palmer, to be read to the meeting of the Board of Directors. (Chronology File Index Tab No. 15.)

(6) On September 30, 1938, Mr. Oliphant submitted a memorandum to Mr. Upham advising that the telegram of September 13, 1938, constituted a sufficient warning to serve as a basis for certifying the facts with reference to the declaration of the dividend on September 13, 1938, to the Board of Governors of the Federal Reserve System under Section 30. (Chronology File Index Tab No. 25.)

(7) With reference to a telegram from Mr. L. M. Giannini to the Board of Governors of the Federal Reserve System, dated

September 20, 1938, requesting a hearing for the Bank before the Board of Governors of the Federal Reserve (Chronology File Index Tab No. 19), Mr. Eccles wrote Secretary Morgenthau on October 27, 1938, objecting to any Section 30 proceedings on the theory that the Comptroller did not have a sufficiently good case to institute such proceedings. (Chronology File Index Tab No. 28.)

(8) As a result of the conferences between the Comptroller and the Bank during the first part of December, 1938, a seventeen point memorandum agreement was concluded. (Chronology File Index Tab No. 1.)

(9) At approximately this same time a warning letter relative to the telegram of September 13th had been prepared although it was not transmitted. (See File December 1 through December 17, 1938.)

(10) Because of a memorandum from Mr. Foley to Secretary Morgenthau, dated December 17, 1938, stating that the seventeen point agreement could have no binding legal effect, the Comptroller transmitted a letter to the Bank on December 22, 1938, clarifying the legal position of the Comptroller with respect to the memorandum agreement which had not yet been officially adopted by the Bank. (Chronology File Index Tab No. 53.)

(11) Mr. L. M. Giannini wrote Comptroller Delano on January 11, 1939, stating that the Board of Directors of the Bank had authorized the management to follow the agreement of December 15th. (Chronology File Index Tab No. 56.)

(12) Due to the fact that Comptroller Delano advised L. M. Giannini on February 20, 1939, that the Bank should require a capital increase of approximately thirty to thirty-eight million dollars, some correspondence was carried on between Chairman Jones and Giannini with reference to the working out of a loan. On March 14, 1939, at a Board of Directors meeting of the Bank, a special committee was appointed to work out a plan for increasing capital. The Board also voted the regular semi-annual dividend at the previous rate of 19.2%. Information concerning the proposed preferred stock plan will be found in Chronology File Index Tab Nos. 62, 68, 70, 73, and 74.

(13) On April 15, 1939, Comptroller Delano asked L. M. Giannini to sign a letter agreeing to veto by the Comptroller of dividends on the Bank of America stock as a condition to any loan which the RFC might make. (Chronology File Index Tab No. 83.)

(14) Because Mr. Giannini took exception to the dividend veto proposal as entirely unjustified, discriminatory and evidence of persecution, he stated his willingness to the Comptroller to proceed with the agreement program outlined the preceding December. (Chronology File Index Tab. No. 86.)

(15) For a historical resume of assets in general as well as the comments of the examiner on matters requiring attention, see photostat taken from bank examiners Consolidated Report, November 21, 1938, to February 28, 1939.

(16) Due to the fact that further information had been uncovered by the bank examiner especially with respect to real estate appraisals, as well as due to the fact that the Bank still refused to cooperate with recommendations of the Comptroller as a result of the last banking examination, a letter signed by the Comptroller was addressed to the Board of Directors, Bank of America, N.T. & S.A., July 31, 1939, warning said directors of the unsafe or unsound banking practices to which they had been a party. (See file July 1, 1939, through September 30.)

(17) On October 2, 1939, another letter of warning was addressed to the Board of Directors of the Bank of America, and signed by the Comptroller. This letter stated that on September 12, 1939, the Bank declared a dividend at the rate of 19.2% without writing off recommended losses in direct violation of the warning of the Comptroller in the letter of July 21, 1939. (See file October, November, 1939.)

(18) The procedure to be outlined under the Section 30 proceedings is contained in a memorandum from Mr. Foley to Secretary Morgenthau, October 25, 1939. (See file October, November, 1939.)

(19) On December 2, 1939, two conferences were held in the Secretary's Office concerning Bank of America at which Dean Landis generally summarized the situation. As a result of these conferences, it was decided that a final letter should be sent to the Bank before any order to show cause was served which would conclude the conferences between the Comptroller's Office and the Gianninis on November 16, 17, and 18. (See memorandum to the President from the Secretary, December 4, 1939, file December, 1939.)

(20) Such a letter was transmitted on December 12, 1939, to Mr. Giannini and signed by Comptroller of the Currency. (See Bank of America file, December, 1939.)

(21) Also on December 12, 1939, an 118 page letter was received by the Comptroller from the Board of Directors of the Bank of America in answer to the Comptroller's letter of October 2nd. This letter was digested by Donald Sherbondy in a 22 page memorandum.

Note: It is my suggestion that all correspondence and conferences since the date of December 12th should be read.

RE BANK OF AMERICA

January 8, 1940.
10:30 a.m.

Present: Mr. Bell
Mr. Young
Mr. Landis
Mr. Foley
Mr. Greenbaum
Mr. Spencer
Mr. Tietjens
Mr. Upham
Mr. Delano

H.M.Jr: I asked you people down to sort of see where we were after this succession of ultimata and dead-lines etc., etc. So, Mr. Comptroller, where are we as of today?

Delano: Well, we have from the Coast one wire from William Wallace Mien, one of the Directors. He, with Marshall Hale, I think, is one of the responsible Directors. We also have word from our examiners that two other people have gotten the letter, Mr. Bocqueraz and Mr. Marble. May I read this wire?

H.M.Jr: Please.

Delano: "Respect your letter of December 28th addressed personally to me as member of the Board of the Bank of America, have not had the opportunity to study the matter. In view of Board meeting next Tuesday - " That is tomorrow, Mr. Secretary - "I am making personal request to you to bide your time until the middle of January. I have not had time to confer with those in authority, hence this telegram sent without their knowledge. Please consider this confidential and personal."

There has been no answer sent to that.

H.M.Jr: Well, that is what I want to be advised about by these gentlemen and have them advise you, where do we go from here. That is the purpose of asking you people down here, you see, where do we go from here.

Bell: I think, Mr. Secretary, that Mr. Spencer has seen Mr. Delano and the attorneys have seen Mr. Foley before this meeting, isn't that right?

Foley: Yes.

Bell: And they have been brought up to date as far as the correspondence is concerned.

Foley: We thought, Mr. Secretary, that we would like to have a little more time together before we make any recommendations and if it is agreeable with you, if you could give us some time this afternoon we could come in with a definite program at that time and we would save more of your time by doing that than --

H.M.Jr: Well, here is the thing. I am at the White House for lunch. Welles and Jesse Jones at 3:00, Press at 4:00, Mexico at 4:30. I should think - I don't think Mr. Welles and Mr. Jones will use the full hour, so the minute that they get through before 4:00 o'clock, I take it some of these people - or after the Mexicans leave. It would either be before 4:00 or after 4:30.

Foley: How about after 4:30?

H.M.Jr: Would that be best?

Spencer: It is all right with me.

H.M.Jr: What time does your train leave?

Spencer: 9:00 o'clock.

H.M.Jr: Jim?

Landis: 9:00 o'clock.

H.M.Jr: Eddie?

Greenbaum: Evening train.

H.M.Jr: And is Mr. Whitney Seymour coming down in time to see me?

Foley: We left it this way, that I would call him around noon time if we wanted him to come down and talk to these gentlemen.

H.M.Jr: He can't fly today.

Spencer: All the planes are down now. I have a seat this afternoon and they said it was very doubtful that the planes would be flying.

H.M.Jr: You will just have to work it out. The trains are running. If he can take a 12:00 o'clock train he would be here at 4:00 or if he took a 1:00 o'clock train he would be here at 5:00, and these gentlemen are here until 9:00.

Foley: Well, I think we ought to decide, Mr. Secretary, whether we are going to retain him before we ask him to come down here.

H.M.Jr: Well --

Foley: And that is one of the things I think perhaps we ought to agree on.

H.M.Jr: As far as I am concerned, I crossed that bridge when we asked him down before, but how these other people feel, I don't know. You can clear that up during the day. Do you know him, Landis?

Landis: I don't know him personally. I know of him, of his work.

H.M.Jr: Have you anything --

Landis: I think there is only one consideration that ought to be taken into account. He is unquestionably an able person. Now, he has represented, in the Herndon case, the Communist party or close allies to the Communist party. Now, what the Press on the West Coast and the Los Angeles Times would do with that is a matter that has to be considered.

H.M.Jr: Supposing he represented --

Landis: I think he intrinsically has nothing to do with them.

H.M.Jr: Supposing he represented a murderer.

Landis: That is all right, but Communists are different from murderers.

H.M.Jr: He put that to me yesterday and I said, "I don't see any reflection -" whether he is a lawyer or a doctor. Supposing he had operated on this fellow. I would take the same surgeon. I am glad you brought it up, but --

Landis: I don't think it is a barrier.

H.M.Jr: Just so he isn't a Communist himself and he never belonged to the Communist party. Does he?

Foley: No, he does not.

H.M.Jr: I told Foley to ask him that specific question.

Foley: I asked him point blank and he said he wasn't any form of Communist or any other Republican.

H.M.Jr: The other thing that would have amused you, he said that when they heard he represented the Communists, nobody would believe he was anything but a Democrat.

Foley: I think, Mr. Secretary, that Jim is particularly sensitive to this kind of unfair criticism and --

H.M.Jr: Well, I will go a step further. I would be delighted if Landis would represent us. That shows how broad minded I am.

Foley: And I think Jim is merely thinking of the implications, the innuendos, the unfair accusations, that these people might try to weave from the fact that this man had represented Communists and that Jim had been an advisor on this matter and that he had found that Bridges was not a Communist to the dissatisfaction of the Press and California and people in high places out there.

H.M.Jr: Well, let me - I am not in tune with the times. Bell, does it bother you to know that this man before the Supreme Court of the United States defended these people and won, before the Supreme Court?

Bell: No, it doesn't worry me.

H.M.Jr: He defended them and won his cases. Right?

Foley: That is right. He was not paid a fee. The sum of his expenses were defrayed by a labor organization that has been labeled by the Dies Committee as a Communistic organization. Herndon was known by him to be a member of the Communist party, but the case - I mean the Herndon case was a case of civil liberties. It was a question of search and seizure. He took it to the Supreme Court twice. The first time he lost and then he went back and brought it up to a habeas corpus where he raised the constitutional question directly. Hughes and Roberts switched and this time he won, four to five.

Bell: It doesn't bother me any. I think Jim is probably right. You may get some repercussions on it.

Spencer: I have got this feeling, if this thing is really aired you are going to get repercussions and I don't care who you get.

Foley: I think that is right, Charley.

H.M.Jr: This man here (indicating picture of former Secretary Taney) had a wonderful reputation until he ruled against something like that, the very case this fellow defended. Do you remember the Dred Scott decision? Am I right? He had a wonderful reputation as the Secretary of the Treasury.

Landis: He made one mistake.

H.M.Jr: But I don't - Eddie?

Greenbaum: Not speaking about the West Coast angle but from the New York angle, it is nothing but a joke to consider that question in regard to Whitney Seymour. He is a member, as you know, of a prominent Wall Street firm, senior partner of the Solicitor General, Judge of the United States District Court, all under Republican appointments and that case that he took was an outstandingly brilliant civil liberties victory and just considering Whitney Seymour as having Communist feelings, I have known the man for a good many years and I think he is a very able fellow and an excellent appointee if you can get him to do it.

H.M.Jr: Everybody that Foley suggested it to said, "Why didn't I think of it before?"

The other comment, Foley is checking with an organization of Democrats. Their comment is, "Why did you have to pick a Republican?" Ed says, "All right, give us the name of a Democrat." They give us the names of two men in New York, both of them nice fellows but neither of them have had trial experience. We have been fussing with this for months. Neither of those men had had Court experience. The best recommendation I got for this fellow was Bob Jackson, who said, "I know him. He licked me twice." So I can't see it. If you people would consider it today and as far as I am concerned, I would say we would be lucky to get him. He has got to talk to his partners and all the rest and I want the Comptroller to meet him, but certainly with all the recommendations this man has from the Bar, I think we would be very lucky to get him.

Foley: He doesn't want to talk to his partners and make arrangements with them to give up his work and to shift over things he is handling etc. and to get suggestions from them as to a basis for compensation unless we are going to go through with it. He said it would be quite embarrassing.

H.M.Jr: The Comptroller has my approval. It is up to him. You have got these people to call and if it is agreeable to take him, I would get him to come down on the 12:00 or 1:00 o'clock train so that he could talk to these three gentlemen today and get their background today and then give us an answer tomorrow.

Delano: As far as I am concerned, Mr. Secretary, I would certainly lean on these gentlemen here, the opinion of our own legal staff, Mr. Landis and Mr. Greenbaum, which would be compelling to me. I don't know the man, but I would be perfectly willing to take a chance.

H.M.Jr: Lloyd Garrison - Everybody we talked to - "Why didn't I think of him?" That was the reaction.

Delano: You feel that way, don't you, Charley?

Spencer: Oh, yes.

H.M.Jr: It is one of the most respectable firms in New York. The only bank work he has ever done is trust work for the Chase.

Delano: We certainly wouldn't want to go any further than these gentlemen, Mr. Secretary.

H.M.Jr: Ed, when you go out of the room, clear it unless somebody says no. If so, come back. If it is cleared, I would invite him to come down unless one of these gentlemen has some different idea, but I would try to get him down this afternoon unless Mr. Landis and Mr. Spencer and Mr. Greenbaum think they ought to postpone it. If they don't think so, I would like to get him down so we could have supper with the people and talk with them this evening and get what they have. The other thing I wanted to ask was, oughtn't we move now? That is the thing that seems important to me. Ought we to wait because one Director says, "Please wait until the middle of January?" Haven't we passed that stage? I don't know.

Spencer: My own feeling on that is that I would wait because possibly - I know this fellow Giannini and the way he acts and the way the whole banking fraternity acts on charge-offs where they have got any idea that there is a dispute and I don't see any - personally, myself, I don't see any disadvantage in waiting. Now, the legal side may say that isn't so, that we ought to move faster, but it seems to me this fellow Miens knew practically nothing about the dispute, the correspondence. My guess is that Giannini's Directors know very little about the inside of that thing.

H.M.Jr: I would like to argue a little bit. My own feeling is, why I am against postponing it, I don't want the Gianninis to feel that we are bluffing, that when we said Friday, we meant Friday. Now, after all, everything we are going to do from now on, the show cause, is all - I mean, what you call it - non-public hearing. They can always take steps why this thing isn't private, but I don't want to - I don't want Giannini to think that any move we made here in the last six months, that we are bluffing. When we said Friday was the dead-line, that was the dead-line. There has been so much of that. Now, again, I am willing to be overruled, but I want to let you know how I feel. I don't want to have them feel, "Well, Morgenthau is bluffing. He didn't mean what he said when he said Friday." Do you see, Dan? I am willing to be overruled but I don't want to let Giannini or his Directors think that we are continuing to bluff.

Bell: I don't think that you can indicate that you are weakening on it, but I thought it would take several days to get ready, probably three or four. Is that right, Ed? If this lawyer comes down and has to read all the correspondence and this order, it might take three or four days. My thought applying to that telegram is that you should tell him that Friday was the dead-line and the Treasury is proceeding to take action. It will take three or four days to get in readiness and he has that time, something along that line.

Foley: Why would you have to say anything, Dan?

Bell: Well, I think the telegram ought to be replied to, shouldn't it?

H.M.Jr: Again may I argue - I feel very argumentative this morning. I don't think the Comptroller can receive any telegram on a personal and private basis from a Director. I mean, he can receive it, but anything that he - in other words, he can't allow a Director to sort of put himself off in a special category.

Bell: No, I don't think so either.

H.M.Jr: Doesn't he say this - I am very argumentative this morning.

Landis: Might I suggest here, I think maybe the most important development that has taken place in the last few days with reference to this is the letter from the Bank signed by the Counsel to the Federal Reserve Board requesting that an independent examination should be made by the Federal Reserve Board. As far as one can try and gauge the tactics of the Bank, it seems that the Bank's reply is moved through the Federal Reserve Board. Now, it occurred to me a wise thing under those circumstances to do would be to convince the Federal Reserve Board that here is a dispute between the Comptroller and the Bank, that the opportunities for handling that dispute and finding out really what the facts are have been set up by the order to show cause proceedings. The Federal Reserve ought to be assured that in that procedure, whatever the facts are, they will be brought out and for that reason the Federal Reserve can say to the Bank, "Since this proceeding is so devised as to permit you to present any consideration relevant to the dispute that exists between you and the Comptroller of the Currency, we don't believe we should step into this matter at the present time."

Now, that kind of a reply from the Federal to the Bank would be a very important thing for this office and it seems to me to be such an important thing that I thought that perhaps that kind of - the Federal itself would be persuaded by you that that would be the proper attitude for the Federal to take. It might be desirable even to suggest it to the President, but I don't know if that is desirable. This is a fair, open procedure which will enable any issue to be brought out definitely.

H.M.Jr: And they have had - the Federal has had all of these Treasury reports of our bank examination and have never raised a question that they wanted to make a study of it.

Delano: I want to bring you up to date on that, Mr. Secretary. I haven't heard from the Federal since the message went down that they should send a Board member over with the staff. There is a question here that we might discuss. We have sent them, you remember, some documents. We haven't sent them all the documents or brought them completely up to date as to the total - the situation exactly as it exists. For example, we haven't sent the last correspondence. We haven't sent copies of this. I wondered how completely we should keep them implemented with documents on this thing. Do you want them --

H.M.Jr: How completely do you keep Crowley informed?

Delano: Pretty completely.

H.M.Jr: Talk it over with these gentlemen.

Delano: All right.

H.M.Jr: I think what Mr. Landis has said, I think that ought to be discussed and I think he is absolutely right. It should be a united front.

Landis: Since they should be convinced that the quality of bank examination, its accuracy and so on, will be entirely explored in this hearing in a nonpartisan manner, they ought to be willing to say that - to the Bank, "There is your opportunity to meet the situation." The Federal, as I understand, doesn't know anything about the show cause proceeding and it is perfectly evident from the Bank's letter that their lawyer doesn't know anything of the existence of the possibility of that type of procedure. They treat them as if it had already been ultimately decided by the Comptroller of the Currency.

H.M.Jr: Well, a possible way of carrying out your thought would be, we are now in the process of getting the show cause order out. It would be to have the Federal sit in at this stage, endorse this thing, and then have them write a letter to the Bank of America saying that this method has their entire approval and they don't want to take any action which would conflict with this procedure.

Landis: Yes, that is exactly it.

H.M.Jr: I think if we could think of a way to bring them in even today, possibly --

Bell: I think that is a good thing.

H.M.Jr: But I would like you people to consider the fact that this show cause thing - we can go right ahead, no matter what any Bank Director or anybody else says. I think it ought to go out this week if it is going at all.

Bell: We set Friday as a sort of dead-line. We don't know how long it would take.

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

Greenbaum: I think very strongly that we should take action. The point that you made before that the whole process of this order to show cause is not any final action and therefore if any of the Directors of the Bank are going to introduce something, and I hope there will be a possibility in that direction, this doesn't foreclose them.

Delano: I really think Mr. Mien thinks, you know, that maybe we are going to take an irrevocable step here. Nobody knows about this show cause thing.

H.M.Jr: Have you got any more thoughts?

Landis: No, I would like to talk these over with the others.

H.M.Jr: Maybe you could get the Federal Reserve people in this afternoon.

Greenbaum: I would like to see that. We should know what they have written to the Bank. We don't even know that. It is very important, as Dean Landis said, that we show a united front here and that they answer appropriately.

Foley: Why not call Eccles and Crowley?

H.M.Jr: Bell will be the man to do it. He has just gotten a letter from Eccles offering his cooperation.

Bell: All right, I will try it. Would you suggest that they bring their Counsel?

Foley: Anybody they want.

H.M.Jr: I think that would be all right. It has got to be a united front and if we can't get it by the ordinary way, as a last resort we can go to the President, and I think if we are going to have a meeting with the Federal that Crowley ought to sit in, too. Then we have got those three agencies.

Foley: There would be no objection to the advisors sitting in at that meeting?

H.M.Jr: Oh definitely, I want them to sit in. While I was thinking about it, if you are going to have a meeting this afternoon, why not ask an observer to come over from S.E.C.? Then you have got the whole shooting match. They are interested in the show cause order. Anything that I have said today is only a suggestion with a question mark. I am just throwing out suggestions. If you had them all here, then --

Bell: Is the S.E.C. interested in this Bank end?

Foley: They are, Dan, to the extent that it has quite a direct bearing on the accuracy of the representations that Trans-America has made to the S.E.C. in the registration statement. In other words, Trans-America owns a very large block of stock of the Bank and what that stock is worth has a direct bearing - the Trans-America proceedings before the S.E.C.

Bell: It seems to me it was a separate proceeding.

Foley: Yes, but it has some bearing.

Bell: No bearing on the Bank end. It is a bearing on the Trans-America end.

Foley: On the Bank end insofar as the value of the Bank's stock is concerned.

Greenbaum: I think what the Secretary says is of the utmost importance, that you have some sort of a unified campaign, if you want to use that word, unified program. Their tactics are perfectly obvious. They are trying to show that something sinister is up when the Secretary has conferences with the Comptroller on this. Then they run to the Federal to try to break up something there and I am going to suggest before this afternoon some further steps with F.D.I.C. and I think it is essential that whatever program is agreed upon, the order to show cause or any other steps to be taken, shall be a unified action. I think S.E.C. and Federal should be on.

Foley: Can we get some agreement on the examiner, Mr. Secretary?

H.M.Jr: Well, again, put that up to these people.

Delano: I am very satisfied.

Greenbaum: Who?

Foley: Dean Bates of Michigan. We had him in last Friday and he met the Comptroller and Dan Bell.

H.M.Jr: I am satisfied with his recommendation.

Bell: That looks very good.

H.M.Jr: See you after 4:30.

MEMORANDUM FOR THE FILES

January 8, 1940

Conference re Bank of America,
January 8, 1940

The following attended a conference on Bank of America which began at 2:30 P.M., on January 8, 1940, in the office of the Under Secretary:

Representing the Federal Reserve Board were Messrs. Eccles, McKee, Dreibelbis and Morrill. Representing the Securities and Exchange Commission were Messrs. Frank, Lane and Treanor. Representing the Federal Deposit Insurance Corporation was Mr. Crowley, and representing the Treasury were Messrs. Bell, Foley, Delano, Folger, Spencer, Greenbaum, Landis, Upham, Young and Tietjens.

Mr. Bell opened the meeting by explaining that the situation between the Comptroller's Office and the Bank of America had reached a point where some definite action on the part of the Comptroller was absolutely necessary and that the purpose of the meeting was to inform those present of the Comptroller's proposed action and to present, if possible, a united front on the part of the various interested Government agencies.

Mr. Foley explained briefly the background of the controversy between the Bank and the Comptroller's Office and the Order to Show Cause which the Comptroller contemplated serving on the Bank for the purpose of giving the Bank an opportunity to justify its position before an impartial examiner.

Mr. McKee asked whether there had ever been an agreement between the Comptroller's Office and the Bank in regard to the matters in dispute, to which it was replied that no agreement had ever been entered into, but that the Bank had submitted a program on December 15, 1938, outlining the steps it proposed to take to meet the Comptroller's criticisms. The memorandum outlining the program together with the Comptroller's covering letter to the Bank, dated December 22, 1938, specifically denying that the program was binding in any way on the Comptroller, were read to the meeting.

With reference to the losses on real estate which the Comptroller had directed the Bank to charge off, Mr. McKee asked whether the bank examiners had not approved values placed on banking premises at the time these premises were taken over by the Bank of America. Mr. Eccles indicated that the matter of making adjustments of appraisals on banking houses in use was always a troublesome matter. Messrs. Foley and Crowley answered that even though the take-over of banking premises had been approved, the examiners were certainly not estopped by such approval thereafter to require adjustments in the values at which such premises were carried. It was also pointed out that many of the banking premises involved had been taken over by the Bank before it became a national bank and that the examiners had not approved the original take-overs.

Mr. Eccles stated that the progress which the Bank had actually made in regard to the items criticized by the Comptroller had to be recognized but that the main question seemed to be one of under-capitalization. He stated that if adequate capital was put in the Bank and that if reserves for losses and write-offs were set up, the Bank's dividends might be O.K. He stressed that additional capital was necessary, especially in view of the Bank's real estate picture, adding that the Bank had no business paying the dividends it had been paying.

Mr. Foley then read to the meeting the Comptroller's letter of December 12 to the Bank and asked Dean Landis to explain the proposed procedure. Dean Landis explained how important it was for the Comptroller to see that his suggestions were carried out. He pointed out that while there was no statutory requirement that a hearing be held before publication of the report of examination, the fairness of providing for such a hearing before an impartial examiner had suggested itself. Mr. McKee thought that such a procedure might weaken the Comptroller's position and set a dangerous precedent. Dean Landis was of the contrary opinion and thought that in any case where publication of the report of examination was contemplated a hearing might very well be held. Mr. Eccles thought the proposed procedure eminently fair but was worried about what would happen if no satisfactory result came from the hearing. He stated that if the result was not satisfactory, it would probably be necessary to publish the report, in which event the depositors and the public interest might very well be harmed. He suggested the desirability of legislation which would lodge power in some Government officer to curb national bank dividends.

Mr. Crowley stated that he thought it was time for the Bank to take over the responsibility of working out its own program instead of putting the burden on the Government agencies to make definite suggestions to the Bank and tell it exactly what it had to do.

At this point Mr. Bell asked if there were any objections to the procedure which the Comptroller proposed to follow. Mr. Frank thought the procedure was wise and fair. He discussed the Securities and Exchange Commission proceeding against Transamerica and stated that the hearing in that matter would probably go ahead in a month or so. He thought the Securities and Exchange hearing could go along all right with the proposed Treasury hearing. Mr. Eccles stated that he didn't believe the present management of the Bank would ever come in and admit its guilt. He was afraid that in order to correct the management, it would be necessary to discredit the management to such an extent that the Bank would be wrecked. He wondered if there wasn't somebody, maybe the President himself, who could bring the management into line. He indicated that the proposed step on the part of the Comptroller was the next logical step, although he thought it might look to the Bank as if the Comptroller was stalling again.

The question of what reply the Board of Governors of the Federal Reserve System would make to the Bank's request for an individual examination by the Board was next discussed. Mr. Eccles stated that the request for an examination had not been treated as official since the Board had no indication that the directors of the Bank had actually approved the request. Mr. McKee said he didn't know what action the Reserve Board might take on the request. The possibility that such an examination would simply be a duplication of the national bank examiner's examination was suggested. Mr. Eccles indicated there would be no need for such a duplication if the Board of Governors was satisfied with the information in regard to the Bank submitted to the Board by the Comptroller. None of the representatives of the Board of Governors at the meeting would indicate at this point what action they thought the Board would take on the request. They stressed the need for further study and for additional information to be furnished the Board by the Comptroller. Messrs. Landis, Foley and Lane thought that it would be very unfortunate if the Board of Governors went into the Bank to make an independent examination. Such action would inevitably be construed as indicating a lack of unanimity among the Government agencies concerned and would amount to one agency investigating another. Mr. Bell again stressed the need for a united front. Mr. Crowley and one or two others suggested that the Board of Governors could tell the Bank that it saw no need for an independent examination in view of the action which the Comptroller's Office proposed to take in providing for a hearing at which the Bank could go into any relevant matters to justify the position it has taken in regard to the Comptroller's criticisms and suggestions.

Eccles asked whether the Comptroller's action couldn't be deferred pending consideration by the Board of Governors of the Bank's request for an examination. He suggested that if the Board went into the matter and found that it agreed with the Comptroller, the Comptroller's position would thereby be immeasurably strengthened. The Treasury representatives indicated that they thought it would be inadvisable further to delay action on the part of the Comptroller, and Mr. Foley stated that if asked he would recommend that no further delay take place no matter what the Board of Governors determined to do.

Messrs. Morrill and Eccles asked for further time to consider the request and indicated that it might be possible to give some answer by the morning of January 9, 1940. Mr. McKee said on leaving the meeting that he was disposed at that particular moment to recommend that the Board of Governors take no action.

(The foregoing is merely a running account of the sense of the meeting. A number of the other conferees, of course, made statements from time to time during the conference which it was impossible to note.)

hor

Noted
H.M.Jr.

TREASURY DEPARTMENT

OFFICE OF

COMPTROLLER OF THE CURRENCY

Air Mail January 9, 1940

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

Dear Sir:

Enclosed you will find a copy of a letter, dated January 6, 1940, which I received by registered mail at 11:30 yesterday forenoon from A. P. Giannini, Chairman of the Board of Directors of the Bank of America National Trust and Savings Association, together with a copy of my reply thereto.

Very truly yours,

/s/ Irwin D. Wright

IRWIN D. WRIGHT
Chief National Bank Examiner
Twelfth Federal Reserve District

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January 9, 1940

Dear Mr. Giannini:

This is to acknowledge the receipt of your letter of Saturday, January 6, 1940, and to thank you for your courtesy in extending me an invitation to attend the annual meeting of the stockholders of your bank to be held this afternoon, January 9th.

Candidly, it is to be presumed that some portion of the proceedings of your stockholders' meeting will be devoted to the consideration of the matters now at issue between the office of the Comptroller of the Currency and the management of your bank; and, considering the nature and present status of the controversy, I cannot see wherein my attendance at your meeting could further the interests of the Comptroller, to whom my loyalty is due. Therefore, I shall not avail myself of your courteous invitation.

Cordially and sincerely,

IRWIN D. WRIGHT
Chief National Bank Examiner
Twelfth Federal Reserve District

Mr. A. P. Giannini,
Chairman of the Board of Directors,
Bank of America National Trust
and Savings Association,
San Francisco, California

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BANK OF AMERICA

NATIONAL TRUST AND SAVINGS ASSOCIATION

SAN FRANCISCO

A. P. Giannini
Chairman of the Board of Directors

January 6, 1940

Dear Mr. Wright:

On Tuesday, January 9, 1940, we are holding the Bank's annual stockholders' meeting on the sixth floor at No. 1 Powell Street, San Francisco.

As we contemplate discussing the correspondence between this bank and the Comptroller and the Treasury Department, we think it would be proper for you to be present, if you are so inclined, and I hereby extend you an invitation to do so.

With best wishes for the New Year,

Sincerely and cordially yours,

/s/ A. P. GIANNINI

Mr. Irwin D. Wright,
Chief National Bank Examiner,
Twelfth Federal Reserve District,
1 Montgomery Street,
San Francisco, California

TREASURY DEPARTMENT

OFFICE OF

COMPTROLLER OF THE CURRENCY

Air Mail January 9, 1940

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

Attention Mr. W. P. Folger, Chief National Bank Examiner

Dear Sir:

Enclosed there is a clipping which was taken from a late edition of yesterday evening's Call-Bulletin of San Francisco.

Undoubtedly, there will be numerous repercussions from the meeting mentioned and I will attempt to keep you supplied with any articles which may appear.

Very truly yours,

/s/ Irwin D. Wright

IRWIN D. WRIGHT
Chief National Bank Examiner
Twelfth Federal Reserve District

CLIPPING FROM SAN FRANCISCO

CALL-BULLETIN

January 8, 1940

NEWSPAPERMEN TO 'SIT IN' ON BANK AMERICA MEETING

For the first time in the history of a large American corporation, newspaper writers will be admitted to the annual stockholders' meeting of Bank of America tomorrow afternoon at the bank's headquarters, Powell and Eddy streets. This virtually will admit the public to the meeting customarily, as in the case of all corporations, held behind closed doors.

Highlight of the meeting will be a review of the bank's growth through the depression by A. P. Giannini, founder and chairman of the board.

January 9, 1940

My dear Mr. Chairman:

Pursuant to your request under date of December 14, 1939, regarding the Bank of America, N.T. & S.A., and the present status of the supervisory problems which it presents, to bring you up to date I am enclosing copies of the following correspondence:

Letter from Board of Directors, dated December 12, 1939, in response to my letter of October 2, 1939.

Letter from Mr. L. M. Giannini, President of the Bank, dated December 14, 1939.

Letter from Mr. A. P. Giannini, dated December 22, 1939.

Letter from Mr. R. G. Smith, dated December 23, 1939.

My letter of December 28, 1939 to Mr. R.P.A. Everard, Secretary of the Board of Directors, enclosing my letter of December 12, 1939 and requesting that copies be transmitted to the Board of Directors.

My letter of December 28, 1939 to Chief Examiner Irwin D. Wright, transmitting letters to be delivered to the Directors upon request and my letter to the individual Directors.

My telegram to Mr. R.P.A. Everard, Secretary of the Board of Directors, dated January 2, 1940, in response to a request made by Mr. Everard by telephone.

Mr. Everard's telegram dated January 4, 1940.

Telegram from Mr. William Wallace Mein, Director of the Bank, dated January 4, 1940.

Telegram in reply thereto dated January 8, 1940.

Very truly yours,

(Signed) Preston Delano

Comptroller of the Currency

Honorable M. S. Eccles
Chairman, Board of Directors of the
Federal Reserve System
Washington

(enclosures)

January 9, 1940

My dear Mr. Chairman:

For your information and to bring you up to date regarding the Bank of America, N.T. & S.A., I am enclosing copy of a telegram from Mr. William Wallace Mein, Director of the Bank, dated January 4 and copy of my telegram in reply thereto dated January 8.

Yours very truly,

(Signed) Preston Delano

Comptroller of the Currency

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

(enclosures)

COPY

SAN MATEO CALIFORNIA
JAN 10, 1940

COMPTROLLER OF THE CURRENCY
WASHINGTON D C

PRESIDENTS STATEMENT INCLUDES REFERENCE REPORT EXAMINATION IN DISPUTE. CREDITS PRESENT MANAGEMENT WITH IMMENSE TASK OF RECONSTRUCTION SINCE 1932. STATES NO PRIOR CONTROVERSY WITH COMPTROLLER OFFICE UNTIL SECRETARY TRANSFERRED FILES TO HIS OFFICE SEPTEMBER 1938. SINCE THEN INSTITUTION HAS BEEN HARASSED AND BADGERED WITH ACCUSATIONS AND INSINUATIONS AS TO POLICIES AND CHARACTER OF MANAGEMENT PRIVATELY ALSO PUBLICLY IN PRESS. HE FURTHER STATES SECRETARY HAS TAKEN OVER COMPTROLLERS OFFICE AND IS BEING ARBITRARY ACTING THROUGH MR UPHAM WHO CONTROLS SITUATION. HE STATES ALL PERSONS ATTENDING CONFERENCES IN WASHINGTON WERE HONORABLE GENTLEMEN AND SHOWED SPIRIT OF COOPERATION EXCEPT SECRETARY WHO IS VINDICTIVE AND ARBITRARY. CRITICISMS FORMERLY FOR DIRECTORS NOW DIRECTED TO SHAREHOLDERS TO SHAKE THEIR CONFIDENCE AND UNDERMINE VALUE OF THEIR INVESTMENT. HE ADVISED THAT THIS INFORMAL REPORT CONTAINING ALL OF THE ABOVE IS AVAILABLE TO ALL SHAREHOLDERS. WOULD APPRECIATE IF EVERYONE READ IT AND BE INFORMED OF ARBITRARY AND ILLEGAL TACTICS OF COMPTROLLERS HE FURTHER STATES IF THINGS ARE NOT BROUGHT TO A HEAD AND SETTLED AT ONCE AND FOR ALL SUGGESTS SHAREHOLDERS WITHDRAW FROM NATIONAL SYSTEM. AIRMAILING FULL REPORT TOMORROW.

ERWIN D WRIGHT CHIEF EXAMINER

Treasury Department

TELEGRAPH OFFICE

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MR OTTLEY WILL ATTEND CONFERENCE TUESDAY JANUARY SIXTEENTH AS REQUESTED

LAURA L BAIRD

SECY TO MR OTTLEY

1258P

Leon Bocqueraz
111 Sutter St.,
San Francisco

1/11/40 (?)

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

Dear Mr. Delano:

This will acknowledge receipt of your letter of December 28th and of copies enclosed therewith of a letter addressed by you to Mr. A.P.Giannini on December 12th and a letter to Mr. Everard dated December 28th.

These communications have had my careful attention. I have, since my return late in August 1939, after a fifteen months absence in Europe, endeavored to acquaint myself with the previous correspondence between your office and the management of the Bank of America N.T.& S.A.

I wish to say at this time that, while I am not in accord with some of Mr. A.P.Giannini's policies, particularly the unlimited expansion of the Bank of America through the purchase of local banks and have freely expressed my views to Mr. Giannini and will continue to do so; I have full faith in his sincerity of purpose and his integrity.

I realize that there are in the present condition of the Bank problems that require serious attention of the management, that energetic and continued efforts should be made toward their solution. In my opinion, the most serious of these is the over concentration in real estate. It must be admitted, however, that a great improvement has been made in this respect. The comprehensive letter of the Board of Directors dated December 12th reviews in detail the assets criticised by the National Bank Examiner and shows the progress accomplished by the Bank in all matters under criticism.

In conclusion, permit me to state that I deeply regret that it has not been possible to reach an understanding between your office and the management of the Bank.

Yours very sincerely,

/s/ Leon Bocqueraz

JOHN E. MARBLE
1313 Garfield Avenue
South Pasadena, California

January 11, 1940

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

Dear Mr. Delano:

Copies of your letter of December 12 to Mr. A. P. Giannini and of his letter in reply have been received by me for which I thank you.

I take a serious view of my responsibilities as a director of the Bank and endeavor to perform my duties under the National Bank Act for the best interests of the Bank and its depositors.

In the past year and a half the directors of the Bank have given much attention to your letters and I believe have endeavored to comply with your suggestions, as you recognize when you say you are "pleased to note improvements which have been made in the Bank's position in regard to certain criticised practices".

Your position in regard to other criticised items is difficult for me to understand. As an example, I mention your view that we should charge off some nine millions of dollars on banking premises when a recent appraisal by the American Appraisal Company gives a present day value of eleven million dollars more than the properties are carried on the Bank books.

You say that you have been furnished certain valuation figures from the report but that the "appraisal has not been made available to us". Probably the reason that it was not available to you was that it had not been completed by the American Appraisal Company. My understanding is that the Bank records are available to you.

Under date of December 12, 1939 the directors forwarded to you a very complete statement of the matters in controversy as we see them. It would be very helpful to me as a director to have that statement fully answered by you.

Very sincerely yours,

/s/ JOHN E. MARBLE

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TREASURY DEPARTMENT

COMPTROLLER OF THE CURRENCY

WASHINGTON

January 11, 1940

Dear Dean Bates:

The Secretary of the Treasury has authorized my retaining you as a hearing examiner in connection with the examination into the condition of the Bank of America National Trust and Savings Association.

Under this retainer you will be expected to conduct the proposed hearings, render a report and do such other things as are necessary and proper arising out of such examination.

Your compensation will be at the rate of one hundred dollars ($100.00) per day plus reimbursement for actual transportation and subsistence expenses.

If the retainer agreement is satisfactory to you will you kindly indicate your acceptance at the foot of the duplicate original of this letter and return it to me?

Sincerely yours,

/s/ Preston Delano

Comptroller of the Currency

Dean Henry M. Bates
Law School
Michigan University
Ann Arbor, Michigan

COPY

TREASURY DEPARTMENT

COMPTROLLER OF THE CURRENCY

WASHINGTON

January 11, 1940

Dear Mr. Seymour:

The Secretary of the Treasury has authorized my retaining you as special counsel to assist in the examination into the condition of the Bank of America National Trust and Savings Association.

Under the retainer you will be expected to prepare the case for the proposed hearings, examine and cross-examine witnesses at the hearings and do such other things as are necessary in connection with the proceedings on the proposed order to show cause.

Your compensation will be at the rate of two hundred dollars ($200.00) per day plus reimbursement for actual transportation and subsistence expenses.

If this retainer agreement is satisfactory to you will you kindly indicate your acceptance at the foot of the duplicate original of this letter and return it to me?

Sincerely yours,

/s/ Preston Delano

Comptroller of the Currency

Mr. Whitney North Seymour
c/o Simpson, Thacher and Bartlett
120 Broadway
New York City, New York

COPY

TREASURY DEPARTMENT
Comptroller of the Currency

Jan. 11, 1940

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

Dear Mr. Delano:

Enclosed you will find additional newspaper clippings, regarding the subjects presented at the annual meeting of shareholders of the Bank of America National Trust and Savings Association, taken from last night's Call-Bulletin and today's Examiner, News, and the Pacific Coast Edition of the Wall Street Journal, which I believe will be of considerable interest to you.

Very truly yours,

/s/ IRWIN D.WRIGHT,
Chief National Bank Examiner
Twelfth Federal Reserve District

COPY

An article by LON HUGHES, FINANCIAL EDITOR OF THE SAN FRANCISCO EXAMINER, dated January 11, 1940 —

GIANNINI ACCUSATIONS SHOULD START OFFICIAL INQUIRY

Is the Secretary of the Treasury persecuting the Gianninis and the Bank of America, or is he administering the banking laws impartially with a view to maintaining the greatest possible strength in the Nation's banking system?

These questions were on the lips of thousands of Californians yesterday following disclosures made by L. M. Giannini, president of Bank of American, at the annual meeting of the bank's stockholders Tuesday.

The Gianninis — A. P. and L. M., heading the fourth largest bank in the country told the bank's stockholders that, in their opinion, the Secretary of the Treasury, by and with the cooperation of the Comptroller of the Currency, was using "arbitrary and illegal" tactics in his dealings with Bank of America.

They cited instance after instance of how, in their opinion, the Secretary of Treasury, Henry Morgenthau, Jr., had taken advantage of his position to make impossible demands on the bank.

What the Secretary wants the bank to do, L. M. Giannini said, is:

1. Discontinue or reduce the amount of dividends being paid stockholders. The Gianninis refuse.

2. Restate at a lower figure on the bank's books the value of some banking premises. The Gianninis refuse.

3. Acquire additional capital which the Federal banking authorities say would be the proper procedure in view of the bank's tremendously increased deposits and volume of business the last few years. The Gianninis refuse this, also.

Whether the Secretary of the Treasury made other demands probably is not important, in that the foregoing are sufficient to carry the point.

The crux of the matter appears plainly to be:

1. Have those charged with administering the banking laws made unreasonable demands on Bank of America's management?

2. How do the demands now being made on the Gianninis compare with demands made on other national banks at various times by the same administration?

3. Who is to decide whether the demands are unreasonable?

3. Has bias and prejudice entered into the administration of the banking laws, as the Gianninis charge?

What the Gianninis imply is that they have no quarrel with the national banking laws, but they are violently opposed to the way they're being administered.

They go further, and accuse the Secretary of the Treasury of administering the law more strictly and arbitrarily in the case of Bank of America than in other cases.

The Secretary has not replied to the accusation and such parallel cases as are available are not sufficiently comparable to draw conclusions.

The Gianninis point with justifiable pride to the record of progress that has been chalked up by Bank of America since the banking holiday early in 1933.

In the face of this progress, they label the actions of the Secretary of the Treasury unjustifiable.

WITHOUT SAYING SO, THEY IMPLY THAT IF MORGENTHAU IS RETURNED TO OFFICE THEY WILL IMMEDIATELY WITHDRAW FROM THE NATIONAL BANKING SYSTEM AND MAKE APPLICATION FOR A STATE CHARTER.

This threat in turn deserves some scrutiny. In some State banking quarters the following question was raised yesterday: Do the Gianninis insinuate that State authorities are more lax in their administration of banking laws than Federal authorities?

That, of course, was not the desired implication of the Gianninis at all. They reiterated they have no quarrel with either state or national bank laws, but merely the administration of the national laws by Henry Morgenthau.

It would seem that a question of deepest gravity has been posed by the Gianninis. Are the national banking laws being administered properly and without bias?

More should be heard on the matter from the proper authorities.

* * * * *

Some measure of the progress of Bank of America is afforded in a perusal of the bank's income account for recent years. Its profit and loss statement (as compared by the Examiner and published herewith for the first time) for the year ended December 31, 1939, compares as follows:

(see next page)

	1939	1938	1937
Income from loans	37,151,991	33,262,000	29,669,000
Income from investment	25,390,999	24,183,000	16,199,000
Income from services and recoveries	9,370,027	8,214,000	12,085,000
Gross revenue	71,913,017	65,659,000	57,900,000
Interest paid	12,473,400	12,440,000	12,272,000
Salaries paid	16,509,558	15,515,000	26,428,000
Taxes and FDIC assessments	5,322,060	12,082,000	-----
Other miscel.op. expense	9,277,550	-----	-----
Operating income	28,330,450	25,622,000	19,200,000
Dpen.& bond amortization	4,381,312	3,639,000	6,400,000
Reserves	4,999,927	6,253,000	-----
Employees' bonus	1,206,134	1,175,972	-----
Foreign credits charged off	5,355,834	-----	-----
Net profit	12,387,242	14,553,000	12,880,000
Dividends paid	9,600,000	9,600,000	8,800,000
Bal. in undivided profits	2,787,242	4,953,000	4,080,000
Profit per share	$3.10	$3.64	$3.22

Pacific Coast Addn. Wall Street Journal - January 11, 1940

HEARING BY FEDERAL RESERVE BOARD SEEN POSSIBLE RESULT OF GIANNINI STAND AT ANNUAL MEETING OF BANK

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By H. C. Hendee

Possibility that the developments at the annual meeting of the stockholders of Bank of America, N. T. & S. A., might result in forcing the controversy between the Giannini management of the bank and the Comptroller's office to formal attention of the Federal Reserve Board was seen in observant quarters yesterday. That such an eventuality would not be unwelcome to the bank management had been indicated by the expression of President L. M. Giannini to stockholders on Tuesday afternoon.

Out of comment upon the series of some nine direct communications from the Comptroller disclosed as having been dispatched to directors of the bank covering a period from September 13, 1938, to November 15, last, was derived indication that such a proceeding had been repeatedly intimated as contemplated at Washington, although it appeared yesterday that thus far no action in this direction has yet been taken.

Actually, under the law, such proceedings, if taken, would be private and findings if made against bank management, would not be publishable.

Determination to Resist

That the possibility was materially increased by the direct declarations of President Giannini respecting the attitude the management proposed to take relative to dividends, valuations and capital, seemed inevitable, these declarations amounting to formal expression of determination to resist the federal regulatory findings which the bank management regards as "arbitrary and illegal."

Suggestions of a shift to a state bank charter made by President Giannini to stockholders also were canvassed in banking quarters.

"We shall continue to contend for honest treatment and fair consideration of your bank's affairs and civil treatment of its directors and officers. If this cannot be accomplished rationally, and if it later appears that Mr. Morgenthau is to be permitted to continue to use his position arbitrarily to harrass your bank, we may suggest that you consider its conversion into a state bank,". Mr. Giannini said.

Process of Charter Change

In legal quarters it was pointed out that such a conversion would necessarily amount to the creation of a new state chartered bank and acquisition by it of the assets of the present national bank which would then be liquidated, since it was pointed out that under federal banking law it is not possible to transfer a bank from national to state charter.

Effect of such a shift, if Federal Reserve and Federal Deposit Insurance Corp. membership were held by the new state bank as would appear inevitable in such a change, would be to remove the bank from under authority of the Comptroller's office but to leave it subject to Federal Reserve and FDIC as well as state regulation.

This line of thought suggested by Mr. Giannini seemed naturally to relate itself to other parts of his statement in which he was at pains to assure stockholders that in Washington conferences, the management had "received considerate and courteous treatment" at the hands of Chairman Leo Crowley of the FDIC and other banking authorities not representing the Treasury Department and the Comptroller's office.

Issue Squarely Joined

That the proposal of a shift to state charter would be beside the immediate question if certification of the bank management to the Federal Reserve Board for hearings under section 30 of the Banking Act of 1933 took place before the change were undertaken seemed apparent.

That the issue between the Giannini contentions and the office of the Comptroller under the Secretary of the Treasury is definitely joined by the action of the stockholders' meeting, seemingly could not be evaded. The whole tenor was in distinct contrast to the talk of and reported conferences upon the situation at Washington last fall looking to a possible adjustment.

The character of the exposition to stockholders clearly thrust well into the background as an issue the SEC-Transamerica delisting case, although this is now reported from Washington as due for resumption of hearings in a few weeks. In fact President Giannini commented upon this corollary matter as a "passing" phase so far as the bank was concerned.

Points to Election Understanding

We do not propose to relinquish our self-respect and submit to his (Secretary Morgenthau) high-handed methods," Mr. Giannini said, adding that "stockholders should understand this before the election."

This was part of the supplemental statement by Mr. Giannini which stockholders by unanimous vote received for the record, following which members of the board were reelected and proceeded thereafter to reelect officers.

Also made part of the record was the 117 page letter and attendant exhibits which directors of the bank sent to the comptroller December 12, last. While this letter was opened to stockholders and other responsible persons, it was withheld from press publication.

Among the disclosures of Mr. Giannini, not commented upon formally heretofore was criticism by the comptroller's office of purchase contracts between Bank of America and Capital Co. and California Lands, Inc.

Land Company Contracts

In a statement that assets classed as doubtful in the last examination amounted to $7,888,000 or only 1.14%, Mr. Giannini pointed out that $6,491,000 of this amount was represented by the classified part of contracts between the realty companies and the bank for foreclosed properties purchased from the bank. The bank management contends that these assets are doubtful.

It was in support of its views relative to value of its realty assets it now holds directly, that the bank engaged American Appraisal Co. to appraise these properties with results stated to be more than fully supporting to management contentions. It was indicated to be upon this controversy that the comptroller, in his November 15 letter to directors, ordered that $9,000,000 be written off, and that the bank's last published statement be revised and republished together with a statement showing this $9,000,000 as loss.

In connection with this controversy, Mr. Giannini said that he had suggested that the bank would be willing to let the issue go to a joint appraisal of the comptroller, the California state superintendent of banks and the Federal Deposit Insurance Corp., and abide by the results.

Mr. Giannini devoted much of his statement to an exposition of the noteworthy progress of Bank of America, particularly over the last five years, under its present management. He was especially emphatic on the progress made in loss classification of loans under various examinations. These he pointed out dropped from 2.4% on

April 10, 1933, to 0.36% on the August 31 examination last year and by January 2 this year, the day on which report was delivered to the national bank examiner, had been further reduced to 0.06% or $397,800, he said.

1939 Income Account

Mr. Giannini's formal report on the bank's operations for 1939, in addition to extensive comment upon the business, contained the following summing up of income:

Receipts:	
From loans	$37,151,991
From security investments	25,390,999
Services, fees, recoveries, etc.	9,370,027
Gross income	71,913,017
Expenses:	
Salaries and services	16,509,557
Interest on deposits	12,473,400
Taxes and assessments	5,322,060
Other operating expenses	9,277,550
Total operating expenses	43,582,567
Depreciation and amortization	4,381,312
Reserve to reduce assets	4,999,927
Employes' bonus plan	1,206,134
Net income	17,743,077
Special reserve for foreign loans	5,355,834
Dividends	9,600,000
Balance to surplus	2,787,243.

While direct comparative figures for 1938 on this basis were not made available, net income for 1938 was stated to be $14,553,636. Gross income in 1938 was stated to have been $65,657,000.

COPY

An article from the San Francisco News, January 11, 1940

MORGENTHAU ANSWERS "ABUSE" FROM

BANK OF AMERICA HEAD

Special to the News: Washington, Jan. 11. Secretary of the Treasury Henry Morgenthau, Jr., took a "law and order" stand today when asked to comment on charges against him from L. M. Giannini, president of the Bank of America in San Francisco yesterday. Mr. Giannini charged that Secretary Morgenthau was antagonistic toward the bank and was persecuting the institution.

"As I see my job here," said Secretary Morgenthau, "it is to protect the interests of depositors of all national banks, and just as long as I am here and have any breath left in my body I am going to continue to do so regardless of any abuse that management sees fit to place on my head."

Mr. Morgenthau declined to discuss what requests, if any, have been made by the Comptroller of Currency to the Bank of America and would not indicate what action was contemplated regarding the bank.

He said, however, that he still favored legislation to terminate bank holding companies.

For Mr. Jones to take up the Secretary's press conference

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January 11, 1940 - DJ 11:10

Secy. Morgenthau said he thought action of House Appns. Com. yesterday in effort to limit appn. recommendations by its subcoms. to the amounts proposed in the Pres.'s budget message is a move in the right direction towards orderly budgeting. Mr. Morgenthau was asked for comment on the charges recently made by L. M. Giannini, Pres. of the Bk. of Am., N.T. & S.A., that he was antagonistic to the bank, and Mr. Morgenthau replied, "As I see my job here, it is to protect the interests of depositors of all nat. bks. and just as long as I am here and have any breath left in my body, I am going to continue to do so regardless of any abuse that any management sees fit to place on my head." Mr. Morgenthau declined to discuss what requests, if any, have been made by the Comptroller of the Currency to the Bk. of Am. and would not indicate what action, if any, was contemplated in regard to the bank. Secy. Morgenthau was asked whether he still favored the enactment of legislation by Cong. to terminate bank holdings companies along the lines that he has proposed in prev. years. He replied that he still favors leg. to deal with the bank holding company question. "It is up to Cong., but I would like to see them do something about it," Mr. Morgenthau declared. He explained that he did not like to see a bank holding company come into a local community, buy up the local bank, replace the local bank personnel with its own management, and operate the local bank from some metropolitan point, or the local banking problems of the community would be lost sight of.

MR. DELANO phoned:

Mr. Spencer of Boston can not come

Mr. Tom Smith can probably come and is wiring later this afternoon

Mr. Ottley can probably come and is wiring this afternoon or tomorrow morning.

Tik of Am.

1-11-40

TREASURY DEPARTMENT

INTER OFFICE COMMUNICATION

DATE January 11, 1940

TO Secretary Morgenthau

FROM E. H. Foley, Jr.

For your information

I have surveyed the available personnel which I might assign to work under Whitney Seymour on the proceeding involving Bank of America. I suggest that our people be under the immediate supervision of Norman Tietjens who will not be able to devote all of his time to the matter but who will be in charge when Whitney Seymour is in New York. For the time being, I think the following men will be adequate:

1. Elting Arnold. Mr. Arnold is now working for the Comptroller. He came to the Treasury in June, 1939. Prior to his appointment he was with Root, Clark,Buckner and Ballantine in New York City for approximately two years. He is a graduate of Williams and Columbia Law School. He was on the Law Review at Columbia and was a Phi Beta Kappa at Williams. Mr. Arnold is from Poughkeepsie, New York.

2. Hilbert Zarky. Mr. Zarky has been with the Treasury since November, 1938. Before he came to us he worked in the office of the Attorney General for the State of Wisconsin. Mr. Zarky is a graduate of the University of Wisconsin and its law school. He was a Phi Beta Kappa and graduated from the law school first or second in his class, being a member of the Law Review. Mr. Zarky is from Madison, Wisconsin.

3. Donald Shebondy. Mr. Sherbondy has been with us since June, 1937. Before Mr. Sherbondy came to the Treasury he was employed in the Solicitor's office, Department of Agriculture. Prior to that he was employed as an attorney at the State Department. Mr. Sherbondy is a graduate of Ohio Wesleyan and Georgetown and George Washington law schools. He was a Phi Beta Kappa at Ohio Wesleyan and a member of the George Washington Law Review. He has been working on the Bank of America case from its beginning. Mr. Sherbondy is from Dawson, Pennsylvania.

We are looking around for a secretary for Mr. Seymour. When we have selected one I shall see that she is investigated by Elmer Irey before she is assigned to work for Mr. Seymour.

E.H.F.Jr.

Secretary Morgenthau   January 11, 1940

E. H. Foley, Jr.

I have determined, subject to your approval, to assign Velma Shelly to Whitney Seymour as his secretary.

Miss Shelly has been working for Norman Tietjens, who has been handling actively the Bank of America case for me from the beginning. Mrs. Davis is Mr. Tietjen's regular secretary, but she has been absent from the office since last October. However, Mrs. Davis is expected to return to the office on February 1. In the meantime I shall supply Mr. Tietjens with a girl from my office.

(Initialed) E. H. F., Jr.

EHF:s 1/11/40

68

McGuire has originals in Dolan's safe

JAN 11 1940

Secretary Morgenthau

E. H. Foley, Jr.

The Comptroller of the Currency has informally requested authority to employ an examiner to conduct the hearings in connection with the examination into the condition of the Bank of America, National Trust and Savings Association along the lines of the annexed proposed order to show cause.

I have inquired into the qualifications of many persons to act as examiner for this proceeding. My conclusion is that Henry M. Bates of Ann Arbor, Michigan is qualified to act as such examiner. Mr. Bates has just retired as Dean of the Michigan Law School.

Accordingly, I recommend that Henry M. Bates be employed as such examiner, with compensation at the rate of one hundred dollars ($100.00) per day plus reimbursement for actual expenses for travel and subsistence. His function will be to conduct the hearings, render a report and do such other things as are necessary and proper arising out of such examination.

(Signed) E. H. Foley, Jr.

APPROVED: JAN 12 1940

(Sgd) Preston Delano

Comptroller of the Currency

(Signed) H. Morgenthau, Jr.

Secretary of the Treasury

OGC/EHF:s 1/11/40

JAN 11 1940

Secretary Morgenthau

E. H. Foley, Jr.

The Comptroller of the Currency has informally requested authority to employ a special counsel to assist in the examination into the condition of the Bank of America, National Trust and Savings Association along the lines of the annexed proposed order to show cause.

I have inquired into the qualifications of several dozen attorneys for this proceeding. My conclusion is that Whitney North Seymour is qualified to act as special counsel in this proceeding.

Accordingly, I recommend that Whitney North Seymour of the firm of Simpson, Thacher & Bartlett, 120 Broadway, New York, be employed as such special counsel, with compensation at the rate of two hundred dollars ($200.00) per day plus reimbursement for actual expenses for travel and subsistence. His function will be to prepare the case for hearing, examine and cross-examine witnesses at the hearings and do such other things as are necessary in connection with the proceeding.

(Signed) E. H. Foley, Jr.

APPROVED: JAN 12 1940

(Signed) Preston Delano

Comptroller of the Currency

(Signed) H. Morgenthau, Jr.

Secretary of the Treasury

OSC/EHFJr/wsh/fm

Typed 1/11/40

JAN 12 1940

MEMORANDUM FOR THE PRESIDENT:

For your information, there is attached a copy of an order for hearing which was sent by registered air mail on January 11, 1940, to the Board of Directors of the Bank of America National Trust and Savings Association. The purpose of the hearing is to provide an opportunity for the Bank to appear on February 14, 1940, at the Comptroller's Office in Washington, and show cause why the Comptroller should not take the following courses of action which are open to him:

1. Publish the report of examination of the Bank,

2. File a certificate before the Board of Governors of the Federal Reserve System for the removal of the directors and officers of the Bank pursuant to Section 30 of the Banking Act of 1933, and

3. Take such other and further action as may be provided by law.

The hearing is to be conducted before Dean Emeritus Henry M. Bates of the University of Michigan Law School, who has been retained as a special representative of the Comptroller for this purpose.

The Comptroller's counsel at the hearing will be Whitney North Seymour of the firm of Simpson, Thacher and Bartlett of New York City who has been retained as special counsel to prepare and present the Comptroller's case.

(Signed) Henry Morgenthau, Jr.

By hand 10^45 am
1/12/40

NOT:vls - 1/11/40

OFFICE OF COMPTROLLER OF THE CURRENCY
WASHINGTON, D. C.

January 11, 1940

ORDER TO SHOW CAUSE AND FOR HEARING, TO DETERMINE (1) WHETHER THE REPORT OF EXAMINATION OF THE BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, SAN FRANCISCO, CALIFORNIA, SHOULD BE PUBLISHED PURSUANT TO SECTION 5240 OF THE REVISED STATUTES OF 1873, AS AMENDED (U.S.C., SUP. IV, TITLE 12, SEC. 481), (2) WHETHER A CERTIFICATE FOR THE REMOVAL OF THE DIRECTORS AND OFFICERS OF SAID BANK PURSUANT TO SECTION 30 OF THE BANKING ACT OF 1933 (U.S.C. TITLE 12, SEC. 77), SHOULD BE TRANSMITTED TO THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, AND (3) WHETHER OTHER AND FURTHER ACTION SHOULD BE TAKEN AS MAY BE PROVIDED BY LAW.

I.

WHEREAS, Bank of America National Trust and Savings Association, San Francisco, California, is now and has been at all times hereinafter mentioned, doing business as a national banking association under the National Bank Act; and

WHEREAS, S. Andriano, W. E. Blauer, Leon Bocqueraz, Dr. G. E. Caglieri, J. Cereghino, John A. Corotto, Fred L. Dreher, W. D. Fennimore, F. W. Flint, Jr., Dr. A. H. Giannini, A. P. Giannini, George J. Giannini, L. M. Giannini, A. J. Gock, Marshall Hale, C. N. Hawkins, John E. Marble, Harry A. Mazzera, Wm. Wallace Mein, Angelo Petri, Dr. Celestine J. Sullivan, E. R. Thurber, and J. Zentner are now directors of the Bank of America National Trust and Savings Association; and

II.

WHEREAS, on September 13, 1938, the Acting Comptroller of the Currency transmitted to National Bank Examiner R. E. A. Palmer, at

Los Angeles, California, a telegram, a copy of which is attached hereto, designated as "Exhibit A" and is hereby incorporated and made part of this Order, in which the Acting Comptroller of the Currency made certain recommendations or suggestions based on the report of examination of the Bank completed April 20, 1938, and which telegram was read by National Bank Examiner R. E. A. Palmer on September 13, 1938, to the Board of Directors of the Bank of America National Trust and Savings Association, and

III.

WHEREAS, on September 23, 1938, the Acting Comptroller of the Currency transmitted to the Board of Directors of the Bank of America National Trust and Savings Association a letter, a copy of which is attached hereto designated as "Exhibit B" and is hereby incorporated in and made a part of this Order, in which the Acting Comptroller of the Currency made certain recommendations or suggestions, based on the report of examination of the Bank, completed September 15, 1938; and

IV.

WHEREAS, on April 14, 1939, the Comptroller of the Currency transmitted to the Board of Directors of the Bank of America National Trust and Savings Association a letter, a copy of which is attached hereto designated as "Exhibit C" and is hereby incorporated in and made a part of this Order, in which the Comptroller of the Currency made certain recommendations or suggestions based on the report of examination of the Bank, completed February 28, 1939; and

V.

WHEREAS, on July 31, 1939, the Comptroller of the Currency transmitted to the Board of Directors of the Bank of America National Trust and Savings Association a letter, a copy of which is attached hereto designated as "Exhibit D" and is hereby incorporated in and made a part of this Order, in which the Comptroller of the Currency made, among others, the following recommendations or suggestions based on the report of examination of the Bank, completed July 21, 1939:

(a) The excessive dividend rate of 19.2% should be reduced;

(b) The under-capitalized condition of the Bank must be remedied;

(c) The amount classified as loss in the report of examination, completed July 21, 1939, totalling $13,517,598.69, must be charged off promptly, and until such losses are charged off and adequate reserves established no further dividends should be declared or paid;

(d) The balance of $2,272,659.55, as shown in the report of examination, completed July 21, 1939 (page 2, insert 7; page 8, insert 16), of the Bank's fidelity insurance reserve for the first $100,000, carried with Transamerica General Corporation, should be returned in cash to the Bank;

(e) The large line of credit to A. O. Stewart and allied interests, shown in the report of examination, completed July 21, 1939 (page 2, insert 4; page 8, inserts 16 to 18), as totalling $7,623,239.31, of which $3,618,000 was classified "II" in the report of examination, completed July 21, 1939, must be promptly curtailed or satisfactory collateral pledged back of the line;

(f) Violations of section 5136 of the Revised Statutes of 1873, as amended (U.S.C. title 12, sec. 24; U.S.C., Sup. IV, title 12, sec. 24), as shown in the report of examination, completed July 21, 1939 (page 2), must be eliminated and discontinued;

(g) Violations of section 5137 of the Revised Statutes of 1873, as amended (U.S.C. title 12, sec. 29), as shown in the report of examination, completed July 21, 1939 (page 2, insert 1), must be eliminated and discontinued;

(h) Violation of section 5200 of the Revised Statutes of 1873, as amended (U.S.C. title 12, sec. 84; U.S.C., Sup. IV, title 12, sec. 84), as shown in the report of examination, completed July 21, 1939 (page 2), must be eliminated and discontinued; and

(i) Violations of section 24 of the Federal Reserve Act, as amended (U.S.C., Sup. IV, title 12, sec. 371), as shown in the report of examination, completed July 21, 1939 (page 2, insert 1), must be eliminated and discontinued; and

VI.

WHEREAS, more than 120 days have elapsed since notification to the Bank of America National Trust and Savings Association by letter of July 31, 1939, referred to in V above, of the recommendations or suggestions of the Comptroller of the Currency, based on the report of examination, completed July 21, 1939, and the Bank has not complied with the same to the satisfaction of the Comptroller of the Currency in spite of letters of warning from the Comptroller of the Currency dated October 2, 1939 and December 12, 1939, copies of which are attached hereto as Exhibits E and F respectively and are hereby incorporated in and made part of this Order; and

VII.

WHEREAS, A. P. Giannini, Chairman of the Board of Directors of the Bank, refused to comply with the request of the Comptroller of the Currency that he transmit to the directors copies of the Comptroller of the Currency's letter dated December 12, 1939, as shown by the letter from A. P. Giannini, dated December 22, 1939, a copy of which is attached hereto as Exhibit G and is hereby incorporated in and made a part of this Order; and

WHEREAS, R. P. Everard, Secretary of the Board of Directors of the Bank, failed to comply with the request of the Comptroller of the Currency that he transmit to the directors copies of the said letter of December 12, 1939, as shown by the letter from the Comptroller of the Currency, dated December 28, 1939, the telegram from the Comptroller of the Currency, dated January 2, 1940, and the telegram from R. P. Everard, dated January 4, 1940, copies of which are attached hereto as Exhibits H, I, and J respectively and are hereby incorporated in and made a part of this Order; and

VIII.

WHEREAS,

(a) The excessive dividend rate of 19.2% has not been reduced and the Bank and its board of directors contemplate the continuance of an excessive dividend rate;

(b) The Bank has not obtained additional capital;

(c) The Bank has not charged off the amount classified as loss by the examiner in the report of examination, completed July 21, 1939, and has continued to pay dividends without charging off such losses and establishing adequate reserves;

(d) The Bank has taken no steps to have the balance in its fidelity insurance reserve carried with Transamerica General Corporation returned to the Bank;

(e) The large line of credit to A. O. Stewart and allied interests has not been sufficiently curtailed or satisfactory collateral pledged back of the line;

(f) The Bank has not eliminated and discontinued all of the violations of section 5136 of the Revised Statutes, as amended (U.S.C. title 12, sec. 24; U.S.C. Sup. IV, title 12, sec. 24);

(g) The Bank has not eliminated and discontinued all of the violations of section 5137 of the Revised Statutes, as amended (U.S.C. title 12, sec. 29);

(h) The Bank has not eliminated and discontinued the violation of section 5200 of the Revised Statutes of 1873, as amended (U.S.C. title 12, sec. 84; U.S.C. Sup. IV, title 12, sec. 84);

(i) The Bank has not eliminated and discontinued all of the violations of section 24 of the Federal Reserve Act, as amended (U.S.C. Sup. IV, title 12, sec. 371); and

IX.

WHEREAS, the Comptroller of the Currency is of the opinion (1) that the report of examination of the Bank of America National Trust and Savings Association, completed July 21, 1939, should be published pursuant to section 5240 of the Revised Statutes of 1873, as amended (U.S.C. Sup. IV, title 12, sec. 481) and ninety days' notice thereof given as provided in said section, (2) that a certificate for the removal of the directors and officers of said Bank pursuant to section 30 of the Banking Act of 1933 (U.S.C. title 12, sec. 77) should be transmitted to the Board of Governors of the Federal Reserve System, and (3) that other and further action should be taken as may be provided by law; and

X.

WHEREAS, the Comptroller of the Currency desires to provide within said ninety days an opportunity to the said Bank of America National Trust and Savings Association, and S. Andriano, C. H. Baker, W. E. Blauer, Leon Bocqueraz, Dr. G. E. Caglieri, J. Cereghino, John A. Corotto, Fred L. Dreher, W. D. Fennimore, F. W. Flint, Jr., Dr. A. H. Giannini, A. P. Giannini, George J. Giannini, L. M. Giannini, A. J. Gock, Marshall Hale, C. N. Hawkins, John E. Marble, Harry A. Mazzera, Wm. Wallace Mein, Angelo Petri, Dr. Celestine J. Sullivan, E. R. Thurber, and J. Zentner, directors of the Bank of America National Trust and Savings Association, or their duly authorized representatives, to appear before the Comptroller of the Currency or his duly authorized representative, and show cause

(a) Why the report of examination of the Bank of America National Trust and Savings Association, completed July 21, 1939, should not be published pursuant to section 5240 of the Revised Statutes of 1873, as amended (U.S.C. Sup. IV, title 12, sec. 481), after ninety days from the date of service of this Order;

(b) Why the Comptroller of the Currency should not transmit to the Board of Governors of the Federal Reserve System a certificate for the removal of directors and officers of the Bank pursuant to section 30 of the Banking Act of 1933 (U.S.C. title 12, sec. 77); and

(c) Why the Comptroller of the Currency should not take such other and further action as may be provided by law.

NOW THEREFORE, it is hereby ordered by the Comptroller of the Currency:

(1) That this Order be served on the said directors by forwarding by registered mail to the Secretary of the Board of Directors of the Bank of America National Trust and Savings Association a copy of such Order for each of said directors, pursuant to the resolution of the Board of Directors of the Bank, dated September 30, 1938, requesting that all communications to the Board of Directors from the Comptroller of the Currency be transmitted through the Secretary of the Board of Directors;

(2) That the Bank of America National Trust and Savings Association be notified by service of this Order on the directors of the Bank of the proposed publication of the report of examination of said Bank completed July 21, 1939, pursuant to Section 5240 of the Revised Statutes of 1873, as amended (U.S.C. Sup. IV, title 12, sec. 481), ninety days after the date of service of

this Order, or at such later date as the Comptroller of the Currency may determine;

(3) That the ninety days' notice prior to publication of a report of examination, provided for in section 5240 of the Revised Statutes of 1873, as amended (U.S.C., Sup. IV, title 12, sec. 481), shall begin to run from the date of receipt of this Order by the Secretary of the Board of Directors of the Bank of America National Trust and Savings Association; and

(4) That a closed hearing begin on the   day of February, 1940, at 10:00 o'clock A. M. at the office of the Comptroller of the Currency in the Treasury Building, Washington, D. C., and continue thereafter at such times and places as the Comptroller of the Currency may determine.

Comptroller of the Currency.

(Copy)

EXHIBIT A

R E A Palmer
835 H W Hellman Building
Los Angeles California

You are instructed personally to advise the board of directors Bank of America, National Trust and Savings Association, San Francisco, California, who are meeting there today Tuesday the following -

"In view of the unsatisfactory asset condition of the bank, of other real estate in excess of $40,000,000 carried in loans and discounts and in the securities account, of German credits of $6,000,000 of other items carried in assets of questionable value and of the aggregate of assets classified as doubtful and losses, it is imperative that the earnings of the bank be used to write off and reduce book value of such assets. Notwithstanding the condition as outlined above and the fact that the dividend policy has been repeatedly criticised, the dividend rate has been repeatedly increased from 4.5% in 1933 to present rate of 19.2%. This situation was discussed at length by the Chief National Bank Examiner in Washington with the Chairman of the Board in January and again with the Vice President and Cashier of the Bank in August of this year. In the opinion of the Comptroller of the Currency the declaration of any dividend at this time would, unless proper provision for such criticised assets were first made, be and continue an unsafe and unsound practice in conducting the business of the bank. Accordingly the Comptroller of the Currency pursuant to Section 30 of the Banking Act of 1933 hereby warns the bank, its officers, the board of directors and the members thereof to discontinue such unsafe and unsound practice."

Marshall R. Diggs
Acting Comptroller

(Copy)

EXHIBIT B

TREASURY DEPARTMENT

Comptroller of the Currency

Washington

September 23, 1938

Board of Directors,
Bank of America National Trust and Savings Association,
San Francisco, California.

Gentlemen:

The report of examination of your bank, completed September 15, has been received and reveals practically the same criticisms as shown in previous reports. The purpose of those criticisms and of the criticisms set forth in this letter is to assist the Board of Directors in a constructive manner to protect the interests of the depositors as well as of the shareholders of your bank.

Your attention is directed to the examiner's comments under the heading of "Historical Resume of Assets in General" starting on page 2 of the consolidated report. A comparative survey over the past five years reveals that the primary purpose of the management appears to be that of publishing large earnings statements and the payment of ever-increasing ill-advised dividends rather than a frank recognition of the asset problems of the bank and a desire to allocate the bank's earnings toward the amortization of frozen and unbankable assets, the creation of adequate reserves and the correction of the bank's under-capitalized condition. The management of the bank has persistently contested the examiner's classification of assets, has defended unbankable assets, and has rarely admitted losses and charged them off voluntarily.

On page 3, insert 2, there is shown under "Large Lines" the extension of credit to Transamerica Corporation and its subsidiaries, which has been criticised for years, aggregating approximately $76,000,000, or in excess of one and one-half times the capital stock of the bank. It is noted that the so-called "Guaranteed Loans" amount to $5,500,000 in round numbers. This amount should be fully collateralized by readily marketable securities, particularly in view of the method used to eliminate the contracts of the Inter-America Corporation by writing up United States and municipal securities approximately $14,000,000 and applying that amount as a credit on such contracts, which were then indicated to have been adequately secured by marketable collateral. It is the position of the Office of the Comptroller of the Currency that these contracts should have been eliminated, not by a weakening of the asset condition of the bank through writing up certain assets as indicated above, but by actual collection, with any deficiency taken care of out of the securities pledged.

Since the early part of 1932 it has been the bank's policy to sell properties acquired by the bank to the California Lands, Incorporated, and the Capital Company under contracts. At the time of the examination of the bank, the amounts which these corporations owed the bank by reason of these contracts and which amounts were carried in the assets of the bank, were as follows:

California Lands, Inc.	$12,051,526.09
Capital Company	27,687,820.37
	$39,739,346.46

The California Lands, Incorporated was further indebted to the bank in amount of $351,016.19 and the Capital Company owed the bank a further sum of $1,443,040.65, making, with the above, the total indebtedness of these two companies to the bank $41,533,403.30.

With reference to the contracts of the California Lands, Incorporated and Capital Company, the bank maintains that real estate owned by the bank is sold under continuing contracts with the two foregoing companies. As a result of the terms and conditions of those contracts the bank is enabled to carry parcels of land, which are either unsaleable or can only be liquidated at a substantial loss, for an unlimited period of years, through the device of crediting the proceeds of the sale of a given parcel as a payment on the balance of the total contracts instead of treating each transaction as an individual item.

It appears that no payments were required on those continuing contracts for a period of two years, namely, through 1934 and 1935, following which one-tenth of the purchase price became payable in 1936 and a like amount each year thereafter for ten years. Taxes on such land are paid by the bank. Presumably title does not pass with the execution of the contract. All of these contracts are carried in your loans and discounts, but in reality they appear to represent "Other Real Estate Owned". The lenient terms and conditions of the contracts are such that this arrangement constitutes in fact merely an agency agreement and not a bona fide sale. In the opinion of the Comptroller of the Currency this real estate should be shown as such on the books of the bank and so shown in future published reports of the bank.

A recapitulation of the amount invested in banking houses, furniture and fixtures and other real estate owned is shown on page 14, insert 1, and aggregates $97,660,265.39, including contracts of the California Lands, Inc., and Capital Company, totaling $39,739,346.46, previously referred to. These are included in this schedule to show properly the bank's entire real estate investments. Of the aggregate of $97,660,265.39 the amount of $47,685,166.67 represents banking houses and equipment, and $49,975,098.72 represents other real estate owned. When $14,004,116.02 of actual and probable foreclosures on real estate loans carried in loans and discounts, are added to the aggregate of $97,660,265.39 referred to, the total is $111,664,331.41 or approximately the entire amount of the bank's capital structure as shown by its books. It is self-evident that an asset concentration of this magnitude constitutes a problem demanding immediate corrective steps.

Attention is also directed to the concentration of credit in the direct and endorsed lines of A. O. Stewart aggregating $3,088,003.96 as set out on page 8, inserts 16-17 and 18; and the Pacific Coast Mortgage Company in amount of $2,925,000.00, as shown on page 8, insert 19, of which company, Mr. A. O. Stewart is president and a director in addition to being a major stockholder. Particular attention is directed to the nature of the collateral securing these lines and to the comments in connection therewith, as set forth on the inserts above referred to.

There are now carried in the International Banking Department, San Francisco, extensions under German Credits, largely under the "German Standstill Agreement", aggregating $7,964,961.76 of which $7,820,660.78, are classified as follows:

Slow	$3,723,441.32
Doubtful	2,097,219.46
Loss	2,000,000.00
	$7,820,660.78

At the time of the October 14, 1936 examination a loss of $1,000,000.00 was estimated and subsequently charged off on these items. By verbal agreement a like amount was to have been charged off at each succeeding examination until the amount classified as doubtful, which represented the exchange loss, was completely eliminated. At the time of the April 20, 1937 examination the management refused to charge off the second estimated loss of $1,000,000.00 and it is included in the present classified loss of $2,000,000.00. However, a recent communication from the bank states that on August 13, 1938 an additional reserve of $1,000,000.00 representing the loss estimated in the April 20, 1937 report, has been transferred to the International Banking Department, making an aggregate of $2,000,000.00, which has been applied to reduce the carrying value of these assets. Consequently there remains an additional loss of $1,000,000.00 yet to be charged off in order to comply with the verbal agreement above referred to. Both the agreement and classifications are believed to be liberal and the exchange loss should continue to be charged off at the rate of $1,000,000.00 at each succeeding examination. This arrangement is considerably more lenient than the charge offs voluntarily made by other large national banks holding these obligations.

On page 3, insert 1, under the schedule "Loans exceeding the limits prescribed by Section 5200 of the Revised Statutes", there are listed obligations of Transamerica Corporation and obligations of certain subsidiaries thereof in which the Corporation owns or controls a majority interest, aggregating $23,113,152.37, resulting in a $14,113,152.37 excessive extension of credit. This violation of Section 5200, U.S.R.S. must be reduced to the bank's legal loaning limit of $9,000,000.00.

Your attention is directed to the examiner's comments under the heading of "Bonds and Securities" relating to certain substandard bonds carried and the option to purchase granted to the Transamerica Corporation covering 56,600 shares of National City Bank of New York at $48.00 a share; also his statements under the caption "Bond Write Up". During the years 1935 and 1936, the management wrote up certain government and municipal securities in amount of approximately $14,000,000.00 by various book entries and applied that amount as a reduction on the former fully secured Inter-America contracts, reference to which was briefly made elsewhere in this letter. The loss as shown in this report in connection with this write-up should be charged off, and in addition thereto, the remaining unliquidated portion of the original write-up should be reversed in its entirety. In the future investment securities must be carried not in excess of actual cost to the bank, less the required amortization.

A depositor is entitled to the protection of an adequate sound capital structure. According to the analysis of capital position as shown on page 3, insert 1, the net sound capital of your bank at the time of examination amounted to $96,447,599.77 after deducting estimated losses, doubtful items and liabilities not shown on the books, with deposits totaling $1,335,494,280.80, or a ratio of 1 to 14.36. The bank is under-capitalized to the extent of at least $42,000,000.00 without taking into consideration its asset condition. The need for such additional capital should be apparent and sound banking policy dictates that steps should be taken to provide it.

An important criticism will be found under the caption "Management and Supervision by Directors". The reports of the various committees appointed by the Board to supervise the operating functions of the bank should be incorporated in the minutes of the meeting of the Board in sufficient detail to be of value to the individual members thereof. The members of the Board have an important duty to perform in formulating the policies of operation of the bank and seeing that such policies are carried out by the active management. The minutes should clearly show the action, if any, taken by the Board with reference to such committee reports, and also which of the members approve or disapprove a given loan or transaction.

On page 16, insert 1, there is a schedule showing service charges on dormant accounts in the amount of $520,732.94 since April 10, 1933. The confiscation of dormant balances through such service charges is contrary to the rulings of the Comptroller of the Currency. All charges heretofore assessed contrary to such rulings should be restored to accounts charged. Unauthorized charges against dormant accounts remain deposit liabilities of the bank and must be so reported in statements of condition rendered to this office and in published reports.

On page 5, insert 5, are shown certain loans made upon the security of the bank's own stock in violation of Section 5201, U.S.R.S. These violations must be corrected and the law strictly observed.

Your particular attention is directed to the recapitulation of criticised and fixed assets, showing the major problems of the bank and their relation to its total capital structure, set forth in the conclusions of the examiner. The criticised and fixed assets of the bank aggregate $226,002,313.26 book value, of which $137,813,327.86 is subject to adverse classification. The serious nature of the problems involved is evident when it is realized that the adversely classified assets exceed the total capital structure of the bank by more than $25,000,000.

The management has persistently refused to either recognize or admit that the unsatisfactory condition of the bank must be corrected. The past practice of capitalizing uncollected profits is pernicious. A sound policy would necessitate the proper charging off of depreciated and unbankable assets instead of deferring such charge-offs until all hope of any recovery has been abandoned.

The management appears to be dominated by the desire to publish ever-increasing earnings statements. The bank's earnings have been utilized to enhance dividend payments to the shareholders of Transamerica Corporation instead of being used to charge off the bank's losses and make adequate provision for other criticised assets. The amount of dividends paid by the bank has been the subject of repeated criticism by various examiners. Despite these repeated criticisms, the dividend rate has been constantly increased. During the year 1937 the dividend paid represented 70% of the net operating profits of the bank.

In a telegram to National Bank Examiner Palmer, which was read by Mr. Palmer to the Board of Directors of the bank at its meeting in Los Angeles on September 13, the position of the Comptroller of the Currency with reference to the declaration of any dividend was clearly stated, and the Board was advised that, in his opinion, the declaration of any dividend at this time would, unless proper provision for the criticised assets of the bank were first made, be and continue an unsafe and unsound practice in conducting the business of the bank, and, the Comptroller, pursuant to the provisions of Section 30 of the Banking Act of 1933, further warned the bank, its officers, the Board of Directors and the members thereof to discontinue such unsafe and unsound practice. The Office of the Comptroller of the Currency is informed that, despite this warning, the Board of Directors of the bank declared a dividend without first having made proper provision for the criticised assets of the bank. No further comment in connection with the declaration of this dividend is being made at this time except to state that nothing contained in Mr. A. P. Giannini's letter of September 15, 1938, alters in any way the comments set forth in our telegram of September 13 in respect of the declaration of the current dividend.

You are requested to consider the present letter at a special meeting of the Board called for this specific purpose and to reply in detail over the signatures of the attending members, setting out the corrections effected in each of the criticised matters and your plans for the complete elimination of the same. Copies of your reply to this letter should be forwarded to Chief National Bank Examiner William Prentiss, Jr., and National Bank Examiner L. H. Sedlacek, 155 Montgomery Street, Room 1103, San Francisco, California.

Very truly yours,

(Sgd.) MARSHALL R. DIGGS

MARSHALL R. DIGGS
Acting Comptroller of the Currency

(Copy)

EXHIBIT C

April 14, 1939

Board of Directors,
Bank of America N.T. and S.A.,
San Francisco, California.

Gentlemen:

Copy of the report of examination of your bank completed February 26 has been forwarded to you for your information and guidance in effecting the corrections necessary to place your institution in a satisfactory condition. You are urged to make a careful study of the information contained therein and to take the proper steps to improve the asset condition at every favorable opportunity.

On page 3 there are scheduled under Classification Number II, \$112,468,546.80; under Classification Number III, \$7,585,059.97, and under Classification Number IV, which represent losses, \$5,883,631.10. It is assumed that items under the last named classification have already been eliminated through charge off but in the event that they have not it is expected that such action will be taken without delay.

On the same page the adjusted capital structure, after certain deductions, is shown as \$102,324,220.14, and with deposits of \$1,379,857,017.66, is deficient approximately \$36,000,000.00 in order to provide the desired ratio between these acounts, and to afford the proper protection to creditors. It is understood that the necessary action was taken at your meeting on March 14 to formulate plans for the increase in the capital of your bank, in accordance with your memorandum dated December 15, 1938.

There is listed on page 8, insert 2, a large line of credit to the Transamerica Corporation and its subsidiaries, aggregating \$72,798,082.51 which has been subject to criticism for many years. You are urged to eliminate the cause for this criticism by reducing this concentration to conservative limits with a view to ultimately completely divorcing the affairs of this Corporation from those of the bank. Included in this concentration is an extension of credit in the form of "Guaranteed Loans" in amount of \$4,885,220.06, and an "Option to Purchase" given by the bank to Transamerica Corporation in the amount of \$2,173,440.00, covering 45,280 shares of the National City Bank of New York, hereinafter referred to.

These items represent the remainder of the Inter-America contracts (formerly Corporation of America contracts) in an original amount of $35,214,000.00 given in 1931 and 1932 for the removal of losses, doubtful, or other assets of such unsatisfactory character as to require their elimination from the bank.

One of the methods used by the bank to reduce these contracts was the writing up of certain United States and Municipal bonds above cost price in 1935 and 1936 in amount of $14,007,788.34, which amount was applied as a reduction on the contracts.

In connection with the various methods used to reduce these contracts, your attention is called to the George H. Boskowitz loan in the amount of $86,000.00 which is carried at the California-Montgomery branch. This loan is secured by stock in the Transamerica Corporation, and the amount of $30,000.00 was charged off and sold to the Inter-America Corporation under one of the early contracts. This loan was subsequently written up $12,000.00 on December 7, 1935 and an additional $9,000.00 on October 30, 1936, or a total of $31,000.00, and this amount was credited upon the Inter-America contract indebtedness. Subsequently the amounts of $10,720.00 and $9,528.00, or a total of $20,248.00 was charged off against the undivided profits account of the bank on March 25, 1938 and October 31, 1938, respectively, but the former credits on the contracts were not reversed. The net result of this transaction is that the asset position of the bank was weakened to the extent of the write-up, and the subsequent charge off of $20,248.00 represents a diversion of bank earnings toward the elimination of the obligations of Transamerica Corporation or its subsidiaries.

From time to time certain charged off portions of notes sold under the various contracts were reinstated as active assets of the bank and applied toward the reduction of the balance due under the contracts. The procedure followed was to write up the active portion of loans on the bank's books as repeatedly as the supporting collateral appreciated in value and the unrealized recoveries thus obtained were applied toward the reduction of the current obligations. This was done under the instructions of the management and was based solely upon the favorable market price of the collateral, without regard to the financial worth of the borrowers or the future stability of the market. The writing up of these loans, secured to a large degree by stock in Transamerica Corporation solely on the strength of unrealized appreciation in value as a result of an increase in the market value of the collateral securing them, is wholly speculative and inconsistent with sound banking principles. The exact extent to which such loans were written up is not known, but the examiner states it is estimated that it would involve several million dollars.

The foregoing amounts were applied toward the reduction of the contracts and in the major portion of instances losses have been subsequently estimated on the loans that were written up. The extent to which the charged off assets have been written up represents a weakening of the asset position of the bank and the extent to which the written up assets have been subsequently charged off represents a diversion of bank profits toward the reduction of obligations of Transamerica Corporation and its subsidiaries. In your memorandum dated December 15, 1938 the statement is made that the bank will not write up on its books the value of any of its assets.

The Inter America contracts were adequately secured by marketable collateral furnished by Transamerica Corporation and could have been collected by the sale of such collateral. Therefore, it would appear that the applications of the credits arising out of the bonds written up constitutes the making of a gift or the forgiveness of a secured debt of a reputedly solvent corporation, neither of which can be justified, and constitutes a weakening of the asset condition of the bank to that extent.

The examiner states that in tracing a few of the reported recoveries through previous and present reports of examination, the following are examples of the methods resorted to by the management to reduce the so-called "guaranteed Loans" of Transamerica Corporation at the expense of the bank:

(1) It appears there was a net profit of $14,307.10 realized on the L.A. Rinconada Country Club property on August 30, 1937, acquired under foreclosure, which was entered as a credit on "guaranteed Loans" instead of the undivided profits of the bank. It would appear that any profit realized on this transaction properly belongs to the bank.

(2) The bank acquired title to the real estate securing the Mary Gantzer loan on October 6, 1937 and sold it to the Capital Company on December 17, 1937 for $12,447.66, the full amount of which was added to the contract indebtedness of Capital Company, and the bank reported a recovery on this sale of $9,944.27 which was credited as a payment on the "Guaranteed Loans." A few days later a loss of $5,447.66 on the sale price of this parcel to Capital Company was charged off but no portion of the endorsement made on the "Guaranteed Loans" was reversed. Since the bank only realized $7,000.00 on this asset finally, it would appear that the difference of $2,944.27 should have been credited to the bank's profits.

(3) On August 5, 1938 the real estate known as the Hellman Deal Properties carried in charged off assets was purchased by the bank and placed in its assets at $89,458.00 and this amount credited as a recovery on "Guaranteed Loans." It is not understood why this real estate was purchased and why it should not be removed from the assets for cash.

The so-called "Guaranteed Loans" in their entirety should be removed from the assets of the bank, and pending such removal should be adequately secured by marketable collateral.

After placing the "Guaranteed Loans" on the books at $6,500,000.00 as part payment on the Inter-America Corporation contracts the remainder of these contracts was eliminated from the bank's books on July 14, 1937 through the purchase by the bank from Transamerica Corporation of 56,600 shares of stock in the National City Bank of New York at a market price of $48.00 a share. The stock thus acquired was set up on the bank's books at $2,716,800.00 and an option granted to Transamerica Corporation to purchase the shares it had sold within a five year period at not less than 11,320 shares a year. Under the terms of the option, in the event that 11,320 shares are not purchased in any one year, the bank may sell at market any additional shares necessary to make up the dollar quota. At the expiration of the first year on July 14, 1938 the Corporation elected to exercise its option and did purchase 11,320 shares from the bank. However, instead of the bank demanding payment of the option price of $543,360.00 in cash, in order to eliminate that portion of the investment which could have been accomplished through the sale of sufficient shares in the market, it accepted from Transamerica Corporation an illegal second deed of trust obligation of the Western Furniture Exchange Corporation, which is approximately 71% owned by the Capital Company, and released a liquid asset having a market value of $288,660.00 at that time. This second deed of trust is subject to a prior lien in favor of the Metropolitan Life Insurance Company in the amount of $1,000,000.00, and has a maturity in excess of 15 years. The remainder due at the time of its acceptance by the bank was $580,000.00 plus interest of $2,497.22 or a total of $582,497.22, of which amount $543,360.00 was taken in consideration of 11,320 shares of the stock referred to and the remainder of $39,137.22 was applied on the delinquent payments due from Capital Company under the real estate contracts. The loan is payable $20,000.00 each six months and is now carried on the books at $560,000.00 and is fully described on page 8, inserts 27 and 28 of the report. You are requested to immediately remove this illegal asset from the bank for cash.

The "Option to Purchase" given by the bank to Transamerica Corporation is now carried at $2,173,440.00 and covers 45,280 shares of National City Bank of New York with a market value of $1,041,440.00 at the date of examination. The book value of these shares is further protected by an additional pledge of 18,400 shares of the same stock, showing market value of $423,200.00. The combined market value of the stock supporting the book investment of $2,173,440.00 amounts to $1,464,640.00, or a loss of $708,800.00.

During the past seven years the bank has pursued the policy of selling the real estate acquired by it through foreclosure to California Lands, Inc., and Capital Company under contracts. The indebtedness of California Lands, Inc. at the time of examination amounted to $12,236,719.72, of which $11,658,436.09 is a real estate sales contract. The indebtedness of the Capital Company aggregated $25,827,358.96, of which $24,911,358.98 is a real estate sales contract. These combined contracts total $36,569,795.05.

The contract of California Lands, Inc. is specifically secured by various farm properties, while the contract of the Capital Company is specifically secured by various parcels of city property acquired by the bank under foreclosure. On April 4, 1934, the contracts now in existence were entered into between the bank and these wholly owned subsidiaries of Transamerica Corporation, and cancelled all previous contracts with the companies, and properties were taken over under the new contracts for the balances due under the former contracts. Under these new contracts all of the properties were included in the face amount of the obligations; no down payment was required; 10% of the face amount due on the contracts was payable within approximately two years from the original date, and the remaining balance payable in ten annual installments. The bank retains title to the real estate until it is sold by California Lands, Inc. or Capital Company to a third party. Interest is payable at 1% per annum on the balance due and the bank pays all real estate taxes on the properties held under contract. The corporations are permitted by the bank to retain all income from the properties, less necessary insurance coverage costs. For these reasons it is evident that this contractural arrangement is interpreted to constitute a mere agency agreement and not a bona fide sale as contended by the management. The result is that the real estate underlying these contracts is actually "Other Real Estate Owned." On page 8, insert 19, the examiner shows that 600 properties with a present book value of $7,044,251.19 under the contract with California Lands, Inc., have been carried for periods ranging from 1929 to 1933, inclusive, while on page 8, insert 21 there are shown 521 properties under the contract with Capital Company with a present book value of $12,337,498.94 carried for like periods.

The National Banking Law provides that no national bank shall hold possession of any real estate except as shall be necessary in the transaction of its business, for a longer period than five years. It is evident that as a result of the revised terms and conditions of the present contracts that the bank is enabled to carry parcels of real estate which are either unsaleable or can only be sold at a substantial loss, for an unlimited number of years through the device of crediting the proceeds of the sale of a given parcel as payment on the balance of the total contracts, instead of treating each transaction as an individual item.

Your method of handling the bank's other real estate by sales to these companies under contract is construed as a violation of the spirit of the law and therefore should be shown on your books and reported as other real estate owned. Your agreement states that the bank will eliminate "Other Real Estate" and the real estate contracts of the Capital Company and California Lands, Inc., such elimination to be diligently pursued and completed by December 15, 1943.

On page 8, insert 1, there is shown an excessive loan to Transamerica Corporation and its owned and controlled subsidiaries in amount of $22,087,365.07 which should be reduced to the bank's legal loaning limit of $9,200,000.00 without undue delay. This violation of Section 5200, U.S. R.S., was listed in the previous report but apparently no action has been taken to eliminate the cause for criticism.

Deducting $85,404,652.81 of loans insured under Title II of the National Housing Act there remain $277,000,106.16 of all other types of real estate loans of which $51,702,463.07, or approximately 20% is subject to adverse classification. Of the criticized real estate loans $12,315,049.29 represent distress items, of which total 385 individual loans totaling $7,383,943.00 are actually under foreclosure as revealed by the foreclosure records of the bank and the remainder represent probable foreclosures in the opinion of the field examiners. In view of past experience it is not unlikely that the major portion of the items under foreclosure will ultimately result in other real estate owned.

On page 2, insert 7, the examiner states that 52 loans aggregating $8,471,372.15 carried in 23 branches are secured in part by 7,458.5 shares of the bank's own stock. It is understood through your cashier that this matter has been largely corrected. You are requested to take prompt action to correct this matter which is a violation of Section 5201, U.S.R.S., in accordance with your memorandum dated December 15, 1936.

On page 9, inserts 16 and 17, examiner has shown a list of 171 branches in which real estate loans aggregating $5,972,370.35 are carried that are supported by appraisal certificates which are five years old and over. It is noted that immediate correction of this condition has been promised.

In connection with your bonds and securities, there are listed on page 13, insert 12, sixty-five issues of bonds with a book value of $6,966,033.78 and a market value of $5,168,532.20 which do not qualify as investment securities. Thirty-two issues, having a book value of $3,406,075.50, and a market value of $2,681,471.50, or a depreciation of $724,604.00, did not qualify as investment securities when purchased and therefore are illegally held. All bonds in this group as well as all stocks owned should be disposed of as rapidly as circumstances will permit and the bond account strengthened at every favorable opportunity.

Your attention is directed to the examiner's remarks relating to the bonds issued by the Downtown Properties, Inc., an affiliate of the bank, carried at $526,520.00. He says the bank owns all of the outstanding bond issue except $3,000.00, (for which they have deposited a like amount in trust), in addition to all of the capital stock. It would appear that this item represents other real estate and therefore should be transferred to that account and so reported.

In order to show the concentration in fixed investments, there is shown on page 14, insert 1, of the report a recapitulation of banking houses, furniture and fixtures and other real estate owned. The combined total of these accounts aggregates $95,280,437.46, including the contracts of California Lands, Inc., and Capital Company hereinbefore referred to, which together with a total of $12,315,049.29 of actual and probable foreclosures on real estate loans, represents a concentration of $107,595,486.75, and constitutes one of the major problems of the bank. This figure is approximately $5,000,000.00 in excess of the adjusted capital structure of the bank as shown on page 3.

The bank's investment in stock of the affiliated Merchants National Realty Corporation is $19,129,108.10, of which $14,073,956.48 properly represents banking houses and $5,055,151.62 represents other real estate originally sold in 1931 by the bank to Transamerica Corporation under an agreement of sale which the bank carried in loans and discounts. Transamerica in turn sold the real estate covered by the agreement to Capital Company. Then the bank through its wholly owned Merchants National Realty Corporation, repurchased from the Capital Company the remaining parcels under the agreement paying cash by means of a contribution by the bank on July 14, 1937. Transamerica Corporation in turn received payment from Capital Company and then paid the proceeds of the transaction to eliminate its obligation to the bank under the original agreement of sale. The net result of this series of transactions was the reacquisition of real estate, and the elimination of the liability of Transamerica Corporation under its agreement to purchase. The real estate in question is not being used as banking premises, and the schedule on page 2, insert 10, shows that 21 parcels aggregating $4,821,344.75 were purchased on dates ranging from 1918 to 1929 inclusive, and 5 parcels totaling $233,806.87 were purchased from 1934 to 1938 inclusive. This total of $5,055,151.62 should be immediately removed from the carrying value of the stock of the Merchants National Realty Corporation and shown on the books and reported as other real estate. Such objectionable transactions as outlined above should be discontinued.

It is noted from the schedules on page 2, inserts 12 and 13, of depreciation on banking houses and furniture and fixtures that only in 1931 was the allowable rate by the Bureau of Internal Revenue actually charged off the books. Since that date to the end of 1937 it is shown that you have actually taken depreciation for income tax purposes of $3,200,553.16 in excess of the amount charged off against the individed profit account of the bank. In view of the heavy investment in fixed assets it is not believed the bank has been charging off a sufficient amount of depreciation against banking houses and furniture and fixtures. However, the examiner will make a further analysis of this situation during the course of the examination now in progress and you are requested to give this important matter careful consideration with a view to arriving at a satisfactory program.

On page 16, insert 1, there is a schedule showing that service charges in the net amount of $590,754.49 have been charged against dormant accounts since April 10, 1933. As you have been previously advised, the position of this office has always been that dormant accounts are the property of the depositors no matter how long they remain in the bank, and must be carried as deposits as long as they exist. With respect to the right of a bank to make a service charge on dormant accounts, it is not believed that the directors would be justified in making such a charge without the consent of the depositors as it would ultimately result in the confiscation of the accounts. All charges heretofore assessed contrary to such ruling should be restored to the various depositors' accounts in order that your books and published reports may accurately reflect the liabilities of the bank. Cashier Smith and Mr. Ferrari conferred with counsel for the Comptroller in connection with this item, and Mr. Ferrari agreed to submit to this office for inspection, copies of the contracts entered into between the bank and the depositors. Final determination of this item will be deferred until receipt of further information from Mr. Ferrari.

Your attention is again directed to the A. C. Stewart and affiliated large line aggregating $8,242,283.57, of which $3,500,000.00 is classified II in the report. The collateral securing this concentration with the exception of approximately $3,500,000.00 of United States obligations and a small amount of listed stocks, is comprised of defaulted bonds having a limited and closely controlled speculative market; stock in Transamerica Corporation and this bank; irrigation district bonds, and stocks in liquidating Joint Stock Land Banks and other real estate holding companies. You should insist upon the liquidation of the criticised portion or require adequate and satisfactory collateral.

The Impounded German Credits are classified $3,321,838.51 as II; $1,289,010.51 as III, and $1,000,000.00 IV. In accordance with the agreement reached with the management $1,000,000.00 should be charged off at each examination until the exchange loss has been eliminated.

Under the schedule of real estate loans on page 9, inserts 6 to 15, inclusive, the examiner has listed $16,152,269.53 which do not conform to the provisions of Section 24 of the Federal Reserve Act. These loans should be bought in conformity with this section or disposed of.

On page 17, inserts 2, 3 and 4, the examiner has set out certain criticisms of the reports of condition as of June 30, 1938 and September 28, 1938. You are requested to take such steps as are necessary to eliminate the cause for such criticisms.

Your dividend policy has been criticized in every report of examination since 1933. Notwithstanding such criticism the dividend rate has been increased steadily from the annual rate of 6% in that year to the present rate of 19.2%, or $9,600,000.00 annually. It is manifestly unsafe and unsound to disburse in the form of dividends the major portion of the bank's operating earnings while the criticised and fixed assets are approximately 200% of the adjusted capital structure of the bank, as shown on page 2, insert 21, of the report.

The comments in this letter are a summary of the criticisms made by the examiner in the report of his examination begun on November 21, 1938, and relate to transactions prior thereto. The bank has agreed, with reference to several of the criticised items, to make corrections. Undoubtedly progress has been made in that program. We shall appreciate an early reply to the present communication, giving us information as to the action which has been taken with respect to each of the items criticised in the report and in this letter, as well as the items covered in the memorandum of December 15, prepared subsequently to conferences in Washington between the Comptroller and officers of the bank.

Please send copy of your reply to this letter to Chief National Bank Examiner Irwin D. Wright, 1 Montgomery Street, Room 921, San Francisco, California.

Yours very truly,

/s/ Preston Delano

(Copy)

EXHIBIT D

TREASURY DEPARTMENT
COMPTROLLER OF THE CURRENCY
WASHINGTON

July 31, 1939

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

Gentlemen:

The current report of examination of your bank, completed July 21, 1939, a copy of which has been sent to you, shows a continuation of the unsatisfactory asset condition which has been the subject of previous communications to you and of discussions with the managing officers of your institution. We shall review in this letter some of the more important phases of the bank's problems, and point out the corrections which must be made if the Bank of America N.T. & S.A. is to be operated soundly and the interests of depositors protected.

The present examination shows that, after deducting estimated losses of $13,517,598.69, liability on account of service charges of $619,760.29, and one-half of Classification III, which aggregates $14,535,225.14, from the total capital structure as shown by your books, there remains $93,207,348.57 of adjusted capital structure, or approximately $9,000,000 less than was shown in the prior report.

Previous letters from this office have outlined the wholly unsatisfactory capital and asset condition of your bank. This two-fold weakness is manifestly attributable to such unsafe and unsound policies as (a) refusal of management and directorate to recognize asset problems in general, (b) refusal to recognize the dangers inherent in the excessive concentration in real estate, (c) use of earnings for the payment of dividends rather than for the creation of adequate reserves and the correction of the asset condition and the under-capitalization, (d) persistent unsound and illegal dealings with Transamerica Corporation and allied interests to the detriment of the bank and in other than conventional and accepted methods employed in dealings with other clients of the bank, and (e) refusal to make and keep the bank independent of, rather than subservient to, the interests and expansion policies of Transamerica Corporation.

The concentration of fixed assets, consisting of banking houses, furniture and fixtures and other real estate, exceeds the capital and surplus of the bank, and in fact exceeds the adjusted capital structure mentioned above. On Page 14, insert 1 of the report of examination, there is a schedule showing the total carrying value of fixed assets, which includes the contracts of California Lands, Inc., and Capital Company, since in effect the only collateral pledged as security for these contracts is the real estate covered by them. The amount properly representing banking houses and furniture and fixtures totals $48,234,851.52, and the amount invested in other real estate is shown to be $45,766,704.89. The combined total of these accounts is $94,001,556.41. In addition, there are 346 loans amounting to $6,032,175.00 which are under foreclosure, and additional loans aggregating $7,621,226.49 which are believed by the examiner to be potential foreclosures. This brings the total investment in actual and potential fixed assets to $107,654,957.90, which sum is <u>greatly</u> in excess of the adjusted capital structure. It is to be noted that $27,387,220.00 book value of other real estate, comprising approximately 1,000 parcels, has been carried beyond five years.

The contracts of California Lands, Inc., and Capital Company, mentioned in the preceding paragraph, aggregate $33,834,723.80. Notwithstanding your assurance that no more real estate would be transferred to these companies, the examiner reports that you have made a direct advance to the Capital Company in the amount of $1,100,000, which was used for the construction of a building for a large department store in Los Angeles, and that you have added that sum to the unpaid balance of the real estate contracts. Such action on your part not only constitutes an unsafe and unsound banking practice but, in the opinion of this office, is a violation of section 24 of the Federal Reserve Act, as amended. Immediate steps must be taken to remove this obligation from the assets of the bank for cash.

The real estate illegally acquired on August 5, 1938 in the amount of $89,456 (shown in the report as $85,405) in a transaction designated as the Hellman deal, must be removed from the assets of the bank for cash. You will recall that when these properties were reacquired, a credit of like amount was entered on "Guaranteed Loans."

As you have been previously advised, the illegal real estate loan of Western Furniture Exchange, Inc., in the amount of $520,000 should be removed from the assets of the bank for cash. That loan was taken from Transamerica Corporation in exchange for 11,320 shares of National City Bank stock carried in the bonds and securities account under "Option to Purchase." The property securing the loan is subject to prior encumbrance of $1,000,000 in favor of the Metropolitan Life Insurance Company. This loan, with a maturity of approximately fifteen years, represents an illegal investment under section 24 of the Federal Reserve Act, as amended.

Your particular attention is directed to the concentrations of credit to Transamerica Corporation and its affiliates in amount of $76,684,859.96; to A. O. Stewart in amount of $7,623,239.31, and extensions under German Credits of $5,009,239.82, which aggregate $89,317,339.09, or almost the entire capital and surplus of your bank. The large extension of credit to Transamerica Corporation (which includes the contracts of California Lands, Inc., and Capital Company) is entirely out of proportion to your capital structure and presents one of the most serious problems confronting you. Although this matter has been repeatedly brought to your attention both in reports of examination and correspondence from this office, you have appeared little disposed to reduce these borrowings through earnings or to have the corporation reduce them by the sale of assets. From the character of the major portion of the collateral pledged as security to this concentration it is apparent that such action will be necessary to bring this line within conservative limitations, and you are directed to take the necessary action to bring this about. Failure to do so constitutes an unsafe and unsound banking practice.

The A. O. Stewart line of $7,623,239.31 has also been subject to criticism over a long period of time and $3,618,000 has been classified II in this report. One of the loans in this large line amounting to $1,946,126.94 is adequately secured by United States Treasury bonds but the other collateral consists chiefly of defaulted bonds and stocks with no ready market or of corporations in liquidation. Prompt steps must be taken looking toward the curtailment of this line, or the pledging of satisfactory collateral back of the line.

Notwithstanding the large and dangerous concentration in real estate, the large and unwarranted obligations of Transamerica and affiliates, and in spite of the fact that the dividend policy has been criticised continuously since resumption of dividend payments in 1933, you have steadily increased that dividend rate until it has reached the annual total of 19.2%. As an illustration of your unsound policies it is noted that during the year 1938 the bank's earnings, after deducting the losses which you charged off, and exclusive of profits realized on the sale of bonds and securities, were $5,389,975.00, and during that year $9,600,000.00 was paid out in dividends. Numerous large transactions have been had with Transamerica and affiliates designed to avoid taking known losses and thus to give color of validity to the distribution of earnings by means of dividends to Transamerica and other shareholders. A net profit of $6,570,000.00 was realized from the sale of securities from September 1, 1938 to March 31, 1939, which was credited to undivided profits. It is the position of this office that until losses have been written off and adequate reserves established, none of such profits should be distributed to shareholders through dividend payments.

The report indicates that your bank carries its own Fidelity Insurance for the first $100,000.00 and that premiums which ordinarily would be paid to an insurance company are deposited with Transamerica General Corporation. The amount of such deposit is $2,272,659.55 and actually represents reserve funds of the bank that are not shown on the books. You are requested immediately to return this deposit to the bank in cash and to set up the proper account on your books. Failure to do so constitutes an unsafe and unsound banking practice.

Violations of law and regulations as shown by the report of examination (page 2) include the non-observance of the provisions of Section 5201, U.S.R.S., by granting loans based on the security of shares of the bank's own stock; of Section 5136, U.S.R.S., by the purchase by the bank for its own account of investment securities which do not conform to the law and regulations; of Section 5137, U.S.R.S., by virtue of certain real estate transactions as cited in the report of examination; and of Section 24 of the Federal Reserve Act in the making and purchasing of certain real estate loans. In addition to the foregoing your attention is again called to the fact that the obligations of Transamerica Corporation and its subsidiaries, in which the Corporation owns or controls a majority interest, amounting to $23,045,819.58 exceeds the 10% loaning limit of the bank under the provisions of Section 5200, U.S.R.S., and is in violation of the provisions of Section 23A of the Federal Reserve Act which limits loans to holding company affiliates.

It is the Comptroller's duty to insist upon the correction of practices or conditions which violate established sound banking principles. Therefore, it is deemed fair and appropriate to advise you that it is the purpose of this office carefully to scrutinize:

1. All transactions and practices which have resulted or which may result in

weakening the capital structure whether by way of unjustified dividends, or the improvident use of the credit facilities of the bank by contributions to, or the foregiveness of obligations of, allied or special interests.

2. The substance and not merely the form of all methods employed in the various and complicated transactions engaged in by your institution.

Furthermore, this office must insist that the bank conserve its earnings and establish an adequate sound capital position, that it refrain from unjustifiable favoritism to allied interests, that it correct the weaknesses and remove the bases of criticisms, that it take appropriate steps to eliminate the undue concentration in real estate including any portion thereof which may have been camouflaged through the use of allied corporations, and that appropriate policies and practices be established and followed to insure a constant sound condition for the bank.

If it has not been done prior to the receipt of this letter, the amount classified as loss by the examiner should be charged off promptly, and certainly not later than the day following the next meeting of your Board. You are advised that until these losses have been written off and adequate reserves established, any further declaration or payment of dividends to shareholders will constitute an unsafe and unsound banking practice.

Each director and officer of the bank is hereby warned, pursuant to the provisions of Section 30 of the Banking Act of 1933, 48 Stat. 193 (U.S.C. title 12, section 77), to discontinue each and all of the unsafe or unsound practices referred to in this letter or which have been disclosed by the reports of examination, and to make provision for the elimination and discontinuance of the violations of law referred to in this letter or in the reports of examination.

Very truly yours,

(Signed) Preston Delano

Comptroller of the Currency

(COPY) EXHIBIT E

TREASURY DEPARTMENT

COMPTROLLER OF THE CURRENCY

WASHINGTON

Address Reply to
"Comptroller of the Currency"

Oct. 2, 1939

Board of Directors,
Bank of America National Trust
and Savings Association,
San Francisco, California.

Gentlemen:

In my letter to you, dated July 31, 1939, which reviewed some of the more important phases of your bank's problems as revealed by the report of examination, completed July 21, 1939, I advised you that until losses set up by the examiner in that report were written off and adequate reserves established, any further declaration or payment of dividends to shareholders would constitute an unsafe and unsound banking practice. I further warned each director and officer of the Bank, pursuant to the provisions of section 30 of the Banking Act of 1933, 48 Stat. 193 (U.S.C. title 12, sec. 77), to discontinue such unsafe and unsound banking practice, as well as other unsafe or unsound practices and violations of law referred to in that letter and in the reports of examination of the Bank.

On September 12, 1939, in direct violation of my warning you declared a dividend at the rate of 19.2 per cent, without writing off all losses set up by the examiner in the report of examination, completed July 21, 1939, and without establishing adequate reserves. The declaration of that dividend constituted the continuance of an unsafe and unsound practice after you had been duly warned pursuant to section 30 of the Banking Act of 1933 to discontinue such practice.

In view of the apparent futility of the measures employed by this office in our efforts to bring about a real and adequate correction of serious unsafe or unsound banking practices and violations of law engaged in by your bank, we are constrained again to direct the attention of each member of your Board of Directors and of each officer of your bank to the provisions of section 30 of the Banking Act of 1933, 48 Stat. 193 (U.S.C. title 12, sec. 77) and to warn again against the continuation of violations of law and the continuation of practices which are unsafe or unsound.

It is unnecessary, for the purposes of this letter, to describe at length each transaction or practice discussed because previous correspondence between you and this office indicates that you are familiar with the matters referred to in this letter. Likewise, several successive reports of examination which have been furnished to your bank contain criticisms of these matters, and it is assumed that each director has familiarized himself with the contents of these reports.

Transactions described in this letter, taken by themselves, constitute unsafe or unsound banking practices. Furthermore, the several transactions, considered together evidence a scheme, inimical to sound banking, to use the facilities of the Bank for the benefit of Transamerica Corporation, its subsidiaries and allied interests without adequate protection for the bank, its depositors and other creditors. A study of these transactions indicates that expansion, rather than safe and sound banking, has been the dominant factor in the formulation of the policies of the bank.

Dividend Policy and Undercapitalization

Since 1933 the dividend rate has increased steadily from 6 per cent to 19.2 per cent. It is manifestly an unsafe or unsound practice to disburse in the form of dividends a major portion of the Bank's earnings, while the Bank carries a dangerous accumulation of real estate and other fixed assets, a large and unwarranted concentration in the obligations of Transamerica and its subsidiaries, and has total criticized assets, as shown by the report of examination, completed on July 21, 1939, of more than $130,000,000, an amount considerably in excess of the total capital structure of the Bank as shown by its books. It is noted from the same report of examination that during the year 1938 the Bank's earnings, after deducting the losses which you charged off, and exclusive of profits realized on the sale of bonds and other securities, were $5,389,975, while during that year $9,600,000 was paid out in dividends. Thus, a large part of the dividends were paid from non-recurring profits from sales of bonds and other securities.

The ratio of the capital structure of the Bank to deposits is out of proportion to the ratio required for safe and sound banking. The report of examination, dated October 21, 1927, revealed $1.00 of net sound capital to each $10.76 of deposits, whereas the report of examination, completed on July 21, 1939, shows $1.00 of adjusted capital structure to each $14.73 of deposits. The adjusted capital structure as shown in the report of examination, completed on July 21, 1939, is more than $9,000,000 less than that shown in the immediately preceding report, completed on February 28, 1939. In view of the enormous concentration in real estate and other fixed and criticized assets, failure of the directors to remedy the under-capitalized condition of the Bank is an unsafe and unsound banking practice.

Before any dividends were paid, earnings should have been used (1) to eliminate all losses and a reasonable portion of the other criticized assets, (2) to establish an adequate reserve against possible future losses, and (3) to establish a proper ratio between net sound capital and deposits. It is obvious that the Bank's dividend policy has been at variance with these principles and constitutes an unsafe and unsound banking practice. This becomes even more apparent when consideration is given to the fact that during most of the period since 1933 approximately 99 per cent of the Bank's stock was owned by the Transamerica Corporation which was the chief beneficiary of the Bank's unwarranted dividend policy. Even today this Corporation, as the owner of approximately 42 per cent of the Bank's stock, stands to receive the larges single benefit from a continuation of this unsound dividend policy. These facts, as well as others, make the conclusion inescapable that Transamerica Corporation and its subsidiaries have been unduly favored without due regard for the interests of the Bank, its depositors and other creditors.

At the meeting of the board of directors of the Bank, on September 13, 1938, a telegram from the Acting Comptroller of the Currency was read to the board by National Bank Examiner R.E.A. Palmer, in which the board of directors were advised that the declaration of any dividend at that time would, unless proper provision for criticized assets were made, be and continue an unsafe and unsound practice and, pursuant to section 30 of the Banking Act of 1933, the Bank, its officers and the board of directors and members thereof were warned to discontinue such unsafe and unsound practice. In direct violation of that warning, a dividend at the rate of 19.2 per cent was declared by the board of directors without making proper provision for criticized assets. The declaration of the dividend on

September 13, 1938 was the continuance of an unsafe and unsound practice, in direct violation of the warning of the Acting Comptroller of the Currency.

In the last report of examination, completed on July 21, 1939, book assets classified by the examiner as loss totaled $13,517,598.69. By letter, dated July 31, 1939, I advised you that until those losses were written off and adequate reserves established, any further declaration or payment of dividends to shareholders would constitute an unsafe and unsound banking practice, and the directors and officers of the Bank were warned, pursuant to section 30 of the Banking Act of 1933, to discontinue such unsafe and unsound banking practice. In direct violation of that warning the board of directors, on September 12, 1939, declared a dividend at the rate of 19.2 per cent without writing off all losses set up by the examiner and establishing adequate reserves. The declaration of the dividend on September 12, 1939, was the continuance of an unsafe and unsound practice, in direct violation of my warning.

The failure or refusal of the Bank or its directors to charge off or make adequate provision for the book assets classified as loss by the examiner in the last report of examination, completed on July 21, 1939, is, and continues to be, an unsafe and unsound banking practice and a violation of law. Likewise the declaration or payment of any dividend in the future without making proper provision for criticized assets will be and continue an unsafe and unsound banking practice, and the failure or refusal of the Bank or its directors to charge off or make adequate provision for book assets classified as loss by the examiner in future reports of examination will be and continue an unsafe and unsound banking practice and a violation of law. You are further advised that representing in published reports of condition of the Bank assets to be good, which the Comptroller of the Currency has directed be charged off, is and continues to be an unsafe and unsound practice and a violation of law.

<u>Real Estate Concentration</u>

The report of examination of the Bank, completed on July 21, 1939, discloses an unwarranted concentration of the Bank's assets in real estate, aggregating $94,001,556.41, a sum in excess of the adjusted capital structure of the Bank. This concentration includes real estate shown on the Bank's books as "banking premises" in the amount of $26,786,498.80 of which, properties having a book value of $1,196,295.20 are not used as banking premises and have been carried by the Bank in excess of eleven years. The real estate concentration also includes contracts with California Lands, Inc., and Capital Company in the amount of $34,934,723.80, since the only collateral pledged as security for the fulfillment of these contracts is the real estate which is purported to be sold thereunder;

and $4,641,991.79 of the investment of the Bank in Merchants National Realty Corporation stock.

Contracts with California Lands Inc. and Capital Company

Apparently, in order to circumvent the five-year limitation upon the holding of real estate by a national bank, proscribed by section 5137 of Revised Statutes, as amended, real estate, formerly securing distressed loans and acquired through foreclosure or otherwise, has been made the subject of several successive contracts with California Lands Inc. and Capital Company, the terms of which have been varied from time to time to meet the needs of those corporations (subsidiaries of Transamerica Corporation) rather than to protect and benefit the Bank.

The original contracts under which the Bank purported to dispose of its "other real estate" were contracts made with National Bankitaly Corporation, which was wholly owned by shareholders of the Bank. Subsequently, those contracts were canceled and new contracts were entered into between the Bank and Capital Company and California Lands Inc. (each of which is wholly owned by Transamerica Corporation). A brief chronology of the changes made in the successive so-called resales of foreclosed properties will disclose how the alterations in the contracts have benefited Transamerica Corporation and its subsidiaries, and prejudiced the interests and rights of the Bank and its depositors.

The original contracts provided for initial payments of 25 per cent of the book value of the real estate sold, with interest at 6 per cent per annum on unpaid balances, payment in full to be made within a period of five years, the purchasers to pay the taxes. These contracts were canceled and new ones entered into with Capital Company and California Lands Inc. The last mentioned contracts provided for initial payments of 10 per cent of the purchase price of the properties (determined by actual cost to the Bank, rather than estimated value) and 10 per cent each year thereafter with interest at the rate of 1 per cent per annum on unpaid balances, but taxes to be paid by the Bank. In April, 1934, those contracts were canceled and new contracts entered into between the Bank and the same subsidiaries of Transamerica Corporation whereby further benefits were given to those subsidiaries, in that no initial or down payment was required and 10 per cent per annum was to be paid from and after two years from the date of acquisition. The annual 10 per cent payments have no relationship to each property sold under the contracts but rather relate to the aggregate of the purchase price of all properties sold to each corporation. The new contracts provide for the acceptance by the Bank at face value of any notes or sales contracts received by these corporations in payment for the real estate sold by them.

Formal approval was not given by the board of directors of the Bank either to the original contracts with Capital Company and California Lands Inc., or to their successive revisions. It is an unsafe or unsound practice for the board of directors to delegate, or permit the officers to assume and exercise, its duties and discretion, particularly where the transactions involve assets and rights of such importance as the real estate contracts with Capital Company and California Lands Inc.

The patent benefits to Transamerica Corporation or its subsidiaries from each successive change in the contracts clearly evidence the unsafe or unsound practice of unduly favoring Transamerica Corporation and its subsidiaries without due regard for the interest of the Bank, its depositors and other creditors.

The assuming by the Bank of the obligation under the present contracts to take at face value, notes or other obligations accepted by Capital Company and California Lands Inc., in payment of the obligations of those corporations to the Bank, constitutes an unsafe or unsound practice since it prevents the board of directors of the Bank from performing its duty by exercising its sound discretion in selecting desirable purchasers or procuring adequate prices for the respective properties.

Any trades of real estate under the provisions in the contracts authorizing California Lands, Inc., and Capital Company to make "trades, with the right of substitution", of real estate owned by the Bank, not only constitute an unsafe and unsound banking practice, but the acquisition of any new real estate by the Bank as a result of such trades constitutes a violation of section 5137 of the Revised Statutes, as amended (U.S.C. title 12, sec. 29). The purported sale of real estate to the two companies for the apparent purpose of circumventing the five-year limitation upon the holding of real estate by a national bank, prescribed by section 5137 of the Revised Statutes, as amended, constitutes an unsafe and unsound practice, unless the companies pledge satisfactory collateral as security for the contracts, in addition to the real estate purported to be sold thereunder, to protect the Bank against losses on sales of real estate not finally disposed of by the companies within five years after acquisition by the Bank. Unless the companies pledge such additional collateral as security for the contracts, the Bank must set up adequate reserves to cover possible losses on sales of real estate not finally disposed of by the companies within five years after acquisition by the Bank. Failure to do so is and continues to be an unsafe and unsound practice.

Merchants National Realty Corporation. On October 1, 1931, the Bank sold to Transamerica Corporation for a consideration of

$9,155,786.56 certain real estate carried on the books of the Bank as "banking premises", but which were not being used for banking purposes. The contract provided for a down payment with the balance payable on or before October 1, 1936. Subsequently, Transamerica Corporation sold to Capital Company the properties acquired by it under the contract. On July 14, 1937, more than nine months after the date on which the balance due to the Bank under the contract of October 1, 1931 was to have been paid to it, the Bank contributed $5,875,000 to the surplus of Merchants National Realty Corporation (wholly owned by it) and increased the book value of the Bank's investment in the stock of this Corporation by the same amount. Merchants National Realty Corporation in turn purchased from Capital Company for the sum of $5,874,457.70, the ex-banking premises then held by Capital Company, such sum representing the balance remaining due to the Bank from Transamerica Corporation under the contract of October 1, 1931. Capital Company then paid to Transamerica Corporation the proceeds of this sale to eliminate the Capital Company's liability on its contract with Transamerica Corporation. Transamerica Corporation in turn used the same funds to eliminate its liability to the Bank under the October 1, 1931 contract.

The result of these transactions is that the Bank increased by the sum of $5,875,000, its investment in the stock of Merchants

National Realty Corporation carried in its "other bonds, stocks and securities" account and eliminated the direct obligation of the Transamerica Corporation to the Bank. Essentially, the transactions resulted in a re-acquisition by the Bank of other real estate which it had formerly sold to Transamerica Corporation. According to the report of examination, completed on July 21, 1939, there remain on the books of Merchants National Realty Corporation 23 parcels of this illegally purchased real estate, having a book value of $4,578,309.34, all but one of which parcels were originally acquired by the Bank more than ten years ago, and, accordingly, are now being carried by the Bank beyond five years, in violation of section 5137 of the Revised Statutes, as amended.

The acquisition of the ex-banking premises by Merchants National Realty Corporation relieved Transamerica Corporation or its wholly owned subsidiary from any risk or hazard of loss through depreciation in value of the real estate, while the Merchants National Realty Corporation, wholly owned by the Bank, assumed that risk. This transaction evidences again the unsafe or unsound practice of favoring Transamerica Corporation or its subsidiaries.

This use of Bank funds for the purpose of indirectly purchasing real estate not necessary for the Bank's accomodation in the transaction of its business is an unsafe or unsound practice and a violation of section 5137 of Revised Statutes, as amended. In addition, the carrying of this illegally purchased real estate in the bond account of the Bank as an investment in the stock of

Merchants National Realty Corporation, rather than as "Other Real Estate Owned", and so reporting it, is misleading and constitutes an unsafe or unsound practice.

Transamerica Corporation Large Line

The last report of examination discloses that obligations totaling $76,684,859.96 (of which more than $53,000,000 are adversely classified), and representing about 67 per cent of the Bank's capital as shown by its books are substantially dependent upon the future prosperity, earning power and success of Transamerica Corporation, its subsidiaries and allied interests. This overconcentration has been the subject of repeated criticisms in reports of examination of the Bank, and in correspondence and conferences between your office and the Bank. By letter, dated July 31, 1939, I advised you that failure to take the action necessary to bring this line within conservative limitations constituted an unsafe and unsound banking practice, and you were warned, pursuant to section 30 of the Banking Act of 1933, to discontinue such unsafe and unsound practice.

The major portion of the securities pledged as collateral for this line is reported to be permanent investments of the Transamerica Corporation and its subsidiaries, and therefore, no substantial liquidation reasonably can be anticipated from that source. The report of examination, completed on July 21, 1939, points out that, although there has been little improvement in the aggregate total of the Transamerica large line for the past several years, Transamerica Corporation, since January, 1937, has disbursed in the form of dividends and in the retirement of its own stock almost $90,000,000.

This overconcentration in obligations of Transamerica Corporation and its subsidiaries is an unsafe and unsound practice which must be discontinued by immediate steps to eliminate the concentration along constructive lines of actual asset improvement and cash liquidation rather than by mere change of obligor or form of obligation or by re-acquisition by the Bank of unsatisfactory or illegal assets, which to a marked degree has been the procedure followed in the past, as disclosed by the various reports of examination.

Inter-America Corporation Contracts.

Certain assets were classified as "nonbankable and loss" in the reports of examination made in 1931 and 1932. These assets to the extent of more than $35,000,000 were made the subject of three contracts (referred to later as Inter-America Corporation contracts) entered into between the Bank and Inter-America Corporation which was a wholly owned subsidiary of Transamerica Corporation.

In causing the contracts to be executed and to be collateralized by securities of substantial value, Transamerica Corporation (which then owned 99.65 per cent of the stock of the bank and was, therefore, responsible directly or indirectly for the threatened impairment of the Bank's capital) outwardly manifested a purpose to strengthen the capital position of the Bank. These contracts purported to represent not only to the public, but also to the national bank examiners and the Comptroller of the Currency, binding obligations of the Inter-America Corporation as well as legal holdings and liquid assets of the Bank.

Each of the original Inter-America Corporation contracts provided for payment of the balance of the purchase price of the non-bankable and loss items covered by them at the expiration of one year from the date of the respective contracts with interest at the rate of 6 per cent per annum on unpaid balances. From time to time the dates for performance of the contracts (and the consequent accrual of interest thereon) were extended. These extensions were in reality for the benefit of Transamerica Corporation or its subsidiaries. By virtue of these extensions the bank was deprived of income contemplated by the original contracts. The extensions removed the contract obligations from the category of "bad debts" as defined in section 5204 of the Revised Statutes (U.S.C. title 12, sec. 56), thereby making possible the payment of large dividends to Transamerica Corporation or its subsidiaries. Finally, Transamerica Corporation or its subsidiaries were enabled to avoid actual payment of the binding obligations created by the contracts. The extensions were clearly unsafe or unsound banking practices.

The methods used in the alleged elimination of the major portion of the obligations created by the so-called Inter-America Corporation contracts constitute unsafe or unsound practices in and of themselves and also evidence the ultimate unsafe or unsound practice which has been followed by the Bank in unduly favoring Transamerica Corporation or its subsidiaries. The methods are disclosed in recent reports of examination under the heading "Large Line". Attention is called to some of the methods used, not one of which was formally approved by the Board of Directors and which are as follows:

First. In 1935 and 1936, certain Government and municipal bonds were written up to the extent of approximately $14,000,000 and a like amount was applied on the obligations represented by the Inter-America Corporation contracts. Those obligations could have been collected at their respective maturities by resort, if necessary, to the collateral pledged as security for them and, therefore, those applications of credits constitute the making of gifts or the forgiving of debts, neither of which can be justified.

The writing up of appreciation in securities without giving consideration to depreciation and losses in other assets is not in accord with sound banking principles and is an unsafe and unsound practice. The various "write-ups" were ciriticized in the reports of examination covering the respective periods in which they occurred.

Second. On February 1, 1933, and January 2, 1934, the Bank entered into contracts with wholly owned subsidiaries of Transamerica Corporation, whereby the Bank sold all of its charged off assets, including those to be charged off up to July 1, 1937, for a total consideration of $300,000. Subsequent to those sales, some of the charged off assets were liquidated and the proceeds thereof in the amount of $1,486,185 were credited upon the Inter-America Corporation contracts. On July 14, 1937, the Bank repurchased from the Capital Company and California Lands, Inc. (successors to the original contracting subsidiaries) the residue of such charged off assets for a consideration of $6,500,000, under a so-called guaranty by Transamerica Corporation that the Bank would obtain through liquidation of these assets the amount of the purchase price. In addition, the contract provided that Transamerica Corporation would share equally with the Bank in all recoveries over and above $6,500,000 until the year 1947. Of the purchase price paid by the Bank, $5,844,287 was made available to Transamerica Corporation through a series of inter-company book entries and eventually was credited upon the obligations of Transamerica Corporation on the Inter-America Corporation contracts. The remaining portion of the purchase price, approximately $657,000, was used by California Lands, Inc. to reduce its liability to the Bank under the real estate contracts already discussed.

The repurchase of charged off assets evidences either the taking of a grossly inadequate consideration at the time of the original sale or the payment of an unconscionable price when these assets were repurchased as well as an illegal and unwarranted investment of bank funds. In addition, the transaction evidences undue favoritism to Transamerica Corporation and its subsidiaries in that there was substituted for a valid and well-secured obligation of Transamerica Corporation a group of previously charged off assets of very questionable value purporting to be secured by a long term guaranty of the Transamerica Corporation, thus further extending the time for payment for its original obligation. All of the recoveries, past as well as future, on the charged off assets should have been and should be used to take care of other losses and to strengthen the capital structure of the Bank, rather than be made the subject of direct or indirect gifts to the Transamerica Corporation and allied interests.

Third. An additional portion of the obligation of Transamerica Corporation under the Inter-America Corporation contracts allegedly was eliminated by a so-called sale of 56,600 shares of stock of

National City Bank of New York by Transamerica Corporation to the Bank for a consideration of $2,716,800, which sum was applied as a credit upon the Inter-America Corporation contract obligations. In the course of the transaction the Bank gave to Transamerica Corporation a so-called "Option to Purchase" the National City Bank stock at the rate of 11,320 shares per year over a five-year period for the price at which the securities were purchased by the Bank.

Among the objectionable features of the so-called "Option to Purchase" National City Bank stock transaction are:

(a) In exercising the first option for the purchase of 11,320 shares of the stock at $48 a share, a second mortgage on real estate, due in approximately 15 years, was offered and accepted in lieu of cash.

(b) The Bank took the stock under an arrangement whereby Transamerica Corporation rather than the Bank would enjoy the benefits of any increase in the market price.

(c) The additional 18,400 shares of National City Bank stock, allegedly pledged to the Bank by Transamerica Corporation, is inadequate to protect the Bank against any appreciable drop in the market price of the stock, as is disclosed by the estimated loss of $724,720 shown in the last report of examination.

(d) The Bank is deprived of the right to dispose of the stock except to the extent that Transamerica Corporation fails to exercise its option in any particular year.

The purchase of the National City Bank stock constitutes an illegal investment of bank funds and a substitution of securities which the Bank could not legally acquire for a binding and well-secured obligation of Transamerica Corporation.

Fourth. From time to time certain notes sold under the Inter-America Corporation contracts were reinstated as assets of the Bank and credit was given to Transamerica Corporation on the contracts. These restorations were occasioned by the increases in the market value of collateral securing the respective notes and appear to have been based solely upon the favorable market price of the collateral without regard to the financial worth of the makers of the notes or the future stability of the market. The writing up of loans, which were considered to be of such nonbankable character as to be charged off, solely on the strength of an unrealized appreciation in value as a result of an increase in the market price of the collateral securing them, is purely speculative, inconsistent with well-established sound banking principles, and wholly unjustified.

"Self Insurance"

On page 18, insert 16, of the report of examination, completed on July 21, 1939, the examiner discusses the so-called "self insurance" plan of the Bank, under which the Bank purports to carry its own fidelity insurance for the first $100,000, by depositing premiums which would otherwise be paid to an insurance company, with Transamerica General Corporation. This plan will not be discussed in detail, since your letter of August 8, 1939, and enclosures, indicates that you are fully acquainted with the plan.

Transamerica General Corporation is a wholly-owned subsidiary of Transamerica Corporation, and it does not appear that the Corporation has any authority to do an insurance business. This practice of depositing with or paying insurance premiums to Transamerica General Corporation constitutes an unsafe and unsound banking practice. If it has not already been done, the practice should be discontinued and the remaining balance of the premiums paid to Transamerica General Corporation, which, according to the examiner, totalled $2,272,659.55 as of March 31, 1939, should be returned to the Bank. Failure of the Bank to discontinue making such payments to Transamerica General Corporation or failure to take immediate steps to obtain the return to the Bank of the balance of the premiums remaining with Transamerica General Corporation, will be and continue an unsafe and unsound practice.

Violations of Law.

In discussing the unsafe or unsound banking practices in the preceding pages certain transactions under consideration were designated as violations of law. Under the present heading are included additional violations of law (this summary contains several of the violations referred to in preceding pages) which the Bank or its directors have knowingly or negligently permitted its officers or agents to commit. The transactions which constitute violations of law will be very briefly identified, since details with reference to such transactions are set forth in the last report of examination of the Bank, completed on July 21, 1939.

Section 5200 of the Revised Statutes, as amended (U.S.C. title 12, sec. 84). This section has been violated by excessive "obligations" of Transamerica Corporation, and its subsidiaries, to the Bank. (Report of examination, completed July 21, 1939, page 8, inserts 1 seq.)

Section 5136 of the Revised Statutes, as amended (U.S.C. title 12, sec. 24). This section has been violated by the acquisition by the Bank of 56,600 shares of stock of the National City Bank of New York from Transamerica Corporation, on July 14, 1937, 45,280 shares of which were held illegally by the Bank at the time of the last examination. (Ibid., page 8, inserts 4 to 6.)

Section 5137 of the Revised Statutes, as amended (U.S.C. title 12, sec. 29). This section has been violated in the following transactions:

(a) On or about July 14, 1937, the Bank illegally repurchased certain properties at one time owned by the Bank and carried as "Future and Former Bank Premises" but sold to Transamerica Corporation, on or about October 1, 1931. This illegal acquisition was effected by the Bank increasing in the amount of $5,875,000 its investment in the stock of Merchants National Realty Corporation, a wholly owned subsidiary of the Bank. (Ibid., page 14, inserts 32 to 66.)

(b) The report of examination, completed on July 21, 1939, at page 14, insert 72 and 73, lists a number of properties acquired in violation of this section.

(c) The report of examination, completed on July 21, 1939, at page 14, insert 71, lists parcels of real estate which have been held by the Bank beyond the five-year statutory period prescribed by this section.

(d) The report of examination, completed on July 21, 1939, at page 14, insert 8, lists three properties which should be carried by the Bank as "Other Real Estate Owned", rather than "Banking Premises." These properties have not been used as banking premises and have been held by the Bank in excess of eleven years in violation of the five-year statutory period prescribed by this section.

Section 24 of the Federal Reserve Act, as amended (U.S.C. title 12, sec. 371). The report of examination, completed on July 21, 1939, at page 9, insert 13, contains a recapitulation showing a total of $16,255,229.66 real estate loans which are in violation of the requirements of this section. You are further advised that the loan to Capital Company for the construction of a department store (Ibid., page 8, insert 10) which, according to your letter of August 8, 1939, has been increased to $1,400,000, is a violation of this section.

* * * * * * *

In the course of this letter certain practices indulged in by the Bank have been characterized as unsafe or unsound, such as the practice of unduly favoring Transamerica Corporation or its subsidiaries or allied interests, without due regard for the interests of the Bank and its depositors and other creditors. In this connection each director and each officer of the Bank is hereby warned, pursuant to the provisions of section 30 of the Banking Act of 1933, 48 Stat. 193 (U.S.C. title 12, sec. 77), to discontinue all practices which may unduly favor Transamerica Corporation or its subsidiaries or allied interest, whether by way of paying unjustifiable dividends before having made appropriate provisions for the elimination of criticized assets and the establishment of an adequate sound capital position, or by way of unwarranted extensions of credit, either directly or indirectly, to Transamerica Corporation or its subsidiaries or affiliates, or by way of making gifts to or forgiving the debts of Transamerica Corporation or its subsidiaries or affiliates, or in any other manner or by any other means.

In addition, each director and each officer of the Bank is hereby warned, pursuant to the provisions of such statute, to discontinue each and all of such unsafe or unsound practices referred to in this letter and to discontinue the violations of law referred to in this letter, as well as all other unsafe or unsound practices or violations of law which have been disclosed by the reports of examination.

Furthermore, each director of the Bank is hereby warned to discontinue the unsafe or unsound practice of delegating, or permitting others to exercise, directorial duties.

Very truly yours,

(Signed) Preston Delano

Preston Delano
Comptroller of the Currency

(COPY)

EXHIBIT F

TREASURY DEPARTMENT

COMPTROLLER OF THE CURRENCY

WASHINGTON

Address Reply To
"Comptroller of the Currency"

December 12, 1939

Dear Mr. Giannini:

Reference is made to my recent conferences at Washington with you and Messrs. L. M. Giannini and Charles W. Collins representing the Bank of America National Trust and Savings Association, San Francisco, California, which were held at your request to discuss criticisms and recommendations relating to the condition and management of your Bank as set forth in my letters of April 14, July 31 and October 2, 1939. At these conferences you indicated that in spite of these letters and other information furnished the Bank, further explanation was requested as to the basis of those criticisms and recommendations, and I complied with your request. During the course of the conferences, you and the other representatives of the Bank advanced certain arguments and made certain suggestions which you requested be considered by this office.

Although I had already given careful study to this entire matter over a long period of time, nevertheless I have complied with your request and have given further careful consideration to the arguments and proposals presented by you. In my opinion they fail to meet in any important particular the criticisms made of the unsafe and unsound banking practices and violations of law pursued by your Bank in the face of long continued and persistent warnings.

In order that there shall be no misunderstanding of the position of this office, I shall again be specific with reference to the most flagrant of these practices.

1. The Dividend Policy: Specific warnings against the continuance of your dividend policy as an unsafe and unsound banking practice began on and have continued since September 13, 1938. Despite these warnings your Bank has deliberately pursued the same policy and has declared dividends at the criticized rate on three separate occasions. At our last conference, you indicated your determination to continue that policy. Your suggestion involving the use of dividends payable to Transamerica Corporation either (1) for the purchase of additional stock in the Bank, or (2) for the retirement of obligations owed the Bank by Transamerica Corporation or its subsidiaries, is not only inadequate and evasive but has implicit in it the perpetration of a deceit upon your stockholders, other than Transamerica Corporation. Obviously, such a proposal could not be considered as meeting our long continued criticisms of your dividend policy.

2. New Capital: Despite my repeated insistence that new capital be provided, in view of the Bank's criticized assets, its over-concentration in real estate, and the unsatisfactory prevailing ratio between its capital and deposits, you have taken no steps to correct this condition, and you have submitted no satisfactory plan to that end. The casual suggestions made by you at the conferences obviously are no substitute for the needed capital, nor for a detailed, definitive and acceptable plan.

3. Charging Off of Losses: I directed you in my letters of July 31, October 2 and November 15, 1939 to charge off all losses set up in the report of examination completed July 21, 1939. At our last conference, you stated that you refused to charge off these losses. You submitted no proposal other than that of accepting certain appraisals of the American Appraisal Company or increasing slightly the depreciation on real estate. You have furnished us with certain valuation figures which you report to be the summary results of an appraisal made for you by the American Appraisal Company, which appraisal has not been made available to us. I cannot accept these figures as justification for your refusal to charge off assets that in my reiterated view should have long since been written off. The slight increase in the depreciation rate that you suggest hardly needs comment. Its insufficiency is obvious. My suggestions have always been pointed toward charging off these losses, not amortizing them.

The foregoing are the more important of the unsafe and unsound banking practices and violations of law which your Bank has persisted in in spite of my repeated warnings. Attention has been called on numerous occasions to these and other unsafe and unsound banking practices and violations of law, including the Bank's failure to take steps to have returned to it the large balance carried with the Trans-america General Corporation in the fund designated by you as the "Self-Insurance Fund." While I am naturally pleased to note improve-ments which have been made in the Bank's position in regard to certain criticized practices, most of which improvements were made during the past year in response to my criticisms, nevertheless the important fact remains that the more essential defects in your practices, some of which have been outlined above, remain untouched by such changes as you have made.

The duties placed upon this office by section 5240 of the Revised Statutes of 1873, as amended (U.S.C. title 12, sec. 481) require me to see to it that my recommendations and suggestions, based upon the last report of examination of your Bank, are complied with. In the major respects mentioned above, my recommendations and suggestions have not been complied with, although more than the statutory time for compliance has passed. Unless appropriate and specific steps to correct the matters referred to above are taken by the Board of Directors of your Bank by December 31, 1939, I shall be compelled to take such action as the law authorizes and requires to protect the interests of depositors and stockholders.

I request that a copy of this letter be transmitted to each of your directors and I am enclosing sufficient copies for that purpose. I do this not merely that the gravity of this situation shall be presented to them but also in order that such final proposals as may be forthcoming may have in their initiation and presentation the sponsorship and approval of the Board of your Bank.

Very truly yours,

Signed - Preston Delano

Comptroller of the Currency.

Mr. A. P. Giannini
Chairman, Board of Directors
Bank of America National Trust
and Savings Association
San Francisco, California

(COPY)

EXHIBIT G

BANK OF AMERICA
National Trust and Savings Association

San Francisco, California

New York

December 22, 1939.

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

Dear Sir:

I acknowledge receipt of a communication from you dated December 12th, 1939, and addressed to me as Chairman of the Board of Directors of the Bank of America, National Trust and Savings Association, San Francisco, California. The letter and a portion of the enclosures have been forwarded to me at the St. Regis Hotel in New York City.

In the letter, you specifically request that a copy of it be transmitted to each of the Directors of the Bank of America, National Trust and Savings Association, and you state that you are enclosing sufficient copies for that purpose.

Upon advice of my counsel, I have to advise you that I must decline to comply with your request, inasmuch as your letter contains matter which is grossly defamatory and libelous. I must therefore refuse to become a party to the publication or circulation of a libel upon the Corporation of whose Board of Directors I am Chairman, upon its officers and upon all or some of its Directors, including myself. If it is now the policy of the Comptroller of the Currency, under the direction of the Secretary of the Treasury, to enforce agreement to such opinions as he, or the Secretary, might have formed regarding the Bank of America, National Trust and Savings Association, or the officers or Directors thereof, by openly charging violations of law and dishonesty, both corporate and personal, I shall have to ask that you use some instrumentality other than me for this purpose.

Yours very truly,

Signed - A. P. Giannini

(COPY)

EXHIBIT H

TREASURY DEPARTMENT
Comptroller of the Currency
Washington

Address reply to
"Comptroller of the Currency"

December 28, 1939

Dear Mr. Everard:

Pursuant to the resolution of the Board of Directors of the Bank of America National Trust and Savings Association, dated September 30, 1938, requesting that all communications to the Board of Directors from the Comptroller of the Currency be transmitted through the Secretary of the Board of Directors, I am enclosing herewith for the information and consideration of each member of the Board of Directors of the Bank of America National Trust and Savings Association, a copy of a letter which was transmitted on December 12, 1939 to Mr. A. P. Giannini as Chairman of the Board of Directors. That letter was addressed in the first instance to Mr. Giannini, inasmuch as he had recently conferred in Washington with me concerning the matters covered in the letter.

Since my letter to Mr. Giannini was of vital interest to each Director of the Bank, I requested him to transmit a copy to each of the Directors and I enclosed sufficient copies for that purpose. By letter, dated December 22, 1939, Mr. Giannini refused to comply with that request. Accordingly, it is necessary for me to transmit to each Director, through you as Secretary of the Board of Directors, a copy of my letter of December 12, 1939 to Mr. A. P. Giannini and of his reply of December 22, 1939. I also request that you transmit to each Director a copy of this letter to you. Sufficient copies for that purpose are enclosed. If you are unable to deliver copies of the above letters to any Director, please advise me immediately of that fact by telegram collect.

In fairness to your Board and, in view of Mr. Giannini's refusal to transmit copies of my letter of December 12, 1939 to the Directors, I am willing to consider a request, if received on or before January 5, 1940, that I defer resorting to my legal remedies for a reasonable time in order to give your Board an opportunity to act.

Very sincerely yours,

(Signed) Preston Delano

Comptroller of the Currency

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

Enclosures

(COPY)

EXHIBIT I

January 2, 1940

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

Re your telephone conversation with Upham the Comptroller's communication of December 28 addressed to you requesting the distribution among the individual members of the Board of Directors of certain correspondence between the Comptroller and the Chairman of your Board was sent to you in accordance with the resolution of your Board of Directors of September 30, 1938 providing for the manner in which official communications from the Comptroller should be communicated to your Board STOP I am unable to accede to your request that I authorize you to distribute the communications as my agent STOP The individual members of your Board have been notified that sealed duplicate copies of the communication and enclosures are available to them at the offices of the National Bank Examiners in San Francisco and Los Angeles in the event that they are unable to obtain them from you.

(Signed) Delano
Comptroller of the Currency

(COPY) EXHIBIT J

TELEGRAPH OFFICE

January 4, 1940

SAN FRANCISCO, CALIF.
JAN. 3, 1940

HON. PRESTON DELANO
COMPTROLLER OF THE CURRENCY

YOUR TELEGRAM STATING YOU ARE UNABLE TO AUTHORIZE ME TO DISTRIBUTE AS YOUR AGENT CERTAIN COMMUNICATIONS SENT TO ME UNDER DATE OF DECEMBER TWENTY EIGHTH HAS BEEN RECEIVED. COUNSEL IS MAKING A FURTHER STUDY OF THE SITUATION AND WILL INFORM ME DEFINITELY BEFORE THE NEXT MEETING OF THE BOARD OF DIRECTORS, WHICH IS SCHEDULED FOR TUESDAY NEXT, JANUARY NINTH, WHETHER OR NOT I MAY TRANSMIT THE COMMUNICATIONS IN QUESTION TO THE DIRECTORS WITHOUT INVOLVING MYSELF AND THE BOARD IN POSSIBLE LIBEL PROCEEDINGS. THEREFORE I SHALL ADVISE YOU ON OR BEFORE JANUARY NINTH OF MY ACTION IN CONSEQUENCE OF COUNSELS FINAL OPINION IN THE MATTER.

R. P. EVERARD
SECRETARY BOARD OF DIRECTORS
BANK OF AMERICA N. T. & S. A.

TREASURY DEPARTMENT

OFFICE OF

COMPTROLLER OF THE CURRENCY

Air Mail January 12, 1940

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

Dear Mr. Delano:

For your information, I am enclosing newspaper clippings from the Call-Bulletin of January 11th and today's Chronicle, Examiner, and the Pacific Coast Edition of the Wall Street Journal referring to matters brought before the stockholders of Bank of America National Trust & Savings Association at the annual meeting last Tuesday, January 9th.

Very truly yours,

/s/ Irwin D. Wright

Chief National Bank Examiner
Twelfth Federal Reserve District

S F CALL-BULLET 1-10-40

GIANNINI HITS BANK ATTACK BY U. S. AIDE

Organization of the 200,000 stockholders of Bank of America to protect their investment rights loomed today as the aftermath of charges of President L. M. Giannini against U. S. Treasury Secretary Henry Morgenthau of "personal and singular harassment and persecution" over a period of two years of the fourth largest bank in the country.

The younger Giannini, son of "A.P.," famed California banker and founder of both Transamerica and Bank of America, made the charges at the annual stockholder meeting yesterday.

Tells of "Threats"

He declared the bank "had been harried and threatened privately and publicly" and "unjustly and unfairly" by Morgenthau, who he accused of instigating the attack on Transamerica Corporation a year ago.

He indicated to stockholders he wanted a showdown on the whole matter, and there was unanimous response. On behalf of the stockholders, Harry Mazzera, Stockton, urged a united front in backing the management, and suggested shareholders invoke their rights as American citizens to protect their investment.

Values down

More than $100,000,000 has been lost in quoted values of both Bank of America and Transamerica shares since federal "persecution" was started sixteen months ago, declared Mazzera.

Among his charges made at the meeting, President Giannini declared that on September 13, 1938, the same day Morgenthau took over the entire legal staff of the comptroller of the currency, the acting comptroller, under the direction of Morgenthau, sent a telegram threatening to cite the bank's officers on account of the declaration of the regular dividend.

Affairs Discussed

President Giannini then charged Morgenthau had, without consent or knowledge of the bank, seen fit to discuss private and confidential affairs of the bank with other bankers.

"Being without power, under the circumstances, to impose on the bank his personal opinions and wishes, because of their illegal character, Mr. Morgenthau fostered the proceedings of the Securities and Exchange Commission against Transamerica Corporation," declared L. M. Giannini.

He then cited records to show that Chairman Douglas of SEC, now supreme court justice, had asked for reports of Bank of America on November 17, 1938, and that, three days later, SEC ordered the Transamerica hearing.

Charges Libel

Recent conferences with the comptroller regarding items in the bank's statement to which objection was made have come to no conclusion, L. M. Giannini added.

"But," he declared, "following these conferences we were threatened anew in language which we regard as grossly defamatory and libelous.

Suggests Change

"We shall continue to contend for honest treatment and fair consideration of your bank's affairs, and civil treatment of its directors and officers. If this cannot be accomplished rationally and if it later appears that Mr. Morgenthau is to be permitted to continue to use his position arbitrarily to harass your bank; we may suggest that you consider its conversion to a state bank. It is not necessary to be a national bank in order to be a member of the federal deposit insurance corporation or the federal reserve system."

Summarizes Row

In summarizing the substance of the controversy between the Bank of America and federal authorities, it boils down to three issues, President Giannini pointed out. These are:

1—Dividend policy. Despite objections made by the acting comptroller in September, 1938, Giannini declared at the meeting that as long as earnings keep pace with the present record or increase, declaration of dividends are fully justified as in the past.

Valuation of Premises

2--Valuation placed on certain bank premises. After a demand that an item of nine millions of dollars be immediately charged off, the bank had the premises appraised by a national known firm of appraisers. Their appraisal was 11 millions higher than that of the national bank examiner. No recommendation will be made that the carrying value be either decreased or increased on the books of the bank, Giannini said.

3--Ratio of capital to deposits. The present capital structure of the bank, said Giannini, is in excess of capital requirements under the statute and until such time as by law or regulation a fixed ratio is established for all national banks alike, this management feels free to use its best judgment as to what recommendations it may make in future to the board of directors concerning an increase in the present capital stock of the bank, declared Giannini.

SAN FRANCISCO CALL-BULLETIN

January 11, 1940

MORGENTHAU IN GIANNINI REPLY

Washington (AP) - Secretary Morgenthau, involved in a controversy with the Giannini banking interests over the government's banking policies, said today that despite "any amount of abuse" he intended to do all he could to protect depositors of "all national banks".

L. M. Giannini, of the west coast banking family, had reported to stockholders in the Bank of America National Trust and Savings Association that the Treasury had demanded that the bank change its dividend, real estate valuation or capital ratio policies.

Morgenthau refused to discuss details of the controversy.

Giannini, addressing cheering stockholders in San Francisco yesterday, told him that "if it appears that Mr. Morgenthau is to be permitted to continue to use his position arbitrarily to harass your bank, we (the officers) may suggest that you consider its conversion into a state bank."

The financier accused Morgenthau of "arbitrary and illegal" interference in the bank's affairs.

CHARGES IGNORED, SAYS GIANNINI

L. M. Giannini, president of Bank of America, made the following reply today to statements of Secretary of the United States Treasury Henry Morgenthau:

"No further proof of my position is necessary than Mr. Morgenthau's melodramatic reaction this morning. My charges go unanswered.

"While he has not been able to meet the charges against him we have the satisfaction of bringing him out into the open and taking him out of the position of hiding behind the comptroller's department.

"There is, in his statement, implicit further evidence of malicious motive. He used the holding company issue which is not applicable in this case, to draw a red herring across the trail.

"Let him lay all the cards on the table."

WALL STREET JOURNAL - PACIFIC COAST EDITION

MORGENTHAU VIEWS ON BANK'S CHARGES January 12, 1940

Asserts He Is Doing His Duty When Questioned by Press;
New Giannini Comment in S. F.

Washington - Secretary of the Treasury Morgenthau, asked for comment on the charges made Tuesday by L. M. Giannini, president of the Bank of America N. T. & S. A., that he was antagonistic to the bank and was "persecuting" that institution, replied:

"As I see my job here, it is to protect the interests of depositors of all national banks and just as long as I am here and have any breath left in my body, I am going to continue to do so regardless of any abuse that any management sees fit to place on my head."

Mr. Morgenthau declined to discuss what requests if any have been made by the Comptroller of the Currency to the Bank of America and would not indicate what action if any was contemplated.

Asked whether he still favored the enactment of legislation by Congress to terminate bank holding companies along the lines that he has proposed in previous years, he replied that he still favors legislation to deal with the bank holding company question. "It is up to Congress but I would like to see them do something about it," Mr. Morgenthau declared.

Mr. Morgenthau indicated disagreement with a recent proposal by Winthrop Aldrich, chairman of the board of the Chase National Bank of New York, for resumption of private ownership and circulation of gold.

"I still adhere to my views concerning gold which I have outlined in detail before congressional committees," the Secretary said. He has testified that he feared that speculators would move into the picture if gold were permitted to circulate again. Mr. Morgenthau said that the House Appropriations Committee agreement to keep departmental and agency appropriations within budget estimates is a move in the right direction toward orderly budgeting.

San Francisco - In relation to Secretary Morgenthau's press conference comment upon the Bank of America case as quoted by Washington dispatches, President L. M. Giannini of Bank of America said:

"No further proof of my position is necessary than Mr. Morgenthau's reaction. My charges go unanswered.

"While he has not been able to meet the charges against him, we have the satisfaction of bringing him out into the open and taking him out of the position of hiding behind the Comptroller's department.

"Let him lay all the cards on the table."

SAN FRANCISCO CHRONICLE - January 12, 1940

BANKING WAR - MORGENTHAU, GIANNINIS SWAP SLAPS

The undeclared war between the Giannini banking dynasty and the Treasury Department was declared yesterday.

Although the battle has long raged in the courts, it was not until last Tuesday it involved personalities when L. M. Giannini, president of Bank of America, charged Secretary Morgenthau with "arbitrary and illegal" acts.

Yesterday Morgenthau acknowledged the broadside, fire a return shot, and received in exchange a second salvo in which satisfaction was expressed he had been "taken out of the position of hiding behind the comptroller's department."

BEGAN A YEAR AGO

The controversy began more than a year ago when the Securities and Exchange Commission, using Treasury information, cited Transamerica Corporation for alleged misleading financial reports. Transamerica owns 42 per cent of Bank of America's stock.

Giannini told stockholders Tuesday their far-flung banking empire might be converted into a State bank if "Mr. Morgenthau is to be permitted to use his position arbitrarily to harass your bank."

Morgenthau replied:

"As I see my job here, it is to protect the depositors of all national banks, and as long as I am here and have any breath in my body, I am going to continue to do so notwithstanding any amount of abuse heaped on my head by any bank."

This was taken by Giannini as proof of Bank of America 's position, and was described by him as "melodramatic".

"MY CHARGES UNANSWERED"

Said he:

"No further proof of my position is necessary than Mr. Morgenthau's melodramatic reaction this morning. My charges go unanswered.

"While he has not been able to meet the charges against him, we have the satisfaction of bringing him out into the open and taking him out of the position of hiding behind the comptroller's department.

"There is implicit in this statement further evidence of malicious motive.

"He used the holding company issue, which is not applicable in this case, to draw a red herring across the trail.

"Let him lay all the cards on the table."

SAN FRANCISCO CHRONICLE - JANUARY 12, 1940

(Continued)

Morgenthau had said he favored legislation to wipe out bank holding companies and was against such companies buying up local banks, replacing local managers and losing sight of local problems.

Giannini declared the holding company issue had nothing to do with the current battle. He had reported to stockholders that the Treasury had demanded Bank of America change its dividend, real estate valuation of capital ratio policies.

SAN FRANCISCO EXAMINER - January 12, 1940

MORGENTHAU IRES GIANNINI BY REPLY

Bankers Say Secretary Evaded Issue in Answering Charges

By Lon Hughes - Financial Editor

Secretary of Treasury Henry Morgenthau, Jr., yesterday replied to L. M. Giannini's charges that the Nation's banking laws are being unjustly administered - and merely added fuel to the raging controversy.

The Secretary of Treasury said he favored legislation to terminate bank holding companies; that he was interested in protecting the Nation's bank depositors, and abuse would not deter him from his purpose.

CHARGE ISSUE EVADED

This answer did not satisfy the Gianninis, who charged him with evading the issue when he brought up the bank holding matter.

This, they indicated, proved Morgenthau thinks Bank of America should be treated differently from other national banks, possibly because it is the biggest branch banking organization in the world. Until 1938, Bank of America was controlled by Transamerica Corporation, bank holding and investment company.

However, since 1938 the bank has not been controlled by a holding company.

ATTITUDE NOT NEW

On the other hand, Morgenthau's antibranch banking beliefs have been well known for years, and yesterday's expression therefore is not necessarily indicative of a prejudicial attitude in the current controversy with Bank of America.

At the last session of Congress, Mortenthau's bank holding company proposals got to the drafting stage in Washington when Senator Carter Glass framed two alternative bills, but Congress took no action. Marriner Eccles, chairman of the Federal Reserve Board, at that time was reported to have been opposed to Morgenthau's proposal.

BACKS UP CHARGES

Giannini's sole contention in the furore created by his accusations earlier this week was: "Morgenthau has and is guilty of bias, unjustifiable demands, arbitrary and illegal practices, and ungentlemanly conduct" in connection with administration of the national banking laws.

SAN FRANCISCO EXAMINER - January 12, 1940

MORGENTHAU IRES GIANNINI BY REPLY (Cont)

He backed up his charges with documentary evidence of an eighteen month period of wrangling by Bank of America and Morgenthau.

"In all our discussions we received courteous and respectful treatment from all agencies of the Government except Morgenthau," Giannini said.

STATEMENT ISSUED

In Washington yesterday, the Secretary of Treasury replied as follows to Giannini's accusations, according to the Associated Press:

"As I see my job here it is to protect the depositors of all national banks, and as long as I am here and have any breath in my body, I'm going to continue to do so, notwithstanding any amount of abuse heaped on my head by any bank."

The statement was made at Morgenthau's press conference, the following account of which was given by Dow Jones & Co., financial news gathering organization:

"Morgenthau declined to discuss what requests if any have been made by the Comptroller of the Currency to the Bank of America, and would not indicate what action if any was contemplated in regard to the bank.

"He was asked whether he still favored the enactment of legislation by Congress to terminate bank holding companies along the lines that he has proposed in previous years. He replied that he still favors legislation to deal with the bank holding company question.

"'It is up to Congress, but I would like to see them do something about it,' Morgenthau declared. He explained that he did not like to see a bank holding company come into a local community, buy up the local bank, replace the local bank personnel with its own management and operate the local bank from some metropolitan point, where the local banking problems of the community would be lost sight of."

BROUGHT INTO OPEN

The Gianninis deny this has ever been the practice of Bank of America, and L. M. Giannini, president of the bank, authorized the following statement upon being informed of Morgenthau's views:

"No further proof of my position is necessary than Mr. Morgenthau's melodramatic reaction. My charges go unanswered.

SAN FRANCISCO EXAMINER - January 12, 1940

MORGENTHAU IRES GIANNINI BY REPLY (Cont.)

"While he has not been able to meet the charges against him we have the satisfaction of bringing him out into the open and taking him out of the position of hiding behind the Comptroller's department.

"There is implicit in this statement further evidence of malicious motive. He used the holding company issue, which is not applicable to this case, to draw a red herring across the trail.

"Let him lay all the cards on the table."

STANDARD FORM No. 14
APPROVED BY THE PRESIDENT
MARCH 10, 1926

TELEGRAM

OFFICIAL BUSINESS—GOVERNMENT RATES

FROM [illegible]

BUREAU Assistant to the Secretary

CHG. APPROPRIATION Comptroller of Currency

[illegible]

January 12, 1940

Mr. John K. Ottley, Sr.
First National Bank,
Atlanta, Georgia

Meeting scheduled for Tuesday, January sixteen, postponed.

Will advise of later arrangements.

BELL

(Initialed) W.N.T.

STANDARD FORM No. 14
APPROVED BY THE PRESIDENT
MARCH 10, 1926

TELEGRAM

OFFICIAL BUSINESS—GOVERNMENT RATES

FROM Room [illegible]

BUREAU Assistant to the Secretary

CHG. APPROPRIATION Comptroller of Currency

U. S. GOVERNMENT PRINTING OFFICE 10—1737

January 12, 1940

Mr. Tom K. Smith,
Boatmen's National Bank,
St. Louis, Missouri.

Meeting scheduled for Tuesday, January sixteen, postponed.

Will advise of later arrangements.

BELL

(Initialed) W.N.T.

STANDARD FORM No. 14
APPROVED BY THE PRESIDENT
MARCH 10, 1926

TELEGRAM

OFFICIAL BUSINESS—GOVERNMENT RATES

FROM Room 294
BUREAU Assistant to the Secretary
CHG. APPROPRIATION Comptroller of Currency

January 12, 1940

Mr. Charles E. Spencer
First National Bank
Boston, Massachusetts

Meeting scheduled for Tuesday, January sixteen, postponed.

Will advise of later arrangements.

BELL
(Initialed) W.N.T.

January 12, 1940

MEMORANDUM re Bank of America, N.T. & S.A. :

The latest report of examination of the Bank of America shows that on August 31, 1939, which is the date the examination was started, the bank held

Real estate loans insured under Title 2 of the National Housing Act	$140,346,766.91
United States Government obligations, direct and fully guaranteed (Par value)	$371,270,525.00
(Book value)	$381,206,004.61
Deposits insured by Federal Deposit Insurance Corporation (estimated)	$840,000,000.00

Mr. Freeman of the Federal Deposit Insurance Corporation stated that the insured liability of banks is only called for at intervals and September 21, 1938 is the latest date for which such information was requested. He stated that on that date insured liabilities of the above named institution amounted to approximately $797,000,000, or 60% of the total deposits. 60% of the deposits at the present time would amount to approximately $840,000,000.

W.P.F.

W. P. Folger
Chief National Bank Examiner

January 12, 1940

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

Dear Mr. Morrill:

There is transmitted to you herewith, in accordance with your request of January 11, 1940, copies of eleven letters and one resolution, which information you required to complete your files.

Very sincerely yours,

Preston Delano
Comptroller of the Currency

C
O
P
Y

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM - WASHINGTON

January 15, 1940

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

Dear Mr. Delano:

There is enclosed for your information and files a copy of a letter dated January 13, 1940 from R. P. A. Everard, Secretary, Bank of America, N. T. & S. A., with copy of enclosure, consisting of a certified copy of a resolution adopted by the board of directors of Bank of America at a meeting on January 9, 1940 approving the letter addressed to the Board under date of December 29, 1939 by Charles W. Collins, a copy of which was forwarded to you at the time of its receipt.

Very truly yours,

/s/ CHESTER MORRILL

Chester Morrill,
Secretary.

Enclosure

BANK OF AMERICA
National Trust and Savings
Association

C
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San Francisco Headquarters

San Francisco, California

January 13, 1940

Board of Governors,
Federal Reserve System,
Washington, D. C.

Gentlemen:

I am enclosing certified copy of resolution adopted by the Board of Directors of Bank of America National Trust and Savings Association at a regular meeting thereof held on January 9, 1940, approving that certain letter signed by Charles W. Collins as Counsel for Bank of America National Trust and Savings Association and addressed to the Board of Governors, Federal Reserve System, Washington, D. C., under date of December 29, 1939.

Yours very truly,

/s/ R. P. A. EVERARD

R. P. A. Everard
Secretary

Enclosure

RESOLVED that that certain letter signed by Charles W. Collins as Counsel for Bank of America National Trust and Savings Association, addressed to the Board of Governors, Federal Reserve System, Washington, D. C., under date of December 29, 1939, and requesting that the Board of Governors order an examination of the condition of said Bank, which said letter has been read to this meeting, be and it hereby is approved, and

FURTHER RESOLVED that the act of said Charles W. Collins in writing and signing said letter in the name and on behalf of Bank of America National Trust and Savings Association as Counsel be and it hereby is approved, ratified and confirmed.

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, State of California, hereby certify and declare that the foregoing resolution is a full, true and correct copy of a resolution duly passed and adopted by the Board of Directors of said Bank at a meeting thereof held on the 9th day of January, 1940, pursuant to the By-laws, at which meeting a quorum of the Board of Directors was present and voted in favor of said resolution; that said resolution has not been rescinded or amended and that the same is still in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Association on this 13th day of January, 1940;

(signed) R. P. A. Everard
Secretary of BANK OF AMERICA
NATIONAL TRUST AND SAVINGS
ASSOCIATION

(Seal)

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January 15, 1940

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

Dear Mr. Everard:

There is enclosed herewith copy of telegram from L. M. Giannini, President of the Bank of America National Trust and Savings Association, dated January 12, 1940, and addressed to the Comptroller of the Currency. There is further enclosed the Comptroller's reply thereto dated January 15, 1940.

It is requested that you distribute one copy of each telegram to each of your directors.

Very truly yours,

Preston Delano
Comptroller of the Currency

UPM WPF EHF Jr.

COPY

Comptroller of the Currency

January 15, 1940

L M GIANNINI
PRESIDENT BANK OF AMERICA
NATIONAL TRUST AND SAVINGS ASSOCIATION
SAN FRANCISCO CALIFORNIA.

ACKNOWLEDGMENT MADE YOUR TELEGRAM JANUARY TWELVE. STOP. RESPONDING TO YOUR INQUIRY THIS OFFICE HAS PRESCRIBED NO FORMALITIES BY RULES OR REGULATIONS WHICH ARE NOT PRESCRIBED BY STATUTE.

COMPTROLLER OF THE CURRENCY

WNS:vls 1-15-40

SAN FRANCISCO CALIFORNIA

JAN. 12, 1940

PRESTON DELANO

COMPTROLLER OF THE CURRENCY

AFTER TESTING SENTIMENT OF OUR STOCKHOLDERS FOLLOWING THE MEETING ON JANUARY 9, 1940 WE FIND A PREPONDERANCE OF OPINION OF THOSE CONSULTED FAVORING THE CONVERSION OF THIS BANK INTO THE STATE SYSTEM. YOU ARE ADVISED THEREFORE THAT WE PROPOSE TO PROMPTLY INITIATE PROCEEDINGS TO BRING ABOUT SUCH CONVERSION. PLEASE ADVISE US WHETHER OR NOT THERE ARE ANY FORMALITIES PRESCRIBED BY RULES OR REGULATIONS OF YOUR OFFICE RELATING TO SUCH PROCEEDINGS WHICH ARE NOT PRESCRIBED BY STATUTE AND IF SO TELEGRAPH THEM TO US AND SEND US THE NECESSARY FORMS IN THIS CONNECTION.

L. M. GIANNINI

PRESIDENT BANK OF AMERICA N T & S A

January 15, 1940

MEMORANDUM TO: Mr. Foley, General Counsel

Dean Bates has accepted the appointment as per my letter to him of January 11, 1940.

Preston Delano

CC Mr. Bell
Mr. Young
Mr. Upham

COPY

CHARLES W. COLLINS
National Press Building
Washington, D.C.

January 15, 1940

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

Dear Sir:

I have been informed by Mr. L. M. Giannini, President of Bank of America National Trust and Savings Association of San Francisco, that a citation from you has been made to the Board of Directors of the Bank to appear in your office on February 14.

As counsel for the Bank, I should appreciate the courtesy of receiving a copy of this paper.

Respectfully,

/s/ Charles W. Collins

RE BANK OF AMERICA

January 15, 1940.
3:00 p.m.

Present: Mr. Foley
Mr. Delano
Mr. Upham
Mr. Folger
Mr. Young
Mr. Seymour

H.M.Jr: I just got a telegram that Tom Smith is going to be here Thursday, Friday and Saturday. I am going to put him to work.

Delano: I guess he is here for the President's reception.

Foley: Mr. Seymour is ensconced in his old office.

H.M.Jr: That is all right.

Seymour: They have got two desks there.

H.M.Jr: He is a bigger man than Tom Smith. He ought to be able to handle him.

This (telegram) looks all right to me.

Foley: We thought, Mr. Secretary, that we ought to be just as brief and stick literally to what they asked here at this time because we don't know what they are going to do and any suggestions we might have would be pure gratuity on our part, not knowing exactly what they have got in mind.

Delano: I think it might be said that ordinarily we'd send a little bit fuller information, but we think in this case that it is not necessary.

H.M.Jr: I have just got one suggestion, which may not be worth a damn, that when you get a telegram like this and you send an answer, that you send this and send copies of it to the Secretary of the Board and ask him to give a copy of it to each Director, the idea being that we have followed this practice now of keeping the Board of Directors informed. Well, we receive a telegram, we answer it, we send a copy from Giannini and our answer to the Secretary of the Board and ask him to furnish each Director with a copy.

Upham: Would you do that with letters, too, Mr. Secretary, or just telegrams?

H.M.Jr: I would do it with all communications from now on which aren't signed by direction of the Board of Directors or authorized by the Board of Directors, et cetera. Where there isn't any indication on his part - first, it keeps the Board informed, going on the assumption that there may be some people who are anxious to carry out your wishes. They may wish to be heard. Put it this way: Let's say no good can come, but what harm can come from doing that.

Delano: I don't see any harm, certainly.

Upham: I am inclined to think it is a good idea but they won't like it, some of them.

Foley: Of course they won't like it. He makes the point at this stockholders' meeting that you were communicating directly with the Board in an attempt to discredit the management with the Board, but I don't see any reason why they ought not to be thoroughly consistent and we ought to furnish the Secretary of the Board of Directors with our replies and a copy of the incoming telegram. It can't do any harm.

Seymour: I don't see any harm in it. It seems to me that this is the least significant of all the communications that you might follow the practice with, but conceivably they don't know about the one that you are answering.

H.M.Jr: How about the Chief Examiner?

Folger: I see no harm in this, in this case. I think they should have it, the Secretary of the Board should have a copy.

H.M.Jr: Would you go the same step and say there are copies of this on file with our man?

Delano: I wouldn't go that far. I don't know how the rest of you gentlemen feel about that. I would go just as the Secretary has said.

H.M.Jr: Do you think it will in any way injure your case?

Seymour: No. We don't know whether this is just a preliminary cast or what they are up to.

H.M.Jr: Another thing I have in the back of my mind. This lawyer here in Washington communicates with the Federal Reserve Board, says they want an examination. They come back and say they don't recognize him and get an order from the Board. Well, that is a week or ten days ago and so far they have had no answer.

Foley: Just called Cy and asked Cy for a copy of the notice.

H.M.Jr: Who did?

Upham: Charlie Collins.

Foley: We refused to give it to them.

H.M.Jr: Unless somebody says they see some danger in doing it, I would send a copy to the Secretary of the Board and ask him to furnish the Directors with a copy.

Delano: I don't see any possible danger unless these lawyers and our own people do. I think it just carries out the theory that we have been proceeding on, like this wire about the meetings, but here we have communications and want those folks to know about it. I think it is all right.

H.M.Jr: Well, that is the easiest ten minutes I have ever had. If Foley and Whitney Seymour have a minute, I would like to talk to them.

Comptroller of the Currency

JANUARY 15 1940

L M GIANNINI
PRESIDENT BANK OF AMERICA
NATIONAL TRUST AND SAVINGS ASSOCIATION
SAN FRANCISCO CALIFORNIA

ACKNOWLEDGMENT MADE YOUR TELEGRAM JANUARY TWELVE STOP RESPONDING TO YOUR INQUIRY THIS OFFICE HAS PRESCRIBED NO FORMALITIES BY RULES OR REGULATIONS WHICH ARE NOT PRESCRIBED BY STATUTE

COMPTROLLER OF THE CURRENCY

SAN FRANCISCO CALIFORNIA JAN 12,1940

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PRESTON DELANO

COMTROLLER OF THE CURRENCY

AFTER TESTING SENTIMENT OF OUR STOCKHOLDERS FOLLOWING THE MEETING OF JANUARY 9, 1940 WE FIND A PREPONDERANCE OF OPINION OF THOSE CONSULTED FAVORING THE CONVERSION OF THIS BANK INTO THE STATE SYSTEM. YOU ARE ADVISED THEREFORE THAT WE PROPOSE TO PROMPTLY INITIATE PROCEEDINGS TO BRING ABOUT SUCH CONVERSION. PLEASE ADVISE US WHETHER OR NOT THERE ARE ANY FORMALITIES PRESCRIBED BY RULES OR REGULATIONS OF YOUR OFFICE RELATING TO SUCH PROCEEDINGS WHICH ARE NOT PRESCRIBED BY STATUTE AND IF SO TELEGRAPH THEM TO US AND SEND US THE NECESSARY FORMS IN THIS CONNECTION.

L M GIANNINI

PRESIDENT BANK OF AMERICA
N T & S A

COPY

CLASS OF SERVICE

This is a full-rate Telegram or Cablegram unless its deferred character is indicated by a suitable symbol above or preceding the address.

WESTERN UNION

1220

(30)

R. B. WHITE, PRESIDENT — NEWCOMB CARLTON, CHAIRMAN OF THE BOARD — J. C. WILLEVER, FIRST VICE-PRESIDENT

SYMBOLS
DL = Day Letter
NL = Night Letter
LC = Deferred Cable
NLT = Cable Night Letter
Ship Radiogram

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LONG WS279 (112) DL= BR PALMBEACH FLO 15 705P 168

HON HENRY MORGENTHAU, PERSONAL= 1940 JAN 15 PM 9 37

DLR RES= 22-11-30-ST

ACCORDING TO ADVICES FROM CALIFORNIA I NOTE THAT YOU ARE STILL PURSUING YOUR SMEARING TACTICS DESIGNED DOUBTLESS TO DO SERIOUS DAMAGE BUT I'M CONFIDENT TO NO AVAIL SO FAR AS THE PEOPLE OF CALIFORNIA ARE CONCERNED. WHO BY THIS TIME ARE QUITE FAMILIAR WITH YOUR SMEARING BULL DOZING TACTICS. COMPLY WITH THE LAW. SIR. AND CITE US BEFORE THE GOVERNORS OF THE FEDERAL RESERVE SYSTEM AS YOU HAVE REPEATEDLY THREATENED AND MAKE IT NOT A SECRET HEARING AS THE LAW PROVIDES BUT A PUBLIC ONE SO THAT THE PEOPLE OF THE COUNTRY CAN FINALLY GET AN INSIGHT INTO THE KIND OF A CREATURE THAT SITS AT THE HEAD OF ITS TREASURY DEPARTMENT=

A P. GIANNINI.

MR. BELL

January 16, 1940

MEMORANDUM TO: Mr. Foley, General Counsel

Mr. Seymour has accepted the appointment as per my letter to him of January 11, 1940.

Preston Delano

TREASURY DEPARTMENT

INTER OFFICE COMMUNICATION

DATE January 16, 1940.

TO Secretary Morgenthau

FROM E. H. Foley, Jr.

For your information -

Here is some information I have received from Jerry* regarding Standard Gas and Electric.

"Prior to 1936, the Emanuel interests held control of the Standard Gas System through United States Electric Power. United States Electric Power pledged its shares of common stock in Standard Power, the top holding company in the Standard Gas System, with three New York banks as collateral for certain notes. These notes were foreclosed in the summer of 1936 and as a result Bankamerica obtained a 25% interest in the United States Electric Power holdings which in turn constituted a 10% interest in the common stock of Standard Power. Bankamerica was owned by one of the Giannini interests. Following the acquisition of the Standard Power stock, this Giannini interest sold its shares in Bankamerica to its own stockholders. Bankamerica changed its name to Blair & Company. At the present time Blair & Company owns a 9.9% interest in the Standard Gas System. Blair & Company is a publicly owned corporation with some 90,000 stockholdens. 14% of its stock is owned by Pacific Coast Mortgage Company. Giannini is reported to own through dummies and nominees 1,120 shares of the 19,000 shares of Pacific Coast Mortgage Company outstanding. In addition, all officers and directors of Trans-American Corporation are stockholders of Pacific Coast Mortgage Company and there is considerable documentary evidence disclosing a substantial interest of Giannini and his associates in Pacific Coast Mortgage Company."

E.H.F.Jr.

* Jerome Frank

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

San Francisco Headquarters

San Francisco, California

January 17, 1940

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

Dear Sir:

This will acknowledge your letter of January 11, 1940, with accompanying sealed envelopes addressed to the individual members of the Board of Directors of Bank of America National Trust and Savings Association.

Pursuant to the request contained in your letter, I am affecting distribution of the envelopes. I shall not be able to effect immediate delivery of the envelope addressed to Mr. Marshal Hale, as he is now traveling in the east, and is not expected to return to San Francisco until the early part of February. Mr. A. P. Giannini is in Florida, and I am effecting delivery to him by mail. I expect to make delivery of envelopes to Messrs. H. A. Mazzera and E. R. Thurber within the next two days. I have not been able to reach Mr. George J. Giannini, but expect I will also be able to make delivery to him within a day or two.

Yours very truly,

/s/ R. P. A. EVERARD

R. P. A. Everard,
Secretary

1-17-40

Dear Gus:

Russ Smith just stopped in to advise that he was on his way to the State Banking Department and the Federal Reserve Bank to arrange for an examination of the bank by them in anticipation of taking out a state charter and expressed his surprise that we had started another examination of the bank since L. M. had threatened "to go State".

I told him that in view of the uncertainty as to just when they would complete their negotiations and become a state bank, I did not feel justified in holding off our examination, but should they complete their conversion before we could finish our examination we could no doubt arrange to withdraw.

I think these boys are of the opinion that they can convert to a State Bank without losing identity of present capital structure, thereby escaping any assessments from the Bureau of Internal Revenue. I hope they are wrong.

Sincerely,

I. D. W.

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SAN FRANCISCO EXAMINER

Editorial Page January 17, 1940

SOLUTION NEEDED

Bank of America Dispute Does Good to Neither Side

The controversy between the Bank of America and the United States Treasury Department has been too long protracted, too indefinitely waged.

It is unfair to the bank's management and unjust to the shareholders and depositors of the bank to have its affairs under criticism.

The layman cannot pass on the merits of the dispute.

But under the law there is an authority that may have jurisdiction in such matters.

The Banking Act of 1933, passed after the banking debacle of 1932, provides that when a national bank is believed to have violated any law or continues unwarranted practices after fair warning, the Federal Reserve Board shall hold a secret hearing on the charges.

This provision is intended to protect a bank from public suspicion, while it gives the Federal banking authority jurisdiction over any irregularities.

The Treasury Department is entrusted with the duty of protecting bank depositors; officers of each bank are entrusted with the duty of transacting the business of their bank to the best advantage of their depositors and stockholders. It well may be that in the delicate operation of a bank, questions may arise between these Federal and bank officials as to the rightness of certain practices.

There should be a definite end put to the present dispute by the proper authorities.

The Bank of America is an important national institution, a vital California establishment.

The welfare of too many persons is involved in its affairs to have its reputation dependent on what seems to have become almost a personal conflict.

If, as one interpretation of the law has it, the Federal Reserve Board has jurisdiction in such disputes, that Board should act.

If there is some other legal procedure required, that should be applied.

The protraction of the dispute benefits neither the bank with its ramifications nor the authority of the Treasury Department.

TREASURY DEPARTMENT

INTER OFFICE COMMUNICATION

DATE

TO Secretary Morgenthau January 17, 1940

FROM E. H. Foley, Jr.

For your information -

Here is a memorandum from Cy Upham on E. W. Wilson, Superintendent of Banks for the State of California. From this report, he does not appear to have been a "conservative" banker.

E.H.F. Jr.

Attachment

Mr. E. W. Wilson was one of the organizers and President of the Pacific National Bank, San Francisco, which opened for business September 27, 1924. He was at one time an officer of the Anglo London Paris National Bank, San Francisco, and later with the Philippine National Bank of Manila.

Report of examination of the bank July 3rd, 1925, indicated that the policy of creating a fast growth was followed, which resulted in the "buying" of business, and that the assets were then burdened with capital and policy loans, which were strongly defended by President Wilson.

The examiner in his report dated July 23, 1926, stated that he held a meeting with the directors at the close of the examination, and advised them that the standard of loans and investments was below the average of city banks generally, and that losses sustained by the bank during the short time they had been in business were excessive. He also stated that he was of the opinion that President Wilson was responsible almost entirely for the losses so far sustained by the bank and for the losses that were likely or almost certain to be sustained on loans listed in the report; that he knew nothing of his record as an executive officer of banks with which he may have been associated previously, but based on the condition of the bank he was forced to the conclusion that Mr. Wilson was overly optimistic, visionary and not a conservative credit man.

The report dated January 17, 1927, showed that in the opinion of the examiner, President Wilson was responsible for more than 90 per cent of the bad credits, and during the examination Mr. Wilson agreed to resign from the loan committee at the next regular meeting of the Board. The examiner stated that the bank had several exceptionally good directors who, just prior to the examination and on their own initiative, undertook to remove the cause for lenient credits and that if President Wilson did not obey their instructions that he would be removed.

President Wilson was eliminated from the bank between the examination in August, 1927, and the examination in February, 1928. The examiner stated:

> "Since the elimination of E. W. Wilson, former President, harmony prevails and active officers are working diligently on the correction of unsatisfactory assets, most of which came into the bank through Wilson."

Information is to the effect that he was and probably is President of the Federal Savings and Loan Association, San Francisco, in addition to being Superintendent of Banks of the State. He is said to be highly active in California politics and a strong supporter of Governor Olsen.

MEMORANDUM FOR THE FILES

January 18, 1940

Conference re Bank of America,
January 18, 1940

The following attended the conference on Bank of America which began at 10:30 A.M. on January 18, 1940, in the office of the Under Secretary:

Representing the Federal Reserve Board were Messrs. Eccles, McKee, Dreibelbis and Morrill. Representing the Securities and Exchange Commission were Messrs. Frank, Lane and Treanor. Representing the Federal Deposit Insurance Corporation was Mr. Crowley. Representing the Treasury were Messrs. Bell, Foley, Delano, Folger, Upham, Seymour, Smith, Young, Cohen and Tietjens.

Mr. Bell opened the meeting by reading the telegram addressed to the Comptroller by L. M. Giannini, expressing the Bank's intention of withdrawing from the national banking system and converting to a state bank and the Comptroller's reply stating that the Comptroller's office had no rules and regulations other than those prescribed by statute applicable to the intended conversion.

Mr. Bell then asked the Securities and Exchange representatives if anything had happened since the meeting on January 8 which the present meeting should know. Messrs. Frank and Treanor explained the S.E.C.'s position with regard to the proposed distribution of Bank of America stock by Transamerica Corporation in view of the proceedings which the Comptroller's Office has instituted against the Bank. Mr. Treanor is to leave for the west coast today to confer if possible with a representative of the Bank and Transamerica in an effort to stop the stock distribution unless full disclosure of all facts which might affect the value of the stock is made. Failing that, an injunction would be sought and an effort made to have the records impounded by a court in order to prevent publicity. It was not thought that anything the S.E.C. proposed to do would unduly interfere with the Comptroller's proceeding.

Mr. Bell next asked whether the Board of Governors had taken any action on the Bank's formal request for an independent examination of its condition or had anything to report. Mr. Eccles replied that no action had yet been taken on the request but that the Bank's people had contacted the Federal Reserve Bank in San Francisco about becoming a state member bank. Mr. Foley suggested that the Board might tell the Bank that no examination would be made until after the Comptroller's hearing was over. In the meantime the Board could have an observer at the hearing and decide what action it would take after the matter had been heard and the examiner's report submitted. At this point Mr. McKee stated that the Board had certain responsibilities in connection with examining the Bank. For instance, it had been indicated to the Board that the Bank intended to convert into a state bank, in which case it would be necessary for the Board to make an examination in connection with the new bank's application for membership in the Reserve System. Mr. Cohen stated that he thought it would be inadvisable for one agency of the government to embarrass another agency; that he appreciated that the Board did not want to give up any of its prerogatives and should not do so, but that something should be worked out with reference to the request for examination which would prevent any embarrassment.

Mr. Eccles said he thought the Bank's plan was to convert into a state bank within the ninety-day period dating from the service of the order to show cause, if possible. In case of conversion, it would be up to the Board to determine the conditions on which the new bank would be admitted to membership in the System. In this connection an examination of some kind would have to be made and the Board's staff had been making a thorough check of all reports made by national bank examiners from 1933 on. He stated that the Board was practically required to make a program for the Bank in contrast with the Comptroller's apparent inability to agree to a program. The Board could hold control over the Bank in this situation since it would forfeit its membership in the System if any of the conditions on which it entered the System were broken. He thought that a complete new examination of the Bank would probably be unnecessary and unwise in view of the fact that the Comptroller's reports contained plenty of information and that the Bank, too, had supplied a good deal to the Board.

Mr. Crowley pointed out that the Board had before it at the present time a request from the Bank to make an independent examination but that the Board's position as to whether or not it would make such an examination would be changed if the Bank converted into a state bank. He thought that if the Board made an examination in accordance with the present request it would weaken the Comptroller's position.

At this point Mr. McKee said he doubted that the publication of the report of examination as proposed by the Comptroller would develop a satisfactory program for the Bank. Mr. Cohen, on the other hand, thought that such a program might very well be developed at or during the Comptroller's hearing. Eccles stated he did not think the Bank would come across as the result of the hearing. Mr. Foley pointed out that this was the first time the Bank had been faced with drastic action but that he wanted to make it clear that it was hoped no publication of the report would be necessary and that a satisfactory program would develop out of the hearing.

Mr. Frank reverted to the question of what action the Board ought to take on the present request made by the Bank for an independent examination. He thought that the Board ought to act on the request as it would embarrass the Treasury if the request were left hanging fire. Mr. McKee stated that the Board had its own responsibilities in connection with the Bank especially in view of the fact that the Board had control over the granting of a voting permit to the holding company (Transamerica) to vote the Bank's stock. He indicated that in this respect the Board ought to get its own facts and that it was almost forced to take some action. He also indicated that for some reason the Board had been kept in ignorance of developments in the Comptroller's case against the Bank. Mr. Foley pointed out that such an accusation was false inasmuch as Governor Ransome had indicated to the Treasury that the Board did not want to be advised. All implications, overtones and undertones of the conversations which took place at this point in the conference were denied by Mr. Frank and the others involved.

Mr. Eccles here entered on a discussion of the voting permit situation. He stated that the Board had full control over the granting of such permits and that it had issued a permit in 1937 to Transamerica to vote the Bank's stock after a full consideration of the Bank's condition and the Comptroller's reports, which in no way indicated an unsound condition. This latter statement was denied by the Comptroller's representatives who said the examiners' reports had contained the same criticisms ever since 1933. Mr. Eccles went on to say that the Board had made no independent examination at the time. The permit could be cancelled for unsafe and unsound practices and if revoked no dividends could be paid by the Bank to Transamerica. He pointed out that during the past few months, as the controversy between the Comptroller's Office and the Bank became more and more apparent, the Board had given some consideration to revocation of the permit. He thought that if revocation was seriously considered the Board would probably get the Bank's people in, and if no agreement could be got from them to clean up the Bank, the Bank would be given notice and a hearing to determine whether the permit should be revoked. Mr. Upham asked if the Board thought that Transamerica was a holding company with relation to the Bank. Mr. Eccles replied that the Board had not yet decided the question for itself but that it would investigate the facts. Mr. Foley said that if action to revoke the permit was taken by the Board, the Treasury might very well postpone its proceeding for a while. In the meantime, however, if no action is taken, the Bank is given comfort by the inaction and apparent lack of unity on the part of government agencies.

Mr. Eccles said he didn't believe the Treasury proceeding would produce the desired results. He thought that the Board could act more effectively on the voting permit, but that he didn't want to do it without first trying to work out a program for the Bank. This couldn't be done without agreement among the government agencies.

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Mr. Foley again suggested that the Board close the door on the pending request from the Bank for an independent examination and then sit in at the Comptroller's hearing.

Mr. Eccles indicated that after the last meeting he thought the Treasury wasn't to act in sending out its order for at least a week, but was to give the Board an opportunity to study the matter and make its suggestions. It was apparent that there was some misunderstanding as to what was to happen after the close of the meeting on January 8. Mr. Foley said it was his understanding that the Board was to have a meeting and act on the request of the Bank the following day (January 9) and that after waiting forty-eight hours without action by the Board, the order was sent out.

Mr. Cohen at this point again stressed the importance of cooperation among the government agencies. He suggested it could be done in such a way as to give the Bank the feeling that all of the agencies were interested in the Comptroller's hearing and that they would all watch the Comptroller's proceeding carefully and base their individual future action in regard to the Bank on what was developed there. Mr. Eccles objected that this assumed that the Bank would appear at the Comptroller's hearing. Mr. Cohen replied that he thought the Bank would appear if all the agencies made the Bank feel that it should appear.

Mr. Eccles suggested that all of the agencies get together and try to write a ticket for the Bank. Crowley thought it was a good idea to sit down and agree on fundamentals and this was generally agreed to, except that Mr. Lane stated that as far as the S.E.C. was concerned, its position was a little different from the other agencies, that it had its neck out and that the Commission would insist on the orderly completion of its proceeding. McKee and Eccles stated that one of the things necessary for the Bank was to get new capital and that this couldn't be done so long as the S.E.C. proceeding was under way, particularly as it was necessary to sell stock to the public. Mr. Foley said that the Treasury had started its proceeding and would go right ahead with it. He recognized that some time the Treasury would be called upon to say whether or not proposals made by the Bank are satisfactory. In that event the Treasury would be satisfied if the Bank complied with the suggestions which had been made to it by the Comptroller from time to time in his letters to the Bank.

Mr. McKee stated that capital was required but that it could not be got publicly so long as the S.E.C. hearing is on. At this point the difficulties of the public sale of stock were discussed.

Mr. Cohen suggested it might be helpful if each agency would work out for itself what action by the Bank would be satisfactory to it. Messrs. Treanor and Lane discussed the difficulties which the S.E.C.

was having in getting sufficient information on which to base what action by the Bank would be satisfactory to the S.E.C. The difficulty of getting capital was discussed again and it was generally agreed that new capital would probably have to come from the government.

Ways and means of working out a satisfactory program for the Bank were then discussed and the importance of a definite understanding among the agencies involved was again stressed. Messrs. Foley and Cohen pointed out that the Comptroller's hearing should not be delayed in any way while attempts were being made to come to some understanding on a satisfactory program.

At the close of the meeting Mr. McKee requested the Comptroller to make his technical staff available for a conference with the technical staff of the Reserve Board and possibly the F.D.I.C. in an attempt to work out a program for the Bank which would be satisfactory to the heads of the agencies interested. If this could be done and a satisfactory program developed, some way would be found, if possible, to get the Bank to propose putting the program into effect before the Comptroller's hearing. In the meantime, preparation for the hearing is to go on uninterrupted and no postponement is contemplated. The Comptroller told Mr. McKee that he would have to take the request under consideration.

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TREASURY DEPARTMENT

Telegraph Office

SAN FRANCISCO CALIF

JANUARY 18, 1940 3 : 24 PM

COMPTROLLER OF THE CURRENCY

ROOM 219 TREASURY BLDG. WASHINGTON D. C.

ATTENTION W. P. FOLGER DEPUTY COMPTROLLER CURRENCY

STATE BANKING COMMISSSIONER HAS IN HIS POSSESSION ORDER BY PRESIDENT 13,044 FOR US TO MAKE AVAILABLE TO STATE BANKING DEPARTMENT REPORT RECORDS ETC IN THIS OFFICE IN CONNECTION WITH BANK APPLICATION FOR STATE CHARTER STOP I REPLIED COULD NOT COMPLY WITH INSTRUCTIONS WITH THE ORDER UNLESS PRESIDENT ALSO FURNISHED US WITH CERTIFIED COPY OF RESOLUTION OF BOARD OF DIRECTORS AUTHORIZING US TO MAKE REPORT ETC AVAILABLE STOP IF I AM NOT RIGHT IN MY POSITION PLEASE TELEGRAPH IMMEDIATELY

IRWIN D WRIGHT

CHIEF NATL BANK EXAMINER

TELEGRAM

WASHINGTON, D. C.

Sent in code

JANUARY 18, 1940

TRANSLATION

IRWIN D. WRIGHT
1 MONTGOMERY STREET, ROOM 921,
SAN FRANCISCO, CALIFORNIA

RETEL JANUARY 18th. UPON RECEIPT BY YOU OF CERTIFIED COPY OF RESOLUTION OF BOARD OF DIRECTORS (13044) BANK OF AMERICA NT & SA YOU SHOULD MAKE AVAILABLE TO STATE BANKING COMMISSIONER REPORT OF EXAMINATION OF BANK AND OTHER RECORDS PERTAINING THERETO EXCEPT CONFIDENTIAL SECTION. REPORT OF EXAMINATION, ETC. SHOULD NOT BE TAKEN AWAY FROM YOUR OFFICE.

/s/ W. P. FOLGER

January 19, 1940

(1) The capital must be increased now by at least $35 million.

If new stock is purchased by the RFC, the articles of association must contain the usual management clause and must provide for a veto power in the Comptroller of the Currency over payment of dividends on common stock. The first $25 million of the preferred stock must be replaced by common stock when it has reached retirement.

(2) If the increase in capital is preferred stock purchased by the RFC, the dividend rate on common stock must not exceed 8 per cent. If it is preferred stock sold locally, the rate on the preferred stock should not be in excess of 3 per cent. If the increase is effected by a sale of common stock, the dividend on common stock should not exceed 6 per cent.

(3) Losses estimated in the last report of examination must be charged off at once.

(4) Obligations of Transamerica and affiliated and subsidiary companies to the bank must be eliminated from the bank by 1943 on a regular monthly program at substantially the same rate as has been done during the last six months; and no new obligations of affiliated or subsidiary companies taken into the bank.

(5) Real estate must be disposed of within the five-year period permitted by law or charged off.

Draft #1. Revised 1/22/40

C O P Y

JANUARY 19 2 37 P M

HON PRESTON DELANO

WASHN DC

REFERRING TO ORDER DATED JANUARY 11, 1940., OUR COUNSEL HAVE NOT FOUND ANY STATUTORY AUTHORITY FOR SUCH ORDER AND THE BANK AND THE DIRECTORS SHALL BE MUCH OBLIGED IF YOU WILL WIRE REFERENCE TO AUTHORITY UNDER WHICH ORDER WAS MADE.

R.P.A.EVERARD BANK OF AM NT AND SA

Original wire sent to Mr. Foley

TREASURY DEPARTMENT

INTER OFFICE COMMUNICATION

DATE JAN 19 1940

TO Secretary Morgenthau

FROM E. H. Foley, Jr.

For your information -

In brief, the present Giannini interest in the Standard Gas System is as follows:

The Pacific Coast Mortgage Company is dominated by A. P. Giannini, who owns through dummies and nominees 1,120 of the company's 19,000 outstanding shares. In addition, all officers and directors of Transamerica are stockholders of Pacific Coast Mortgage Company and of course subject to the Giannini influence.

The Pacific Coast Mortgage Company holds 14% of the stock of Blair and Company which in turn owns a 9.9% interest in the Standard Gas System.

(See Chart attached.)

* * * * * * * * * * *

The history of these holdings prior to 1936 is as follows:

The Emanuel interests controlled the Standard Gas System through the medium of the United States Electric Power. United States Electric Power pledged its shares of common stock in Standard Power (the top holding company in the Standard Gas System) with three New York banks as collateral for certain notes. As a result of the foreclosure of these notes in the summer of 1936, Bankamerica obtained a 25% interest in United States Electric Power and by virtue of this interest in United States Electric Power, Bankamerica became the holder of a 14% interest in the common stock of Standard Power.

Bankamerica at the time was owned by one of the Giannini companies. This company subsequently sold its shares in Bankamerica to its own stockholders and Bankamerica changed its name to Blair and Company. The present interest of Blair and Company in the Standard Gas System is shown in the third paragraph of this memorandum.

The above is a summary of information furnished by Jerry Frank.

E.H.F.

PRESENT GIANNINI INTEREST IN STANDARD GAS SYSTEM

PACIFIC COAST MORTGAGE COMPANY

1,120 of 19,000 shares owned by A. P. Giannini through dummies or nominees.

Officers and directors of Transamerica are also stockholders.

BLAIR AND COMPANY

1% owned by Pacific Coast Mortgage Company.

STANDARD GAS SYSTEM

9.9% interest owned by Blair and Company.