Book 367

Bank of America

January 21 - February 20, 1940

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FOR THE COMPTROLLER

While I have not been able to definitely identify to my own satisfaction the incident which the Secretary was attempting to recall in his office day before yesterday when you and I were present, it occurs to me that the attached chronological sequence, which I believe to be approximately correct, may serve to stimulate his own recollection.

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January 20, 1940

1. In 1933 Transamerica Corporation applied to the Federal Reserve Board for a voting permit to vote the stock of the Bank of America.

2. In 1934 the Federal Reserve Bank of San Francisco recommended to the Federal Reserve Board numerous corrections in the Bank as prerequisites to the granting of a voting permit.

3. In 1935 the Comptroller of the Currency objected to the Federal Reserve Board imposing conditions with respect to the Bank as prerequisites to the granting of a voting permit, on the ground that this was supervision of the Bank by the Federal Reserve Board, indirectly.

4. Pending the granting of a general voting permit, the Federal Reserve Board granted limited permits for certain purposes and periods.

5. In March, 1936, President Calkins of the San Francisco Reserve Bank resigned. This was hailed by Giannini as a victory for himself, and he is said to have bragged that he would now get his voting permit.

6. In 1936 the Federal Reserve Board agreed to grant a general permit on condition that Transamerica would agree to exert all its influence to compel the bank to meet criticisms of the Comptroller and make the required corrections.

7. This condition was refused and as a result in the annual meeting of the Bank in 1937, Transamerica Corporation had no voting permit, and was unable to vote its stock of the Bank.

8. In the spring of 1937 a general voting permit was granted to Transamerica Corporation, unlimited, good until revoked.

9. Later in 1937, distribution was made by Transamerica of its holdings of Bank of America stock down to less than 50 per cent of the total.

10. In 1937 there was some talk about the requirements of the Banking Act of 1935 with respect to certain conditions which must be met by bank holding companies within 5 years from the date of the Act and other conditions which must be met within 5 years of the date of application for a voting permit, both periods expiring in 1938.

11. In the fall of 1937 there was some concern expressed by the Secretary in a meeting of the Interdepartmental Loan Committee about bank holding companies, and legislation was under consideration. It was the Secretary's opinion that the three-year period allowed for dissolution in the pending McAdoo Bill, was too long. Mr. Eccles opposed dissolution of present holding companies unless branch banking could be substituted for it. Otherwise, he said, it would be deflationary and upsetting to banking generally.

12. Again in 1938, and in 1939, bank holding company legislation was proposed, and in 1939 the President sponsored it in a message to Congress.

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MEMORANDUM FOR THE FILES

January 22, 1940.

Conference re Bank of America

A meeting was held in the Under Secretary's office at 10 A.M., January 22, 1940, to discuss a minimum program which would be acceptable to the Comptroller in the Bank of America case.

The meeting was attended by Messrs. Bell, Delano, Upham, Folger, Mulroney, Seymour, Sherbondy, Young and Tietjens.

The Comptroller presented the following program which had been worked out in his office as the basis for discussion:

(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.

A general discussion of the proposed program followed. The dangers of putting any program (and especially a minimum, rather than a maximum program) in writing and handing it to representatives of the other agencies involved were pointed out. Some of the conferees feared that if the program were put in documentary form it could easily be misused and misrepresented. The necessity for reducing to writing a program acceptable to the Comptroller at some time during the proceeding was mentioned but concern was expressed as to whether it would be a good idea to put the program in documentary form at this time. There was some thought that if a program was reduced to writing it should be the result of discussions with representatives of the other agencies involved. It was suggested that if the program were put on paper at this time it should not be passed around as the "Comptroller's program" but should simply be used as a basis for discussion with the other agencies in attempting to get them back of the Comptroller's position. The meeting worked out no definite procedure as to how whatever program was agreed upon at the meeting would be handled with the other agencies. It was generally considered that what the meeting should do was to agree upon an acceptable minimum program and the mechanics for handling it with the other agencies would be left for future determination.

It was the consensus of the meeting, however, that it would be advisable to talk to the other agencies.

Mr. Seymour, in discussing the program as presented, pointed out that from the standpoint of the hearing on the order to show cause, it might be inadvisable to use certain general terms in the program. These would be subject to definition if actual negotiations with the Bank and the other agencies got under way. He had reference to such terms as "obligations of Transamerica" which appears in paragraph 4. The fear was expressed that such terms are subject to definition and could be cut down in such a way as to make it appear that the Comptroller was surrendering points at this time for the sake of a minimum program which he would want to press later on at the hearing in case no agreement was reached beforehand with the Bank and the other agencies. This was particularly true of the $14,000,000 bond write-up and the $1,000,000 forgiveness in the Merchants National Realty Corporation real estate transaction. It could be argued with equal weight that these transactions were within the term "obligations of Transamerica" and its subsidiaries or that it was not intended to include such transactions in that term. Mr. Seymour felt that any claims based upon such transactions should be asserted in any negotiations for the bargaining powers involved, if for no other reason.

After further discussion of the program, point by point, it was agreed that the first three items were definite enough and would have to be insisted on. As for the remainder of the proposed program, it was thought that a catch-all paragraph could be devised which at least in part would meet Mr. Seymour's point.

It was agreed that the following program be reduced to writing for a discussion with the Secretary at 3 o'clock in the afternoon:

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

If the money for the new stock is furnished by the RFC in any manner, 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 when and if retired by means of a dividend, payable in common stock.

(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 must not exceed 6 per cent.

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

(4) The criticised assets and transactions must be adjusted to the satisfaction of the Comptroller as expeditiously as possible; and no new obligations of Transamerica Corporation or its affiliated or subsidiary companies or allied interests taken into the bank.

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RE BANK OF AMERICA

January 22, 1940.
3:00 p.m.

Present: Mr. Bell
Mr. Seymour
Mr. Folger
Mr. Upham
Mr. Foley
Mr. Young
Mr. Delano
Mrs Klotz

Bell: You will recall that the Treasury has had several meetings with representatives of the Federal Reserve Board, FDIC and the Securities and Exchange Commission for the purpose of outlining the Treasury's program and at the same time trying to get an understanding with these agencies not to take any action during this Treasury proceeding that would in any way embarrass the Treasury in its investigation. We particularly had in mind trying to get some indication from the Federal Reserve Board as to what action it proposed to take on the request that it had from the Giannini bank for an independent examination.

At the last meeting there was a suggestion made by Mr. Crowley and readily agreed to by Mr. Eccles and Mr. McKee that the technicians of the three agencies (Treasury, Federal Reserve Board, FDIC) get together and try to work out a minimum program on which all of these agencies could present on a united front. We told them that we would take this suggestion under consideration.

In talking over this matter here in the Treasury, we thought it best to clarify our own thinking first before we turned the matter over to the technicians for discussion. This sheet that Mr. Delano has just handed to you represents the minimum program upon which the Treasury can agree, at the same time trying to preserve all rights of the Treasury.

H.M.Jr: Is everybody in the room in agreement on this?

Bell: Everybody is in agreement. Mr. Foley wasn't there this morning but Tietjens and Sherbondy were there and they thought it was all right. I don't know whether he has seen them since.

Foley: Yes, I talked with them just before I came in here.

H.M.Jr: Does this express your feelings?

Delano: Yes.

H.M.Jr: You?

Upham: Well, I had no enthusiasm for doing this, but once having decided to do it, I am for this proceeding, yes sir.

H.M.Jr: Where did your enthusiasm go pale, I mean, as to doing this?

Upham: Yes.

H.M.Jr: I mean, if you are going to do it --

Upham: That is a splendid program there.

Bell: I think Cy has a little fear that once you hand this to these agencies it will be on its way to 'Frisco in a few hours, that somebody else will be negotiating the Treasury problems instead of the Treasury.

H.M.Jr: I think his fear is a reality. Let's take a look at it. How about you, Seymour?

Seymour: I agree, without knowing anything about the capital or dividend aspect of the thing. The third and fourth points cover everything that is in the record to show cause and more, too. And then the detail of one and two are things that I haven't had anything to do with.

H.M.Jr: Gus, is this a good program?

Folger: Yes, sir. I think it is all right, Mr. Secretary.

H.M.Jr: Too strong?

Folger: No, sir.

H.M.Jr: Strong enough?

Folger: Strong enough.

H.M.Jr: Phil, have you had a look at this?

Young: Yes, sir. I share Cy's lack of enthusiasm because it is useless in the first place and in the second place I don't see where it can possibly do any damage, whether it goes to 'Frisco or not. I don't think it is going to help us very much in the long run.

H.M.Jr: Well, I will take a look at it. Well, we have got this thing over-simplified for me. I will have to ask some questions.

"If the money for the new stock is furnished by the RFC in any manner, the articles of association must contain the usual management clauses and must provide for a veto power in the Comptroller of the Currency over payment of dividends on common stock. The first 25 million dollars of the preferred stock must be replaced when and if retired by means of a dividend, payable in common stock."

Now, I don't understand how this is going to be handled. Let me just put myself - I don't like this dividend clause. I am not going to do it that way. I am going to do it some other way. What other way can I do it? How can I raise 25 million dollars or 35 million dollars?

Upham: You can borrow it from someone else other than the RFC or you can issue common stock.

Bell: You could sell preferred stock as well as you could the common, but the rate, I think, prevents that.

H.M.Jr: Well, it looks to me as if this is an awfully tricky thing, this whole statement. It doesn't look like a forthright statement to me. I don't know whose toes I am stepping on, but it just doesn't look like a forthright statement. If you people think that you need 35 million dollars, why not say so? I am like Whitney Seymour, I don't know whether we need 35 or 25 or 45. I will take your word for it. If you need 35, say that we think that he should get it through the RFC, or if you want to give him two ways --

Bell: This says the capital must be increased by 35 million now. That is a definite statement.

H.M.Jr: Well --

Bell: We don't care where he gets it.

H.M.Jr: Then leave out the rest. Why not just say, one, that the capital must be increased by 35 million dollars. Then not go into all the rest of this stuff. It is time enough when he comes around and says, "I want to take it from the RFC," to say, "Well, if you are going to take it from the RFC, we want you to take it the way 95 percent of the other people are taking it." But I mean, why go into all this extra stuff here? What you want is to have him take 35 million.

"All right, Mr. Giannini, we want you to increase your capital by 35 million." I am hitting hard. This looks to me --

Bell: The only new thing in there, I take it, is the veto power on the dividends, that is the articles of association containing the management clause at the regular RFC requirement. That is new. But the veto power of the Comptroller of the Currency on dividends is new in this picture. If they came back and got this money from the RFC, that would be an additional condition that you might want to put on at this time and they would accuse you of adding something new if you didn't have it in the statement.

H.M.Jr: No, wait a minute. We say that he has got to raise 35 million dollars. We don't say where. Then he comes back and says, "All right, if I want it from the RFC, under what conditions can I borrow it?" "All right, under the following conditions."

I mean, looking at it again from his standpoint, a good publicity fellow would just take that and just hammer hell out of me on that paragraph. Now, I can stand - I can say, backed up by you fellows, that the Bank - backed up by Gus and - that the Bank needs 35 million dollars and I can pound the desk as hard as I can and say, "Well, it is up to you to get it." There are various ways. I am not trying to tell him how to get it. All the United States Treasury is saying is that he needs 35 million dollars of new, clean money.

Bell: That is a minimum. We might argue it up to 50, but that is the minimum.

H.M.Jr: You don't say that.

Bell: Yes, not less than 35 million.

H.M.Jr: Or at least.

Delano: I think that was put in, Mr. Secretary, as much to clarify our own minds to the conditions we would impose later on. I don't think it is an essential part of the program at all. What we were trying to do was to --

H.M.Jr: The simpler the thing, the better, and if you say 35, all right. Condition number one, they must have at least 35 million dollars new, clean, fresh money.

Bell: Supposing we strike out number one, except that first line. Would you be satisfied with the control you have over the dividends under two?

Delano: I didn't get the question.

Bell: If you strike out what the Secretary is suggesting under number one, you have put a maximum dividend which they can pay on the stock under two. Would you be willing to abide by that control, rather than putting in the veto power?

Delano: I think we ought to ultimately have the veto power. I am very much convinced that the Secretary - if he doesn't want to put it in here, we can produce it at the time that they make the application. I think we should have that veto power.

H.M.Jr: That was where the President laid down his rules.

Delano: That is right.

H.M.Jr: In December, '38.

Upham: That is right.

Delano: That is right.

H.M.Jr: So, if you are in accordance with that --

Delano: Yes, I think we should have that veto power, but if you want to leave it out of this particular memo, I see no reason - it wouldn't do any harm to leave it out of the memo.

H.M.Jr: I am just thinking. I want to be as practical as I can. I want to give them as little information as possible that they can use against us publicly. I think it is time enough to say what we want if and when you, as Comptroller, having the full authority of the Treasury of the United States, through me, to negotiate for RFC stock and I simply write a letter, by direction of the President, saying please lend Mr. - Bank of America - 25 million dollars. But the conditions will be laid down by you, because the authority flows from the President to me and from me to you.

Delano: That is right.

H.M.Jr: That is the way the authority flows. It hasn't been used that way, but that is the way it flows. Mr. Jones has always done the negotiating and then he writes me a letter and says, "Will you please authorize me to do it," after he has done the negotiating, but the way it is set up the power rests with the President and he delegates it to me and I in turn delegate it to the Comptroller to do the negotiating. In the first place, I think we could get into all kinds of arguments about that with the press.

Folger: This requirement would be in the articles of association. I think you are correct that they probably have no place in this memorandum.

H.M.Jr: If you are talking about a united front then the thing you want to agree on, the bank needs 35 million dollars, that is all. That is all they have got to agree on.

Upham: But we don't want them to go and do what Mr. Jones did before, make an agreement with the bank to do a certain thing which precludes it.

H.M.Jr: Well, he can't, because he has no authority to do it.

Upham: Mr. Jones didn't have authority before, but he did.

H.M.Jr: Well, if we find out he is going to make that move, I can simply draw his attention to the fact that he does not have that authority and that I don't want him to do that negotiating, that the President doesn't want him to do it.

Bell: The thing that worries me, the veto power is something extraordinary and something that you are going to have to impose in the articles of association that hasn't been imposed, as I understand it, in any other case. Now, this will be new in this case. When we go to impose something new in a loan agreement, then they are going to charge you with adding new conditions which you haven't added any place else, and again the charges will fly thick and fast.

H.M.Jr: Then we --

Bell: That all we want is to kill this bank.

H.M.Jr: Let me take a look at number two.

"If the increase in capital is preferred stock purchased by the RFC, the dividend rate on common stock must not exceed eight percent."

Is that forever?

Bell: Well, until this thing is straightened out.

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

Upham: Well, until the Comptroller permits them to pay more.

H.M.Jr: Well, it doesn't say that. It doesn't say it.

Upham: It sounds kind of perpetual, doesn't it?

H.M.Jr: "If it is preferred stock sold locally, the rate on the preferred stock should not be in excess of three percent."

Why do you penalize them for selling it locally?

Upham: They can get it at the RFC for three percent. The RFC will buy their preferred stock for three percent, but we didn't want them to pay any more for it if they sold it locally than if they sold it to the RFC.

Foley: Wouldn't it be better to express it that way, say, because when you put the two rates in here you get them confused between the common and preferred stock. It looks as though you are willing to allow them to pay an eight percent dividend on the common if they sell the preferred to the RFC, but if they raised the money locally, why then they can sell it only to the RFC. It is confusing, I think. I think you ought to say if they sell the stock locally they shouldn't pay any more than if they borrowed the money from the RFC.

Upham: That is right.

Bell: Of course, this throws them right into the hands of the RFC and they can't sell it for less than three percent.

H.M.Jr: Well, again, instead of two, if you want to have everything on the table, this says the capital must be increased by 35 million dollars. Two, irrespective of the measure used for raising this additional capital, the Comptroller of the Currency will have the right to recommend the amount of the dividend paid on the common stock. Isn't that simple?

Foley: Yes, but I think also these agencies are going to say --

H.M.Jr: You have had beefsteak for lunch.

Foley: These other agencies are going to say, "Well, it is one thing to talk about --"

H.M.Jr: Go on. I should say that isn't very good lager beer, that sounds better.

Delano: He is slow on the uptake.

H.M.Jr: There is something the matter with one of us and I don't think it is me. I was with the President from 1:00 until ten minutes of 3:00, which is awfully tiring.

Upham: That is further than we went before, Mr. Secretary. The President said before that if they got the money from the Government, we would have a veto power over dividends. Now, do you want to go so far as to say --

H.M.Jr: That is what I am trying to find out. I am trying to find out what this means. There are so many innuendos in this thing. What do you mean? Do you want the Comptroller to have the control irrespective of whether he raises it or only if he does?

Bell: As it is written, it is only if they get their money from the Government.

H.M.Jr: Then the other side, if you are playing poker, why show them all your cards and scare the man by saying, "Come on, we will give you 35 million dollars but, oh baby, what we will do to you on the dividend policy."

Bell: Do you think we ought to have control if they raise the money outside?

H.M.Jr: I think that the Comptroller of the Currency should have the right to keep a national bank from dissipating its assets through excessive dividends.

Bell: That goes to all national banks?

H.M.Jr: I am only thinking in terms of all banks. Yes, I do think so, he should have the right to keep them from dissipating their assets by declaring excessive dividends.

Folger: So do we.

Delano: We agree with that.

H.M.Jr: That is a nice way to get it, is through legislation. What do you think about what I am saying, Mr. Seymour?

Seymour: Well, I haven't the slightest notion what the dividends of this bank should be and I assume that these figures represent the judgment of those who do know. On the question of veto power over declaration of dividends, it would seem to me that to have that power in all cases without legislation and without some practical experience of that nature would be the kind of a responsibility that would be a constant headache. It would be just a little less of a headache if it is on loans from the RFC. On that, whether you want to have a headache, I haven't any opinion about.

It seems to me that the point is here that this bank should not be allowed to declare dividends which impair conditions from the point of view of the depositors and this bank, I suppose, ought to stay to a maximum dividend under present conditions and the veto power would be on the question of whether even that maximum of dividends would be declared, how much less you want to give out, and so forth.

H.M.Jr: But look, you have got a man - certainly by now you realize he is a very difficult person to deal with. Do you think for the sake of his depositors he ought to get 35 million dollars? Well, we want to make it as practical for him as possible to do it and in the same breath we are trying to introduce something over which we have no legislation and it seems as though we were putting ourselves in a very weak position with the amount of trading basis or in the minds of the public. I mean, the one thing we need more than anything else is 35 million dollars. Then we will have something over which we have legislative backing.

Seymour: And, at the same time, which makes it almost impossible for him to agree to try to raise that money.

H.M.Jr: Through RFC. I mean, the two things to me just seem to come head on and clash.

Gentlemen, I know you are living with this and I am not. I would hate to see this piece of paper get out of this room. I think what we ought to do is take a ten or twenty-page document - I am going to make a suggestion which may be impossible. After all, it took weeks or months to get this show cause order ready, didn't it?

Foley: Yes.

H.M.Jr: And in that thing went the best judgment we could get into the thing. In trying to make this thing taste sweet, and so forth, I am going to make a suggestion. Make these fellows agree to the show cause order. Let the united front be on the show cause order and not on something like that. Do you like that?

Upham: Right.

H.M.Jr: We don't --

Upham: They ought to be making a program, not us.

H.M.Jr: We are out on the end of the limb on the show cause. This gentleman has got to try this on the 14th of February. Either we are on safe, sound ground on that or we had better go hide our heads from cold water.

Bell: Well, that is what we have tried to do here, is be specific under the show cause order.

H.M.Jr: Isn't the show cause order specific, Dan?

Bell: Well, it has been pretty general and nothing in there about 35 million dollars in capital. You just said, "More capital." And all of the documents that are attached to it. While we have said reduce the dividends, we have never been specific about that.

Folger: No, we haven't.

H.M.Jr: Then that is an easier document to have the fellows agree to in the Government.

Bell: I think that is what all of this is, is to try to be a little more specific on the show cause order and still stick to the show cause order.

H.M.Jr: Well, you are arguing on my side. If that is a less specific document, it ought to be easier to agree to.

Bell: Well, except they say they need more capital and the Gianninis say, "How much capital do you say we need?" We can't go along on a united front until we know what is in their minds about capital. There is no united front.

H.M.Jr: All right, 35 million is the answer to that.

Bell: When we say reduce dividends, they will say, "What do you mean, or where do we stop?"

H.M.Jr: Let me ask you a question. If the Bank of America writes off all the losses with Mr. Delano asking him to do it, then I should think it would be one kind of a dividend and if they refused to do it, I should think it would take another kind of a dividend.

Foley: They can't refuse to write off the losses, Mr. Secretary. They have got to do it.

H.M.Jr: They have?

Foley: On that there can't be any trading. They have got to write them off.

Bell: It is under number three, very specifically.

H.M.Jr: All right, they write off all the losses and then what would the dividend be, eight percent?

Foley: On 35 million dollars of new capital.

Upham: No, 50 million.

Foley: But I mean, assuming they get 35 million dollars new capital. Hasn't there got to be 35 million dollars new capital in there before they can continue any dividends?

Upham: Yes.

H.M.Jr: Then how much is the --

Folger: Eight percent on the total common.

Foley: Then they are going to say - maybe they may write off these losses or they may amortize them and we will say that they must write them off. Then these other criticisms such as the large loan to Transamerica, the concentration of real estate, the two million dollar fund and the other things that we have criticized, have to be adjusted to the satisfaction of the Comptroller. That is what this is supposed to do, I assume.

H.M.Jr: Could you do this thing the other way around? Instead of our trying to say - there is only one agency at stake and that is the Fed, isn't it? Mr. Crowley has agreed to the show cause order, hasn't he?

Delano: Yes.

H.M.Jr: "Mr. Federal Reserve, here is the show cause order. We are asking you to go along with us on this thing." Now, what is there in this show cause order that they would raise any questions about? I mean, put it on them.

Seymour: Well, if you will forgive me for blundering in --

H.M.Jr: That is what you are here for.

Seymour: My impression of that meeting was that they came just to decide whether they could go along on it.

H.M.Jr: Giving them --

Seymour: Giving them light on it.

H.M.Jr: That isn't the reason they wanted light. What they want is what the Comptroller will be satisfied with before February 14th if they can make a deal with Giannini.

Foley: So there won't have to be any hearing.

Seymour: That is right. So the reason for being specific is that they can consider whether in their judgment these requirements are so that they want to associate themselves with them for the purpose of trying to bring about an adjustment. That is a worthy project, but I doubt from what I have seen that it will get anywhere, but it is a worthy project and if it could get anywhere it would be a good thing.

H.M.Jr: Granted.

Seymour: So specificity at this stage is pretty important and one thing that troubled me is that it is very hard to be specific about number four, which is the price in addition to these things on dividend. And also we want everything else fixed up. Now, what is everything else? And before we can - before whoever is going to talk to the Federal Reserve people can attempt to persuade them of that, some explication of just what number four means will have to be reached in the Department, I suppose.

H.M.Jr: Then you are not satisfied with number four?

Seymour: I like its statement, but then they will say, "What do you mean by that," and it is that that I think will cause the difficulty.

Bell: What we mean about that is everything else that isn't specifically mentioned that is covered in the show cause order.

Seymour: But there must be some judgment about which of those things are more important than others.

H.M.Jr: Can I come back at you - you finish, I will wait.

Seymour: I am through.

H.M.Jr: I am not going to give up so easily. Take Mr. McKee, for instance. Supposing he came over and sat down with you and said, "Now look, gentlemen, what out of this show cause order don't you understand, what do you want to know?" I mean, if you had to have the sole responsibility of sitting down with Giannini to make a deal between now and the 14th, what would you want to know? What would be on your mind? What wouldn't be clear on the show cause order?

Delano: He practically has answered that to a certain extent by asking us to be more specific, Mr. Secretary, about the amount of capital and dividend. That is what he said the other day. He said, "What do you want in the way of capital and dividend control and would you amortize these losses over a period of time?" And that was our attempt to be specific on those items.

H.M.Jr: Well, let me ask you a question. What, in your opinion, is the best way for the Bank of America to raise additional capital?

Delano: There is only one way they have got outside of some academic discussion. That is to go to the RFC.

H.M.Jr: Then why not let's just say so, why not say so, say that they have got to go to the RFC? They have got to give you a management clause and they can't pay more than eight percent until such time as you feel safe.

Folger: You must give the stockholders a right to subscribe to the new issue whether it be preferred or common stock.

H.M.Jr: That is all right. Do you hold that it should be preferred?

Folger: No.

H.M.Jr: Rather than common?

Folger: No.

H.M.Jr: You don't care.

Folger: Don't care. We know that the stockholders won't subscribe to any 35 million dollars of new stock, but the law requires them to give them the right to subscribe and if they won't do it, then they go to the RFC.

H.M.Jr: That is all right. But you hold to it that that is the only place that they would get an underwriting?

Foley: I don't believe they could sell it elsewhere.

Bell: They certainly couldn't on a three percent basis, could they?

Seymour: Don't overlook the fact that the crucial reason why they can't sell it anywhere else is the SEC. The SEC stated the other day that they couldn't go out now in view of their proceeding.

Delano: May I make a suggestion?

H.M.Jr: Please.

Delano: I suggest that Mr. Bell and I and Mr. Upham sit down with some Board member, Mr. McKee, if he is here, or whoever you want to designate, from the Federal Reserve, and go over the show cause order and use this thing here without showing it to them or anybody else to be specific where they ask us about the capital, about the dividend, about the write-offs. We have got a program in here that I think our minds meet on, as far as dividends and capital and write-offs are concerned, but let's keep this in our pockets but use it as a basis for telling these people what we want.

Bell: You know they wanted our technicians to get together and agree upon a program and bring it back to the group and we thought we had better get together and have a meeting of our own minds. If we could agree on something like this, they would have to discuss as to whether we were going to the group with it or whether we would turn it over to Gus and let him go to the technicians and discuss the program with this in his mind.

H.M.Jr: As I understand what is in it, I can't argue about it because I don't know. You say there are two things that stand out, 35 million and eight percent on the common and the management contract. If that is what you feel is right, I say, "Amen." I can't think of anything additional. It is the way it is worded that I am worrying about.

Bell: Well, maybe we can change that.

Foley: Don't forget about the losses.

Upham: That could be simplified a great deal.

Bell: The first three things there are the things that were mentioned in the December 12 letter, is that right?

Upham: Yes.

Delano: And they have been important things.

H.M.Jr: What do you add to it?

Bell: Everything else that is in the correspondence as far as the show cause order. We are not giving up anything.

H.M.Jr: Well, I think this is important enough that the people here in the room sit down with anybody that they want, I mean the people in the room here. I think it is important enough, leaving Mrs. Klotz and myself out, that the rest of you sit down. I don't know whether you (Seymour) want to go in or not. You have got to decide that yourself. If you think it is all right and won't damage your standing, you can go in.

Foley: Amateur standing.

H.M.Jr: I hope it is not an amateur standing. I don't want to talk to the technicians, with all due respect to the rest of you. I think these people in the room should talk to them. Not the big meeting with the other people, but just our crowd plus the Federal Reserve crowd.

Delano: Anybody they want to send over?

H.M.Jr: Anybody they want to send over.

Delano: And then discuss this and then can we clear with you, Mr. Secretary, that these things we have in mind are fundamentally correct?

H.M.Jr: I am in your hands and I accept it.

Delano: And we may use these as a basis for discussion, then?

H.M.Jr: Definitely.

Delano: But you would like to have us invite them over for another meeting?

H.M.Jr: Yes. Not the crowd you had in the other day, but just Treasury and Federal Reserve. I think if it is important enough for Bell and Foley to sit in, and you, Delano --

Delano: I was only just trying to cut it down from the standpoint of getting a smaller group so we can work.

H.M.Jr: Everything I can think of is in there. I can't think of anything more.

Delano: We particularly wanted to clear with you, Mr. Secretary, this dividend rate and the amount of capital.

H.M.Jr: I am like Whitney Seymour, I don't know whether it is 35 or 30 or 40. If you say it is eight percent, that is all right with me.

Bell: The amount of money is the same whatever direction they take, about five million dollars a year.

H.M.Jr: But if you can get these fellows over and get them into this building and then as you go along and get stuck, if you want to come in and whisper something in my ear, I will listen to it. I think you ought to do that, Dan, and for God's sake don't let them lay their hands on this piece of paper. Is that all right?

Delano: All right, sir.

H.M.Jr: I would do it tomorrow, if they are willing, and then postpone the other people until you can get together with the Federal.

Delano: I would like to discuss the matter with Mr. Crowley, if we can.

H.M.Jr: I don't think he ought to be in that meeting.

Delano: No, I would like to get his judgment on it.

H.M.Jr: That is all right.

Bell: We left out the question of management, eliminating the management.

H.M.Jr: Yes.

Bell: We thought Tom Smith had a good point, that if you insisted on that, that would be one thing they would use in a public charge.

H.M.Jr: I said I didn't want to add anything to it.

Bell: We left it out of here.

Seymour: If I might just add this, as far as I am personally concerned, the thing I am interested in is if you can get a reasonable settlement, that is what everybody wants, but I hope that as a result of these conferences the Federal Reserve people won't get an authority to offer a settlement to the Bank which is less favorable to the Treasury than the demands we are making in the hearings, because if they do, and then they begin to attack these hearings, they will be in the position of saying, "Well, the Comptroller didn't - the Treasury didn't have any real confidence in these things. They offered to forget about them," and it is that that I am particularly concerned about.

H.M.Jr: I think you have - why should the Federal Reserve offer these things?

Bell: I don't think they should, but that might happen.

Seymour: McKee indicated the other day, if I understood him correctly, that he wanted to know what the Comptroller's demands were so that he would be in a position or the Reserve Board would be in the position, if they thought it was feasible, to attempt to get Giannini to comply with those demands.

Upham: Which they say they can get and we can't.

Seymour: Yes.

H.M.Jr: I agree with Cy. I think this particular phase of this thing is very unfortunate. We are kind of committed to it, now, aren't we?

Delano: I don't know.

Bell: You mean giving this to the Board?

Delano: We are not committed to give them anything.

Foley: All we ever did was say we would consider it.

Bell: We are not committed to anything.

H.M.Jr: I think that is an excellent point. If they make an offer which is easier than the one we are asking for, we might just as well close up shop.

Seymour: You can control that by what you give them as a result of this conference and even if you are in the mood to ameliorate your demands somewhat, you can satisfy them with even more than you ask as reasonable and thus leave yourself in a position where there - if Giannini turns them down, they will back you up in the - to the full extent of your demands.

Now, there are several items here which are not clearly set forth in the most recent statements of the Comptroller's position and yet they are pretty serious things, and those I should dislike to see abandoned and I think there would be a very real chance of persuading the Federal people that even if you insisted on those you would be taking that position.

H.M.Jr: I think by all means you had better sit in the next meeting.

Seymour: I don't see it would disqualify me in any way and I will be mighty glad to do that.

H.M.Jr: You are going to be there?

Seymour: All right.

H.M.Jr: I think we are on awfully ticklish ground. This idea, that the Federal Reserve should get them to agree because we can't, it makes it look as though we are so ornery and so impossible that they can't do business with us, but the Fed, they are nice, sweet boys and they can do business with them.

Bell: That is what may develop out of this whole thing. There isn't any question about it. I don't think we are putting the picture too strong as yet. We don't want, I don't think, to be in a position of refusing to cooperate with two other governmental agencies that have asked us to get together and agree upon a program so that we can submit to these people a united front. I don't think we can be in that position, but I think that Mr. Seymour is right, that eventually it will come to a point where the Fed will be trying to negotiate some kind of a settlement.

H.M.Jr: Well, let me just say this. Someone asked me do I care whether the Fed gets the credit. No. If they get the credit, wonderful. But in this talk as it goes on the next two or three weeks, I don't want to find ourselves in the position that we are worse off in our relation with the Bank of America than we are now, because we have had to work hard enough to get whatever strength we have at the present. I don't think we ought to let that slip through our fingers.

Delano: We can be specific on this point if they ask us to be specific.

H.M.Jr: You are up against a real problem. I think you have got to watch yourself.

O. K.

COPY

DREHER, McCLELLAN & McCARTHY
Attorneys at Law
485 California St., Suite 1005
San Francisco, California

Fred L. Dreher
J. Ed McClellan
Frank J. McCarthy

January 23, 1940

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

Dear Sir:

I have the honor to acknowledge receipt from you of a communication dated January 11, 1940, which is denominated "Order to Show Cause and for Hearing" to determine certain matters with respect to the Bank of America National Trust and Savings Association of San Francisco, California, of which bank I am a director. It is my purpose as a director of the bank fully to perform every obligation and to discharge all responsibilities which such directorship entails. In order to be certain that no opportunity is neglected to establish and maintain proper relations with the Federal authority charged with the administration of the law under which the bank is operating, I should, in respect to the above mentioned communication, appreciate receiving from you information which might enable me better to cooperate with your office in the discharge of our separate responsibilities. I might add that the other directors of the bank with whom I have discussed your communication, approach the questions presented in similar spirit. I feel that any information you can give me in response to the following inquiries will enable me to discharge my responsibility with greater assurance:

1. Inasmuch as I have no knowledge of any law or regulations pertaining to the office of the Comptroller of the Currency which authorize hearings to be held by the Comptroller or by his personal representatives touching the matters referred to in your communication, I should like to inquire whether at the hearing you have set for the 14th day of February, 1940, witnesses will be sworn and examined. What rules of evidence will be in force? Will the Comptroller at such hearing be represented by counsel? Will the Comptroller promptly advise me as to the contemplated rules of procedure intended to govern at the proposed hearing?

2. What specifically is your authority for issuing such a communication?

3. If you, as Comptroller of the Currency, have determined to publish the report of examination of the bank, will you specify in advance of the hearing the legal conditions or requirements which have not been complied with and which would constitute legal ground for such publication?

4. In view of the correspondence between your office and the bank relative to proceedings for the removal of directors and officers pursuant to Section 30 of the Banking Act of 1933, what further assurance would

the Comptroller desire of the willingness of the directors and officers of the bank to submit to and participate in proceedings under said Section 30 of the Banking Act of 1933? I am not aware that any director or officer of the bank has any reluctance to submit his conduct and his qualifications to the scrutiny of the tribunal designated by law to pass judgment on such matters.

5. I am at a loss to know how to proceed in respect to the question of whatever other or further action you might take as provided by law unless I were advised in advance of some other or further action which might be contemplated. Perhaps if you would indicate the character of any other or further action which the circumstances, as you may conceive them, might legally warrant, it might be possible to offer facts and suggestions which would have a proper bearing upon the exercise of your discretion or duty. But I must recognize that you are responsible for the administration of the office of the Comptroller of the Currency under the direction of the Secretary of the Treasury and I am not in a position to volunteer advice as to how the office should be conducted.

6. At the conclusion of the hearing before your special representative, is it contemplated that he shall make findings of law and fact, and recommendations to guide you in the performance of your duties? If so, would you have any objection to the directors or the bank appointing a special representative of equal dignity and experience who might likewise be present throughout the hearing and to whom would be made available all the evidence, records and files which it is contemplated will be available to your representative, and who might likewise submit findings and recommendations deemed warranted and appropriate?

Respectfully,

(signed) Fred L. Dreher

FLD/M
AIRMAIL

MEMORANDUM FOR THE FILES

January 23, 1940

Conference re Bank of America

A conference was held in the office of the Under Secretary beginning at 3 P.M., January 23, 1940, with further reference to a program for Bank of America.

The following were present at the conference: Messrs. Bell, Foley, Delano, Upham, Folger, Seymour, Young, Sharbondy and Tietjens representing the Treasury and Messrs. Eccles, Morrill and Dreibelbis representing the Federal Reserve Board.

Mr. Bell opened the meeting by stating since the last meeting with the representatives of the Federal Reserve Board the Treasury representatives had been considering what would be an acceptable program for the Bank but had found it difficult to work out a more definite program than the one set out in the show cause order.

Mr. Morrill asked what the difficulties were, stating that he didn't think there should be any and that in his opinion the show cause order contained no definite program. Mr. Bell replied that he thought the order was pretty definite with respect to what was required of the Bank. Mr. Morrill asked whether the Treasury had a definite figure for the capital which the Bank would be required to put in. Mr. Bell replied that we did have a pretty definite idea as to the amount of capital.

As this point Mr. Eccles stated that he didn't think the Treasury procedure would get any where. "If you were the Bank," he asked, "would you come in?" The Bank has been trying to get before the Reserve Board in a section 30 proceeding for some time and has practically invited the Treasury to start one. So there would be no objection to the Comptroller taking this course on the part of the Bank. On publication, the Bank might very well say, "You take the responsibility of publishing the report. If you think it is in the public interest, go ahead." So there is nothing to gain on the part of the Bank by coming in. The Comptroller's office would thus be faced with the same problems after the hearing as it is now. The Comptroller wont be bound by the examiner's report, so he will still have to decide whether he is going to publish the report or start a section 30 proceeding. The Federal Reserve Board would like to settle without either a section 30 proceeding or publication of the report. As a matter of fact, publication may have very little effect. The Bank seems to be getting increasing confidence in its position. It sets a bad precedent for a private institution to defy the government. But if the Reserve Board and the San Francisco Reserve Bank get in the picture, the Bank can't very well cry "discrimination." There is indication that the Bank is considering conversion to a state bank and asking membership in the Reserve System. Both Mr. Morrill and Mr. Eccles thought that the Bank would have to become a member of the System in order to get along. The Bank can't get membership except on conditions laid down by the Board. This means writing a ticket for the Bank. As for the voting permit, it is possible for the Board to cite the Bank for revocation of the permit in view of the information which the Board has from the Comptroller. The Bank might say that it isn't an affiliate of Transamerica but in that case the Board could revoke the permit anyway and cut off dividends to Transamerica and put the controversy as to whether the Bank is an affiliate into the courts.

As Mr. Eccles sees it, there are two courses open: Either for the Comptroller to wait for the Bank's next move and let the Board write the ticket it would require of the Bank for membership and perhaps let the Board cancel the voting permit if the Bank wont comply with the ticket. Maybe the Board would call the Bank's people in and tell them this would be done. But the program written for the Bank ought to be agreeable to the Comptroller and the F.D.I.C. If this course can't be followed, then the Board is under a responsibility to do it anyway. It would rather do it with agreement of the agencies.

In response to a question from Mr. Upham, Mr. Eccles stated that the Bank had asked the Federal Reserve Bank at San Francisco what they would have to do to be eligible for membership in the System in case of conversion into a state bank.

In response to Mr. Bell, Mr. Eccles stated that the Board's technical people had almost finished their analysis of the Comptroller's reports and correspondence with reference to the Bank.

Mr. Foley asked what the Board did when a state bank asks for membership. Messrs. Eccles and Morrill stated that the Board's procedure varies in different cases. In some it might involve working out a program for the applicant and making an examination. It depended upon the information that was available. Sometime this was done informally even though a bank had not made formal application for membership.

Mr. Eccles stated that he couldn't help but believe that if the Bank was willing to meet the requirements which the Board would lay down for membership, there would be no need for conversion.

Mr. Morrill stated that in talking of a program for the Bank, he wouldn't lay such a program on the table at a meeting with the Bank but would simply have it in the back of his mind. This case has been handled so far on an individual basis with each agency. The Bank has never been faced with all of the Federal agencies at the same time.

Mr. Bell inquired as to how the program would be presented to the Bank. To this Mr. Eccles replied that the program was only part of the picture. The real question is one of banking practices as well as new capital. Personally he would want it agreed that there would be no write-up of securities; that profit on securities be put in a reserve and that losses be taken out of current earnings. He wouldn't care anything about dividends if losses are charge out and capital put in. Since 1933, as he analyzed the reports, the Bank had reported earnings to the public which included security profits. The addition to the capital account had been less than the write-up on the securities and the Bank had paid out $5,000,000 more than it earned after the losses were charged off. In the meantime, the Bank has had a $700,000,000 increase in deposit liabilities. The Bank must put enough capital in to take care of doubtful and slow assets, but when it comes to figuring how much capital, we should not start with any ratio. Ratios like 10 - 1 don't really mean anything and simply start arguments. As to banking houses, furnishings, etc., the Bank would have to increase its charge-off out of earnings. If the new capital came from the government the Bank would have to have the usual retirement program. No limits should be set on dividends in the program. The dividend rate would take care of itself if the other things were done.

Mr. Foley asked Mr. Eccles further about increasing capital and charging off losses. In response Mr. Eccles stated that he didn't know enough about the actual condition of the Bank but he thought there would have to be substantial improvement, especially in view of the great amount of real estate, banking houses, furniture and fixtures carried by the Bank.

At this point Mr. Eccles went back to the voting permit question. He said the Board was up against it on this question. He feels that Transamerica is a holding company affiliate even if it can't be proved. He would put the burden on the Bank of proving it wasn't an affiliate by revoking the permit. To date he felt the Board is a party to allowing dividends to go to the holding company when this could be stopped. But before anything is done in this respect he would like to get the Bank in and give it a chance to toe the line. This should be done if possible only with the agreement of all of the agencies concerned. He didn't blame the Treasury for wanting to take action. The action taken so far was fair all right, but he was afraid it would not bring the desired results. He would like to get the F.D.I.C., the Treasury and the Board together. As for the S.E.C., it was in a little different position but he thought that if the Bank would consent to a program agreed upon by the other agencies, most of the S.E.C.'s difficulties would be solved automatically and the S.E.C. could then find a way out.

In speaking of how the program would be presented, he believed in direct action. Agree on a ticket and tell the Bank, "If you want to come into the System, here are the conditions." The Comptroller would impose the same program and the F.D.I.C. too. The Reserve Board would also say to the Bank either follow the program or we will cancel the Transamerica voting permit. Faced with these alternatives, it seems inevitable that the Bank must give in, although they might fight for a long time.

Mr. Bell inquired whether sitting around a table and discussing a program with the Bank would prejudice the Treasury's proceeding on the order to show cause. Mr. Eccles didn't think so and said the Treasury would be just that much further along.

Mr. Foley remarked that Mr. Eccles had been very helpful and at this point Mr. Eccles stated that he was always frank, that he never dealt at arms' length with other governmental agencies. He stated that he was misunderstood by someone at the Treasury last summer when he came over to talk about a section 30 proceeding and sent over a memorandum explaining what he thought were the difficulties with such a proceeding. Someone over here thought that he was afraid of such a proceeding, but he wanted it understood that he wasn't, he merely thought that it would be a long drawn-out affair and that there were better methods of dealing with the Bank.

Mr. Foley summarized the matter thus: The Treasury has started its proceeding. As he understood what Mr. Eccles had said about the Bank, the three agencies involved apparently see eye to eye on the major criticized items, maybe not specifically on each item, but in general. Maybe it wasn't possible to work out all of the difficulties with the Bank in a way satisfactory to everyone concerned, but if the Gianninis were turned away by the other agencies and were gradually driven in, the procedure which had been suggested by Mr. Eccles would almost be bound to come to pass. Mr. Foley didn't believe that the time was propitious for sitting down with the Bank and discussing an agreed program. That could come at a later date, maybe after the hearing started. As Mr. Foley understood it, Mr. Eccles' position on new capital, real estate valuations and practices sounded the same as the Treasury's.

Here Mr. Eccles broke in to say it was easier to approach the Bank's problems from the capital angle rather than compelling the Bank to make charge-offs.

Mr. Foley stated he didn't want anything to happen to the proceeding which had been started by the Treasury. He believed that the government's position would be strengthened as the order to show cause hearing went ahead. It would be unfortunate to give ground at this point.

Mr. Eccles replied that he wasn't asking anybody to give ground. He wanted to consolidate and go ahead. He simply does not believe that results will come from the Treasury hearing. As he stated before, the Bank doesn't care about a section 30 proceeding. The Comptroller might be put in the position of having to publish the report and thus the government's position would be weakened. He stated that he thought the Bank would come in to the Treasury hearing. But even if they did, there wasn't any assurance that the Bank would offer a satisfactory program. He thought the sooner the Bank was told what all the agencies wanted, there would be less room for the Bank to maneuver.

Mr. Foley said that he thought if the Treasury participates before the hearing in a conference with the Bank about an agreed program, our position would be immeasurably weakened.

Mr. Eccles said, "Then let the Board call the Bank in and say here is what you have got to do." If the Bank replied, "but the Comptroller is going to have a hearing," then the Board would say, "well we will see if he wont accept the same kind of program." Mr. Foley pointed out that this would put the Board in the unfortunate position of representing the Bank in an attempt to work out an agreement with the Comptroller.

To this Mr. Eccles replied that the Board was going to call the Bank in anyway, probably on an order to show cause why the voting permit should not be revoked

Mr. Foley stated that he didn't believe that the Bank actually wants a section 30 proceeding. He accepted Mr. Eccles earlier indictment about someone over here misunderstanding Eccles' position on the section 30 proceeding and stated that he thought the Board at that time didn't want such a proceeding; that the Gianninis knew this and for that reason were telling the Treasury to go ahead and certify the Bank to the Board.

Here Mr. Foley asked Mr. Seymour if he had any comments. Mr. Seymour stated that if the Board's program for the Bank is the same as the Comptroller's it might be very helpful to have the Bank know what the Board would require as a condition to membership. Mr. Seymour didn't see much essential difference between the Board's position and the Comptroller's position.

Mr. Eccles stated that the Board's approach would be different. It can make an agreement where the Comptroller can't. The Board would not argue about how the Bank carried its banking houses, its furniture and fixtures, etc., so long as the capital picture is changed. He thought that losses in banking houses were different from losses on notes and that the method of bookkeeping was more important than anything else. He stated that the Comptroller ought to be interested in a sound capital situation which would be sufficient to protect depositors. The Bank's future practices could be taken care of by regulation of its accounting practices. If the Comptroller's requirements were met by the Bank it might be necessary to suspend dividends and Mr. Eccles thought this was questionable in view of a possible public interest in their continuance.

Mr. Seymour stated that he thought that losses found by the national bank examiners, whether found in the banking houses or not, ought to be charged off.

Mr. Eccles answered this by stating that the Comptroller was always arranging to have real estate held more than five years by banks removed according to schedule rather than compelling removal of all such real estate at once.

Mr. Eccles contended that even though there should be losses in banking premises that an increased capital structure would furnish adequate protection for the depositors to cover any such losses, and that an increasing depreciation rate could gradually write down the value of the banking premises. Mr. Seymour stated again that the Comptroller's order as to setting up of losses must be upheld by all means.

Mr. Eccles stated that he had hoped that the three banking agencies might agree on a program. However, if only the Federal Reserve Board could agree on a definite program, the Federal Reserve Board itself would feel obliged to call the Bank to Washington informally to discuss such a program. If, as the result of such an informal conference, the Bank didn't agree to the program, the Board would then feel obligated to take steps to revoke the voting permit, probably by a hearing to show cause why such action should not be taken.

Both Mr. Delano and Mr. Upham stressed the necessity of upholding the authority of the Comptroller's office in requiring a Bank to charge off losses, and Mr. Upham pointed out that merely increasing the capital of a bank that was full of bad assets should not be recognized as a solution of the situation.

Mr. Eccles referred to the rather sudden action of the Comptroller in setting up losses of approximately $9,000,000 in banking premises. In answer, Mr. Folger explained that it was only recently that the examiners discovered the appraisals of banking premises in the files of Capital Company, although they had felt for a long time that the banking premises were carried at an excessive figure. Mr. Eccles stated that it should not be necessary for a bank to carry its banking premises as though they had to be liquidated immediately, since such premises had a going concern value to the Bank as long as it continued to use them for banking purposes. He continued to stress the most beneficial result which would accrue from an increased capital structure. Mr. Eccles admitted that the Bank had been paying excessive dividends, but he doubted that it was in the public interest for the Bank to drastically reduce the dividend rate at the present time because of the possible effect upon the public confidence in the institution.

Mr. Foley asked Mr. Eccles how long it would take the Federal Reserve to work out a program. Mr. Eccles was not very definite although he indicated they might agree upon a program in ten days or two weeks. He stated he could not commit the Board although he was confident that the Federal Reserve staff would be prepared to discuss a general outline of the program with the Comptroller's staff within a few days. Mr. Foley asked Mr. Eccles if it was clear that no program would be discussed by the Federal Reserve with the Bank without advising the Treasury and in reply Mr. Eccles said that was true, that the Federal Reserve would not discuss a program with the Bank without contacting both the Treasury and the F.D.I.C. Mr. Eccles also indicated that he wasn't certain that the Board would care to discuss its own program for the Bank with the Comptroller's staff if the Comptroller's staff wasn't interested in helping to work out a program with the Federal Reserve. He further stated that so far as he could determine, the only proposal made by the Treasury in this conference was that the Federal Reserve should do nothing until after February 14 and that he had put that proposal to the Board and they had refused point blank to concur in any such proposal. He was confirmed in this by Messrs. Morrill and Dreibelbis.

In concluding the conference, Mr. Bell stated that he thought it would be advisable for the Treasury people to discuss the matter and then possibly contact the Federal Reserve if it was considered that anything might be accomplished by that procedure. In leaving, Mr. Eccles said the Federal Reserve staff would be very glad to discuss the subject at any time with the Treasury staff.

January 24, 1940.

MEMORANDUM

To: Secretary Morgenthau

From: Mr. Schwarz

Deac Parker is in Florida for a month but Walker Stone of his office, whom I believe you also know, would be pleased to come in at your convenience later this week in order to help straighten out the San Francisco News with respect to the Transamerica situation. Stone is ill at home today but hopes to return to his office tomorrow. He would, of course, come over then rather than miss seeing you Friday or Saturday, but, if it is okay with you, would prefer one of the latter days. You may wish to have Phil Young see him, too. He has asked me to tell him when he might see you.

January 22, 1940

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

If the money for the new stock is furnished by the RFC in any manner, 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 when and if retired by means of a dividend, payable in common s tock.

(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 s tock 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 must not exceed 6 per cent.

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

(4) The criticised assets and transactions must be adjusted to the satisfaction of the Comptroller as expeditiously as possible; and no new obligations of Transamerica Corporation or its affiliated or subsidiary companies or allied interests taken into the bank.

Draft #2.
Revised 1/25/40

C O P Y

TREASURY DEPARTMENT

Telegraph Office

WS1 N 56 1 EXTRA 1940 JAN 25 AM 8 35

SAN FRANCISCO CALIF JAN 24 1940 713P

HON PRESTON DELANO
COMPTROLLER OF THE CURRENCY

MANY THANKS FOR YOUR WIRE OF JANUARY TWENTIETH IN ANSWER TO OURS OF THE NINETEENTH. WE HAVE EMPLOYED O. K. CUSHING AND THE FIRM OF CUSHING & CUSHING OF SANFRANCISCO TO REPRESENT THE BANK AND DIRECTORS WITH REFERENCE TO THE MATTERS PENDING BETWEEN THE BANK AND YOUR OFFICE. YOU WILL SHORTLY HEAR DIRECTLY FROM MR. CUSHING.

R P A EVERARD SECRETARY
BANK OF AMERICA NT & SA

CUSHING & CUSHING
Attorneys at Law
1 Montgomery St.
San Francisco, Cal.

as. S. Cushing
K. Cushing
. H. Gorrill
win E. Richter
lger Trowbridge
erett S. Layman
n C. Duniway

January 25, 1940

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

Dear Sir:

My firm and I have been employed on behalf of Bank of America National Trust and Savings Association in reference to your order of January 11th and other matters. I understand that you have been so advised in a wire from Mr. Everard, Secretary of the Bank.

A preliminary review of your order, the Examiner's reports and correspondence, convinces me that my associates and I can be more helpful if we can have a conference with you on the subject.

I am planning to be in Washington on bank matters on February 5th and would appreciate an opportunity to confer with you about that date. Would you be good enough to wire me whether a conference with you about that date could be arranged.

Very truly yours,

/s/ O. K. Cushing

OKC;A

AIRMAIL

J. F. T. O'CONNOR
530 West Sixth Street
Los Angeles, California

January 25, 1940

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

Dear Mr. Comptroller:

In looking for a letter today I happened to run across copy of a letter which I wrote to Honorable Jesse Jones on July 5, 1933. This was at the time when the R. F. C. and the Comptroller's office were working so hard on re-establishing the banking system in the nation. The letter gives an interesting discussion I had with Mr. Giannini at that time. Mr. Jones no doubt has the original in his files if you desire to see it.

With kindest regards, I am

Sincerely yours,

/s/ J. F. T. O'CONNOR

J. F. T. O'Connor

July 5, 1933

Dear Jesse:

A. P. Giannini called me today from San Francisco and stated he would like very much to have me return by way of San Francisco but it is impossible. He also inquired about a certain application his bank had made for a branch, which I will take up when I return.

However, it will interest you to know that I told him I was not satisfied with his dividend policy and that we had discussed the matter in Washington. He told me that he had never received any suggestions from my department. I told him a letter had been sent out some several weeks before I took office, by Acting Comptroller Awalt with reference to the matter.

I told him further - while his bank was earning the money and making a good showing, that it was the strong banks that should cooperate with us in helping the weaker banks to follow the suggested recommendations by the Comptroller's office. He said he was sorry he didn't know about this matter earlier and didn't understand why the letter was not called to his attention. I am flying back to Washington and will reach there before this letter does.

Very cordially yours,

J. F. T. O'Connor
Comptroller

Hon. Jesse Jones,
Chairman R. F. C.,
Washington, D. C.

1-25-40

(1) Capital. The capital must be increased immediately by not less than $35,000,000. This capital may be obtained from the RFC through the purchase of preferred stock which must be retired from earnings within a reasonable time.

(2) Losses set up in reports of examination. Losses set up by the examiners in the last report of examination must be charged off immediately and a reasonable rate of depreciation must be taken in the future on all banking houses.

(3) Accounting practices. Accounting practices must disclose the true nature of all transactions. Bond profits must be placed in a special reserve account to take care of possible depreciation in the bond account. All future losses must be charged off out of earnings, exclusive of bond profits. Loss items must not be disposed of to other parties except under bona fide sales agreements. All practices tending unduly to favor Transamerica, its affiliated or subsidiary companies or allied interests, must be discontinued.

(4) Dividends. Dividends may only be declared out of net earnings after all losses have been written off and any reserves required by the Comptroller established.

(5) Illegally held bank stock. The Bank must dispose of all stock of the National City Bank which it acquired in violation of section 5136 of the Revised Statutes.

(6) Transamerica Large Line. The orderly reduction of this line must be continued by the Bank at the rate equal to the reduction made during the past year.

1/29/40

(7) Real estate concentration. There must be a definite accelerated program of liquidation of real estate holdings, especially future and former banking premises held by Merchants National Realty Corporation, and the contracts with Capital Company and California Lands, Inc. All real estate acquired or carried in violation of section 5137 of the Revised Statutes must be disposed of as soon as possible. The liquidation of real estate loans which do not conform to section 24 of the Federal Reserve Act must be accelerated.

(8) Self-insurance reserve. The Bank must take immediate steps to obtain the balance of its self-insurance reserve fund from Transamerica General Corporation.

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BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM

Washington

January 27, 1940

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

Dear Mr. Delano:

For your information you will find attached a copy of a letter dated January 23, 1940, which has just been received from L. M. Giannini, President of the Bank of America National Trust and Savings Association, addressed to Chairman Eccles, and copies of the enclosures therein referred to, consisting of a letter dated January 23, 1940, from President Giannini addressed to the Federal Reserve Bank of San Francisco, a copy of the "pro forma balance sheet" referred to in that letter, and a memorandum of provisions of the California Bank Act—Section 56b.

Very truly yours,

(Signed) Chester Morrill,
Secretary

Enclosures 4

BANK OF AMERICA

National Trust and Savings
Association

San Francisco Headquarters

San Francisco, California

January 23, 1940

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

Dear Governor Eccles:

I am enclosing copy of a letter and copies of enclosures which accompanied it, sent to the Federal Reserve Bank of San Francisco today. This letter is self-explanatory.

We shall very much appreciate whatever you may do to expedite the consideration of this matter by your Board and an early indication to us regarding the consideration which would be given to a formal application.

Yours very truly,

(signed) L. M. GIANNINI.

President

Enclosures

January 23, 1940

Federal Reserve Bank of San Francisco,
San Francisco, California.

Gentlemen:

Bank of America National Trust and Savings Association proposes to proceed under the provisions of Section 56b of the California Bank Act to convert into a State Member Bank. Before proceeding formally, as required by Section 56b, to dissolve the Association as a National Bank, we would like to have an indication from you as to the formalities involved. We would propose to proceed under a plan similar to that followed by the First Commercial Bank of Pontiac, Michigan , which was converted from a National Bank into a State Bank under substantially the same statute. The Supreme Court of Michigan decided that in so converting, the bank did not lose its identity. (First Commercial Bank of Pontiac, Michigan, v. Talbert, 61 N.W., 888)

Accordingly, we are enclosing copy of Section 56b of the California Bank Act and a pro forma balance sheet indicating the condition of the Bank as of December 31, 1939, as it would appear with assets and liabilities segregated and capital funds allocated to commercial, savings, and trust departments, as required under State law.

Inasmuch as the proposed procedure will require a stockholders' meeting and due notice and publication of our intentions, we should appreciate having a response as early as possible.

Yours very truly,

(Signed) L. M. Giannini

President.

Enclosure

CALIFORNIA BANK ACT - Sec. 56b.

Any banking corporation organized under the laws of the United States and doing business in this state may become an incorporated bank of this state with all the powers and subject to all the obligations and duties of banks organized under the provisions of this act, provided such banking corporation has authority by virtue of any law of the United States, to dissolve its organization as a national banking corporation. A national banking corporation desiring to become such an incorporated bank of this state shall proceed in the following manner:

It shall take such action, in the manner prescribed or authorized by the laws of the United States, as shall make its dissolution as a national banking corporation effective at a future date certain.

A majority of its directors shall thereafter and before the time when its dissolution becomes effective, subscribe and acknowledge in duplicate upon the authority in writing of the owners of at least two-thirds of its capital stock, the articles of incorporation required by section two hundred ninety of the Civil Code of California, and attach thereto copies of the said written authority of stockholders and the resolution fixing the date at which its dissolution as a national banking association shall become effective, executed in the same manner as said articles of incorporation.

It shall thereupon take such action, in the manner prescribed or authorized by the laws of the State of California as shall create a corporation for the purposes set forth in the said articles of incorporation.

It shall thereafter and before the time when its dissolution becomes effective, make application to the superintendent of banks for his certificate of authorization to transact business as is prescribed in sections one hundred twenty-seven and one hundred twenty-eight of this act.

If the superintendent of banks shall issue his certificate of authorization to transact business, its corporate existence as a state bank shall begin as soon as its dissolution as a national banking corporation becomes effective. But such bank shall transact no business as a state bank other than that relating to its organization until it shall have received the said certificate of authorization of the superintendent of banks.

At the time when the corporate existence of said state bank begins all the property of the dissolved national banking association shall immediately by act of law and without any conveyance or transfer be vested in and become the property of such state bank. The directors of the dissolved corporation at the time of such dissolution shall be the directors of the bank created in pursuance hereof until the first annual election of directors thereafter, and shall have power to take all necessary measures to perfect its organization, and to adopt such regulations concerning its business and management as may be proper and not inconsistent with law.

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COMBINED REPORT OF CONDITION

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

AT SAN FRANCISCO

AS OF THE CLOSE OF BUSINESS ON THE 30th DAY OF DECEMBER, 1939

RESOURCES	Commercial	Savings	Trust: Court Trust	Trust: Private Trust	Combined
1. Loans and discounts	317,713,413.90				317,713,413.90
2. Loans secured by real estate		392,770,340.22			392,770,340.22
3. Overdrafts	864,001.00				864,001.00
4. United States securities	134,000,000.00	289,761,202.66	500,000.00	100,000.00	424,361,202.66
5. All other bonds, warrants, and other securities	88,916,404.16	90,997,263.11			179,913,667.27
6. Bank premises, furniture and fixtures and safe deposit vaults	10,000,000.00	21,477,848.75			31,477,848.75
7. Other real estate owned		7,182,032.63			7,182,032.63
8. Cash on hand and due from banks	138,381,389.10	67,100,000.00			205,481,389.10
9. Exchanges for clearing house	5,949,046.06				5,949,046.06
10. Checks and other cash items	3,858,875.59				3,858,875.59
11. Items with Federal Reserve Bank and other banks in process of collection	6,942,806.82				6,942,806.82
12. Customers liability account of acceptances	18,281,457.98				18,281,457.98
13. Acceptances of other banks and bills of exchange or drafts sold with our endorsement					
14. Items in transit between head office and branches - net	8,621,993.67	17,433,831.15			26,055,824.82
15. Advances to trusts					
16. Other resources	8,236,471.38				8,236,471.38
Total	741,263,859.36	886,722,418.41	500,000.00	100,000.00	1,628,586,277.77

LIABILITIES	Commercial	Savings	Trust: Court Trust	Trust: Private Trust	Combined
21. Capital paid in:					
a. Class A preferred stock,...............shares Par $...............					
b. Class B preferred stock,...............shares Par $...............					
c. Common stock, 4,000,000 shares Par $ 80,000,000	28,000,000.00	27,400,000.00	500,000.00	100,000.00	56,000,000.00
22. Surplus	19,000,000.00	19,000,000.00			38,000,000.00
24. Undivided profits - net	22,845,841.75				22,845,841.75
25a. Reserve for contingencies	2,007,823.83				2,007,823.83
25b. Reserves for interest, taxes, etc., accrued and unpaid	116,423.84	275,276.58			391,700.42
26a. Preferred stock retirement fund					
26. Fund for advances to court and private trusts					
27. Bills payable and rediscounts with Federal Reserve Bank					
28. Bills payable and rediscounts other than with Federal Reserve Bank					
29. Deposits due to banks	37,140,090.05	4,275,393.89			41,415,483.94
30. a. Dividends unpaid					
b. Individual deposits - demand	389,463,918.74				389,463,918.74
c. Individual deposits - time					
d. Savings deposits		686,945,246.60			686,945,246.60
e. Demand certificates of deposit	219,604.69				219,604.69
f. Time certificates of deposit		10,890,246.62			10,890,246.62
g. Cashiers checks	19,051,495.74				19,051,495.74
h. Certified checks	1,975,830.66				1,975,830.66
31. State, county and municipal deposits	86,920,586.36	136,204,899.88			223,125,486.24
32. United States and Postal Savings deposits	77,081,460.89	1,731,384.94			78,812,845.83
33. Letters of credit and travelers checks sold for cash and outstanding	77,981.62				77,981.62
34. Acceptances executed for customers or for dollar exchange 35. Acceptances of other banks and bills of exchange or drafts sold with endorsement of this bank	18,815,971.91				18,815,971.91
36. Other liabilities	9,567,224.29				9,567,224.29
Total	741,263,859.36	886,722,418.41	500,000.00	100,000.00	1,628,586,277.77

COMBINED REPORT OF CONDITION

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

AT SAN FRANCISCO

AS OF THE CLOSE OF BUSINESS ON THE 30th DAY OF DECEMBER, 1938

RESOURCES	Commercial	Savings	Trust: Court Trust	Trust: Private Trust	Combined
1. Loans and discounts	317,715,415.90				317,715,415.90
2. Loans secured by real estate		392,770,340.22			392,770,340.22
3. Overdrafts	584,301.00				584,301.00
4. United States securities	134,000,000.00	289,761,202.65	500,000.00	100,000.00	424,361,202.65
5. All other bonds, warrants, and other securities	88,916,404.16	90,997,263.11			179,913,667.27
6. Bank premises, furniture and fixtures and safe deposit vaults	10,000,000.00	21,477,546.75			31,477,546.75
7. Other real estate owned		7,182,032.53			7,182,032.53
8. Cash on hand and due from banks	138,581,589.10	67,100,000.00			205,481,589.10
9. Exchanges for clearing house	5,949,046.06				5,949,046.06
10. Checks and other cash items	3,686,876.59				3,686,875.59
11. Items with Federal Reserve Bank and other banks in process of collection	6,947,806.52				6,942,806.52
12. Customers liability account of acceptances	18,281,157.98				18,281,157.98
13. Acceptances of other banks and bills of exchange or drafts sold with our endorsement					
14. Items in transit between head office and branches - net	8,621,993.67	17,433,831.15			26,055,824.82
15. Advances to trusts					
16. Other resources	8,236,271.38				8,236,271.38
Total	741,263,859.36	886,722,418.41	600,000.00	100,000.00	1,628,586,277.77

LIABILITIES	Commercial	Savings	Trust: Court Trust	Trust: Private Trust	Combined
21. Capital paid in:					
a. Class A preferred stock..............shares Par $..............					
b. Class B preferred stock..............shares Par $..............					
c. Common stock, 4,000,000 shares Par $ 50,000,000	28,000,000.00	27,400,000.00	500,000.00	100,000.00	56,000,000.00
22. Surplus	19,000,000.00	19,000,000.00			38,000,000.00
24. Undivided profits - net	22,845,841.75				22,845,841.75
25a. Reserve for contingencies	2,007,523.85				2,007,523.85
25b. Reserves for interest, taxes, etc., accrued and unpaid	116,423.64	275,276.88			391,700.42
25c. Preferred stock retirement fund					
26. Fund for advances to court and private trusts					
27. Bills payable and rediscounts with Federal Reserve Bank					
28. Bills payable and rediscounts other than with Federal Reserve Bank					
29. Deposits due to banks	37,140,080.06	4,275,385.89			41,415,465.94
30. a. Dividends unpaid					
b. Individual deposits - demand	309,483,915.74				309,483,915.74
c. Individual deposits - time					
d. Savings deposits		656,948,246.80			656,948,246.80
e. Demand certificates of deposit	219,604.69				219,604.69
f. Time certificates of deposit		10,890,246.62			10,890,246.62
g. Cashiers checks	19,031,495.74				19,031,495.74
h. Certified checks	1,978,838.86				1,975,838.86
31. State, county and municipal deposits	88,920,586.36	156,204,899.88			232,125,486.23
32. United States and Postal Savings deposits	77,081,460.89	1,731,584.64			78,812,615.55
33. Letters of credit and travelers checks sold for cash and outstanding	77,981.62				77,981.62
34. Acceptances executed for customers or for dollar exchange	18,815,971.91				18,815,971.91
35. Acceptances of other banks and bills of exchange or drafts sold with endorsement of this bank					
36. Other liabilities	9,567,222.29				9,567,222.29
Total	741,263,859.36	886,722,418.41	600,000.00	100,000.00	1,628,586,277.77

NAT BANK EXAMINERS S & E

DAY LETTER

JANUARY 27, 1940

MR O K CUSHING
1 MONTGOMERY ST
SAN FRANCISCO CALIFORNIA

[redacted] BE GLAD TO SEE YOU FEBRUARY FIFTH AS PER YOUR AIRMAIL LETTER OF JANUARY TWENTYFIFTH. STOP. IF CONVENIENT TO YOU I SUGGEST TEN THIRTY A M AT MY OFFICE.

DELANO

Sent @ 12^{30}

January 28, 1940

MEMORANDUM:

At the request of Mr. Charles W. Collins, the appointment which Mr. O. K. Cushing had with the Comptroller for Monday, February 5, at 10:30 A. M. has been changed to Tuesday, February 6, at 10:30 o'clock.

Preston Delano

EDWARD H. HELLER
600 MARKET STREET
SAN FRANCISCO

January 29, 1940

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

Dear Henry:

This morning I had a pleasant talk with Clarence Lindner, publisher and general manager of The Examiner, a good personal friend of mine.

He told me that he would be very happy to have your side of the controversy only having heard the other, and that he himself, together with Lon Hughes, would be delighted to meet any representative that you might have available. He expressed the highest opinion of you, and I think you will get a fair deal from him if the general anti-Administration bias of the Hearst newspapers does not overcome his good intentions.

My reluctance to speak plainly over the telephone was caused by a strange circumstance which I am going to tell you about.

When I was in Washington six months ago I was approached by a Mr. Byrnes who seems to have some connection with the Gianninis. Byrnes suggested that I could do California a great service if I would approach you and persuade you to make peace with the Transamerica interests. Naturally I did nothing about it, not knowing whether Mr. Byrnes was authorized to speak for the Gianninis, and perfectly well understanding that nothing I could say to you would have any influence on what you considered to be the proper policy for the Treasury Department to pursue.

When I returned to San Francisco Byrnes arranged a private luncheon for me with Mario Giannini. At the luncheon Mr. Giannini told me he thought the attack on the Bank of America was a Jewish plot, and that such strangely assorted conspirators as yourself,

EDWARD H. HELLER
600 MARKET STREET
SAN FRANCISCO

Eugene Meyer, Herbert Fleishhacker, Bernard Baruch, Cohn, and even your humble servant were concerned in it. While proud of being placed in such distinguished company, I was too amazed to make any reply save a general denial.

Our firm has always gotten along well with the Gianninis and hopes to remain friendly in the future, but they live in a fantastic world of plots and counter plots, and carry on Sicilian vendettas with people they consider their enemies. Their belief in a Jewish conspiracy seems to have died down and their animus is more exclusively directed at you. I suppose you will have to grin and bear it.

I am, with kindest regards to Eleanor and yourself,

Sincerely yours,

Ed

1/29/40

PROPOSED PROGRAM OF REHABILITATION FOR

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

(1) __Capital.__ The capital must be increased immediately by not less than $35,000,000. This capital may be obtained from the RFC through the purchase of preferred stock. If preferred stock is issued, it must not be retired without a coincidental increase in common stock of at least $25,000,000, thus achieving an ultimate common capital of at least $75,000,000.

(2) __Losses.__ Losses set up by the examiners in the last report of examination must be charged off immediately and a reasonable rate of depreciation must be taken in the future on all banking houses, furniture and fixtures.

#4 Revised 1/31/40

(3) __Dividends.__ Dividends on common stock shall not be paid out of presently existing undivided profits or reserves. Future earnings, exclusive of bond profits, to the extent necessary must first be used to charge off future losses and to establish reserves as required by the Comptroller of the Currency. All bond profits must be placed in a special reserve account to take care of possible depreciation in the bond account.

(4) __Illegally held bank stock.__ The Bank must dispose of all stock of the National City Bank which it acquired in violation of section 5136 of the Revised Statutes.

(5) Large lines. The orderly reduction of the Transamerica and A. O. Stewart large lines must be continued by the Bank at a rate at least equal to that made during the past year.

(6) Real estate concentration. There must be a definite accelerated program of liquidation of real estate holdings, especially future and former banking premises held by Merchants National Realty Corporation, and the contracts with Capital Company and California Lands, Inc. All real estate acquired or carried in violation of Section 5137 of the Revised Statutes must be disposed of as soon as possible. The liquidation of real estate loans which do not conform to section 24 of the Federal Reserve Act must be accelerated.

(7) Self-insurance reserve. The Bank must take immediate steps to obtain the balance of its self-insurance reserve fund from Transamerica General Corporation.

(8) Accounting practices. Accounting practices must disclose the true nature of all transactions. Loss items must not be disposed of to other parties except under bona fide sales agreements. All practices tending unduly to favor Transamerica, its affiliated or subsidiary companies or allied interests, must be discontinued.

Treasury Department

Mr Delano

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TELEGRAPH OFFICE

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CHICAGO ILL JAN 30-40 817A

1940 JAN 30 AM 9 35

HON D W BELL
UNDER SEC OF TREASURY

WEATHER CONDITIONS SUCH THAT I DISLIKE TO RISK FLYING. WILL BE IN YOUR OFFICE WEDNESDAY MORNING AT 930. SINCERELY HOPE THAT DELAY WILL NOT SERIOUSLY INCONVENIENCE YOU AND YOUR ASSOCIATES REGARDS

LEO T CROWLEY

933A

RE BANK OF AMERICA

January 29, 1940.
10:30 a.m.

Present: Mr. Bell
Mr. Delano
Mr. Tietjens
Mr. Sherbondy
Mr. Seymour
Mr. Young
Mr. Folger
Mr. Schwarz
Mr. Upham

H.M.Jr: What is the purport of this?

Delano: Well, that is a letter from the Bank of America to the Federal Reserve Board, in which the Bank of America states that they are going to convert it into a state institution, and that they propose to do that and asking what formalities they should go through with the Federal Reserve Board. Then they enclose a balance sheet at the bottom there of the Bank. But that is the purport of the message.

Now, under that statute they quote - under that statute they quote a Michigan statute which would seem to indicate they are going to rely on that Michigan statute to make the transition from a national to a state bank without losing their identity, possibly without having to go through the formality of again applying for entrance into the Federal.

Now, we have gone over that and we have gone over the Federal rulings in the past on that. We don't think it is in point --

H.M.Jr: Don't think it is what?

Delano: Don't think it is in point, that Michigan case, and we don't think there is much danger of the Federal doing any such thing. However, that aspect of it, I think Mr. Tietjens might explain.

Tietjens: Well, they have cited a Michigan Supreme Court decision in their letter and the purport of that decision was that when a state - or when a national bank located in the State of Michigan dissolved and transferred all its assets to a state bank and the state bank assumed all of the liabilities of the national bank, that the national bank's identity was not lost in so far as the state bank could enforce certain assets which it got from the national bank. Now, they apparently think that if they do the same thing under a similar provision of the California statute that all of the rights and privileges that they have as a member of the Federal Reserve system automatically passed over, too.

Well now, the Michigan case had nothing to do with those rights and privileges at all.

H.M.Jr: I see.

Tietjens: And we ran across a ruling of the Federal Reserve Board back in 1916 - of course, there has been some change there now and we don't know whether they will follow that ruling or not, but the Federal Reserve Board in '16 said that the identity of a national bank which dissolved and reorganized as a state bank did not take with it all of the rights and privileges as a member of the Federal Reserve System and that they would have to file a new application.

H.M.Jr: Let me just stop here a minute. I don't want to get bogged down in too much detail. Either Bell or the Comptroller, some of you, where are they as of this morning? Where is the Treasury? If you don't mind, see. I mean, just sum up where we stand as of today.

Bell: You have been brought up to date so far as the correspondence is concerned and the interchange of correspondence between the Fed and the Treasury. As you recall, at our last meeting --

H.M.Jr: You are not referring to what Mr. Delano --

Bell: Yes, that is the later thing. You recall at the last meeting it was suggested that the three agencies get together and have a program and then we had the subsequent meeting with Eccles and he said that he was sure that these people were coming into the Board and he wanted something where he could present a united front. Last Friday the Treasury people got together and worked out a program and that program is here this morning for you to see. After we decide if this is the program, then we have got to decide how we are going to handle it between the three agencies. Mr. Crowley is not in town. He probably will not be here until tomorrow evening or Wednesday morning, so that we couldn't get the three agencies together.

H.M.Jr: The first order of business would be for me to decide whether this so-called program would be acceptable, is that right?

Bell: That is right.

Delano: I would just like to make this comment, if I may, on the program, Mr. Secretary. I think we have all clarified our own minds pretty much on this thing. One thing I would like to do, I would like to talk to Leo Crowley about the business, if I could. I depend a good deal on his judgment. I think it would be very good business to have the FDIC and the Treasury together when we go down to the Federal on the program, if we can. For that reason, I say it is tentative, as far as I am concerned, to that point. I would like to talk to Leo about some of these provisions.

H.M.Jr: Well, let's see how it hits me.

Delano: Right.

H.M.Jr: "The capital must be increased immediately by not less than $35,000,000. This capital may be obtained from the RFC through the purchase of preferred stock. If preferred stock is issued, it must not be retired without a coincidental increase in common stock of at least $25,000,000, thus achieving an ultimate common capital of at least $75,000,000."

Now, that is a new point. You want them to issue 25 if they retire the 35?

Delano: The present capital is 50. If they put in 35 while they are going through the process of decreasing it, we want them to increase it.

H.M.Jr: So whenever they get through, they must have at least 75?

Delano: That means a capital structure of 150.

H.M.Jr: "Losses set up by the examiners in the last report of examination must be charged off immediately and a reasonable rate of depreciation must be taken in the future on all banking houses, furniture and fixtures."

What are the losses as of the last report?

Delano: The total loss as of the last report was something over 14 million, but they really have written them all off except that disputed real estate. I think they have written them all off, haven't they, Gus, except one million?

Folger: Yes.

Delano: We are down to 9½ million now.

Folger: They haven't charged off anything on the --

H.M.Jr: The losses set up by the examiner are how much?

Folger: Fourteen million in the last report.

H.M.Jr: And of that - they have charged it down to 9½ million, 8½ of which is the real estate?

Folger: Yes.

H.M.Jr: I see. Now, on whose appraisal are you doing that?

Delano: That is the same situation we had in July. We set this thing up by our examiner based on the appraisals of the bank as discovered in their own files.

H.M.Jr: You are still holding to that?

Delano: Yes.

H.M.Jr: We haven't had any original appraisals?

Delano: No.

H.M.Jr: Has that been considered?

Delano: It has been considered, Mr. Secretary, but we are rather opposed to it.

H.M.Jr: I see.

Delano: We would rather stand on the appraisals in their own files.

H.M.Jr: Well, I guess this isn't the place to argue it, but I would like to put it - I have never been satisfied that we didn't go ahead and do our own appraising. I don't think this is the time to discuss it, but I have always felt that we would be in a much stronger position if we did our own appraisal. You do do that, don't you, on occasion?

Delano: We never have done it in anything like this. We have made appraisals in specific instances, yes.

H.M.Jr: Well, sometime if you would bring that up, I would like to talk about it.

Delano: I would just like to say a word on it, the difficulty of making an appraisal for this outfit is, of course, the appraisals would be matched by other appraisals and appraisals are a little bit like expert witnesses at trial. We would get ourselves into a controversy over that, which we have tried to avoid.

H.M.Jr: It is kind of a trick, in a sense, using this appraisal which we found in their files.

Delano: I would resist that.

H.M.Jr: Resist or resent?

Delano: I wouldn't want to say that we are using trickery in this thing. I think we are on very firm ground.

H.M.Jr: If you don't mind, I would like to be sold on that. I am not.

Delano: You don't want it now, do you?

H.M.Jr: No, but I would like somebody to try to sell me on that. I have always felt that that was a weak spot.

Seymour: It is a difficult problem. I would like to have independent appraisals but it doesn't seem to me this is the time to get them. When you are about to go in to sustain a definite determination, as a matter of strategy it would be very dangerous to go in there and admit that the basis on which the report was instituted might be erroneous and that it was necessary to have independent appraisals, especially as if they were generally independent appraisals, they might come out differently than the conclusions in the report.

H.M.Jr: But you are not happy over that, either, are you?

Seymour: No.

H.M.Jr: "Dividends on common stock shall not be paid out of presently existing undivided profits or reserves. Future earnings, exclusive of bond profits, to the extent necessary must first be used to charge off future losses and to establish reserves as required by the Comptroller of the Currency. All bond profits must be placed in a special reserve account to take care of possible depreciation in the bond account."

Well, that is just --

Delano: That simply established the free, complete control, without being specific.

H.M.Jr: And as I understand, it would bring it down to about five million a year.

Delano: In this particular case, it would go lower than that. If they charge off the losses that are set up on the books at the present time, they couldn't declare any dividends.

H.M.Jr: I see. You are not too tough, there?

Delano: Maybe.

Bell: Well, there is room for giving a little there.

H.M.Jr: That is what I was trying to find out, whether this was the irreducible minimum.

Delano: We agree that it is not.

H.M.Jr: It reads good, anyway.

"Illegally held bank stock. The Bank must dispose of all stock of the National City Bank which it acquired in violation of section 5136 of the Revised Statutes."

Is that a time limit?

Delano: Well, we don't make any time limit on it, Mr. Secretary.

H.M.Jr: What is the statute, 5136?

Tietjens: It says the Bank is not authorized to acquire stock in any other corporation. It must dispose of it in a reasonable time. They have acquired this illegally. They didn't take this legally at all, so the order is to get rid of it immediately.

H.M.Jr: How long ago did they acquire the stocks?

Sherbondy: 1937.

H.M.Jr: How often have we brought it to their attention?

Tietjens: Every examination.

Sherbondy: Three or four times.

H.M.Jr: Isn't that an open and shut case? We are on perfectly firm ground on that, aren't we?

Sherbondy: We think so.

Folger: They don't agree with it, Mr. Secretary.

Seymour: It all depends on whether it was analogous to this purchase.

Delano: They don't think it was acquired as an investment, it was acquired to support the existing debt.

Bell: Then it becomes a question of whether they have had a reasonable time to dispose of it, I suppose.

Delano: They have made some progress in this matter of reducing that.

H.M.Jr: Just as a matter of interest, is the stock selling today at above or below what they acquired it at?

Delano: It is below.

Folger: Selling below.

Seymour: They are protected against loss on it.

Delano: Well, you mean - talking about the Bank?

Seymour: Yes.

Delano: Yes, the Bank is protected.

H.M.Jr: Bank of America?

Delano: In its relationship with Transamerica. It is collateral, you see.

H.M.Jr: A loan from Transamerica?

Delano: Yes. It is an obligation of Transamerica --

Tietjens: The Bank's position isn't hurt at all by keeping this stock. You can't say that they are bound to take a loss on it, because they are not.

Delano: They have still got some of it.

Folger: They have deposited an additional amount of collateral to protect the Bank against any additional loss on this particular stuff.

H.M.Jr: What is the transaction?

Folger: How does it get in the Bank?

H.M.Jr: Yes.

Folger: Rather than to charge off large amounts of loss, Transamerica guaranteed the Bank on the loss items.

H.M.Jr: Now, go back to the original. How did they get this ~~flock~~ block of National City Bank stock?

Folger: I am coming to that. The Bank of America had several million dollars of loss. They didn't charge it off. Transamerica gave the Bank a guarantee, that they would guarantee those assets that we had determined to be a loss. Later on they gave the Bank this - to reduce that obligation, they gave the Bank this stock, put this stock in the assets, National City Bank stock.

H.M.Jr: Is that the whole story?

Bell: Do you consider that a purchase or an acquisition of this stock through --

Folger: They agreed with --

Sherbondy: The point is, here you had a totally solvent corporation that had an obligation to the Bank and to retire that the obligor paid stock instead of cash. We did not construe that as a loss contract. Here was a fully solvent corporation and you can't take a legal asset from a fully solvent corporation to retire the obligation to the Bank. If the concern was insolvent, that is different, but Transamerica could pay and therefore there was no justification for calling it an illegal act. It was an illegal acquisition.

Seymour: But there was a contract in connection with the coming in of that stock to the Bank, as I remember it, wasn't there, under which the --

Folger: They would refurnish - Transamerica would take back a certain amount from the Bank each year until they had purchased the entire amount.

Delano: At a certain price.

Seymour: At the price the Bank paid and the collateral for that obligation of Transamerica to repurchase, they deposited some 18,000 shares and the total amount of the obligation and the collateral is in excess of the remainder of the obligations.

Sherbondy: There is no loss.

H.M.Jr: But the total amount of National City Bank stock involved hasn't changed since the original transaction?

Folger: Oh, yes, they have been buying it.

Seymour: It has been reduced by one or two --

Sherbondy: Twenty-two hundred shares.

Folger: They buy a certain amount each year. They are keeping up with their own program.

H.M.Jr: Transamerica buys it?

Delano: That is right. So there has been some reduction in that obligation.

H.M.Jr: I see.

"Large Lines. The orderly reduction of the Transamerica and A. O. Stewart large lines must be continued by the Bank at a rate at least equal to that made during the past year."

Well now, what is the Transamerica line and what is the A. O. Stewart line?

Delano: Transamerica line was about 76 million and it has been reduced to 60 million dollars within the last year. The A. O. Stewart line - about seven million?

Folger: About 6½ million.

Bell: It was originally about eleven, wasn't it?

H.M.Jr: Twelve?

Bell: Well, they have reduced that.

Delano: Not as well as they reduced the Transamerica.

H.M.Jr: "Real estate concentration. There must be a definite accelerated program of liquidation of real estate holdings, especially future and former banking premises held by Merchants National Realty Corporation, and the contracts with Capital Company and California Lands, Inc. All real estate acquired or carried in violation of Section 5137 of the Revised Statutes must be disposed of as soon as possible. The liquidation of real estate loans which do not conform to section 24 of the Federal Reserve Act must be accelerated.

"Self-Insurance reserve. The Bank must take immediate steps to obtain the balance of its self-insurance reserve fund from Transamerica General Corporation.

"Accounting practices. Accounting practices must disclose the true nature of all transactions. Loss items must not be disposed of to other parties except under bona fide sales agreements. All practices tending unduly to favor Transamerica, its affiliated or subsidiary companies or allied interests, must be discontinued."

Well, I take it that everybody in the room here is in agreement on this.

Delano: I think so, subject only to that --

Bell: Everybody is in agreement. All the lawyers who worked on it, technicians, have also been over it carefully and Mr. Seymour --

Seymour: Let me make this comment, that there is at least one thing on that program, while I agree it ought to be asked for, I would also feel that you could give up without serious loss.

H.M.Jr: What is that?

Seymour: That is that self-insurance thing, which amounts to about two million dollars and which my judgment is that the Comptroller isn't on as strong ground as he is on the other things.

H.M.Jr: I see.

Bell: Well, that isn't in the show cause order, is it?

Seymour: Yes.

Bell: Is it?

H.M.Jr: Well, that is something to make a trade on.

Seymour: Yes.

H.M.Jr: Anything else?

Seymour: Well, there are several other matters there which are controversial, certainly, on which they would be safe.

H.M.Jr: Have they left out anything which you think we ought to ask?

Seymour: Well, there are two matters which are not in the order to show cause but which have, from time to time, been the subject of comment in the reports and as a matter of argument in getting agreement to the balance of the program, the reasonableness of the Comptroller's position in giving up those points would seem to me to be fairly thrown into the discussion, but they are not in a position where you could really say that they represent current demands of the Comptroller in the order to show cause and therefore I don't suppose they ought to be a formal part of this program. They consist of about 15 million dollars.

H.M.Jr: Of what kind?

Seymour: One of them is an amount forgiven to Transamerica by a process of writing up bonds and then giving Transamerica the benefit of the write-up, which occurred in --

Folger: '35 and '36.

Seymour: And which, while it has from time to time been criticized, has never been made the subject of a formal demand that it be given back and the other is a million dollar item which occurred in --

Sherbondy: In '34.

Seymour: Which again was a forgiveness of Transamerica in connection with the contract and both of those seem to me very questionable legally, but the examiners and the Comptroller haven't made them an absolute demand and therefore we are not in a position, perhaps, to insist on them now, but you are definitely giving up something on which there is some color of claim and they seem to me to be almost as strong, perhaps stronger, than that insurance fund thing.

Delano: I might say in connection with that, Mr. Secretary, that practices have been criticized which resulted in this. There has been made a formal demand that Transamerica shall add this to their debt.

H.M.Jr: Has not?

Delano: I mean there has never been made a formal demand by the examiners that that should be added to the debt of Transamerica to the Bank. It is a criticized practice.

H.M.Jr: I take it it is left out because it doesn't come under the category of being reasonable.

Seymour: Well, I think it is left out because it isn't in the show cause order.

H.M.Jr: It is not in the show cause order?

Seymour: No.

Bell: That number three was designed to prevent any future transactions of that character.

Seymour: And the point in there about not showing favoritism to Transamerica gives an opportunity to raise those points if anybody says, "What do you mean by favoritism?" Here were 15 million dollars that the Bank gave up to Transamerica, which it certainly never would have done to any other corporation.

H.M.Jr: If you were doing the show cause order over, would you put those items in?

Seymour: I doubt if I would, in view of the fact that they were kind of old and the examiners' reports haven't ever insisted that they be put back.

H.M.Jr: I see. Now, is there anything else in your mind?

Seymour: Well, those are two items on which there is a ground for saying that this is really a reasonable program because of that. There are a couple of things in there in addition to the insurance fund which bulk a little larger in that program than they would have to, to meet the Comptroller's demands. The charge about the real estate, for example, that is really a matter of working out a program to liquidate it. The charge about the acquisition of that real estate is, I think, a very arguable and controversial matter. You could make an adjustment on the program there quite consistently --

Delano: You mean the question of writing off the losses?

Seymour: No, I don't mean that.

Bell: You mean closing of the real estate acquired?

Seymour: Yes. The charge in the order to show cause is that a lot of that real estate was acquired illegally. Whether it was acquired illegally seems to me a highly controversial matter and a very doubtful matter. Therefore, the arguments for liquidating it is not on the strongest possible ground when it is put solely on the ground of legality.

H.M.Jr: Well, I take it that this thing is still carrying a certain amount of flexibility.

Seymour: Yes. That is all I wanted to say. It is sort of an asking program.

H.M.Jr: Well, going around, is there anybody who wants to say anything? Well, why don't we say this, as far as I am concerned, I am willing to take the advice of these gentlemen in this room on this thing. There is nothing in the - I mean, it is in much better shape than when we met last time, much better shape.

Now, if I hadn't received this letter of Chester Morrill's, we would have said, "Well, we will follow this program of sitting down with Mr. Crowley and Mr. Eccles," and say, "Here is what we are asking." Is that right?

Delano: Yes.

H.M.Jr: But you say you want to see Crowley first?

Delano: I would like to. I don't want to hold this thing up unduly, but I think Mr. Seymour has a good idea. There is a little pressure on us for time, now. The only thing is, I feel it will reinforce our position considerably and it would certainly satisfy my own mind to talk this thing over with Crowley before I talked it over with the Fed.

Seymour: I had raised the point that - with some of these gentlemen earlier this morning - that because of developments last week if a program of the Comptroller was to be put up to these other agencies, it seemed to me there was some reason for expediting that process. We heard last week that the Bank had retained counsel. Counsel wrote the Comptroller asking for an appointment. The Comptroller fixed an appointment for next Monday. The letter from counsel said that counsel had to be in Washington to discuss some other matters affecting the Bank and they doubt at all that he is going to come in advance of that date and discuss matters with the Reserve Board. It would seem to me that before that discussion occurs, it would be desirable, if possible, to get the Reserve Board to agree that this program would be their program for a conversion.

H.M.Jr: What I would suggest is this, that we ask Crowley to be back here, if possible, tomorrow and if he can't, not later than Wednesday morning.

Bell: He will be here Wednesday anyway.

H.M.Jr: Well, I would make a record that we are trying to ask him to come back. I don't know whether he will or not. I think he ought to be back here tomorrow morning. Then who contacts the Fed?

Bell: I have been for these conferences.

H.M.Jr: Well, I would make a record also that we, the Treasury, are ready and that we are waiting for Mr. Crowley.

Bell: You mean with the Fed?

H.M.Jr: To sit down with them.

Bell: I should think Leo could be here for a conference tomorrow afternoon, probably. He intended to be in late, anyhow.

H.M.Jr: I would make it a point that it is Leo's absence which is holding us up, which is true.

Delano: That is right.

H.M.Jr: Now, my hunch is that I would think we ought to go right ahead with this, irrespective of whether they are a state bank or - after all, have they formally asked for an examination?

Delano: Yes, sir.

Bell: Yes, they have asked the Board.

Seymour: But that antedated this move about conversion.

Bell: That is right.

H.M.Jr: What I understand is that you people want whoever sees - if there is to be any negotiation between now and the 14th, it is to be done with the three agencies present, is that right?

Delano: That is right.

H.M.Jr: And we will keep saying all right if the Federal Reserve insists, we will sit down, but I, talking for myself, still think it is a mistake, but I can realize that we don't want to have the Treasury in the position that if the Federal Reserve and the FDIC said, "Well, we will give them one more chance between now and the 14th", "Well, what do you want?" "This is what we want."

Bell: You say you do think it is a mistake to discuss this program with the Federal Reserve Board?

H.M.Jr: No, but I think it is a mistake to discuss it with Mr. Giannini. I mean, he has had every opportunity.

Delano: There is a point involved, too.

H.M.Jr: He has had opportunity after opportunity after opportunity, and now fourteen days before, are we going to say, "Well, we didn't mean what we said, to come in on the 14th. Come in and let's do a little trading." You have heard me on this subject. I think it is ridiculous and I think it terrifically weakens our position and he has had opportunity after opportunity and he has refused to do it and he has not only refused to do it, but he has been insolent about it and arbitrary and everything else and I think the only thing he understands is the perfectly firm, fair position and consistent position on the part of the Government. Why we should suddenly go in and ask them to negotiate - he isn't asking for negotiations. I can also realize that we don't want the Federal Reserve to say, "Well, we asked them what were their minimum requirements, and they wouldn't tell it to us."

Bell: Of course, there isn't any reason why we should tell them if we don't want to and we do run the danger of - when we give this program to the Fed, of having them run right to the Bank.

Delano: That is one point I wanted to make, Mr. Secretary. I wonder if we shouldn't make it clear to the Fed when we give them this program that we regard that as confidential between us.

Bell: I would insist that it be confidential.

H.M.Jr: I wish somebody else would take my viewpoint, that the time of negotiating this thing has passed. We have had two years, now, to sit down and talk. The talking point is over. I mean, it has gotten down to a point of telling them.

Upham: I have maintained that consistently.

H.M.Jr: Have you?

Upham: I said in here the other day that I didn't like the idea of doing this at all.

Bell: I think, however, that you have got to recognize that this Bank has made application to the System or told them that they are going to convert to a state bank and asked them what their requirements would be. Now, I think we might be in a difficult position if those requirements are something less than what we are asking for. Maybe they would be in a difficult position, too, saying that the requirements for being a member of the Federal Reserve System aren't quite as restrictive as the requirements of being a national bank. That might be difficult, also.

H.M.Jr: Look, put yourself in their position. Whatever they have in mind, they take it for granted that we mean business here in the Treasury and suddenly they get a crowd to sit around the table and negotiate. If I was Giannini, I would just laugh. I would say, "I won't sit down with you; I won't come to your hearing; I won't do anything. Try and make me do it. Come and get me."

Seymour: I don't understand that anybody is asking him to come in here and negotiate. His counsel has asked for an appointment on February 5, and Mr. Delano has given him one.

H.M.Jr: But before that, before we knew he was coming in, we were advised to get a minimum program. The thought was, so I was told - I mean, Tom Smith made the comparison of - told the story about somebody or other - that the point was that the Federal Reserve could get a better deal than the Treasury could because we had been the tough guy, so with the Federal being known as their friend they could get a better deal out of them than we could.

Seymour: Yes.

H.M.Jr: Then Smith says, "Do you mind if they get the credit?" And I said, "I would be tickled to death if anybody gets the credit if we get the results," but I mean that was - he told the story about the Bank borrowing - so that was before that and ever since I have heard that story I have been bothered because we get nearer and nearer to the bait and again I go back and I think somebody has got to say to this fellow - or at least they have in mind to say, "Well, the three agencies will sit down and talk with you and we are put on the --" We invite him in again, and say, "Well now, this is what we want. Won't you please, Mr. Giannini, do this?"

Seymour: You can't do that.

H.M.Jr: Well, that is the position we are in and we are getting into it every day. Now, "Please, Mr. Giannini - oh, we mean February 14. We are tough guys. We mean that and you have got to do this between now and the 14th and - but won't you please do this?" The longer I live with it, the sillier I think it is. I want you all to think about it, whether we can say, "All right, Fed, you have asked us. Of course, we have a minimum position. But the trading days are over and he has had ample time and you have had ample time." And when Giannini is ready to say, "Well, I want to talk. What do you want?" that is the time to show it, but not to keep putting this pressure on us to say, "Well, what do you want?" and then we will ask Mr. Giannini to come in, but when Mr. Giannini comes in and says, "All right, I have been a bad boy. I have got enough of that and I am sick of it. I want to run a decent, honest bank, and what do you want?" O. K., then the time has come for the Comptroller to talk. You (Delano) have made all the talk for the Treasury and when he says that, "I want to be a good boy," then is the time for you to talk. I can't get away from that.

Let's say publicly - all right, publicly, the Federal Reserve says, "We have asked Mr. Comptroller and the Treasury for a minimum program and they have refused to give it to us." And so what? Well, the answer is, "For years we have had a minimum program." I am willing to have somebody come back again and as far as the Federal Reserve is concerned, there is only one fellow that must agree and that is Crowley. He must agree with us. They must be a hundred percent the same. There can't be an eyelash of difference between us but if we are the same, I would come back again with the thing to the Federal Reserve and say, "You can't negotiate with this man with this thing here. You have just got to go along. You haven't taken any interest for 12 months and you have got to go along with the national bank examination. You can't just do it."

Now, I have said my piece. I have been saying it for a week. You argue against me.

Seymour: Well --

H.M.Jr: What is the matter, go ahead.

Seymour: They now take the position, if I understand them, that they are not seeking an opportunity to appear as friends of the Treasury in a negotiation or anything like that.

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

Seymour: The Federal Reserve Board. That they are faced with the problem, which is their problem, of deciding on what terms they will permit a conversion, and they have got to indicate what those terms are. They would much prefer to have those terms consistent with the terms upon which the Treasury would be satisfied with the condition of this bank as a national bank.

H.M.Jr: May I interrupt you? Since when have they been saying that?

Seymour: That is what I understood Eccles' position to be the last time and it is made particularly pertinent as a result of this letter, which indicates that they have got a semi-official application for conversion.

H.M.Jr: I am going to interrupt you. Why must Mr. Eccles - let's just take this new angle. In view of the conversion, why must Mr. Eccles have our minimum requirements? He has our bank report, our bank examination report. I mean, supposing he doesn't have them? I mean, I don't get that argument. That is a new one to me. In the first place, they have got to decide and I take it that the decision will be that if they are going to go to a state they have got to go through the process just as though they were a new bank. Let's go on that assumption.

Seymour: Yes.

H.M.Jr: All right. Now, is it that we are going to be placed - that one agency is going to make it more attractive than another and they are going to make it easier and more attractive to go state bank? What I am getting at, are we going to bid for this bank?

Upham: That is what we are doing.

Seymour: They obviously want to keep it a national bank rather than have it converted.

H.M.Jr: All right. Well then, it is up to them, if that is what is motivating them. It is up to them to say to Mr. Giannini, "All right, we think the Comptroller's bank examination is fair." Now, they have never said it and God damn it, either you do what the Comptroller says or don't come around and talk with us, and why should we go around with our hats in our hands? I can't see it. If the Federal Reserve is sincere and wants them to stay national, then they have got everything that you have got, they can read the show cause order and to get back to the original thing, they can say this is fair. "Now, we are not going to talk to you unless you are going to do what the Comptroller tells you to do. We are back of him."

Seymour: That is the result everybody would like to see, from our side.

H.M.Jr: I think the only way to get it is to pound the table and tell Mr. Eccles that is the policy and if he wants to go out and make a deal, let him go out and make a deal and explain it to the public, why he makes it more attractive to Mr. Giannini to become a state member bank than it is to comply with your (Delano) laws. We have got our minimum program which we can put on the front page of the paper and let the public decide and say, "This is what the FDIC and the Comptroller's answer is, as a minimum program, Mr. Public, but having had this for years and knowing about it, the Federal Reserve went and made a bid which is more attractive and now they are going to go state bank because the Federal Reserve are easier and willing to condone this sort of thing."

Seymour: There is one aspect in which your program is not officially known to the Federal Reserve

Board, as a result of seeing all the documents they have seen, and that is on the question of increasing capital.

Bell: They agree that that is one thing that should be done, more capital put into the bank, but they might come out with 25 million and we would come out with 35, or the other way around, and they think there ought to be something definite on that. I certainly don't think the Federal Reserve Board should negotiate with the bank for the Treasury, but I realize the minute you give them this program, they are going to hand it to them in some form.

H.M.Jr: Sure.

Delano: That is the thing I was trying to bring up, Mr. Secretary, that I think we ought to bind them not to do that if we are going to do this.

H.M.Jr: Preston, I wish I could say to you that giving it to them, I am sure they will not do it.

Delano: Even under their word, Mr. Secretary?

H.M.Jr: Even under their word.

Schwarz: Mr. Secretary, there is always a question of --

H.M.Jr: Any institution that will sit there knowing that the president of a San Francisco bank owes 12 million dollars, and not do anything until I hold a pistol to their head and say, "By God, you will do it in 24 hours, or else," I say there is something wrong. There is something that smells. They have had a chance. There is something wrong, Preston. Now, you asked me pointblank what I think of their word and I say there is something wrong somewhere and every time I make a move, by God, Giannini knows it.

Delano: It is a terrible situation.

H.M.Jr: Of course it is. I mean, they have had their chance. This fellow Stewart sits there for year after year and a stool pigeon for Giannini owes him 12 million dollars and what does the Federal Reserve Board do about it? Not a damn thing.

Delano: I think it is highly important to get Crowley here in the morning, Mr. Secretary.

H.M.Jr: If you want me to call him, I will call him, but I still come back to this point, and I wish somebody would argue with me. Now, Bell, you keep saying that they will show it. Is there some in-between way? I have got an idea - it may not be worth a damn - supposing we say to the Federal Reserve, "You write us some questions. You asked us what you wanted to know. What don't you know? Put it in questions, what you want to know that you don't know now. Ask us those questions." And then we have their questions and we can answer, but say, "All right, we have given you everything. If you don't know everything, Mr. Federal Reserve Board, write us a letter and tell us what you need. What don't you know?"

Bell: We did ask them to draw up a program and they said they wouldn't, except if we didn't draw one, they would have to and then they would have the question as long as we didn't cooperate whether they would give us their program. That was the attitude they took.

H.M.Jr: I don't get that, Dan.

Bell: Well, we asked them first if they would draw a program and let us see it and they said they would have to draw a program if we didn't get together, before the 14th, they were quite certain, and then we asked them if we could see it and they said, "Well, there would be a question as to whether we would want to show it to you after you refused to cooperate."

H.M.Jr: Well, do you think I am unfair when I say if we give them a program we say it mustn't be shown to anybody? Do you think it would stay secret?

Bell: It never has been. I have some doubts in my mind as to whether this will be.

Seymour: The only circumstances, it would seem to me, to be harmful to have it not stay secret would be if the Federal Reserve Board said this is what the Comptroller wants, but they think it is unreasonable. If they said, "This is what the Comptroller wants and this is what we want, I don't see what harm it would be. We agree on this. What we really want to bring about here is an agreement by them on this program and if they agree, what harm does it do to have them tell the Bank?

Bell: I think if we want to press this Bank, they have to have some respect for the Comptroller's demands. If you allow another institution to do the negotiating, you are taking it out of the Comptroller's hands.

Seymour: You are not allowing them to do it. We've got to solve this problem.

Bell: It won't be put up that way, though.

Seymour: Well, that is the answer.

Delano: I think there, Mr. Secretary, that if we didn't depend on these men playing this game gentlemenly, holding this confidential, I don't think we ought to give them anything.

Schwarz: That is a matter of strategy, why must the Government, including the Fed, be so much faster to respond to the request for the requirements for conversion than the Bank has been in responding to the Government's request? You have only got until the 14th. Why shouldn't they come in here first instead of --

Bell: We have argued that at all these meetings and we didn't think the Federal Reserve Board ought to do anything until after these hearings. Now, we had in the last meeting a very definite indication that they were going to do everything in their power to do something before the 14th, even to the extent of getting the people in here and having a program of their own if there wasn't a joint program.

H.M.Jr: Why are they so anxious?

Bell: They are anxious to keep this bank in the national system and not have this thing thrown on their doorstep, as a Section 30 case, and not have the balance sheet published and avoid all of those things. I think if you throw it on their doorstep, as a Section 30 case, it is another two-year program. It will be dragged out.

H.M.Jr: You mean what you want us to do is to come to an agreement with Leo, everybody agrees on that?

Delano: I do.

H.M.Jr: And then have Eccles come over here and say, "Well now, this is the minimum, what we want?"

Delano: If Leo is with us, absolutely, eyelash to eyelash on this whole thing, the whole program, up to the present moment on this question of good faith, I favor having then an agreement on the basis of a united front with the Fed on this. I think this question of whether they would --

Bell: Why wouldn't it be a good thing to get Leo in here and ask him if he agrees on this program, and if he does, not take any action.

Seymour: The difficulty, it seems to me, if I may make a comment on this, is that this fellow will come to this Monday meeting, either encouraged or discouraged about what has happened to the Federal Reserve Board, and if they give him any encouragement he will come with quite a different attitude toward the hearings than he has otherwise. Maybe you don't care about that, but it seems to me the Reserve Board looks like a beautiful blonde at the moment and this hearing looks like Charybdis, and I would like to see the conversqion to Scylla made so that as it faces this whole problem you will see that he hasn't got any chance of - how that result is to be brought about--

H.M.Jr: Now look, let me ask you this. We have our - have we told the Federal we would give them a minimum program?

Bell: No, we have not. We have told them it was under consideration.

H.M.Jr: Well, why don't we do this. Supposing we go ahead, have Leo in here just as quick as we can get him and come to an agreement and then have as many outsiders as possible around, particularly bankers. They have a good effect on the Fed, don't they?

Delano: You mean Tom Smith and Ottley and Spencer?

H.M.Jr: Yes. Don't they have a good effect?

Delano: I suppose they do. I think they are good, sound people.

H.M.Jr: And let's have Corcoran and Cohen. And let's have a united front amongst the bankers and Corcoran and Cohen and Crowley and ourselves, and then invite the Fed in with this audience and say, "Here is what we are insisting on and we furthermore insist that no Federal agency have anything to do with banks - do anything with the Bank of America unless it at least gets the Federal administration this much out of it. We are not asking you whether you like it, but this is the minimum program and we insist that we get, by God, at least this. Now, we are not horse trading with you, Mr. Federal, or with Mr. Giannini, because evidently you want to put yourself in the same thing with him and now this is the program." And then have all these people sit around and let Eccles explain why he wants to take less or what he wants to do. How does that sound?

Seymour: It sounds as though it is the most likely way to bring about what we want. If they take this position, then it seems it is just a question of time before you get a satisfactory agreement.

H.M.Jr: If they don't - they just can't stand that. They are very publicity minded, over there. I see we are in a box, but I think that - now, let's just say we do this and then they say, "Well, we think your program is fair." Now, are they going to encourage Mr. Giannini to go ahead and go state bank?

Seymour: No, I don't believe so.

Tietjens: Not from the way they talk.

Seymour: If they agree on that program so they say to him that that is their program - I had the impression what they said the other day - I had the impression they were going to do everything they could to get him to stay a national bank.

H.M.Jr: If they will give him a new license, or whatever you call it, to go state bank on a lesser program than this, their position is untenable.

Delano: They have to assume the responsibility for that, that is their job.

H.M.Jr: That is right. He would have to apply for insurance, too.

Delano: No, if the Fed admits them, they are automatically insured.

Bell: Does the Secretary have to approve that license? Is there any way of them getting around that license?

Tietjens: You would have to license the bank to do business.

Bell: Unless there is some way of getting around that license.

H.M.Jr: If we are sure about it, what are we worrying about?

Bell: You have still got the whip hand.

H.M.Jr: What the hell! If you fellows are sure about that --

Upham: There is one way they can get around it, Mr. Secretary. If they have, as they apparently have, a state bank in California that is a member already of the Federal Reserve System, that bank can buy all the assets of this bank and won't have to be licensed.

H.M.Jr: Are you sure of that?

Tietjens: You mean a going bank?

Upham: Yes.

H.M.Jr: I thought that was the thing they couldn't do.

Delano: That is not the procedure they seem to be adopting by this correspondence, though.

Bell: This was a recent acquisition, wasn't it, this state bank, within the last year?

Upham: I don't know, Dan.

Bell: It was a small bank, wasn't it?

Folger: About two years ago.

Delano: Was it that long ago, Gus? What is the name of it?

Folger: Central Bank of Oakland.

Sherbondy: No, another little bank.

Upham: Up in Pilone.

Bell: The Central Bank of Oakland is not a member of the Federal Reserve.

Delano: They would have to get a license on that.

Upham: They would have to get a license on that.

Delano: The only other way is this state bank.

H.M.Jr: What I say in this room here, it goes without saying, must not be repeated outside of the room to anybody because I have talked very frankly, but I - lacking ability to get the Federal Reserve to say that they approve what the Comptroller is doing and they will sit by and wait, I suppose we are in an untenable position if we refuse to tell them what our minimum program is.

Delano: Yes.

H.M.Jr: From a public relations standpoint. What do you think, Chick? Supposing we say to the Federal Reserve, "To hell with you. We're not going to give you any minimum program."

Schwarz: I don't think we would be in a good position then, but I do think your suggestion of asking them to ask us would be tenable.

Bell: Ask us for what?

Upham: Questions, give us questions.

Schwarz: In other words, take the position that we have given them, that they know where we stand, what are they asking for. I think that is all right, because we have carried the ball on this thing for too long a period now to --

Bell: They have asked us informally in the meetings to set down what these demands are more generally. They want to know how much capital. They have asked us those specific questions.

Tietjens: That is about the only thing that is more definite on that paper than it is in the show cause order.

Bell: And the dividends.

Delano: Dividend control.

Bell: What kind of control you want.

Schwarz: Why does the specific amount relate to their responsibilities as against our proposed action?

Bell: I didn't get that.

Schwarz: Why does the definite amount of additional capital relate to their responsibilities? Why do they need that?

Folger: They have already said that the Bank needs more capital.

Delano: They want to have the same amount.

Folger: If it is to be a state member of the Federal Reserve System.

Schwarz: We had better tell them.

H.M.Jr: Well, the next move is to get hold of Crowley?

Delano: Yes.

H.M.Jr: I don't think we are sitting so bad, do you?

Seymour: No, but I am awfully anxious, if possible, that when these guys come around here Monday, they realize that they have come to the only place that can help them and that the only way they can come here is with their hats in their hands ready to comply with this program. That is the frame of mind we want them in.

Schwarz: I would call the program, Mr. Secretary, "conditions", rather than a minimum program, because the very use of the word "minimum" indicates trading.

Upham: They agreed here this morning that on that program they can trade, it isn't minimum.

Bell: I think you might trade with these three agencies, wasn't that the idea, not with the Bank?

Delano: Not with the Bank. The whole predication of that program was that it would be confidential.

Bell: That is right.

Young: I still don't think it is a program, anyway.

It is merely a more specific explanation of what is in certain items in the show cause order.

Delano: Well, that is true. But it certainly was developed in my office with the theory that it was confidential and would be confidential to these agencies.

H.M.Jr: There is no harm telling that to the Fed three times if you think it is confidential.

Bell: I think there are certain things in that memorandum that the Fed might not go along with, or at least they would want to make a few changes on. I think the real estate is one. When I read over these papers, I had the same feeling that you did, that we are not on strong grounds with respect to that item, but I think the Board will undoubtedly say that is too drastic to write that off in one year and I think they will ask if it can't be done in two or three years. I think then the question the Comptroller will be faced with is whether or not he wants to do that and trade on the other end and raise the capital to maybe 45 million. If he raises it to 45 million, go ahead and write this off over three or four years. But that is a matter between the three agencies and not a matter of negotiating with the Bank.

Delano: Get Crowley first?

H.M.Jr: Right.

BOARD OF GOVERNORS OF THE

FEDERAL RESERVE SYSTEM

January 27, 1940

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

Dear Mr. Delano:

For your information you will find attached a copy of a letter dated January 23, 1940, which has just been received from L. M. Giannini, President of the Bank of America National Trust and Savings Association, addressed to Chairman Eccles, and copies of the enclosures therein referred to, consisting of a letter dated January 23, 1940, from President Giannini addressed to the Federal Reserve Bank of San Francisco, a copy of the "pro forma balance sheet" referred to in that letter, and a memorandum of provisions of the California Bank Act — Section 56a.

Very truly yours,

/s/ Chester Morrill
Chester Morrill
Secretary

Enclosures 4

BANK OF AMERICA

NATIONAL TRUST & SAVINGS ASSOCIATION

San Francisco Headquarters

January 23, 1940

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

Dear Governor Eccles:

I am enclosing copy of a letter and copies of enclosures which accompanied it, sent to the Federal Reserve Bank of San Francisco today. This letter is self-explanatory.

We shall very much appreciate whatever you may do to expedite the consideration of this matter by your Board and an early indication to us regarding the consideration which would be given to a formal application.

Yours very truly,

/s/ L. M. GIANNINI
President

Enclosures

January 23, 1940

Federal Reserve Bank of San Francisco,
San Francisco, California.

Gentlemen:

Bank of America National Trust and Savings Association proposes to proceed under the provisions of Section 56b of the California Bank Act to convert into a State Member Bank. Before proceeding formally, as required by Section 56b, to dissolve the Association as a National Bank, we would like to have an indication from you as to the formalities involved. We would propose to proceed under a plan similar to that followed by the First Commercial Bank of Pontiac, Michigan, which was converted from a National Bank into a State Bank under substantially the same statute. The Supreme Court of Michigan decided that in so converting the bank did not lose its identity. (First Commercial Bank of Pontiac, Michigan, v. Talbert. 61 N.W.,888)

Accordingly, we are enclosing copy of Section 56b of the California Bank Act and a pro forma balance sheet indicating the condition of the Bank as of December 31, 1939, as it would appear with assets and liabilities segregated and capital funds allocated to commercial, savings,and trust and departments, as required under State law.

Inasmuch as the proposed procedure will require a stockholders' meeting and due notice and publication of our intentions, we should appreciate having a response as early as possible.

Yours very truly,

/s/ L. M. GIANNINI
President

Enclosure

CALIFORNIA BANK ACT - Sec. 36b

Any banking corporation organized under the laws of the United States and doing business in this state may become an incorporated bank of this state with all the powers and subject to all the obligations and duties of banks organized under the provisions of this act, provided such banking corporation has authority by virtue of any law of the United States, to dissolve its organization as a national banking corporation. A national banking corporation desiring to become such an incorporated bank of this state shall proceed in the following manner:

It shall take such action, in the manner prescribed or authorized by the laws of the United States, as shall makes its dissolution as a national banking corporation effective at a future date certain.

A majority of its directors shall thereafter and before the time when its dissolution becomes effective, subscribe and acknowledge in duplicate upon the authority in writing of the owners of at least two-thirds of its capital stock, the articles of incorporation required by section two hundred ninety of the Civil Code of California, and attach thereto copies of the said written authority of stockholders and the resolution fixing the date at which its dissolution as a national banking association shall become effective, executed in the same manner as said articles of incorporation.

It shall thereupon take such action, in the manner prescribed or authorized by the laws of the State of California as shall create a corporation for the purposes set forth in the said articles of incorporation.

It shall thereafter and before the time when its dissolution becomes effective, make application to the superintendent of banks for his certificate of authorization to transact business as is prescribed in sections one hundred twenty-seven and one hundred twenty-eight of this act.

If the superintendent of banks shall issue his certificate of authorization to transact business, its corporate existence as a state bank shall begin as soon as its dissolution as a national banking corporation becomes effective. But such bank shall transact no business at a state bank other than that relating to its organization until it shall have received the said certificate of authorization of the superintendent of banks.

At the time when the corporate existence of said state bank begins all the property of the dissolved national banking association shall immediately by act of law and without any conveyance or transfer be vested in and become the property of such state bank. The directors of the dissolved corporation at the time of such dissolution shall be the directors of the bank created in pursuance hereof until the first annual election of directors thereafter, and shall have power to take all necessary measures to perfect its organization, and to adopt such regulations concernings its business and management as may be proper and not inconsistent with law.

CONDENSED REPORT OF CONDITION

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

AT SAN FRANCISCO

AS OF THE CLOSE OF BUSINESS ON THE 30th DAY OF DECEMBER, 1939

RESOURCES	Commercial	Savings	Trust: Court Trust	Trust: Private Trust	Combined
1. Loans and discounts	317,718,418.80				317,718,418.80
2. Loans secured by real estate		308,770,840.32			308,770,840.32
3. Overdrafts	366,001.00				366,001.00
4. United States securities	184,000,000.00	289,761,308.68	300,000.00	100,000.00	484,361,308.68
5. All other bonds, warrants, and other securities	88,916,404.16	90,997,263.11			179,913,667.27
6. Bank premises, furniture and fixtures and safe deposit vaults	10,000,000.00	21,477,848.78			31,477,848.78
7. Other real estate owned		7,188,088.83			7,188,088.83
8. Cash on hand and due from banks	138,381,389.10	67,100,000.00			205,481,389.10
9. Exchanges for clearing house	5,949,046.04				5,949,046.04
10. Checks and other cash items	2,696,076.89				2,696,076.89
11. Items with Federal Reserve Bank and other banks in process of collection	6,942,806.87				6,942,806.82
12. Customers liability account of acceptances	18,281,457.98				18,281,457.98
13. Acceptances of other banks and bills of exchange or drafts sold with our endorsement					
14. Items in transit between head office and branches - net	8,621,988.67	17,482,881.18			[illegible]
15. Advances to trusts					
16. Other resources	8,236,471.36				8,236,471.36
Total	741,263,859.36	886,722,418.41	300,000.00	100,000.00	1,628,386,277.77

LIABILITIES	Commercial	Savings	Trust: Court Trust	Trust: Private Trust	Combined
21. Capital paid in:					
a. Class A preferred stock,..............shares Par $..............					
b. Class B preferred stock,..............shares Par $..............					
c. Common stock, 4,000,000 shares Par $ 80,000,000	[illegible]	27,400,000.00	300,000.00	100,000.00	[illegible]
23. Surplus	19,000,000.00	19,000,000.00			38,000,000.00
24. Undivided profits - net	22,845,841.75				22,845,841.75
25a. Reserve for contingencies	8,007,883.88				8,007,883.88
25b. Reserves for interest, taxes, etc., accrued and unpaid	116,423.84	879,276.80			995,700.64
25c. Preferred stock retirement fund					
26. Fund for advances to court and private trusts					
27. Bills payable and rediscounts with Federal Reserve Bank					
28. Bills payable and rediscounts other than with Federal Reserve Bank					
29. Deposits due to banks	37,140,090.06	4,275,385.80			[illegible]
30. a. Dividends unpaid					
b. Individual deposits - demand	389,483,013.74				389,483,015.76
c. Individual deposits - time					
d. Savings deposits		606,948,346.80			606,948,346.80
e. Demand certificates of deposit	210,606.80				210,606.80
f. Time certificates of deposit		10,880,346.48			10,880,346.48
g. Cashiers checks	19,081,486.74				19,081,486.74
h. Certified checks	1,978,880.06				1,978,880.06
31. State, county and municipal deposits	86,880,886.38	136,204,489.88			[illegible]
32. United States and Postal Savings deposits	77,081,460.89	1,732,380.84			78,813,815.88
33. Letters of credit and travelers checks sold for cash and outstanding	77,881.62				77,881.62
34. Acceptances executed for customers or for dollar exchange	18,815,871.91				18,815,871.91
35. Acceptances of other banks and bills of exchange or drafts sold with endorsement of this bank					
36. Other liabilities	9,387,224.29				9,387,224.29
Total	741,263,859.36	886,722,418.41	300,000.00	100,000.00	1,628,386,277.77

Jan 29, 1940.
10.30, A.M.

PROPOSED PROGRAM OF REHABILITATION FOR

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

(1) Capital. The capital must be increased immediately by not less than $55,000,000. This capital may be obtained from the RFC through the purchase of preferred stock. If preferred stock is issued, it must not be retired without a coincidental increase in common stock of at least $25,000,000, thus achieving an ultimate common capital of at least $75,000,000.

(2) Losses. Losses set up by the examiners in the last report of examination must be charged off immediately and a reasonable rate of depreciation must be taken in the future on all banking houses, furniture and fixtures.

(3) Dividends. Dividends on common stock shall not be paid out of presently existing undivided profits or reserves. Future earnings, exclusive of bond profits, to the extent necessary must first be used to charge off future losses and to establish reserves as required by the Comptroller of the Currency. All bond profits must be placed in a special reserve account to take care of possible depreciation in the bond account.

(4) Illegally held bank stock. The Bank must dispose of all stock of the National City Bank which it acquired in violation of section 5136 of the Revised Statutes.

(5) Large Lines. The orderly reduction of the Transamerica and A. O. Stewart large lines must be continued by the Bank at a rate at least equal to that made during the past year.

(6) Real estate concentration. There must be a definite accelerated program of liquidation of real estate holdings, especially future and former banking premises held by Merchants National Realty Corporation, and the contracts with Capital Company and California Lands, Inc. All real estate acquired or carried in violation of Section 5137 of the Revised Statutes must be disposed of as soon as possible. The liquidation of real estate loans which do not conform to section 24 of the Federal Reserve Act must be accelerated.

(7) Self-Insurance reserve. The Bank must take immediate steps to obtain the balance of its self-insurance reserve fund from Transamerica General Corporation.

(8) Accounting practices. Accounting practices must disclose the true nature of all transactions. Loss items must not be disposed of to other parties except under bona fide sales agreements. All practices tending unduly to favor Transamerica, its affiliated or subsidiary companies or allied interests, must be discontinued.

Pursuant to his duty under the law to protect depositors in national banks, the Comptroller of the Currency on January 11, 1940, served an order to show cause on the Bank of America National Trust and Savings Association, San Francisco, California, and its directors. The order provides for a hearing and calls upon the Bank and its directors to show why, after ninety days from the issuance of the order, the Comptroller should not publish the report of examination of the Bank and cite the Bank's officers and directors to the Board of Governors of the Federal Reserve System for removal from office. These two actions are authorized by U.S.C. Title 12, sections 481 and 77, respectively. Under section 481 the Comptroller is authorized to publish the report of examination upon the Bank's failure to comply satisfactorily with suggestions and recommendations made by the Comptroller based on the report. Under section 77 the Comptroller is authorized to cite the Bank's officers and directors to the Board of Governors of the Federal Reserve System for removal on the ground that they have continued unsafe and unsound banking practices and violations of law after warning by the Comptroller to discontinue such practices and violations. The hearing provided for in the order is scheduled for February 14, 1940 and will be conducted before Dean Emeritus Henry M. Bates of the University of Michigan Law School who has been chosen by the Comptroller to act as his special representative.

Jan 30, 1940
Draft of proposed press release prepared in Dr. Dietjens' Office. Not released.

The issuance of the show cause order was the culmination of an extended series of conferences, letters, warnings, and criticisms between the Comptroller's office and representatives of the Bank. The Comptroller's action in issuing the order became necessary after the Bank failed to take advantage of many opportunities offered to cease its unsafe and illegal practices. On at least four occasions during the sixteen months ended December 30, 1939, the Bank had been warned specifically to cease certain violations of law and unsafe and unsound banking practices. In addition, the Comptroller sent two detailed letters of criticism to the Bank and held two conferences with the Bank's officers. The violations of law and of sound banking practices outlined in these conferences and letters were not new to the Bank in any sense. They had been repeatedly brought to the Bank's attention by the national bank examiners' reports for years prior to the first formal warning. Despite this fact and the specific warnings and criticisms of the Comptroller, the Bank has persisted in its refusal to correct the matters complained of.

The sole purpose of the Comptroller's action has been to protect the depositors and stockholders of the Bank. The Bank has been informed that the law not only authorizes but requires the Comptroller of the Currency to safeguard depositors against illegal or unsound banking practices on the part of officers and directors of national banks. On December 12, 1939, before issuing the show cause order, the Comptroller sent a final letter to the Bank which stated, "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."

The disproportionately large accumulation of real estate held by the Bank in one form or another, its undercapitalization, especially in view of its illiquid assets, its excessive dividend payments during a period when earnings should be conserved to improve the depositors' protection and the retention of illegal and criticized assets are the principal criticisms which the Bank has failed to meet. In greater detail, the basic matters which have been called to the attention of the Bank through examination reports, criticisms, and warnings are the following:

1. Real Estate Concentration. Against an adjusted capital structure of approximately $100,000,000, the Bank's concentration in real estate, in one form or another, totals approximately $90,000,000, exclusive of $6,000,000 of real estate securing loans now under foreclosure. This is greatly in excess of the real estate concentration of any other national bank in the entire United States. The Comptroller has insisted that immediate steps be taken to reduce or write down this excessive real estate concentration.

2. Refusal to charge off losses. Since coming into the national banking system in 1927, the management of this Bank has repeatedly refused to charge off losses set up by the examiners in their reports of examination, in the face of express directions from the Comptroller of the Currency to do so. By letter of October 2, 1939, the Directors of the Bank were advised that their failure or refusal to charge off the losses set up by the examiners in the report of July 21, 1939, and representing such assets to be good in published reports of condition of the Bank constituted an unsafe and unsound practice and a violation of law. Nevertheless, the Bank refused to charge off approximately $9,000,000.00 of losses set up in the Bank's real estate, and in the published report of condition represented such assets as good.

3. Undercapitalization. In 1927 this Bank had a ratio of approximately $1.00 to $10.00 between net sound capital and deposits. The most recent report of examination shows a decline to a ratio of approximately $1.00 to $14.00. In view of the enormous real estate concentration and other fixed and criticized assets held by the Bank, the Bank is undercapitalized. The Comptroller has been insisting unsuccessfully that the Bank obtain additional capital.

4. Dividend Policy. Since 1933 the dividend rate has increased steadily from 6 percent to 19.2 percent despite repeated criticisms and warnings from the Comptroller that before dividends were paid the

Bank should (1) establish adequate reserves and eliminate all losses and a reasonable portion of other criticized assets, and (2) correct the undercapitalized condition of the Bank. These warnings have been disregarded. For example, the regular semi-annual dividend was declared on September 12, 1939, despite the fact that the Bank refused to charge off approximately $9,000,000 of the $13,500,000 of estimated losses set up in the report of examination dated July 21, 1939, after being expressly directed by the Comptroller to charge off such losses. Dividends have been in excess of earnings, exclusive of non-recurring profits.

5. Transamerica Large Credit Line. Transamerica Corporation, owner of 42% of the Bank's stock, and its subsidiaries and allied interests are obligated to the Bank in a total amount of more than $60,000,000. The Comptroller is insisting that drastic steps be taken to reduce this dangerous concentration. It is especially important that this line of credit be drastically reduced by *bona fide* liquidation. In the past the Bank has treated obligations of Transamerica Corporation or its subsidiaries in such a manner as to result in the forgiving of large amounts of such obligations. For example, at one time the Bank wrote up certain of its securities in the approximate amount of $14,000,000, and credited that amount on obligations owing to the Bank from Transamerica Corporation or its subsidiaries.

6. Violations of law. It is the position of the office of the Comptroller of the Currency that the Bank has violated the National Banking laws in a number of ways, such as (1) by refusing to charge

off losses as directed by the Comptroller of the Currency, and representing such losses as good assets in published reports of condition, (2) by having an excessive amount of obligations owing to the Bank from Transamerica Corporation and its subsidiaries, (3) by acquiring in an illegal manner certain corporate stock which a national bank is not permitted to acquire, (4) by acquiring illegally and continuing to hold for an illegally excessive period large amounts of real estate, and, (5) by continuing to carry numerous real estate loans which do not comply with the requirements of the law.

COPY

NL

JANUARY 31, 1940 8:40 A.M.
SAN FRANCISCO CALIFORNIA

HON PRESTON DELANO
COMPTROLLER OF THE CURRENCY

PLEASE ACCEPT MY THANKS FOR YOUR COURTEOUS WIRE OF JANUARY TWENTY SEVENTH SUGGESTING MEETING FOR FEBRUARY FIFTH. MR. COLLINS HAS TOLD ME OF YOUR KINDLY CHANGING THE DATE TO FEBRUARY SIXTH AND HAS ALSO REPEATED TO ME YOUR SUGGESTION THAT MR FOLEY BE PRESENT AT THE MEETING. THIS WILL BE QUITE AGREEABLE TO ME.

O. K. CUSHING

PROPOSED PROGRAM OF REHABILITATION FOR

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

1. Capital. The capital must be increased immediately by not less than $35,000,000. This capital may be obtained from the RFC through the purchase of preferred stock. If preferred stock is issued, it must not be retired without a coincidental increase in common stock of at least $25,000,000, thus achieving an ultimate common capital of at least $75,000,000.

2. Dividends. Dividends on common stock shall not be paid out of presently existing undivided profits or reserves. Future earnings, exclusive of bond profits, to the extent necessary must first be used to charge off future losses and to establish reserves as required by the Comptroller of the Currency. All bond profits must be placed in a special reserve account to take care of possible depreciation in the bond account.

3. Accounting Practices. Accounting practices must disclose the true nature of all transactions. Loss items must not be disposed of to other parties except under bona fide sales agreements. All practices tending unduly to favor Transamerica, its affiliated or subsidiary companies or allied interests, must be discontinued.

4. Losses. Losses set up by the examiners in the last report of examination must be charged off immediately and a reasonable rate of depreciation must be taken in the future on all banking houses,

furniture and fixtures.

5. Illegally held bank stock. The Bank must dispose of all stock of the National City Bank which it acquired in violation of Section 5136 of the Revised Statutes.

6. Large Lines. The orderly reduction of the Transamerica and A. O. Stewart large lines must be continued by the Bank at a rate at least equal to that made during the past year.

7. Real estate concentration. There must be a definite accelerated program of liquidation of real estate holdings, especially future and former banking premises held by Merchants National Realty Corporation, and the contracts with Capital Company and California Lands, Inc. All real estate acquired or carried in violation of Section 5137 of the Revised Statutes must be disposed of as soon as possible. The liquidation of real estate loans which do not conform to section 24 of the Federal Reserve Act must be accelerated.

8. Self-Insurance reserve. The Bank must take immediate steps to obtain the balance of its self-insurance reserve fund from Transamerica General Corporation.

RE BANK OF AMERICA

February 1, 1940.
10:05 a.m.

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

H.M.Jr: Well now, Dan, outline for me what you have in mind as a program from now until Tuesday morning in regard to the Bank of America. What have you got in mind?

Bell: I don't know as I have anything definitely in mind. Of course, we will receive the bankers and lawyers tomorrow and bring them up to date. As I told you this morning, Leo Crowley suggested that we have this conference with the Federal Reserve officials and that we hold the conference with as small a number of people as possible, not bringing in this great big group we had the other day, a room full of people, and get discussion on this thing and get no place, and everybody afraid to talk because there are so many there.

He suggested that the first conference be held with just the necessary people.

H.M.Jr: Who would that be?

Bell: Try to get Eccles and maybe he could drag in a lawyer, and Delano and Mr. Foley and Leo Crowley. He could bring a lawyer, but he said he didn't want one. He could just go over the program we have agreed to here in the Treasury and which Leo Crowley agreed to.

Leo states it is a very strong program and he thinks maybe we will have to give on a point here and there, but he things we are right in making it strong in the first attempt and he thinks we ought to go down the line, one, two, three, and not jump from one to seven and agree on points like that, but agree on the first three points and then he says we could give ground on the other four.

Now, the question as to whether we should have this conference. I think everybody here thinks we should. If we are going to have it at all, we should have it before Cushing gets here.

H.M.Jr: What do you think?

Foley: I very definitely feel if we are going to have it at all, we ought to have it before Cushing comes. I don't know whether we have to have the conference or not. I haven't any definite feeling on it. I don't think it would do any harm. I don't know how much good it will do. I sort of have a feeling that Eccles will not be able to talk on this until after - talk terms with Cushing until after he has had a talk with us. I don't think we have to be in the position of running to him and asking him to come to us. I think he has got to talk to us before he can do anything about the Bank.

H.M.Jr: As I understand, Friday Eccles said to somebody, "When are you fellows going to be ready?"

Bell: Yes, Delano and he were at a luncheon.

H.M.Jr: I see.

Foley: Maybe for purposes of relationship, it might be best for us to say we are ready and come on over and we will show him what we have got.

Bell: He said, "What are you fellows going to do, are you going to continue the discussions? I think you had better hurry up. This lawyer is going to be here the end of this week."

Foley: That shows definitely he wants to see us before he sees him.

Bell: I think we ought to push it a little.

H.M.Jr: This is the way I feel: I haven't changed one bit. I think it is very unfortunate if we have to give Eccles any material so that - so that he can sit down and try to negotiate with the Bank of America between now and the 14th.

Foley: I think that is right. We shouldn't let him do that.

H.M.Jr: The thought has seemed to have changed. I seem to have made an impression on the crowd and it has changed to this extent: They feel inasmuch as they have asked for that, he should know what we want so that if we say 35 million new capital, he doesn't say 25 or something like that, but everybody seems to have more or less come around to "Yes, you can have this, but not to do what Tom Smith said or Ben Cohen said," or, as Tom put it, that the Federal Reserve thought they should go ahead and make this deal. I think that while different people don't realize it as much as I do, because I have been watching it as I sit back, I think they now all realize that this thing of saying to Eccles, urging him to make a deal, I think people have withdrawn from this position, but on the other hand, having had this discussion puts us in the position of Eccles being able to say, "I asked the Treasury crowd for this minimum requirements and they wouldn't give it and I have gone ahead and told them 25 or 30. Now, I would have asked for 35 if you had told me it was 35." Am I summing it up right, Dan?

Bell: That is right.

H.M.Jr: Using Tom Smith's thought of urging Eccles to go ahead and negotiate, I don't think anybody now wants him to do it, but on the other hand, they sort of feel, "Well, let him know what our position is."

Bell: I think we always made it quite clear in our conferences that we did not want the Federal Reserve to negotiate for us and that is the reason we asked him last time just what he would do with this program.

H.M.Jr: I got the distinct feeling from both Smith and Cohen that they kind of thought he could do the negotiating.

Bell: I think they felt it really didn't make a lot of difference who did the negotiating.

H.M.Jr: I feel the negotiating stage is past and they should come in here. Once the thing starts, if during the process of the hearing they will say, "Now, what will you take?" all right, but the whole theory was that if we started this thing, put the pressure on them and so forth, that they might be reasonable. I don't think there is one chance in ten between now and the 14th that they will be.

Bell: This fellow on Tuesday may be here for the very purpose of trying to be reasonable.

Foley: I think that is probably true, Dan, but I think that we probably underestimate the position that we have. I mean, we are in the middle so much that all these fellows out around the edges can't do anything in so far as solving the problem is concerned, without getting it in one form or another, so I think that controls the situation absolutely.

H.M.Jr: Dan, if you don't mind, I would like to take the opposite viewpoint of you and the other fellows that are against the town meeting. I am for the town meeting.

Bell: Are you?

H.M.Jr: Yes, and I will tell you why. Have two or three bankers in and two or three of these lawyers and again invite Ben Cohen in - I think that the chances of making a - of shaming the Fed into something are much better in a town meeting than they are with a small group. I vote for the town meeting.

Bell: I was hoping we wouldn't have to shame him into it, that we could give him our program and convince him it was reasonable.

H.M.Jr: I am for the town meeting.

Schwarz: I was just going to say, why can't we give them our program for their information.

intra-Government information, with no request for them to negotiate. That puts them in the position more or less of relaying the program.

H.M.Jr: I don't think you could do that. The minute that you say, "Here is something that you can't do," then they have got to get their back up and say, "We are an independent agency - you can't tell us." But if you invite them in for a town meeting and let everybody have a talk, they then know that the Bank of America knows, that the legal profession knows, that the President knows, et cetera. I am for the town meeting, Dan.

Bell: Well, Leo just made the suggestion. I don't think he felt so strongly about it. He thought maybe we would come nearer to getting Eccles on our side if we say, "Now, this is it. It is just up to you to sell this thing to the Board."

H.M.Jr: If you will play my hunch, just take the Morgenthau hunch, and have a town meeting.

Klotz: Plus experience in the past with Eccles.

H.M.Jr: I would play the town meeting hunch.

Bell: We are not going to get an agreement in the town meeting. We probably wouldn't in the smaller meeting, either, because they are going to take it back and mull it over.

H.M.Jr: Sure. The more people --

Bell: Have more excuses.

H.M.Jr: The more people legitimately that know about this thing, the better. And Eccles isn't going to - Eccles is going to act entirely differently in front of a town meeting than he is in front of these three or four people.

Klotz: Anybody would.

H.M.Jr: Sure. He knows that these people, if he doesn't behave, are going to talk. It is the only way we have him. He doesn't care about us. He had demonstrated that.

When are we going to do this, tomorrow?

Bell: It would have to be done either this afternoon or tomorrow.

H.M.Jr: If you don't mind, wait until the people come in tomorrow. Who will be here tomorrow?

Bell: Two bankers, Ottley and Smith.

H.M.Jr: And which of the lawyers?

Foley: Eddie and Lloyd Garrison.

H.M.Jr: Swell. I would have a town meeting tomorrow, plus Ben Cohen.

Bell: Would you have the Securities and Exchange Commission in?

H.M.Jr: Yes, definitely.

Bell: That means the same meeting we had before.

H.M.Jr: I certainly would.

Foley: We will just go over the program, point by point, say, "Here it is, gentlemen, this is what we are asking for. We don't want anybody negotiating this for us. This is what we are going to ask for and what we are going to get as a result of this hearing."

H.M.Jr: Does that interfere with Whitney Seymour?

Foley: No, he is for that.

Bell: He is all right on it? He wants the conference?

H.M.Jr: You have the conference in your room and if you don't mind, I would do it that way.

Foley: One of the fellows on this trip, Arthur Carter, said that in '33 Giannini asked them to make an audit of the Transamerica and after they got in they found they couldn't audit Transamerica without looking at the underlying properties and told Giannini that, and Giannini said that he wouldn't let them go into the banks and they said, "All right, if we can't go into the banks, then we won't give you a certificate," and he withdrew and he said Giannini has retaliated against him several times on the West Coast.

H.M.Jr: Well, I will be up in the country tomorrow and if something is happening during the meeting that you get to a point - why, give me a ring, but I would play this hunch. My instinct tells me to do it this way, Dan.

Bell: That is all right. I don't think that as far as the people in the Treasury are concerned, it makes any difference.

H.M.Jr: O. K.

COMPTROLLER'S REQUIREMENTS WITH RESPECT TO

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

1. Capital. The capital must be increased immediately by not less than $35,000,000. If the capital is secured by the issuance of preferred stock, the preferred stock must not be retired without a coincidental increase in common stock of at least $25,000,000, thus achieving an ultimate common capital of at least $75,000,000.

2. Dividends. Dividends on common stock shall not be paid out of presently existing undivided profits or reserves. Future earnings, exclusive of bond profits, to the extent necessary must first be used to charge off future losses and to establish reserves as required by the Comptroller of the Currency. All bond profits must be placed in a special reserve account to take care of possible depreciation in the bond account.

3. Accounting Practices. Accounting practices must disclose the true nature of all transactions. Loss items must not be disposed of to other parties except under bona fide sales agreements. All practices tending unduly to favor Transamerica, its affiliated or subsidiary companies or allied interests, must be discontinued.

4. Losses. Losses set up by the examiners in the last report of examination must be charged off immediately and a reasonable

not less than F R requirements

rate of depreciation must be taken in the future on all banking houses, furniture and fixtures.

5. Illegally held bank stock. The Bank must dispose of all stock of the National City Bank which it acquired in violation of Section 5136 of the Revised Statutes.

6. Large Lines. The orderly reduction of the Transamerica and A. O. Stewart large lines must be continued by the Bank at a rate at least equal to that made during the past year.

7. Real estate concentration. There must be a definite accelerated program of liquidation of real estate holdings, especially future and former banking premises held by Merchants National Realty Corporation, and the contracts with Capital Company and California Lands, Inc. All real estate acquired or carried in violation of Section 5137 of the Revised Statutes must be disposed of as soon as possible. The liquidation of real estate loans which do not conform to section 24 of the Federal Reserve Act must be accelerated.

8. Self-Insurance Reserve. The Bank must take immediate steps to obtain the balance of its self-insurance reserve fund from Transamerica General Corporation.

MEMORANDUM FOR THE FILES

February 2, 1940

Conference re Bank of America

A meeting was held in the office of the Under Secretary beginning at 2:30 P.M., February 2, 1940, with further reference to a proposed program for Bank of America.

Those present at the meeting were: Representing the Federal Reserve Board, Messrs. Eccles and Morrill; representing the S.E.C., Mr. Jenks; representing the F.D.I.C., Mr. Crowley; representing the Treasury, Messrs. Bell, Foley, Delano, Upham, Greenbaum, Cohen, Garrison, Smith, Folger, Ottley, Mulroney, Seymour, Young, Sherbondy and Tietjens.

Mr. Bell opened the meeting by bringing the conferees up to date. He stated that the Bank had appointed Mr. O. K. Cushing of San Francisco to represent it at the Treasury hearing and that Mr. Cushing would be in next Tuesday to talk with the Comptroller. At the last meeting it had been planned that the Treasury would get together its program for the Bank. This program had now been formulated and copies were passed out. Mr. Bell asked for comments on the program.

Mr. Crowley said he thought the program set out well what had been discussed and that it ought to form a basis for an agreement. He pointed out that the first three or four items were the most important of the Comptroller's requirements. He asked Mr. Eccles how he felt about the requirement for new capital.

Mr. Eccles said that they had been talking about new capital and had tentatively agreed among themselves and had in mind between $25,000,000 and $40,000,000. He thought it was best to take a stand on a definite amount of capital with the Bank and stand pat on it. Mr. Smith agreed and pointed out that if a compromise with the Bank was intended it would be better to start with $50,000,000. Mr. Crowley said that he thought it would be better to put the capital figure at $35,000,000 and Mr. Eccles thought that figure could be agreed on.

Mr. Eccles then suggested taking the points one by one. Mr. Crowley said we all agree that capital is needed and that it didn't seem there was any need to argue unnecessarily about the amount. Mr. Eccles agreed but said that the Bank will ask "how did you get $35,000,000?" Mr. Bell said that makes a ratio of about 10 to 1 and Mr. Delano added that despite the ratio, the $35,000,000 figure had a definite relation to the criticized assets. Mr. Eccles stated that his people had a case built up for at least $30,000,000 and could support a demand for that amount, to which Mr. Morrill assented. Mr. Crowley said that the difference between $30,000,000 and $35,000,000 was probably not enough to argue about and Mr. Morrill agreed.

Mr. Morrill then asked how the Comptroller had arrived at the $25,000,000 increase in common stock which was mentioned in point (1). Messrs. Crowley, Delano and Smith discussed this point and explained that the method of retiring preferred stock could be taken care of in the articles and that after all the Comptroller could retain some control over the method of retirement. Mr. Morrill pointed out that all he had in mind was that talking about increasing the common stock by $25,000,000 on retiring preferred stock simply interjected a point which wasn't necessary and which might weaken the Comptroller's case. He pointed out that it wasn't necessary to mention common stock at all. Mr. Upham explained that what was sought was ultimately to have a $75,000,000 capital and that the language as used in point (1) achieved that result.

Mr. Eccles said he didn't believe it was necessary to say anything about how the retirement of preferred stock should be handled. This would be automatically taken care of if the Bank can't pay dividends except after charge-offs and if they can't use bond profits, etc., for that purpose. Mr. Morrill again pointed out that to leave the language of point (1) as it was might give the Bank a talking point, that more capital would carry with it a charge against earnings. Mr. Eccles added that all you have to do is to assure yourselves that none of the new capital gets out of the capital structure. If that is done, you don't have anything to worry about. Mr. Crowley pointed out again that the retirement of capital stock is in the control of the Comptroller anyway.

Mr. Eccles went on to say that what is needed now is $35,000,000 in new capital. The first point as outlined goes beyond this requirement. You do not have to go beyond the requirement if all of the accounting practices are adhered to, such as charge-offs. The program as set out in point (1) goes too far into the future. Mr. Delano stated that point (1) as formulated would build up the capital account to $150,000,000 which would balance frozen assets. Mr. Eccles stated that we would go a long way if we got $35,000,000 new money into the Bank and provided that it couldn't be taken out.

Mr. Crowley suggested that the dividend policy be discussed next. He stated that point (2) freezes undivided profits and that future dividends must come out of future earnings. Mr. Eccles stated that he thought it would be necessary to permit the Bank to pay dividends after a certain date. Mr. Morrill thought that the first sentence complicated things unnecessarily and asked whether there would be any undivided profits if the Bank did the other things required of it.

Messrs. Delano and Eccles discussed this point briefly and it was pointed out that if the Bank did the other things required, its undivided profits would not be used up.

Mr. Morrill then asked whether the program required reserves to be set up against potential losses, on the real estate contracts, for instance.

Mr. Eccles stated that the Board had a program so far as banking houses, furniture and fixtures were concerned. This program called for reserves to be set up against these items to the extent that the account showed any write-up or other extraordinary banking practices in the past. The requirement would be based upon a ten-year experience and would probably not go beyond that period. Mr. Crowley thought that this might complicate things. Mr. Eccles went on to explain that it would only mean asking the Bank whether they had taken depreciation. If not, the Bank would be required to set up a reserve for depreciation on these items out of its $25,000,000 in undivided profits. Mr. Crowley pointed out that this looked the same as the Comptroller's accelerated depreciation requirement but that maybe it was a little more complicated. Mr. Eccles stated that it simply amounted to whether you wanted to leave it in the undivided profits or put it in a special reserve account of from $8,000,000 to $10,000,000 for this real estate. He added that the Bank was constantly incurring losses on real estate contracts. Mr. Crowley thought this was something for the technical people to work out. Mr. Eccles went on to say that we might get opposition on the dividend paragraph since it freezes undivided profits. This means that you have to use future earnings to charge off losses. Mr. Folger stated that he didn't see any difference.

Mr. Morrill then went on to explain that he didn't think you needed to wave a red flag on dividends. If reserves were set up for losses, the dividends would automatically take care of themselves. If there were no current earnings, there would be no dividends. He pointed out that losses on real estate which had been held over five years by the Bank were running around 20% and that it was reasonable to expect a greater loss from now on because the best real estate had naturally been disposed of first. This is part of the reason why additional capital is required. Accordingly, it was their thought that reserves ought to be set up to take care of these losses on other real estate. Messrs. Eccles and Morrill went on to explain that instead of saying "you can't pay dividends out of undivided profits" the Bank should be required to set up reserves for potential losses. As for the banking premises problem, they thought the best way to approach it was on the basis of the experience for the last ten years. They stated that they thought a questionaire, to be answered by the Bank, would show up those cases where no depreciation has been taken or where write-ups had occurred which were inconsistent with normal banking practices. These cases might amount to a couple million dollars for which the Bank should be required to set up reserves.

Messrs. Folger and Delano pointed out that the Comptroller's office had been trying to get just such information from the Bank during the past several years but had been unable to obtain it. They didn't see how the Reserve Board could be any more successful.

Mr. Eccles then stated that he agreed on the requirement that bond profits be placed in a special reserve, especially in view of the inadequacy of the Bank's capital structure and the cost of the bonds. Mr. Crowley asked "how about the accounting practices in point (3)." Mr. Morrill replied "we know what you mean by the language used" but asked if it couldn't be differently expressed. He pointed out that the Board didn't approve of disposing of losses to affiliates either.

Mr. Eccles suggested that it might be required that all real estate taken on foreclosure be carried as other real estate, then if a bona fide sale is made the transaction could be carried as a sales contract.

This suggestion was discussed and it was generally agreed that it ought to be a matter of judgment for the bank examiners as to whether sales contracts were bona fide.

Mr. Morrill then asked about the land contracts and whether the Bank's progress in this respect was satisfactory. Mr. Delano replied that from the Comptroller's standpoint the Bank's progress with these items had been satisfactory.

Messrs. Eccles and Morrill then stated that it might be better to set up reserves for these losses than to require charge-offs. If charge-offs are required the Bank simply gets into arguments with the examiners over valuations.

Mr. Eccles asked how long the Bank would have to liquidate these contracts and Messrs. Delano and Crowley pointed out that the Bank itself had only asked until 1942 for this purpose.

Mr. Eccles stated that he thought a longer period would be necessary inasmuch as the Bank had more than $30,000,000 worth of real estate. He thought that the liquidation period might be extended until 1945 if it appeared that such an extension would be necessary in order to get the required capital into the Bank.

Mr. Smith asked what the difference was between the charge-offs as required by the Comptroller or to set up reserves.

Mr. Eccles explained that the reserve would be a blanket reserve based on experience. He thought it would be more practical to do this than to require charge-offs. So far as the real estate contracts were concerned, the Bank ought to be able to liquidate about $6,000,000 every year and should be required to set up at least a $10,000,000 reserve to take care of losses.

Mr. Crowley suggested that maybe it would be better to leave the liquidation period of the land contracts for future discussion but Mr. Eccles stated he thought it would be best to write a perfectly definite program in all respects at the present time and then tell the Bank "all or nothing."

Mr. Smith asked what would happen if the Bank does not put in the required capital. Mr. Eccles replied "then we will have to go the limit and use all the sanctions we have against the Bank."

Getting back to the land contracts, Mr. Eccles stated that we ought to work out a practical program and not put too much pressure on the Bank in this respect if the new capital is put in.

Mr. Folger pointed out that the Comptroller's requirement only asked that the present rate of liquidation be continued.

Mr. Eccles then suggested that it might be possible to rewrite paragraph (3) and make it a little more definite. He suggested that maybe he and Mr. Morrill could take the program back with them and rewrite it and make their own suggestions.

Mr. Delano stated that of course this program was just between the agencies concerned and must be kept confidential.

The discussion then went on to point (4) which required that losses set up in the last report must be charged off immediately and a reasonable rate of depreciation taken in the future on all banking houses, furniture and fixtures. Mr. Eccles tentatively agreed that this point was all right, but then he asked "how about a reasonable rate in the future, what is meant by that."

Mr. Folger stated that the rate of possibly 2% to 4% would be reasonable depending on the type of building.

Mr. Eccles said he thought it ought to be at least all that the Bank could take for income purposes and that it might be best to get figures from the Internal Revenue Bureau which would be helpful on this point.

Mr. Cohen suggested that he thought a definite formula could be worked out based on the Internal Revenue rate. Mr. Eccles said that to get any kind of agreement the rate must be written out and he thought that depreciation ought to be based on current book values.

Mr. Folger said that you could never get down to sound values that way.

Mr. Smith stated that what the Comptroller wants is for the Bank to charge off $8,500,000 in order to get down to sound values and then depreciate, possibly at the Internal Revenue rate.

Mr. Eccles said that this required write-off is a real bone of contention. He didn't see what difference it really made if they wrote this amount off out of undivided profits. It didn't seem to him to be important so long as the capital structure is adequate. He said "let's step up the depreciation so that over the next five or six years the same amount could be got as if the charge-off was made." He thought the situation with reference to the banking premises was different from the land sale contracts where there was an actual loss experience record.

Mr. Cohen said that he thought the Bank might reasonably object to increasing the depreciation rate in the future just in order to take care of what the Comptroller wanted to charge off since this might result in distorting the true current earnings picture.

Mr. Crowley suggested that if the Bank goes in for recapitalization it ought to want to charge off these amounts right now rather than increase the depreciation rate.

Mr. Delano asked why it wouldn't be better to use the Comptroller's write-off requirement figure rather than try to get information which the Comptroller's office has tried many times to get with reference to banking premises and failed to get.

Mr. Morrill stated that they wanted to build a record which could actually be justified by experience. Mr. Eccles added that they thought it was better to set up reserves for depreciation in the banking premises, furniture and fixtures, etc., rather than compel a write-off at this time. He said "you got a tough job to prove your case if you want to force a charge-off and you just get into difficulties by insisting on them."

Mr. Greenbaum suggested that if the Bank didn't charge off, more capital might be required than the Comptroller had based his figures on. In other words, the Comptroller's $35,000,000 capital requirement was based on the premise that the Bank would immediately charge off the $8,500,000 in losses.

Mr. Eccles replied that he didn't think any more capital would be needed whether reserves were set up or the charge-offs made. He thought the picture would be actually the same from the depositors' standpoint.

Mr. Smith observed that it looked as if all that was standing between the two viewpoints was $8,500,000.

Mr. Eccles stated that he would prefer to set up reserves now, maybe $8,500,000 or $9,000,000, either that or step up the depreciation rate so that we could get that amount out in the next five or six years.

Mr. Crowley suggested that the discussion proceed to point (5), the illegally acquired stock in the National City Bank. He pointed out that the Bank would have disposed of this stock in about three years. Mr. Eccles said he wouldn't fuss about it since there wasn't any loss, but he would require them to continue to liquidate the item.

At this point there was general discussion on point (6), the A. O. Stewart and Transamerica large lines. On this there was little disagreement except that Mr. Morrill pointed out that the language could be modified to make it entirely clear that the Bank would only be required to bring these lines within a reasonable limit and not to eliminate credit to A. O. Stewart and Transamerica entirely.

On point (7), real estate concentration, there was general agreement.

On point (8), the self-insurance reserve, Mr. Eccles asked what the legal basis would be for demanding that the self-insurance fund be paid back to the Bank. He pointed out that the plan wouldn't cost the Bank any more than it would have cost had the Bank insured with private insurance companies.

Messrs. Sharbondy and Delano went into some of the details of the transaction and Mr. Eccles finally stated that while he didn't condone the self-insurance plan as it had been carried out, yet he thought the primary interest at this time should be in getting adequate capital into the Bank and straightening out the Bank's future practices.

Mr. Cohen asked Mr. Eccles how he would rewrite points (1) and (2), suggesting that he thought they could be rewritten so as to indicate that existing undivided profits could be used for write-offs and reserves, but to the extent that write-offs and reserves would not exhaust the undivided profits, the balance must be kept in the capital structure. If rewritten in this way, the connection between undivided profits and dividends would be removed and the language should not bother the Bank as much as it might in its present form. Messrs. Eccles and Morrill thought this could be done.

Mr. Crowley thought it would be best if the Bank would charge off its banking house losses and thus clean up its picture. If this was done and the Bank did all of the other things required, the dividends would take care of themselves.

Mr. Eccles stated that inasmuch as Mr. McKee had been out of town and had just returned, he would like to have an opportunity to discuss the Comptroller's requirements with Mr. McKee and his staff. He stated that the requirements pretty much met his own view of the thing outside of the accounting procedure "whether charge-offs are to be insisted upon or reserves set up." He thought that $35,000,000 new capital would be adequate but as for requiring a $25,000,000 increase in common stock, he wanted to think about that. As for dividends, he would try to say nothing in the requirements but would provide for charge-offs and reserves to be taken care of out of existing undivided profits and put the balance of undivided profits in the capital structure. From then on if charge-offs were properly made and a reserve established for bond losses and real estate losses and if preferred stock dividends and retirement requirements were met out of current earnings, the dividends would take care of themselves.

Messrs. Ottley and Morrill thought that the first paragraph could be rephrased and should simply require the Bank to put in $35,000,000 in additional capital. Having said that, there would be no need for reference to preferred stock or common stock, etc. Mr. Smith agreed in this.

In answer to Mr. Smith, Mr. Eccles stated that there was about a 20% loss on real estate contracts to date and that we ought to go after the Bank for a reserve based on a 25% loss on what is left. He would require approximately a $10,000,000 reserve and if this was set up, he would not press for too rapid a liquidation program. As for getting information on the banking premises, Mr. Clark, one of the vice presidents of the San Francisco Reserve Bank thought that he could get information which would establish at least a ten-year experience. The Comptroller thought that it would be necessary to go back farther than ten years in order to get a true picture of the banking house situation.

Mr. Eccles thought that the Comptroller was on pretty weak ground for compelling a charge-off of the full $8,500,000 loss at this time, but indicated that he would be willing to try to get the Bank to set up a reserve for this item. So far as the dividends were concerned, he thought the Bank might be able to continue paying dividends at the present rate after the smoke cleared away. He also thought that to quit payments at this time would be dangerous from the standpoint of the public.

Mr. Smith pointed out that in the future dividends will be controlled by having the amount available for dividends under control.

Mr. Crowley suggested that the Reserve Board be permitted to take the Comptroller's requirements and come back later and discuss them at the Treasury before they talked to Mr. Cushing about them.

Mr. Eccles stated that he understood that all three agencies were trying to get together on a program which could then be enforced by all three agencies acting together. He questioned whether the program ought to be given to Mr. Cushing at all, saying that we might not want to talk to the Bank's lawyers about the program. He would like to be able to say that the three agencies are together and then get L.M. Giannini and Russell Smith, who actually operate the Bank, to come in and talk to all three agencies. If this were done the Bank could not then think that there was some other door they could get out of.

Mr. Bell pointed out that all Mr. Cushing wanted was to talk to the Comptroller on the order to show cause.

Mr. Crowley asked when the Federal Reserve Board could be ready to talk again about the program. Mr. Eccles replied that they could talk probably by next Wednesday. Then if all of the agencies were together, the Bank would know that all sanctions could be applied against it. He said that he had been anxious all the way along to have the fullest kind of justification for the requirements to be imposed on the Bank based on practices of the Comptroller's office especially as applied to other banks.

At this point there was some discussion as to what might be done about the next regular dividend of the Bank. Mr. Eccles said that he wouldn't bother much about the March dividend, that as a matter of fact the Bank will have earned at least part of what would be required for one more dividend by the time it was declared.

At this point Mr. Seymour stated that he understood there was to be no change in the date for the proposed Treasury hearing and that he was going right ahead in preparation for opening the hearing on the 14th of February, adding that he thought this had been agreed to by all.

Mr. Eccles said that if it was decided to call in L. M. Giannini and Russell Smith, he thought that the Treasury would certainly want to postpone or adjourn the hearing, but that we could cross that bridge when we came to it.

Mr. Bell stated that there had been no change in the Treasury's plans for the hearing and Mr. Foley added that if Mr. Cushing wanted an adjournment he could ask the examiner for it on the 14th when the hearing began.

Mr. Eccles stated that if we agree on a program we shouldn't give it to Mr. Cushing but should call L. M. Giannini and Russell Smith in. If the Bank would not agree to comply with the requirements then we would use all of our sanctions. In view of this, the time element might counsel a postponement of the hearing, but he thought the hearing might very well run concurrently with negotiations.

Mr. Foley stated he didn't see what could be gained by postponing the hearing in any event and that he thought the Treasury should go right ahead as planned.

Mr. Eccles said that if the Bank agreed to do what the Federal Reserve Board would require of it, he thought it ought to satisfy the Treasury and vice versa.

Mr. Upham stated that so far as he was concerned, the Treasury will never approach the management of the Bank and ask them to come in and talk, but if they wanted to come in, all right, but he didn't think anyone should invite them to come in and bargain.

Mr. Smith stated he didn't think that was quite the case, that the Bank had now approached the Federal Reserve Board for a conversion into a state bank and that the Bank expected the Board to be its friend. If the Board asks the Bank for the program which had been discussed at the meeting, the case is ended.

Mr. Eccles stated at this point that in view of the Bank's request for information as to the formalities which the Board would require if the Bank converted and then applied for membership in the Federal Reserve System, the Federal Reserve Board would feel that it was necessary to discuss with the Bank's representatives a program. He indicated further that if it was impossible for the Federal Reserve Board to agree with the other banking agencies on a program, they would have to proceed on their own program. Mr. Smith objected very strenuously to any such line of conversation. He said that Mr. Eccles' statement was nothing but a threat and that there was no use in discussing such a situation since it wasn't going to occur. Mr. Smith reiterated several times that Mr. Eccles' statement was nothing but a threat.

Mr. Eccles indicated that it was most necessary that the three agencies get together and that they ask the Bank to come in and consider the program agreed upon by the three agencies. Mr. Foley immediately responded that he was unalterably opposed to the three agencies inviting the Bank to come in for a conference. He stated that if the Bank desired to come, that was all very well, or if the Federal Reserve Board felt that it was necessary for them, as a single agency, to have the Bank in for a conference, that was for the Board to decide. Mr. Eccles indicated that it was necessary for the Board to have the Bank's representatives in for a conference.

Some question was raised as to what part the S.E.C. had in the meeting and Mr. Jenks pointed out that it was the duty of the S.E.C. to see that the public was properly advised as to the facts relative to the value of any securities which might be sold to the public, and that any agreement reached between the three agencies and the Bank would appear to have a vital effect upon the value of such securities.

Mr. Smith indicated that he felt that great progress had been made at the meeting. Mr. Foley stated that the important thing was to agree upon a program and then it could be decided just how that program should be handled with the Bank. Mr. Eccles stated that the Federal Reserve Bank of San Francisco had advised the Board of Governors that Mr. Cushing contemplated conferring with the Federal Reserve Board when he came to Washington. However, Mr. Eccles stated that no definite date had been arranged.

It was finally agreed that there would be no objection to the Federal Reserve or the Comptroller's office talking with Mr. Cushing on Monday or Tuesday, but that he should not be advised at that time concerning a definite program. It was decided that the three agencies would confer again on Wednesday, February 7, at 2:30 with reference to the program, the intention being that no mention of an agreed upon program will be made to Mr. Cushing until the three agencies were in entire accord.

MEMORANDUM OF CONFERENCE BETWEEN
COMPTROLLER OF THE CURRENCY, MR. O. K. CUSHING, AND MR. SEYMOUR
HELD AT 10:30 A.M., ON FEBRUARY 6, 1940

Mr. Cushing stated that the Bank was considering conversion but that, as he did not personally favor that course, he had decided to talk to the Comptroller before talking to the Federal Reserve Board. He stated that he wished to have a purely off-the-record talk and indicated that he was principally concerned in discussing the hearing. The Comptroller told him that he would prefer to have him discuss questions concerning the hearing with Mr. Seymour, which Mr. Cushing agreed to do. Mr. Cushing indicated that he hoped some satisfactory adjustment could be worked out. He inquired what was meant by the provision in the Order to Show Cause relating to other action that might be taken by the Comptroller in addition to publication of the report and the citation under Section 30. The Comptroller indicated that that was one of the matters which should be discussed with Mr. Seymour.

Mr. Cushing asked that, if his discussions with Mr. Seymour did not progress satisfactorily, he should be allowed to renew his discussions with the Comptroller and was told that he could.

W.N.S.

PD

MEMORANDUM

February 6, 1940

To: Secretary Morgenthau

From: Mr. Schwarz

Ed Foley reported to me that Sandy Klein had walked in on him with all the major facts regarding next week's action in the Giannini matter and told him he was satisfied of their truth, that he just wanted to check his information that Bates and Seymour were working for us. Ed said he cautioned him to consult the United Press lawyers before writing anything because of the delicacy of the subject. I added a word of caution in a 'phone call to Sandy and checked to ascertain whether the story had emanated from the Treasury. He indicated he had secured his information from Giannini people here yesterday for the meeting of the Democratic National Committee. Except for the possible danger to the bank, which is, of course, a vital factor, I feel that a statement of fact, with no comment upon it by the Treasury, might help to clear the atmosphere.

CS

February 6, 1940.

MEMORANDUM

Messrs. Delano, Foley, Seymour, and Schwarz met at about 4:30 p.m. today in Mr. Delano's office after Mr. Foley had been asked by the representative of the United Press to comment upon reports that the Comptroller of the Currency would "open hearings" on February 14 with respect to the operations of the Bank of America. It was felt that the Treasury Department had a definite responsibility, legal and moral, to avoid discussion of the case with the press in order to prevent any suggestions, however remote, that might create concern or difficulty for the depositors of the Bank. While it would appear that there would be a similar interest on the part of the management of the Bank, inasmuch as the first open discussion developed almost upon the heels of the arrival in the city of representatives of the Bank and broadening of conferences with other Government agencies interested in banking, it was decided to ask Mr. O. K. Cushing, of counsel for Bank of America, to consult with the Comptroller in order to establish the position of the Bank with respect to advance publicity of next week's proposed activity.

Mr. Cushing denied that his associates could have been the source of information in the hands of the United Press, he agreed that they could have no motive in giving currency to such a story, said that one of his associates--Mr. Ferrari--also had been asked for comment on the reports, had refused to confirm or deny them, and that his partner had telephoned him to ask him to seek the aid of the Treasury Department in an attempt to prevent publication of the reports.

At the urgent request of Mr. Cushing, Mr. Schwarz talked on the telephone to the United Press correspondent and again, as Mr. Foley and Mr. Schwarz had already done, called attention to the grave responsibility involved in publication of any rumors that might weaken the confidence of the depositors in a bank. Mr. Klein of the United Press insisted that his organization was satisfied that it had facts, that it felt that its proposed news story was sufficiently conservative as to avoid giving rise to anxiety, that he had read it over the telephone to Mr. Ferrari and that the latter had seemed much relieved at the proposed treatment of the situation.

Mr. Delano thereupon telephoned to Mr. Cushing, who meanwhile had returned to his hotel, and Mr. Schwarz advised him of the results of his conversation with Mr. Klein. Mr. Cushing said it was true that Mr. Ferrari had listened by telephone to the draft of the proposed United Press story, that the possibly dangerous elements seemed to have been removed. Mr. Cushing expressed his thanks to the Treasury Department and said that it had provided "good cooperation". Messrs. Delano, Seymour, and Foley felt that the participation of Mr. Cushing had provided the best opportunity to date for unemotional discussion of the entire matter and, while protecting the Treasury against any further Bank of America tricks, were of the opinion that surprise publication of a story at this time might have speedily dissipated what was apparently the sole remaining possibility of voluntary adjustment of conditions by the Bank of America. They were, therefore, of the opinion that it was well to have the expression by Mr. Cushing that the Treasury had cooperated in this latest incident and had not retreated from its position that its principal responsibility was the protection of depositors of the Bank.

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Wednesday
February 7, 1940.

MEMORANDUM FOR THE FILES

Conference re Bank of America

A meeting was held in the office of the Under Secretary beginning at 2:30 p.m., February 7, 1940, with further reference to a proposed program for Bank of America.

Those present at the meeting were: Representing the Federal Reserve Board, Messrs. Eccles, Morrill, Driebelbis, Clark and McKee; representing the S.E.C., Treanor and Jenks; representing the F.D.I.C., Crowley; representing the Treasury, Messrs. Bell, Foley, Delano, Upham, Young, Folger, Seymour, Mulroney, Sherbondy and Tietjens.

Mr. Bell opened the conference by stating that Messrs. Seymour and Delano had seen Mr. Cushing. He asked Mr. Seymour to report on what Mr. Cushing had said.

Mr. Seymour stated that he had had a talk with Mr. Cushing after he and Mr. Delano had seen Mr. Cushing together. The tenor of Mr. Cushing's conversation was that he thought the Bank ought to stay a national bank and make peace with the Comptroller if at all possible. Mr. Cushing had asked whether he could come over again today (Feb. 7), but Mr. Seymour had postponed seeing him again until Friday. Mr. Seymour told Mr. Cushing that he was not prepared to say exactly what the Comptroller would accept from the Bank, but that whatever the Bank offered would have to follow closely in substance and form the order to show cause. Mr. Cushing stated that he would go to work on that basis and talk again on Friday. He also stated that it had not been decided whether or not the Bank would appear at the hearing and that if a settlement could be worked out he hoped it could be accomplished before the hearing.

Mr. Eccles stated that so far as he knew nobody at the Federal Reserve Board had seen Mr. Cushing. He also stated that L. M. Giannini was in town and had asked to see Messrs. McKee and himself, but that they had not seen him. The Board had avoided seeing anyone from the Bank in line with the understanding reached at the last meeting until after today's meeting. Mr. Eccles went on to say that he had talked to his staff and to Mr. McKee about the memorandum which he took from the last meeting and that Mr. Clark had been brought in from the Reserve Bank in San Francisco, of which he is Executive Vice President, because of his familiarity with the affairs of the Bank of America.

Mr. McKee stated that the Board's own memorandum of suggestions in regard to the Comptroller's requirements had been prepared with Mr. Clark's assistance.

The meeting then moved to a consideration of the Comptroller's requirements and the Board's memorandum of comments and suggestions. The points in the memoranda were taken up in order (copies of the memoranda are attached hereto).

Mr. Bell then read Point 1 from the Treasury's memorandum and the comments on it made in the Board's memorandum. In substance, the Board's suggestion was that all but the first sentence of the Comptroller's number one requirement be eliminated. This would reduce the point simply to a requirement that $35,000,000 in new capital be put into the Bank.

At this point, there was a general discussion as to the control which could be exercised by the Comptroller over the increase or decrease in the Bank's capital stock even though such control were not set out in detail in the requirement. It was generally agreed that there should be no retirement of preferred stock without the approval of the Comptroller.

Mr. Crowley suggested that it should be understood that if the Government furnished money for preferred stock, such stock should be purchased directly by the R. F. C. and not by the R. F. C. making a loan for that purpose.

Mr. Eccles said that he didn't want to close the door to a discussion of some other plan in case it became necessary to discuss other plans.

Mr. Crowley stated that he would prefer having an agreement before he left the meeting so that when Mr. Giannini came around he wouldn't find any of the agencies with their guard down.

Mr. Bell asked whether there was any objection to having just the one sentence in Point 1.

Mr. McKee asked why not stick to $35,000,000 in new capital and when that is retired have it all changed to common instead of only $25,000,000 changed to common stock.

Messrs. Upham and Folger were apparently willing to go along with this suggestion.

Mr. Eccles then said let's provide for $35,000,000 preferred and that on retirement this amount either go into common stock or the conditions of retirement be left optional with the Comptroller.

Mr. Mulroney pointed out that this was optional with the Comptroller now but that there was more to it than that.

Mr. Crowley stated that the Bank must be made to understand that the Comptroller was to exercise control over the method of retiring the preferred stock so that it wouldn't look later on as if this were a new requirement being made by the Comptroller.

The discussion went on to the dividend point.

Messrs. McKee and Eccles pointed out that as written the Comptroller's requirement as to setting up a reserve for losses in the bond account provided for no cut-off on the reserve. This might result in a reserve of such an amount that the Governments would actually be carried below par.

There was a general discussion on this point and the Comptroller's representatives were apparently agreed that a reserve in the bond account equal to the premium would be a satisfactory reserve.

Mr. Treanor raised a question of how the bond premiums would be amortized. After a discussion of this question, it was suggested that the bond profit requirement be changed to include a cut-off for the reserve. The reserve for the bond account would be set up out of bond profits, the amortization of bond premiums being taken care of annually out of profits (if any) otherwise in the usual way (out of earnings). There was no unanimity of thought on this point.

Point 3 was next read and discussion of this point was passed for the moment.

Point 4, dealing with losses, was next read.

Mr. Crowley raised the question of what was meant by reasonable rate of depreciation, to which Mr. Folger replied that if the charge-offs were made he would be satisfied with the Internal Revenue rate of depreciation.

Mr. Crowley pointed out that he was concerned with the difficulty of arriving at a decision on the valuation of banking houses and that in this respect the write-ups made from time to time by the Bank offered a serious problem.

Mr. Eccles stated that it would be difficult to sell the Bank on the charge-off requirement, but that the general principles laid down in the Board's memorandum, if adhered to, would solve the difficulties without requiring a charge-off.

Mr. Clark said he thought it would be difficult for the Comptroller to go back of the take-in value of banking houses as approved by the Comptroller when the Bank came into the System. He thought that the properties should be looked at not from the sale value angle, but from the occupancy value angle. If depreciation had been taken at a reasonable rate the present value should be accepted, but if any write-ups had occurred these should also be taken into consideration and explanations demanded.

Mr. Crowley then stated that it would make a mess to go into the question of these valuations because all kinds of controversies would arise over the figures. He thought it would be much more convenient to make a charge-off of the losses in banking premises as set up by the Comptroller. He suggested, however, that it might be possible to get the Bank to set up a reserve equal to the losses estimated by the Comptroller in the banking houses. If such a reserve is required of the Bank, however, Mr. Crowley doubted that we would be able to get the Bank to agree to set up a 25% reserve on "other real estate".

Mr. Eccles pointed out that the Bank actually has a loss on its other real estate. Mr. Treanor pointed out that the Bank had a possible answer to that.

At this point, there was a general discussion of the difference in point of view between the Comptroller's charge-off requirement and the possibility of setting up a reserve for losses in banking premises. In this respect, Mr. Seymour summed up the differences by stating that the write-off was the crucial point in the controversy between the Bank and the Comptroller. It looked to him as if the Board wanted a reserve of about $2,000,000 or so set up for banking house losses based on a failure by the Bank to take reasonable depreciation, or possible write-ups made by the Bank which could not be properly explained. On the other hand, the Comptroller had estimated an $8,500,000 loss in these properties which he wanted charged off immediately. The reserve suggested probably wouldn't get close to the Comptroller's $8,500,000 figure. This would make it look as if the agencies were agreed that the Comptroller was wrong in his position.

Messrs. Eccles and Clark pointed out that they would go back at least as far as 1927 to ascertain what write-ups had occurred in banking premises and try to get the history of these premises from that date on.

Mr. Folger indicated dissatisfaction at cutting off at that date and stated that he would like to see the $8,500,000 charged off. He indicated that he was not so much concerned with the contracts with California Lands Inc. and the Capital Company.

Mr. Clark, on the other hand, expressed concern over the future of these contracts.

Mr. Crowley suggested an agreement on an $8,500,000 reserve for losses in banking houses to be held until the Bank proves otherwise with respect to losses. It was pointed out that an $18,500,000 reserve might be necessary to cover the losses both in banking houses and in other real estate.

Mr. Crowley further suggested that there be an agreement on an $8,500,000 reserve for banking houses with the understanding that if the Bank can't submit sufficient evidence to satisfy the Comptroller that the amount then be charged off.

Mr. Upham summarized the history of the difficulties between the Comptroller's office and the Bank over the years and insisted that the charge-off be made and that no reserve for losses on banking houses be agreed to.

Mr. Delano also stated that his office expected that the $8,500,000 would be charged off.

Mr. Crowley indicated that he would be satisfied with a reserve, but if the Comptroller insisted that he must have the charge-off he would do his best to get it for him.

Mr. Eccles also stated that he was willing to use all means to get the amount charged off but failing that he was willing to carry the amount as a valuation reserve until the Bank's experience with write-ups and failure to take depreciation is worked out as far back as 1927.

Mr. Clark stated that he recognized the difficulty of tracing ownership beyond 1927. He would take the Bank buildings as they were put on the books in 1927 and see if depreciation had been taken at a reasonable rate. On other properties taken in after that date, he would make an investigation of the cost and any write-ups that had occurred. In this way he would work out the Bank's experience with the banking premises and, if it was found to vary fom ordinary banking practices, adjustments could then be required of the Bank.

Mr. Eccles further elaborated on the proposal for dealing with losses on banking premises, pointing out that if a reserve of approximately $8,500,000 was set up this reserve should not be deducted from the total resources of the Bank as they appeared in its published statements, but should merely be shown as a reserve. This reserve would be reduced if within probably six months or a year the Bank could show the Comptroller of the Currency that there had been no write-up in a given premise and that the depreciation taken to date was satisfactory. If the Bank could not show this, the estimated loss would have to be charged off. Mr. Eccles indicated further that the Comptroller should not go back of 1927 with reference to write-ups of the Bank's premises, since the Comptroller's office had permitted the Bank to come into the national System at that date and presumably had concurred in the values given by the Bank at that time. Mr. Delano indicated that he wanted to discuss this matter with his staff before he committed himself.

Mr. Crowley indicated that he did not think that an agreement on a program for the Bank should be permitted to fall through simply because of a disagreement as to whether the losses should be charged off or a reserve established.

With reference to the remainder of the suggestions of the Federal Reserve, the discussion was rather brief and there was no very substantial disagreement. What argument did ensue primarily concerned detail rather than fundamental principle. Mr. Eccles pointed out that with reference to Transamerica large line, it was very important that the specific units or organizations included within that line should be named so that there could be no misunderstanding as to just what obligations were included in the line. He also stressed the importance of prohibiting the use of Bank funds by Transamerica Corporation to facilitate any of its expansion programs, for example, by the making of Bank loans upon the stock of Transamerica Corporation or any of its affiliated interests.

Mr. Eccles and Mr. Crowley were agreed that if an $8,500,000 charge-off or reserve on losses was insisted upon, it might be necessary to reduce the 25% reserve opposed against other real estate.

Mr. Eccles indicated the necessity for arriving very soon at an agreement on a program. He indicated that L. M. Giannini had requested an opportunity to confer with the Federal Reserve as soon as they would see him, and that the Board did not feel that they could delay such a conference much longer. Some brief consideration was given to the procedure to be followed if a program was agreed upon. Although no definite understanding was reached, the general sentiment appeared to be that any such program would be discussed by the three banking agencies as a group, and that it would be discussed as the Comptroller's program. in which the other two agencies concurred.

Mr. McKee and Mr. Eccles raised the question of whether there should be some type of a tentative understanding before any final program is agreed upon so that the President, the Secretary of the Treasury and the R. F. C. would be entirely in accord with the putting of new capital into the Bank. The sentiment of the group appeared to be that there was no need to consider that point at this time. Mr. Bell pointed out that that was the least of his worries.

Mr. Eccles said that he felt that at the next meeting the Treasury should definitely have made up its mind whether a joint meeting with the Bank would embarrass the hearing scheduled for February 14th, and he indicated further that of course if it was understood that there would be a joint meeting with the Bank, the Federal Reserve would hold no separate conference with the Bank. He felt that all problems could be ironed out at a joint meeting.

It was agreed that the Treasury would give immediate consideration to the suggestions made by the Federal Reserve, and that there would be another meeting of the entire group on Thursday afternoon (February 8) at 2:30 p.m.

Attachment

2/7/40

COPY

Confidential

COMMENTS AND SUGGESTIONS CONCERNING "COMPTROLLER'S REQUIREMENTS WITH RESPECT TO BANK OF AMERICA N. T. & S. A." WHICH WERE DISCUSSED AT THE TREASURY ON FEBRUARY 2, 1940.

1. Capital. A requirement that the capital must be increased immediately by not less than $35,000,000 would not appear to be unreasonable. Since it is believed that such capital can be obtained only through the purchase of preferred stock by the Reconstruction Finance Corporation and since the capital of the bank can be reduced only with the consent and upon such terms and conditions as the Comptroller of the Currency may prescribe in the amendments to the articles of association of the bank providing for such increase in capital, we would eliminate from the program any reference to a subsequent increase in common stock upon the retirement of preferred stock, which would be in effect an attempt to determine in advance what should be the capital requirements with respect to this bank over a substantial period of time.

2. Dividends. We would prefer to attack this problem more directly by imposing requirements which would cause the Bank to rectify its condition and practices, thus leaving to the existing limitation of law the payment of dividends out of any earnings not used in meeting the imposed requirements. Consistently with this approach, one requirement might be that bond profits must be placed in a special reserve account to take care of losses and depreciation in the bond account, and the excess, if any, to be retained as long as any preferred stock is outstanding or until the Comptroller of the Currency is satisfied that it is no longer necessary to maintain such reserves to meet such losses or depreciation and consents to its use for other purposes.

3. Accounting practices. There is, of course, no objection to the first sentence. As to the other two sentences it is believed that their intent will be covered by other suggestions.

4. Losses. A large part of the losses set up by the examiners in the last report of examination is represented in banking houses and other real estate which are also a large part of the amount classified in column III.

Concerning the Bank's banking premises, we would suggest giving consideration to requiring that additional reserves be set up to the extent necessary so that the carrying values of banking premises, as shown on the Bank's books and in the investments in Merchants National Realty Corporation, shall not include any "write-ups" (i.e., any increases in book value not due to actual increase in cost due to acquisition of properties or to improvements of a permanent nature) and that the carrying value shall not include any depreciation which should have been taken in accordance with established banking practices during the period that the Bank has been operating under its present charter.

Concerning the Bank's other real estate we would suggest giving consideration to requiring that additional reserves shall be set up to the extent of 25 per cent of the existing carrying values of all "other real estate" of the Bank, whether carried on its books as such or as banking premises or transferred to and now held by California Lands, Inc., Capital Company, and Merchants National Realty Corporation;

that no real estate acquired by the Bank shall be transferred to Capital Lands, Inc., Capital Company or Merchants National Realty Corporation, or to any other party under similar arrangements, and that no real estate shall be disposed of except for cash or under bona fide sales contracts with purchasers under conditions justifying the expectation that such sales will be final. As soon as possible after the acquisition of any additional real estate it shall be placed on the Bank's books as "other real estate" and shall be appraised by competent appraisers, and thereafter shall not be carried at an amount exceeding such appraised value or the book value, whichever is the lower.

5. Illegally held bank stock. We suggest that further consideration be given to the question whether, in view of the terms of the option agreement, sale of the stock at this time would be advantageous to the Bank. In this connection, it might be well to consider imposing a requirement that if and to the extent that Transamerica Corporation shall fail to repurchase the National City stock from the Bank, in accordance with the existing option agreement between Transamerica and the Bank, the Bank shall make adequate provision for the removal of such stock without prejudice to any rights that it might have against Transamerica Corporation under the option contract.

6. Large lines. We agree that the progress that has been made in the past year in liquidating indebtedness of Transamerica and its subsidiary corporations should be continued, that the aggregate amount of these lines should be brought within the statutory limitations, and that such indebtedness should be adequately and properly secured in accordance with sound

banking practices and applicable legal requirements. We believe also that the concentration of credit in the Bank, depending upon the shares of other closely related banking institutions should be discontinued; that the credit facilities of the Bank should not be used for the expansion of Transamerica; and that, with respect to existing loans representing credit used for that purpose, there should be a program for reduction and retirement. To this end we suggest that there be a definite understanding with the Bank as to what associated and affiliated companies are covered by the restriction and that the aggregate of such loans be brought within the legal limit of the Bank's lending power by July 15, 1942; that the stock of any bank in which Transamerica is substantially interested securing such loans be eliminated by July 15, 1945; and, that no similar pledges be accepted. We believe also that consideration should be given to the discontinuance of further extensions of credit by the Bank for the purpose of purchasing or carrying Transamerica stock and to a provision that no collateral value shall be assigned to such stock when pledged to secure other loans.

Concerning the A. O. Stewart line we suggest that the Bank be required to continue its orderly liquidation in accordance with the agreement referred to in the report of examination of August 31, 1939, as having been made by the Bank and A. O. Stewart and which contemplated the liquidation of $1,000,000 of such indebtedness before the end of 1940 in addition to any liquidation from the sale of United States Treasury bonds and other Government obligations.

7. Real estate concentration. We have already made certain suggestions with respect to other real estate in our comments and suggestions under "4. Losses."

Non-conforming real estate loans and real estate acquired or carried in violation of section 5137 of the Revised Statutes should receive necessary attention. We have had in mind in making our suggestion as to reserves for real estate the desirability of avoiding statements which might be interpreted as placing upon the Government responsibility for forced, immediate liquidation which might undermine market values.

8. Self-insurance reserve. We believe that such steps should be taken as may be necessary to determine the legality of the transaction between the Bank and Transamerica General Corporation relating to insurance against certain losses of the Bank. In the event that it be found that such transaction was invalid the balance of the funds in the hands of Transamerica General Corporation, after deducting therefrom all losses paid by it, should be restored to the Bank.

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COMPTROLLER'S REQUIREMENTS WITH RESPECT TO

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

1. Capital. The capital must be increased immediately by not less than $35,000,000. If the new capital is obtained by the issuance of preferred stock, the articles of association are to contain a provision to the effect that except with the approval of the Comptroller of the Currency no preferred stock will be retired unless the net sound capital, surplus, undivided profits and retirement funds exceed $150,000,000 by an amount at least equal to the sum necessary to effect the proposed retirement.

2. Bond profits. All bond profits must be kept in a special reserve account to take care of losses and depreciation in the bond account until the total of that reserve account shall equal the total bond premium plus all bond depreciation.

3. Losses and reserves. Concerning the bank's banking premises accounts and investments in Merchants National Realty Corporation, a specific reserve of $8,000,000 must be set up on the books of the bank, and if at the expiration of one year the bank has not satisfied the Comptroller of the Currency that the present book values are justified, the loss in such assets must then be charged off.

All losses set up in the latest report of examination except those listed in banking premises accounts and investments in Merchants National Realty Corporation must be charged off at once if that has not already been done.

Future losses, except thase reserved for, must be charged out of future earnings, and presently existing undivided profits may not be used for any purpose except the setting up of reserves and charging out of losses not provided for by future earnings.

Concerning other real estate carried as such, real estate sold under contract to Capital Company and California Lands Inc., a reserve of per cent of the book value of such assets must be set up on the books of the bank.

No real estate acquired by the bank shall be transferred to California Lands Inc., Capital Company, or Merchants National Realty Corporation, or to any other party under similar arrangements, and no real estate shall be disposed of except for cash or under bona fide sales contracts with purchasers, under conditions justifying the expectation that such sales will be final. As soon as possible after the acquisition of any additional real estate it must be placed on the bank's books as other real estate.

4. Illegally held bank stock. Bank must continue to dispose of all stock of the National City Bank and at a rate not less than the amount disposed of in the last year.

5. Large lines. The progress that has been made in the past year in liquidating indebtedness of Transamerica and its subsidiary companies must be continued. The aggregate amount of these lines should be brought within the statutory limitations for any one borrower and such indebtedness must be adequately and properly secured in accordance with sound banking practice. The concentration of credit in

the bank depending upon the shares of other closely related banking institutions must be discontinued. The credit facilities of the bank must not be used for the expansion of Transamerica. With respect to existing loans representing credit used for that purpose there must be a program of reduction and retirement. There must be a definite understanding with the bank as to what associated and affiliated companies are covered by the foregoing restrictions, and the aggregate of such loans must be brought within the legal limitation of the bank's lending power before July 15, 1942. The stock of any bank, in which Transamerica is substantially interested, securing such loans must be eliminated by July 15, 1945, and no similar pledges may be accepted. Further extensions of credit by the bank for the purpose of purchasing or carrying Transamerica stock must be discontinued, and no collateral value may be assigned to such stock pledged to secure the loans. The orderly reduction of the A. O. Stewart line must be continued at a rate at least equal to that made during the past year.

6. Real estate concentration. All real estate acquired or carried in violation of Section 5137 of the Revised Statutes must be disposed of as soon as possible. Real estate loans which do not conform to Section 24 of the Federal Reserve Act must be disposed of or made to conform as soon as possible.

7. Self-insurance reserve. Steps should be taken as soon as possible to determine the legality of the transaction between the Bank of America and Transamerica General Corporation relating to insurance

against certain losses of the bank. In the event it be found that such transaction was invalid, the balance of the funds in the hands of Transamerica General Corporation, after deducting all losses paid by it, should be restored to the bank.

COPY

AMERICAN BANKER

February 7, 1940

MORGENTHAU, DELANO TAKING FURTHER STEPS AGAINST GIANNINI

Hope To Confer With Bank Officials February 24, When It Will Be Decided If Case Goes To F. R. Board.

TREASURY RETAINS SEYMOUR, BATES

American Banker Bureau

Washington, Feb. 6. — Secretary of the Treasury Henry Morgenthau, Jr., and Comptroller of the Currency Preston Delano are taking further steps against the Giannini financial interests of the West, the "American Banker" learned today. These steps will involve another conference here, to be attended by high officials and the advisers of Bank of America N. T. & S. A., when they will be confronted with data, findings and opinions of the legal divisions of the Treasury Department.

It is understood that February 24 has been chosen as the time when officials of the bank and officials representing the Government will meet here in a discussion which could lead to the Federal Reserve Board, in the unlikely case that the bank's officials do not concur with the findings of the Treasury Department. While no provision of the Banking Law specifies that such conferences shall be held, but does provide in Section 30 of the Act for appearances before the Federal Reserve Board, Treasury officials are interpreted as being hopeful that the latter step will not be necessary. The bank, however, has repeatedly signified its willingness to appear before the Board of Governors of the Federal Reserve System.

It is heard here that Whitney Seymour, of the firm of Simpson, Thatcher & Seymour, formerly connected with the Justice Department under the last Republican regime, has been retained by the

(Continued on page 8)

MORGENTHAU, DELANO TAKING FURTHER STEPS

(Continued from page 1)

Treasury to correlate its position in the current dispute with the Giannini-controlled bank. Also employed, according to information available here, is Henry M. Bates, Dean Emeritus of the University of Michigan Law School.

Secretary of the Treasury Morgenthau has inferentially made it clear that he will not abandon his position in demanding certain changes in the banker's practices. One of these has to do with real estate charge-offs and another concerns the dividend rate. The Secretary has received several letters in support of his program, it is understood. Independent bankers' organizations are known to have so expressed themselves.

L. M. Giannini, president of the Bank of America, has charged "persecution" on the part of Secretary Morgenthau and, in a statement which was given considerable publicity last month, insisted that the bank had kept an agreement entered into with the Office of Comptroller to accede to certain criticisms. Mr. Giannini also declared that he welcomed an appearance before the Federal Reserve Board, sitting as an arbitrator in the case as provided for under Section 30 of the Banking Act.

The forthcoming conference, according to those familiar with the two-year old controversy, is not expected to pour any oil on the differences between the Treasury head and the Giannini-controlled bank.

2-7-40 **Confidential**

COMMENTS AND SUGGESTIONS CONCERNING THE DRAFT OF "COMPTROLLER'S REQUIREMENTS WITH RESPECT TO BANK OF AMERICA N.T. & S.A." WHICH WERE DISCUSSED AT THE TREASURY ON FEBRUARY 2, 1940.

1. Capital. A requirement that the capital must be increased immediately by not less than $25,000,000 would not appear to be unreasonable. Since it is believed that such capital can be obtained only through the purchase of preferred stock by the Reconstruction Finance Corporation and since the capital of the bank can be reduced only with the consent and upon such terms and conditions as the Comptroller of the Currency may prescribe in the amendments to the articles of association of the bank providing for such increase in capital, we would eliminate from the program any reference to a subsequent increase in common stock upon the retirement of preferred stock, which would be in effect an attempt to determine in advance what should be the capital requirements with respect to this bank over a substantial period of time.

2. Dividends. We would prefer to attack this problem more directly by imposing requirements which would cause the Bank to rectify its condition and practices, thus leaving to the existing limitation of law the payment of dividends out of any earnings not used in meeting the imposed requirements. Consistently with this approach, one requirement might be that bond profits must be placed in a special reserve account to take care of losses and depreciation in the bond account, and the excess, if any, to be retained as long as any preferred stock is outstanding or until the Comptroller of the Currency is satisfied that it is no longer necessary to maintain such reserves to meet such losses or depreciation and consents to its use for other purposes.

3. Accounting practices. There is, of course, no objection to the first sentence. As to the other two sentences it is believed that their intent will be covered by other suggestions.

4. Losses. A large part of the losses set up by the examiners in the last report of examination is represented in banking houses and other real estate which are also a large part of the amount classified in column III.

Concerning the Bank's banking premises, we would suggest giving consideration to requiring that additional reserves be set up to the extent necessary so that the carrying values of banking premises, as shown on the Bank's books and in the investments in Merchants National Realty Corporation, shall not include any "write-ups" (i.e., any increases in book value not due to actual increase in cost due to acquisition of properties or to improvements of a permanent nature) and that the carrying value shall not include any depreciation which should have been taken in accordance with established banking practices during the period that the Bank has been operating under its present charter.

Concerning the Bank's other real estate we would suggest giving consideration to requiring that additional reserves shall be set up to the extent of 25 per cent of the existing carrying values of all "other real estate" of the Bank, whether carried on its books as such or as banking premises or transferred to and now held by California Lands, Inc., Capital Company, and Merchants National Realty Corporation;

that no real estate acquired by the Bank shall be transferred to Capital Lands, Inc., Capital Company or Merchants National Realty Corporation, or to any other party under similar arrangements, and that no real estate shall be disposed of except for cash or under bona fide sales contracts with purchasers under conditions justifying the expectation that such sales will be final. As soon as possible after the acquisition of any additional real estate it shall be placed on the Bank's books as "other real estate" and shall be appraised by competent appraisers, and thereafter shall not be carried at an amount exceeding such appraised value or the book value, whichever is the lower.

5. Illegally held bank stock. We suggest that further consideration be given to the question whether, in view of the terms of the option agreement, sale of the stock at this time would be advantageous to the Bank. In this connection, it might be well to consider imposing a requirement that if and to the extent that Transamerica Corporation shall fail to repurchase the National City stock from the Bank, in accordance with the existing option agreement between Transamerica and the Bank, the Bank shall make adequate provision for the removal of such stock without prejudice to any rights that it might have against Transamerica Corporation under the option contract.

6. Large lines. We agree that the progress that has been made in the past year in liquidating indebtedness of Transamerica and its subsidiary corporations should be continued, that the aggregate amount of these lines should be brought within the statutory limitations, and that such indebtedness should be adequately and properly secured in accordance with sound

banking practices and applicable legal requirements. We believe also that the concentration of credit in the Bank, depending upon the shares of other closely related banking institutions should be discontinued; that the credit facilities of the Bank should not be used for the expansion of Transamerica; and that, with respect to existing loans representing credit used for that purpose, there should be a program for reduction and retirement. To this end we suggest that there be a definite understanding with the Bank as to what associated and affiliated companies are covered by the restriction and that the aggregate of such loans be brought within the legal limit of the Bank's lending power by July 15, 1942; that the stock of any bank in which Transamerica is substantially interested securing such loans be eliminated by July 15, 1945; and, that no similar pledges be accepted. We believe also that consideration should be given to the discontinuance of further extensions of credit by the Bank for the purpose of purchasing or carrying Transamerica stock and to a provision that no collateral value shall be assigned to such stock when pledged to secure other loans.

Concerning the A. O. Stewart Line we suggest that the Bank be required to continue its orderly liquidation in accordance with the agreement referred to in the report of examination of August 31, 1939, as having been made by the Bank and A. O. Stewart and which contemplated the liquidation of $1,000,000 of such indebtedness before the end of 1940 in addition to any liquidation from the sale of United States Treasury bonds and other Government obligations.

7. Real estate concentration. We have already made certain suggestions with respect to other real estate in our comments and suggestions under "4. Losses."

Non-conforming real estate loans and real estate acquired or carried in violation of section 5137 of the Revised Statutes should receive necessary attention. We have had in mind in making our suggestion as to reserves for real estate the desirability of avoiding statements which might be interpreted as placing upon the Government responsibility for forced, immediate liquidation which might undermine market values.

8. Self-insurance reserve. We believe that such steps should be taken as may be necessary to determine the legality of the transaction between the Bank and Transamerica General Corporation relating to insurance against certain losses of the Bank. In the event that it be found that such transaction was invalid the balance of the funds in the hands of Transamerica General Corporation, after deducting therefrom all losses paid by it, should be restored to the Bank.

PROPOSED PROGRAM OF REHABILITATION FOR BANK OF AMERICA N. T. & S. A.

(1) Capital. The capital must be increased immediately by not less than $35,000,000. This capital may be obtained from the RFC through the purchase of preferred stock. If preferred stock is issued, it must not be retired without a coincidental increase in common stock of at least $25,000,000, thus achieving an ultimate common capital of at least $75,000,000.

(2) Losses. Losses set up by the examiners in the last report of examination must be charged off immediately and a reasonable rate of depreciation must be taken in the future on all banking houses, furniture and fixtures.

(3) Dividends. Dividends on common stock shall not be paid out of presently existing undivided profits or reserves. Future earnings, exclusive of bond profits, to the extent necessary must first be used to charge off future losses and to establish reserves as required by the Comptroller of the Currency. All bond profits must be placed in a special reserve account to take care of possible depreciation in the bond account.

(4) Illegally held bank stock. The Bank must dispose of all stock of the National City Bank which it acquired in violation of section 5136 of the Revised Statutes.

2/7/40

(5) Large Lines. . The orderly reduction of the Transamerica and A. O. Stewart large lines must be continued by the Bank at a rate at least equal to that made during the past year.

(6) Real estate concentration. There must be a definite accelerated program of liquidation of real estate holdings, especially future and former banking premises held by Merchants National Realty Corporation, and the contracts with Capital Company and California Lands, Inc. All real estate acquired or carried in violation of Section 5137 of the Revised Statutes must be disposed of as soon as possible. The liquidation of real estate loans which do not conform to section 24 of the Federal Reserve Act must be accelerated.

(7) Self-Insurance reserve. The Bank must take immediate steps to obtain the balance of its self-insurance reserve fund from Transamerica General Corporation.

(8) Accounting practices. Accounting practices must disclose the true nature of all transactions. Loss items must not be disposed of to other parties except under bona fide sales agreements. All practices tending unduly to favor Transamerica, its affiliated or subsidiary companies or allied interests, must be discontinued.

2-8-40

Confidential

REQUIREMENTS WITH RESPECT TO
BANK OF AMERICA N.T. & S.A.

1. Capital. The capital of the Bank must be increased immediately by not less than $55,000,000 with the understanding that, without the written consent of the Comptroller of the Currency, there shall be no reduction in the aggregate of its capital stock, surplus and undivided profits below a figure specified in the articles of association.

2. Disposition of bond profits. All bond profits must be placed in a reserve account to take care of current losses, depreciation, and amortization of premiums in the bond account, the excess, if any, to be retained until the premium account on all bonds is eliminated or the Comptroller of the Currency is satisfied that no larger reserve is necessary, and the deficiency, if any, to be charged against current earnings.

3. Banking premises. A reserve of $6,926,845.56 must be set up against the carrying values of banking premises as shown on the Bank's books and in the investment in Merchants National Realty Corporation. At the end of six months this reserve shall be used to reduce the carrying value of such banking premises unless in the meantime the Bank shall have furnished to the Comptroller of the Currency evidence satisfactory to him with respect to the actual cost of each banking premise and the depreciation which has been taken thereon. Cost with respect to premises held by the

Bank prior to its nationalization shall be the amount at which such premise was carried when the Bank received its national charter. Upon furnishing such evidence within the six months the reserve shall be used to reduce the carrying value of banking premises by the amount of any depreciation, not previously taken, which should have been taken in accordance with established banking practices and by the amount of any "write-ups" (i.e. any increase in book value not due to actual increase in cost through acquisition of properties or through improvements of a permanent nature) and the remainder, if any, may be returned to the undivided profit account.

4. Real estate concentration. Without relieving California Lands, Inc. or Capital Company of their obligations with respect to properties presently under contract with them, a reserve against losses on account of other real estate must be set up in the amount of 25 per cent of the existing carrying values of all "other real estate" of the Bank, whether carried on its books as such or as banking premises or transferred to and now held by California Lands, Inc., Capital Company, and Merchants National Realty Corporation. No other real estate hereafter acquired by the Bank shall be transferred to the California Lands, Inc., Capital Company or Merchants National Realty Corporation or to any other party under similar arrangements, and no real estate shall be disposed of except for cash or under bona fide sales contracts with purchasers under conditions justifying the expectation that such sales will be final. As soon as

possible after the acquisition of any additional real estate it shall be placed on the Bank's books as "other real estate" and shall be appraised by competent appraisers, and thereafter shall not be carried in an amount exceeding such appriased value or the book value, which ever is the lower.

Non-conforming real estate loans and real estate acquired or carried in violation of section 5137 of the Revised Statutes must receive necessary attention.

5. Large lines. Orderly reduction in the indebtedness of Transamerica and its subsidiary corporations must be continued; the aggregate amount of these lines must be brought within the statutory limitation; and the indebtedness must be adequately and properly secured in accordance with sound banking practices and applicable legal requirements. The concentration of credit in the Bank depending upon the shares of other closely related banking institutions must be discontinued; and, with respect to existing loans depending in whole or in part upon such shares, there must be an orderly reduction and retirement. The aggregate of loans to associated and affiliated companies, as determined by the Comptroller of the Currency, must be brought within the legal limitation of the Bank's lending power by July 15, 1942. The stock of any bank in which Transamerica is substantially interested securing such loans shall be eliminated by July 15, 1945; and no similar pledges shall be accepted. The Bank must not make further extensions of credit for the purpose of purchasing or carrying Transamerica stock and in the future no collateral value shall be assigned to such stock when pledged to secure other loans.

Orderly liquidation of the A. O. Stewart line must be continued in accordance with the agreement referred to in the report of examination of August 31, 1939 as having been made by the Bank and A. O. Stewart and which contemplated the liquidation of $1,000,000 of such indebtedness before the end of 1940, in addition to any liquidation from the sale of United States Treasury bonds and other Government obligations.

6. Illegally held bank stock. To the extent that Transamerica Corporation fails to repurchase the National City stock from the Bank, in accordance with the existing option agreement between Transamerica and the Bank, the Bank must make adequate provision for the removal of such stock without prejudice to any rights that it may have against Transamerica Corporation under the option contract.

7. Losses. Losses set up by the examiners in the last report of examination not otherwise provided for herein must be charged off immediately.

7/8/40

REQUIREMENTS WITH RESPECT TO

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

1. Capital. The capital must be increased immediately by not less than $35,000,000. If the new capital is obtained by the issuance of preferred stock, no retirement of preferred stock shall be made without the consent of the Comptroller of the Currency, if such retirement would reduce the aggregate capital stock, surplus and undivided profits below the total of the capital stock, surplus and undivided profits as of the effective date of the proposed increase in capital; provided that in the event the R.F.C. subscribes to preferred stock the bank will be permitted to retire the minimum amount of preferred stock annually in order to qualify for the lowest dividend rate.

2. Bond profits. All bond profits must be kept in a special reserve account to take care of losses and depreciation in the bond account until the total of that reserve account shall equal the total bond premium plus all bond depreciation.

3. Losses and reserves. A reserve of $8,000,000 must be set up against the carrying values of banking premises as shown on the bank's books and in the investment in Merchants National Realty Corporation. At the end of one year this reserve shall be used to reduce the carrying values of such banking premises, unless in the meantime the bank shall have furnished to the Comptroller of the Currency

complete information satisfactory to him with respect to the actual cost of each banking premise and the depreciation which has been taken thereon, such information to cover the complete history of each banking premise from the time of construction. Upon furnishing such evidence within the one year, the reserve shall be used to reduce the carrying value of banking premises by the amount of adequate depreciation during the life of the building, not previously taken, which should have been taken in accordance with sound banking practices, and by the amount of any "write-ups." The remainder of such reserve, if any, may be returned to the undivided profits account.

Losses set up by the examiners in the last report of examination not otherwise provided for herein must be charged off immediately.

Future losses, except those reserved for, must be charged out of future earnings, and presently existing undivided profits as well as any amount that may later be released from reserves herein established, may not be used for any purpose except the setting up of reserves and charging out of losses not provided for by future earnings.

Concerning other real estate carried as such, real estate sold under contract to Capital Company and California Lands Inc., a reserve of 25 per cent of the book value of such assets must be set up on the books of the bank without relieving California Lands Inc. or Capital Company of their obligations with respect to properties presently under contract with them.

No real estate acquired by the bank shall be transferred to California Lands Inc., Capital Company , or Merchants National Realty Corporation, or to any other party under similar arrangements, and no real estate shall be disposed of except for cash or under bona fide sales contracts with purchasers, under conditions justifying the expectation that such sales will be final. As soon as possible after the acquisition of any additional real estate it must be placed on the bank's books as other real estate and at a figure which would eliminate any loss in the asset. In no instance is the carrying value of other real estate to exceed the book value of the loan.

4. Illegally held bank stock. The amount of the investment in the stock of the National City Bank must continue to be reduced at a rate not less than the amount of the reduction made in that asset during the last year.

5. Large lines. The progress that has been made in the past year in liquidating indebtedness of Transamerica and its subsidiary companies must be continued. The aggregate amount of these lines should be brought within the statutory limitations for any one borrower, and such indebtedness must be adequately and properly secured in accordance with sound banking practice.

The concentration of credit in the bank depending upon the shares of other closely related banking institutions must be discontinued. The credit facilities of the bank must not be used for the expansion of Transamerica. With respect to existing loans representing credit used for that purpose there must be a program of reduction and retirement.

It is definitely understood that the banks and the companies herein listed and referred to shall be construed as associated and affiliated companies subject to the foregoing restrictions and the aggregate of such loans must be brought within the legal limitation of the bank's lending power before July 15, 1942.

Transamerica Corporation
Coast Company
Corporation of America
First Securities Company of Portland
Transamerica Service Corporation
Transamerica General Corporation
Bankamerica Agricultural Credit Corporation
California Lands, Inc.
  California Exploration Company
Capital Company
  Western Furniture Exchange
  Western States Corporation
Coast Service Company
Inter-America Corporation
Inter-Continental Corporation
American Brokerage, Inc.
General Metals Corporation
Occidental Life Insurance Company
Pacific National Fire Insurance Company
Bankamerica Company
First National Corporation of Portland
California Joint Stock Land Bank
Associated American Distributors, Inc.
Pacific Coast Mortgage Company
and any other subsidiaries of above companies presently in existence or to be organized in the future or any other corporations, which under the circumstances of their existence appear to be within reasonable limits affiliated or closely allied to the borrowing interests of the above corporations.

The stock of any bank, in which Transamerica is substantially interested, securing such loans must be eliminated by July 15, 1945, and no similar pledges may hereafter be accepted. Further extensions of credit by the bank for the purpose of purchasing or carrying Transamerica Stock must be discontinued, and no collateral value may be assigned to such stock hereafter pledged to secure the loans.

6. Real estate concentration. All real estate acquired or carried in violation of Section 5137 of the Revised Statutes must be disposed of as soon as possible. Real estate loans which do not conform to Section 24 of the Federal Reserve Act must be disposed of or made to conform as soon as possible.

7. Self-insurance reserve. Steps should be taken as soon as possible to determine the legality of the transaction between the Bank of America and Transamerica General Corporation relating to insurance against certain losses of the bank. In the event it be found that such transaction was invalid, the balance of the funds in the hands of Transamerica General Corporation, after deducting all losses paid by it, should be restored to the bank.

Thursday
February 8, 1940

MEMORANDUM FOR THE FILES

Conference re Bank of America

A meeting was held in the office of the Under Secretary beginning at 2:30 p.m., February 8, 1940, with further reference to a proposed program for Bank of America.

Those present at the meeting were: Representing the Federal Reserve Board, Messrs. Eccles, Morrill, Driebelbis, Clark and McKee; representing the S.E.C., Treanor and Jenks; representing the F.D.I.C., Crowley; representing the Treasury, Messrs. Bell, Foley, Delano, Upham, Young, Folger, Mulroney, Sherbondy and Tietjens.

Mr. Bell opened the discussion by reading in its entirety a revised memorandum of the Comptroller's requirements for the Bank of America.

Mr. Delano explained, with reference to the language contained in Point 1 in regard to putting new capital into the Bank, that it largely followed the R.F.C. practice in the purchase of preferred stock. There was some dispute on this point between Messrs. McKee and Mulroney as to just what the present R.F.C. practice is insofar as it concerns the provisions required to be written into the Bank's articles.

Mr. Eccles objected to the language used in the revision of Point 1, because he thought it would stop dividend payments until the required minimum of $150,000,000 as the aggregate of net sound capital, surplus, undivided profits and retirement funds was reached.

Messrs. Crowley, Mulroney and Delano pointed out that this would not be necessarily so, as the Bank would be permitted to retire the minimum amount of preferred stock necessary to get the advantage of the lower interest rate.

Mr. Eccles read aloud a proposed substitute paragraph.

Mr. Crowley commented that the substitute contained no definite figure representing net sound capital, surplus, undivided profits and retirement funds. Mr. Eccles said he didn't see the need of putting in any amount because the Comptroller would have control of building up the capital structure through controlling the retirement of preferred stock.

Mr. Foley stated that we probably would have to give the Bank a definite figure eventually and he thought that we might as well tell them now.

Mr. McKee stated he thought the Comptroller's requirement would compel the Bank to put up $150,000,000 capital right now; that is, in addition to the $35,000,000 to be added by preferred stock an extra $15,000,000 would have to be raised somehow. Mr. Eccles added that any such requirement would put a crimp in current earnings.

Mr. Crowley stated that he thought that it had been agreed yesterday all around that the Bank would be permitted to retire a minimum amount of preferred stock without the necessity of getting the Comptroller's approval first.

Mr. Eccles stated that he would never put the point up to the Bank in the way it was written. There was further discussion between Messrs. Mulroney and McKee. Mr. Eccles went on to say that he didn't believe the Bank could be sold the program on this basis. He said that if the Comptroller wanted $150,000,000 it ought to be got by retiring the preferred stock and putting the retired value into common stock. As written the program looked to him to require the Bank to take $15,000,000 out of its earnings in order to build up to the $150,000,000 figure. He wanted to permit the Bank to retire up to 5% of its preferred stock per year without the Comptroller's consent and to freeze the capital at $135,000,000 and build it up by retiring the preferred stock.

Mr. Crowley suggested taking out the $150,000,000 figure and freezing the capital structure at the present capital plus the $35,000,000 in preferred stock which is to be put into the Bank.

There seemed to be agreement on some such language as this although it was pointed out that the R.F.C. might not accept it.

Mr. Crowley asked whether reserves which would be required to be set up would be treated as capital funds, to which Mr. McKee answered no.

Mr. Eccles said suppose that an $8,500,000 reserve is set up for the estimated losses in banking premises and that the full $8,500,000 is not charged off. It seemed to him that the balance left ought to become part of the capital account again and that the Bank should not be permitted to use any part of such balance for paying dividends or for retiring preferred stock.

Messrs. Mulroney and Folger stated that all they would require would be control of the retirement of preferred stock over and above the minimum amount required to be retired in order to obtain the preferential interest rate.

There was general agreement that language satisfactory to all could be worked out for Point I and it was left up to Messrs. Morrill and Folger to work out the language.

At this point Messrs. Crowley and Eccles started on a discussion as to the method to be followed in dealing with the Bank. Nothing definite was determined, however, and the discussion became centered on Point 2-- Bond Profits. With reference to the language employed in the memorandum on this point, Mr. Eccles stated that one thing had been overlooked. It was his understanding that bond profits were first to be used to cover premium amortization. He read a substitute paragraph which the Board had prepared. This point was further discussed by Messrs. Folger, Eccles, Morrill and McKee. Mr. Eccles thought that to make the Bank amortize bond premiums out of earnings rather than out of bond profits was in effect to require the Bank to carry a double reserve. The point was extensively argued and it was finally agreed to put it in the Comptroller's way with the chance that this position might later be modified.

Point 3 - Losses and Reserves - was then discussed.

Mr. Morrill asked whether the $8,000,000 classified as loss didn't have some doubtful classification in it, inasmuch as the Board had been able to find only about $6,926,000 classified as loss in banking premises.

The reports were sent for for the purpose of verifying these figures.

Mr. Morrill also objected to the language employed in this point because it failed to include the Board's formula for determining the amount to be charged off based on the Bank's experience with its banking houses from 1927 on. The matter of including this formula was discussed with Messrs. Eccles, Morrill and Crowley with Messrs. Eccles and Morrill insisting that the Bank's experience with write-ups on its banking houses and its failure to depreciate at a reasonable rate should be used as the working basis for determining losses.

There was some disposition in this discussion to go along with the Comptroller's language but Mr. Eccles didn't think it was definite enough to deal with the Bank on. He felt that some definite basis for determining fair valuation of the premises without resorting to appraisals would have to be established.

Mr. Folger indicated that he was not satisfied with the Board's formula for determining losses.

It was agreed that the reserve against other real estate including real estate under the Capital Company and California Lands Inc. contracts should be in the amount of 20% and that a phrase should be added to the paragraph indicating that there was no intention to relieve either of the companies of its obligations under the existing contracts. No fundamental changes were made in the remaining provisions of the program.

Mr. Crowley stated that it appeared that all of the agencies were in accord and Mr. Eccles suggested that all three of the agencies meet with the Bank. He stated that the group should not be too large and suggested that the conferees should be Messrs. Eccles, McKee, Delano, Bell and Crowley. Mr. Crowley stated that if the Bank should walk out and refuse to go along with the program agreed upon it should be clear that all three agencies are going to use all the sanctions necessary to bring the Bank into line.

Mr. Eccles stated in very positive language that if L. M. Giannini walked out on the proposed program the Bank could not get into the Federal Reserve System as a state member bank, without complying with the program. He also stated that L. M. Giannini would hardly want to continue the Section 30 proceeding if he were aware that the Federal Reserve System was agreed upon this program, unless he merely desired to drag out the proceedings for a year or more. Both Mr. Eccles and Mr. Crowley stated in very positive language that if the Bank did not go along with the program they would use all the sanctions available to bring it into line.

Mr. Eccles stated that no specific statement should be made concerning the dividend rate and that the Bank should not be prevented from declaring its March dividend.

It was agreed that the Comptroller's staff would revise the program that evening in conjunction with Mr. Bell's and that the meeting with the Bank would be arranged for Friday afternoon at 2:30. Copies of the redraft of the program would be sent to the three agencies on Friday morning and if there were any suggestions or questions they should be cleared up by telephone.

It was further indicated that the meeting between Mr. Cushing and Mr. Seymour scheduled for Friday morning should be postponed.

Conference held in the Office of the Under Secretary of the Treasury the afternoon of February 9, 1940, for a review of the Bank of America situation and a discussion of the measures which should be taken by the Bank to meet the criticisms of the supervising agencies.

Attended by: Under Secretary of the Treasury Bell
Chairman Eccles of the Federal Reserve Board
Governor McKee of the Federal Reserve Board
Chairman Crowley of the Federal Deposit Insurance Corp.
Comptroller of the Currency Delano

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

Prior to the entrance into the meeting of Mr. Giannini and Mr. Cushing, there was a brief discussion between the Federal officials concerning the proposed program for the rehabilitation of the Bank, Mr. Eccles making the point that in his judgment item 3 should contain the figure $6,900,000 in place of $8,000,000 (the balance of $1,100,000 to be transferred to "Other Real Estate"), and further that there should be modification of the formula for a determination of the valueof bank premises as outlined in item 3. It was finally agreed to present the program as drawn, with the understanding that Mr. Eccles' position was understood and that further consideration would be given to his viewpoint should occasion demand. (Copy of the program or supervisory requirements as presented to the conference is attached for reference).

Mr. Giannini and Mr. Cushing then entered the meeting and Mr. Bell opened the discussion with a brief statement to the effect that all present were familiar with the long pending controversy between the office of the Comptroller and the Bank of America and that in an effort to be fair and to develop an impartial review before the application of sanctions the Treasury had arranged for a "Show Cause" hearing to be opened on February 14, 1940, and to be held before a special examiner, Dean Emeritus Bates of Michigan. In the meantime, the Bank had asked the Federal Reserve Board to make an independent examination of its condition and followed this request by inquiring as to the Board's requirements if the Bank should convert to a state member. Mr. Bell commented that the present meeting grew out of the imminence of the Treasury's proposed hearing and these requests of the Bank. There was also a general desire on the part of all concerned to have a full and frank discussion of the matter before the inauguration of formal proceedings.

The requirements for the rehabilitation of the Bank as drafted in collaboration by the Federal agencies represented were then presented in memorandum form to Messrs. Giannini and Cushing. The memorandum was read by Mr. Eccles and a general discussion ensued.

Mr. Giannini took exception to the general tone of the document, insisting that by implication the Bank was being charged "With all the crimes in the calendar". He restated his former position that the present management had done remarkable work of rehabilitation since 1932, that this management had entered into an agreement with the Comptroller in December 1938 and had lived up to that agreement, that he had repeatedly requested a citation under Section 30 to the Federal Reserve Board and was still requesting it. He further stated that to charge off the losses on bank premises as set up by the examiners or to set up a reserve for them would compromise the bank in its hearings pending before the SEC and prove the SEC case.

Mr. Cushing made the point that the hearing proposed by the Comptroller for February 14, 1940 was supposed to be closed and highly confidential but that the SEC had been furnished with a copy of the Show Cause order and had immediately demanded that the first nine pages be published. Mr. Cushing contended that this was a violation of the confidential relationship existing between the Comptroller's office and all banks.

Mr. Eccles, Mr. McKee and Mr. Delano all argued that they could not see how the setting up of a reserve for depreciation of bank premises pending a further investigation of the matter (and a justification of the Bank's refusal to write off the loss as listed) would prejudice the Bank's case before the SEC.

There was considerable discussion of the requirements for new capital, dividend control and the reduction of the

Transamerica large line. This discussion was largely explanatory in character and led to no conclusions. Concerning new capital, it was made clear that in the event the Bank should sell common rather than preferred, the restrictions on retirement as outlined in the memorandum would not obtain, except of course that any retirement of common always must have the approval of the Comptroller.

The meeting was adjourned until 2:30 P. M. Monday, February 12, 1940.

PD
DWB

February 10, 1940

REQUIREMENTS WITH RESPECT TO

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

1. Capital. The capital must be increased immediately by not less than $35,000,000. If the new capital is obtained by the issuance of preferred stock, no retirement of preferred stock shall be made without the consent of the Comptroller of the Currency, if such retirement would reduce the aggregate capital stock, surplus and undivided profits below the total of the capital stock, surplus and undivided profits as of the effective date of the proposed increase in capital; provided that in the event the R. F. C. subscribes to preferred stock the bank will be permitted to retire the minimum amount of preferred stock annually in order to qualify for the lowest dividend rate.

2. Bond profits. All bond profits must be kept in a special reserve account to take care of losses and depreciation in the bond account until the total of that reserve account shall equal the total bond premium plus all bond depreciation.

3. Losses and reserves. A reserve of $8,000,000 must be set up against the carrying values of banking premises as shown on the bank's books and in the investment in Merchants National Realty Corporation. At the end of one year this reserve shall be used to reduce the carrying values of such banking premises, unless in the meantime the bank shall have furnished to the Comptroller of the Currency

complete information satisfactory to him with respect to the actual cost of each banking premise and the depreciation which has been taken thereon, such information to cover the complete history of each banking premise from the time of construction. Upon furnishing such evidence within the one year, the reserve shall be used to reduce the carrying value of banking premises by the amount of adequate depreciation during the life of the building, not previously taken, which should have been taken in accordance with sound banking practices, and by the amount of any "write-ups". The remainder of such reserve, if any, may be returned to the undivided profits account.

Losses set up by the examiners in the last report of examination not otherwise provided for herein must be charged off immediately.

Future losses, except those reserved for, must be charged out of future earnings, and presently existing undivided profits as well as any amount that may later be released from reserves herein established, may not be used for any purpose except the setting up of reserves and charging out of losses not provided for by future earnings.

Concerning other real estate carried as such, real estate sold under contract to Capital Company and California Lands, Inc., a reserve of 25 percent of the book value of such assets must be set up on the books of the bank without relieving California Lands, Inc. or Capital Company of their obligations with respect to properties presently under contract with them.

No real estate acquired by the bank shall be transferred to California Lands, Inc., Capital Company, or Merchants National Realty Corporation, or to any other party under similar arrangements, and no real estate shall be disposed of except for cash or under bona fide sales contracts with purchasers, under conditions justifying the expectation that such sales will be final. As soon as possible after the acquisition of any additional real estate it must be placed on the bank's books as other real estate and at a figure which would eliminate any loss in the asset. In no instance is the carrying value of other real estate to exceed the book value of the loan.

4. Illegally held bank stock. The amount of the investment in the stock of the National City Bank must continue to be reduced at a rate not less than the amount of the reduction made in that asset during the last year.

5. Large lines. The progress that has been made in the past year in liquidating indebtedness of Transamerica and its subsidiary companies must be continued. The aggregate amount of these lines should be brought within the statutory limitations for any one borrower, and such indebtedness must be adequately and properly secured in accordance with sound banking practice.

The concentration of credit in the bank depending upon the shares of other closely related banking institutions must be discontinued. The credit facilities of the Bank must not be used for the expansion of Transamerica. With respect to existing loans representing credit used for that purpose there must be a program of reduction and retirement.

It is definitely understood that the banks and the companies herein listed and referred to shall be construed as associated and affiliated companies subject to the foregoing restrictions and the aggregate of such loans must be brought within the legal limitation of the bank's lending power before July 15, 1942.

Transamerica Corporation
Coast Company
Corporation of America
First Securities Company of Portland
Transamerica Service Corporation
Transamerica General Corporation
Bankamerica Agricultural Credit Corporation
California Lands, Inc.
    California Exploration Company
Capital Company
    Western Furniture Exchange
    Western States Corporation
Coast Service Company
Inter-America Corporation
Inter-Continental Corporation
American Brokerage, Inc.
General Metals Corporation
Occidental Life Insurance Company
Pacific National Fire Insurance Company
Bankamerica Company
First National Corporation of Portland
California Joint Stock Land Bank
Associated American Distributors, Inc.
Pacific Coast Mortgage Company
    and any other subsidiaries of above companies presently in existence or to be organized in the future or any other corporations, which under the circumstances of their existence appear to be within reasonable limits affiliated or closely allied to the borrowing interests of the above corporations.

The stock of any bank, in which Transamerica is substantially interested, securing such loans must be eliminated by July 15, 1945, and no similar pledges may hereafter be accepted. Further extensions of credit by the bank for the purpose of purchasing or carrying Transamerica stock must be discontinued, and no collateral value may be assigned to such stock hereafter pledged to secure the loans.

6. Real estate concentration. All real estate acquired or carried in violation of Section 5137 of the Revised Statutes must be disposed of as soon as possible. Real estate loans which do not conform to Section 24 of the Federal Reserve Act must be disposed of or made to conform as soon as possible.

7. Self-insurance reserve. Steps should be taken as soon as possible to determine the legality of the transaction between the Bank of America and Transamerica General Corporation relating to insurance against certain losses of the bank. In the event it be found that such transaction was invalid, the balance of the funds in the hands of Transamerica General Corporation, after deducting all losses paid by it, should be restored to the bank.

Conference held in the Office of the Under Secretary of the Treasury the afternoon of February 12, 1940 for a review of the Bank of America situation and a discussion of the measures which should be taken by the Bank to meet the criticisms of the supervising agencies.

Attended by: Under Secretary of the Treasury Bell
Chairman Eccles of the Federal Reserve Board
Governor McKee of the Federal Reserve Board
Comptroller of the Currency Delano

(Note: Chairman Crowley of the Federal Deposit Insurance Corporation was absent from the meeting, being out of town.)

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

While awaiting the arrival of Mr. Giannini and Mr. Cushing, there was a discussion as to whether counsel for the Treasury as represented by Mr. Foley and Mr. Seymour should be included in the impending conference. Mr. Foley pointed out that he felt he had some responsibilities and inasmuch as the Show Cause hearing was scheduled for next Wednesday, February 14, he thought that he and Mr. Seymour should be included. Mr. Bell and Mr. Delano agreed with Mr. Foley, but the Federal Reserve representation - Mr. Eccles and Mr. McKee - made strong objection, stating that they had no counsel and that if any were to be included they would insist upon having their own as well. Mr. Eccles stated that he would not participate in such a conference. Confronted by this situation, Mr. Foley and Mr. Seymour withdrew for a private conference. It was then suggested that the conference scheduled for this afternoon be canceled or postponed until this question of the attendance of the lawyers could be clarified. Both Mr. Foley and Mr. Seymour thought this inadvisable, Mr. Seymour being particularly emphatic that if such a procedure were followed it would materially weaken our case. Mr. Foley then suggested that rather than have the conference break up, it proceed as scheduled and that he and Mr. Seymour should be fully advised as to developments. The conference, therefore, was permitted to go forward with the same attendance as that of last Friday, February 9 save for the absence of Mr. Crowley who was out of town.

The discussion was opened by Mr. Cushing who stated that he thought there was considerable difference of opinion as to the facts in the controversy now pending, and that with the idea of presenting the Bank's viewpoint he and Mr. Giannini had prepared and brought with them a number of schedules and statements showing the condition of the Bank at various epochs and the progress made, particularly since the assumption of responsibilities by the present management. The schedules and statements submitted by Mr. Cushing and Mr. Giannini are attached hereto for reference.

The presentation of these documents precipitated a general discussion concerning the conduct of the Bank under the direction of the present management and the now familiar ground as to dividend policy, loss write-offs, under-capitalization and criticised practices was again traversed, and in considerable detail. It was contended by the Bank's representatives that a remarkable job of rehabilitation had been accomplished by the present management, that the dividends declared were moderate, that the losses listed by the examiner were capricious, and that the many practices criticised were either unimportant or unjust. The point of view of the Comptroller was defended by Mr. Delano, and vigorous support to his position was given by both Mr. Eccles and Mr. McKee. It was pointed out by all three of these gentlemen that the Bank's dividend policy was lavish and extreme, and entirely unjustified when the nature and extent of its frozen assets was considered; furthermore, the necessity of more capital admitted of no debate, and the unsafe and unsound practices listed by the Comptroller certainly fell into that category.

The main discussion, of course, centered around the question of capital, dividend control and losses listed by the Comptroller in order to bring the valuation of the bank premises on the Bank's books more in line with the facts. In regard to capital, the position taken by the Federal officials was that there should be an immediate subscription through the RFC for $35,000,000 of preferred stock. Mr. Giannini stated that the Bank would consider adding $25,000,000 of common stock, the operation to be completed by August 1st next and the machinery to be set in motion immediately. Mr. Eccles suggested that preferred stock be taken immediately and retired as the common was sold. There was no final agreement on this point.

In regard to the control of dividends to be established through the provision that such disbursement must come out of future earnings, exclusive of bond profits and after proper deductions for losses, depreciation, amortization, etc., there was sharp discussion as to the freezing of existing undivided profits and what result the statutory provision as to bad debts might have upon the declaration of such future dividends. Here again there was no final determination although it was made clear that if the statutory provision referred to should result in making all future dividends impossible there would be a further consideration of that point.

As to the question of bank premises, Mr. Giannini and Mr. Cushing advised that they had prepared and brought with them not only appraisals but also the entire historical background (original costs of acquisition and construction) pertaining to the 123 parcels used by the Comptroller's examiner in computing his loss figure of $9,500,000 in the July 21, 1939 report. Mr. Delano commented that this historical background of costs and depreciation was exactly the information the Comptroller's office had been requesting for over a year. He suggested that if this data constituted original records and was in proper form it would enable the Comptroller to check his findings within the year proposed for review of this loss item after it had been set up as a reserve and in accordance with paragraph 3 of the original memorandum submitted to the Bank's representatives at the conference on February 9, 1940. This matter was discussed in considerable detail, including a technical point as to what would be the attitude of the Comptroller's office in the case of acquisition by the Bank of America of a bank building which had been completely depreciated to $1.00 on the books of the original institution. Mr. Giannini and Mr. Cushing were assured that in such cases the Comptroller's office would be entirely reasonable but would reserve to itself the determination of what the figure should be, and it was made clear that the Federal authorities would not countenance the inclusion into the price paid for bank premises at the time of acquisition any inflated values due to the addition of good will or other such factors. In regard to this provision of losses on bank premises, it was very evident that the Bank's representatives had uppermost in their minds the question of their position in their pending controversy with the SEC, it obviously being their opinion that if they acquiesced in such write-offs it might well prejudice their case with the SEC.

Shortly before the conference broke up, both Mr. Eccles and Mr. McKee made it very clear that the Federal Reserve Board did not desire to discuss this matter with the Bank's representatives until a settlement had been reached with the Comptroller, and furthermore that any approach to the Federal Reserve Board with the idea of becoming a state chartered member

Bank would be met with practically the same requirements as had been here discussed. The Federal Reserve representatives definitely made the point that the three supervising agencies were in accord on this matter. Mr. Cushing and Mr. Giannini stated that they would like to consider the matter among themselves and it was suggested that if they desired to communicate further that they call the Comptroller who would arrange an appointment.

PWB
SWB

February 13, 1940

COMPARATIVE STATEMENT OF

	1932	1933	1934
TOTAL OPERATING PROFIT (After payment of interest expense)	22,765,090	23,576,366	25,034,639
(EXPENSES, All expenses including administration, operating and occupancy expenses, depreciation and Other Real Estate expense)	20,323,230	18,483,250	18,843,592
NET OPERATING PROFIT	2,441,860	5,092,115	6,191,046
Add: Profits on sale of securities	895,515	1,025,745	2,664,076
Other recoveries	1,412,388	164,680	44,627
NET PROFITS BEFORE LOSSES	4,749,764	6,282,541	8,899,750
(TOTAL LOSSES)	5,218,597	5,510,104	11,537,378
NET PROFIT OR LOSS	468,832 R	772,436	2,637,627 R

The foregoing schedule is taken from the REPORT OF EXAMINATION OF AUGUST 31, 1939 (Page 2 Inserts 4 to 6). The figures used are those of the examiner except for the last six months of 1939 for which comparable figures were supplied by the bank's accounting department. Headings in brackets have been supplied for necessary clarity.

A breakdown of total losses shown in the schedule, as computed by the bank's accounting department shows that total losses of all kinds on transactions originating prior to 1932 amounted to $60,528,326, or 86.8% of all losses, whereas losses on transactions originating subsequent to 1932 amounted to $9,047,557, or 13.2% of the total. This is an average annual loss from current transactions of all kinds of $1,131,000 for the eight year period.

OPERATIONS (Cents Omitted)

1935	1936	1937	1938	1939
27,760,086	34,007,899	39,026,024	41,606,334	44,427,422
20,632,549	23,581,987	27,495,739	29,754,632	32,376,327
7,127,537	10,425,912	11,530,285	11,851,702	12,051,095
13,882,341	14,269,968	3,955,788	9,175,515	11,274,608
893,483	375,242	1,886,886	293,853	383,661
21,903,362	25,071,123	17,372,960	21,321,070	23,709,364
12,045,266	12,618,705	4,823,820	6,755,578	11,066,431
9,858,095	12,452,418	12,549,193	14,565,491	12,642,933

PROGRESS OF BANK OF AMERICA FROM 1932 and 1933 UNDER PRESENT MANAGEMENT

Total capital funds increased more than	$17,000,000
Deposits increased (116%) more than	745,000,000
Loans increased (48%) more than	221,000,000
Bonds and securities more than doubled, the increase being more than	351,000,000
Cash position as of 12-30-39 increased more than	190,000,000

Items Reduced or Eliminated

	Reduction
Bills payable eliminated in less than 3 years from March 1, 1932	$146,500,000
"Slow" classification on loans reduced since 4-10-33 more than	109,000,000
"Doubtful" classification on loans reduced since 4-10-33 more than	20,000,000

(Present total of $7,788,000 includes $6,491,000 on real estate contracts, Capital Co. and California Lands, Inc. which are good. <u>Actual doubtful classification on loans is therefore $1,300,000 out of total loans of $682,000,000.)</u>

Loss classification on loans reduced from $13,691,874 on April 10, 1933 to $4,306,749 on August 31, 1939, all of which have since been eliminated.	9,200,000
Non-conforming real estate loans reduced since 4-10-33 more than	62,000,000
Loans with interest past due more than six months decreased since 4-10-33 more than	35,000,000
Past due loans decreased since 4-10-33 more than	45,000,000
Liquidation of Capital Co. and California Lands contracts in effect as of, and executed since 1932 more than	38,000,000
The Interamerica contracts or "guaranteed loans" which totaled more than $35,000,000 early in 1932 decreased more than	31,000,000

Loan Portfolio

On December 30, 1939 the loan total had increased to $711,054,000 made up of the following items:

Installment credit loans Average loan $251	$118,385,000
Federal Housing Administration insured loans Average loan $4,100	152,005,000
Other Real Estate Loans Average loan $4,000	243,112,000
Other Loans Average loan $3,600	197,552,000

An analysis of the June 30, 1939 real estate loan total shows 86,331 loans for $321,725,000 on city property and 7,398 loans for $40,344,000 on country property. 89.7% of all real estate loans provide for amortization. During the year 1939 lending operations consisted of the making of 600,000 new loans for $616,000,000 or an average of $1,030 per loan. Depositors number 2,300,000, borrowers 600,000, and shareholders about 150,000. Average deposit account less than $650 and average loan less than $1,200. Demand deposits $640,000,000; savings and time deposits $840,000,000. All averages include large and small items.

A schedule of progress on the major asset items covered by the December 15, 1938 program is as follows:

	4-28-38*	1-31-40		Reduction
Guaranteed Loans	$5,524,096.03	$3,624,868.37	Note A	$1,899,227.66
National City Bank Stock	2,716,800.00	1,630,080.00	Note A	1,086,720.00

* This is the date of the report of examination discussed at the December conferences

	4-28-38	1-31-40		Reduction
First National Corp. Portland	1,000,000.00	——		1,000,000.00
Transamerica Service Corp.	7,600,000.00	2,700,000.00	Note B	4,900,000.00
Intercontinental Corp.	7,150,000.00	4,700,000.00	Note C	2,450,000.00
Land Companies (Capital Co. and California Lands, Inc.)	41,533,403.30	29,121,797.80	Note D	12,411,605.50
A.O.Stewart Note E	8,088,003.96	7,346,621.69		741,382.27
Former Bank Premises	5,913,041.42	2,494,699.34	Note A	3,418,342.08
Bond Write-up	2,825,597.55	——		2,825,597.55

Note A: Scheduled to be eliminated by July 15, 1942.

Note B: In August 31, 1939 report $1,000,000 classified under II. Loan since reduced $2,100,000.

Note C: August, 1939 report shows this loan to be adequately secured, conforming and unclassified.

Note D: Scheduled to be eliminated by December 15, 1943.

Note E: Pacific Coast Mortgage Co., $2,925,000, no longer included by Bank Examiner as part of A. O. Stewart line.

Earnings

A comparative statement of operations of the Bank since 1932 shows a substantial and continuous increase in total operating profit year by year from $22,765,000 in 1932 to $44,427,000 in 1939 and a net operating profit before losses likewise increasing year by year from $2,400,000 in 1932 to $12,051,000 in 1939 and a net profit after losses in every year except 1932 with a net loss of $468,000 and 1934 with a net loss of $2,637,000. More than 86% of all losses since 1932 have been occasioned on transactions originating prior to 1932 and profits on the sale of securities for the period have been more than sufficient to provide for all losses with the exception of losses occurring on transactions originating subsequent to 1932 which have been provided for from current operations.

Form 1430
Treasury Department
Comptroller of the Currency--Reports

No. of Bank 13044

C O P Y

Comparative Schedule of Occupancy Expense for Banking Quarters

Rent paid and Received	1932	1933	1934	1935	1936	1937	1938
Rent paid on leased premises	1,788,174	1,679,588	1,393,717	1,377,324	1,434,248	1,508,824	1,418,640
Rent received exclusive of banking quarters	1,432,739	1,192,145	1,166,482	1,282,072	1,416,364	1,574,035	1,537,273
Net rent paid, exclusive of owned premises	355,435	487,443	227,235	95,252	17,884	65,211R	118,633R
Other Occupancy Expense							
Maintenance & Repairs	1,209,099	1,076,809	955,730	1,282,167	1,669,740	1,510,904	1,681,975
Real Estate Taxes on Bank premises owned	673,921	542,218	482,400	460,204	482,889	490,607	511,269
Total other expense	1,883,020	1,619,027	1,438,130	1,742,371	2,152,629	2,001,511	2,193,244
Total net expenses before depreciation	2,238,455	2,106,470	1,665,365	1,837,623	2,170,513	1,936,300	2,074,611

	1932	1933	1934	1935	1936	1937	1938
Depreciation							
Buildings	451,094	432,551	- 442,032	390,769	392,164	445,041	420,211
Furniture	168,913	170,441	172,090	190,641	210,616	207,360	227,583
Fixtures & Equipment	416,573	409,755	411,189	454,908	463,659	483,122	558,305
Repairs on Equipment	31,714	40,380	67,770	80,127	86,001	112,056	126,985
Total Depreciation	1,068,294	1,053,127	1,093,081	1,116,445	1,152,440	1,247,579	1,333,084
Total Occupancy Expense	3,306,749	3,159,597	2,758,446	2,954,068	3,322,953	3,183,879	3,407,695
Deposits as shown by reports of condition (in thousands)	698,762	767,581	975,948	1,148,750	1,287,927	1,286,818	1,353,456

The foregoing schedule of occupancy expense is taken from the report of examination commenced August 31, 1939, page 14, Insert 2.

It is to be noted that occupancy expense increased but $101,000 during the seven-year period whereas deposits increased from $698,000 to $1,353,000,000. During this period 65 new banking locations were added and in spite of this fact, the occupancy expense decreased from $4.70 a year for each $1,000 of capital and deposits in 1932 to $2.30 a year for each $1,000 of capital and deposits in 1938 or $2,300 a year for each $1,000,000 of deposits being $191.66 a month which surely would not be considered an excessive cost for banking house, furniture, fixtures and equipment including maintenance, repairs and taxes for a million dollar bank.

In a national survey made by the American Bankers Association a year or so ago, the average annual occupancy cost of 284 reporting banks was found to be $4.10 per $1,000 of capital and deposits.

EXAMPLES OF CRITICISED PROPERTIES

		COST						APPRAISALS*		CURRENT ACTIVITY			
No.	Branch	Land	Bldg.	Total	Depreciation	Book Value	Examiner's Valuation	Reproduction Cost less Depreciation	Valuation after Penalties	Average Deposits	Average Loans and Deposits	Outside Income	Percentage Book Value
10	Fresno	352,537	421,505	774,042	129,259	644,783	488,966	1,103,226	850,000	19,388,000	30,540,000	26,861	.041
20	Seventh & Olive	—	1,814,244	1,814,244	522,431	1,291,813	750,000	1,354,905	1,354,905	17,413,000	26,790,000	118,387	.091
35	San Jose Main	336,606	929,241	1,265,847	225,380	1,040,467	800,000	1,409,566	1,150,000	13,460,000	21,571,000	74,204	.071
50	San Diego Main	1,108,046	1,520,042	2,628,088	305,659	2,322,429	1,500,000	2,850,863	2,215,000	18,544,000	25,465,000	177,788	.076
289	Clay Montgomery	193,161	694,599	887,760	206,765	680,995	450,000	918,861	800,000	13,170,000	19,007,000	76,234	.111
600	Los Angeles Main	1,735,207	2,364,684	4,099,891	630,116	3,469,775	2,500,000	3,701,042	3,701,042	40,494,000	79,314,000	235,000	.067
958	Whittier	88,026	419,920	507,946	129,522	378,424	300,000	415,616	367,500	3,513,000	6,413,000	23,358	.061

* American Appraisal Company

OAKLAND MAIN OFFICE R. E. LOANS CLASSED BY EXAMINERS AS ILLEGAL AS OF 9-15-39

		Amounts		
Acorn Realty Co.	*	119,000		Taken from Bancitaly Mtge. Co.
"		606,000		(Taken from Oakland Bank where it was (then conforming)
" (G. E. Gray)		125,000		(
" (G. E. Gray)	*	75,000		May be D.P.C. Record not clear.
Bancroft & Grove Inc.		10,355		Taken from Oakland Bk.
Bancroft H. P. Inc.		22,397		do
Carpenter, H. G.		465	**	Qualified
Ciampi, M.		3,035		Taken from Oakland Bank.
Brace, A.B.		29,242		do
Clark, A. W.	*	35,840		
Cohn, A. & D.		5,380		Taken from Oakland Bank.
Cardy, Elvira		12,400		do
Dolan, Daisy		60,825		do
Fairman, M. R.		6,727		do
Fillmore, Wm. H.		9,554		Qualified in B. of Italy
Fontaine, Pierre		42,888	**	Sold; Eliminated.
Franklin Invt. Co.		41,100		Taken from Oakland Bank.
"		144,100		do
Friedman, Alfred		10,000		do
Hassler, Axton, Jr.		6,000	**	Qualified
Harold, J. C.		4,433		Under foreclosure; taken from Oakland Bank.
Kulchard, Stephan	*	4,750		Pays $250 mo. & int. Committment made by Oakland Bank.
Lavenson, A. S.		75,000		From Oakland Bank.
Lomax, L. W.		8,261	**	Now qualified.
Lyon, Edmund		8,650		From Oakland Bank.
McCabe, T. J.		3,470	**	Orig. B. of I. (State Bank) Now qualified.
McCrackent, W.J.		64,400		Orig. Oakland Bank
Massie, Eline		28,000		do
Master, Plumbers		5,880		
Nelson, C. R.		24,300		do D.P.C.
Providence Hospital		182,500		Orig. B. of I. (State)
Realty Syndicate		853,806		Orig. Oakland Bank.
Redwood Highlands		82,803		" " "
Rock, Delbert	*	13,500		Technical
Rodriques, P.		1,828		Orig. B. of A. (State)
Rosenthal, L.		2,260		Orig. Oakland Bk. D.P.C.
Ross, Chas. J.		22,360		Orig. Oakland Bk.
Schuline Inv. Co.		13,545	**	Orig. " Eliminated. Now qualified.
Skinner, P.C.		63,105	**	Eliminated O.R.E.
Spencer, Harry W.		27,500		Orig. Oakland Bank.
Steccone, P. & A.		16,096		Orig. Bank of Italy.
Street, E.C.		5,212		Orig. Oakland Bank
Van Loben Sels, S.F.		87,644		" " "
Villa Lite Dev. Co.		134,644		" Bank of Italy (State)
Wundus, H.F.		400	**	Paid
		3,099,162		
Less Res.		548,279	**	Eliminated as indicated (8) $138,134
		2,550,883		Reclassified for reasons stated (33) 2,164,659
				2,302,793
			*	Remaining in classification (5) 248,090
				2,550,883

Conference held in the Office of the Comptroller of the Currency the afternoon of February 13, 1940 for further discussion of the Bank of America situation. Conference called at the request of Mr. O. K. Cushing, Counsel for the Bank of America.

Attended by: Under Secretary of the Treasury Bell
Chairman Eccles of the Federal Reserve Board
Governor McKee of the Federal Reserve Board
Comptroller of the Currency Delano

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

Mr. Cushing stated that his reason for requesting a continuance of the conferences was that he was under the impression that if an agreement could be reached as to the amount by which the capital of the Bank was to be increased (and the details attendant upon such increase) there would be no great difficulty in adjusting the other items proposed in the memorandum submitted to the Bank at the conference on February 9, 1940.

A general discussion ensued as to whether the stock issue should be preferred or common and as to what time limit should be imposed on the consummation of the increase. Mr. Giannini advanced the Bank's position, saying they would prefer that such an increase should be made by common stock and that the mechanics would require at least from now until July 1, 1940 before this could be accomplished. It was the opinion of the Federal officials that preferred stock should be employed and that very little time was necessary to accomplish this. It was pointed out that if later the Bank desired to replace this preferred with common that could be easily arranged. No conclusions were reached, and as the conference broke up Mr. Bell inquired as to the Bank's intention concerning the "Show Cause" hearing which was scheduled for the next day, Wednesday, February 14. Mr. Cushing informed the conference that the Bank had definitely decided not to attend the hearing and that the Comptroller would be so notified by letter in the morning. Mr. Cushing further advised that the Bank did not care to ask for a continuance of the hearing but would accept notification of one, and further that the Bank desired to continue conversations looking toward settlement. *Mr. Bell made it plain that the informal ~~hearings~~ conferences could not continue while the hearings before the Special Examiner were being held.*

DWB

February 14, 1940

Presented by Messrs
Giannini & Cushing
on 7/20/40

<u>Response to Memo Presented by the Committee with Regard to Bank of America N. T. & S. A.</u>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

From Delano
2-14-40

CUSHING & CUSHING
Attorneys at Law
1 Montgomery Street
San Francisco, Cal.

Mayflower Hotel
Washington, D.C.
February 14, 1940

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

Dear Sir:

This has reference to your communication to the Bank of America N.T.& S.A. and its Directors dated January 11, 1940 in which you announce a proceeding for the purposes specified in your communication, on February 14 before Henry M. Bates as your special representative.

We believe you have been advised by Mr. Everard, the Secretary of the Bank, that we are authorized to represent the Bank and its Directors.

12 U.S.C.A., Section 484 provides that "No bank shall be subject to any visitorial powers other than such as are authorized by law * * *." In our opinion, the proposed proceeding involves the exercise of visitorial powers which are not authorized by law and any decision of your representative would have no legal validity and would bind neither you nor the Bank.

One purpose of the proceeding, as described in your communication, relates to the possibility of a hearing before the Board of Governors of the Federal Reserve System pursuant to a statute (12 U.S.C.A., Section 77) which prohibits publicity of any order of the Board and findings of fact upon which it is based. The publicity that has already been given to your notice of the proposed proceeding seems to run counter to that statute.

The Bank, of course, is willing to give you any information for which you may ask concerning its business or affairs, but the Bank and its Directors very respectfully decline to participate in this proceeding.

Yours very respectfully,

CUSHING & CUSHING

By O.K. Cushing (signed)

FEB 16 1940

O. K. Cushing, Esq.,
Mayflower Hotel,
Washington, D. C.

Dear Mr. Cushing:

In the Comptroller's absence I am acknowledging your letter of February 14, 1940, declining on behalf of the Bank of America N.T. & S.A. and its directors to participate in the proceeding before Henry M. Bates as his representative, which was scheduled to commence on February 14 and which is now under way. The reasons which you give for not participating are, briefly, first, that the proceeding involves the exercise of visitorial powers not authorized by law, and second, that the publicity already given the proceeding runs counter to law.

As was pointed out in the Comptroller's telegram of January 20, 1940 to Mr. Everard, Secretary of the Board of Directors of the Bank, the purpose of the proceeding was to provide the Bank and its directors with an opportunity to present before a disinterested tribunal any relevant matter before final action is taken by the Comptroller with respect to sanctions authorized by law. It seems obvious that a proceeding of this character does not involve in any way the exercise of unauthorized visitorial powers. The responsibility for declining to take advantage of the opportunity thus offered them is one which must be borne by the Bank and its directors.

I am sure that the Comptroller shares your regret with reference to the publicity that has been given in the press to the proceeding. However, I repeat the assurance which was given you in the Comptroller's office that no one connected with the Treasury Department is responsible in any way for the publicity, and any implication in your letter to the contrary is in fact without any foundation whatsoever.

Very sincerely yours,

Deputy Comptroller of the Currency

NOT:lld 2-14-40
cc: Cushing & Cushing
Attorneys at Law
1 Montgomery Street
San Francisco, California.

Bank of America
NATIONAL TRUST AND SAVINGS ASSOCIATION

SAN FRANCISCO HEADQUARTERS

SAN FRANCISCO, CALIFORNIA

Mayflower Hotel
Washington, D. C.
February 20, 1940

Mr. C. B. Upham
Deputy Comptroller of the Currency
Washington, D. C.

Dear Sir:

This has reference to your letter dated February 16 regarding the proposed proceeding before the special representative of the Comptroller.

The Comptroller's letter of January 11 announced a proceeding to be held before a "special representative of the Comptroller of the Currency". But in his wire of January 20 to the Secretary of the Board of Directors of our Bank he refers to the proceeding as giving the Bank "an opportunity to present before a disinterested tribunal any relevant matter." Without attempting a technical definition of a disinterested tribunal, it seems to me that under the American theory of government a disinterested tribunal is one like a court which is established by constitution or statute, independent of either the executive or the legislative branches of government.

The Comptroller's letter of January 11 gives notice of a possible publication of the report of examination of the Bank as of March 31, 1939 which examination was completed July 21, 1939. Since then, there was completed on December 20, 1939 the report of the examination of the Bank as of August 31, 1939. The December report of examination shows that the July report of examination contains erroneous conclusions and definite misstatements of fact and that the condition of the assets commented on in the July report has improved since March 31, 1939. It is thus evident that publication of the July report of examination would result in misleading the public as to the condition of the Bank. We do not believe that the Comptroller would choose to do that. If it were published, clearly the responsibility therefor would not be that of the Bank or its Directors.

The only other "sanction" expressly mentioned in the Comptroller's letter of January 11 is the possible transmittal to the Board of Governors of the Federal Reserve System of "a certificate for the removal of directors and officers of the Bank." We believe that the Comptroller has no authority to do that but that, in conformity with the statute, he "may certify the facts to the Board of Governors of the Federal Reserve System." We understand that such certification is the means provided by law to arrive at a decision on the questions such as those now pending between the Comptroller and the Bank. Since the Comptroller alone has the power to decide whether such a certification shall be made, a proceeding before any other person to that end necessarily would be futile, because such person could not make the decision.

Frankly, we do not understand why the Comptroller should contemplate invoking any "sanctions" against the Bank in view of its continuous and substantial progress. As one item of such progress, the December report shows the adjusted capital structure of the Bank as computed by the National Bank Examiner to be more than $100,000,000, after giving effect to all deductions made by the Examiner for items classified by him as doubtful or loss, in which classifications we cannot concur. The figure fixed by the Examiner shows an increase of more than $7,000,000 in five months over the Bank's adjusted capital structure as shown by the Examiner's figures in the next preceding report of examination.

Representatives of the Bank are now engaged in an effort to come to an understanding with the Comptroller. If that effort should fail and the Comptroller should decide to certify the facts to the Board of Governors of the Federal Reserve System, the officers and directors, confident that they are operating the Bank in accordance with law and safe and sound banking practice, will welcome the opportunity to present the matter before that Board in the hope that a hearing there may resolve the existing differences.

Very truly yours,

L. M. Giannini, President
BANK OF AMERICA NATIONAL TRUST
AND SAVINGS ASSOCIATION.

COPY

BANK OF AMERICA
NATIONAL TRUST AND SAVINGS ASSOCIATION
SAN FRANCISCO CALIFORNIA.

Mayflower Hotel,
Washington, D.C.
February 20, 1940

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

Dear Comptroller Delano:

I am sending you the enclosed copies of the schedules with respect to the Bank's investment account which I promised you this afternoon. There are additional copies to be furnished to the others present at the meeting this afternoon. I have not been able to secure the other information yet but will communicate it to you just as soon as it is received.

Kind regards.

Very truly yours,

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

INVESTMENT ACCOUNT -- BANK OF AMERICA, N.T.& S.A.

	Governments		Tax-Exempts	
Date	Net Carry	Average Net Carry	Net Carry	Average Net Carry
December 31, 1931	142,374,707.38	104.708	67,791,778.86	104.786
June 30, 1932	151,094,925.71	109.506	68,979,259.10	103.57
December 31, 1932	169,685,564.47	103.71	73,269,320.24	103.08
June 30, 1933	177,647,862.34	102.686	73,746,006.79	102.948
December 31, 1933	214,839,858.68	102.379	76,507,970.63	101.246
June 30, 1934	277,118,849.69	102.161	102,932,324.83	98.307
December 31, 1934	346,954,777.30	101.878	101,033,984.82	101.183
June 30, 1935	340,222,055.47	103.553	98,692,486.55	102.414
December 31, 1935	484,440,089.49	102.614	91,902,115.32	105.456
June 30, 1936	485,783,726.80	101.89	96,323,418.52	104.627
December 31, 1936	461,346,989.14	102.67	101,307,930.95	106.433
June 30, 1937	414,559,084.70	102.505	92,865,348.99	105.861
December 31, 1937	418,973,058.33	101.94	85,358,708.47	105.124
June 30, 1938	432,379,483.36	102.221	99,424,399.79	104.185
December 31, 1938	405,468,768.83	101.815	107,680,007.63	104.664
June 30, 1939	390,064,439.98	103.086	134,164,163.87	104.59
December 31, 1939	424,254,993.92	102.891	139,194,443.15	104.46

Note: Net carry value is carry value after deductions for Reserves for Amortization of premium.

February 17, 1940.

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

Each year since 1935 Loans and Discounts to Total Resources rose in percentage to Total Resources.

1935	35.3%	$451 (in millions)
1936	37.2	532.1
1937	42.2	630.7
1938	42.8	673.8
1939	43.6	711

At the same time the amount of Governments held and the percentage to Total Resources declined.

1935	38.3%	$488.6 (in millions)
1936	32.6	466.4
1937	28.5	425.3
1938	26.2	412.3
1939	26.6	434

This declining trend in the percentage of U. S. Governments to Total Resources is a reversal of the previous trend for the preceding five years when the percentage of U.S. Governments to Total Resources was as follows:

1930	12.7%	$147.5 (in millions)
1931	15.4	142.8
1932	19.4	170.2
1933	22.8	215
1934	31.1	355.3