Book 362

Bank of America

February 21 - May 20, 1939

Bank of America

[illegible]

RECONSTRUCTION FINANCE CORPORATION

WASHINGTON

February 25, 1939

Dear Mr. Giannini:

Reference is made to the meeting this morning between the Comptroller of the Currency, you and myself.

I am authorized by our Directors to advise you that, upon the ~~receipt~~ request of the Secretary of the Treasury and approval of the President, the RFC will lend to the stockholders of the Bank of America N. T. & S. A., individually or in group, the money necessary to enable each stockholder to subscribe for his pro rata share of any increase in the capital stock of your Bank that you may determine to make and that is approved by the Comptroller of the Currency. The stock to be preferred stock bearing 4% per annum, preferred both in dividends and distribution. The loans will be at 3 1/2% per annum, payable quarterly, and will mature one-tenth each year for five years and the balance in six years.

The voting rights accorded the stock will be exercised by the RFC only if there is default in the payment of interest or principal of the note.

Sincerely yours,

Jesse H. Jones /s/
Chairman

Mr. L. M. Giannini
President
Bank of America N.T.& S.A.
San Francisco, California.

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Sincerely yours,

(Signed) Jesse H. Jones

Chairman

Mr. L. M. Giannini
President
Bank of America N. T. & S. A.
San Francisco, California

CC - The Comptroller of the Currency

March 7, 1939

FOR THE SECRETARY:

I don't know whether I still have any responsibility for the Bank of America case, but if I do have perhaps I should tell you that the next meeting of the directors on a dividend probably will be March 13th.

ESD

March 10, 1939

To: The Secretary

From: Mr. Hanes

Under date of February 25th, Mr. Jesse Jones sent a letter to Mr. Giannini, copy of which is attached herewith. In my memorandum of February 15th I stated that I would not bother you about this Giannini matter until something concrete happened. I am bringing this to your attention now as this is the first change in the situation which has taken place since my memorandum. I understand from Jesse Jones that there is no departure in what he is proposing to do here from what has been done in other cases in the past.

Also, since my memorandum, Mr. Giannini has replied to a letter from the Comptroller of the Currency, in which the Comptroller advised that the preliminary figures of the audit showed a necessity for taking steps looking toward augmenting his capital to bring his ratio up to 1 - 10. In this letter Mr. Giannini states that he has every intention of going through with his agreement to raise new capital but it is apparent from the tone of the letter that when he does so it is with a feeling that he is going far beyond any requirement of law or even beyond requirement made by the Comptroller of the Currency upon other banks. In other words, to put it simply, I still believe Mr. Giannini is going through with the program in spite of the fact that he does not like it.

J. W. H.

COPY

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WASHINGTON

February 25, 1939

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Sincerely yours,

/s/ Jesse H. Jones
Chairman

Mr. L. M. Giannini
President
Bank of America N. T. & S. A.
San Francisco, California.

March 9, 1939

MEMORANDUM TO: Mr. John W. Hanes,
Under Secretary of the Treasury

The attached is copy of a letter received today from the President of the Bank of America.

You will note that in the final paragraph Mr. Giannini says "...the Board of Directors at the meeting on March 14 intends to take definite action to propose after conference by the Management with you the final plan to be submitted to our stockholders and informing them of the additional capital to be subscribed." This would seem to be a commitment that initial steps will be taken at the meeting on March 14th of this year to provide the additional capital required not later than June 30, 1939.

P.D.

CABLE ADDRESS - BANKAMERICA

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Bank of America
NATIONAL TRUST & SAVINGS ASSOCIATION

L. M. GIANNINI
PRESIDENT

San Francisco, California
March 7, 1939.

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

My dear Mr. Comptroller:

Your letter of February 20, 1939, arrived when I was in the East, and reached me subsequent to our last conference in Washington on the morning of February 25, 1939, at which time we discussed and agreed upon the procedure to be followed in the matter of increasing our capital.

On the basis of this understanding and of a mutual observance in good faith of the provisions of the memorandum of December 15, 1938, you can consider that our Board of Directors and the Management of the Bank are committed to proceed with a program to increase the capital structure of the Bank to the Department's specified ratio not later than June 30, 1939, the amount of additional capital, as agreed with you, to be arrived at after we have had an opportunity to discuss with you in detail the findings of your examiners with regard to the actual asset value of the Bank, and items that were left for further discussion in the memorandum.

May I be permitted to call to your attention, for the purpose of clarifying the situation, the fact that your letter refers to the memorandum as mine, whereas in fact it was not of my authorship but was prepared in the Treasury Department after the conferences to which your letter refers. It does not represent our views, opinions, or conclusions, but was accepted by us on the basis of our confidence in the assurances of the conferees that fair treatment would be accorded this Bank, and in the interest of arriving at an amicable adjustment of differences. It was expressive of our desire to go more than half way in an endeavor to cooperate with the Treasury Department.

Our position with respect to this and other issues raised was clearly set forth in our letters of September 15 and October 11, 1938. It is difficult for me to understand how it can be construed that the arbitrary provisions of the memorandum express in any way our position with regard to capital structure, particularly when, as was pointed out in the above mentioned communications, our institution is presently over-capitalized by more than 100% under existing laws.

Since 1932 when the Bank came under this Management, its deposits have been increased from less than $700,000,000 to approximately $1,400,000,000 and its earnings have been so greatly increased, and its expenses so reduced, that an improvement of more than $69,000,000 was made in its net sound capital structure by the end of 1938. If further evidence be required to demonstrate the soundness of our policies and the efficiency of our Management, we point with satisfaction to the remarkable resistance of the Bank to damaging effects as a result of the unwarranted and unfair attacks made upon it and its Management, the Bank's business having remained at normal levels and its earnings having increased.

Our Board of Directors has at two consecutive meetings discussed the matter of the Department's requirement of increased capital structure, which, as I stated to you, is extra-legal, and appears inequitable and arbitrary because it is not applied to all banks. Nevertheless, on the basis of the memorandum and our understanding with regard to the procedure to be followed, arrived at in our conference of February 25, 1939, the Board of Directors at the meeting on March 14 intends to take definite action to propose after conference by the Management with you the final plan to be submitted to our stockholders and informing them of the additional capital to be subscribed.

My kind regards to you.

Yours very truly,

President.

TREASURY DEPARTMENT

INTER OFFICE COMMUNICATION

DATE

March 13, 1939

TO Secretary Morgenthau

FROM E. H. Foley, Jr. Acting General Counsel

For your information

I have just been informed that the Bank of America case on appeal before the local Court of Appeals has again been adjourned until Monday, March 27, at the request of Donald Richberg, who has been detained in Mexico City.

E.H.F.Jr.

COPY

Mr Upham

BANK OF AMERICA
NATIONAL TRUST AND SAVINGS ASSOCIATION

SAN FRANCISCO CALIFORNIA.

March 15, 1939

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

Dear Sir:

Pursuant to the program outlined in the memorandum of December 15, 1938, the Board of Directors of Bank of America, N.T. & S.A. at its regular meeting held on March 14, 1939, adopted resolutions relating to capital increase and the payment of a dividend. Copies of the resolutions referred to are enclosed.

Copies of these resolutions have also been sent to the office of the National Bank Examiner in Los Angeles.

Respectfully,

R.P.A. Everard /s/
R.P.A.Everard,
Secretary
Board of Directors.

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WHEREAS, it is the desire of this Board of Directors to carry out the spirit of the resolution adopted by the Board on January 10, 1939:

NOW, THEREFORE, BE IT

RESOLVED, that a special committee be appointed, with power to act, to study the capital structure of this Association, to work out the details of a plan to increase the capital stock of the Association and to propose through the Board to the stockholders of this Association after agreement between the management of this Association and the Comptroller of the Currency in regard to this subject a plan designed to effect such increase; and

BE IT FURTHER RESOLVED, that the following named persons be, and they hereby are, appointed the members of said special committee:

Marshal Hale
C.H. Baker
Dr. G. E. Caglieri
F. W. Flint, Jr.
Dr. A. H. Giannini
A. P. Giannini
L. M. Giannini
C. N. Hawkins
H. A. Mazzera
Wm. Wallace Mein
Henry S. McKee
A. F. Morlan
Dr. C. J. Sullivan

I, R. P. A. EVERARD, the duly elected and qualified Secretary of BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, a national banking association organized and existing under and by virtue of the laws of the United States of America, and having its principal place of business in the City and County of San Francisco in the State of California, hereby certify and declare that the foregoing resolution is a full, true and correct copy of a resolution duly passed and adopted by the Board of Directors of said bank at a meeting thereof held on the 14th day of March, 1939, pursuant to the By-laws, at which meeting a quorum of the Board of Directors was present and voted in favor of said resolution; that said resolution has not been rescinded or amended and that the same is still in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Association on this 15th day of March, 1939.

Secretary of BANK OF AMERICA NATIONAL
TRUST AND SAVINGS ASSOCIATION.

S.

RE BANK OF AMERICA SITUATION

March 15, 1939.
3:00 p.m.

Present: Mr. Hanes
Mr. Foley
Mr. Duffield
Mr. Delano
Mr. Upham
Mr. Murphy

H.M.Jr: The reason of this meeting is, I read on the Dow-Jones ticker that they voted a dividend, and, not being a stockholder of the Bank of America, I've got to come to you to get my information. So - incidentally, I've got a bottle of champagne at stake, too.

Upham: Well, I lost a dollar.

H.M.Jr: What?

Upham: I lost a dollar.

Delano: I collected one bet. I'm not so sure about the champagne.

H.M.Jr: I want you to know there's at least one bottle of champagne at stake.

Upham: That will influence my decision.

H.M.Jr: You've lost a dollar?

Upham: Yes.

H.M.Jr: What was your bet?

Upham: I bet they'd pay a 25 percent dividend.

H.M.Jr: What did they pay?

Upham: 19.2.

Delano: 19 - regular dividend.

Upham: That was a little foolish, I think.

H.M.Jr: Where do we go from here?

Delano: The question hinges here, Mr. Secretary, as to whether they've taken what they call preliminary steps looking toward the placing of new capital in the Bank. That was the memorandum that we had called for.

Now they've passed a resolution appointing a committee to confer with the Comptroller as to the amount of capital. Now, we haven't seen the text of that thing; it's coming out by air mail. That's what they tell us after the telephone ...

H.M.Jr: Have you any inkling what method it's going to be?

Delano: Yes, they've talked to Jesse Jones about the method and they've got a plan worked out with Jesse. He has given them a memorandum subject to your approval and the approval of the President, and that method calls for Jesse to loan their stockholders up to a hundred percent on their subscriptions for this stock. In other words, the issue will be offered to their own stockholders and underwritten by the R.F.C.

H.M.Jr: How big will the issue be?

Delano: Well, we don't know yet. Our records show it ought to be somewhere between 33 and 38 million.

H.M.Jr: Now wait a minute. The stockholders get a chance to subscribe - let's say they offer them 30-odd million, let's say.

Delano: Right.

H.M.Jr: 30 million plus of stock.

Delano: That's right.

H.M.Jr: Now, if they only get 25 million, and let's say they're 5 million dollars short, what does the R.F.C. - what would they have to do?

Delano: The R.F.C. would then take the balance, it's my understanding.

H.M.Jr: What kind of stock is it?

Delano: It's preferred stock paying 4 percent.

H.M.Jr: Preferred stock.

Delano: And the R.F.C. is loaning the money at three and a half.

H.M.Jr: To?

Delano: To the stockholders to subscribe to this stock, which is 4 percent stock.

H.M.Jr: At three and a half. I'm a stockholder, borrow at three and a half, then the Bank pays me 4.

Delano: That's right.

H.M.Jr: A half percent profit.

Delano: There's half a percent profit in the transaction.

H.M.Jr: Why?

Delano: I don't know.

Hanes: Inducement.

Delano: Inducement, I guess.

Hanes: Inducement to make the local people subscribe, if you can. That's what the R.F.C. wants to do: get their money in the Bank rather than our money.

H.M.Jr: Why shouldn't the R.F.C. get, say, 4 percent in this case?

Hanes: Why shouldn't they get 4 percent?

H.M.Jr: Why shouldn't they?

Hanes: I don't know. My understanding is that this is not an unusual practice, for the R.F.C. to encourage local bank people to put their money in their local banks.

Delano: They've done it before, if you'll remember.

H.M.Jr: No, I don't.

Delano: The Fleishhacker loan.

H.M.Jr: Yes.

Delano: Done on the same basis.

H.M.Jr: Was it?

Delano: Yes, the loan to Fleishhacker.

Duffield: The first loan.

Delano: First loan to Mr. Fleishhacker.

H.M.Jr: That was to the Lily Corporation?

Foley: No, September.

Duffield: Other end of the year.

H.M.Jr: That's a hell of a long time ago.

Upham: I think it was a two percent ...

Delano: There was a wide spread in there at that time.

H.M.Jr: That's six years ago.

Delano: I don't know what's happened in the meantime.

Hanes: I said to Uncle Jesse, "Is there anything unusual in your arrangement with Giannini? In other words, is this transaction any different than you would make for any bank in the United States?"

He said, "Absolutely not."

H.M.Jr: Well, he's wrong; he's wrong. We'll search our records, and since I've been Secretary of the Treasury we'll go back; won't go back of that. I don't think we've ever made a loan like this since I've been Secretary of the Treasury. It's very easy to ascertain.

Upham: I never saw one go through.

Hanes: I don't know.

H.M.Jr: Where are our records? I mean where would the records be?

Delano: Our Preferred Stock Section would have them.

Upham: Plus Murphy.

Foley: Murphy would know, in George Haas's section.

H.M.Jr: Who can do this for me, for my end of it?

Foley: I can do it or Gene can do it.

H.M.Jr: Well, how would you (Hanes) like it done from our end, to search my records? Can you (Duffield) do it?

Duffield: I'll do it.

H.M.Jr: Well, I want to know if while I've been Secretary of the Treasury - I don't think, John, I've ever done it. And then go back - I mean have a cut-off date since I've been Secretary, see?

Duffield: Uh-huh.

H.M.Jr: And then - well, that's far enough back, isn't it?

Delano: Yes, that's right.

H.M.Jr: I don't think it's ever been done.

If that's the one, I don't like it. I don't like it. Now we're right back - I mean this is the purpose of this meeting - I mean I see this - the reason that it's unusual and apart - I mean it looks as though the thing was practically set, then I've got to come along and throw Giannini down.

Hanes: Why don't we ask Jesse right now on the phone about it? He may have the answer quickly, so we'll know what it is right now.

Duffield: Well, can I ask a question before we do it? What would the R.F.C. buy this preferred stock for direct?

Upham: Three percent.

Hanes: Buy what?

Duffield: Buy this stock direct. I mean what interest - dividend rate would it ask if it bought this stock?

Delano: Well, three, in some cases three and a half.

Upham: If they reduce according to schedule, they get a three percent rate. You see, Jesse's making money by doing it this way also.

Duffield: Well, the Bank, by that token, is paying more, isn't it?

Upham: That's right.

H.M.Jr: I mean this is such a big broad thing and there is so much around town.

Delano: I want to add two things, Mr. Secretary. In the first place, I think it should be made clear that this deal - these proposals between Mr. Jones and Mr. Giannini were worked out without my having knowledge of them. You see?

H.M.Jr: Well, that's not right.

Delano: That is, the deal was made by Mr. Jones with Mr. Giannini.

H.M.Jr: Well now, before I call ...

Delano: That's number one.

H.M.Jr: Please take your time. I've got all the time necessary.

Delano: The second thing is, so you'd be fully informed as to the terms of this preferred stock, it's to be retired within six years and to be amortized - I'm talking about the loan now on the stock to the stockholders - be amortized at the rate of 10 percent per annum for five years, and then a lump sum in the sixth year to retire it all.

H.M.Jr: Well now, look, if you came in here and said to me, "Morgenthau, we're proposing three percent on the regular basis the way we've always done it" - so far as I know - I mean there may be some isolated case; I'm willing to say that if we've done, since I've been here, five hundred cases, there may be one, but I don't think there is one; and even if there is one you can't say this is the usual way to do it. Now, if I ever want to do it the usual way, I now want to do it the way the 99 have been done and not the way the one has been done. Now, see?

Why can't, if it's agreeable to Hanes, in order - or I'll do it any way - but in order to make it again look - I mean I don't want to take the ball away from you fellows. See what I mean? But I don't want to find myself with a thing almost sewed up and then suddenly come over here and Giannini is under the impression that it's all right and that he's got the thing all settled, and then suddenly I'm in the position - or we'll be unanimous -...

Hanes: ... of holding back, yes.

H.M.Jr: I mean all of us together.

Delano: I think that's very important.

H.M.Jr: And I mean if this thing - if I'm right, and I've got a pretty good memory on these things - now look, I don't want to take this thing at this stage, but do look that up.

Duffield: I'll look that up.

H.M.Jr: On this thing. But if I'm right, since I've been Secretary - let's say there's only one time since Mr. Roosevelt's been here; let's say there's only once. I would say I don't think that you want to come in and recommend it to me, do you?

Delano: That's right.

H.M.Jr: What? Am I right?

Hanes: I wouldn't either. My understanding was everything was in order.

Delano: I paid no attention to it for that reason. I thought it was undoubtedly ....

H.M.Jr: Excuse me a minute. (Leaves room)

Delano: The difficulty of that position right now is that Giannini's been told that's all right. You see?

Hanes: Well, I don't think Jesse - in the first place, he called me up from Florida and I said, "Now, one thing I want to be sure of before I tell the Secretary..." - and I wrote him a memorandum to this effect the same day ... - ".... I want to be absolutely sure that thing is done exactly in accordance with the practice. In other words, I don't want to recommend to the Secretary to do something that is either one way or the other - now the position is pretty precarious if we're going to do things differently in this case than it's ever been done before."

Jesse assured me that it was absolutely in accordance with the general practice. But if it isn't ....

Delano: Well, it was not put up to us, John. Was it put up to you? It wasn't put up to me. Jesse just did it.

Hanes: He didn't put up any of the details to me except to say, "You remember I wrote Giannini a letter, of which I sent a copy to the Secretary, stating that with the Secretary's consent I would agree to underwrite his offer to stockholders."

So I said, "Well, the underwriting must be in accordance with the practice." That's all I asked.

Delano: Well, that's what I thought.

(H.M.Jr returns)

H.M.Jr: Look, let me say something here where I think we can make life easier for everybody, see, and I think that Hanes will agree with me. I think we have to let Jones know - and I think you're (Delano) the person that has to do it - that he mustn't advance these things as far as they are, to a state, where it's a national bank and where the law says I have to ask for it and where you are my representative as far as national banks go, that we have to be in a position where we might have to publicly turn down Jesse Jones.

Delano: Yes.

H.M.Jr: Now, that's what it amounts to. Now, Jesse can reach you, he can reach Hanes, he can reach me any time he wants to. We're not turning down the Bank, we're turning down Jesse Jones. And of all the banks, with all these suits pending, I don't see how for one second you can make any kind of a proposition which isn't like 99 out of 100. Am I right, John?

Hanes: Right.

H.M.Jr: What?

Hanes: Absolutely right.

H.M.Jr: And I'm not - this group wouldn't be turning down Giannini, we'd be turning down one Jesse Jones.

Delano: It's the terms that you're objecting to.

H.M.Jr: That's all. All I'm asking is, from what you tell me - is that whatever the proposal is, it be just like the last hundred that I've done. Now, certainly nothing could be more reasonable than that. I want the same as the last hundred. Am I right, Cy?

Upham: Seems so to me.

H.M.Jr: And I wouldn't be turning down Mr. Giannini on your advice; I'd be turning down Jesse Jones, and I don't want to turn down Jesse Jones. But the only way he can do is to let you know right from the beginning.

And certainly the President wouldn't want for a minute - even if I recommend something which is the way you describe it, I'm sure he wouldn't take it. And then - well, I just think the whole thing would be unfortunate.

Now, if we still got - but unless Hanes disagrees, I wish you'd (Delano) talk - I think the way I feel is that this national bank is your baby, and I think after you get the information and if we're right, if this hasn't been done once in five years... I mean I wouldn't go back to that one thing, because God! if we've got to say we did it the way we did it for Fleishhacker and draw attention to that one, I think that would be .... "Well, how did you do it?" "We did it the way we did that September Corporation" Then focus the whole attention of America on the September Corporation? I think Jesse must be slipping.

Delano: Well, I think he must have done some in between there, don't you, John? I mean I can't conceive his making those statements with ...

Hanes: I think before we get excited we'll find out just exactly how ....

H.M.Jr: Henry Murphy knows this stuff, doesn't he?

Upham: Yes.

H.M.Jr: (On phone) Tell Henry Murphy to come right in here, please.

Duffield: Would Transamerica as a holder of the common stock of the Bank - any statement as to whether they would borrow or put up their own money in order to subscribe for this preferred stock?

Delano: No, the whole question is of being an option, Gene - an option. That is, Jesse is standing behind the offer.

Duffield: That is, he'll lend them the money if they want to borrow it.

Foley: Lend individuals the money?

Delano: Individuals or any stockholders. Of course, Transamerica owns 48 percent of the stock of the Bank.

Duffield: I would hate to see Jesse lend Transamerica money on which they'd make a half percent profit to buy stock in the Bank. I think they ought to go down in their jeans.

Foley: I do too. I think we'd look a little foolish putting $35,000,000 new capital into a bank and they declare a 19 percent dividend. If they've got that much profit, why don't they rehabilitate their capital out of earnings?

H.M.Jr: Well, that's the position that I took originally.

Delano: Well, of course, that's the position we'd all like to see them take.

Foley: If you're going to loan them money to buy their own stock and put it in the treasury and make one-half percent ....

Hanes: It isn't quite that, because you've haven't got any - you're asking this bank to go way beyond what you're asking any other bank in the country to do.

Upham: Oh no.

Hanes: You certainly are. You haven't got a one-to-ten ratio, you're not demanding a one-to-ten ratio, in other banks.

Upham: We insist on that in every bank. We don't get it in all banks. We haven't got it in all banks. But we don't have a bank of this size, with the complexities and the number of branches, anywhere else. This bank - if other banks have a ten-to-one ratio, this bank ought to have a one-to-seven.

Hanes: Well, but you haven't got any way to enforce it. All I'm saying is, you haven't got any power to enforce it.

Upham: But we're treating it just like other banks.

H.M.Jr: I thought the Comptroller wrote a letter telling these fellows not to pay any more dividends, in September. Didn't we?

Delano: We sent them a wire.

H.M.Jr: Which was read to all the directors, in September.

Duffield: The agreement superseded that, though.

Delano: I suppose that conference here superseded that.

H.M.Jr: Is "superseded" the word? That isn't the word, is it? What's the word?

Duffield: The lawyer ought to tell us.

H.M.Jr: I mean you can't "supersede" ....

Duffield: "Nullified" it or whatever it is.

Foley: I never thought that that agreement nullified the dividend warning. To make clear that it didn't, I wanted to put in this letter a repetition of the warning that we put in the telegram, and I was overruled.

H.M.Jr: No, but what I'm getting at - what's the word - I mean the word which follows - I mean where ...

Upham: "Supplement."

Delano: It wouldn't supplement it, it would replace it.

H.M.Jr: "Replace."

Delano: I think "supersede" is the good word.

H.M.Jr: All right.

(Murphy comes in)

Henry, are you familiar with handling preferred stock subscription of national banks?

Murphy: Yes, sir.

H.M.Jr: All right. As far as you can remember, have we ever - have I ever signed a letter to the R.F.C., where the bank offers its stockholders a right to subscribe to new preferred stock and the R.F.C. underwrites that issue?

Murphy: To the best of my knowledge, and I think it's complete, there haven't been any cases of just that form, no. We have always requested that they subscribe to the stock, rather than having an underwriting deal.

H.M.Jr: Well, would you go back ...

Upham: Henry, what he means: are there any cases where we have asked the R.F.C. to lend money to the stockholders?

Murphy: Yes, there are quite a ....

Upham: With which to purchase the stock.

Murphy: Yes, there are a number of cases of that kind. I thought you meant that the R.F.C. would stand ready - would underwrite a public offering.

Upham: Since he became Secretary, a number of cases?

H.M.Jr: Well, wait a minute. Let's get the proposal. Let's get that straight first. What's the proposal?

Delano: You want me to give it?

H.M.Jr: What's the proposal, so he can look it up.

Delano: The proposal is that the R.F.C. shall agree.... Let's start the other way. The Bank will offer to its shareholders the right to subscribe to preferred stock at a certain price. The R.F.C. coincidentally will offer to loan the money to the shareholders up to a hundred percent, if necessary, for them to buy this stock, to be paid back over a period of six years, ten percent per annum, until the sixth year, and then the balance in the sixth year. That's the....

Foley: Stock to be 4 percent preferred, the money to be loaned at 3.

Delano: The money to be loaned at three and a half.

Murphy: There have been a number of loans to shareholders, more often to corporations which are organized - dummy corporations which are organized for the specific purpose of purchasing the shares, to purchase preferred stock. Now, whether there's been an underwriting agreement of that kind, I don't know.

Delano: Let me ask this.

Hanes: The main thing is whether there's been a differential in the interest. What the Secretary is interested to know: is there a differential in interest?

Murphy: There has been. There was a differential in interest, you remember, on the September Company.

H.M.Jr: I wasn't Secretary of the Treasury then.

Upham: We recalled that.

Delano: Any others you can think of?

Murphy: No. The whole list isn't so large that it couldn't be ....

Foley: ... examined quickly.

Murphy: .... - that it couldn't be examined as a whole.

Foley: You've got a record of every one of those.

H.M.Jr: Could you have it by tomorrow morning? Go through it?

Murphy: It would ....

H.M.Jr: They can get some help. The Comptroller can give you a couple ....

Upham: Mulroney can do it.

Murphy: Is this confined to national banks?

H.M.Jr: Yes.

Murphy: Well, if we confine it to national banks ...

Upham: Why should it be? They do it for state banks.

H.M.Jr: Well, do it anyway you want. The point is this, Henry. This is a proposal for the Bank of America. The thing that I want to do - I want it to be as near as possible to the formula that we use in 99 cases out of 100. That's what I want, see?

Murphy: Of course, the whole amount of these preferred stock loans, Mr. Secretary, is very small, of the order of magnitude of $10,000,000, as compared with a figure of the order of magnitude now outstanding of, say, $500,000,000 for direct preferred stock purchases. And at the last time I looked into the preferred stock loans, there were about four loans which accounted for, I think, maybe 60 or 70 percent of the total amount. So you can't draw much in the way of precedent about it. It's been a highly unusual form of transaction. I think that - I made a study of this for Mr. Taylor back at the time of the September Company deal, and I think then only about two percent of the total deals that we had in this preferred stock were in this loan form, and these several ....

H.M.Jr: Well then, if you have it, it would make it very easy. As soon as you're ready, let Mr. Hanes and Mr. Delano know. What I'm trying to get at is - I said one percent - I want to make it as near - whatever the form of getting money to strengthen the structure of a bank, I want to follow that procedure which is as near 99 percent - and I take it that's what you'd like to do.

Delano: Exactly.

H.M.Jr: You certainly don't want, of all cases, this to be an unusual case.

Murphy: My only point, Mr. Secretary, is that any loan case is an unusual case; they're such a small category of the total cases.

H.M.Jr: I didn't use the word "loan," Henry. I said what I wanted, what Mr. Delano wants, and Mr. Hanes wants, is to get additional capital into the Bank of America.

Hanes: That's the first step.

H.M.Jr: And we want to use the procedure to get additional capital into the Bank of America - to follow that procedure which is as near as possible the normal procedure which has been followed since this law has been on the books.

Murphy: Well, for about 98 percent of all cases by value, the procedure has been the direct purchase of stock by the R.F.C. Now, any procedure other than that belongs to this very small minority.

H.M.Jr: Well, that's what these gentlemen want to find out. When you have it, let Mr. Hanes know; and Duffield will work with you on it. Dig it out. If we made it once, it's very easy. Am I stating it - you'd (Delano) like that information.

Delano: That's right.

H.M.Jr: John?

Hanes: Yes.

H.M.Jr: What? But I still say, and I think that I'm right, that on these things, unless they're the regular thing, it would be foolish for Jesse to stick his neck out without letting you know right from the beginning so that you can keep us informed why it's unusual.

Delano: I think it's particularly unfortunate in this instance if we've done something here, you know, that's way off the reservation or unusual, because Jesse has written a memorandum to the Gianninis saying he'll do this thing, you see?

Upham: Subject to the Secretary's and the President's approval. So that this bee is on you and the President if we don't do it.

Delano: I think that's the miserable part of it.

Murphy: There is one case - pardon me - I haven't much facilities for looking into it - that comes to my mind. Perhaps you people know the answer on it. It seems to me that Manufacturers Trust of New York had a deal of this kind but after it had passed out of our jurisdiction or any of our records; in other words, that the R.F.C. purchased the stock and after they had purchased it, substantially after our request, an arrangement was made for selling that preferred stock to private individuals and the R.F.C. undertook to loan the money on an installment plan to buy it, and there were various incidental arrangements. But notice that we had no responsibility for it at all. We requested the R.F.C. to buy the stock, then after they got it that happened.

H.M.Jr: Well, somebody made the remark that if we followed this formula we'd be lending the money to Transamerica.

Delano: That's right.

H.M.Jr: That's ridiculous.

Delano: We'd be lending the money to Transamerica for Transamerica to buy stock from the Bank of America.

H.M.Jr: The President wouldn't O.K. that any more ....

Foley: And make half a percent on the deal.

H.M.Jr: He wouldn't O.K. that any more than he'd O.K. - well, I don't know what. It's ....

Murphy: Would Transamerica put up any additional collateral other than the stock?

Foley: Just like any other stockholders deal. I suppose it would be just like any stockholders deal. Of course, in the September deal they had additional collateral. That was supposed to justify the additional differential.

H.M.Jr: I'm not going to talk to Mr. Jones. I'm just going to wait, if Mr. Hanes agrees, until you're ready to talk again. I'm just going to sit tight until I hear from you people.

Delano: You want Mr. Hanes to work this out with Mr. Jones?

H.M.Jr: That's what you have been doing. I don't know how much time Mr. Hanes has got.

Hanes: I've got all the time - I'll take time, don't worry.

H.M.Jr: But we couldn't - but I'm just pointing out that to walk across the street to say to the President, "We want to loan 14 million dollars to Transamerica to buy additional stock in the Bank of America..." - why he'd just laugh at me. He'd just laugh at me, and I think he'd be justified.

Hanes: Have to work out some way to get 14 million dollars out of Transamerica. To get the money into the Bank - what's what I'm interested in; to get the money in the Bank.

Delano: That's what we're trying desperately for, Mr. Secretary.

H.M.Jr: I think it's a worthy cause, and I think it can be done, but it should be done the way the 99 or 98 percent is done.

Hanes: That's right.

Murphy: That's direct purchase.

H.M.Jr: That's all.

Well, John, when you and Preston Delano are ready, we'll move.

Hanes: Sure.

March 16, 1939

FOR THE SECRETARY:

The following figures are for your information in connection with the proposed preferred stock deal with the Bank of America. They are based on the assumption that 30 million dollars of preferred stock would be issued.

1. The proposed plan would be more expensive for the Bank than the ordinary direct purchase of preferred stock by the R.F.C. because the proposed plan calls for a 4 per cent dividend, whereas the Bank could obtain 3 per cent direct from the R.F.C. The additional cost to the Bank is shown in the following table.

	Annually	6 years (Life of preferred)
4% dividend -- Suggested plan	$1,200,000	$7,200,000
3% dividend -- Direct purchase by R.F.C.	900,000	5,400,000
Additional cost under suggested plan	$ 300,000	$1,800,000

2. If Transamerica were to borrow from the R.F.C. the money with which to buy its pro rata share of a 30 million dollar preferred stock issue, Transamerica would actually realize net income on the deal which was financed by Government money. The amount realized by the holding company from the bank is shown in the following table.

	Annually	6 years (Life of preferred)
4% dividends on TA's pro rata $12,600,000 of preferred	$504,000	$3,024,000
3½% interest to R.F.C. on $12,600,000	441,000	2,646,000
Net income to Transamerica	$ 63,000	$ 378,000

These two facts indicate that the plan is burdensome on the Bank and profitable to the bank holding company. There is no apparent reason why, if the objective is to put local money into the Bank, Transamerica should have to borrow the money with which to purchase the preferred stock. The most recent Transamerica balance sheet (as of December 31, 1937) indicates current assets of 54 million dollars in excess of current liabilities and total surplus of 68 million dollars. Included in current assets are marketable securities reported as having a market value of $99,000,000 of which $80,000,000 are free from pledge. Therefore, Transamerica should be able to raise the cash for the preferred stock purchase without borrowing from the R.F.C. The same is true of Mr. Giannini who, according to his own statement of his net worth, would have to buy only $4,000 worth of the new preferred stock and could raise that sum out of some $400,000 worth of marketable securities.

In this connection, it is interesting to note that a continuation of dividends on the common stock at the present rate (after allowance for dividends on a new preferred stock) would automatically retire the preferred stock within the six years contemplated. In other words, if Transamerica invested $12,600,000 in new preferred stock it could still expect to receive over the next six years $21,000,000 in dividends on the common stock of the Bank which it holds. These figures suggest that in reality Transamerica expects the Bank to pay for its own preferred stock through the dividends which the Bank will pay to its common stockholders. If this is true, there is no reason why the Bank's earnings should not be retained in the Bank through some other plan than the preferred stock plan, which in essence requires that the earnings be handed over to Transamerica and other common stockholders and then passed back to the Bank as a redemption of the new preferred stock.

ESD

TREASURY DEPARTMENT

INTER OFFICE COMMUNICATION

DATE

March 18, 1939

TO Secretary Morgenthau

FROM E. H. Foley, Jr., Acting General Counsel

For your information

John Rogge of SEC telephoned Donald Sherbondy, one of our attorneys, around noon today and said that SEC had a letter from one of their men on the West Coast stating that he had obtained indirectly from one of the credit men of the Bank of America information that a loan in the amount of approximately $800,000 had been made recently to some prominent official in the Administration. I have checked hurriedly the recent report of the examination of the Bank, which fails to disclose in general uncriticized loans.

You may want to consider asking the Comptroller to investigate the rumor.

E.H.F.Jr.

March 21, 1939

HM,Jr sent for Foley and told him what Hanes had just related, viz: that Kannee had called up and said that he was talking for the President and that Jimmie Roosevelt had arranged an appointment with the President for him to see Mario Giannini and that the President would not do it. Therefore, he had asked Bill Douglas to see him and he refused. Kannee then called up Johnnie Hanes and asked him to see Giannini and Haley, of SEC, whom Bill Douglas designated, at four o'clock today.

HM,Jr said to Foley, "Hanes asked me what he should do. I notice that the President had an appointment with Jefty O'Connor today. I am sure that that had something to do with it. I made two suggestions to Hanes. First, that he should have a stenographer in the room and also you, the Acting General Counsel. Hanes said what about Preston Delano and I said no. As long as the White House did not suggest it, I would not have him there, so that you can say that you cannot commit yourself because you have to consult the Comptroller. Hanes thought my suggestion was good.

Foley then handed the Secretary the attached memorandum on the discontinuance of public hearings on Transamerica.

* * *

The Secretary called Bill Douglas at 12:35 p.m. and a record of their conversation follows on the next page.

March 21, 1939.
12:35 p.m.

HMJr: Hello.

Operator: Chairman Douglas. Go ahead.

HMJr: Hello.

Wm. O. Douglas: Hello, Henry.

HMJr: You still can talk man to man, can you?

D: You're God damn right. Anytime; I'm not -- never going to quit doing that.

HMJr: What about this call that Johnny Hanes just tells me that comes from Henry Kannee about Hanes seeing Mario Giannini?

D: Well now, this is what I -- this is the dope, as I understand it. Mario Giannini came in yesterday morning. I thought it was going to be A.P.

HMJr: You did?

D: Mario came in instead.

HMJr: Yeah.

D: At nine o'clock. He sat down in my office, and I said, "Now, before you start talking, Mr. Giannini, I should tell you what the procedure in my office is on -- on such conferences as this. We have a stenographic transcript. Maybe in view of that you wouldn't like to talk." He said, "I couldn't talk without consulting my lawyer." And he left. He failed to call me back before the Boss sent up my name on the court.

HMJr: Yeah.

D: And I was sunk yesterday with a lot of things that tended on such events.

HMJr: Yeah, people like me calling you. Things like that.

D: (Laughter) To my great pleasure. Now, so I arranged for him yesterday to see three of the Commission -- Mathews, Frank and Eicher -- and he had a talk -- a long talk yesterday afternoon with them. I thought it was all over. This morning Kannee called me and said this: He said that through Jimmy Roosevelt, the Boss had agreed if Giannini came on to arrange a conference to see me and Hanes. That's what Kannee says; I haven't talked to the Boss about it.

HMJr: Yeah.

D: Kannee said, "Will you see him?" And I said, "Well since I presumably will be getting out of here be-for long, unless the Senate raises some hell, and since this is a long-term thing, I think that new -- that the fellows who are going to be here after I'm gone should handle this." This is a long-range thing we're working on.

HMJr: Yeah.

D: Therefore, I'd suggest that -- that Haley, who is a lawyer and a member of our Commission, sit in for us, and I said that I was sure that Haley would be willing to sit in on a conference with -- with Hanes if it was agreeable from your end. Now that's all I know about it.

HMJr: Well.....

D: Now, what the subject matter of it is, I don't know. As far -- the conference that he had with the three of the Commissioners yesterday afternoon was -- it was they -- it was -- they said absolutely nothing. He kept talking about motives and publicity and things like that, and it was a vague thing in which absolutely nothing happened and it was a perfectly useless conference.

HMJr: I see. Well, I don't mind saying I'm just a thousand per cent disgusted, and that -- why should Jimmy Roosevelt stick his nose into this.

D: I don't know.

HMJr: I think it's outrageous, and I don't mind saying so, and saying it pretty loud too.

D: Yeah. Well, I'll -- when I got this call from Kannee, it came just a few minutes ago -- well, I say a few minutes -- probably within the half hour -- I told him that if that is what the Boss wanted that I would try to work it out. Now, nothing definite has been -- been decided because......

HMJr: Well.....

D: He was to check with you and I was trying to -- was going to get to you before he did, but I.....

HMJr: Well, Hanes came in here, and I -- I've never known Kannee to call that it wasn't for the President, see?

D: That's right.

HMJr: And.....

D: Kannee said that Giannini said that Jimmy had agreed for Giannini to see the President. The President said he made no such agreement. The only thing that he did suggest was that Giannini see me and Hanes.

HMJr: Well, on the ticker I see Jesse O'Connor had an appointment with the President this morning.

D: Is that so?

HMJr: Yeah.

D: Well that's -- that's in lieu then of Giannini -- probably on the same subject matter.

HMJr: I think so. I guess so, I don't know.

D: Sure, he's probably lawyer.

HMJr: Oh, I'm just disgusted, Bill.

D: Well, Now I'll -- I'll steer the thing on from this end.....

HMJr: Yeah.

D: If you think.....

HMJr: Well.....

D: The thing to do is to get word back to the Boss that no purpose would be served; that he's already had his conference with the S.E.C. and -- and as far as you are concerned he's had -- the thing is all covered, and that this is just -- this surplusage, I think our record would be clear and that would be the best way of handling it.

HMJr: Well, I'm -- I'm thinking of the President's sake -- I mean, that Jimmy Roosevelt would be making appointments around here for people to see things; I think it's terrible.

D: I do too. I do too.

HMJr: And -- it's bad enough having Hall Roosevelt stick his neck into everything.

D: Yeah. Well now -- say -- why don't you let me carry the ball for a minute on this thing and let me call back Kannee and say that I've had a talk with you and that from our point of view he's had -- already had his conference, nothing to be gained, and I can say whatever you want me to say.

HMJr: Well, you do it that way. Why don't you talk, if you don't mind, on your own, and I'll call up Miss LeHand. See?

D: Yeah.

HMJr: And tell her that I think from the President's standpoint it's terrible.

D: Yeah.

HMJr: Now, if he wants us to do it, all right.

D: Yeah.

HMJr: See? How's that?

D: Yeah, O. K. But let her know too, will you Henry, that he's already seen us here; he's already had his conference, and it's absolutely nothing....

HMJr: Yes.

D: He's just -- I tell you, he's just fishing around for.....

HMJr: Well, this is just -- for six years now we've been trying to find out -- I've been trying to find out whether Giannini is running the Treasury or the Treasury is supervising the Bank of America.

D: That's right.

HMJr: And this is just applesauce for him.

D: That's all. He'll -- he'll go out and if he doesn't get anything it will be another blast, and....

HMJr: I think it's terrible, and I -- I'm going to call up Missy and say if -- I may even talk to the President.

D: Yeah. Well....

HMJr: But you do it the other way and then you -- we'll each call each other back.

D: O. K. I'll -- I'll stand right on the line with you.

HMJr: Thank you.

D: O. K.

Then the Secretary called Miss Le Hand and the following is their conversation:

HM,Jr: Are you alone, Missy? Can I talk to you?

Miss LeH: Yes.

HM,Jr: If you know about this, stop me. I am terribly excited. Kannee called Hanes and Bill Douglas and said that Jimmie Roosevelt had made an appointment for Giannini to see the President, but that the President would not see him and we should. Both Bill Douglas and I think it is terrible and we should not see him either. This has been going on for about a year. That is why I got rid of Jefty O'Connor. Douglas said that three of his Commissioners saw Giannini yesterday and got nowhere. If Hanes sees him this afternoon and he does not get what he wants, and we cannot give him what he wants, he will just blast some more. For Jimmie Roosevelt to stick his nose in this thing is simply awful. I do not think on Jimmie's say-so that Giannini should get any special treatment.

Miss LeH: I don't think so either.

HM,Jr: We have issued certain orders to him and he has disregarded them. For Jimmie to do this and for Giannini to think that he has a back door to the White House is simply awful. You know that the President made McIntyre write Giannini that there is no back door to the White House.

Miss LeH: Let me have a talk with the President. I thoroughly agree with you.

HM,Jr: Of course, we can see him. But I think it is just cheapening the White House.

The Secretary then called in Hanes and told him of the above conversation and also phoned to Bill Douglas (at 12:53 p.m.). (Copy of his conversation with Mr. Douglas follows this page.)

March 21, 1939.
12:53 p.m.

HMJr:	Hello.
Operator:	Mr. Douglas. Go ahead.
HMJr:	Bill.....
Wm. O. Douglas:	Yes, Henry?
HMJr:	Bill....
D:	Yes?
HMJr:	I want you to know what I told Miss LeHand -- this is between us. See?
D:	Yeah.
HMJr:	I just told her that -- that, of course, anybody the White House wanted us to see, we would....
D:	Yeah.
HMJr:	But there was no reason for Mario Giannini to come over here; that the only pending business that we had was that certain orders which have gone out in the Comptroller's office, which up to now he had not complied with.
D:	Yeah.
HMJr:	And I said that to let Jimmy Roosevelt make this appointment over here with you people, I said it just cheapened the White House.
D:	Yeah.
HMJr:	See?
D:	Yeah.
HMJr:	And I said I thought it was terrible.
D:	Terrible.
HMJr:	And that I hoped that The President wouldn't insist that we saw him.
D:	Yeah.

HMJr: And I said, "If you agree with me..." She said, "Absolutely."

D: Yeah.

HMJr: And she said, "The minute the President is alone, I'm going to see him."

D: Swell. Now, I haven't been able to get Kannee. He's been out.

HMJr: Well.....

D: He's due in about ten minutes.

HMJr: Well, doesn't this pretty well take care of it?

D: I think so, but I'll -- I'll complete it at my end also.

HMJr: Well, that would be helpful, but I -- I'd just do that -- it just cheapens the White House.

D: Sure it does.

HMJr: Now, I'm -- I'm in a frame of mind -- well, I'm just not going to let the President's oldest son sell him down the river.

D: Yeah.

HMJr: That's the way I.....

D: You're -- you're dead right on it.

HMJr: And.....

D: You're dead right on it.

HMJr: Anybody can see Johnny Hanes any time day or night.

D: Sure.

HMJr: He doesn't need Jimmy Roosevelt or Jesse O'Connor to make the appointments.

D: Sure. This bastard has been trying to see me for two weeks. He wanted me to meet him at the Chevy Chase Country Club.

HMJr: Yeah.

D: At some rendezvous like that, and just kept telling him to go to hell. My office door is open and I make appointments all the time to see anybody unless it's -- it's somebody who has a bomb in his pocket.

HMJr: Well, now that you sit way up on that front stairs, nobody is going to bomb you.

D: (Laughter) Well, I'm not sure.

HMJr: All right. Well, if you hear anything or I hear anything I'll call you.

D: I'll check back.

HMJr: Hanes is sitting here next to me, and he and I are two peas in a pod on this.

D: Swell. All right, Henry. Thanks.

HMJr: Thanks.

March 21, 1939.
2:42 p.m.

HMJr: Hello.

Operator: Chairman Douglas. Go ahead.

HMJr: Hello.

Wm. O. Douglas: Hello, Henry.

HMJr: Yes, Bill.

D: I just talked to Johnny a few minutes ago. I....

HMJr: I haven't seen him.

D: I called Kannee.....

HMJr: Yeah.

D: And told him -- I didn't mention your side of the thing at all; I just mentioned our side of it. I said that I'd gone over the thing here again; there wasn't any earthly sense in us having another conference because everything had been talked out yesterday. However, if the Boss said, "Must", why I'm on his ball team and we'll do anything he wants.

HMJr: Yeah.

D: But I told him that he -- that I saw that it is a useless thing from our end. He came back with a -- said, "Well, the appointment has been made, and why don't you send somebody over and -- to -- to Hanes' office and just say that there is nothing for you to add. It's all been covered by the previous conversation." I said that I had talked to you or to John and Kannee didn't mention anything about calling it off. Now, this was about one-thirty, I guess.

HMJr: I see.

D: Now, have you heard from.....

HMJr: No. I just came up. I've had Jesse Jones here for an hour and a half, and I had this ticket to call you, and I was going to call up Miss LeHand and see if she had anything.

D: Yes. Well, I did everything I could to discourage Kannee, and I told him to take it back to the Boss because I thought by that time Miss LeHand would have seen the Boss.

HMJr: Well, if I get anything from her, I'll call you back, but if you don't hear from me, why you know that I got nothing.

D: Yeah. O. K.

HMJr: Thank you very much.

D: Thank you, Henry.

Upon returning from lunch, HM,Jr again spoke to Miss Le Hand and then sent for Hanes and repeated to him his conversation with Miss Le Hand, as follows:

"I just talked to Miss Le Hand, and asked if she had any word for me. She said she talked to the President and had I said that Douglas had seen Giannini? I said yes, he had seen him in the morning and the Commissioners had seen him in the afternoon. She wanted to know if I had anything new. I said no, they reported that he had no proposal.

"Well, she said, the President thought that he had the same right that anybody else did to see Government people. I said absolutely, but not when Jimmie Roosevelt made the appointment.

"So I said to her, may I make a suggestion. She said please do. I said how would it be if Hanes called him up and said he was working on Social Security and if he was going to be in town for a day or two would he, Giannini, give Hanes a day or two to get himself straightened out? So Miss Le Hand said that's fine; don't let's say anything -- just go ahead and do it that way. I said what I want to accomplish is I don't want Giannini to think he is seeing our people on Jimmie Roosevelt's arrangement. She said don't say anything to anybody else. Go ahead and do it. I said I'll take 75%. Will you take 25%? She said yes; go ahead and do it; that's perfect. I said the only reason I am doing it, I don't want Jimmie Roosevelt making the appointments and she said neither do I.

"I want to call up Bill Douglas in your presence and tell him this conversation. Who do you think should call Giannini? "

Mr. Hanes said, "I will call him if I know where to find him. Bill may know."

HM,Jr then said to Mr. Hanes, "I feel lots better. All I am trying to do is save the President from his oldest son. It's one of those damn fool things that I take on myself. I can't help it and any time the President does not like it -- but he evidently does like it.

"The first time I ever turned Jimmie Roosevelt down, I was a member of Governor Roosevelt's cabinet. He came around and said, I am just starting in the insurance business and don't you think it would be nice if every member of the Governor's cabinet would take out a $10,000 policy? I said I am terribly sorry. I have all the insurance I want. So from that day on he has had his knife out for me.

"If Giannini waits around a couple of days, it won't hurt any and you have to help me on Social Security. We have lots of things to do. If you want to see him along about Thursday or Friday, what the hell! -- provided he is going to be here. Let him wait a couple of days and it's you calling him. It's all right, and for his own sake he's a damn sight better off. Takes a little nerve to do it."

At this point, the Secretary spoke to Mr. Douglas and copy of his conversation, at 2:55 p.m., follows this page.

March 21, 1939.
2:55 p.m.

HMJr:	Hello.
Operator:	Chairman Douglas. Go ahead.
HMJr:	Hello, Bill....
Wm. O. Douglas:	Yes, Henry.
HMJr:	Johnny Hanes is sitting here with me...
D:	Yeah.
HMJr:	And he can hear on this phone.
D:	Yeah.
HMJr:	I just called up Miss LeHand...
D:	Yeah.
HMJr:	And between the two of us we've cooked this up....
D:	Yeah.
HMJr:	And I -- she and I are sharing the responsibility on it.
D:	Yeah.
HMJr:	And either you or Hanes will call up Giannini and say that you're all tied up.
D:	Yeah.
HMJr:	But, if he's going to be in town, why in a couple of days you can call him on the phone and be glad to see him.
D:	Yeah.
HMJr:	In that way our friend Jimmy gets no credit for it.
D:	Yeah.
HMJr:	Don't you think that's a good one?
D:	Yeah.

HMJr: Now, Johnny is sitting here and he's perfectly willing to call him up or you -- he -- Johnny doesn't even know where he is.

D: I don't know either. We could probably find him by sounding out a few hotels.

HMJr: Well, now, just let me ask -- (Pause)

(HMJr. talks aside to Mr. Hanes; then Hanes talks on the phone.)

Johnny Hanes: Bill?

D: Yes, John.

H: Who is his attorney. I'd just call up his attorney and find out where I can find him.

D: He's a little son-of-a-bitch by the name of Farari, or something like that.

H: Well now listen, Bill, I tell you. Well then, never mind, I'll find him.

D: He's -- he's a --

H: Maybe.....

D: He's a bad egg.

H: Well, I'll find him anyway. He's generally -- last time he was here they told me he was staying at the Carlton Hotel.

D: No, he's staying at the Mayflower now. I just got a note from my secretary.

H: Mayflower?

D: Yeah.

H: All right, fine. Well, I'll call him there and see if I can't catch him.

D: Yes.

H: If I -- if I -- unless you hear back from me, tell the judge he needn't come.

D: Yeah. Well, the judge.....

H: If I can't locate him, then I'll -- I'll tell the judge -- I guess we'll -- we'll have to see him if he comes. I don't know what else we can do, if he -- if we can't catch him.

D: Yeah. Well, I'm sure we can catch him, and instead of the judge I'll have Jerry there.

H: O. K. Fine.

D: Good bye, John.

H: All right.

D: Good bye.

H: Good bye.

TREASURY DEPARTMENT

INTER OFFICE COMMUNICATION

DATE MAR 21 1939

TO Secretary Morgenthau

FROM Mr. Foley, Acting General Counsel

For your information, the Transamerica hearing at the Securities and Exchange Commission was suspended this morning until 10 o'clock Thursday morning.

I understand that the Giannini group have proposed to the Securities and Exchange Commission that it discontinue public hearings, on condition that there is made available to the Commission all of the books and records of Transamerica Corporation and its subsidiaries, including the Bank of America and the Pacific Coast Mortgage Company. The Commission would be permitted to introduce in evidence, as part of its record in the proceeding to delist the Transamerica stock, any information or facts obtained from such books and records. If this program were followed the Giannini group would probably dismiss the two cases now pending on appeal in the United States Court of Appeals for the District of Columbia, namely, the Bank of America case and the case to compel witnesses to testify concerning the Pacific Coast Mortgage Company.

E.H.F.

March 21, 1939

TO: The Files

FROM: Mr. Hanes

The White House operator called at 12:45 and said that Mr. Kannee wanted to speak to me. Mr. Kannee came on the wire and stated to me that Jimmy Roosevelt had asked his father to arrange a meeting for L. M. Giannini with the Chairman of the Securities and Exchange Commission, John Hanes of the Treasury Department and himself because of the confusion and difficulties that Mr. Giannini was having in Washington. Kannee said the President was anxious to have us meet with Giannini in order to try to straighten out this situation. After Mr. Giannini's arrival the President decided that he would not be present himself at this proposed meeting, but it was his desire that Douglas of the SEC and Hanes of the Treasury meet with Giannini this afternoon.

I told Kannee that I would be glad to comply with the wishes of the White House, and would meet with Giannini at 4:15 this afternoon.

Conversation between Mr. Steve Early, Secretary to the President, and Under Secretary John Hanes - 3/21/39 — 3:55 P.M.

Early: Well, Johnnie, I am between you, the SEC, the President, Jimmie Roosevelt out on the Coast, and Giannini at the Mayflower Hotel.

Hanes: That's a tough spot to be in.

Early: That's a spot that we get in over here every day. Jimmie Roosevelt said he would undertake through me, although I am just learning of that phase, to get Giannini, you for the Treasury, and someone, he said Douglas, now I suppose it is Frank, of Securities together so that you could sit down and have a talk and be nice to the fellow — irrespective of the merits of the decision.

Kannee advised me that you were going to see Giannini. I am now told that it is going to be postponed until tomorrow.

Hanes: We are trying to get finished with the Social Security hearings. the Secretary has to see the President before he goes before the Committee.

Early: Oh - yes.

Hanes: I told Giannini that we would see him tomorrow morning. That I would call him in the morning at exactly what time we would be ready and I have already told Frank to be in readiness.

Early: Well, that will be all right.

Hanes: He was perfectly satisfied (meaning Giannini).

Early: He seemed to be with me.

The second call/through from JR on the West Coast. Well, he is a little bit exercised over reports from some source - the source — the one source. — So I told him I would attempt to straighten the course out.

Hanes: I will take care of it tomorrow and before noon.

Early: Tell him he will hear from you, and you and Frank will get together over there.

Hanes: Yes, that's right.

Early: All right, Johnnie - Thanks

Hanes: Thank you Steve - Goodbye.

Early: Goodbye.

IN RE: BANCAMERICA

March 22, 1939.
2:30 P. M.

(Under Secretary's Office)

PRESENT: Under Secretary Hanes
Mr. Foley
L. Mario Giannini

Giannini: The thing we are primarily concerned in is the bank. All these attacks upon it aren't doing it any good and, haven't done it any great harm to date. They have held us back from a normal growth -

Hanes: The attacks coming from where?

Giannini: From the proceedings before the Securities & Exchange Commission. For example we had such articles as these (handing newspaper clippings to Mr. Hanes) appearing, charging - intimating that there would be criminal proceedings and so forth.

Then in discussing the matter with some of the members of the Commission they state that, of course, they hadn't any thought that there was anything like that, but that it was an ordinary part of the pleadings. But those things, you see, appearing in our papers out there don't do the bank any good. You see the headlines here. And I don't think it is fair. I think we have done a pretty good job out there. The bank has gone from over one billion in deposits down to 700 millions, and was operating at a very small or no profit. And since 1932 purely through Mr. Giannini's dynamic force and the confidence that the public have in him, he has built it up where, you know today, it has 1 billion 4 hundred million dollars of deposits, and earning some 20 to 25 million dollars a year, and where we are meeting our problems and getting on top of them.

We felt that we had a reasonable program worked out with you through the conference that you attended, and Mr. Crowley, Mr. Jones, Mr. Delano and other members of the Department.

Mr. Hanes: Now, let me stop you right there a minute. Is there anything that you have on your mind that has to do with the Comptroller's office? Is there anything that the Comptroller's office has not done or has done which is --

Giannini: Well, yes. Now take this latest examination. In the light of our memorandum of December 15, in which we had agreed in substance on most of the matters, and then there were several items left open in Paragraph 15 of the memorandum, the Examiner has treated all of that memorandum as though it never had been written and he has made a more critical presentation in this examination than any preceding examination. I mean just viciously critical -- not fair, I don't believe.

Hanes: Who was the Examiner in this case?

Giannini: The same man -- Sedlacek.

Hanes: The last I heard of it -- I am just bringing myself up to date because I am not quite familiar with everything that has gone on. The last I heard of it was that they were to complete their examination about the 15th of March and that after that examination -- no, I should say by the 1st of March and after that examination you had had a meeting of your Board of Directors at which time you set the wheels in motion for getting such capital as may be necessary after a conference with the Comptroller's office on the subject of the examinations. Is that correct? Is my understanding up to that time correct?

Giannini: Yes. That pursuant to the resolution that had been adopted in January by the Board, wherein it expressed a willingness to comply with the spirit of the discussions that we had, we appointed at the last meeting a committee to go into the matter and present to the stockholders through the Board, a plan of increasing the capital to the Department's required ratio, which I said to you, was extra-legal, and really we have now one hundred per cent more capital than the law requires. But we entered into that agreement in the memorandum and felt that we should follow through on it, assuming that there was good faith on both sides.

Hanes: At your last meeting when you declared your dividend you also at the same time, appointed a committee, which my understanding was, was to go ahead and complete preliminary steps when, as and if you had gotten in an agreement with the Comptroller's office as to the amount of new capital required. Is that correct?

Giannini: That is right, yes.

Hanes: Now, have you gone any further with that?

Giannini: I have contacted the Comptroller's office three or four times since I have been here but we have not met yet. We are supposed to meet at three o'clock this afternoon, just Mr. Delano and I, for a preliminary discussion as to the procedure to be followed. Russell Smith, our cashier --

Hanes: That is just following out the normal procedure that was outlined in your January meeting and in the spirit of the memorandum?

Giannini: Yes.

Hanes: That is all, you are just carrying it through?

Giannini: Yes.

Hanes: Now let me get up to date on the other thing: Where has the Comptroller's office -- you said the Comptroller's office has been interfering or has done something that you don't like. Now tell me where that is aside from this thing; the examination is neither here nor there. I don't see that that should confuse us for a moment because after all the Examiner's job is to examine and if you don't agree with his findings it seems to me that that is a question that you and the Comptroller will have to iron out, the differences of opinion, on the matter, I presume, of segregated assets -- classified.

Giannini: Is it necessary to be so vicious in it? We can't, being self respecting people, let that sort of thing go by without writing more letters and then we get into the letter writing contest back and forth, which I don't think does anybody any good. It takes a tremendous amount of time and diverts our attention from the main business of the bank, and I don't really see where we get anywhere calling names.

Hanes: Well, when you say, "vicious" what do you mean by that?

Giannini: They are uncalled for, vicious comments.

Hanes: In the examination itself?

Giannini: Examination report. He says he did not write the report; the report was written here in the Treasury.

Foley: How can the report be written here? It has to be written by the man that made the examination.

Giannini: I mean the comments on the old issues.

Hanes: That is something I can not answer because I don't know anything about that.

Giannini: You see there were several things that we took up with him during the course of the examination.

Hanes: That is something that Preston Delano and you will have to straighten out. He will be able to straighten that out for you. I don't know a thing about that.

Giannini: I discussed the recovery that we reported to him and he said he could not do anything about that; that had been written up in Washington already. But I do know, John — if I may strike that, Mr. Secretary, if you are going to put it in the record?

Hanes: No, leave it there. John, that is my name.

Giannini: I would like to clear that with you. I did not ask for a conference. There seems to be some misunderstanding about that. It is my understanding that it was suggested that it would probably accomplish some good if the agencies that are disputing or that are involved in the supervision of the bank, could in some way get together and meet with the Securities &

Exchange Commission and see if they could not define jurisdiction, so that we would not be harassed by another Government agency in addition to those that are now supervising the bank.

Hanes: You mean the meeting today?

Giannini: Yes.

Hanes: You did not ask for it?

Giannini: I did not ask for this or for a meeting. That was supposed to have taken place with Chairman Douglas of the Securities & Exchange Commission last Monday, but which in view of his nomination for the Supreme Court appointment he thought it best not to keep after a preliminary discussion at which he had wanted to take a stenographic report of a meeting, and I said: "If that is going to be done I think I should have counsel present". He agreed very pleasantly that would be the case and I went out and then that noon he was nominated. Instead of meeting with him I met with three members of the Commission and talked it over.

Hanes: This is the first time I have had that information. Through the newspapers I saw that your hearing over there had been postponed. What was the reason for that?

Giannini: Well to see if we could arrive at some plan of procedure which would expedite the hearing. We had a talk with Mr. [illegible] after the meeting with the members of the Commission, which was an informal meeting, and the conditions that he stipulated for shortening the proceedings, were such as we felt we could not accept.

Then I noticed that in this morning's New York Herald Tribune they had a report by Gregory that we had capitulated and opened our records to the inspection of the S.E.C., and agreeing to dismiss our cases in courts and so forth, which is not a fact. Which is not a statement of the fact. There hasn't been any agreement on that. And part of our discussion there was to the effect that there should be no publicity given out. It seems to me there has been a breach of confidence in that respect.

Publicity has been given out or was assumed through something that was heard or done, which does not properly present the picture.

Hanes: I did not see the article in the paper. I just saw it on the ticker, that the hearing had been postponed until Thursday.

Giannini: Well this is it (handing newspaper clipping to Mr. Hanes). It is quite a long article in this morning's paper.

Hanes: This is not correct? You have not let them look at your books?

Giannini: We haven't agreed to anything. We are talking trying to arrive at a plan of procedure and it was understood nothing would be said during the pendency of the discussions, but this is the sort of thing that happened. Well, I suppose that you are primarily interested in matters that have to do with the Comptroller's Department?

Hanes: I will state my position very clearly, Marion, so you will know just exactly where I stand. I am only interested in what we are doing here in the Treasury. I confine my efforts to the Treasury and keep my nose out of other people's business, and confine myself particularly to this department and this department only. We are charged here with the responsibility of seeing that the bank is conducted along safe and sound principles. That is what the statute says is the duty of the Comptroller of the Currency, and beyond that I have no right to go. I am not appointed for the purpose of going outside.

Giannini: Do you know what the purpose was of the conference to have been arranged between you and a representative of the Securities & Exchange Commission?

Hanes: No. And I will be perfectly frank with you and tell you how I got into it: I got into it because Steve Early asked me to. That is the only thing I know.

Giannini: I know that you are --

Foley: You said it was "suggested". What do you mean by that, Mr. Giannini?

Giannini: Just that.

Foley: By whom?

Giannini: Oh, I would rather no say. I don't think it is relevant.

Foley: Well, you brought it up; I was just curious.

Giannini: The main point I want to make is that I am not trying to go over anybody's head, and it is certainly not my purpose to increase the feeling that exists on the part of some members of the Treasury or between some of the officials of the Treasury and some of the officials in our institution. My whole aim and purpose has been to try and iron out and smooth the difficulties, and I know that has been your purpose.

Hanes: My purpose as I said before, is to obey the mandate of the statute, which is our marching orders that we get from Congress, and that is all the interest I have in it in anyway whatsoever, and as far as I am concerned and I believe that this might -- I hope it will -- for the members of the office of the Comptroller of the Currency and of the Secretary of the Treasury, that if you comply with the things which we have entered into and talked over amongst ourselves in good faith, and go through with the spirit of that memorandum which we drew here when you were here before, I don't see that we have anything further to talk about.

Giannini: Well, then, shouldn't that be binding on both sides?

Hanes: What?

Giannini: Shouldn't we both be bound to a good faith observance of that?

Hanes: Absolutely.

Giannini: Well we are not being.

Hanes: That is the point. That is what I would like to know. What is it that we can do to live up to our side of it, both in the letter and the spirit? I have no patience with anybody that makes a statement, whether he writes it down or not -- doesn't make a god-damn bit of difference to me -- I don't have to write things down to make an agreement --

Giannini: I feel the same way about it.

Hanes: -- and I just think if there is anything that we have implied or have stated that we would do that we are not doing, then I would like to have you tell me that so I can report it to the Secretary of the Treasury and let us see whether we are going to stand by what we say or not.

Giannini: Well there are a number of the items that were discussed in the memorandum, that we had agreed to, in substance, with reference to and which in this last examination are again commented on as though our discussions -- previous discussions had never taken place, with more venom than before.

Hanes: As I recall you may be talking about No. 15 in that memorandum. I recall the Number was 15 which said that there were certain items here upon which we would have to wait the results of the examination before any decision could be reached. Is that not correct?

Giannini: No, it said that they were subject to further discussion.

Hanes: Further discussion and negotiation?

Giannini: Yes.

Hanes: That was the way I understood it. The argument that we had down there one day as to the value set down on these classified assets, there was such a wide disparity in viewpoint as to what the classified assets were worth, that nobody could tell. We were working, you remember, on an examination a year old and you made the statement: "these figures are not good today because there has been a hell of a lot of recovery here and therefore we can not tell you a thing about this until we know what the classified assets are". I mean it was so wide apart -- there was a difference, I recall, of 50 million dollars between your viewpoint and the viewpoint of the fellow who makes the examination -- the examiner.

Giannini: 28 million it was.

Hanes: 28 million, all right.

Giannini: Slow classification.

Hanes: It was a big figure -- it was a big item so we said, "we will wait until we get the results; it is not fair to base an opinion on a year-old audit, so we will wait until we get the figures and when we have gotten the figures then we will sit down and thresh out the Examiner's report and we will arrive at a conclusion as to what are these classified assets and what is their value". Now I assume that is what you are going to do with the Comptroller now, is to make plans for receiving it along that line, which was the general spirit we had in writing.

Giannini: Yes, like on the question of service charges. We referred that in our meeting to counsel on the question of guaranteed loans and on the question of the National City stock and former bank premises. If you will recall in our conference, Mr. Folger was there and I think you were there and Mr. Jones and Mr. Delano --

Hanes: And Mr. Upham I think.

Giannini: I don't know if he was there at that time. And Folger said if we could get together on the first agenda -- there were two agenda of the meeting, one was the short agenda and the other was the long agenda, and he said: "I am going to go along on these other matters -- "

Hanes: "If we get the short agenda agreed to I am willing to go along with him on the long one", as I remember that.

Giannini: And then you recall that we had some conferences -- with Mr. Jones and Mr. Delano and you and everybody and Mr. Crowley, agreed in principle, that our program outlined for those items was all right provided we went along and complied with the provisions of the memorandum. Well, we have eliminated all of that bond write-up; we have charged the charge-offs off, and have made consistent adjustments right along the line. We have kept you advised of those adjustments and we felt that with the criticisms that are in this examination they are not conforming to the spirit of the agreement.

Hanes: Well, now, I don't think you are quite fair by saying that or saying that the Comptroller's office should be blamed for criticisms which the Examiner makes. The Examiner may set down these things which he says are classified assets and put them over here at a certain value and may be very critical about it. That is a question that comes between you and the Comptroller that you have got to sit down and work those criticized assets out on a fair basis to both sides, and I know that Preston Delano and Cy Upham will sit down and be fair with you; they will live up to the spirit of that agreement. Of that I am sure.

Giannini: Well, we had agreed in substance to those things. You will recall in Jones' letter sending you the memorandum, Jones said that everybody, Crowley and Delano, had all agreed in substance what we had discussed was satisfactory even though those items were left for future discussion.

Hanes: My understanding was that the technical staff -- at which meetings I never was present, our technical staff and your technical staff were working on those particular items which was the so-called long agenda. My understanding was that they came back and said: "we have got a meeting of the minds on the basis that you agree to these short agenda items". Is that correct? Was that your understanding of it?

Giannini: Yes, if we could agree on the long agenda, then the long agenda was all right and acceptable on the basis that it was first written up, and we had it in the first paragraph of the memorandum, and then you finally took it out and put it all under Paragraph 1 as subject to further discussion.

Hanes: Yes, well, now --

Giannini: But each of those items were --

Hanes: Now, the only point I want to make is that I want to get clear with you this thought, that the Comptroller's office hasn't any desire to go back on the spirit or the letter of that memorandum. I know that to be the fact. And I don't think that they are going to make an attempt to go back on it regardless of what the Examiner has said or done. I know the Comptroller's office is not going to go back on the spirit of what they said.

Giannini: But it is necessary for us to be at sword's points all the time?

Hanes: No, no, it is not necessary and I had not known up until this moment that we were. I thought we were getting along pretty nicely.

Giannini: I mean we have this examination now —

Hanes: It is completed?

Giannini: It is very critical and we have got to answer it and we have got to write the same kind of a letter that we wrote before going over all that same old stuff that was in the Director's letters; give the same story and commenting on the attitude of the Examiner in the Comptroller's Department. Well, I don't like to do that. I don't want to be contentious. I want to live in harmony with you fellows. We ought to be working for a common purpose and that is to serve the public and to protect the deposits that are entrusted to us. That is your concern and that is our concern. We ought to be able to do that harmoniously if there is good faith in the observance of the provisions of the memorandum. But then I thought maybe you could do something, as long as we are talking. That is why I gave you those clippings, to minimize the adverse effect that they have on an institution which you are very much interested in.

Now, when we discussed these things with the Commission and said: "If you have any criminal charges let us have them, bring them out, specify them; if you have any fraud specify that". Well, they said they hadn't anything in mind of that sort, but the implication is there. It will take us twenty years to live that sort of thing down.

Foley: Well, that is a direct result of the allegations in your own brief, because you said in the brief as I remember, that the only instances in which the Comptroller's records have been made available to the Department of Justice were those involving criminal violations, disclosed by the report of the Examiner. And the S.E.C. in reply to the allegations made by your own counsel, said that that is not true, that the same power under which information and bank examination reports made available to the Department of Justice covers the other agencies of Government, but if you argue that is is restricted to criminal violations we don't know what is going to be developed in this proceeding. This proceeding is to elicit the stock transactions of Transamerica because of false and misleading statements in registration certificates, and in this investigation that we are conducting to learn the facts, may disclose evidence of criminal law violations which necessarily may result in criminal prosecution. Now, if your counsel had not taken that point of view and forced the S.E.C. to answer in the way that it did, I don't think I ever would have been in the newspapers.

Giannini: But it was the Department's witness.

Foley: I don't think it is malicious. I think it is the natural consequence of the tack that you have taken in your proceeding.

Giannini: We haven't taken an attack.

Foley: I say the "tack" -- the course that you have taken in your legal proceedings.

Giannini: What course do you refer to?

Foley: I am referring to the charge that these records were made available to the S.E.C. by the Comptroller in violation of law.

Giannini: That was brought out by a witness from the Comptroller's Department Mr. Peterson.

Foley: I am not talking about witnesses. I am talking about what your briefs say.

Giannini: The brief was discussing the testimony of Mr. Peterson.

Foley: Well it may have been discussing the testimony but the point was made that only in cases where a crime was involved have records of the Comptroller's office been made available to another agency of the Government. The general denial was made that was not so, and then the specific answer was made that this investigation might develop criminal proceedings. And how could anyone determine before the information was made available to the S.E.C.

whether you would have a civil proceeding or a criminal proceeding. Now, I say in all fairness that a charge that that is malicious is not right, because I think you left the S.E.C. no alternative other than to answer in the way they did, as a matter of law. Those statements were public statements.

Giannini: You mean to say: "affording asylum to brigands in banking" was a necessary thing to say in a pleading? It does not impress me as being the proper way to present a case, and then to give the thing out to the press boys with the paragraphs checked that they ought to be interested in.

Foley: Well, I don't know anything about that, the press releases. We are not running the S.E.C. I am talking about the briefs, John, that is all I am talking about and the tack that the S.E.C. took in their brief was a necessary one following the position that counsel for the Bancamerica had taken in its pleadings.

Hanes: That is over my head and again --

Giannini: That was based upon the evidence adduced at the hearing from a witness furnished by the Comptroller's Department or subpoened from the Comptroller's Department, Mr. Peterson I think his name was, wasn't it Mr. Peterson?

Foley: I don't know.

Giannini: One of your attorneys.

Foley: No, we have nobody by the name of Peterson.

Giannini: Anderson.

Foley: Anderson is a lawyer in the Comptroller's office.

Giannini: Yes,,he was called.

Foley: Yes, he testified.

Giannini: And he brought out the fact that never in a civil case had bank records been supposed to be published.

That it had happened in a limited number of instances for specific items in a criminal prosecution and in cases of closed banks it had happened where there was a receiver and usually with the consent of the receiver, and in regard to any going bank it was with the consent of the Board of Directors before they ever gave out any information.

Foley: Well, this is the first request we have ever had -- first official request we have ever had from the S.E.C. for reports of this character. The reports are a part of the general records of the Secretary of the Treasury and the Secretary of the Treasury has plenary power under the statute, to withhold or disclose records in his Department.

Giannini: I don't think we want to ask the Under Secretary to sit in judgment on the Secretary and I really don't want to raise these questions to be contentious at all. I am just saying that I can not quite see who is being advantaged by keeping the bank in this proceeding, if it were possible to cooperate to have it out in the interest of all concerned.

Hanes: Well, as far as we can go here, Mario, without interfering with the operation of the other Departments, which I am not going to do --

Foley: That is what he asks us to do, is to stop that sort of thing.

Giannini: No, I did not ask you to stop it.

Foley: I thought that is what you said. You said "this sort of thing" indicating the newspaper clippings and that is why you brought them out. I was merely saying I did not think it was unfair and in the second place it is none of our business.

Giannini: I said if we could, through some form of cooperation, eliminate that sort of thing it would be advantageous to the bank. Of course, if we can not eliminate it and we have to live with it, we can; I think we can survive and face this sort of thing.

Foley: That is between you and the S.E.C; it is not between us and the S.E.C.

Giannini: No, I am just raising the question.

Hanes: One thing we can do is to get the relationship between the bank and the Comptroller of the Currency, which happens to be the examining agency in this case -- there is no reason in the world why we should not get the cooperation between those two people going and carry on and get the bank in shape where it will be satisfactory to the Comptroller of the Currency in compliance with the memorandum that was written when you were here before. There is no reason why we should not go on with that, and so long as we confine our efforts here to doing our job and doing it well and doing it conscientiously and faithfully, I think that we would further the friendly spirit between your bank and the Comptroller's office, and that I am going to do.

Giannini: And so am I. And anything that can be done in that direction you may count on me to do and I have been trying my very best to bring that sort of situation about.

Hanes: You are going down to see Preston now and I assume there you are going to lay the foundation for going on with your capital procedure and everything else, and getting this Examiner's report straightened out and so forth.

Giannini: That is my intention. I would like to discuss the examination report and its general tenor and discuss with him whether in his opinion he thinks that the provisions of the memorandum have been lived up to by the Treasury Department.

Hanes: I am quite sure you will find Preston Delano looking at it from a purely objective viewpoint. He is a good, fairminded fellow and I am sure he will give you everyhelp, and if there is anything I can do I will do what I can -- anything.

Giannini: Well, that is very nice. I just wanted to say again that I feel that I know you well enough and have confidence enough in you to come in and talk with you without having to arrange anything. I thought that in this case where it was supposed to be a meeting between representatives of this Department and the Commission, that there may have been something special to discuss, probably affecting the welfare of the bank or something of that sort, and I was very happy to come here and hopeful that it might result in a better understanding and a clarification of the bank's status in this pending S.E.C. proceeding. But I understand that you can not discuss the S.E.C.'s attitude.

Hanes: No, I can't.

Giannini: Especially in the absence of any of their representatives being here.

Hanes: I thought they were going to have a representative here. That is what I thought when the conference was arranged that that was what it was, but apparently they could not get off. At anyrate you are always welcome anytime you want to come in here.

Giannini: Well please feel that I am not going over anybody's head to come in and talk to you because I feel very free to do it.

Hanes: Any time. I am delighted to see you. Goodbye.

Giannini: Thank you; goodbye.

Foley: Goodbye, sir.

Giannini: Goodbye, sir. It is awfully nice to have met you. May I have a copy of this transcript?

Hanes: Yes, sure.

(Meeting concluded)

COPY

STATEMENT OF O. JOHN ROGGE, ASSISTANT GENERAL COUNSEL, AT RESUMPTION OF TRANSAMERICA HEARING ON MARCH 29, 1939:

Mr. Examiner, I have to announce that Transamerica Corporation has offered to the Commission full access to its books and records and those of its subsidiaries.

Transamerica Corporation has reserved the right to object on the ground of relevance to the intsoduction of any evidence which the Commission may secure through its inspection of these books and records.

The appeal of Bank of America N. T. & S. A. from the judgment of the District Court for the District of Columbia, in which the Bank's demand for an injunction against the Commission was denied, will be argued on Thursday.

By reason of this announcement, which is agreed to by counsel for Transamerica Corporation, I hereby request that this hearing be adjourned, for the purpose of enabling the Commission's staff to examine the books and records to which access is being given. I ask that the hearing be resumed onten days notice from the Commission.

In order to avoid any possibility of misunderstanding, I also wish to state that the Commission has entered into no commitment against the resumption of the hearings herein, or with regard to any other matter.

71

sent to the
Secy at
Rea Island
by Hanes
4/4/39

April 4, 1939

To: The Files

From: Mr. Hanes

Jimmy Roosevelt came to see me at 3:30 P.M. on April 3rd. He told me that he was on his way to Europe and was stopping to discuss his telephone conversation with me from California. He told me that his only interest in the Giannini matter was that in his opinion Mr. Giannini was an honorable man and wanted to do whatever was necessary in order to adjust his differences with the Comptroller's Office and the Securities and Exchange Commission. More particularly the Securities and Exchange Commission as it was Jimmy's thought that differences with the Comptroller's Office were well on their way to being ironed out. He said that he was advising Giannini to stipulate agreement to certain charges by the Securities and Exchange Commission and that he was on his way to see members of the Securities and Exchange Commission to see if there was not some means by which the present differences could be adjusted.

I repeated to Jimmy practically what I had said to him over the telephone, namely, that a good deal of feeling existed in certain quarters in Washington; that he was interfering with a matter that was none of his business, and I advised himto watch his step and be cautious about being too active in the matter. Jimmy said that he recognized that fact but that since his only interest was in seeing that justice was done to every citizen, he felt that it was his obligation to do whatever he could to get the matter adjusted. I told him that the Comptroller's Office was getting along nicely with Mr. Giannini; that he had agreed to do certain things which were demanded by the Comptroller, and that until he had failed to do these things, which he had agreed to do, the Comptroller's Office had no quarrel with him. Jimmy was very pleasant about the whole matter and said he appreciated our attitude.

Before he left he said there was one other matter he had been asked to mention, and that was the tax situation of one Joseph Schenck. He said that Mr. Schenck had told him that he had a tax difficulty with the Bureau of Internal Revenue, and that he had received a hint to the effect that he might be charged with fraud. Jimmy made the specific request that if we were going to charge Schenck with fraud that we at least give him the opportunity to come in and present his side of the case, before a fraud charge is published against him. I was not familiar with the Schenck case, and therefore called Commissioner Helvering to find out what the status of this case is. I was advised by the Commissioner that we did have a rather important case against Schenck, and that there was a possibility that fraud might be involved although no decision has been reached on this point. I told Jimmy that if it was in keeping with the policy of the Bureau and the Secretary of the Treasury, that we would

original to Secretary in
4-4-39 pouch

give Schenck every opportunity to explain his case before charging him with fraud. This seems to me to be perfectly fair, although I do not know if it is in accordance with the policy of the Bureau.

(Initialed) J.W.H.

1933

FEDERAL DEPOSIT INSURANCE CORPORATION
WASHINGTON

OFFICE OF THE CHAIRMAN

April 4, 1939

My dear Mr. Secretary:

We are informed that the board of directors of the Bank of America National Trust and Savings Association proposes to increase the capital stock and surplus account of the bank in the sum of $25,000,000. The proposal contemplates a program whereby the Reconstruction Finance Corporation will underwrite an issue of new Class A preferred stock, which will be offered to the present stockholders for subscription to preemptive rights, the Reconstruction Finance Corporation agreeing to make loans on such portions of new subscriptions as may be desired by the present stockholders, accepting the new stock as collateral. In all likelihood this would necessitate a loan to Transamerica Corporation by the Reconstruction Finance Corporation for a part or all of their subscription to the new stock. In this connection, it is my understanding that Mr. William O. Douglas, Chairman of the Securities and Exchange Commission, interposes no objections to this program.

The increase of capital is in line with the program that is being developed by the Office of the Comptroller of the Currency to overcome the many criticisms of the conduct of the affairs of this institution, and it is believed that with the injection of the proposed new capital funds the position of the bank will be very materially strengthened.

Very truly yours,

Leo T. Crowley

LEO T. CROWLEY
Chairman.

The Honorable
The Secretary of the Treasury
Washington, D. C.

April 4, 1939

To: The Secretary

From: Mr. Hanes

I had a long talk with Tom Smith today and he asked me to pass along this information to you. He said (1) there is violent criticism on the part of the National banks of the Comptroller's office for giving out what they consider confidential information to the SEC in the Bank of America case; (2) the transferring of the legal staff of the Comptroller's office to the General Counsel's office of the Treasury; (3) Preston Delano's letter to Senator Byrnes stating that the Comptroller was not asking for exemption under the reorganization statute. This letter, you will remember, was written at the request of the President. Tom Smith also said that if you want to lead a fight against the so-called Brown Bill in the Senate abolishing the Office of the Comptroller of the Currency, he is prepared to get strong support for you and believes that the bill can be defeated if you so desire. I pass this along to you without comment.

J.W.H.

RECONSTRUCTION FINANCE CORPORATION
WASHINGTON

JESSE H. JONES
CHAIRMAN OF THE BOARD

April 4, 193[illegible]

Dear Johnnie:

Enclosed is (1) copy of a letter I wrote to Mr. L. M. Giannini, February 25th, indicating the terms and conditions upon which we would finance an increase of the capital stock of the Bank of America N. T. & S. A.

(2) A letter from William O. Douglas, Chairman of the Securities and Exchange Commission, dated March 31st, stating that the Securities and Exchange Commission saw no reason why the RFC should not assist the stockholders of the Bank of America N. T. & S. A. through loans that will enable them, including Transamerica Corporation, to finance the increase.

(3) A letter of April 3 from Mr. L. M. Giannini, President of the Bank, applying for a loan or loans on behalf of the stockholders up to $25,000,000, to be used in the purchase of preferred stock in the Bank.

You will note that they wish to repay the money at the rate of 10% each year for 5 years, and 50% the 6th year, which is a much shorter time than we require in the liquidation of preferred stock.

Sincerely yours,

Jesse H. Jones
Chairman

Honorable John W. Hanes
Under Secretary of the Treasury
Washington, D. C.

COPY

RECONSTRUCTION FINANCE CORPORATION

WASHINGTON

February 25, 1939

Dear Mr. Giannini:

Reference is made to the meeting this morning between the Comptroller of the Currency, you and myself.

I am authorized by our Directors to advise you that, upon the request of the Secretary of the Treasury and approval of the President, the RFC will lend to the stockholders of the Bank of America N. T. & S. A., individually or in group, the money necessary to enable each stockholder to subscribe for his pro rata share of any increase in the capital stock of your Bank that you may determine to make and that is approved by the Comptroller of the Currency. The stock to be preferred stock bearing 4% per annum, preferred both in dividends and distribution. The loans will be at 3-1/2% per annum, payable quarterly, and will mature one-tenth each year for five years and the balance in six years.

The voting rights accorded the stock will be exercised by the RFC only if there is default in the payment of interest or principal of the note.

Sincerely yours,

(Signed) Jesse H. Jones
Chairman

Mr. L. M. Giannini
President
Bank of America N. T. & S. A.
San Francisco, California
CC - The Comptroller of the Currency

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON

2

March 31, 1939

The Honorable Jesse H. Jones,
Chairman,
Reconstruction Finance Corporation
Washington, D. C.

Dear Mr. Jones:

In the conference yesterday with you, the Comptroller of the Currency, Preston Delano, and the Under Secretary of the Treasury, John W. Hanes, you asked me if, from the viewpoint of this Commission, there would be any objection if the Reconstruction Finance Corporation undertook to furnish the Bank of America with additional capital, this capital to be supplied directly by the purchase of preferred stock of the Bank, or a loan to the stockholders of the Bank (which would include Transamerica), secured by the preferred stock.

I have taken the matter up with the Commission and am authorized to advise you that such a step is in no way germane to our proceeding against and investigation of Transamerica Corporation and that therefore from our point of view there is no reason of policy which we would advance against it.

Our proceeding and our investigations are based wholly and entirely on the statutes which we administer. Any such step as you propose, therefore, has no bearing whatsoever on the matters under our jurisdiction.

Yours faithfully,

(Signed) Wm. O. Douglas

William O. Douglas,
Chairman.

COPY

3

April 3, 1939

Honorable Jesse H. Jones
Reconstruction Finance Corporation
Washington, D. C.

Dear Chairman Jones:

At the March 14 meeting of the directors of our bank a committee was appointed to consider increasing our capital, and upon my return to San Francisco the committee will make its recommendation to the Board.

It is my purpose to suggest that we increase our capital funds $25,000,000. This will bring our ratio of capital funds to deposits to approximately 1 to 10 by June 30, and will be done through offering subscription rights to stockholders.

You have advised me that upon request of the Secretary of the Treasury and approval of the President you would lend our stockholders, individually or in group, the money necessary to finance the increase, and the terms upon which the loan or loans would be made.

In all probability the stockholders will authorize the issuance of preferred stock to bear a dividend rate equal to 4% per annum on the subscription price of the stock.

In view of our several conversations I will recommend to the directors of Transamerica Corporation that any dividend received on the new stock subscription by, or on behalf of, Transamerica Corporation in excess of interest to the RFC be remitted to the bank.

Our earnings are such that it will be easy for us to retire the preferred stock within a much shorter time than your usual terms and we will want the privilege of retiring it as rapidly as earnings are available for this purpose.

You may treat this as an application on behalf of our stockholders for a loan or loans up to $25,000,000, the loan or loans to be on substantially the terms and conditions outlined in your letter to me of February 25, 1939. Upon receipt of advice that this application is approved, our directors will, I am sure, take definite action to put the plan in operation.

Sincerely yours,

L. M. Giannini (Signed)
L. M. Giannini, President
Bank of America, N. T. & S. A.

TREASURY DEPARTMENT
COMPTROLLER OF THE CURRENCY
WASHINGTON

ADDRESS REPLY TO
"COMPTROLLER OF THE CURRENCY"

April 4, 1939

My dear Mr. Secretary:

Reference is made to the attached copy of a letter dated February 25, 1939 from Chairman Jones of the Reconstruction Finance Corporation to Mr. L. M. Giannini, President of the Bank of America National Trust and Savings Association, and further to a letter dated April 3, 1939 from Mr. Giannini to Mr. Jones. This correspondence outlines a procedure to be followed in increasing the capital stock and surplus account of the Bank of America.

The Reconstruction Finance Corporation is expected to underwrite an issue of new Class A stock which is preferred both as to dividends and asset position. The Reconstruction Finance Corporation further agrees to make loans to the bank stockholders on the security of the new stock provided such stockholders prefer to so finance their subscriptions. The new stock will carry a dividend rate of 4%, and the Reconstruction Finance Corporation will make its advances to stockholders at 3 1/2%. Should the Transamerica Corporation, which owns a large percentage of the stock of the Bank of America elect to borrow from the Reconstruction Finance Corporation to finance its subscription, it is proposed that the amount represented by the differential in rate between the dividend paid by the new bank stock and the charge made by the Reconstruction Finance Corporation for such financing, will be remitted by the Transamerica Corporation to the issuing bank.

Precedent exists for the handling of this matter as proposed by Mr. Giannini, and it has the approval of the Reconstruction Finance Corporation, subject to the formal request of the Secretary of the Treasury. I recommend that the Secretary of the Treasury request the Reconstruction Finance Corporation to finance this new issue upon the terms proposed.

It will be recalled that in December of 1938 there were held a series of conferences in the Comptroller's office, participated in by Under Secretary of the Treasury Hanes, the Comptroller of the Currency and his staff, Chairman Jones of the Reconstruction Finance Corporation, Chairman Crowley of the Federal Deposit Insurance Corporation and representatives of the Bank of America National Trust and Savings Association.

As a result of these conferences Mr. L. M. Giannini despatched a memorandum to the Comptroller of the Currency outlining in considerable detail certain steps which the bank management proposed to take to meet some of the criticisms which had been directed in previous examinations by the Office of the Comptroller against the conduct of the bank. The Comptroller's office, through its examination procedure, is in constant touch with the management of the Bank of America looking toward the carrying out of the corrective program outlined in Mr. Giannini's memorandum. One of the important provisions of the memorandum in question was an undertaking by the bank's management to maintain a ratio of 1 to 10 between the sound capital structure of the bank and its total deposits. The present request of Mr. Giannini to the Reconstruction Finance Corporation for financing additional capital is a necessary step toward the effecting and maintenance of such a ratio. It is my opinion that because of the asset condition of the Bank of America the securing of these additional funds is a very important and necessary part of our program for the improvement of the capital position of the bank.

Very sincerely yours,

Preston Delano

Preston Delano
Comptroller

The Honorable,

The Secretary of the Treasury.

C O P Y

RECONSTRUCTION FINANCE CORPORATION

WASHINGTON

February 25, 1939

Dear Mr. Giannini:

Reference is made to the meeting this morning between the Comptroller of the Currency, you and myself.

I am authorized by our Directors to advise you that, upon the request of the Secretary of the Treasury and approval of the President, the RFC will lend to the stockholders of the Bank of America N. T. & S. A., individually or in group, the money necessary to enable each stockholder to subscribe for his pro rata share of any increase in the capital stock of your Bank that you may determine to make and that is approved by the Comptroller of the Currency. The stock to be preferred stock bearing 4% per annum, preferred both in dividends and distribution. The loans will be at 3-1/2% per annum, payable quarterly, and will mature one-tenth each year for five years and the balance in six years.

The voting rights accorded the stock will be exercised by the RFC only if there is default in the payment of interest or principal of the note.

Sincerely yours,

(Signed) Jesse H. Jones
Chairman

Mr. L. M. Giannini
President
Bank of America N. T. & S. A.
San Francisco, California

CC - The Comptroller of the Currency

THE UNDER SECRETARY OF THE TREASURY

WASHINGTON

9

April 4, 1939

Dear Henry:

I am enclosing herewith a file on the Bank of America matter containing a letter of transmittal to me dated April 4th signed by Jesse Jones, together with the following enclosures:

(1) Letter from Jesse Jones to Mr. Giannini agreeing to underwrite the increase in capital of the Bank, dated February 25, 1939.

(2) Letter from William O. Douglas to Jesse Jones.

(3) Letter from L. M. Giannini, President, to Jesse Jones.

(4) Letter of recommendation by Jesse Jones to you.

(5) Letter of recommendation by Preston Delano.

(6) Letter of recommendation by Leo Crowley. (not received in time)

(7) Letter of recommendation by Under Secretary Hanes.

I am also sending a complete file as outlined above to the President at Warm Springs by pouch this afternoon.

I trust this is the information you desire.

Sincerely,

John W Hanes

The Honorable Henry Morgenthau, Jr.
The Cloisters
Sea Island, Georgia

(N.B. Originals of above letters are filed under their respective dates.)

(Copy)

April 4, 1939

My dear Mr. President:

The Secretary has asked me to send you by pouch the enclosures. He also has asked me to say that he would like to communicate with you by telephone on Wednesday concerning these enclosures.

Faithfully yours,
J.W.H.

The President,
Warm Springs, Ga.

JWH:JR

RECONSTRUCTION FINANCE CORPORATION
WASHINGTON

JESSE H. JONES
CHAIRMAN OF THE BOARD

April 4, 1939

Dear Johnnie:

Enclosed is (1) copy of a letter I wrote to Mr. L. M. Giannini, February 25th, indicating the terms and conditions upon which we would finance an increase of the capital stock of the Bank of America N. T. & S. A.

(2) A letter from William O. Douglas, Chairman of the Securities and Exchange Commission, dated March 31st, stating that the Securities and Exchange Commission saw no reason why the RFC should not assist the stockholders of the Bank of America N. T. & S. A. through loans that will enable them, including Transamerica Corporation, to finance the increase.

(3) A letter of April 3 from Mr. L. M. Giannini, President of the Bank, applying for a loan or loans on behalf of the stockholders up to $25,000,000, to be used in the purchase of preferred stock in the Bank.

You will note that they wish to repay the money at the rate of 10% each year for 5 years, and 50% the 6th year, which is a much shorter time than we require in the liquidation of preferred stock.

Sincerely yours,

Jesse H. Jones

Chairman

Honorable John W. Hanes
Under Secretary of the Treasury
Washington, D. C.

P
I

1

February 25, 1939

Dear Mr. Giannini:

Reference is made to the meeting this morning between the Comptroller of the Currency, you and myself.

I am authorized by our Directors to advise you that, upon the request of the Secretary of the Treasury and approval of the President, the RFC will lend to the stockholders of the Bank of America N. T. & S. A., individually or in group, the money necessary to enable each stockholder to subscribe for his pro rata share of any increase in the capital stock of your Bank that you may determine to make and that is approved by the Comptroller of the Currency. The stock to be preferred stock bearing 4% per annum, preferred both in dividends and distribution. The loans will be at 3-1/2% per annum, payable quarterly, and will mature one-tenth each year for five years and the balance in six years.

The voting rights accorded the stock will be exercised by the RFC only if there is default in the payment of interest or principal of the note.

Sincerely yours,

Chairman

Mr. L. M. Giannini
President
Bank of America N. T. & S. A.
San Francisco, California

CC - The Comptroller of the Currency

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON

2

March 31, 1939

The Honorable Jesse H. Jones,
Chairman,
Reconstruction Finance Corporation
Washington, D. C.

Dear Mr. Jones:

In the conference yesterday with you, the Comptroller of the Currency, Preston Delano, and the Under Secretary of the Treasury, John W. Hanes, you asked me if, from the viewpoint of this Commission, there would be any objection if the Reconstruction Finance Corporation undertook to furnish the Bank of America with additional capital, this capital to be supplied directly by the purchase of preferred stock of the Bank, or a loan to the stockholders of the Bank (which would include Transamerica), secured by the preferred stock.

I have taken the matter up with the Commission and am authorized to advise you that such a step is in no way germane to our proceeding against and investigation of Transamerica Corporation and that therefore from our point of view there is no reason of policy which we would advance against it.

Our proceeding and our investigations are based wholly and entirely on the statutes which we administer. Any such step as you propose, therefore, has no bearing whatsoever on the matters under our jurisdiction.

Yours faithfully,

(Signed) Wm. O. Douglas

William O. Douglas,
Chairman.

C O P Y

3

April 3, 1939

Honorable Jesse H. Jones
Reconstruction Finance Corporation
Washington, D. C.

Dear Chairman Jones:

At the March 14 meeting of the directors of our bank a committee was appointed to consider increasing our capital, and upon my return to San Francisco the committee will make its recommendation to the Board.

It is my purpose to suggest that we increase our capital funds $25,000,000. This will bring our ratio of capital funds to deposits to approximately 1 to 10 by June 30, and will be done through offering subscription rights to stockholders.

You have advised me that upon request of the Secretary of the Treasury and approval of the President you would lend our stockholders, individually or in group, the money necessary to finance the increase, and the terms upon which the loan or loans would be made.

In all probability the stockholders will authorize the issuance of preferred stock to bear a dividend rate equal to 4% per annum on the subscription price of the stock.

In view of our several conversations I will recommend to the directors of Transamerica Corporation that any dividend received on the new stock subscription by, or on behalf of, Transamerica Corporation in excess of interest to the RFC be remitted to the Bank.

Our earnings are such that it will be easy for us to retire the preferred stock within a much shorter time than your usual terms and we will want the privilege of retiring it as rapidly as earnings are available for this purpose.

You may treat this as an application on behalf of our stockholders for a loan or loans up to $25,000,000, the loan or loans to be on substantially the terms and conditions outlined in your letter to me of February 25, 1939. Upon receipt of advice that this application is approved, our directors will, I am sure, take definite action to put the plan in operation.

Sincerely yours,

L. M. Giannini (Signed)
L. M. Giannini, President
Bank of America, N. T. & S. A.

RECONSTRUCTION FINANCE CORPORATION
WASHINGTON

JESSE H. JONES
CHAIRMAN OF THE BOARD

April 4, 1939

4

Dear Mr. Secretary:

I am authorized by our Board to recommend that we lend all or any part of $25,000,000 on the preferred stock of the Bank of America National Trust and Savings Association, California, to enable the Bank to increase its capital funds by this amount.

Our usual formal recommendation, with details, will be sent to you in due course.

Sincerely yours,

Jesse H. Jones

Chairman

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

TREASURY DEPARTMENT
COMPTROLLER OF THE CURRENCY
WASHINGTON

ADDRESS REPLY TO
"COMPTROLLER OF THE CURRENCY"

April 4, 1939

5

My dear Mr. Secretary:

Reference is made to the attached copy of a letter dated February 25, 1939 from Chairman Jones of the Reconstruction Finance Corporation to Mr. L. M. Giannini, President of the Bank of America National Trust and Savings Association, and further to a letter dated April 3, 1939 from Mr. Giannini to Mr. Jones. This correspondence outlines a procedure to be followed in increasing the capital stock and surplus account of the Bank of America.

The Reconstruction Finance Corporation is expected to underwrite an issue of new Class A stock which is preferred both as to dividends and asset position. The Reconstruction Finance Corporation further agrees to make loans to the bank stockholders on the security of the new stock provided such stockholders prefer to so finance their subscriptions. The new stock will carry a dividend rate of 4%, and the Reconstruction Finance Corporation will make its advances to stockholders at 3 1/2%. Should the Transamerica Corporation, which owns a large percentage of the stock of the Bank of America elect to borrow from the Reconstruction Finance Corporation to finance its subscription, it is proposed that the amount represented by the differential in rate between the dividend paid by the new bank stock and the charge made by the Reconstruction Finance Corporation for such financing, will be remitted by the Transamerica Corporation to the issuing bank.

Precedent exists for the handling of this matter as proposed by Mr. Giannini, and it has the approval of the Reconstruction Finance Corporation, subject to the formal request of the Secretary of the Treasury. I recommend that the Secretary of the Treasury request the Reconstruction Finance Corporation to finance this new issue upon the terms proposed.

It will be recalled that in December of 1938 there were held a series of conferences in the Comptroller's office, participated in by Under Secretary of the Treasury Hanes, the Comptroller of the Currency and his staff, Chairman Jones of the Reconstruction Finance Corporation, Chairman Crowley of the Federal Deposit Insurance Corporation and representatives of the Bank of America National Trust and Savings Association.

As a result of these conferences Mr. L. M. Giannini despatched a memorandum to the Comptroller of the Currency outlining in considerable detail certain steps which the bank management proposed to take to meet some of the criticisms which had been directed in previous examinations by the Office of the Comptroller against the conduct of the bank. The Comptroller's office, through its examination procedure, is in constant touch with the management of the Bank of America looking toward the carrying out of the corrective program outlined in Mr. Giannini's memorandum. One of the important provisions of the memorandum in question was an undertaking by the bank's management to maintain a ratio of 1 to 10 between the sound capital structure of the bank and its total deposits. The present request of Mr. Giannini to the Reconstruction Finance Corporation for financing additional capital is a necessary step toward the effecting and maintenance of such a ratio. It is my opinion that because of the asset condition of the Bank of America the securing of these additional funds is a very important and necessary part of our program for the improvement of the capital position of the bank.

Very sincerely yours,

Preston Delano

Preston Delano
Comptroller

The Honorable,

The Secretary of the Treasury.

6

April 4, 1939

To: The Secretary

From: Mr. Hanes

Letter dictated by Leo Crowley from Wisconsin failed to arrive in time to make this pouch. Will come forward by next mail.

JWH

THE UNDER SECRETARY OF THE TREASURY

WASHINGTON

(7)

April 4, 1939

Dear Mr. Secretary:

As you know, I have been following very closely the negotiations between the Comptroller's Office and the officials of the Bank of America which have been going on now for several months. It has been our desire that the Bank of America increase its capital to a point where the institution would have a net sound capital ratio of $1 of capital to each $10 of deposits. Mr. L. M. Giannini agreed that he would recommend to his directors that the Bank increase its capital by June 30, 1939, by an amount sufficient to bring the ratio to the 1 - 10 basis provided he could be assured of a method of obtaining such capital funds. In order to get him to agree to raise the additional amount of capital required, Jesse Jones had to agree to underwrite such offering to his stockholders. This was done by Jesse Jones in his letter to Mr. Giannini dated February 25th, 1939, copy of which is enclosed. Mr. Giannini is now ready to make offering to his stockholders of subscription to additional capital funds under the terms and conditions laid down in his letter to Jesse Jones dated April 3d, copy of which is also enclosed.

In order for the Reconstruction Finance Corporation to go through with its contract it will be necessary for you, as Secretary of the Treasury, to sign a letter requesting the Reconstruction Finance Corporation to supply funds for this purpose. I am glad to join with Preston Delano, Leo Crowley, and Jesse Jones in recommending to you that you sign such a request to the Reconstruction Finance Corporation, based upon the information contained in the enclosures herewith.

Faithfully yours,

John W Hanes

The Honorable

The Secretary of the Treasury.

RECONSTRUCTION FINANCE CORPORATION
WASHINGTON

JESSE H. JONES
CHAIRMAN OF THE BOARD

April 4, 1939

Dear Mr. Secretary:

I am authorized by our Board to recommend that we lend all or any part of $25,000,000 on the preferred stock of the Bank of America National Trust and Savings Association, California, to enable the Bank to increase its capital funds by this amount.

Our usual formal recommendation, with details, will be sent to you in due course.

Sincerely yours,

Jesse H. Jones

Chairman

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

FEDERAL DEPOSIT INSURANCE CORPORATION
WASHINGTON

OFFICE OF THE CHAIRMAN

April 4, 1939

My dear Mr. Secretary:

We are informed that the board of directors of the Bank of America National Trust and Savings Association proposes to increase the capital stock and surplus account of the bank in the sum of $25,000,000. The proposal contemplates a program whereby the Reconstruction Finance Corporation will underwrite an issue of new Class A preferred stock, which will be offered to the present stockholders for subscription to preemptive rights, the Reconstruction Finance Corporation agreeing to make loans on such portions of new subscriptions as may be desired by the present stockholders, accepting the new stock as collateral. In all likelihood this would necessitate a loan to Transamerica Corporation by the Reconstruction Finance Corporation for a part or all of their subscription to the new stock. In this connection, it is my understanding that Mr. William O. Douglas, Chairman of the Securities and Exchange Commission, interposes no objections to this program.

The increase of capital is in line with the program that is being developed by the Office of the Comptroller of the Currency to overcome the many criticisms of the conduct of the affairs of this institution, and it is believed that with the injection of the proposed new capital funds the position of the bank will be very materially strengthened.

Very truly yours,

Leo T Crowley

LEO T. CROWLEY
Chairman.

The Honorable
The Secretary of the Treasury
Washington, D. C.

april 5, 1939

DISTRICT COURT OF THE UNITED STATES

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v.	Civil Action
TIMETRUST, INCORPORATED, BANK OF AMERICA NATIONAL TRUST & SAVINGS ASSOCIATION, MEREDITH PARKER, RALPH W. WOOD, H. E. BLANCHETT, A. P. GIANNINI, L. MARIO GIANNINI, and JOHN M. GRANT, Defendants.	File No. COMPLAINT

It appears to the plaintiff that the defendants are engaged and are about to engage in acts and practices which constitute and will constitute violations of Section 17(a) of the Securities Act of 1933, as amended, 48 Stat. 84, 15 U.S.C. 77q(a), and the plaintiff brings this action to enjoin such acts and practices, and respectfully represents as follows:

I.

Jurisdiction is conferred on the Court by Section 22(a) of the Securities Act of 1933, as amended, 48 Stat. 86, 15 U.S.C. 77v(a).

II.

On information and belief:

Defendant Timetrust, Incorporated was incorporated in California on June 23, 1938. Defendants A. P. Giannini, L. Mario Giannini and John M. Grant, aided and abetted defendant Timetrust, Incorporated and its officers, directors and agents to engage in the acts and practices which plaintiff seeks to enjoin. Defendants Bank of America National Trust & Savings

Association, of which A. P. Giannini is Chairman of the Board of Directors and L. Mario Giannini is President and a director, and Meredith Parker, Ralph W. Wood and H. E. Blanchett, who are officers of Timetrust, Incorporated, and constitute the board of directors thereof, have participated and continue to participate in the acts and practices which plaintiff seeks to enjoin. Prior to the organization of defendant Timetrust, Incorporated, said defendants Parker, Wood and Blanchett had been employed by Associated American Distributors, Inc., a corporation, and by Bankamerica Company, a corporation, both subsidiaries of Transamerica Corporation, of which corporation defendant A. P. Giannini is Chairman of the Board of Directors; L. Mario Giannini is a director and Chairman of the Executive Committee; and John M. Grant is President, a director and a member of the Executive Committee. From 1934 to April, 1937, Associated American Distributors, Inc., engaged in the business of soliciting orders to purchase Transamerica Corporation stock on stock exchanges on which such stock was listed, for the purpose of creating a public demand for the common stock of Transamerica Corporation, thereby stimulating market activity therein and supporting and increasing the market price thereof. Since June, 1937, Bankamerica Company has been and still is engaged, among other things, in the business of soliciting orders to purchase Transamerica Corporation stock on stock exchanges on which such stock is listed and of soliciting orders to purchase stock of Bank of America National Trust & Savings Association.

Since on or about August 11, 1938, defendants Timetrust, Incorporated, Meredith Parker, Ralph W. Wood and H. E. Blanchett have been and now are, selling and causing to be sold, and defendants A. P. Giannini, L. Mario Giannini, John M. Grant and Bank of America National Trust & Savings

Association, have been and now are abetting the sale, by the use of the mails, securities, to-wit, (1) Timetrust Certificates, copy of one of which in present use is attached hereto, marked Exhibit A, and (2) common stock of Bank of America National Trust & Savings Association, a corporation, of which defendant A. P. Giannini is Chairman of the Board of Directors, and L. Mario Giannini is President and a director. Such securities are sold to the public pursuant to the terms of an agreement of trust called a "Trust Agreement," dated August 16, 1938, between Timetrust, Incorporated, Title Insurance and Guaranty Company, designated the "trustee" under the agreement, and the holders from time to time of Timetrust Certificates (therein and sometimes hereinafter referred to as "trustors"). In the sale of such securities to the public by the use of the mails, defendants Timetrust, Incorporated, Meredith Parker, Ralph W. Wood, and H. E. Blanchett, aided and abetted by the defendants A. P. Giannini, L. Mario Giannini, John M. Grant and Bank of America National Trust & Savings Association, have employed and are employing a device, scheme, and artifice to defraud, and have obtained and are obtaining money and property by means of untrue statements of material facts and omissions to state material facts necessary to be stated in order to make the statements made, in the light of the circumstances under which they were made, not misleading, as set out in detail hereinafter. A copy of the "Trust Agreement" is attached hereto, marked Exhibit B.

III.

Timetrust, Incorporated, maintains its principal executive and sales office in the City of San Francisco, California, and maintains other sales offices in the cities of Hollywood, Long Beach, Oakland, Fresno, Sacramento, and Stockton, all in the State of California. Timetrust, Incorporated employs approximately fifty salesmen and sales managers, whose remuneration was and is dependent upon commissions derived from sales of Timetrust Certificates and common stock of Bank of America National Trust & Savings Association.

IV.

On information and belief:

Timetrust Certificates are sold to the public in the face amounts of $600 and multiples thereof. A purchaser of a Timetrust Certificate agrees to pay a stipulated aggregate sum, representing the face amount of the Certificate, in 120 equal monthly payments, commencing on a certain date and continuing on the corresponding day of each calendar month thereafter until the face amount of the Certificate has been paid in full. However, the "trustor" may, and in fact is encouraged to, make payments in advance in amounts equal to or in multiples of the amount of the monthly payment, and pay the full face amount of the Certificate before the designated termination date thereof.

Apart from the down payment which accompanies an application for a Timetrust Certificate, monthly payments on Timetrust Certificates may be, have been and now are being made by "trustors" directly to the trustee. In addition, pursuant to an arrangement made by Timetrust, Incorporated with defendant Bank of America National Trust & Savings Association, and Central Bank, a corporation controlled by Transamerica Corporation, monthly payments may be, have been and now are being made at such banks and branches thereof for transmittal to the trustee. Payments on Timetrust Certificates to said banks and branches thereof for transmittal to the trustee may be, and have been, and are now being made pursuant to "authorization cards" executed by the "trustors" to said banks, authorizing said banks each month to debit the bank accounts of depositor "trustors" with the amount of monthly payments. No charge has been or is being made by such banks for the rendition of such services. Services of this type are not ordinarily rendered by banks without compensation.

In connection with the purchase of Timetrust Certificates, persons have been and now are being solicited to apply for life insurance covering the unpaid balance of the face amount of the Timetrust Certificate, and persons have applied for, and received, and now are applying for, and receiving, such life insurance. All such life insurance has been and is being placed with Occidental Life Insurance Company, a corporation, which is a wholly owned subsidiary of Transamerica General Corporation, a corporation, which is in turn a wholly owned subsidiary of Transamerica Corporation.

The trustee, upon receipt of each monthly payment, has been and now is deducting therefrom various fees and charges:

A so-called "creation fee" is charged by Timetrust, Incorporated. This fee is determined in accordance with the following schedule in respect of the face amount of the Certificate:

(a) Up to and including the first Twelve Hundred Dollars ($1,200.00), six percent (6%);

(b) On the next Eighteen Hundred Dollars ($1,800.00), five and one-fourth percent (5-1/4%);

(c) On the next Three Thousand Dollars ($3,000.00), four and three-fourths percent (4-3/4%);

(d) On the next Six Thousand Dollars ($6,000.00), four and one-fourth percent (4-1/4%);

(e) On all amounts in excess of Twelve Thousand Dollars ($12,000.00), three and one-half percent (3-1/2%).

The "trust agreement" provides that this fee shall be charged on the date of each monthly payment at the rate of one-eighteenth of the full fee until it is paid in full. In practice, such fees have been and now are being deducted by the trustee out of the first payments on each Certificate which equal the amount that would be paid in by regular monthly payments for a period of eighteen months, so that the full amount of the creation fee may be deducted before the "trustor" has made eighteen separate payments, if he has made a number of monthly payments in advance. Such fees amount to 40% of the first eighteen monthly payments on a $1,200 face amount certificate. Such fees are transmitted to Timetrust, Incorporated.

A so-called "trustee fee" is charged by Title Insurance and Guaranty Company, the trustee, for clerical and ministerial services performed pursuant to the "trust agreement". This fee amounts to 30¢ on each and all monthly payments, exclusive of the first two monthly payments when made concurrently with the initial payment. On a $1,200 face amount certificate, such fee amounts to 3% of each monthly payment, except that such fee is not paid on the first two monthly payments when made concurrently with the initial payment.

Where life insurance is taken out with a Timetrust Certificate, insurance premiums are charged at the rate of 80¢ per month per $1,000 of the amount of the insurance coverage. Such fees are deducted out of each monthly payment, and transmitted to the Occidental Life Insurance Company.

Other fees are charged by the trustee in designated contingencies.

The balance of all monthly payments remaining after the deductions of the designated fees, must be used by the trustees to acquire for the account of each "trustor" shares of Bank of America National Trust & Savings Association common stock (hereinafter sometimes called "bank stock"). The trustee, before the close of each business day, determines the total amount of cash available for the purchase of shares of bank stock in all of the "trustors'" accounts. Thereafter, it purchases shares of bank stock with such cash, and allocates to the fourth decimal point at their average net cost all shares so purchased to the respective "trustors'" accounts in the ratio which said net cost of the bank shares purchased bears to the funds which were available in each "trustor's" account.

All shares of bank stock acquired by the trustee for the accounts of the "trustors" have been and are issued in the name of the trustee. Pursuant to the "trust agreement", the trustee has intermingled and is now intermingling all shares of bank stock in the "trustors'" accounts.

The "trust agreement" provides that each of the "trustors" delegates to Timetrust, Incorporated the power to instruct the trustee as to the manner in which the full bank shares in each "trustor's" account shall be voted at all stockholders' meetings.

The "trustor" may at any time revoke his Timetrust Certificate by delivering to the trustee his written request for such revocation, and upon payment of a fee of $2.50. In the event of revocation, none of the charges deducted from the "trustor's" monthly payments for the creation fee or the trustee's fee are recredited to his account. On the fifth day after the receipt of a request for revocation, the property in the "trustor's" account, consisting of cash for fractional shares and of full shares of bank stock acquired with the balance of all monthly payments remaining after the deduction of the designated fees, is delivered to the "trustor."

The "trust agreement" provides that after the termination date of each Certificate, the trustee shall deliver to the "trustor" cash for fractional shares and all full shares of bank stock then held in the "trustor's" account.

Timetrust, Incorporated has been and now is selling said bank stock and is acting as a dealer for profit in the purchase and sale of said bank stock. Among other transactions in said bank stock, Timetrust, Incorporated, purporting to act as a dealer, has sold at a profit shares of bank stock to the trustee, purchasing for "trustors."

V.

On information and belief:

Commencing on or about August 11, 1938, Timetrust, Incorporated offered $5,000,000 face amount of Timetrust Certificates to the public, thereby soliciting offers to buy bank stock in the amount of the balance of payments made under said Timetrust Certificates remaining after deduction of the fees and charges heretofore referred to in Paragraph IV. It has issued and sold to more than six hundred persons, by use of the mails, Certificates in an aggregate face amount exceeding $1,600,000. It is now offering for sale to the public the unsold balance of its $5,000,000 offering of Timetrust Certificates.

VI.

On information and belief:

Defendant Timetrust, Incorporated was organized with the active support and assistance of defendants A. P. Giannini, L. Mario Giannini and John M. Grant, and has been and still is being operated by defendants

Parker, Wood and Blanchett, with the active support and assistance of defendants A. P. Giannini, L. Mario Giannini, John M. Grant, and Bank of America National Trust & Savings Association, for the following purposes, among others:

(1) To aid in the widespread sale and distribution of shares of Bank of America National Trust & Savings Association common stock owned or to be acquired by Transamerica Corporation, Transamerica Service Corporation, and/or other persons and corporations affiliated with Transamerica Corporation.

(2) To create a constant and ever-increasing interest in and demand for shares of Bank of America National Trust & Savings Association common stock, thereby stimulating market activity in said bank stock and supporting and increasing the market price of such stock;

(3) To effect the placement of shares of Bank of America National Trust & Savings Association common stock as widely and as permanently as possible among members of the public.

VII.

On information and belief:

In order to accomplish, among other things, the purposes heretofore recited in Paragraph VI, the defendants, Timetrust, Incorporated, Meredith Parker, Ralph Wood and H. E. Blanchett, aided and abetted by the defendants A. P. Giannini, L. Mario Giannini, John M. Grant and Bank of America National Trust & Savings Association, have, since on or about August 11, 1938, in the sale of securities, namely, Timetrust Certificates and common stock of Bank of America National Trust & Savings Association, by the use of the mails, employed and are now employing a device, scheme, and artifice to defraud the purchasers of such securities, in that purchasers and prospective purchasers of Timetrust Certificates were to be told, and they were told and are being told that the purchase of a Timetrust Certificate is the same as or similar to the creation of a savings bank account and that the principal sums paid in by such persons would and will, similarly to a savings account, remain intact and be withdrawable at any time without loss, which such representations were false and fraudulent, and were known by defendants to be false and fraudulent, and were designed to, and did, delude and deceive, and still are deluding and deceiving purchasers and prospective purchasers of Timetrust Certificates. In furtherance of said device, scheme, and artifice to defraud, and to delude and deceive unwary and financially inexperienced persons, defendants devised and operated, and now are operating, the plan of speculation in the common stock of Bank of America National Trust & Savings Association, represented by investment in Timetrust Certificates, to resemble as closely as possible the mechanics of the operation of a savings bank account. Thus, defendants arranged that monthly payments by "trustors" of a Timetrust could be made through any branch of the defendant Bank of America National Trust & Savings Association or through any branch of Central Bank; that such payments would be recorded in a book similar to a savings bank passbook, called a "Timetrust Pass Book"; and that "authorization cards" would be employed, very similar to those used in the operation of Christmas Club Savings Accounts, instructing branches of the Bank of America National Trust & Savings Association or of Central Bank to debit "trustor" depositors' accounts each month to make payments to the trustee.

and it was a part of such device, scheme, and artifice to defraud that defendants would make and cause to be made, and have made and caused to be made, other similar false and fraudulent representations, and defendants would employ and cause to be employed, and have employed and caused to be employed, other similar devices designed to delude and deceive unwary and financially inexperienced persons.

VIII.

On information and belief:

From August 11, 1938, Timetrust, Incorporated, and its officers, directors, agents, and sales personnel, with the aid and abetment of defendants A. P. Giannini, L. Mario Giannini, John M. Grant and Bank of America National Trust & Savings Association, in the sale of securities, namely, said Timetrust Certificates and said common stock of Bank of America National Trust & Savings Association, by the use of the mails, directly and indirectly, obtained and are now obtaining money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, in that Timetrust, Incorporated, by and through its officers, agents, and sales personnel, directly and indirectly represented and caused to be represented, and is now representing and causing to be represented:

(a) That the purchase of a Timetrust Certificate is the same as, or similar to, the creation of a savings account in a bank, and that such Certificates will pay a higher rate of return than can be obtained from a savings bank account; whereas, in truth and in fact, the purchase of a Timetrust Certificate is not the same as or similar to the creation of a savings account in a bank and the Timetrust plan is essentially a plan for indirect speculation in the common stock of Bank of America National Trust & Savings Association, and the value of a Timetrust Certificate is at all times dependent upon the market price of said bank stock, and there is no fixed rate of return on said bank stock, thereby making it impossible to predict with accuracy that the rate of return will be better or worse than the fixed rate of return of a savings bank account, which facts defendants omitted to state and which facts were necessary to be stated in order to make the statements made not misleading.

(b) That the money paid in by purchasers of said Certificates would be available at all times, and might be withdrawn in full at any time or subject only to a small, insignificant, or nominal fee, or a revocation fee of $2.50; whereas, in truth and in fact, the money paid in by purchasers of said Certificates would not be available at all times, nor could it be withdrawn in full at any time subject only to a small, insignificant, or nominal, or a revocation fee of $2.50. There is no provision in the Timetrust plan for "withdrawing" money paid in, as that term is popularly understood and was and is understood by prospective purchasers. Purchasers seeking return of monies paid in on a Timetrust Certificate must "revoke the trust" and pay a fee therefor of $2.50. Upon revocation, the purchaser of a Timetrust Certificate obtains cash for all fractional shares and obtains all full shares of bank stock which have been purchased with the balance of monies paid into his account, remaining after deduction of heavy and substantial fees and charges as heretofore set forth in Paragraph IV. None of the fees and charges which have previously been deducted from the monthly payments made by the trustor are recredited to his account, or returned to him in the event of revocation. The value of all shares of bank stock obtained upon revocation is dependent upon the then market price of such shares, and it is impossible to determine in advance what amount, if any, will be available to or may be realized by a "trustor" upon revocation. As of February 27, 1939, the market value of bank stock purchased by the trustee for the account of all "trustors" was approximately 40.69% less than the amount of payments made by "trustors" as of that date.

(c) That the purchase of a Timetrust Certificate and the making of monthly payments thereunder represent a safe, sound, and secure method of accumulating a definite sum for some contemplated future need or purpose, such as an old age retirement fund, an emergency fund, a children's educational fund, a vacation fund, or a business "reserve" for depreciation, obsolescence, and similar purposes; whereas, in truth and in fact, the purchase of a Timetrust Certificate and the making of monthly payments do not represent a safe, or a sound, or a secure method of accumulating a definite sum for some contemplated future need or purpose, such as an old age retirement fund, an emergency fund, a children's educational fund, a vacation fund, or a business "reserve", in that the Timetrust plan is merely a plan indirectly to acquire bank stock, the value of which fluctuates with the rise and fall of the market price thereof.

(d) That the Bank of America National Trust & Savings Association and/or its resources were "back of" the Time trust Certificates, meaning thereby, and intending to convey and conveying the meaning to purchasers that said bank guaranteed and/or assured the return of the full amount of money paid in on any Timetrust Certificate and/or that the resources of said bank were pledged to secure and would insure payment of the full face amount of such Certificates at the termination date thereof; whereas, in truth and in fact, neither the Bank of America National Trust & Savings Association nor its resources were "back of" such Certificates, nor had said bank guaranteed or assured the return of the full amount of money paid in on such Certificates, nor were the resources of said bank pledged to secure nor did they insure the payment in full of the face amount of such Certificates.

(e) That the principle of dollar averaging is unique and original and is available to a small investor only through the Timetrust plan, and that by applying the principle of dollar averaging under the Timetrust plan an investor would solve the "age-old problem" of "when to buy" and "when to sell," meaning thereby and intending to convey and conveying the meaning to prospective purchasers that the principle of dollar averaging would solve the problems of "when to buy" and "when to sell" wisely and profitably, and that the employment of the principle of dollar averaging under the Timetrust plan would assure to a purchaser of a Timetrust Certificate a profit under any and all stock market conditions unless the Bank of America National Trust & Savings Association failed; whereas, in truth and in fact, the principle of dollar averaging is not unique or original, nor is it available to a small investor only through the Timetrust plan, nor by applying the principle of dollar averaging under the Timetrust plan could an investor solve the problem of "when to buy" or "when to sell" wisely or profitably, nor would employment of the principle of dollar averaging under the Timetrust plan assure to a purchaser of a Timetrust Certificate a profit under any and all stock market conditions, unless the Bank of America National Trust & Savings Association failed. The principle of dollar averaging in fact has been well known for many years, and has been and is now available to small investors in a large number of so-called "thrift plan" companies.

(f) That through the operation of the principle of dollar averaging and "compounding" under the Timetrust plan, a Timetrust Certificate, at or before the maturity thereof, will be worth variously stated amounts, ranging from 50% to 300% in excess of the face amount of the certificate; whereas, in truth and in fact, there was, and is, no reasonable basis upon which the future worth of a Timetrust Certificate could have been or can be so predicated, as the worth thereof is solely and entirely dependent upon the fluctuating market price of shares of bank stock which have been purchased for the account of the "trustor" with the balance of his monthly payments remaining after the deduction of designated fees and charges, as hereinbefore set forth in Paragraph IV; which market price of said shares may well be substantially less than the amount of payments made by a "trustor."

(g) That through the operation of the principle of dollar averaging under the Timetrust plan, the "trustor" is enabled to acquire shares of bank stock at an average cost which is less than the average market price of such shares, omitting to state the material facts necessary to be stated in order to make the statements made not misleading, that the operation of the principle of dollar averaging under the Timetrust plan is dependent upon the making of equal payments of a fixed amount at stated intervals, and that the principle of dollar averaging will operate only if the "trustor" is able to and will make his payments at regular intervals for a stated period, irrespective of whether business, market, or personal conditions are favorable or adverse during that period.

(h) That the operation of the Timetrust plan is free from all risks and/or errors arising from the exercise of human judgment; whereas, in truth and in fact, the operation of the Timetrust plan is not free from all risks or errors arising from the exercise of human judgment, and is subject to the same risks and errors as are involved in any common stock investment, and at the end of the ten year period contemplated by such plan, Timetrust Certificate holders receive bank stock and occupy the same position and are confronted with the same problems as the average purchaser of common stock.

(i) That the Timetrust plan provides for compounding income by reinvestment of dividends received on shares and fractions of shares of bank stock purchased by the trustee for the account of the "trustor", meaning thereby, and intending to convey and conveying the meaning to prospective purchasers that the principal sums paid in by the "trustor" would at all times remain safe and intact and would be increased and augmented by the receipt and reinvestment of such dividends; whereas, in truth and in fact, the Timetrust plan does not provide for compounding income in such a way that the principal sums paid in would at all times remain safe or intact or that such principal sums would be increased or augmented by the receipt and reinvestment of such dividends, since the value of a Timetrust Certificate is at all times dependent upon the fluctuating market price of shares of bank stock purchased by the trustee for the "trustor's" account with the balance of monthly payments remaining after the deduction of substantial fees, as hereinbefore set forth in Paragraph IV.

(j) That the Timetrust plan provides for "compounding appreciation" in the market price of shares of bank stock purchased by the trustee for the account of the "trustor"; whereas, in truth and in fact, the Timetrust plan does not, and could not, provide for "compounding appreciation" in value of bank shares purchased by the trustee for the account of the "trustor," since there is no way under the Timetrust plan by which appreciation, if any, may be compounded.

(k) That a purchaser of a Timetrust Certificate could expect a combined return from income from and appreciation in the shares of bank stock purchased by the trustee for the account of the "trustor" of from 7% to 15% per annum, and that such combined return of from 7% to 15% per annum compounded on an investment of $50 per month over a ten year period on a Timetrust Certificate in the face amount of $8,000, would give to such certificate at the expiration of ten years a value of from $8,685 to $13,778; whereas, in truth and in fact, there was and is no sound basis upon which to predicate the statement that a combined return from income and appreciation of from 7% to 15% per annum, compounded on an investment of $50 per month over a ten year period on a Timetrust Certificate in the face amount of $8,000, would give to such Certificate at the expiration of ten years a value of from $8,685 to $13,778, for the reason that the estimation of such values failed to take into consideration the possibility that there may be no earnings in any particular year, and the stock may actually depreciate rather than appreciate in value, and for the further reason, among others, that the worth of a Timetrust Certificate after monthly payments are made thereunder for ten years will entirely depend upon the unpredictable market price at that time of shares of bank stock purchased by the trustee for the "trustor's" account with the balance of monthly payments remaining after the deduction of substantial fees, as hereinbefore set forth in Paragraph IV. Furthermore, in representing to prospective purchasers that an investment in a Timetrust Certificate of $50 per month for a period of ten years, at a compounded return of from 7% to 15% per annum, would give a value to such Certificate, at the expiration of ten years, of $8,658 to $13,778, defendants, and each of them, and their officers, agents and sales personnel, omitted to state the material fact necessary in order to make the statements made not misleading, that the estimation of such values failed to take into account the effect of the deduction of substantial fees and charges payable under the Timetrust plan prior to the investment of such monthly payments, as hereinbefore set forth in Paragraph IV.

(l) That where insurance is taken out with a Timetrust Certificate, the life of the "trustor" is insured for the full face amount of the Certificate, so that in the event of his death while his Timetrust Certificate is in effect, there would immediately be paid to his designated beneficiary a lump cash sum consisting of the face amount of his Certificate; whereas, in truth and in fact, the insurance protection is not in the amount of the face amount of the Certificate, but in the amount of the payments remaining unpaid on the Timetrust Certificate.

(m) That all monthly payments made under a Timetrust Certificate would be kept intact, or that all such monthly payments would be invested in shares of bank stock, or that only a small, or insignificant, or nominal fee would be deducted from the monthly payments, or that the only fees and charges that would be deducted from the monthly payments would be trustee's fees of 30¢ per month and/or insurance premiums and/or a revocation fee of $2.50 payable upon revocation of a "Timetrust"; whereas, in truth and in fact, a creation fee in the sum of 6% of the first $1,200 face amount, in the sum of 5-1/4% of the next $1,200 face amount, in the sum of 4-3/4% of the next $3,000 face amount, in the sum of 4-1/4% of the next $6,000 face amount, and in the sum of 3-1/2% on all amounts in excess of $1,200. of any Timetrust Certificate or Certificates would be deducted from payments equalling the sum of the first eighteen regular monthly payments, and would be $72, or 40% of such sum on a $12,000 face amount Certificate, and would increase in amount but would decrease in percentage to the face amount of the Certificate with the increase of such face amount, and would be $954, or approximately 22%, of payments equalling the sum of the first eighteen regular monthly payments on a $24,000 face amount Certificate.

(n) That stock of Bank of America National Trust & Savings Association was chosen as the investment medium for Timetrust, Incorporated, because it was the finest investment medium available; whereas, in truth and in fact, stock of Bank of America National Trust & Savings Association was not chosen as the investment medium for Timetrust, Incorporated because it was the finest investment medium available, but was chosen in order to effect the purposes hereinabove recited in Paragraph VI.

(o) That the purpose of Timetrust, Incorporated is to enable provident-minded persons to secure the better things in life; whereas, in truth and in fact, the purpose of Timetrust, Incorporated was and is to carry out the distribution program hereinabove referred to in Paragraph VI.

IX.

Upon information and belief, unless enjoined and restrained therefrom, the defendants will continue the acts and practices herein described.

WHEREFORE, plaintiff demands:

A. That the defendants and their agents, servants, representatives, employees and persons in active concert and participation with them be permanently enjoined from, in the sale of securities, namely, Timetrust Certificates and common stock of Bank of America National Trust & Savings Association or any other securities, by the use of the mails, directly or indirectly,

(1) Employing a device, scheme, or artifice to defraud, particularly in devising, operating and representing a plan or scheme of common stock speculation in Bank of America National Trust & Savings Association stock as a savings bank account or as a plan of investment similar to a savings bank account, or employing any other device, scheme, or artifice to defraud purchasers similar to that set forth above or of a similar purport or object;

(2) Obtaining money or property by means of untrue statements of material facts and omissions to state material facts necessary to be stated in order to make the statements made, in the light of the circumstances under which they are made, not misleading concerning

(a) The similarity of such securities to a savings bank account and to the yield thereon and earnings thereof,

(b) The amount available to and withdrawable by purchasers,

(c) The safeness, soundness, or security of such securities as investments to assure accumulation of definite sums of money for specific purposes,

(d) The "backing" of such securities by Bank of America National Trust & Savings Association and/or its resources,

(e) The application of the principle of dollar averaging to such securities,

(f) The principle of dollar averaging and compounding,

(g) The cost of purchasers of Bank of America National Trust & Savings Association stock under the Timetrust Plan,

(h) The freedom from all risks or errors arising from the exercise of human judgment of a purchaser of such securities,

(i) The effect of compounding income,

(j) The compounding of unrealized appreciation,

(k) The combined return from income and appreciation on such securities,

(l) Insurance protection available under the Timetrust Plan,

(m) The fees and charges attached to such securities,

(n) The reason for selection of Bank of America National Trust & Savings Association stock as the investment medium, or any other untrue statements of material facts or other omissions to state material facts necessary to be stated in order to make the statements made, in the light of the circumstances under which they are made, not misleading, similar to those set forth above, or of similar purport or object.

D. For such other and further relief as is just.

Chester T. Lane, General Counsel

O. John Rogge, Assistant General Counsel

Howard A. Judy, Regional Administrator

E. Forrest Tancer, Principal Attorney

Sam Harris, Attorney

John G. Sobieski, Attorney

Roger Kent, Attorney

Herbert Cohn, Attorney

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STATE OF CALIFORNIA)
)
CITY AND COUNTY OF) SS
SAN FRANCISCO)

E. FORREST TANCER, being duly sowrn, deposes and says:

That he is one of the attorneys for the Securities and Exchange Commission, Plaintiff herein, that he has been duly authorized by said Plaintiff to make this affidavit for it and in its behalf; that he has read the foregoing Complaint, knows the contents thereof, and knows that the facts therein set forth are true, except such facts as are therein stated upon information and belief, and that such allegations on information and belief, he believes to be true.

That the source of deponent's information and the grounds of his belief are investigations made and conducted by deponent as attorney herein for the Plaintiff herein, in charge of this matter, and the testimony of witnesses examined by officers of the Securities and Fxchange Commission and by deponent in hearings held in this action, before deponent and others as officers of the Securities and Exchange Commission.

E. Forrest Tancer
Attorney

Subscribed and sworn to before me
this 5TH day of April, 1939.

Notary Public in and for the City
and County of San Francisco, State
of California.

---oOo---

April 6, 1939

To: Miss Chauncey

From: Miss Epps

I am attaching herewith all originals which we have on the Bank of America, recently received from Messrs. Jesse Jones, Leo T. Crowley, and Preston Delano.

(1) From RFC

Letter to Mr. Hanes dated April 4, 1939
Letter to Secretary dated April 4, 1939
Copies - letter from RFC to Giannini - February 25, 1939
letter from SEC to RFC - March 31, 1939
letter from Giannini to RFC - April 3, 1939

(2) From Comptroller of the Currency

Letter to Secretary dated April 4, 1939

(3) From Federal Deposit Insurance Corporation

Letter to Secretary dated April 4, 1939

E.E.

N.B. Above letters are filed under respective dates

April 7, 1939

MEMORANDUM RELATIVE TO PROPOSED RFC LOAN TO FACILITATE ISSUE AND SALE OF PREFERRED STOCK BY THE BANK OF AMERICA N.T. & S.A.

With reference to the contemplated loan by the R.F.C. to the stockholders of the Bank of America National Trust & Savings Association to finance the purchase of preferred stock of the Bank, a draft of a letter from the President of the Bank of America to the Comptroller of the Currency has been prepared. In that letter, the President of the Bank would state that, if the loan is made by the R.F.C., upon the request of the Secretary of the Treasury and the approval of the President, the Bank will agree "to pay no further dividend if in the opinion of either the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation the declaration of such dividend would impair the capital stock of the Bank or would constitute an unsafe and unsound banking practice". The reasons for including in the suggested letter the statement in the form here set forth are as follows:

(1) It would be wholly inadequate merely to provide in the letter that a dividend would not be paid if it would impair the capital stock of the Bank. Such a statement would be superfluous since it would amount to saying that no dividend would be paid in violation of law. Under existing law (U.S.C. title 12, sec. 55), if the capital stock of a national bank becomes impaired by losses or otherwise, the deficiency must be paid by assessment upon the shareholders. If the deficiency is not paid and the bank refuses to go into voluntary liquidation, the Comptroller of the Currency may appoint a receiver to close the bank.

Also, under existing law (U.S.C. title 12, sec. 56), a national bank is prohibited to use any portion of its capital for the payment of dividends. Nor may a dividend be paid by a national bank in an amount greater than its net profits then on hand, less its losses and statutory bad debts.

Accordingly, if the suggested letter is to mean anything, it should provide that a dividend will not be declared if the payment of such a dividend would constitute an unsafe and unsound banking practice. Such a restriction is broad enough to forbid the use of the earnings of the bank in paying excessive dividends, when such earnings should be used to write-off ascertained or probable losses, or to set up adequate reserves. Such a restriction would be consistent with the position taken by the Comptroller of the Currency in his telegram read to the meeting of the Board of Directors of the Bank on September 13, 1938, when he warned them that the declaration and payment of the dividend then under contemplation would constitute an unsafe and unsound banking practice under section 30 of the Banking Act of 1933, as amended. The continuance of such an unsafe and unsound banking practice, after warning from Comptroller of the Currency, would furnish the basis for a proceeding before the Board of Governors of the Federal Reserve System to remove officers or directors of the bank.

(2) The draft of the letter provides that the opinion of either the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation

that a contemplated dividend will impair the capital stock of the Bank or constitute an unsafe or unsound banking practice, shall be sufficient to deter the Bank from declaring or paying such dividend. The three banking supervisory agencies were included since all of them have an interest in the matter.

The Comptroller of the Currency has general supervision over the Bank of America since it is a national bank. If the capital stock of the bank should become impaired and that impairment not be remedied, the Comptroller of the Currency is authorized to appoint a receiver. If any director or officer of a national bank continues unsafe or unsound banking practices, after having been warned by the Comptroller of the Currency to discontinue such practices, the Comptroller of the Currency may cite such officer or director to the Board of Governors of the Federal Reserve System for removal from office (U.S.C. title 12, sec. 77).

The Federal Deposit Insurance Corporation, as insurer of deposits, has a direct pecuniary interest in the sound condition of the Bank and should have a voice in determining whether or not a contemplated dividend would tend to impair the capital stock of the bank or constitute an unsafe or unsound banking practice. In addition, if the Board of Directors of the Federal Deposit Insurance Corporation finds that an insured bank, or its directors or trustees, have continued unsafe or unsound practices in conducting the business of such bank, the law provides that, with respect to a national bank, the Board of Directors shall give the Comptroller of the Currency a statement concerning such practices. If the criticized practices have not been corrected within 120 days, or within such shorter period of time as the Comptroller of the Currency shall require, the Board of Directors may take the necessary action to proceed to terminate the insurance of the bank.

The Board of Governors of the Federal Reserve System is the agency which determines, after proper hearing, whether or not a director or officer of a national bank should be removed for continuing unsafe or unsound banking practices (U.S.C. title 12, sec. 77). If a national bank is insolvent and a receiver is appointed by the Comptroller of the Currency, the stock held by such bank in the Federal Reserve bank of the district is cancelled and the bank automatically ceases to be a member of the Federal Reserve System (U.S.C. title 12, sec. 288). In addition, the Federal Reserve Act provides that if a bank (including national banks) is not carrying its required reserve balance with the Federal Reserve bank of the district, such bank may pay no dividends unless and until the total reserve balance required by law is fully restored (U.S.C. title 12, sec. 464).

TREASURY DEPARTMENT

INTER OFFICE COMMUNICATION

DATE APR 7 - 1939

TO Secretary Morgenthau

FROM E. H. Foley, Jr., Acting General Counsel

For your information

Re: Bank of America, N.T. & S.A.

On Tuesday, April 4, 1939, the Securities and Exchange Commission filed a bill of complaint in the United States District Court for the Northern District of California, requesting an injunction to restrain Timetrust, Inc., A. P. Giannini, L. M. Giannini, and John M. Grant, President of Transamerica Corporation, from defrauding investors by a scheme of selling so-called trust certificates. These certificates, sold in face amounts of $600 and multiples thereof, may be purchased by payments in 120 monthly installments. Under the trust agreement, the funds obtained from the sale of the certificates are invested in stock of the Bank of America.

The certificates are sold under a plan by which the purchasers are led to believe that they are investing in something very similar to a savings account. They receive books similar to savings account pass books and payments are entered in the books in a manner similar to the entry of payments on Christmas Club savings accounts. However, as an actual fact, if a certificate holder should desire to withdraw the funds he has invested, he can only receive bank stock of the Bank of America purchased with his funds, with a cash adjustment for any fraction of a share of such stock. In connection with the sale of the certificates, the purchasers are also solicited to purchase insurance to cover the unpaid balance of the installments on the certificates. This insurance is placed with the Occidental Life Insurance Company, owned by a subsidiary of Transamerica Corporation.

As of February 27, 1939, the market value of the Bank's stock purchased for the account of certificate holders was approximately 40 per cent less than the amount of the payments made by those holders. Of the $5,000,000 of the certificates offered for sale by Timetrust, Inc., beginning August 11, 1938, thus far more than 600 persons have purchased certificates with a face value of $1,600,000.

The certificates are offered for sale only within the State of California, and, accordingly, are not subject to registration with the Securities and Exchange Commission. The civil suit by the Commission for an injunction has been instituted under section 17 of the Securities Act of 1933 and is, in brief, predicated on an allegation that the United States mails have been used in the sale of securities under a scheme to defraud purchasers.

EHF

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E. H. Foley, Jr., Acting General Counsel

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

DJS/EHF:s Retyped 4/7/39

TREASURY DEPARTMENT

INTER OFFICE COMMUNICATION

DATE APR 7 - 1939

TO Secretary Morgenthau

FROM Mr. Foley, Acting General Counsel

Re: Bank of America.

On Thursday, April 6, 1939, the United States of America and the Securities and Exchange Commission filed a complaint in the District Court of the United States for the Northern District of California against William J. Mahaney, Bank of America, L. M. Giannini, Transamerica Corporation, and Timetrust, Inc., requesting an injunction to enjoin Mahaney, a former employee of the S.E.C. from disclosing to the defendants confidential information obtained by him during his employment with the Commission, and to enjoin the defendants from continuing the employment of Mahaney as an attorney for the Bank.

Mahaney resigned as an attorney in the San Francisco office of the S.E.C. on January 3, 1939, effective at the expiration of his accrued annual leave, February 20, 1939. Since January 1, 1939, Mahaney has been employed by the Bank as an attorney at $7,500 a year (his salary with the S.E.C. was $4,000). Last fall, at Mahaney's request, he was transferred to Washington temporarily for duty from October 11 to November 2, 1938. The complaint alleges that Mahaney obtained much confidential information concerning the investigations by the S.E.C. of Bank of America, Transamerica Corporation, and Timetrust, Inc., and that when he terminated his employment with the S.E.C. he falsified to the Commission the identity of his new employer and the nature of his employment.

E.H.F. Jr.

APR 7 - 1939

Secretary Morgenthau

Mr. Foley, Acting General Counsel

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

DJStes typed 4.7.39

COPY

April 7, 1939

To: Mr. Delano

From: Mr. Hanes

In view of the fact that I am going away tonight, and in order that there will be no misunderstanding, I am sending you this memorandum toconfirm our conversation to the effect that you will clear with the F.D.I.C. and the Federal Reserve, i.e., Crowley and Eccles, the letter which we are desirous of having Mr. Giannini sign and send to the Comptroller, and, further, that you will proceed in the effort to get Mr. Giannini to sign the letter.

Will you advise Mr. McReynolds, Mr. Gaston or Mr. Foley of any progress during my absence. I assume the Secretary will want to know about this when he gets back on Monday.

2nd draft of ltr to The Comptroller
from Giannini

My dear Mr. Comptroller:

I am writing you with reference to negotiations which have been going forward between the Bank of America N. T. & S. A., the Treasury Department and the R. F. C. for increasing the capital funds of the Bank. Particular reference is made to a letter dated February 25, 1939, addressed to me by the Chairman of the R. F. C., and my reply dated April 3, 1939, in which application was made on behalf of our stockholders for a loan or loans of up to $25,000,000 to be made by the R. F. C. to the stockholders of the Bank of America N. T. & S. A. individually or in group, the money to be used by the stockholders to subscribe for any increase in the capital stock of the Bank that may be determined upon and approved by the Comptroller of the Currency. I understand that copies of these letters have been furnished to you.

As a condition to any loan which the R. F. C. may make pursuant to these letters, the Bank will agree to pay no further dividend if in the opinion of [either] the Comptroller of the Currency, [the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation] the declaration of such dividend would impair the capital stock of the Bank [or would constitute an unsafe or unsound banking practice.] In order to facilitate carrying out this agreement, the Bank will notify the Comptroller of the Currency within a reasonable time before any such dividend is declared of the contemplated rate of such dividend.

Copies of this letter have been forwarded to the R. F. C., the F. D. I. C. and the Board of Governors of the Federal Reserve System.

Sincerely yours,

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

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

COPY Draft #1.

My dear Mr. Comptroller:

I am writing you with reference to negotiations which have been going forward between the Bank of America N. T. & S. A., the Treasury Department and the R. F. C. for increasing the capital funds of the Bank. Particular reference is made to a letter dated February 25, 1939, addressed to me by the Chairman of the R. F. C., and my reply dated April 3, 1939, in which application was made on behalf of our stockholders for a loan or loans of up to $25,000,000 to be made by the R. F. C. to the stockholders of the Bank of America N. T. & S. A. individually or in group, the money to be used by the stockholders to subscribe for any increase in the capital stock of the Bank that may be determined upon and approved by the Comptroller of the Currency. I understand that copies of these letters have been furnished to you.

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Copies of this letter have been forwarded to the R. F. C., the F. D. I. C. and the Board of Governors of the Federal Reserve System.

Sincerely yours,

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

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

April 7, 1939

The papers which the Secretary secured, through Duffield, from the office of the Comptroller of the Currency and loaned to Mr. Douglas were today returned by Douglas to McReynolds, and they are to be returned to the Comptroller by Mr. Duffield when he returns to Washington on Monday.

These documents included the following:

1. March 18, 1939 - Duffield's memorandum to the Secretary re Mr. A. O. Stewart's indebtedness to Bank of America

2. Sept. 30, 1938 - Press Release, FRB System announcing resignation of A. O. Stewart as Class C Director and Chairman of the Board and FRB Agent of FRB of San Francisco.

3. Oct. 30, 1938 - Copy of memorandum regarding A. O. Stewart Loans

4. Sept. 26, 1938-- Copy of memorandum "References to the A. O. Stewart Line in Reports of Examination of the Bank of America, N.T. & S.A.

5. Sept. 17,1938 - Photostat of letter to Wm. Prentiss, Jr., Chief Nat'l Bank Examiner, Washington, from C. H. McLean, Nat'l Bank Examiner, San Francisco, furnishing complete line-up, as requested by phone, of the A.O.Stewart indebtedness to Bank of America and Nat'l Trust and Savings Assn. together with list of securities held.

April 8, 1939

FOR THE SECRETARY:

You will please find attached herewith a chronology of events covering the relationship of the Treasury (including the Office of the Comptroller of the Currency) with the Bank of America National Trust and Savings Association. You will note that this chronology is in two parts:

(1) A copy of a record already submitted to you and which is complete up to September 21, 1938;

(2) A chronology from September 1938 to April 4, 1939.

Pertinent documents for both these periods are available if you desire them.

Preston Delano

Preston Delano

CHRONOLOGY OF EVENTS, WITH PERTINENT DOCUMENTS,

RELATIVE TO

THE BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION

* * * *

Prepared by

DONALD J. SHERBONDY

FROM

DECEMBER 8, 1937

to

SEPTEMBER, 1938

1. December 8, 1937 - Hearings before the sub-committee of the House Committee on Appropriations relative to the Treasury Department Appropriation Bill for 1939:

"Johnson: Mr. Secretary, do you have any suggestions to make as to whether, or not, the banking laws should be in any wise changed? I ask that because you are familiar with the banking laws.

"H.M.Jr: There is only one thing that bothers me about the banking situation, and that is we may want to do away with holding companies for bank securities. There are 8 or 10 holding companies that hold a lot of bank stock, and I think that is an unhealthy situation.

"Johnson: Do you think that the banking laws as they are now cover the situation pretty well?

"H.M.Jr: Basically, yes.

"Taber: Are not the provisions of the banking law as to branch banking rather too liberal, especially in the case of small communities?

"H.M.Jr: That is something else, and if you do not mind---

"Taber (interposing): They do the same things nationally on a broader scale, without regard to the limitations of the law as to branch banking.

"H.M.Jr: I do feel very strongly on the subject of holding companies. There would be just a few people controlling important banks. They are growing all the time.

"Taber: I think you are correct on that.

"H.M.JR: They have one in New York. I have no criticism of that particular group, but I do not think it is a healthy situation." (p. 20)

2. January 19, 1938 - Secretary's staff meeting. The following quoted from the minutes:

***

"Magill: Henry, I thought you might be interested to know I had a lunch yesterday with Bill Douglas.

"Magill: Yes. Then he said he had some stuff on Trans-America.

"H.M.Jr: On what?

"Magill: On Trans-America.

"H.M.Jr: He volunteered that?

"Magill: Yes. And he said, 'I'm thinking of sending it to Jefty O'Connor.'

"H.M.Jr: Yes.

"Magill: 'Well,' I said, 'he isn't in the Treasury. Why don't you send it to the Secretary.

"H.M.Jr: Yes.

"Magill: He said, 'all right, I'll do that. I don't know where to send it, but I'll send it wherever it should go.' He said, 'It's fragmentary, but it looks very bad.'

"H.M.Jr: Yes, Well, I'd like to have it.

"Magill: Yes. Well, that's about ...

"H.M.Jr: Now, is Trans-America subject to regulation?

"Magill: No, I wouldn't think so.

"H.M.Jr: No other than the New York Stock Exchange.

"Magill: I wouldn't think so, within what he was talking about.

"H.M.Jr: Well, that's interesting."

3. January 21, 1938 - Letter from Mr. William O. Douglas, Chairman of the SEC, to the Secretary transmitting, pursuant to Mr. Magill's suggestion, a copy of a survey of the Transamerica Corporation prepared in connection with the SEC's study of investment companies. Mr. Douglas indicated that the SEC could make no further survey of Transamerica as part of the investment study. (Summary of SEC report prepared by Mr. Upham and dated January 26, 1938.)

4. January 28, 1938 - Minutes of group meeting in the Secretary's office relative to bank holding companies. (The whole series of joint meetings on the President's message to Congress relative to group banking was part of the Secretary's interest in the Bank of America situation.) During the meeting the Secretary was insistent that prompt steps be taken with reference to the Bank of America. The following is quoted from the minutes of the meeting:

"H.M.Jr. (to Mr. Douglas): You don't mind my saying that I've got that - that that was a nice report on Trans-America you dumped into my lap. I mean I just want these gentlemen to know that I've got it and that you gave it to me, because I can't just sit with it and not do something about it, and - I mean I'm willing to accept it where you people leave off. I mean ....

"Douglas: That particular study wasn't a hundred percent; that is to say, we hadn't got way down into the roots of the whole thing; we just touched the surface of that problem.

"H.M.Jr: I haven't fully absorbed it, but after I have I'd like to talk to you some more. But it only bears out this - the fact that there is something very much to be worried about. (p.6.)

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"H.M.Jr: What I want to do at this time, before we go any further, is this. As Secretary of the Treasury, I am going to ask the Chairman of the R.F.C. to take a look at the Bank of America to see whether they have sufficient capital, and I'm going to ask him to do it just as promptly as possible.

"Jones: All right, if we can have your (Diggs) report and your (Crowley) report, why, we'll dig right into it and I'll give you an answer in a very few days. We've got some general information, but I don't think we've had the benefit of the Comptroller's report. (p.22.)

***

"H.M.Jr: And what I would say is that just as soon as Mr. Jones is ready, and now that he's heard what you've got to say - the more I go into it, the more serious it looks - but the minute that he's ready, I'll call another meeting like this. And, fortunately, we can call it a bank holding meeting and not have it look as though we were studying Trans-America or Bank of America. But I would say to Mr. Jones - I mean he's a fast worker and Sundays don't mean anything to him when he has to work, so that the minute he's got something and is ready to report back to these agencies, who are charged with the responsibility - and fortunately we've got everybody in the room who's got anything to do with it; there isn't anybody in the Government who isn't in the room now, and the minute you've got something ....

"Jones: I'll give you a ring.

"H.M.Jr: You'll give me a ring and we'll have another meeting. But I think it's all the more important that we take a look at the Bank of America and see that they have ample capital. There seems to be two opinions as to their statement, and that's what bothers me - the fact that the F.D.I.C. thinks one thing and the Comptroller's office thinks another. And I think the quicker we get to the bottom of it, the better. And, of course, we don't want to start any whispers or anything, but I would say, Mr. Douglas, that one or two days to you wouldn't make an awful lot of difference." (pp. 24-25) (Mr. Jones' report given to the Secretary about February 18, see 14 below.)

5. January 28, 1938 - Letter from Mr. O'Connor to the Secretary (received January 29 at 11:55 a.m.) in which Mr. O'Connor expressed surprise at Mr. Crowley's critical remarks at the morning conference (4 above) with reference to the Bank of America. Mr. O'Connor stated that if Mr. Crowley's statements were correct, he should have presented the facts to the Board of the F.D.I.C. and a notice should have been sent to the Bank.

6. January 29, 1938 - 11:00 a.m. - Secretary suggested that Mr. O'Connor, as a member of the Board of the FDIC, ask Mr. Crowley to bring information relative to Bank of America formally before the Board of the FDIC for whatever action the Board deemed necessary. Mr. O'Connor agreed. (Secretary's memorandum.)

7. January 29, 1938 - Letter from Mr. O'Connor to the Secretary in which he advised that Mr. A. P. Giannini was in his office and indicated that he favored a bank holding company bill based upon a 10 per cent stock ownership definition of a bank holding company.

8. January 29, 1938 - Letter from Mr. O'Connor to the Secretary in which he advised that Mr. Crowley stated to him that there was nothing the Board of the FDIC could do at that time with reference to Bank of America and that there was no action he could suggest to the Board.

9. January 29, 1938 - Mr. Opper's memorandum, dated January 31, 1938, covering meeting at Secretary's house at 5:00 p.m., on January 29, to advise him of the SEC's interest in the Trans-America situation. Messrs. Throop, Lane and Judy of the SEC present. Meeting concluded by request from the Secretary, acceded to by the SEC representatives, that any final action determined upon by the Commission would be communicated to the Treasury.

10. January 31, 1938 - Letter from the Secretary acknowledging Mr. O'Connor's letters of January 28 and 29 (5, 6 and 8 above) and stating that in view of his oral discussion with Mr. O'Connor on January 29, he assumed no further reply to the letter of January 28 was necessary.

11. January 31, 1938 - Memorandum from Mr. Opper to the Secretary advising that Mr. Chester Lane of the SEC had informed him that the SEC had discussed with Messrs. Neblett, his partner Warner, Baker and Scampini, all of Transamerica, the proposed distribution of Paganucci stock (see memorandum under 9 above). No conclusion reached and another meeting scheduled for next day.

12. February 1, 1938 - Memorandum from Mr. Opper to the Secretary advising that Mr. Chester Lane of the SEC had informed him that the SEC had taken the position that the Paganucci stock could not be distributed without registration. Neblett advised of that conclusion. Question of a general investigation of Transamerica still open. Lane indicated he would keep us advised.

13. February 1, 1938 - Memorandum from Mr. Upham to the Secretary in which Mr. Upham stated that Mr. Crowley had informed him that at a conference with Mr. Giannini on Saturday (January 29) he had told Mr. Giannini that, so far as he was concerned, Mr. Giannini's application for approval of some branches of state banks would never be granted. Mr. Giannini also indicated that he favored the bank holding company bill. (See 15, 20 and 21 below)

14. February 16, 1938 - Secretary's staff meeting. Secretary gave Mr. Jones' report (see 4 above) to Mr. Upham. (Minutes p. 1.)

15. March 8, 1938 - Letter from the Secretary to Mr. Crowley in which he inquired as to whether there had been any change in the policy of the F. D. I. C. since its letter of February 16 to the Central Bank of Oakland, California, in which letter the Bank was advised that action upon its application for approval of certain branches would be postponed until public policy on the matter had been clarified.

16. March 9, 1938 - Secretary's staff meeting. The following quoted from the minutes:

"H.M.Jr: *** Mr. Oliphant, I'd like your people to examine Mr. Glass' bill from the standpoint 'does it control Trans-America?' Will you please, also, Mr. Oliphant, find out what, if anything, S. E. C. is doing in regard to Trans-America, see? Does it do anything on Trans-America?" (p. 2) (Memorandum showing effect of Glass Bill, if enacted, upon Trans-America Corporation sent to Mr. Upham by Mr. Foley on March 11, 1938. Copy filed hereunder.)

17. March 16, 1938 - Secretary's staff meeting. The following quoted from the minutes:

. . . Telephone conversation between the Secretary and Mr. Douglas of the SEC:

" H.M.Jr: Fine. Now one other thing. Ah, if it would be agreeable to you, I'd like my Mr. Upham to contact, in your shop, whoever is doing the investigation of, ah, Trans-America." (p. 3)

Discussion in Staff Meeting

"H.M.Jr: (To Mr. Oliphant) I want you to assign some very good lawyer that Upham could call on when necessary, to advise him - advise me - on this particular thing, see? Somebody - will you? I want somebody who'd do this and the Comptroller's office - some one person, see, so it would be just between you (Mr. Upham) and one person so that nobody but you and one person ..... (Pursuant to the above Mr. Oliphant appointed Mr. Sherbondy in Mr. Foley's division of the General Counsel's office.)

"H.M.Jr: All Right, Cy?

"Upham: Yes, fine.

"H.M.Jr: I want you to tie this thing together and then as we go along you keep Mr. Taylor and myself advised what you are doing, see, but that is a big enough job for anybody - I mean the Comptroller's end plus the S. E. C. end, and tie the thing together. I am not at all satisfied with what's going on. I mean I'm not going to wait until we have a potential T. V. A. on our hands, or something like that. I mean, it is just every time I take a nibble at it, it gets worse - smells worse - so if you can get what those boys are doing over there, then the thought - I've got an idea besides that." (p. 5)

"H.M.Jr: ***

Triple confidentially, the thing I had in mind was this: This thing is sour as it is and the New York Stock Exchange - if we could hit the New York Stock Exchange, "Here's the Trans- America listed, and if you fellows want to do something - have you got the guts to go after Trans-America and kick them off?" That's what I've got on my mind. "Have you got the guts to do that?" That is their job. "Have you got the guts to go and investigate Trans-America, and if it's as sour as I know it is, to give them a delisting?" (p. 6)

18. March 14, 1938 - Messrs. Foley and Sherbondy discussed the Trans-America situation at lunch with Messrs. Allen Throop and Robert E. Kline of the SEC. Mr. Throop gave Mr. Foley a copy of a letter from Mr. Throop, as General Counsel of the SEC, to Mr. Neblett of the counsel for Transamerica, in which Mr. Throop advised that his office could not render an opinion that the proposed distribution of the Paganucci stock could be effected without prior registration. Copy of Mr. Throop's letter.

19.. March 21, 1938 - Secretary's staff meeting. The following quoted from the minutes:

H.M.Jr: (To Mr. Upham) Did you get the report on the holding companies?

"Upham: It came in about noon Saturday.

"H.M.Jr: Are you going to go to work today?

"Upham: I am speaking of the principle of their report.

"H.M.Jr: The report of the Trans-America?

"Upham: The auditing firm puts in so many exceptions- that they didn't see this and they didn't see that, and on the basis of what was presented to them, it looks all right.

"H.M.Jr: At least you got it?

"Upham: Yes.

"H.M.Jr: It must mention the holding companies of Trans-America; doesn't it list those?

"Upham: Yes.

"H.M.Jr: You could check that against the bank.

"Upham: Surely. (pp. 11 and 12)

20. April 1, 1938 - Letter (copy not dated, but apparently April 1, 1938) from Mr. Giannini to Mr. Crowley, in which he requested that the application to establish the branches of the Central Bank of Oakland be approved, and further stated that he would discuss with Mr. Crowley the question of additional capital for the Oakland bank at the California State Bankers Association meeting in May.

21. April 1, 1938 - Letter from Mr. Crowley to Mr. Giannini agreeing to permit the establishment of the four branches of the Central Bank of Oakland with the understanding that no more banks would be acquired by the Oakland bank without first getting the permission of the FDIC, and that the matter of additional capital would be discussed.

22. July 8, 1938 - Excerpts from memorandum prepared by Mr. Upham covering meeting at 10:30 a.m. of Messrs. Taylor, Diggs and Upham with the Secretary:

> "Mr. Morgenthau said that he was sick and tired of hearing about Giannini and the German credits and the fact that he wouldn't do what the Comptroller wanted him to do and said that he thought the Comptroller's Office ought to handle it without bringing it to him. He expressed the opinion that the people in the Comptroller's Office and the FDIC as well were "sissies," or they would do something about it. He said that he felt that Mr. Giannini was awfully smart from his own standpoint but he thought the bank supervisors ought to be equally as smart. Mr. Morgenthau gave as his offhand opinion that the Bank ought either to increase its capital or cut its dividends in hald. (p. 2.)
>
> "Mr. Morgenthau said on second thought that he was inclined to the view that the Comptroller ought to insist on the Bank taking whatever house-cleaning steps were felt to be necessary and that if they do, he would then treat them just like any other bank and agree to RFC money going into the Bank on the same basis that they put it into other institutions. If not,

he said he would personally be inclined to 'sit still until Hell freezes over' before doing anything in the way of permitting additional branches. In any event, he said he would make no promises on branches but let them come to see us when they have complied with our requirements.

"Mr. Upham reminded Mr. Morgenthau that he had requested the Comptroller's Office to bring in a program of minimums that they would insist upon. Mr. Diggs said that this program was not ready but that it would be in three or four weeks when the latest report of examination comes in." (p. 3)

23. September 21, 1938 - Memorandum from Mr. Upham to Mr. Oliphant in which Mr. Upham stated that on many occasions, between March 1938 and September 1938, the Secretary had asked him to inquire about aspects of the Bank of America situation and to press for action based on examination reports. Upon many occasions Mr. Upham brought those requests to the attention of the Comptroller's Office.

April 7, 1939

Memorandum for the Comptroller

I think this includes all action taken. It does not list all of the conferences held in the Secretary's office. It does not include conferences on the general subject of holding company legislation.

It can be elaborated if you or the Secretary wishes.

Upm

CHRONOLOGY OF EVENTS

RELATIVE TO

THE BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION

FROM

SEPTEMBER, 1938

TO

APRIL, 1939

September 9, 1938	Upham memorandum to Secretary Morgenthau reviewing examiner criticism of Bank of America N.T. & S. A. from 1933 to 1938
September 13, 1938	Telegram to Examiner Palmer to read at meeting of bank board warning bank that declaration of any dividend would be unsafe and unsound banking practice. (Board declared dividend nevertheless.)
September 13, 1938	Letter from Gough to A. P. Giannini answering letter of May 6, 1938 with respect to examiner criticisms.
September 15, 1938	Letter from A. P. Giannini to Diggs protesting warning telegram.
September 23, 1938	Letters to each director of Bank of America outlining personal liability as directors and summarizing criticisms in latest report of examination.
October 1, 1938	Letter from bank stating that a committee of nine directors had been named to review communications from Comptroller.
October 11, 1938	Letter from directors of bank answering criticisms in letter of September 23rd.
October 25, 1938	Meeting in Taylor's office reached conclusion no reply to letter of October 11th without thorough appraisal of that letter and changes in bank condition subsequent to examination.

October 27, 1938	Eccles letter to Secretary Morgenthau stating his belief action under Section 30 would be great mistake.
November 19, 1938	Reports of examination sent to SEC.
November 21, 1938	New examination of bank begun.
November 23, 1938	Letter from Comptroller to bank agreeing to conference in Washington with representatives of bank.
November 23, 1938	Letter from Secretary Morgenthau to Douglas, agreeing to public official use by SEC of information in reports.
December 6, 1938	Conferences begun between Comptroller and officials of bank.
December 15, 1938	Letter to Comptroller from L. M. Giannini submitting memorandum program of 17 points that he agreed to present to his board with his recommendation for their acceptance.
December 22, 1938	Letter from Comptroller to L. M. Giannini stating that he cannot bind his official action by agreement and that memorandum is to be considered an agreement by the bank.
December 31, 1938	Letter from L. M. Giannini to Comptroller stating that memorandum not of Giannini's authorship but prepared in Office of Comptroller.
January 11, 1939	Letter from L. M. Giannini to Comptroller stating that board has agreed to go ahead with program outlined.

January 21, 1939	Affidavit of Deputy Comptroller Upham in Bank of America case that Comptroller does not prescribe accounting practices for banks. (Given at request of Chairman Douglas and upon authorization by Secretary Morgenthau.)
February 20, 1939	Mr. Delano's letter to L. M. Giannini stating capital increase required of from $33 million to $38 million. (Tentative figures)
February 25, 1929	Letter from Jesse Jones to L. M. Giannini stating RFC agreement to finance stock increase.
March 7, 1939	Letter from L. M. Giannini to Comptroller objecting to program outlined but stating willingness to follow it out nevertheless.
March 14, 1939	Declaration of dividend by board of directors.
March 18, 1939	Letter of criticism prepared based on report of examination recently received.
March 23, 1939	Conferences begun between officials of bank and Mr. Folger on last report of examination.
April 3, 1939	Letter from L. M. Giannini to RFC requesting financing to extent of $25 million.
April 4, 1939	Letters to Secretary Morgenthau from Jones, Hanes, Delano, and Crowley recommending that RFC be requested to finance capital stock increase as outlined.

April 11, 1939

Dear Donald:

I have your letter of April 10.

As you may know, I have just returned to my desk after a brief holiday, and find myself swamped with work. I shall be happy, however, to hear what you have to say about the Mexican situation. As to the bank matter, I have made it a practice not to discuss out of channels legal problems affecting the Department. I suggest, therefore, that you take up the bank situation with our lawyers.

Just as soon as I see my way clear, I shall telephone when it will be convenient for me to see you. I shall try to do it this week.

Sincerely yours,

Donald R. Richberg, Esq.
815 - 15th Street
Washington, D. C.

EHF:s Retyped 4/11/39

THE SECRETARY OF THE TREASURY
WASHINGTON

April 10, 1939

Dear Donald:

I have your letter of April 10.

As you may know, I have just returned to my desk after a brief holiday, and find myself swamped with work. I shall be happy, however, to hear what you have to say about the Mexican situation, Go to the Bank ~~of America~~ matter ~~Transamerica, and any other matter you may care to discuss with me.~~

I have made it a practice not to discuss [illegible] channels legal problems affecting the Department, [illegible], [illegible] this you [illegible] and the banks [illegible] with our lawyers.

Just as soon as I see my way clear, I shall telephone when it will be convenient for me to see you. I shall try to do it this week.

Sincerely yours,

Donald R. Richberg, Esq.
815 - 15th Street
Washington, D. C.

April 10, 1939

Dear Donald:

I have your letter of April 10.

As you may know, I have just returned to my desk after a brief holiday, and find myself swamped with work. I shall be happy, however, to hear what you have to say about the Mexican situation, Bank of America, Transamerica, and any other matter you may care to discuss with me.

Just as soon as I see my way clear, I shall telephone when it will be convenient for me to see you. I shall try to do it this week.

Sincerely yours,

Donald R. Richberg, Esq.
815 - 15th Street
Washington, D. C.

EHF:s Typed 4/10/39
E.L.J. TL

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DONALD R. RICHBERG

815 FIFTEENTH STREET, WASHINGTON

April 10, 1939.

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

Dear Henry:

There are one or two matters concerning which I should like to have an opportunity to talk with you at an early time, if your engagements will permit.

One is the Mexican situation, in which, as you may know, I have been endeavoring to work out an agreement between the Mexican government and the foreign owned oil companies. This matter closely involves several questions of international finance, as to which it would be very helpful to have your advice.

You can be assured that I am not seeking any particular action or inside information, but merely wish to steer a difficult course in a turbulent sea of international politics.

The other matter is one in which you may or may not care to have any particular discussions, but as to which I would feel neglectful if I did not express a desire to try to promote better relations between the Treasury and one of the largest banking institutions of the country.

I am not urging this matter upon you if for any reason you would not care to discuss it. But I do hope we can have a talk about the first matter with which my concern is far deeper than that of a lawyer representing private clients; because here I think critical national interests are involved.

If your secretary could give me an appointment by telephone, I could meet practically any hour arranged in the immediate future.

Sincerely yours,

Donald Richberg

DRR:AH

April 11, 1939

For the Secretary:

Do not the developments in the SEC comduct of the Transamerica matters offer a favorable opportunity for the pressing now of holding company legislation in the banking field? I think we heed the help of such legislation to break up the West Cpast group.

If there is to be banking legislation, or hearings, (as there seems certain to be) so that an airing of sundry views on the part of Federal banking officials is inevitable, why not have it in connection with a constructive proposal, such as the Glass bill for the elimination or more complete control of bank holding companies.

May I recommend that Sehator Glass be encouraged to introduce and press his group bank bill. That may divert some attention to banking matters into a useful direction.

COPY

April 12, 1939

Dear John:

Upon my return from home yesterday the letter addressed to the Secretary regarding the preferred stock of the Bank of America was called to my attention.

This letter does not specifically cover the point in question. At the luncheon which you, Mr. Jones, Mr. Delano and I attended, we all concurred in the plan outlined by Mr. Jones and each of us agreed to write a letter endorsing it. In order to straighten the record I am sending this memorandum to confirm the understanding as indicated.

I am sorry that my office did not have more time to contact me before sending the letter, but I am advised Mr. Delano requested it that afternoon.

Yours very truly,

/s/ Leo T. Crowley

Chairman.

Honorable John W. Hanes
Assistant Secretary of the Treasury
Washington, D. C.

Confidential

April 12, 1939

FOR THE SECRETARY:

The arrangement with the Bank of America which was tentatively made during your absence from the Treasury at the first of this month is one with which I can not agree. I realize that because I was away from the Department while the arrangement was being worked out that I can not, with good grace, object at this late date to the consummation of the plan. However, when the final papers are drawn up, they would ordinarily pass through my office, and I wanted you to know in advance why I will decline to initial the agreement.

My objections to the arrangement are as follows:

1. The 25 million dollars of preferred stock to be issued is inadequate on the basis of the last examination which indicates that 30 to 38 million dollars' worth of preferred stock should be issued to put the Bank in a sound position.

2. The Comptroller of the Currency has never made a formal determination (as was contemplated in his agreement with the Bank) of the exact amount of preferred stock which the Bank should issue and in the absence of such a determination I believe we should adhere to the findings in the examiner's report -- not to what the Bank offers to do.

3. The proposed cutback in the preferred stock value from a cash value of 25 million dollars to a par value of 10 million dollars is unjustified and might actually be fatal to the Treasury's program for strengthening the Bank. No bad assets are to be eliminated because of the cutback and it can not be justified on this ground. On the other hand, the addition of the 15 million dollar cutback to the Bank's surplus would bring that surplus to a point which would excuse the Bank from further necessity of adding 6 per cent of its earnings to its surplus before declaring dividends. Thus, the result of the cutback might well be to weaken our insistence on curtailment of dividends.

4. I object to the R.F.C. lending money to the Bank's common stockholders. I agree with your original statement that this case should be handled in the normal way and more than 98 per cent of the preferred stock transactions have been handled by direct purchase and not be lending. Certainly loans to the common stockholders is not the normal way.

I do not believe that the Treasury should be placed in a position of approving a loan of $10,500,000 to Transamerica Corporation when that Corporation is involved in litigation with the S.E.C. Moreover, I believe Transamerica Corporation, in view of the special favors it has received from the Bank in the past, should be required to invest its own money -- not R.F.C. money -- in the capital structure of the Bank; Transamerica claims to have $65,000,000 of cash and marketable securities.

5. I do not approve of the method of negotiation through which the agreement was made. It seems to me to result in consultation and agreement between the Comptroller's Office and outside agencies such as the R.F.C. and the Federal Reserve before consultation with you, thereby facing the Treasury with a virtually accomplished fact before the Treasury has had any chance to pass upon the merits of the scheme.

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BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

April 13, 1939

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

My dear Mr. Comptroller:

This is in response to your letter of April 13, 1939, addressed to the Board of Governors of the Federal Reserve System, enclosing a draft of a proposed letter which it is understood the Bank of America N.T. & S.A. may be requested to address to the Comptroller of the Currency, agreeing to declare no further dividend "if in the opinion of either the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation, the payment of such dividend would impair the capital stock of the bank or would constitute an unsafe or unsound banking practice." It is understood that this is in connection with a proposed loan by the Reconstruction Finance Corporation to the stockholders of the bank to finance the purchase of additional stock of the bank for the purpose of increasing the bank's capital.

You ask to be advised whether the Board is prepared to assume this responsibility and, further, the opinion of the Board as to the procedure outlined therein.

It is the opinion of the Board that it cannot properly assume this responsibility and cannot approve of the procedure, for the following reasons:

1. An agreement not to pay dividends which in the opinion of the supervisory authorities would impair the capital stock of the bank is superfluous, because the payment of dividends which impair the capital of a national bank is expressly prohibited by section 5204 of the Revised Statutes and the Comptroller of the Currency is clothed with authority to take remedial action if this prohibition is violated;

2. If the bank's capital is unimpaired, if it has actual net earnings within the meaning of section 5204 of the Revised Statutes, and if it transfers ten per cent of its net earnings to surplus (until the surplus equals 100 per cent of

its capital) as required by section 5199 of the Revised Statutes, the question whether it is expedient to distribute any or all of its remaining net earnings in the form of dividends is a question which the law expressly leaves to the judgment of the bank's directors. For the supervisory authorities to undertake to tell the directors whether or not they may pay dividends under these circumstances would be to assume a responsibility which the law places upon the directors;

3. The duty of determining whether the foregoing provisions have been complied with by a national bank is placed by law primarily on the Comptroller of the Currency and as a matter of practice is not assumed by any other bank supervisory authority. No such other supervisory authority would be in possession of independent information except as a result of expensive and unnecessary duplication of examinations; and

4. If the bank should violate this provision or otherwise engage in unsound practices in paying dividends and the Comptroller should decide to institute proceedings under section 30 to remove the directors from office, the Board would preside as a judge in such proceedings and it ought not to prejudge the case by a prior approval of the payment of dividends, either expressly or by implication.

Very truly yours,

L. P. Bethea,
Assistant Secretary.

165-A

COPY

April 13, 1939

Dear Preston:

I am in receipt of a copy of a proposed letter by you to be signed by Mr. L. M. Giannini. The second paragraph of this letter provides in effect that the Bank of America N. T. & S. A. agrees to pay no dividends disapproved by the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation.

We agree with the principle of control of dividends paid by banks which are in an unsatisfactory condition. We have felt for a long time that this bank pays out an unreasonably large proportion of its earnings in dividends in view of its present condition. Its high dividend rate is one cause of the necessity of its now issuing preferred. However, we are vitally interested in getting this $25,000,000 additional capital into this bank, and the question arises in our minds as to the advisability of attaching this provision to the contract when the law does not specifically give the Comptroller that power. We would dislike to see this provision be the reason for the Bank of America not increasing its capital. The question of control of dividends has long been under consideration by this Corporation.

Sincerely yours,

/s/ Leo T. Crowley

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

April 14, 1939

MEMORANDUM

To: Mr. McReynolds

From: Mr. Upham

Attached are a copy of a letter from the Comptroller to the board of directors of the Bank of America, N.T.& S.A. of San Francisco, California, summarizing the examiner's criticisms in the last report of examination of that bank, and a brief summary statement of the criticised conditions.

The Comptroller has asked me to send these to you for transmittal to Secretary Morgenthau.

Upm

April 13, 1939

FOR THE SECRETARY:

Digest of the condition and criticisms of the Bank of America National Trust and Savings Association as shown by report of examination dated February 28, 1939.

(1) The report shows a net sound capital structure of some $102,000,000 and classified assets in the amount of something over $120,000,000. There are also fixed assets of some $45,000,000 in the form of banking house properties. This makes a total of approximately $165,000,000 of classified and fixed assets to which must be added other criticised assets which bring the total of fixed and frozen assets to something over $200,000,000. Real estate held in one form or another totals practically $100,000,000, or almost the amount of the net sound capital structure. In other words, fixed and criticised assets are some $100,000,000 in excess of the net sound capital structure of the bank.

(2) The dividend policy is criticised in the light of the asset condition of the bank. Every report of examination since 1933 has pointed out the desirability of the retention of earnings to correct the inadequate capital structure and to improve the asset condition. Despite such criticism the dividend rate has been increased steadily from 6% in that year to the present

19.2%. It is the position of the Comptroller's office that because of the large amount of frozen assets the capital structure should be increased and a ratio of 1 to 10 between the net sound capital and total deposits be maintained. If this ratio can not be obtained by the taking of preferred stock the only alternative course is the retention of earnings until the proper ratio is effected.

(3) The large line of credit to Transamerica Corporation and its subsidiaries totaling some $72,800,000 is a subject of criticism. The practice of carrying $36,569,000 of its other real estate in loans and discounts under contracts given the bank by two 100% owned subsidiaries of Transamerica and reporting the same as loans and discounts in published reports is strongly criticised.

(4) There is criticism of numerous unusual transactions between the Bank and Transamerica Corporation and its subsidiaries. These transactions have taken place from time to time following the elimination of $35,214,000 of doubtful assets and losses in 1931 and 1932 and substituting therefor certain contracts given to the bank by a 100% owned subsidiary of Transamerica Corporation.

Preston Delano
Preston Delano

COPY

TREASURY DEPARTMENT
COMPTROLLER OF THE CURRENCY
WASHINGTON

ADDRESS REPLY TO "COMPTROLLER OF THE CURRENCY"

April 14, 1939

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

Gentlemen:

Copy of the report of examination of your bank completed February 28 has been forwarded to you for your information and guidance in effecting the corrections necessary to place your institution in a satisfactory condition. You are urged to make a careful study of the information contained therein and to take the proper steps to improve the asset condition at every favorable opportunity.

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

On the same page the adjusted capital structure, after certain deductions, is shown as $102,334,220.14, and with deposits of $1,379,857,017.66, is deficient approximately $36,000,000.00 in order to provide the desired ratio between these accounts, and to afford the proper protection to creditors. It is understood that the necessary action was taken at your meeting on March 14 to formulate plans for the increase in the capital of your bank, in accordance with your memorandum dated December 15, 1938.

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

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

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

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

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

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

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

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

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

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

(3) On August 5, 1938 the real estate known as the Hellman Deal Properties carried in charged off assets was purchased by the bank and placed in its assets at $89,456.00 and this amount credited as a recovery on "Guaranteed Loans." It is not understood why this real estate was purchased and why it should not be removed from the assets for cash.

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

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

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

During the past seven years the bank has pursued the policy of selling the real estate acquired by it through foreclosure to California Lands, Inc., and Capital Company under contracts. The indebtedness of California Lands, Inc. at the time of examination amounted to $12,235,719.72, of which $11,658,436.09 is a real estate sales contract. The indebtedness of the Capital Company aggregated $25,827,358.96, of which $24,911,358.96 is a real estate sales contract. These combined contracts total $36,569,795.05.

The contract of California Lands, Inc. is specifically secured by various farm properties, while the contract of the Capital Company is specifically secured by various parcels of city property acquired by the bank under foreclosure. On April 4, 1934, the contracts now in existence were entered into between the bank and these wholly owned subsidiaries of Transamerica Corporation, and cancelled all previous contracts with the companies, and properties were taken over under the new contracts for the balances due under the former contracts. Under these new contracts all of the properties were included in the face amount of the obligations; no down payment was required; 10% of the face amount due on the contracts was payable within approximately two years from the original date, and the remaining balance payable in ten annual installments. The bank retains title to the real estate until it is sold by California Lands, Inc. or Capital Company to a third party. Interest is payable at 1% per annum on the balance due and the bank pays all real estate taxes on the properties held under contract. The corporations are permitted by the bank to retain all income from the properties, less necessary insurance coverage costs. For these reasons it is evident that this contractural arrangement is interpreted to constitute a mere agency agreement and not a bona fide sale as contended by the management. The result is that the real estate underlying these contracts is actually "Other Real Estate Owned." On page 8, insert 19, the examiner shows that 500 properties with a present book value of $7,044,251.19 under the contract with California Lands, Inc., have been carried for periods ranging from 1929 to 1933, inclusive, while on page 8, insert 21 there are shown 531 properties under the contract with Capital Company with a present book value of $12,337,498.94 carried for like periods.

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

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

On page 8, insert 1, there is shown an excessive loan to Transamerica Corporation and its owned and controlled subsidiaries in amount of $22,037,365.07 which should be reduced to the bank's legal loaning limit of $9,200,000.00 without undue delay. This violation of Section 5200, U.S.R.S., was listed in the previous report but apparently no action has been taken to eliminate the cause for criticism.

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

On page 2, insert 7, the examiner states that 52 loans aggregating $8,471,372.15 carried in 23 branches are secured in part by 7,458.5 shares of the bank's own stock. It is understood through your cashier that this matter has been largely corrected. You are requested to take prompt action to correct this matter which is a violation of Section 5201, U.S.R.S., in accordance with your memorandum dated December 15, 1938.

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

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

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

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

The bank's investment in stock of the affiliated Merchants National Realty Corporation is $19,129,108.10, of which $14,073,956.48 properly represents banking houses and $5,055,151.62 represents other real estate originally sold in 1931 by the bank to Transamerica Corporation under an agreement of sale which the bank carried in loans and discounts. Transamerica in turn sold the real estate covered by the agreement to Capital Company. Then the bank through its wholly owned Merchants National Realty Corporation, repurchased from Capital Company the remaining parcels under the agreement paying cash by means of a contribution by the bank on July 14, 1937. Transamerica Corporation in turn received payment from Capital Company and then paid the proceeds of the transaction to eliminate its obligation to the bank under the original agreement of sale. The net result of this series of transactions was the reacquisition of real estate, and the elimination of the liability of Transamerica Corporation under its agreement to purchase. The real estate in question is not being used as banking premises, and the schedule on page 2, insert 10, shows that 21 parcels aggregating $4,821,344.75 were purchased on dates ranging from 1918 to 1929 inclusive, and 5 parcels totaling $233,806.87 were purchased from 1934 to 1936 inclusive. This total of $5,055,151.62 should be immediately removed from the carrying value of the stock of the Merchants National Realty Corporation and shown on the books and reported as other real estate. Such objectionable transactions as outlined above should be discontinued.

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

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

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

The Impounded German Credits are classified $3,331,838.51 as II; $1,289,010.51 as III, and $1,000,000.00 IV. In accordance with the agreement reached with the management $1,000,000.00 should be charged off at each examination until the exchange loss has been eliminated.

Under the schedule of real estate loans on page 9, inserts 6 to 15, inclusive, the examiner has listed $16,152,269.83 which do not conform to the provisions of Section 24 of the Federal Reserve Act. These loans should be bought in conformity with this section or disposed of.

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

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

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

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

Yours very truly,

(Signed) Preston Delano

Comptroller of the Currency

April 14, 1939

10:45 a. m.

Present:

Mr. Preston Delano
Mr. Hanes
Mr. Foley

Mr. Delano: I have these letters from the Fed and from Leo.

HM,Jr: (Reading the letter from FRB) Of course, paragraph three is the important part -- where they say that's your responsibility.

Mr. Delano: Yes.

HM,Jr: Would you have these photostated and let me have a photostat for Hanes and me.

(Reading Crowley's letter) Well, Crowley does not give us a clean-cut answer, does he?

Mr. Delano: No. I think he pussyfoots a little bit.

HM,Jr: What is the status as between you and the Bank of America? Where is it?

Mr. Delano: I succeeded in keeping Giannini over, so I have not presented the letter to him. I think this presented something which should be discussed first. But he will be back tomorrow morning.

HM,Jr: This would be my thought -- I am shooting from the hip -- to try to get a message to the President that the Federal Reserve don't want to go along and that Crowley is hesitant about it and that, therefore, I suggest to the President that we just let the letter include yourself and leave the other two agencies out.

Mr. Delano: (Nodded approval.) I have come to that conclusion myself.

HM,Jr: Let me see if I can get a clearance from the President now and if we get a clearance then we will just re-write the letter and keep it a family affair.

Mr. Delano: That's right.

HM,Jr: I have not had time to digest -- this has nothing to do with that very unusual letter that Jones wrote me last night?

Mr. Delano: I just heard about that this morning.

HM,Jr: Let me ask you one question, for my own record. Has Jones had access to the most recent report of the Bank of America?

Mr. Delano: Yes.

HM,Jr: He could not have had the letter of criticism because I have not received that.

Mr. Delano: You got that letter of criticism. It was only written yesterday. It has been delivered to you now.

HM,Jr: What I am trying to -- Jones wrote that letter to me before he saw that letter of criticism?

Mr. Delano: He may have seen the examination report and he may have seen the criticism report by Sedlacheck.

HM,Jr: But on the most recent report?

Mr. Delano: The one as of November 21.

HM,Jr: You think he has seen that?

Mr. Delano: I am very sure he has seen that.

HM,Jr: But he could not have seen the letter of criticism from here?

Mr. Delano: No, because that was only completed yesterday. The letter of criticism from the examiner, he could have seen that because that's in the report.

(At this point, HM,Jr spoke to Miss Le Hand and the following is a record of what he said to her.)

"Missy, good morning.

Will you do me a job, please?

When I called the President, at Warm Springs, about Bank of America, he said that we should not buy any of their preferred stock unless Mr. Giannini wrote us a letter which more or less amounted to that he would not pay any dividends if it was not agreeable to the Federal Reserve, FDIC and the Comptroller.

Now, we have just gotten a letter -- Mr. Delano has -- from the Federal Reserve that they don't want to go along with the suggestion of the President, and mainly because they think it's the responsibility of the Comptroller. Mr. Crowley sort of straddles the thing.

We here -- The Comptroller, Mr. Hanes and I -- think it is entirely adequate if the letter reads that they shall not pay dividends unless the Comptroller of the Currency says it's all right.

Giannini has been sitting around in town, waiting until we could get the letter cleared, and my recommendation to the President is we make the letter read just the way he suggested, but make the Comptroller of the Currency final arbitrator.

And if we could get a yes or no on that.

In the Treasury here we are together in thinking every purpose can be served by making it read that the Comptroller of the Currency should be the arbitrator.

O. K. Thank you very much."

She's very good. She will get me an answer, and the minute I hear, I will let you know.

Mr. Delano: Could I see the letter from Jones?

HM,Jr: Yes; of course.

May I just throw out a hint which I threw out to Hanes this morning and he likes the suggestion very much and I would like you to be thinking about it.

If we should be unfortunate enough to reach a stalemate on this thing, this is the suggestion that I made to Hanes. He likes it. You can tell me whether you like it or not.

For the sake of all of us, if we reach a stalemate, in view of various things that happen, my suggestion is that we invite in three people: Mr. Tom K. Smith, Mr. Jeff Coolidge and Mr. Hanes of Salem, and ask them whether they would be willing to take all of this material, lock themselves in and make a recommendation to the Treasury.

Mr. Delano: Very good idea.

HM,Jr: And I would say beforehand that I would take any recommendation that those three would agree on.

Mr. Delano: You said Jefferson Coolidge?

HM,Jr: Thomas Jefferson Coolidge, -- for two reasons, he is a man of very high ethics. He's a Republican, so I don't want it said that we had only Democrats on the committee and I don't know of a better Republican. Do you know of any better Republican?

Mr.Delano: I would like to take that under advisement!

HM,Jr: Jeff Coolidge has been here. He is a man of extremely high ethics. Don't know of anybody who has a high ethical standing. He's the opposition. He has a following and Senator Glass thinks very highly of him. I am only thinking of this in terms -- because, frankly, I think I can talk for Hanes and myself --

neither of us has got time, in the present situation in the world, to sit down and devote exclusively a week to this thing.

Mr. Delano: I regret so much that you have to be in on it.

HM,Jr: But if you want to say to me, Morgenthau, I will take full responsibility, and you don't want this committee of three, that's all right too.

Mr. Delano: I rather like the committee idea.

Mr. Hanes: The committee appealed to me when Henry suggested it. I thought it was a swell idea, not particularly because my brother happens to be on it, but some three men that you did have confidence in, that you believe would give you an honest answer, and those three would. Maybe Bob Fleming instead of my brother.

HM,Jr: No; I would rather have your brother. He's an officer of the American Bankers and it gives us that prestige. He will be the next President, won't he?

Mr. Hanes: Yes.

Mr. Delano: The aspect that I have been very much impressed with, it seems we practically have an order from the President of the United States.

HM,Jr: It is an order.

Mr. Delano: And that's the only reason I hesitate at all about reviewing the whole thing; it would be a question whether we should have permission of the President.

HM,Jr: Oh, I wouldn't do this without that. Here's an order from the President of the United States. As far as I am concerned, it's final. What I am saying is you will do everything humanly possible to get Mr. Giannini to sign this thing.

Mr. Delano: That's my duty.

HM,Jr: Then the three of us walk over to the President and say,"Mr. President, we have done everything possible to carry out your wishes; we are stalemated. Now, therefore, there will be no preferred stock, The man needs 10 - 1 ratio. He needs "X" millions of dollars, or he needs to curtail his dividends, one or the other, to strengthen his bank. We have a suggestion to make because so many agencies are in on this thing and we have arrived at a stalemate. We would like to suggest we bring in these three men, or would you like to have it handled some other way?"

Mr. Delano: That's the step I did not understand. I think we would have to do that, because obviously the President has issued a flat-footed order.

HM,Jr: One of the reasons people can't saw the limb off on me in Washington is because I always know where the President stands and that's why they can't saw the limb off.

But I am only thinking of what would be the next step if Giannini refused to do what the President of the United States wants him to do. That means we have to start all over again and I was thinking what is the way to do it and still keep myself alive and carry out my end of the responsibility, and that's the suggestion.

Mr. Delano: I think it is excellent.

HM,Jr: It doesn't have to be those three; it can be any three.

Mr. Hanes: The main thing is this: we ought to get this out of the way. It's a trifling thing compared to the other things we have to do.

Mr.Delano: With the world in flames, it seems a nuisance to bother the President with it.

HM,Jr: There is a lot at stake -- can the Comptroller of the Currency and the Treasury make a man run his bank on a sound basis -- because that's what it amounts to -- or can't we?

Mr. Delano: Could I take time for one other thing? We discussed the Brown bill yesterday and I have draft of a proposed letter from the Treasury. I am wondering, in the light of the fact it is the Comptroller's Office which is mainly attacked here by the Brown bill, if you would like to have us present the Comptroller's views. I have a request from the Committee. Ordinarily, we don't do that; we simply merge our answer with yours. Is it good strategy for the Comptroller to answer this particular request of the Committee, giving our reasons why, putting us on record, we think it would be a mistake to turn the Comptroller's Office over to FDIC?

HM,Jr: I have no feeling. I would do anything you would like along those lines. You decide.

Mr. Delano: It's just a question of policy. We can write a strong memorandum.

Mr. Foley: It would not be inconsistent with the letter that the Treasury is supposed to send.

Mr. Delano: Heavens, no! The Secretary of the Treasury does not want the Comptroller's Office absorbed over there.

HM,Jr: Quite the contrary. Anyway you want it.

C
O
P
Y

April 16, 1939

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

Dear Comptroller Delano:

On April 3, 1939, in compliance with the provisions of the memorandum and correspondence of December 15, 1939, between our bank and your office, I filed with the RFC on behalf of our stockholders an application for a loan or loans to enable our stockholders to subscribe to $25,000,000 of preferred stock to be issued by our bank when you request it.

We have reviewed our articles of incorporation with representatives of your office and the RFC, and are in substantial agreement on the changes in them that would be necessary to effect the capital increase.

In the course of the discussions with you and other representatives of your office prior to filing the application with the RFC, we reported on the present status of all matters covered in the December conference and it was agreed that good progress had been made; and that as long as the program was followed, the Department would be satisfied. I asked if there were any further matters to be discussed or clarified and was advised that there were none.

On the basis of your last examination, we now have sound capital funds of substantially more than $120,000,000 (net asset value in excess of liabilities) and can point with pride to our record in working out of the unprecedented conditions that confronted the country in 1932 and '33. We have been able to make substantial increases in our sound capital funds through earnings and to pay substantial dividends to our large number of stockholders which has been helpful in promoting recovery. In addition our deposits have more than doubled since we assumed responsibility for the management of the bank in February, 1932.

We have cooperated with practically every department of this Administration in its effort to promote recovery and are proud of our contribution in this respect.

We do not need any additional capital since our capital funds are now more than double legal requirements and adequate to meet all standards of sound banking practice. It is therefore unfair that we should be forced to maintain a 1 to 10 ratio of capital when this is not required of other banks. However, we agreed to meet this requirement in the interest of arriving at an amicable adjustment of differences and to co-operate with your office.

In view of the delay that has taken place through no fault of ours and the fact that our April directors' meeting was held on the eleventh, it will probably be necessary to defer the effective date of the capital increase should you decide that you want us to proceed with it. We are ready to do so on the basis of the agreed plan. To impose new conditions at this time that were not discussed or contemplated then, it appears to me, would constitute a breach of the mutual good faith pledged at the time of the December conferences.

Notwithstanding the fact that my wife has been ill in a hospital in New York, I have been in Washington almost constantly for the past three weeks in an effort to conclude the arrangements contemplated in our December agreement. As she has recovered sufficiently to enable her to travel, I am now taking her to California, but I want again to reiterate that our bank is prepared to comply with every agreement I have made.

My kindest regards to you.

Sincerely yours,

(signed)

L. M. Giannini, President

April 17, 1939

MEMORANDUM FOR THE SECRETARY

The attached draft of a proposed letter from Mr. L.M. Giannini to the Comptroller of the Currency was presented for Mr. Giannini's consideration the afternoon of April 15, 1939.

It was explained to Mr. Giannini that the President desired this letter dispatched to the Comptroller as a condition precedent to the underwriting or financing by the Reconstruction Finance Corporation of the Bank of America's proposed $25,000,000 issue of preferred stock.

Mr. Giannini took exception to the proposal, stating that in his opinion such a request was entirely unjustified, a discrimination against the Bank of America, and not contemplated in the program outlined last December in the conversations which took place at that time. He considered it further evidence of persecution.

I took occasion to point out to Mr. Giannini that in any discussion contemplating a procedure, any step of which had later to be approved by the President of the United States, there was necessarily an implied condition that if Presidential approval were not received the matter under consideration would have to be recanvassed; no one could bind the President in advance. I further made it clear that the Comptroller's Office desired this letter signed by him, and that if it were signed I would consider it my duty to use the discretion thus conferred with entire impartiality and to the best of my ability without fear or favor.

Mr. Giannini took a copy of the attached letter with him but stated that he would not act in the matter until it was formally presented with a letter requesting his signature. He asked that such a letter recite the fact that it was a condition imposed by the President. I told him I could not agree to write such a letter, certainly not without further consultation with my superiors.

This morning I received a letter from Mr. L. M. Giannini stating his willingness to proceed with the program outlined in December of last year but omitting any reference to our conference of last Saturday or to the letter which he was asked to sign at that time. This letter from Mr. Giannini is also attached.

Preston Delano

My dear Mr. Comptroller:

I am writing you with reference to negotiations which have been going forward between the Bank of American N.T. & S.A., the Treasury Department and the R.F.C. for increasing the capital funds of the Bank. Particular reference is made to a letter dated February 25, 1939, addressed to me by the Chairman of the R. F. C., and my reply dated April 3, 1939, in which application was made on behalf of our stockholders for a loan or loans of up to $25,000,000 to be made by the R. F. C. to the stockholders of the Bank of America N. T. & S. A. individually or in group, the money to be used by the stockholders to subscribe for any increase in the capital stock of the Bank that may be determined upon and approved by the Comptroller of the Currency. I understand that copies of these letters have been furnished to you.

As a condition to any loan which the R. F. C. may make pursuant to these letters, the Bank will agree to declare no further dividend if in the opinion of either the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation the payment of such dividend would impair the capital stock of the Bank or would constitute an unsafe or unsound banking practice. In order to facilitate carrying out this agreement, the Bank will order ~~to facilitate carrying out this agreement, the Bank will~~ notify the Comptroller of the Currency within a reasonable time before any such dividend is declared of the contemplated rate of such dividend.

Copies of this letter have been forwarded to the R. F. C., the F. D. I. C., and the Board of Governors of the Federal Reserve System.

Sincerely yours,

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

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

April 17, 1939

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I took occasion to point out to Mr. Giannini that in any discussion contemplating a procedure, any step of which had later to be approved by the President of the United States, there was necessarily an implied condition that if Presidential approval were not received the matter under consideration would have to be recanvassed; no one could bind the President in advance. I further made it clear that the Comptroller's Office desired this letter signed by him, and that if it were signed I would consider it my duty to use the discretion thus conferred with entire impartiality and to the best of my ability without fear or favor.

Mr. Giannini took a copy of the attached letter with him but stated that he would not act in the matter until it was formally presented with a letter requesting his signature. He asked that such a letter recite the fact that it was a condition imposed by the President. I told him I could not agree to write such a letter, certainly not without further consultation with my superiors.

This morning I received a letter from Mr. L. M. Giannini stating his willingness to proceed with the program outlined in December of last year but omitting any reference to our conference of last Saturday or to the letter which he was asked to sign at that time. This letter from Mr. Giannini is also attached.

Preston Delano

Preston Delano

My dear Mr. Comptroller:

I am writing you with reference to negotiations which have been going forward between the Bank of America N. T. & S. A., the Treasury Department and the R. F. C. for increasing the capital funds of the Bank. Particular reference is made to a letter dated February 25, 1939, addressed to me by the Chairman of the R. F. C., and my reply dated April 3, 1939, in which application was made on behalf of our stockholders for a loan or loans of up to $25,000,000 to be made by the R. F. C. to the stockholders of the Bank of America N. T. & S. A. individually or in group, the money to be used by the stockholders to subscribe for any increase in the capital stock of the Bank that may be determined upon and approved by the Comptroller of the Currency. I understand that copies of these letters have been furnished you.

As a condition to any loan which the R. F. C. may make pursuant to these letters, the Bank will agree to declare no further dividend if in the opinion of the Comptroller of the Currency the payment of such dividend would impair the capital stock of the Bank or would constitute an unsafe or unsound banking practice. In order to facilitate carrying out this agreement, the Bank will notify the Comptroller of the

Currency within a reasonable time before any such dividend is declared of the contemplated rate of such dividend.

Sincerely yours,

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

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

Bank of America
NATIONAL TRUST AND SAVINGS ASSOCIATION

SAN FRANCISCO HEADQUARTERS

SAN FRANCISCO, CALIFORNIA
April 16,1939

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

Dear Comptroller Delano:

On April 3, 1939, in compliance with the provisions of the memorandum and correspondence of December 15, 1938, between our bank and your office, I filed with the RFC on behalf of our stockholders an application for a loan or loans to enable our stockholders to subscribe to $25,000,000 of preferred stock to be issued by our bank when you request it.

We have reviewed our articles of incorporation with representatives of your office and the RFC, and are in substantial agreement on the changes in them that would be necessary to effect the capital increase,

In the course of the discussions with you and other representatives of your office prior to filing the application with the RFC, we reported on the present status of all matters covered in the December conferences and it was agreed that good progress had been made; and that as long as the program was followed, the Department would be satisfied. I asked if there were any further matters to be discussed or clarified and was advised that there were none.

On the basis of your last examination, we now have sound capital funds of substantially more than $120,000,000 (net asset value in excess of liabilities) and can point with pride to our record in working out of the unprecedented conditions that confronted the country in 1932 and '33. We have been able to make substantial increases in our sound capital funds through earnings and to pay substantial dividends to our large number of stockholders which has been helpful in promoting recovery. In addition our deposits have more than doubled since we assumed responsibility for the management of the bank in February, 1932.

We have cooperated with practically every department of this Administration in its effort to promote recovery and are proud of our contributions in this respect.

We do not need any additional capital since our capital funds are now more than double legal requirements and adequate to meet all standards of sound banking practice. It is therefore unfair that we should be forced to maintain a 1 to 10 ratio of capital when this is not required of other banks. However, we agreed to meet this requirement in the interest of arriving at an amicable adjustment of differences and to co-operate with your office.

In view of the delay that has taken place through no fault of ours and the fact that our April directors' meeting was held on the eleventh, it will probably be necessary to defer the effective date of the capital increase should you decide that you want us to proceed with it. We are ready to do so on the basis of the agreed plan. To impose new conditions at this time that were not discussed or contemplated them, it appears to me, would constitute a breach of the mutual good faith pledged at the time of the December conferences.

Notwithstanding the fact that my wife has been ill in a hospital in New York, I have been in Washington almost constantly for the past three weeks in an effort to conclude the arrangements contemplated in our December agreement. As she has recovered sufficiently to enable her to travel, I am now taking her to California, but I want again to reiterate that our bank is prepared to comply with every agreement I have made.

My kindest regards to you.

Sincerely yours,

L. M. Giannini, President.

APR 19 1939

Dear Mr. Chairman:

I acknowledge receipt of your letter of April 13th, together with enclosures: (1) letter from Mr. Cooksey; (2) your Schedule National No. 391; and (3) memorandum to the Board dated April 4th, signed by Sam Husbands.

You are aware of the fact that the Comptroller of the Currency had a meeting on Saturday, April 15th, with Mr. L. M. Giannini, President of the Bank of America, and that he discussed with Mr. Giannini the question of the dividend policy to be maintained in the future by the Bank.

Mr. Giannini has returned to California and formal action upon the application will await further consideration of the subject matter.

Sincerely yours,

/s/ H. Morgenthau, Jr.

The Honorable Jesse H. Jones,
Chairman of the Board,
Reconstruction Finance Corporation,
Washington, D. C.

Secretary signed while in
Mr. Hanes' office - 4-19-39-
5:30 P.M. - mailed from 278
4-19-39 - 5:35 P.M.

JWH:jr

J.W.H.
PD

RECONSTRUCTION FINANCE CORPORATION
WASHINGTON

JESSE H. JONES
CHAIRMAN OF THE BOARD

April 15, 1939

Dear Mr. Secretary:

April 3rd or 4th I had a request from Under Secretary Hanes for our recommendations with reference to increasing the capital of the Bank of America N. T. & S. A.

I wrote you April 4th advising that our Board recommended lending all or any part of $25,000,000 on the preferred stock of the Bank to enable it to increase its capital by this amount and that our usual formal recommendation would follow, which I am inclosing.

Our recommendations are based upon the conclusions reached at the conferences held in December between officials of the Bank, the Comptroller of the Currency, members of his staff and yours, Chairman Crowley and our organization.

While we believe in strong capital structures for all banks, the ratio of sound capital funds to deposits of the Bank of America is not out of line with many other important banks, and while desirable it is not, in our opinion, essential that the bank increase its capital.

Sincerely yours,

Jesse H. Jones

Chairman

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

RECONSTRUCTION FINANCE CORPORATION
WASHINGTON

April 13, 1939

The Honorable,
The Secretary of the Treasury,
Washington, D. C.

Sir:

The Corporation has considered the application filed with it for a loan to be secured by the preferred stock of the national bank association as indicated on the attached Schedule (such Schedule being designated National No. 391, containing one page, identified by the initials of W. F. McGrath, Acting Chief of the Examining Division of this Corporation).

It was agreed that the Corporation would proceed to make a loan to be secured by such preferred stock of such institution in accordance with its action upon the application as indicated in such Schedule, upon receipt of request from you, with the approval of the President of the United States, as prescribed by Section 304 of the Act approved March 9, 1933 (Public No. 1 - 73d Congress), as amended.

Permit me to inform you that, upon the basis of a report of examination of the national bank examiner examining this bank, which report has been presented to the Directors of this Corporation for consideration and recommendation, the Directors of this Corporation suggest, as part of the current program for rehabilitation of the banking structure of the nation, the capital investment set forth in the enclosed Schedule.

Respectfully,

Secretary

Enclosure

COPY

Schedule National No. 391

NATIONAL BANK

LOAN TO BE SECURED BY PREFERRED STOCK

Continuing Institution

BANK	APPLICANT	AMOUNT CONDITIONALLY APPROVED	
		Aggregate Par Value	Subscription Price
Bank of America National Trust and Savings Association, San Francisco, California.	Coast Company San Francisco, California.	$10,000,000.00	$25,000,000.00

MEMORANDUM TO THE BOARD

April 4, 1939

RE: Bank of America National Trust
and Savings Association
San Francisco, California

REQUEST: That RFC agree to loan up to $25,000,000.00 to Coast Company (an independent, privately owned corporation acting in behalf of the Bank and its stockholders) to assist it in purchasing up to $25,000,000.00 4% preferred stock of Bank of America N.T. & S.A. Loan to be repaid at the rate of 10% per annum for the first 5 years and the remaining 50% at the end of the 6th year.

EXAMINATION - NOVEMBER 21, 1938

Cash	$ 254,000,000.00	
U. S. Securities	382,000,000.00	
Other Securities	129,000,000.00	
Banking House, F & F	49,800,000.00	
Other Real Estate.	53,200,000.00	(Dir.& Ind)
Deposits	1,379,000,000.00	
Common (Par)	50,000,000.00	
Surplus.	42,000,000.00	
Undivided Profits	22,591,000.00	

RESOURCES	II	III	IV	
All loans and Discounts	102,515,860.89	2,265,901.68	2,517,762.87	
Overdrafts	14,530.14	623.09	2,682.45	
Premium on Bds.	-0-	-0-	-0-	
Bonds, Sec., etc.	30,099.08	2,118,153.17	2,913,770.77	3,805,254.42/ (Bond Apprec.)
Banking House	1,363,950.37	-0-	389.80	
Furn. & Fix.	-0-	-0-	-0-	
Other Real Estate	3,437,404.68	-0-	199,347.24	
Cash Items	-0-	-0-	-0-	
Shortages	-0-	-0-	-0-	
Other	61,550.02	728.27	249,677.97	
Mer. Nat'l Realty Co.	5,055,151.62	-0-	-0-	
Dep. on Bk.House F & F	-0-	3,200,553.76	-0-	
	112,468,546.80	7,585,059.97	5,883,631.10	

TOTAL CAPITAL STOCK		$50,000,000.00
Surplus	$42,000,000.00	
Net Undivided Profits . .	18,087,078.99	
Reserve for contingencies	1,766,248.36	
Reserve on account of retirement of preferred stock	-0-	
Unallocated profit on securities sold prior to date of exam.	737,808.36	62,591,135.71
TOTAL CAPITAL STRUCTURE AS SHOWN ON BOOKS		112,591,135.71
LESS: 50% of Classification III	3,792,529.98	
Classification IV	5,883,631.10	
Liabilities not shown on books	590,754.49	10,266,915.57
ADJUSTED CAPITAL STRUCTURE AFTER ABOVE DEDUCTIONS		102,324,220.14

EARNINGS	1933	1934	1935	1936	1937
Net from operations	8,105,000	7,818,000	8,164,000	11,495,000	12,666,000
Total Profits & Rec.	1,190,426	2,708,704	14,775,824	14,645,211	5,642,874
Total Losses & Dep.	6,522,854	12,562,690	13,081,586	13,687,702	5,959,346
Div. pd. on common	2,250,000	3,750,000	6,000,000	8,000,000	8,600,000
Net change in Und. Profits	R 1,477,564	R6,387,628	3,858,094	4,452,418	3,749,139

At this time the bank advises that its net sound capital is approximately $116,000,000.00 based on earnings of approximately $7,200,000.00 since the examination (after allowing for dividends payable June 30, 1939, and the realization by sale of bonds of $1,600,000.00 of write-ups in U.S. Bonds, which was deducted as a loss in the last examination.) The remainder of the claimed capital is exceptions taken by the bank to classification of the Examiner.

1.- It is proposed to issue 1,000,000 shares of preferred stock with a par value of $10.00 per share, retireable at $25.00 per share, dividends payable at the rate of 4% per annum on the retireable price of $25.00 per share.

2.- The Coast Company will have a nominal capital (approximately $10,000.00 to $20,000.00) and will be owned by ten or twelve of the Officers and Directors of Bank of America N.T. & S.A.

3.- Common stockholders of the bank will be given at least 30 days in which to exercise their preemptive rights and the Coast Company will purchase that portion of the stock not taken by stockholders or sold to others immediately after the lapse of the time for stockholders to exercise their preemptive rights.

4.- While the dividend rate on the preferred stock will be 4% as against an interest rate of 3½% to be charged by the RFC, the Coast Company will enter into an agreement with the bank whereby the bank will service all sales of stock and furnish all required clerical help. The Coast Company will turn over to the bank in consideration of these services all of the profits that might accrue to it as a result of the purchase, ownership and sale of the stock.

5.- In order to facilitate the sale of stock to stockholders who exercise their preemptive rights, the Coast Company will agree to extend credit to such stockholders on the same basis as that given to it by the RFC.

6.- The preferred stock will carry a conversion privilege which will allow the holders of shares of preferred to convert into one share of common stock.

RECOMMENDATION

It is recommended that the RFC loan the Coast Company up to $25,000,000.00, to be secured by 4% preferred stock of Bank of America N.T. & S.A. of a retireable value equal at least to the face of the note.

CONDITIONS

1.- That common stockholders be given their preemptive rights to purchase preferred stock.

2.- That Coast Company agree to refund or pay to the bank for services, any excess dividends or any other profits, over interest and expense.

3.- That the note be payable at the rate of at least 10% on or before the expiration of each year for the first 5 years and the remainder of 50% be due at the end of the 6th year with interest at the rate of 3½% per annum.

4.- That in case of default of four quarterly dividends on the preferred stock each share of preferred to have 2 votes instead of 1.

SAM H. HUSBANDS
Chief, Examining Division.

FEDERAL DEPOSIT INSURANCE CORPORATION
WASHINGTON

OFFICE OF THE CHAIRMAN

April 13, 1939.

Dear Preston:

I am in receipt of a copy of a proposed letter by you to be signed by Mr. L. M. Giannini. The second paragraph of this letter provides in effect that the Bank of America N. T. & S. A. agrees to pay no dividends disapproved by the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation.

We agree with the principle of control of dividends paid by banks which are in an unsatisfactory condition. We have felt for a long time that this bank pays out an unreasonably large proportion of its earnings in dividends in view of its present condition. Its high dividend rate is one cause of the necessity of its now issuing preferred stock. However, we are vitally interested in getting this $25,000,000 additional capital into this bank, and the question arises in our minds as to the advisability of attaching this provision to the contract when the law does not specifically give the Comptroller that power. We would dislike to see this provision be the reason for the Bank of America not increasing its capital. The question of control of dividends has long been under consideration by this Corporation.

Sincerely yours,

Leo T. Crowley

Chairman.

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

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

April 13, 1939

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

My dear Mr. Comptroller:

This is in response to your letter of April 13, 1939, addressed to the Board of Governors of the Federal Reserve System, enclosing a draft of a proposed letter which it is understood the Bank of America N.T. & S.A. may be requested to address to the Comptroller of the Currency, agreeing to declare no further dividend "if in the opinion of either the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation, the payment of such dividend would impair the capital stock of the bank or would constitute an unsafe or unsound banking practice." It is understood that this is in connection with a proposed loan by the Reconstruction Finance Corporation to the stockholders of the bank to finance the purchase of additional stock of the bank for the purpose of increasing the bank's capital.

You ask to be advised whether the Board is prepared to assume this responsibility and, further, the opinion of the Board as to the procedure outlined therein.

It is the opinion of the Board that it cannot properly assume this responsibility and cannot approve of the procedure, for the following reasons:

1. An agreement not to pay dividends which in the opinion of the supervisory authorities would impair the capital stock of the bank is superfluous, because the payment of dividends which impair the capital of a national bank is expressly prohibited by section 5204 of the Revised Statutes and the Comptroller of the Currency is clothed with authority to take remedial action if this prohibition is violated;

2. If the bank's capital is unimpaired, if it has actual net earnings within the meaning of section 5204 of the Revised Statutes, and if it transfers ten per cent of its net earnings to surplus (until the surplus equals 100 per cent of

its capital) as required by section 5199 of the Revised Statutes, the question whether it is expedient to distribute any or all of its remaining net earnings in the form of dividends is a question which the law expressly leaves to the judgment of the bank's directors. For the supervisory authorities to undertake to tell the directors whether or not they may pay dividends under these circumstances would be to assume a responsibility which the law places upon the directors;

3. The duty of determining whether the foregoing provisions have been complied with by a national bank is placed by law primarily on the Comptroller of the Currency and as a matter of practice is not assumed by any other bank supervisory authority. No such other supervisory authority would be in possession of independent information except as a result of expensive and unnecessary duplication of examinations; and

4. If the bank should violate this provision or otherwise engage in unsound practices in paying dividends and the Comptroller should decide to institute proceedings under section 30 to remove the directors from office, the Board would preside as a judge in such proceedings and it ought not to prejudge the case by a prior approval of the payment of dividends, either expressly or by implication.

Very truly yours,

L. P. Bethea,
Assistant Secretary.

TREASURY DEPARTMENT

INTER OFFICE COMMUNICATION

TO Secretary Morgenthau

DATE May 8, 1939

FROM E. H. Foley, Jr.

<u>For your information</u>

The United States Court of Appeals for the District of Columbia, through Chief Justice Groner, today held unanimously--

1. That the delivery to the Commission by the Secretary of the Treasury of the examiners' reports was authorized and legal;

2. That their use in proceedings to obtain the necessary facts and information whereby to carry out the investigatory function of the Commission, is proper;

3. That except to the extent necessary to carry out the purpose just above mentioned the reports should be treated as confidential; and

4. That the subpoenas in their present form are unreasonable and should not be enforced.

The Court, in its opinion, indicated that the present subpoena was too broad; that if the Commission desired all of the information requested by the subpoena, it should send an examiner to the West Coast where hearings should be held; and that if the material was to be produced in Washington, the subpoena should be narrowed and deal specifically with the information desired.

As far as the Treasury is concerned, the decision represents a complete vindication of our action in turning over the bank examination reports to SEC.

The following extract from the Court's opinion is interesting:

"And this brings us back to the question with which we began this inquiry--the authority of the Secretary of the Treasury to furnish the information in question and, assuming that, whether it should be published by the Commission.

* * *

"The Commission insists that equal power is lodged in the Secretary by R. S. 161, which authorizes the head of each Department to prescribe regulations not inconsistent with law for the custody, use, and preservation of its records and papers. We think this is correct, and that the power includes the right to determine whether records may be withdrawn and used by other departments. In this view and since the Comptroller's records are within the Treasury Department and the Comptroller, by statute, is under the general direction of the Secretary, it follows that no distinction can be made between the two classes of records. See, generally, 25 O. A. G. 326; 35 O. A. G. 5. Without more, therefore, we hold that the act of the Secretary in furnishing the Commission with the reports of the bank examiners in the present case 'was not inconsistent with law'."

E.M.Jr.

Secretary Morgenthau   May 8, 1939

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

EHF:s Typed 5/8/39

TREASURY DEPARTMENT

INTER OFFICE COMMUNICATION

DATE MAY 19 1939

TO Secretary Morgenthau

FROM Mr. Foley

FOR YOUR INFORMATION

You will remember that Mr. L. M. Giannini, President of the Bank of America National Trust and Savings Association of San Francisco, wired Senator Wagner and Congressman Steagall, Chairmen of the Senate and House Banking Committees, to request a congressional investigation of the manner in which the Securities and Exchange Commission has been conducting its hearing to determine whether the registration of the stock of Transamerica Corporation (the Bank of America holding company) should be suspended. These telegrams contained implied criticism of the Treasury for making available to the Commission Comptroller of the Currency reports of examinations made of the Bank of America.

We contacted Congressman Steagall and Senator Wagner (the latter through his Clerk, Mr. Will) and discussed this matter with them. Both of them are fully familiar with the matter and have paid no attention to the Giannini telegram. We furnished them with copies of the recent District of Columbia Court of Appeals case sustaining the propriety of the Treasury's action in furnishing this information to the Commission. They said that they would read this, as well as a California District Court decision bearing on the matter which we gave them, with interest. They are both entirely satisfied with the soundness of the Treasury's position.

E.H.F.Jr.