Book 360

Bank of America

November 21 - December 20, 1938

Bank of America

Hane

November 21, 1938.

Memorandum to: The Secretary

From: Mr. Upham

This is the letter I propose for directors of Bank of America -- to be followed later by a detailed letter of warning.

Upm.

November
18th
1938

This office has previously acknowledged your letter of October 11, 1938. I wish here to reaffirm our position with respect to the major points which you discuss in that letter. In order that the problems involved may be perfectly clear, I wish to outline once more the major aspects of your bank which constitute a danger to the public interest.

These aspects center about the two facts that so small a portion of the total funds of the bank is capital funds and that so large a proportion of the total funds is invested in fixed or hazardous assets. Either one of these two facts by itself would be cause for alarm, but existing simultaneously in the same institution, they assume much more serious proportions. Their significance with respect to the public interest is still further enhanced when they exist in such a gigantic institution having such far-flung operations as the Bank of America, National Trust and Savings Association.

The bank has capital funds equal to about 6.4 percent of its total funds. This compares with an estimated 10.9 percent for the banks of the country as a whole. It means that if the assets were to depreciate 6.4 percent in value, or if 6.4 percent of the assets were to prove to be worthless, the bank would be insolvent.

On the other hand, 14.2 percent of the funds of the bank are invested in fixed and hazardous assets. When this percentage is compared with 6.4 percent for the capital, the seriousness of the situation becomes inescapable. Some of the fixed assets and all of the hazardous assets have no place in a good bank.

It is not the function of this office to dictate or even to suggest the specific practices which should be followed by the bank. However, it may be useful for you to have our opinion concerning broad principles which are involved. When a bank is in such a precarious position, every possible step must be taken to improve that position. But in the meantime

its operations must be carried on with particular circumspection since it cannot safely bear new risks such as can be assumed by a bank which is in a sound condition.

The main long-run concern of the directors of this bank must be to increase the capital until it bears a reasonable relation to the total funds of the bank and to dispose of the hazardous assets until they are reduced to nominal proportions.

If capital funds cannot be immediately increased adequately from the sale of stock, the earnings of the bank must be used to build up the capital as rapidly as possible. And even if capital can be raised through the sale of preferred stock, earnings must be used to retire that stock.

On the other hand, hazardous assets must be disposed of as rapidly as possible. Assets must not be held with a view to profiting from a problematical rise in value. An asset which could not legitimately be bought cannot legitimately be held. If there are probable losses in the assets of the bank, those losses should be realized now. Orderly liquidation of the hazardous assets of this bank is absolutely necessary.

The affairs of this bank must be disentangled from those of Transamerica Corporation and other corporations dominated by the same management. The present manipulated situation constitutes a violation of the spirit and letter of banking law which can no longer be tolerated.

Finally, if the Board of Directors really wishes to reform the bank and make it a credit to the State of California and the nation, it will make a serious attempt to ascertain the true condition of the bank. Nothing is to be gained by anyone concerned refusing to face the true conditions. I hope that your committee which is studying the situation will be but the beginning of a new era in the history of the bank in which the board will really perform the function of determining and directing the operating policies of the bank. This office will be most happy to confer and cooperate with your committee at any time in determining upon sound future policies.

The Anglo California National Bank
of San Francisco

November 21, 1938

Comptroller of the Currency
Washington, D. C.

Dear Sir:

Your attention is respectfully directed to a communication dated the 9th inst., signed by a majority of the Directors of The Anglo California National Bank of San Francisco, acknowledging receipt of your office letter of the 3rd ult., informing you of progress made in the correction of criticized items, and advising you of certain of our future plans.

Many of the matters complained of in your letter of the 3rd ult. are so complicated and methods of correcting them are so difficult to arrive at, that our time has been largely consumed in attempting to formulate a forward program possible of accomplishment and at the same time in accordance with departmental requirements. Since the 9th inst., however, we have made additional progress and feel that we are now in a position to outline in a more definite way steps we propose to take in cooperation with your office and the Reconstruction Finance Corporation to place the affairs of this institution in a condition to merit the approval of the various supervising authorities.

From our analysis of the report of examination under consideration and the letter of the Comptroller under date of October 3rd, it seemed apparent to us that one of the most important requirements necessary was the matter of providing the Bank with additional capital not only to correct conditions which presented themselves from the Examiner's classifications but to provide as well for the establishment of reserves against certain accounts of loans, bonds, other real estate and other asset items, concerning which question has been raised by the Examiner as to collectability within a reasonable time either in whole or in part.

Acting under the authority of a resolution of the Board of Directors of this Bank under date of October 6, 1938, a committee of five of the Directors made an application to the Reconstruction Finance Corporation for the purchase by it of $17,000,000 of preferred stock of this Bank, a copy of which formal application for this purchase is recited immediately below for the information of your office.

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October 13, 1938

Mr. Sam Husbands
Chief, Examining Division
Reconstruction Finance Corporation
San Francisco, California

Dear Mr. Husbands:

Application is hereby made to the Reconstruction Finance Corporation for the purchase by it of $17,000,000 of preferred stock of The Anglo California National Bank of San Francisco.

Two million five hundred thousand dollars will be used to retire the preferred stock now held by the September Company; $2,500,000.00 to retire the preferred stock now held by the Standard Oil Company of California; and $12,000,000.00 to be received by the Bank.

The total amount of this stock is to have a par value of $5,000,000.00, to be retirable at $17,000,000.00.

The rate of dividend, schedule of retirement and other conditions governing the issuance of this stock are to be agreed upon at a later date.

The undersigned are a committee duly authorized by the Board of Directors of The Anglo California National Bank to make this application.

Respectfully submitted,
(Signed) Mortimer Fleishhacker
" P. E. Hoover
" Samuel Kahn
" Wm. B. Reis
" W. O. Wayman "

Following the filing of the above mentioned application, Mr. Samuel Husbands, Chief Examiner of the Reconstruction Finance Corporation, and his associates were immediately contacted and requested to make an examination of all of the criticized assets listed in the last report of examination made of this Bank in conjunction with the local National Bank Examiner.

Following the completion of this examination, it was concluded that provisions should be made for the elimination of the assets listed below either by charge off or the setting aside of reserves that are to be netted to said assets in future statements of condition.

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LOANS AND DISCOUNTS

	Reserve	Loss
Affiliates	1,216,500.00	542,801.49
Loans to Officers, Directors and their corporations (as grouped by the Examiner in his report)	2,447,636.88	1,835,131.84
Other Commercial Loans	2,774,416.92	1,369,053.48
Real Estate Loans	40,025.60	20,402.06
Stocks, bonds, claims, etc.	1,895,213.74	1,150,921.93
	8,373,793.14	4,918,310.80

RECAPITULATION

	Reserves	Losses	Total
Loans	6,478,579.40	3,767,388.87	10,245,968.27
Stocks, bonds, claims etc.	1,895,213.74	1,150,921.93	3,046,135.67
Total	8,373,793.14	4,918,310.80	13,292,103.94

The individual items comprising the foregoing totals were agreed upon by representatives of the Reconstruction Finance Corporation and the National Bank Examiner at the time of his recent review, details of which are in his possession.

In order to reserve, therefore, against the foregoing assets and insure a sound capital structure for the Bank, it was considered desirable to increase the present capital by the addition of $12,000,000 of preferred stock. In this connection you will observe that our application to the Reconstruction Finance Corporation was for a total purchase by it of $17,000,000 of preferred stock, of which $5,000,000 will be used to retire the Bank's present preferred stock and the balance would be new capital.

With further respect to criticized assets or portions of assets commented upon especially by your Examiner and representatives of the Reconstruction Finance Corporation, there appear to be some items of loans, both commercial and real estate, and certain items of bonds and securities aggregating $1,250,470.45 not provided for in reserve allocations heretofore set forth. It seemed to be the opinion of your Examiner, and we concur therein, that these particular items appear to be adequately secured, although the character of the security might be construed as being of a "slow" nature. In connection with the items comprising this total, therefore, it is proposed to allocate such future reserves as may be necessary from the recoveries realized on the assets for which reserves have been provided prior to the use of any such recoveries for preferred

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stock retirement purposes. It is our understanding, however, that no reserves will be required upon the unpaid balance of any of the aforementioned assets that have been placed in acceptable condition in the interim.

All of the above conditions as to requirements for charge offs and reserve allocations are among those discussed with the representatives of the Reconstruction Finance Corporation and we understand have met with their tentative approval.

In order, therefore, to provide means for the removal of the items regarded by the Examiner as "loss" and to set aside sufficient reserves for certain other asset items, it is proposed to make the par value of the preferred stock issue $5,000,000, the amount of our present preferred stock issue, but to sell it for $17,000,000, thereby making $12,000,000 available for the above mentioned purposes. This would make the new capital structure of the Bank as follows:

Preferred stock (par 20, liquidating and retirable value 68)	$5,000,000.00
Common stock (par value)	10,400,000.00
Surplus ($350,000 from U.P.)	4,000,000.00
Undivided profits	1,476,451.06
Reserves (judgment)	750,000.00
New Capital Structure	$21,626,451.06

We strongly hope that this method will be approved by your office as we feel it distinctly for the best interests of the Bank that our present capital position should not be changed in material respects.

Your criticism and that of the Examiner relative to borrowings of certain companies affiliated with the Bank, have been given attention. As an initial step looking toward the elimination of these items, we propose a plan to liquidate the following enumerated so-called affiliated companies by formal foreclosure of the supporting collateral in each instance:

Consolidated Securities Co.
Amalgamated Properties Co.
The Anglo Corporation
Jerome Garage Co.
Anglo California Company
Anglo Investment Company
Anglo California Securities Co.
Islais Company, Ltd.
San Rafael Development Company

In addition to the foregoing affiliates, it is now proposed that a plan be presented to the shareholders of the Anglo National Corporation looking toward partial distribution of its assets and the winding

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up of its affairs over a period of time. While many of the shareholders of this company are also shareholders of the Bank, the shareholders are by no means identical. The company's loan to the Bank has now been reduced to $300,000 and its assets consist largely of stocks of controlled banks, minority holdings in other banks, listed and unlisted securities, which assets have been appraised by the Examiner as follows:

Market value	$ 3,572,000.00
Estimated value of other assets	2,228,000.00
	$ 5,800,000.00

As an essential part of the plan we are proposing with respect to affiliated companies, it will be necessary that the Anglo National Corporation acquire the minority holdings in the six banks listed below, and thereafter make application to convert them into branches of this Bank.

Holdings of Anglo National Corporation	Bank	Examiner's Valuation	Deposits
298 shares	First National Bank, Fairfield	59,600.00	629,000.00
896 "	Bank of Suisun, N. A.	268,000.00	1,395,000.00
450 "	First National Bank, Weed	83,250.00	764,000.00
1,374 "	Winters National Bank	58,000.00	269,000.00
874 "	First National Bank, Yreka	36,000.00	660,000.00
1,560 "	Mechanics & Merchants National Bank of Vallejo	80,000.00	1,725,000.00
		$584,850.00	5,452,000.00

As part of this general plan, therefore, we expect to authorize our officers to make formal application for these branch permits and we trust that these applications will receive your favorable consideration. Following the completion of this branching program, the Anglo National Corporation will receive somewhat in excess of $500,000 in cash, represented by initial liquidating dividends in addition to any of the assets of the institutions mentioned which might be classified as inadmissible for acceptance by this Bank. It will be seen, therefore, that this operation will provide sufficient cash means for the corporation to liquidate its borrowed money liability to this Bank now standing at $300,000, incidentally, its only liability.

On completion of formal foreclosure of collateral securing loans to affiliated companies and others, the Bank will become the owner of 17,286 shares of the Common capital stock of the Anglo California National Bank and 66,746 shares of the Class A stock of the Anglo National Corporation.

As a means, therefore, of eliminating these holdings of bank stock and Corporation A stock, we propose to offer for sale the above stocks to the affiliated Anglo National Corporation as a debt-previously-contracted transaction at the market prices on the date of purchase and

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sale, which, as of this date would be approximately as follows:

17,286 shares of Bank's own stock	@ 13	$ 224,718.
66,746 shares of Anglo National Corporation A	@ 10	667,460.
		$ 892,178.

In order to effect this sale, it will be necessary for Anglo National Corporation to give its unsecured note to the Bank in the amount of somewhere between $900,000. and $1,200,000, depending upon the market prices for the stocks on the date of purchase and sale, which would represent its only liability for money borrowed. As will be seen from the foregoing, the Anglo National Corporation is possessed of sufficient sound assets to thoroughly protect a loan in this amount and it would be our purpose to place requirements for liquidation of this loan commensurate with the ability of the corporation to convert its remaining assets into cash. Completion of this plan, therefore, will provide for the elimination of all the Bank's own stock and that of its affiliates from the assets of the Bank.

If this proposed purchase and sale is consummated, the Directors and shareholders of the Anglo National Corporation can then take such steps looking toward distribution of its Bank stock holdings and other assets, liquidation, etc., as may be considered for their best interests. We believe this plan, speaking in general terms, has merit from the standpoint of the shareholders of the Anglo National Corporation and expect that the program will be presented to the shareholders of the corporation for their approval at its next annual shareholders' meeting, which will be held in February, 1939.

It will be obvious that the successful completion of this plan brings in items which may not be possible of accomplishment as, for example, the purchase of minority interests in the banks above mentioned. We set the plan forth, therefore, with some diffidence as we may be obliged to alter it. In fact, were it not for the fact that you desire a prompt answer, we should prefer to consider the matter further before making any statement.

The comments in your letter respecting the wholly owned Progress Mortgage Company, the Bank's other real estate account, etc., have likewise been carefully noted. Your office is aware of the reasons for the organization of this company and the further fact that it has been used as a real estate holding company. It is noted from your letter that the terms and conditions under which real estate has been transferred to Progress Mortgage Company are such that the arrangement in the opinion of your office does not constitute a bona fide sale. We believe it to be definitely for the best interests of the Bank that this company be continued as a real estate holding company, and that its assets now represented largely by real estate owned be reconveyed to the Bank, following which the various properties be resold to Progress

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Mortgage Company under a definite agreement of purchase and sale. The terms of this transaction will provide that the purchase price will be liquidated in five equal annual installments. An analysis of real estate loan items which represent potential "other real estate" is now being made and such items which may be found to be in this category will be likewise transferred to Progress Mortgage Company, in order that the entire real estate situation may be concentrated in this affiliate. At the time of the recent review of the assets of this company by the Reconstruction Finance Corporation representatives and your Examiner, a requirement was placed for a $1,000,000 reserve to be set aside against this account, with the understanding that any unliquidated portion of any annual installment payment will be charged against this reserve. You may be sure that every effort will be extended to liquidate the assets of this company and curtail its indebtedness to the Bank as speedily as possible.

The comments contained in your letter of October 3rd respecting two loans, namely, Dollar Steamship Lines Inc. Ltd., and certain liabilities of Mr. Herbert Fleishhacker, both of which have been classified by your Examiner as excessive, have been carefully considered. At the time of the commencement of the last examination of this Bank, the affairs of the Dollar Steamship Lines Inc. Ltd. were undergoing a reorganization, which reorganization has now been completed. One of the features of this reorganization involved the acceptance on the part of this Bank of 11,400 shares of non-cumulative preferred stock of the reorganized company in payment of $1,140,000 of the company's indebtedness. This stock was accepted and is now being carried in the bond account of the Bank at a book value of $1,140,000 against which a full reserve is being set aside, and the borrowed money liabilities of the company were simultaneously reduced by this amount. The additional $250,000 loan commented upon in your letter, which was granted to this company in January, was made, as reported in our recent letter, in an emergency, in order that the Dollar Company might be subsidized by the United States Maritime Commission and its existence perpetuated for the benefit of this Bank as well as its other creditors. The security taken for the protection of this $250,000 advance is represented by preferred mortgages on the S.S.President Fillmore and S.S.President Johnson (subject to prior liens of $90,000.00), which have been appraised at $375,000 apiece, and which it is represented to us could be disposed of for salvage purposes for $250,000 each. The present loan indebtedness of the Dollar Company to the Bank is $2,047,276.10. Energetic steps are now being taken looking toward the sale of certain of the collateral held behind this loan. It seems apparent to us from representations made by the officers of the Bank that there should be opportunities available to effect a reduction in the item within a reasonable time in sufficient amount to bring the total line within the new loaning limit. We assure you of our cooperation towards this end. Since the reorganization of the Dollar Company, the United States Maritime Commission is the actual owner of roughly 90% of the company's common stock. The company itself has been granted a five year operating differential subsidy which, on the basis of present differentials, will amount to $15,000,000. over the life of the

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long term subsidy. Insofar as the company's loan to this Bank is concerned, we have retained all our collateral rights, are guaranteed current interest payments and an amortization schedule for the liquidation of principal is set in amounts over an eight year period. The Reconstruction Finance Corporation has provided the company with a working capital loan in the amount of $2,500,000 and the United States Maritime Commission have provided further funds up to $2,000,000 for the purpose of effecting reconditioning, repairs, etc., to the company's operating fleet.

There are also enumerated in the Examiner's report, on page 8 insert 1, the so-called Herbert Fleishhacker loans, totaling $3,473,442.26. In our letter to you under date of November 9th, we informed you that as a result of the recommendation of the Committee on Loans of Officers and Directors, the Bank had foreclosed on the collateral to certain of these loans and reduced it to ownership. Mr. Mortimer Fleishhacker has informed the Board that he is endeavoring to make an arrangement whereby the following enumerated loans will be paid in full:

M. & H. Fleishhacker	$ 705,000.00
Fleishhacker Paper Box Co.	770,000.00
Farm Land Investment Co.	371,000.00
Klamath Development Co.	314,000.00
	$2,160,000.00

The loan of M. & H. Fleishhacker in the amount of $705,000 and the Fleishhacker Paper Box loan of $770,000, both loans aggregating $1,475,000, which have been reduced from $1,600,000 since the date of examination, are included in the Herbert Fleishhacker concentration on page 8 insert 1. It will be seen, therefore, that full payment of these two items will reduce the Herbert Fleishhacker loan in an amount sufficient to relieve criticism hereafter insofar as the limit of loans is concerned.

The comments contained in your letter respecting the real estate loan department of the Bank have likewise been carefully noted and considered. A recent review of this department indicates that liquidation on criticized real estate loans in the amount of $991,000 has taken place since the date of the examination. It is noted from the last report of examination that an aggregate of $6,621,351.78 of real estate mortgages have been classified as non-conforming for one reason or another. Since the date of examination we have been informed by the Examiner that your office has recently ruled that, inasmuch as the Comptroller approved the consolidation of the Anglo California Trust Company with this Bank, the non-conforming real estate loans originating in the trust company could be considered as legally acquired by the consolidated bank. By the application of this ruling and the collections made in the interim, a total of $4,765,870.21 of the loans formerly classified as non-conforming may be eliminated from that classification, leaving a balance of $1,855,481.51

according to the report of examination still subject to adverse classification. We are naturally desirous of eliminating every real estate loan which might be considered by your office as non-conforming, and it is proposed to sell these remaining non-conforming real estate loans to the Progress Mortgage Company under the same terms that the other real estate account will be sold to that affiliate hereinbefore set forth. The officers in charge of our real estate loan department will be instructed to take all necessary action to bring these particular items within a conforming status at the earliest possible moment. The foregoing action would result in the complete elimination of all real estate loans to which criticism has been directed. From a review of the report it is noted, however, that there remains a total of approximately $4,000,000 of loans that your Examiner informs us will be classified as "legal when acquired but non-conforming now". We do not believe that this particular group of loans and the classification indicated is of a serious nature and your office may be assured that every possible available means will be used to either collect or place these remaining items in a condition satisfactory to your office. The fact that over $2,000,000 of real estate loans have been liquidated since the date of your last examination indicates to us the effectiveness of the results being obtained in this department.

On page 6 of your office letter of October 3, 1938, reference is made to twenty-one blocks of stocks and bonds having a book value of $3,813,467.54. You are now advised that our above mentioned plans contemplate the elimination of a total of $1,404,988.59 through reserves to be created out of the proceeds of the preferred stock sale, leaving $2,408,478.95 still remaining. A substantial portion of this latter amount is comprised of stocks and bonds originally acquired in connection with debt-previously-contracted transactions. Records of the Bank indicate that they were later sold to the Progress Mortgage Company in 1933, for the purpose of effecting a borrowing from the Reconstruction Finance Corporation at that time for the benefit of the Bank. Following the repayment of that loan, these stocks were then repurchased by the Bank, the proceeds of the purchase price having been applied toward the reduction of the company's indebtedness to the Bank. Inasmuch as these particular assets were always the property of the Bank and acquired legally through DPC transactions and that the affiliate is 100% owned by the Bank, adverse classification of these assets is entirely technical, and the Examiner is requested to obtain a ruling from your office in this connection. Regardless, however, of the determination of this point, you may be assured that the securities classified by your Examiner in this category, all stocks of corporations in which Directors might be interested, as well as certain bonds to which exception is taken, will be liquidated as rapidly as reasonable values can be obtained. Liquidation of criticized items under this head has already reached $3,230,500.56 and the officers in charge of the Bond Department have been instructed to take such steps as are necessary to relieve this department of all criticism.

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Careful attention has been given to the comments, criticisms and conclusions of the Examiner contained on page 2 inserts 1 to 17 of the report of examination in question, as well as further comment in your office letter of October 3rd with reference to miscellaneous matters to which criticism has been directed. In connection, therefore, with these particular situations we wish to advise you as follows: Statutory bad debts, as set forth in your Examiner's report, have to a large extent been eliminated. Elimination of other items falling within this category according to your Examiner's classifications will be eliminated by charge off or through reserves upon completion of the adjustment of capital heretofore outlined.

You have been heretofore informed of the creation of an executive committee composed of three outside Directors, the President acting as an ex-officio member, and this committee is now meeting weekly in pursuance of its duties in dealing with major problems, policies and loans of the Bank. You have been likewise informed of the appointment by the Board of a special committee of three to handle the liquidation of all loans of officers and directors. This committee is now meeting at regular intervals and making a study of the situation preparatory to making its report for the information of the Board as a whole.

A reserve of $750,000 for the Bank's liability in connection with the Lazard judgment has been previously and is now provided for by adequate reserves.

The deficit in the preferred stock retirement fund commented upon in the Examiner's report will be eliminated under the recapitalization program set forth herein. Criticism directed to the common stock certificates of the Bank was corrected during the month of February, 1938. The expense account of the Bank henceforth will be closely scrutinized and the Board is now specifically reviewing all expense items in excess of $1,000.

All executive officers of the Bank will be required to report their borrowings from other banks in the manner provided by Section 22 (g) Regulation "O" of the Federal Reserve Act as of the 2nd day of January each year, in order that current information will be available at all times. The officers in charge of the preparation of the Bank's earnings and dividend reports, as well as published call reports of condition, will be instructed to make corrections as set forth in the Examiner's report. An active examining committee will be appointed to work in conjunction with the Bank's Auditing Department, with special attention being given to criticized assets and other items of criticism which may be contained in future reports of examination.

All loans to Directors and to corporations in which Directors or officers are interested, together with interest rates thereon, will be specifically approved by the Board of Directors henceforth and such approval noted in the Minutes.

The reports of examination of the Bank will be fully

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considered by the Board of Directors in the future as well as all important communications from your office and replies thereto, such action to be noted in the Minutes.

You will, of course, understand that the figures used in this letter have been furnished to us by officers of the Bank and, while we believe them to be correct, we naturally cannot guarantee them.

Consideration is to be given to the matter of reducing the number of Directors from twenty-four to fifteen members at the coming annual stockholders' meeting, with a view towards eventually obtaining further supplementation of membership strength.

The Board of Directors is fully cognizant of the desire on the part of your office to assist us in the consummation of a forward plan which will have for its effect the correction of the conditions set forth throughout the Examiner's report and your letter of October 3rd. It is needless for us to state that we will appreciate your active cooperation to this end. On our part, we assure you that we are highly desirous of cooperating to the fullest extent both with your office and the Reconstruction Finance Corporation to the end that the general plan formulated herein can be placed into operation at the earliest possible moment. It will be our purpose to give the affairs of the Bank our closest attention and our combined efforts will be directed toward the reestablishment of this Bank to a condition that will be satisfactory to the supervising authorities. We are not unmindful of the fact that some of the problems of the Bank will require time and effort to solve, and we would like to request your forbearance during this period. May we also request that our letter to you under date of November 9th be read and considered in conjunction with this communication.

Respectfully yours,

Pages 15 through 18
placed in Book 358, pages 277 A-D

RE BANK OF AMERICA

November 22, 1938.
4:05 p.m.

Present: Mr. Hanes
Mr. Oliphant
Mr. Foley
Mr. Delano
Mr. Upham
Mr. Smith
Mr. Gaston
Mr. Duffield

H.M.Jr: Well, Mr. Hanes.

Hanes: This is a meeting of this banking group to consider a letter that the Comptroller wants to write to the Board of Directors in answer to their answer to our letter of criticism, and it's been boiled down to a very short document in which we agree to give them a conference here at their convenience and then cite to them certain things which the Comptroller wants to demand of them. The letter is short and I'll read it if you wish.

H.M.Jr: Please.

Hanes: "In further reference to your letter of October 11, 1938, this office has given much thought and attention to the matters under discussion between us.

"We shall be pleased to comply with your request for a meeting with the managers of your bank to clarify the issues raised in our letter of September 23, 1938, at any time they may care to come to Washington. In the meantime, we want to reiterate our position as to the necessity for the correction of certain practices which for several years have been the subject of so much criticism in our reports of examination as well as in communications from this office and in interviews with your officers.

"We must continue to insist upon:

(1) Proper standards of banking practice.

(2) A reduction in the percentage of criticized assets; and

(3) An increase in capital ratio.

"We again emphasize the necessity of immediate action to achieve these corrections, including the conservation of earnings. We cannot urge too strongly that you proceed with every power at your command to the end that this task be performed effectively and expeditiously.

"Very truly yours, - Mr. Delano, the Comptroller of the Currency."

H.M.Jr: Well, who objects? That's the easiest way.

Oliphant: I'd like to omit the last two sentences. Rather than get back on the basis now of pleading with them, I'd like to omit those two sentences. That is, you've carried on that process of begging or imploring or urging for several months or years.

H.M.Jr: I'm all "fit" out. Anybody can fight who wants to. You've got to sign the letter, Preston Delano, so you do the fighting.

Delano: Well, I take issue with General Counsel. I think I'd like to leave it in.

Oliphant: Well, all I want to do is just present that thought. As I say, we have over months or years or what have you urged and begged and so forth; then we decided we'd take action.

Delano: I recommend that - think that's a matter of just taste and fancy.

Gaston: I suggest 50-50 - take the - omit the last sentence and leave the next to the last in as a final paragraph.

Delano: What do you think, Tom?

Smith: Well, the only thought I have in this is that this all - there is a chance that some day this will all come out, be put out on the table; and if it ever is, you will be charged with being hard-boiled, hasty, and everything of the kind; and I believe in

administering the dose as courteously as possible, being firm but courteous all the way through; and that's all that is. I don't believe it hurts the letter in any way to leave it in, but I think it makes a very courteous communication out of it.

Oliphant: Talking now of both sentences?

Smith: Yes, I think they both should stay in, on the ground that it doesn't injure the letter a bit, but makes it more courteous. I don't think it's very important one way or the other, but it's a better letter with both of them in there.

H.M.Jr: Well, I still say it's up to Preston Delano to decide.

Delano: Well, if I had to decide it - I wrote the letter - I'd leave it that way.

H.M.Jr: Pardon me?

Delano: I would leave it that way. I agree with Tom.

Oliphant: Check. I've thrown the thought out. I'm satisfied.

H.M.Jr: All right. Let's look around the room. How about you (Upham)? You think the letter is all right?

Upham: I'm satisfied.

Duffield: I've really had my shot at this; I'm a little late; but as it was read it occurred to me that perhaps in addition to these three things enumerated here we're charing with outright violations of the law. Maybe that's covered by point number one - proper standards of banking practice.

Delano: Point number one was intended to get them all - a catch-all proposition.

Duffield: So that's all right - I mean ...

Delano: I think we have that in there.

Duffield: Yes, all right.

H.M.Jr: Johnny?

Hanes: Suits me all right. I think it's a good letter.

Delano: One correction in there as you read it; instead of saying "managers" we say "management." Simply - purely technical thing.

H.M.Jr: Ed?

Foley: Satisfied.

Smith: This has been around pretty generally, discussed before you came in.

RE BANK OF AMERICA & TRANSAMERICA November 23, 1938.
9:15 a.m.

Present: Mr. Hanes
Mr. Taylor
Mr. Oliphant
Mr. Foley
Mrs Klotz
Mr. Duffield
Mr. Upham
Mr. Douglas
Mr. Rogge
Mr. Lane

H.M.Jr: Well, what happened is this. Mr. Douglas called me up after six last night at the house and talked about a letter and said he wanted to add a paragraph. So I said, "I don't know anything about the letter, don't know whether to add a paragraph or not."

And then the principal thing he wanted - if two months from now he wanted some pages, would they be available. I thought that inasmuch as Delano and Upham had expressed some doubts last night about the legality of this thing, before I put my neck out I wanted to have them both on record.

Upham: That's this order?

H.M.Jr: To give the S.E.C. what they want from the Comptroller's office, and when they want it, in connection with Transamerica.

Upham: Did I express doubt as to the legality?

H.M.Jr: No, Preston was saying last night here ...

Foley: We have an opinion, Mr. Secretary. I'll get it.

Upham: When Mr. Douglas came over I said I was disposed to do it, but I would want counsel's opinion before ...

H.M.Jr: No, last night.

Hanes: Mr. Delano, I think, Mr. Secretary, said that; just asked the question had we verified the fact that he had the right - he, Delano, as Comptroller, had the right to give this thing to them.

H.M.Jr: That's - I mean my ....

Upham: Well, I have no ....

H.M.Jr: But this happened last night, didn't it?

Hanes: Yes.

H.M.Jr: Well, I .... So before I give Bill Douglas ....

Upham: He said he wanted to be sure, that's right.

H.M.Jr: ... my assurances, I want everybody all along the line to be satisfied.

Kieley: Mr. Douglas.

H.M.Jr: Yes.

(On phone) Hello. Where's Preston Delano. - What? - .

(Douglas, Lane, and Rogge come in)

H.M.Jr: We got the wrong Delano - Frederic. The operator made a mistake. So the one man I wanted here, Preston, isn't here. But he's in the building, so ...

Douglas: Shall I wait until he comes?

H.M.Jr: What?

Upham: Can I do anything?

H.M.Jr: Yes, you can get Preston Delano. (Upham leaves)

I told them just before you (Douglas) came in here, I want anybody that's got anything to say about this thing to say "Yes" now or keep their peace forever. And it's - so I phoned everybody 8 o'clock to be here, and if anybody's got any doubts, let them tell - in my shop or the Comptroller's office, I want to know it this morning. Right?

Douglas: Yes. I might say, Mr. Secretary, as apropos of our earlier discussion here the other day, that we have not received word from F.D.I.C. yet. It was my understanding that the Comptroller's office was to

contact F.D.I.C. and then advise us.

H.M.Jr: Well, do you want - we'll put Crowley on the phone.

Duffield: Mr. Upham did talk to Mr. Crowley and when he comes back ....

H.M.Jr: We'll get Crowley and you can talk to him yourself.

Douglas: Well, I - that flank hasn't been covered, and I ....

H.M.Jr: We'll see how long it will take him to get over here.

(On phone) Leo Crowley on the telephone, please. - Did you locate Preston Delano? - Did you speak to that operator? - What did she say? - All right. - Well, see if Leo Crowley's around, please.

Want anybody else?

Douglas: No. I mean that was the only other agency in question that we felt might be considered.

H.M.Jr: I'm perfectly conscious what I'm doing and I'm doing it cheerfully and - because I think it's one of the biggest jobs we've got to do in this town.

(Upham comes back)

Upham: He's on his way down from home. He's not in the building yet.

H.M.Jr: I'll murder that operator.

Douglas: Mr. Secretary, we have - the Commission has approved the order under Section 19 of our statute. The Commission has authorized the service of that order on Transamerica and has scheduled the release of that order for Friday of this week at 3 p.m. When last evening I was about to sign ...

H.M.Jr: Excuse me.

(On phone) Hello. - Get him on the telephone, and Mr. Douglas and I want to talk to him. - Thank you.

He's in Wisconsin. We'll get him on the phone.

Douglas: When last evening I was about to sign a letter to you requesting permission for us to use in our proceedings, publicly use, officially use in our proceedings, the information from the Bank Examiners' reports bearing on the issues raised by our order and bearing on the facts and allegations charged in our order, a question arose in my mind by reason of the presence in the letter that I was about to sign, that had been worked out by our two staffs, of a sentence to this effect: that if we wanted to introduce in evidence at any of these hearings any certified copy of any part of the Bank Examiners' report, we would have to come back and - or we would come back and get further permission at a future time.

Well now, just to be a hundred and ten percent clear on this thing, so that we know precisely where we're going and have a very definite clear understanding, I thought that I ought to talk to you. We may be making a request for a certified copy of page 1012 of volume 16 or what not, not next week or not next month, but in February or in March. The hearing is going to begin on January 16, 1939. The announcement of these proceedings is going to create a terrific turmoil, in my opinion; I mean turmoil in the sense of every conceivable kind of pressure everywhere in the Administration to knock off the proceedings by the S.E.C. We're going right straight ahead with the thing.

And as I was - and I like to think in these situations of the worst that could happen, and I began to think last evening, "Well now, suppose the Secretary and Johnny Hanes and Herman Oliphant next February or March for some reason or other were out of the picture, and here's the S.E.C. with these charges, with the necessity of having a certified copy of page 1014 of volume 16 or what not in order to make that particular charge stand up legally, in order to prove it. We have no assurance that we're going to get that thing. We'll have to then perhaps negotiate with a new set of people in Treasury and on the record we'll have absolutely no protection."

Now, I'm just imagining....

H.M.Jr: You're pessimistic about Oliphant, Hanes and me, aren't you? (Laughs)

Douglas: Well, I'm ...

H.M.Jr: I think we'll all go to Public Health and get a certificate.

Hanes: Bill, you're right. We're all going flying together right soon. You better not take any chances.

Douglas: Don't just put me down as a neurotic, Mr. Secretary.

H.M.Jr: (On phone) Keep after him. - And have you got Preston Delano anywhere? - No.

Crowley will be ready in about ten minutes.

Douglas: I'm just imagining the worst.

H.M.Jr: That's all right.

Douglas: But I know there's going to be a great storm of all sorts of pressures and what not and every conceivable effort is going to be used to tie our hands at the legal level of this thing; that is, the introduction of evidence. And if we're going to be working under wraps at that level, we may be under very serious handicaps and we may be out on the end of the limb with the old saw going at the other end. I just wanted - the letter is all right; I'll sign it and I'll undertake to take my chances later on getting the information if that's the best that you can do, but I just wanted it clear that you and I had no misunderstanding on that point because we'll be back later asking for any of the information, asking for this specific information; and if there's any slightest reason why we shouldn't have it, we want to know it now.

H.M.Jr: Well now, look, you got me off base last night because we had a terrible day here - typical Treasury day.

Oliphant: Not typical - worst in 90 days.

H.M.Jr: All right. And we were getting out a document for the President. I sent a man down last night in an airplane. So you're talking about something that

I've got to do my homework on, so to speak, publicly. And if you will - I take it Oliphant heard what you said, and I called him up this morning, and all I know - he said when he left here last night he thought everything was all right as between Rogge and our place. Now let's start from there, and if you would ....

Oliphant: I'd like to make this suggestion. Our objectives are identical, and I think it's merely the question of - Bill and I can sit down in my room and in five minutes agree on the formula.

H.M.Jr: I'd rather - if it's five minutes, let's do it right here, because there's nothing more important that I've got. I've just stopped - we'll stop everything until it's finished. I'll do it right here.

Douglas: That's the paragraph - the last paragraph of that letter is the one that I just paused on.

H.M.Jr: May I - I mean this is that you didn't want to send me.

Douglas: Well, I wanted to make sure that we had ....

H.M.Jr: Want me to read this?

"May I respectfully request your consent to make public official use, as part of the proposed proceedings, of such information obtained from these reports as is contained in the proposed order?

"Before any of these reports, or parts thereof, are introduced in evidence at the hearing in this proceeding, another certified copy thereof, in accordance with applicable statutory provisions and rules and regulations of the Treasury Department, will be secured."

Douglas: It's the last sentence.

H.M.Jr: Well, has Herman - who put the last sentence in?

Foley: I did, out of an abundance of caution.

Oliphant: While I was handling these other matters, Ed was discussing it with Rogge.

H.M.Jr: Well, why, Ed?

Rogge: I think that last sentence came up this way. I think that at previous conferences ....

H.M.Jr: Could you wait just a minute, please? (Whispers instructions aside to Mrs. Klotz)

(Upham hands Secretary a note)

Damn it, we'll put him on the phone. I mean he's either Comptroller of the Currency or he isn't Comptroller of the Currency. You can't pinch hit for him on this thing.

Upham: Well, I got him into it originally.

H.M.Jr: What?

Upham: I got him into it originally. I agreed to it being done. I guess he thinks ...

H.M.Jr: Well, all right.

Upham: I'm sure that he's perfectly willing to permit anything that Herman says can be done.

H.M.Jr: Well, I want him to say so. Douglas says, supposing that Hanes and Oliphant and I are out of the picture and supposing you're out of the picture and Preston Delano is here in charge. Then what? We'll get him on the telephone and we'll make a record of it.

Upham: I'm sure he'll go along.

H.M.Jr: That isn't what Douglas wants; I mean Douglas wants a hundred and ten percent; he's entitled to it, and I'm going to see that he gets it.

Douglas: I'm just trying to think of the lines of communication in this military strategy.

H.M.Jr: You're right, and you're going to get everything that I can give you. I'll give you 150 percent. Now just - please ....

Oliphant: Well, let Rogge ....

Rogge: That last sentence of the letter, I think, arose in this way: that at a previous conference between Mr. Upham, Mr. Foley and myself, I said to them that, of course, before any of the reports or parts thereof would be introduced in evidence, we would ask for certified copies thereof, in accordance with the common law rules of evidence. I did not put that in the draft of the letter that I brought over here, and Mr. Foley reminded me that that's what I had said the previous time and he thought it would be a good idea to add that sentence to the letter. Now, of course, I think you could assume that we were going to do our duty and try this case in accordance with the rulings of evidence without perhaps adding that last sentence to the letter.

Foley: I put it in, Mr. Secretary, perhaps as an over-abundant caution. Matters that are introduced in evidence will appear in the stenographic transcript, and that can be purchased and publicly circulated, and I thought we might want to see those things that were going to be transcribed in that way before they were actually put into the record. That was the only reason that I inserted that qualification in the letter.

Douglas: But it raises immediately in my mind ....

Oliphant: I can - if you want me to ....

H.M.Jr: I'm listening to you lawyers. I want you ....

Oliphant: This is up to me, and I'm clear on what that is. You've got to guard against the possibilities that Bill outlines, and over on the other side are the possibilities of death and destruction in S.E.C. See? Now, I think of the two limbs Bill is going out on the longer one, and I'm perfectly willing to leave it as it now stands, that as a matter of oral understanding as they want this stuff they will request the certified copies, and I'm willing to leave the sentence out.

Douglas: That would resolve all of the difficulties that I was having last night.

H.M.Jr: You mean leave the sentence out.

Douglas: If the last sentence were stricken ....

H.M.Jr: ... then you're satisfied.

Oliphant: Now is the sentence too tight for you?

H.M.Jr: Just a minute.

(On phone) Hello. (Conversation with Crowley follows)

November 23, 1938.
9:38 a.m.

HMJr: In the office here are my own people, plus Commissioner Douglas of SEC.

Leo Crowley: Yes.

HMJr: And - Are you where you can talk?

C: Yes, sir.

HMJr: All right. Well now, Commissioner Douglas wants us to - he's entitled to a hundred and fifty per cent assurance that all of us are going to back him up, see?

C: Yes.

HMJr: And I'm going to let him talk to you a minute and satisfy himself, see?

C: All right. Let me say this, I'm sorry I'm away right now. I had to come out here to the hospital for a little check up and I'll be back the Friday after Thanksgiving.

HMJr: Well that's all right.

C: Let me talk to Bill now.

W.O. Douglas: Hello, Leo?

C: Hello Bill, how are you?

D: Fine. Have you - you're up to date on what the SEC has decided to do on the Trans-America situation?

C: Yes, we'll stand back of you a hundred per cent Bill.

D: There is no reason, in your mind, why we shouldn't proceed forthwith with a proceeding to delist the Trans-America securities?

C: I don't see any reason in the world Bill, I think if that fellow is going to be able to dictate and run the policy of the Government, why we all better quit.

D: Yes. Well you realize of course that in the allegations and the charges that we will be making in our order that will be issued Friday of this week, that there will be certain facts charged that will challenge

the financial integrity of that whole system.

C: I appreciate that, Bill. I don't think it'll hurt the institution any at all. If it does why we'll stand back of any of them.

D: Well I just wanted to make sure that there was absolutely full accord all down the line.

C: That's right. I'm with you Bill, you go right ahead.

D: O. K.

C: All right Bill.

D: Thanks very much.

C: Hello.

HMJr: Hope you have a nice Thanksgiving.

C: Thank you. Are you going to take a little vacation? Are you going to be back the first of the week?

HMJr: I'll be back Monday morning.

C: I'll see you the first of the week. I'd like to talk with you.

HMJr: Give me a ring will you please.

C: Thank you.

H.M.Jr: Before we go, we'll get Preston Delano on the phone.

Douglas: We are under our proceedings, as a practical matter as well as a matter of law, geared into the common law procedure, common law rules of evidence and so on. We try to stay very, very close to those.

Oliphant: Ed handled this just the way I like the work done; that is, he was just taking all the precautions. And we all get together and face the alternative as to which limb is the longer limb, and I am perfectly clear in my mind that if we leave that sentence out - we should, since they follow, as he says - since they follow the common law rules of evidence, they will, in order to make them admissible under those rules, want to get the certified copies and will as a matter of routine get them.

Douglas: That's correct.

H.M.Jr: Let me see the letter. What you're going to do is just leave off the last paragraph.

Rogge: Last sentence.

Douglas: The last sentence.

The only other question remains as to whether or not Mr. Lane or Mr. Rogge feel - can give me advice that otherwise it's all right.

Upham: Well, let's give them the certified copies now, so if we all disappear now they'll have them.

Foley: We don't know what they'll want.

Lane: Can't tell now what pages we want. It's impossible until the case develops.

Rogge: The letter without the last sentence will be acceptable to me.

Oliphant: Entirely agreeable, is it, Rogge?

Rogge: Yes.

Hanes: We've satisfied ourselves that the Comptroller has a right to give all this?

Oliphant: Yes indeed. Perfectly clear.

Lane: This should - this point should be recalled. This is restricted to the information contained in the proposed order. It may very well be necessary for us to have revised, amended or supplementary orders, and we will want to make similar requests for the right to use the material called for in any of those supplementary orders. That should also be understood as something we have to do. May not want to refer to it in this letter.

Douglas: Well, from the Treasury's point of view, I gather it's perfectly clear that if as we go along we find new relevant matters that would strengthen our hand in these proceedings that would necessitate an amendment of this order, that we would be in a position to come back to Treasury and get a similar permission for information in an amended order as we are getting for this original order.

Oliphant: Why not stick in, Bill, "or amendments thereto" in the letter? - "in the order or amendments thereto."

Douglas: That would ....

Oliphant: That would take care of it.

Douglas: That would take care of it once and for all.

Foley: Then there wouldn't have to be another exchange of correspondence.

Lane: If you wanted to say "as may be necessary in the proposed proceeding" instead of referring specifically to the order - that's the real point, the proceedings.

Oliphant: May I see the letter? Is this it?

Douglas: That's it.

(Various conferees discuss letter speaking in low tones)

Douglas: May I - the revision is: "May I respectfully request

your consent to make public official use, as part of the proposed proceedings, of such of the information obtained from these 25 reports as is contained in the proposed order or amendments thereof?"

Lane: I'd like to toss in an alternative suggestion which - it may go too far, but I ... : "May I respectfully request your consent to make public official use, as part of the proposed proceedings, of such of the information obtained from these 25 reports as the Commission may find necessary or appropriate in the proposed proceedings." Don't tie it down to any specific order - just as an alternative suggestion. Reference to "information contained in the order" is to me a little inadequate. We have made public official use, in a sense, of the information contained in the order by publishing the order. What we want to use in the proceedings is any information that we may need in these reports, not knowing now specifically what we will need and not having even necessarily a final definitive order, in the sense we may have supplemental orders.

Douglas: Well, another way of stating your point would be to substitute for the phrase "as is contained" "as bears on the allegations or charges made in the proposed order or amendments thereof."

Lane: Yes, certainly.

Rogge: I think the Treasury would prefer, perhaps, that way of drafting it too.

Oliphant: "... as bears on" instead of the word "contained." Right?

Douglas: "... as bears on the ..."

Rogge: ".. allegations..."

Douglas: ".. contained in the proposed order or amendments thereof."

Oliphant: Check.

Douglas: Is that agreeable all around?

H.M.Jr: Now, do I acknowledge this?

Foley: You reply to it.

H.M.Jr: All right. Now, I'm not signing anything after 12 o'clock today.

Oliphant: It will be ready for your signature before that.

H.M.Jr: Wait a minute. Before I sent it - I'll sign it, but before it goes over I want Mr. Preston Delano to sign it.

Oliphant: It ought to go the regular route for all the initials.

H.M.Jr: I want his full signature. I mean can't you leave a place for him to sign it - "Comptroller of the Currency" and "Secretary of the Treasury."

Douglas: Should I address this to both? This is addressed to the Secretary.

Oliphant: The authority is vested in you, not in the Comptroller.

Foley: We can put "Approved" at the bottom, let him approve.

Oliphant: He doesn't approve what the Secretary does.

Taylor: The other way.

Upham: He can initial it.

Oliphant: That's legal - what we always do.

H.M.Jr: Is that holding?

Oliphant: That's holding, binding.

H.M.Jr: Well, get everybody in this room to initial it, plus Delano. Get everybody in this room to initial it - I mean everybody who is in Treasury to initial it and sign it. Now, if anybody - let's go around - if anybody doesn't want to initial it, now's the time to say so.

John?

Hanes: It's all right.

H.M.Jr: Gene?

Duffield: It's all right.

H.M.Jr: Cy?

Upham: In a big hand.

H.M.Jr: Wayne?

Taylor: (Nods approval)

H.M.Jr: All right, there you are.

Douglas: Thank you, Mr. Secretary.

H.M.Jr: Now wait a minute. We don't have to get Delano on the phone on that basis, do we?

Douglas: On that basis, no.

H.M.Jr: Are you satisfied?

Douglas: Yes. Shall I say we'll have this over within half an hour?

H.M.Jr: What?

Lane: We can get it over within half an hour.

Oliphant: Send it to Ed.

H.M.Jr: I think this is something you most likely know, but we've had this thing with San Francisco before. When we do anything that affects the Coast we never do it until six o'clock, because their exchanges are open until six our time.

Douglas: Well, we ....

H.M.Jr: I mean I just - you most likely are aware of that, but we have had several instances where the three-hour difference ...

Douglas: That's right; we considered that and still decided we'd do it at three o'clock.

H.M.Jr: All right.

RE BANK OF AMERICA & TRANSAMERICA

November 23, 1938.
9:55 a.m.

Present: Mr. Hanes
Mr. Taylor
Mr. Oliphant
Mr. Upham
Mr. Duffield
Mrs Klotz
Mr. Gaston

H.M.Jr: I want to know - let's hear it.

Hanes: The order is in the proceeding under Section 19 (a) (2) under the Securities Exchange Act of 1934, in order to offer testimony against the Transamerica Corporation for delisting purposes.

The charge - they charge the Transamerica Corporation with issuing statements filled with false and misleading statements. They enumerate those false and misleading statements, and the omission of material facts.

"The Commission has reasonable grounds to believe that in 1934 general proxies were given to Giannini, Grant, and L. M. Giannini, that such proxies were voted at the annual meeting in the spring of 1934. It appears to the Commission that the failure to disclose the committee composed of A. P. Giannini, John Mr. Grant and L. M. Giannini as a parent of the registrant constitutes an omission of a material fact."

That's a generality. They charge them with the failure to disclose the payment to A. P. Giannini of $1,400,000 during the years from 1930 to 1936.

H.M.Jr: Excuse me, what was that for? What was that in payment for?

Hanes: In payment for services. The whole citation is as follows: "The Commission has reasonable grounds to believe that on January 20, 1930, the sum of $1,400,000 was placed on the books of Bankitaly Company of America, then a subsidiary of Transamerica Corporation, to the credit of A. P. Giannini;

that of this $1,400,000 all but $792,000 had been paid to A. P. Giannini by September, 1931, at which time counsel for the then existing management of Transamerica Corporation advised that further payment would be illegal; that thereafter subsequent to the change in management in 1932, A. P. Giannini withdrew from the balance of $792,000 the following sums: in 1932, $134,000; in 1933, $132,000; in 1934, $100,000; in 1935, $251,000; in 1936, $65,000.

"It appears to the Commission that the failure to disclose these facts in Items 28 and 29 renders registrant's response to these items materially misleading."

Then they charge him with the material omissions in their balance sheet of Transamerica Corporation as of December 31, 1936. They charge them with balance sheet irregularities. Transamerica paid large sums of money to a wholly-owned subsidiary for the distribution of its own stock. That was through two subsidiaries. The name of that subsidiary was - the final subsidiary that got the money was Associated American Distributors, Incorporated. They paid out - Transamerica to the Associated American Distributors - a total of $2,341,000 in three years.

H.M.Jr: For what?

Hanes: For the distribution of the stock of Transamerica Corporation.

H.M.Jr: You mean as a bonus?

Hanes: No, they paid it as a commission.

H.M.Jr: I see.

Hanes: As a commission for the distribution of stock.

H.M.Jr: What I want to interrupt you at this point - that information doesn't come out of the Comptroller's office, does it?

Duffield: That's their own.

Hanes: This is - I think this is their own. The bank stuff came out....

H.M.Jr: But this distribution business ....

Haines: No, but the payments of the Bank of Italy to Giannini - that comes out of our files. These monies should have been charged to the current expense of this corporation called Associated American Distributors - I mean to the - it should have been charged as expense to the Transamerica, whereas it was charged to the "Paid-In Surplus" account and it wasn't charged to current expense. That's what - they charge there that's a misleading statement.

Here it comes down to information which they got from us. The bank examiners wrote off, or caused to be written off, $35,000,000 from the Bank of America statement as worthless or uncollectible items. The Bank turns around and sells these items, turns around and sells these doubtful assets to its own parents, that is, to Transamerica and Transamerica General, at their full face value, $35,000,000.

H.M.Jr: Full value, to Transamerica?

Haines: Full value. Sold these assets which were written off by the bank examiners as worthless.

H.M.Jr: They're worthless, but they sell them to Transamerica for thirty-five.

Haines: Then they charge them with not making clear the fact that the investment of over eight million dollars, pretty near nine million dollars, in Italy was subject to certain restrictions imposed by the Italian Government upon the transfer of the profits and funds from Italy to any other country, which materially affect this investment and therefore should be stated to the stockholders.

That isn't the worst one.

H.M.Jr: I'm intensely interested. Don't skip anything. I'm intensely interested - intensely.

Haines: They charge them with setting up no reserve in the Bank of Italy statement - setting up no reserve on real estate and real estate loans, amounting to a total of $133,000,000; charge them with writing up their Government securities $14,000,000 and taking

that write-up into their current profit account; without realizing the profit, they take that into their current profit and pay dividends on it.

Duffield: They used that $14,000,000 to allow Transamerica to repay them for those bum assets.

H.M.Jr: Pay them for the $35,000,000 - you mean the write-up of the 14 is part of the stuff they used to pay for the 35.

Duffield: To excuse that debt, they got it around to Transamerica, so they could switch it.

Hanes: They charge them with their reserve being misleading because of his failure to provide for losses and doubtful accounts in Bank of America other than loans on "farm lands" and "other real estate" included in the "Assets" to the extent of approximately $8,000,000; also in failure to provide sufficient reserves for the $304,000,000 of loans on "farm lands" and "other real estate"; also failure to provide for losses on real estate other than bank premises held by Bank of America to the extent of approximately $1,600,000; in failing also to provide sufficient depreciation for bank premises, furniture, and fixtures of Bank of America; in failure to provide also for losses on bonds and other securities held by Bank of America to the extent of approximately $400,000 and for losses on other asset items to the extent of approximately $300,000.

Then they charge them with their undivided profits account - the net is set forth at $22,503,000, and the Commission has reasonable grounds to believe that in that it includes approximately $9,000,000 of unrealized appreciation resulting from the $14,000,000 write-up in 1935 and 1936 of United States and municipal securities held by the Bank; also in failing to include a reserve for losses and doubtful accounts, losses on real estate, depreciation of bank premises, furniture and fixtures of Bank of America and losses on securities and other assets in excess of $13,000,000.

H.M.Jr: (On phone) Hello. - All right, I hope he enjoys it.

Colonel McIntyre is having his breakfast and will talk

in a few minutes.

Hanes: The S.E.C. claims that if these two items were taken into account in the balance sheet it would completely wipe out that portion of the "Undivided profits - net" which may be attributed to Bank of America.

Again they charge them in 1935 and 1936 with including unrealized depreciation as income, and dividends paid in 1935 were more than $3,500,000 in excess of actual earnings.

H.M.Jr: In the case of ....

Hanes: In the case of Transamerica.

H.M.Jr: Say that again.

Hanes: The dividends paid in 1935 were more than three million dollars in excess of their earnings. That was dividends paid by, not Transamerica, but Bank of America.

H.M.Jr: Bank of America.

Hanes: Now, the worst item that I could find in here, and this is such fancy bookkeeping and such kiting as I have never seen in my life - this is a hot one - in 1933 the Bank sold to the parent banks - to its two parents - now, the Bank is owned by two parents; one is 99 percent owned - 99.65 percent owned; the other is 100 percent owned by that one .... - they sold to the parent charged off assets, that is, assets that the Bank had charged off - they sold to the parents ...

H.M.Jr: Which is Transamerica?

Hanes: ... which is Transamerica, for $250,000. Now, keep that figure in mind. In 1934 they sold another group of assets to the same parents for $50,000. So they paid a total - the parents paid a total to the Bank of $300,000 for this group of assets, and they were assets which had been charged off of the Bank, you see, as worthless.

Now, in 1936 those companies which had bought those assets sold the same assets to two more subsidiaries, or 100-percent-owned corporations, for $500,000.

So you got two steps. Then in 1937 the Bank comes back ....

H.M.Jr: The Bank of America?

Hanes: The Bank of America comes back and pays to this fourth one of the chain $6,500,000 for those assets.

Oliphant: Oh my God!

H.M.Jr: For the same assets which they originally sold for $300,000.

Hanes: Wait a minute; they paid $6,500,000 for a portion of those assets - for a portion of them. It wasn't a - there was $1,100,000 sold to another company, which is the California Lands Company. So from the original three hundred thousand they extracted a million one, then sold the balance for six million dollars.

H.M.Jr: Where did they get that information from?

Duffield: That's out of our reports.

Hanes: If they don't know where that comes from ....

Upham: That's our report.

Hanes: In order to - here's one I don't quite get. The Transamerica - all this passing through these corporations back to the Bank; Transamerica then goes in and gives the Bank a guaranty of $6,500,000, its purchase price, against the loss on these assets. Now, Gene says he understands that, but I don't quite understand it - why the Transamerica ....

Duffield: It's hooked up with another transaction, because Transamerica under that previous purchase of $35,000,000 worth of bum assets which were referred to earlier, had coming due within nine months a balance due to the Bank of eight million - between eight and nine million dollars. This six million and a half which was paid to the subsidiary company for these bum assets went around through that subsidiary to Transamerica Corporation. Transamerica used those funds to discharge a portion of that eight million dollar debt. So that what happened was that instead of an eight million dollar debt coming due within nine months for Transamerica, the

Bank got this $6,500,000 guaranty from Transamerica, which runs over five or ten years, I've forgotten which.

Upham: Five years.

Duffield: Five years. So that what happened was that through these two manipulations they extended for five years a debt which Transamerica had coming due within nine months. That's what happened. The reason Transamerica guaranteed it was that it got excused for this other debt.

Taylor: I got - in reading over some of those things that came over from the S.E.C. and our own comments on it, I got very strongly the impression that several of these transactions were entered into for tax purposes.

Upham: That's right.

Duffield: Well, at the date they did this they excused altogether, or rather, extended for from five to ten years, about $11,000,000 worth of debt.

Taylor: Yes. I'm making this additional comment.....

Upham: Saved about two million in taxes.

Taylor: .. that as it was described in several of those memos, why, they would take this profit and place it in a place where it wouldn't show....

Duffield: That's right.

Taylor: ... for tax purposes.

Oliphant: If it was done for tax purposes, it's none the less misleading to stockholders.

Taylor: No, I wasn't - I was giving that as an additional incentive for why they handled these things in that way.

H.M.Jr: A little by-product, huh?

Duffield: That's right.

Hanes: It wasn't for tax purposes that in 1937 the Bank of America paid six and a half million dollars for a portion of the same assets which the Bank had originally sold in '33 and '34 for $300,000. That wasn't for tax purposes.

Taylor: Johnny, I think you'll find that there was at least one of those transactions which showed that right up, and so on, which unquestionably had the tax angle in there. That is, as I say, a very strong impression that I got.

H.M.Jr: Let's go on; let's just run over that.

Hanes: That's the worst one.

H.M.Jr: Well, I just wanted ....

Hanes: And the balance of the order recites for five years practically the same thing that I've recited for the previous year.

H.M.Jr: Now - all right, I just wanted - the reason I wanted to listen - I wanted to make sure that they weren't hanging this whole thing on the Comptroller's report, because, strictly in this room, I'm bothered that it took us a month to answer Giannini's letter.

Oliphant: It took what?

H.M.Jr: It took us a month to answer the directors' letter. It bothers me that we took a month to answer it, and then we really didn't answer it. And I'm just raising the question why, if S.E.C. can get out a letter - why this - why does it take the Comptroller's office a month to get out something and it really isn't something; all you did is say, "Come on over here and see me; come on up and see me."

Upham: That's a good question.

H.M.Jr: Well, I'm just - I mean if they can do a thing like that, based on our report... Then after a month of maneuvering we write them a one-page letter: "Come to Washington, we'll talk it over."

And I further ask the question, which the public will ask: if the S.E.C. can move on this front and move so

promptly, why, when Morgenthau has made such a fuss, changed and got new people in the Comptroller's office - what are they doing? I mean you people have been in there since the first of October. Now, what are you doing about this? What's the answer to that?

Upham: Well, the answer on the October 11 letter, I think, is this. I acknowledged it at once. We had a meeting of the banking group, and it was there that - Mr. Delano was present - it was their feeling unanimously that that letter was such a good reply to our criticisms of the Bank of America that we couldn't do anything until that letter had been analyzed point by point and it was discovered whether or not our examiners were right or Giannini was right.

Now, we went ahead to make that analysis of the letter and we got into complicated transactions; we didn't have very much help in the Comptroller's office to make that analysis aside from the examiners themselves, who were reviewing their own work. And when we produced a letter based on that answer of theirs, answering point by point, why, the banking committee determined that it would be preferable to write a very short letter and include the detail in a letter of warning when we have had a little more time to straighten out all the complications and go back out to the Bank and find out whether some things were true.

Now, that is not, in my opinion, an answer to the letter - to why the letter wasn't answered a long time ago, and with a good deal of this material in it. Of course, we have faced the Bank with these facts in the reports of examination and we have been repeating what we told them before. That is an explanation which is not an answer to your question at all.

H.M.Jr: No, it isn't, and it isn't an answer to Mr. Giannini bellowing all over Houston that after 30 days we couldn't answer his letter.

Well, I'm going to ask, how long is it going to take the Comptroller's office before you can do something about the Bank of America?

Upham: Before we do something?

H.M.Jr: Yes, besides writing letters.

Upham: Well, the plan now seems to be to call them in and talk to them. I think the examiners and the administrative people in the Comptroller's office regard this letter we are sending today as a slap on the wrist.

Duffield: To them.

Upham: To the Bank of America.

Duffield: Well, aren't you meanwhile working on the formal letter of warning which has to be the next legal step?

Upham: That's right, we're working on a letter of warning to the Bank which would be a basis for certifying them to the Federal Reserve.

H.M.Jr: Well, how long before that letter - does it - the letter of warning will not go until Giannini comes here?

Upham: That's my understanding. The next thing is a conference with Giannini. That seemed to be the ....

Oliphant: All that left me cold, and that was the reason I suggested omitting the last two sentences yesterday.

Upham: I've been convinced since early September that we have unsafe and unsound banking evident and that we could write a letter of warning and certify them to the Federal Reserve. Now, I don't think we know all the answers to all of the points that are made in all of the replies that come from Giannini; but there certainly is a mass of evidence of unsafe and unsound banking sufficient to certify them to the Federal Reserve Board. But when we get into analyzing and everybody agreeing to go ahead and do it, why, ...

Duffield: Well, if I may at that point suggest something that was suggested to me in the Federal Deposit Insurance Corporation - that if we can warn them on some points we don't need to make the first letter of warning cover everything. If we can catch them on something else later on and have all the details on that, we can warn them once a week if we want to.

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

Haines: I think in fairness to the Comptroller's office in this thing here - you ask why the S.E.C. can do a document like this in such a short length of time. The S.E.C. in the first place have been familiar with the Transamerica up to the point of giving you that first information that they had. In addition to that, all they had to do was come in here and get out some certain salient points that were very vulnerable and attack them on those points: just what the F.D.I.C. said to Gene, to pick out the point that you do know that they're violating, and go and charge them with those, and if later on some others develop, do them; but let it go, try not to make a tourniquet job of the first letter to cover every point in the bank examiner's report. So I think it's fair to say that the S.E.C. have come in here and picked out the things which have hit you in the eye and have included those in their so-called order, which is a far less task than Ely and his group have to do if they're going to make a complete analysis and tourniquet job to answer every specific point that Giannini has raised in his letter.

Upham: If we're going to wait until we're absolutely sure that in every particular we're right, why, we'll be a long time.

Haines: Well, that's what you said: it will take you until after Christmas to get everyone of these questions answered, and I'm inclined to agree with the suggestion of the F.D.I.C. that you not wait until you get every single item analyzed, but to pick out the ones that are really important and the ones you really have a case on. That's what the S.E.C. has done.

H.M.Jr: That's what I'm leading to. If the S.E.C. can take the salient points out of our report, why can't the Comptroller's office do the same thing?

Taylor: I think they're in much better shape if they do, because there are enough things in there, things that you're perfectly clear about so you don't have to cite them for all these other things about which there can be rather serious argument.

Upham: Well, if we could have got this agreement a month ago, we could have done that at once.

H.M.Jr: Well, say what's on your mind. I don't know what's on your mind; if there is something on your mind, say it. I mean amplify that statement that you just made now.

Upham: Well, I've had to - well, I've been privileged to have ...

H.M.Jr: You're amongst friends.

Upham: I've been privileged to have this group to help me, but after all it does slow things up a little. We had this meeting in Mr. Taylor's office of the banking group, and they said, "Now we must be absolutely sure, we must go very slow, before we get out on a limb with Giannini; we must be able to answer this very good and very clever letter that he has written." And it doesn't seem to me that it was a very good and very clever letter. But I'm a small fellow among a bunch of important people here, and I'm not going to just go out and run the Comptroller's office and have you say, "Well, look how big shot he got to be overnight." I'm guided by you all, I have to listen to you and listen to what you say, and I'm very glad most of the time to have you tell me.

Gaston: I think you should mention in that connection that there are jobs for three men there in the spot which Cy has been occupying since the first of October, and it's a pretty tough spot.

H.M.Jr: That ....

Gaston: He didn't have an organization in there.

H.M.Jr: Cy and I understand each other perfectly. Don't we?

Upham: I hope so.

H.M.Jr: Now, the point that I'm getting over is that this advisory committee which I've set up - I think that when Mr. Crowley comes back Monday, in view of this thing and in order that we be at least as aggressive as the S.E.C. - I wish you people would take another look at this thing, see?

Oliphant: Well, does that mean this letter is going out, the one they had?

H.M.Jr: Well, I wouldn't change anything.

Upham: Hasn't been signed.

Hanes: Seems to me - Herman, the way I look at this thing is that he asked specifically for a meeting, said, "I'd like to come in here and talk to you." Well, after all, as Tom Smith says, what you're trying to do is clean up that bank. That's what you want to do, is clean up that bank. And if he makes that direct request, I don't see how you can very well refuse him.

H.M.Jr: I don't want to change, I don't want to be in the position that one day I say one thing and one day another. We agreed to this. That doesn't mean that this little banking group can't meet on Monday with Crowley and see if maybe we can't use this as a model, and so forth and so on, and pick out of it some of the salient points. I'm familiar with this thing - I mean that this question had to be answered; and then the thing that bothered me was, I began to wonder whether you could answer Giannini's letter, on account of all the delay.

Upham: Well, there was an atmosphere all around town of "Go slow," you know. Marriner wrote to you and said he thought it was inadvisable to go ahead, and that had an effect on a lot of people.

H.M.Jr: I've heard this. I'm glad I said what I've said. Evidently - but then I think that if Hanes will get the so-called banking advisory group together on Monday and take another look at this thing, then they can advise me further. Is that all right?

Hanes: Sure.

H.M.Jr: What? Now, for my information, will you clear up, you and Oliphant, with Douglas whether this is simply a courtesy matter and whether - we've seen it and have no comment to make; I take it that's what we do.

Hanes: They called me last night and said, "If we want to mail this thing to San Francisco, have it ready for delivery on Friday, we want to clear it with the

Treasury tonight." See? So that's the reason I stayed up last night to do this thing. I thought it was important, if they're going to send that thing out there - if we had any objection to this thing, we ought to say so now.

H.M.Jr: Now the other thing, when that's certified is this made public?

Hanes: On Friday.

H.M.Jr: It is made public - that whole letter. Well then, when it is made public, would you draw Elmer Irey's attention to it, please?

Hanes: Beforehand?

H.M.Jr: No, I'd wait until Friday. I'd just want to say this. I mean in order to make my position also consistent in approaching this thing, I would rather err on the side of being extra careful in our approach to the Bank of America than of going off half-cocked and being sorry afterwards. And the fact that we've got this now is all to the good, but I think in view of the technique followed by the S.E.C. of picking out the salient things - I think that possibly we might do the same and not try to cover a hundred items or whatever it is. Right, Wayne?

Taylor: I think particularly because some of those points are definitely arguable ....

H.M.Jr: You're changing your position too now?

Taylor: I've felt that if we were going to attempt to answer that letter that we should - which is what we were trying to do in the original drafts, and they were very long drafts - that we weren't sure enough of certain positions which we were taking to be able to do it; and I still feel that same way: that there are certain things that Giannini brings out that I haven't seen that we have sufficient information to be able to say, "You're a liar," which is what you have to be able to do.

H.M.Jr: Now one other thing; I'd say this is the most important. This letter is going to be released on Friday.

What are the chances of any - if any, of - when this letter is released, that there might be a run on the Bank of America? This is - this I consider terrifically important, and what steps does anybody take to see that if there is a crisis we should put in enough capital to take care of it?

Hanes: I should think it would be a good idea to talk to Jesse about this thing.

H.M.Jr: I do.

Oliphant: Does Jesse know about it?

H.M.Jr: Jesse does.

Hanes: He does know about it.

H.M.Jr: Yes, he does. Wayne's told him, and ...

Oliphant: Administrative possibility that Leo ...

Upham: Well, the Federal Reserve Bank of San Francisco will have to provide cash if there is any cash provided - more important than Jesse or Leo in meeting that. But I don't think there will be any runs.

H.M.Jr: Herman, exclusive of Herbert, the people in this room - if you will assume the responsibility, I'd like you to assume that responsibility for me, but in the sense that - to watch it for me, but I mean it's not - I'm not divesting myself of responsibility. And I'd like you (Hanes) to take it up with Eccles today; I'll make you chairman of this committee for me. And take it up; and I'll be out of your hair, so to speak, by noon, so this afternoon I think I'd have Eccles come over here and talk to him and somebody from Crowley's office and the Comptroller's office, and just have a little war board; because the one thing the President said to me in connection with Bank of America is, "Now make doubly sure that you're going to look after the depositors."

So I think this afternoon you fellows ought to sit down and discuss all possibilities and be prepared if they need cash, and have it there, and if necessary to send the cash in armored trucks, and everything

else. And I think you fellows ought to have a little war board meeting this afternoon. Now, I'm not in any way divesting my responsibility other than - let's call this a planning board in case of war; but I'm still Secretary of the Treasury and have my full responsibility. But I do want you fellows to get together this afternoon with Jesse, with the others, just have it ready. Now, is that ... - what? And then - but I wish you would meet with them and just be sure that everything is ready. And if you have any doubts, you can call me on the farm, will you?

Hanes: Yes, sir.

Oliphant: I'd like for Ed to sit in to follow it.

H.M.Jr: What?

Oliphant: For Ed to follow it.

H.M.Jr: That's all right; but you're a member of this group, Mr. Oliphant.

Oliphant: Yes, sir. Well, the technical thing - is it satisfactory for Ed to sit?

H.M.Jr: Sit? You mean for you?

Oliphant: Yes. I've got a pretty tall desk.

H.M.Jr: Well, that's up to the chairman of this committee.

Oliphant: Well, whatever John wants.

H.M.Jr: What do you want, John?

Hanes: That's all right with me. He's been following this thing.

Oliphant: Yes, been following it very closely.

H.M.Jr: All right, fine. And if you want me tonight, you see, to talk to me about it - talk over if there's any question; I think you definitely ought to prepare for any possible move, a run on the Bank or banks. And if when you meet this afternoon - gentlemen, I've

got General Craig here - won't you throw out a little hint, if you think well of it, to Eccles that they shouldn't let this thing just slide over that these banks which are holding companies - I mean what's that thing that expires on November 29?

Duffield: Voting permit for the stock in the Bank.

H.M.Jr: In the group - I mean not just to sit back and let the thing slide by without bringing it again to the attention of whoever controls those things.

Duffield: They've instructed their Vice President in the San Francisco Bank that if Transamerica hasn't submitted a suggestion by the 29th, to go in on their own motion and discover what the situation is and what the company proposes to do.

H.M.Jr: Well, could this be possible, to do it even a little bit differently? To say that if on the 29th they haven't done it ... (makes sharp downward motion with arm) ?

Duffield: Yes, I should think so.

H.M.Jr: Instead of doing it that way, I mean, to get out the notice that "you have the 29th as a deadline, and if by the 29th you haven't severed the connections of this thing, the voting trust expires and will not be renewed."

Duffield: I think - should think it will be.

Hanes: Is that up to the Federal Reserve Board?

H.M.Jr: The Board. Instead of sitting back, arguing about it for a year, they can put them on notice: "Now if by the 29th you haven't done so and so, the permit expires and will not be renewed." I'm bringing that - I'm not - this is a suggestion and not an order. I mean I'm just, instead of - in other words, let's change the technique, if possible. They've had how many months to think this thing over?

Duffield: They started way back in the spring, when they first notified the Corporation.

H.M.Jr: I'm just offering this - when you get this group

together ...

Hanes: O.K.

Upham: Mr. Secretary, I don't want these people to think that I don't appreciate their help, because I do, and I take the blame myself for these things not being done.

H.M.Jr: Oy, nobody's blaming. Listen, the purpose of these meetings is to talk frankly and for me to talk frankly and everybody else to talk frankly. I appreciate the difficulties and the handicaps which you are working under. I didn't know that Mr. Delano was such a sick man and couldn't come to the office all the time. I appreciate all the trouble. But what is said here is for the benefit of myself and everybody else, and you know by now that when I make statements or - if I'm wrong or anything else. But nobody - you need this group badly.

Upham: Yes.

H.M.Jr: And I need them badly, and we'll continue to work together. But the purpose of it is so that we can all talk things over. And I couldn't help but be hit on the forehead when I see this thing, and I've just heard yesterday about Mr. Giannini bellowing all over Houston, and naturally it will be asked, "If they can do it, why not the Comptroller's office?" I realize there's a lot of reasons why, but I also realize that you might follow this as a pattern. Might - that's all. Just remember, you always have been and still will be a member of the Treasury family.

Upham: Thank you.

H.M.Jr: And we squabble amongst each other, but if any outsider comes in we all join hands against the outsider. Right?

Upham: O.K.

H.M.Jr: And you're still on the inside.

Oliphant: Here's the formal opinion of your authority to turn those examiners' reports over to S.E.C.

H.M.Jr: I can't take that on the fly.

Oliphant: You don't want it now.

For IMMEDIATE Release Friday, November 25, 1938

SECURITIES AND EXCHANGE COMMISSION
Washington.

Securities Exchange Act of 1934
Release No. 1950

UNITED STATES OF AMERICA
BEFORE THE SECURITIES AND EXCHANGE COMMISSION

At a regular session of the Securities and Exchange Commission, held at its offices in the City of Washington, D. C., on the 22nd day of November, A. D., 1938.

In the Matter of	
Proceeding under Section 19(a)(2) of the Securities Exchange Act of 1934, as amended, to determine whether the registration of	ORDER FOR HEARING AND DESIGNATING OFFICER TO TAKE TESTIMONY
TRANSAMERICA CORPORATION	
CAPITAL STOCK, $2 PAR VALUE	File No. 1-2964
should be suspended or withdrawn	

It appearing to the Commission that Transamerica Corporation is the issuer of Capital Stock, $2 par value, and that said Transamerica Corporation registered 11,590,784 shares of such stock on the New York Stock Exchange, the Los Angeles Stock Exchange, and, by amendment, on the San Francisco Stock Exchange, all national securities exchanges, by filing on or about August 7, 1937, an application on Form 24 signed for the Corporation by John M. Grant, President, with the said exchanges and with the Commission pursuant to Section 12(b) of the Securities Exchange Act of 1934, as amended, and pursuant to Rule JB1 (now Rule X-12B-1) as amended, promulgated by the Commission thereunder, which application became effective September 10, 1937; and

The Commission having reasonable grounds to believe that Transamerica Corporation has failed to comply with the provisions of Section 12(b) of the Securities Exchange Act of 1934, as amended, the rules, regulations, Form 24 and the Instructions thereto, promulgated by the Commission thereunder, in that the application for registration on Form 24 and the amendments thereto, filed by said Corporation contain false and misleading statements of material

facts, including financial statements of said Corporation and its subsidiaries, which do not correctly reflect the true financial condition of the Corporation and its subsidiaries, all as hereinafter more particularly set forth;

The false and misleading statements which the Commission has reasonable grounds to believe exist in the application on Form 24 and the amendments thereto being more particularly as follows:

I. Item 4(b) and Item 11, Col. G call for certain information with respect to all parents of the registrant. The Instructions to Form 24 define the term "parent" to include a person in control of the registrant and the term "control" is defined to mean "the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise."

The Commission has reasonable grounds to believe that in 1934 general proxies, to remain in full force and effect, unless revoked, for a term of seven years, were delegated to a Committee composed of A. P. Giannini, John M. Grant and L. M. Giannini, that such proxies were voted at the annual meeting of stockholders on March 29, 1934, and were in effect at the date of the application on Form 24, and that at such date these proxies conferred upon A. P. Giannini, John M. Grant and L. M. Giannini the power to direct the management and policies of the registrant. It therefore appears to the Commission that the failure in Item 4(b) and Item 11, Col. G to disclose the committee composed of A. P. Giannini, John M. Grant and L. M. Giannini as a parent of the registrant constitutes an omission of a material fact.

II. Item 28 and Item 29 call for information with respect to the remuneration paid by the registrant and its subsidiaries to certain of its officers, directors and employees.

The Commission has reasonable grounds to believe that on January 20, 1930, the sum of $1,400,000 was placed on the books of Bankitaly Company of

America (then a subsidiary of Transamerica Corporation) to the credit of A. P. Giannini; that of this $1,400,000 all but $792,000 had been paid to A. P. Giannini, by September, 1931, at which time counsel for the then existing management of Transamerica Corporation advised that further payment would be illegal; that thereafter subsequent to the change in management in 1932, A. P. Giannini withdrew from the balance of $792,000 the following sums:

1932 -	$134,828.58
1933 -	132,896.92
1934 -	100,596.24
1935 -	251,952.03
1936 -	85,914.38

It appears to the Commission that the failure to disclose these facts in Items 28 and 29 renders registrant's response to these items materially misleading.

III. With respect to the "Balance Sheet" of Transamerica Corporation as of December 31, 1936 -

A. In Schedule VI the figure $1,171,714.58 is set forth as a charge to "Paid-In Surplus" in 1936 under the caption "Charge resulting from cancellations and redistribution of capital stock."

The Commission has reasonable grounds to believe that of this amount $1,124,724.78 represents commissions and other monies paid by Transamerica Corporation to Associated American Distributors, Inc. (at that time a wholly-owned subsidiary of Inter-Continental Corporation which was itself a wholly-owned subsidiary of Transamerica Corporation), in connection with the following activities:

From 1934 to April 1937, Associated American Distributors, Inc. engaged in the business of soliciting orders to purchase Transamerica Corporation stock on the various stock exchanges on which such stock was listed. It does not appear that in any case Associated American Distributors, Inc. solicited orders for the

purchase of capital stock held by Transamerica Corporation. The solicitations were effected by means of contracts entered into by Associated American Distributors, Inc. with independent dealers and through a large number of salesmen employed directly by Associated American Distributors, Inc. Associated American Distributors, Inc. paid commissions to the dealers and to its salesmen for the orders obtained and, to encourage retention of the stock so purchased, additional commissions were paid in proportion to the duration of "placements." To support these activities, Transamerica Corporation paid the following amounts to Associated American Distributors, Inc.: In 1934, $336,857; in 1935, $891,202.17; in 1936, $1,124,724.78. These payments were treated by Associated American Distributors, Inc. as current earnings and were set up on its books as income in the years received.

In the light of the facts set forth above, it appears to the Commission that the commissions and other monies paid to Associated American Distributors, Inc., in the amount of $1,124,724.78 in 1936, represent a current expense properly chargeable to profit and loss and that registrant's treatment of this item as a charge to "Paid-In Surplus" and its failure to reflect this item as a current expense with a consequent reduction in "Earned Surplus" renders the "Balance Sheet" and Schedule VI materially misleading.

IV. With respect to the "Profit and Loss Statement" of Transamerica Corporation -

A. Schedule VI sets forth as charges to "Paid-In Surplus" under the caption "Charge resulting from cancellations and redistribution of capital stock" the figures $495,152.72 in 1934, $891,202.17 in 1935 and $1,171,714.56 in 1936.

The Commission has reasonable grounds to believe that of these figures $336,857 in 1934, $891,202.17 in 1935, and $1,124,724.78 in 1936 represent commissions and other monies paid by Transamerica Corporation to Associated American Distributors,

Inc. (then a wholly-owned subsidiary of Inter-Continental Corporation which was itself a wholly-owned subsidiary of Transamerica Corporation) in connection with the activities described above in paragraph III-A. In the light of the facts and for the reasons set forth above in paragraph III-A, it appears to the Commission that registrant's treatment of these items renders the profit and loss statements for 1934, 1935, and 1936 materially misleading.

V. With respect to the "Balance Sheet" of Inter-America Corporation as of December 31, 1936 -

A. Under the caption "Reserves - For liability and possible loss under outstanding contract of guaranty", and in Schedule V relating to additions and charges to "Reserves", there is set forth the figure $9,302,381.82. The accompanying Note states that this amount relates to a contract of guaranty given to Bank of America N.T. and S.A. in connection with certain assets of the Bank.

The Commission has reasonable grounds to believe that certain facts having a material bearing on this matter are as follows:

In 1931, in the course of an examination of Bank of America N.T. & S.A., the national bank examiners classified certain assets of the Bank in the face amount of approximately $35,214,000 as losses and doubtful accounts of such unsatisfactory character as to require their elimination from the Bank's balance sheet. Under three contracts dated June 26, 1931, December 31, 1931, and February 13, 1932, Bank of America N.T. & S.A. and Corporation of America (both of which were at that time 99.85% owned by Transamerica Bank Holding Company, itself a wholly-owned subsidiary of Transamerica Corporation), entered into agreements which provided that Bank of America N.T. & S.A. "agrees to sell, transfer and set over and does hereby sell, transfer and set over to the Corporation, and the Corporation agrees to purchase and does hereby purchase from the Bank" all such assets. As consideration

for these assets, Corporation of America agreed to pay the face amount of $35,214,000. To secure performance Corporation of America pledged with the Bank the assets purchased together with additional collateral. Corporation of America failed to give effect on its books to the assets acquired by these contracts of purchase and sale or to reflect any direct liability thereunder, but apparently treated the obligation arising under the contracts as a guaranty by setting up a reserve from capital surplus in an amount approximately equal to the aggregate purchase price under the contracts.

In 1933, the three contracts were transferred to Transamerica Bank Holding Company, and Transamerica Bank Holding Company by a resolution of its Board of Directors, dated August 30, 1933, agreed to "assume all of the obligations of Corporation of America under those three certain contracts between said Corporation of America and Bank of America N.T. & S.A." In connection with this transfer, Corporation of America eliminated the reserve set up to cover its obligation under the contracts, then aggregating approximately $34,994,378.57, and a reserve in the same amount appeared on the books of Transamerica Bank Holding Company. At a "Special Stockholders Meeting" on April 20, 1935, the name of Transamerica Bank Holding Company was changed to Inter-America Corporation. From time to time Bank of America N.T. & S.A. reduced the item set up on its books to reflect the obligation of Inter-America Corporation under the three contracts by a write-up of unrelated assets and by various other means as set forth below under paragraphs VII to XI, and XV to XVII, both inclusive.

In the light of the facts set forth, it appears to the Commission that the items "Reserves - For liability and possible loss under outstanding contract of guaranty" together with the accompanying Note, Schedule V, and the "Balance Sheet" are materially misleading:

1. In treating the contracts described and the obligation of Inter-America Corporation thereunder as a guaranty rather than as a purchase and sale which should have been recorded by setting up the assets purchased with a corresponding direct liability for the purchase price and, in view of the character of the assets, a reserve for the losses which would be borne by Inter-America Corporation;

2. In that the amount set up as "Reserves" for this obligation does not reflect the true amount of the liability due nor the possible losses under the contracts;

3. In the use of the term "recoveries" in Schedule V as charges to the "Reserve" originally set up to cover Inter-America's obligation under the three contracts, in that the term "recoveries" fails to indicate and falsifies the true nature of the reduction of Inter-America's obligation by conveying the impression of actual cash recoveries on assets written down, whereas in fact the "recoveries" were accomplished by the write-up by Bank of America N.T. & S.A. of unrelated assets as set forth below in paragraphs VII to XI and XV to XVII, both inclusive.

VI. With respect to the "Balance Sheet" of Transamerica General Corporation as of December 31, 1936 -

A. Under the caption "Investments in Securities of Affiliates" and in Schedule II there is set forth the figure $8,982,180.20 as the carrying value of the investment in the capital stock of Banca d'America e d'Italia.

The Commission has reasonable grounds to believe that certain restrictions imposed by the Italian Government upon the transfer of any profits or other funds from Italy to any other country materially affects this investment. It therefore appears to the Commission that it is materially misleading to set forth the figure $8,982,180.20 as the carrying value of the investment in the capital stock of Banca d'America e d'Italia without indicating the effect that the restrictions referred to above may have upon the investment.

VII. With respect to the "Combined Report of Condition" of Bank of America N.T. & S.A., First National Bank in Reno, Bank of America (California) as of December 31, 1936 -

A. The item "Loans and discounts" under "Assets" and in Schedule E is stated to be $539,899,100.65. This figure includes, among other things, loans in the amount of $304,674,551.73 on "farm lands" and "other real estate." The Commission has

reasonable grounds to believe that the item of $539,899,100.65 includes estimated losses and doubtful accounts aggregating in excess of $8,000,000 and slow accounts in excess of $125,000,000 held by Bank of America N.T.& S.A. Registrant has failed to disclose these losses, doubtful items and slow accounts in the "Report of Condition", either in Schedule E or elsewhere in the registration statement, has failed to provide any reserve for such losses and doubtful accounts, and, in the supplementary data furnished in accordance with paragraph I(5) of the Instructions as to Financial Statements in the Instruction Book for Form 24, has affirmatively stated that there are no losses on loans and discounts not provided for.

B. "United States Government obligations, direct and/or fully guaranteed" and "Other bonds, stocks and securities" are set forth under "Assets" and in Schedule F and Schedule G at $478,019,771.38 and $175,078,108.60, respectively. The Commission has reasonable grounds to believe that these items include United States Government and Municipal securities held by Bank of America N.T.& S.A. which were written up in 1935 and 1936 to the extent of approximately $14,000,000 and which at the date of the "Report of Condition" included an unrealized appreciation of approximately $9,000,000. The registrant has failed to disclose this fact in either Schedule F, Schedule G, the supplementary data furnished in accordance with paragraph I(5) of the Instruction Book for Form 24, or elsewhere in the registration statement.

The only provision for a reserve, captioned "Reserve for contingencies", is set at $2,049,928.01. The Commission has reason to believe that $1,971,058.48 of this figure is applicable to Bank of America N.T.& S.A., and that of this $1,971,058.48, approximately $1,480,000 is a reserve for self-insurance. The Commission further has reason to believe that this reserve is misleading because of its inadequacy -

1. In failing to provide for losses and doubtful accounts of Bank of America N.T. & S.A. other than loans on "farm lands" and "other real estate" included in the "Assets" to the extent of approximately $8,000,000;

2. In failing to provide sufficient reserves for the $304,674,551.73 of loans on "farm lands" and "other real estate";

3. In failing to provide for losses on real estate other than bank premises held by Bank of America N.T. & S.A. to the extent of approximately $1,600,000;

4. In failing to provide sufficient depreciation for bank premises, furniture, and fixtures of Bank of America N.T. & S.A.;

5. In failing to provide for losses on bonds and other securities held by Bank of America N.T. & S.A. to the extent of approximately $400,000 and for losses on other asset items to the extent of approximately $300,000.

D. "Undivided profits - net" is set forth at $22,503,612.05. The Commission has reasonable grounds to believe that this figure is false and misleading -

1. In that it includes approximately $9,000,000 of unrealized appreciation resulting from the $14,000,000 write-up in 1935 and 1936 of United States and Municipal securities held by Bank of America N.T. & S.A.;

2. In failing to include a reserve for losses and doubtful accounts, losses on real estate, depreciation of bank premises, furniture and fixtures of Bank of America N.T. & S.A. and losses on securities and other assets in excess of $13,000,000;

3. In that the total of (1) and (2) would wipe out that portion of the "Undivided profits - net" which may be attributed to Bank of America N.T. & S.A. and would require a reduction of the "surplus" account of Bank of America N.T. & S.A.

VIII. With respect to the "Combined Report of Earnings and Dividends" for Bank of America N.T. & S.A., First National Bank In Reno and Bank of America (California) -

A. For the year ended December 31, 1935 -

1. The items "Recoveries on bonds, stocks and othe securities" and "Profits on securities sold" ar stated to total $14,942,992.67. The Commission has reason to believe that this figure includes unrealized appreciation of approximately $7,000,000 resulting from an approximately $8,000,000 write-up in 1935 of United States Government and Municipal securities held by Bank o America N.T. & S.A., and, in addition, includes a substantial amount of unrealized appreciation resulting from the write-up of certain Transamerica Corporation stock held by Bank of America N.T. & S.A. as collateral for written off loans, and that the inclusion of this unrealized appreciation as income is false and misleading;

2. The provision for loss and depreciation on "banking house, furniture and fixtures" is set at $1,055,223.40. The Commission has reason to believe that this figure is inadequate;

3. The deficiencies set forth in (1) and (2) are reflected in the statement of net profits and undivided profits and render these items false and misleading to an amount in excess of $7,000,000. It appears that the dividends paid in 1935 by Bank of America N.T. & S.A. were mor than $3,500,000 in excess of its actual current earnings.

B. For the year ended December 31, 1936 -

1. The item "Recoveries on bonds, stocks and other securities" is stated to be $6,309,400.20. The Commission has reasonable grounds to believe tha this figure includes unrealized appreciation of approximately $2,000,000 resulting from a $6,000,000 write-up in 1936 of United States Government and Municipal securities held by Ban of America, N.T. & S.A., and, in addition, includes a substantial amount of unrealized appre ciation resulting from the write-up of certain Transamerica Corporation stock held by Bank of

America, N.T. & S.A. as collateral for written off loans, and that the inclusion of this unrealized appreciation as income is false and misleading;

2. The report of Earnings and Dividends further appears misleading in that no provision from earnings has been made for doubtful accounts and uncollectible foreign credits held by Bank of America N.T. & S.A. which the Commission has reasonable grounds to believe aggregated approximately $3,700,000;

3. The provision for losses and depreciation on "banking house, furniture and fixtures" is set at $1,082,748.86. The Commission has reasonable grounds to believe that this figure is inadequate.

4. The deficiencies set forth in (1), (2) and (3) are reflected in the statement of net profits and undivided profits and render these items false and misleading to an amount in excess of $6,000,000. It appears that the dividends paid in 1936 by Bank of America N.T. & S.A. were more than $1,500,000 in excess of its actual current earnings.

IX. With respect to the "Balance Sheet" of California Lands, Inc., as of December 31, 1936 -

A. Schedule VII relating to "Surplus" sets forth as an addition to "Earned Surplus" under the caption "Profit on sale of assets purchased from affiliate" the sum of $297,918.26. The accompanying Note states that this amount represents the excess of realization over the cost to California Lands, Inc. of an undivided one-half interest in certain notes, parts of notes, deficiency judgments, etc., theretofore written off on the books of Bank of America N.T. & S.A. and purchased from the Bank by Inter-America Corporation and from Inter-America Corporation by California Lands, Inc.

The Commission has reason to believe that certain facts having a material bearing on this matter are as follows:

on February 1, 1933, Bank of America N.T. & S.A. sold to Corporation of America (both of which were at this time 99.65% owned by Transamerica Bank Holding Company, itself a wholly-owned subsidiary of Transamerica Corporation), for a consideration of $250,000, all of ... charged off assets, including those to be charged off up to July 1, 1933. This agreement was transferred for the same consideration to Transamerica General Corporation and then to Transamerica Bank Holding Company (both wholly-owned subsidiaries of Transamerica Corporation). On January 2, 1934, Bank of America N.T. & S.A. sold to Transamerica Bank Holding Company for a consideration of $50,000 all of the assets of the Bank charged off from July 1, 1933, to July 1, 1937. At a Special Stockholders Meeting on April 20, 1935, the name of Transamerica Bank Holding Company was changed to Inter-America Corporation.

On October 1, 1936, Inter-America Corporation transferred the charged off assets covered by the two aforementioned agreements to California Lands, Inc. and Capital Company (both wholly-owned subsidiaries of Transamerica General Corporation which corporation was 100% owned by Transamerica Corporation) for an aggregate consideration of $500,000.

On July 14, 1937, California Lands, Inc. and Capital Company transferred these same assets less $1,486,185.67 collected by Inter-America Corporation (for the account of California Lands, Inc. and Capital Company) to Bank of America N.T. & S.A. for a consideration of $6,500,000. Thus, in 1937, Bank of America N.T. & S.A. paid $6,500,000 for a portion of the same assets which the Bank had originally sold in 1933 and 1934 for $300,000.

As part of this same transaction, Transamerica Corporation entered into an agreement guaranteeing the Bank against loss to the extent of $6,500,000 on the charged off assets repurchased.

In the light of the facts set forth above, it appears to the Commission that the figure $297,918.26 set forth in Schedule VII as "Earned Surplus" under

the caption "Profit on sale of assets purchased from affiliate", together with the accompanying Note, and the inclusion of this amount in the "Earned surplus - deficit" in the "Balance Sheet" are materially misleading.

X. With respect to the "Balance Sheet" of Capital Company as of December 31, 1936 -

A. Schedule VII relating to "Surplus" sets forth as an addition to "Earned Surplus" as "Profit on sale of assets purchased from affiliate" the sum of $297,919.23. The accompanying Note states that this amount represents the excess of realization over the cost to Capital Company of an undivided one-half interest in certain notes, parts of notes, deficiency judgments, etc., theretofore written off on the books of Bank of America N.T. & S.A. and purchased from the Bank by Inter-America Corporation and from Inter-America Corporation by Capital Company.

In the light of the facts set forth above under paragraph IX-A, it appears to the Commission that the figure $297,919.23 set forth in Schedule VII as "Profit on sale of assets purchased from affiliate" together with the accompanying Note, and the inclusion of this amount as "Earned Surplus" in the "Balance Sheet" are materially misleading.

It appearing to the Commission that pursuant to Section 13(a) and (b) of the Securities Exchange Act of 1934, as amended, and Rules KA1 and KA2 (now Rules X-13A-1 and X-13A-2) promulgated by the Commission thereunder, Transamerica Corporation filed on or about June 27, 1938, its annual report on Form 24-K for the fiscal year ended December 31, 1937, signed for the Corporation by John M. Grant, President; and

The Commission having reasonable grounds to believe that said Transamerica Corporation has failed to comply with the provisions of Section 13(a) and (b) of the Securities Exchange Act of 1934, as amended, the rules, regulations, Form 24-K and the Instructions thereto, promulgated by the Commission thereunder, in that the annual report on Form 24-K filed by said Transamerica Corporation contains false and misleading statements of material facts including financial statements of said Transamerica Corporation and its subsidiaries, which do not correctly reflect the true financial condition of the Corporation and its subsidiaries, all as hereinafter more particularly set forth:

The false and misleading statements which the Commission has reasonable grounds to believe exist in the annual report referred to above being more particularly as follows:

XI. With respect to the "Balance Sheet" of Transamerica Corporation as of December 31, 1937 -

A. Note B referring to the items captioned "Marketable Securities" and "Investments in Securities of Affiliates" states that securities having a market value of $1,338,835 and investments in securities of affiliates having a carrying value of $5,638,576.32 were pledged as security "(1) in connection with a contract of guarantee and (2) on an option to purchase certain securities." Note I referring to "Contingent Liabilities" states that "At December 31, 1937, the Corporation was reported as being contingently liabile [sic] under certain conditions of contract in the amount of $5,838,123.74."

1. The Commission has reasonable grounds to believe that certain additional facts having a material bearing on the "contract of guarantee" referred to in Note B are as follows:

In connection with the transactions described above under paragraph IX-A, in which a portion of the charged off assets of Bank of America N.T. & S.A., originally sold by the Bank in 1933 and 1934 for an aggregate consideration of $300,000, were repurchased by the Bank on July 14, 1937, from California Lands, Inc. and Capital Company for a consideration of $6,500,000, Transamerica Corporation entered into an agreement guaranteeing the Bank against loss to the extent of $6,500,000 on the assets repurchased. The reference in Notes B and I to a "contract of guarantee" apparently refers to this agreement.

In the light of the facts set forth above in this paragraph and in paragraph IX-A, and in the light of the apparent disparity between the actual value of the assets repurchased by the Bank and the amount of recovery guaranteed by Transamerica Corporation, it appears to the Commission that Notes B and I and the "Balance Sheet" are grossly inadequate to reflect the nature of Transamerica's obligation under the contract of guarantee.

2. The Commission has reasonable grounds to believe that certain additional facts having a material bearing on the "option to purchase certain securities" referred to in Note B are as follows:

In July, 1937, Bank of America N.T. & S.A. purchased from Transamerica Corporation 56,600 shares of stock of National City Bank at the then market price of $48 per share. It appears that the stock purchased was set up on the books of Bank of America N.T. & S.A. at $2,716,800, the purchase price, and that payment was made by crediting $2,716,800 to Inter-America Corporation to reduce by that amount the balance of the $35,214,000 obligation originally undertaken by Inter-America Corporation under the circumstances set forth in paragraph V-A. As part of the contract of purchase and sale of National City Bank stock, Transamerica Corporation agreed to repurchase the stock at $48 per share over a period of 5 years at the rate of 11,320 shares each year, and pledged an additional block of 18,400 shares to secure this agreement. It further appears that on December 31, 1937, the market value of National City Bank stock was approximately $27 per share. The reference in Note B to "an option to purchase certain securities" apparently relates to this transaction.

It appears to the Commission that the foregoing transaction was a device employed in an attempt to reduce or eliminate the balance of the obligation originally undertaken by Inter-America Corporation, and that the designation and treatment of this transaction as an "option" and the failure to disclose the additional information set forth above and the circumstances surrounding this transaction render Notes B and I and the "Balance Sheet" materially misleading.

3. In Schedule VIII the figure $444,000 is set forth as a charge to "Paid-In Surplus" in 1937 under the caption "Contribution to Associated American Distributors (Incorporated) in connection with redistribution of capital stock."

The Commission has reasonable grounds to believe that this amount represents commissions and other monies

paid by Transamerica Corporation to Associated American Distributors, Inc., (then a wholly-owned subsidiary of Inter-Continental Corporation which was a wholly-owned subsidiary of Transamerica General Corporation, itself a wholly-owned subsidiary of Transamerica Corporation) in connection with the activities described above in paragraph III-A.

In the light of the facts and for the reasons set forth above in paragraph III-A, it appears to the Commission that registrant's treatment of this item renders the "Balance Sheet" and Schedule VIII materially misleading.

XII. With respect to the "Profit and Loss Statement" of Transamerica Corporation -

A. In Schedule VIII the figure $444,000 is set forth as a charge to "Paid-In Surplus" in 1937 under the caption "Contribution to Associated American Distributors (Incorporated) in connection with redistribution of capital stock."

The Commission has reasonable grounds to believe that this amount represents commissions and other monies paid by Transamerica Corporation to Associated American Distributors, Inc., (then a wholly-owned subsidiary of Inter-Continental Corporation which was a wholly-owned subsidiary of Transamerica General Corporation, itself a wholly-owned subsidiary of Transamerica Corporation) in connection with the activities described above in paragraph III-A.

In the light of the facts and for the reasons set forth in paragraph III-A, it appears to the Commission that registrant's treatment of this item renders the "Profit and Loss Statement" and Schedule VIII materially misleading.

XIII. With respect to the "Balance Sheet" of Inter-America Corporation as of June 30, 1937 -

A. Under the caption "Reserves - For liability and possible loss under outstanding contract of guaranty", and in Schedule VI relating to additions and charges to "Reserves", there is set forth the figure $8,561,099.82.

In the light of the facts set forth above under paragraph V-A, it appears to the Commission that the items "Reserves - For liability and possible loss under outstanding contract

of guaranty", Schedule VI, and the "Balance Sheet" are materially misleading:

1. In treating the contracts described in paragraph V-A and the obligation of Inter-America Corporation thereunder as a guaranty rather than as a purchase and sale which should have been recorded by setting up the assets purchased with a corresponding direct liability for the purchase price, and, in view of the character of the assets, a reserve for the losses which would be borne by Inter-America Corporation;

2. In that the amount set up as "Reserves" for this obligation does not reflect the true amount of the liability due nor the possible losses under the contracts;

3. In the use of the term "recoveries" in Schedule VI as charges to the "Reserves" originally set up to cover Inter-America's obligation under the three contracts, in that such term fails to indicate the true nature of the reduction of Inter-America's obligation.

XIV. With respect to the "Balance Sheet" of Transamerica General Corporation as of December 31, 1937 -

A. Under the caption "Investments in Securities of Affiliates - Banks" there is set forth the figure $9,374,148.08. In Schedule II it is stated that the investment in the capital stock of Banca d'America e d'Italia is carried on the balance sheet at the amount of $8,982,321.85.

In the light of the facts set forth above under paragraph VI-A, it appears to the Commission that it is materially misleading to set forth the figure $8,982,321.85 as the carrying value of the investment in the capital stock of Banca d'America e d'Italia without indicating the effect that the restrictions referred to in paragraph VI-A may have upon this investment.

XV. With respect to the "Balance Sheet" of California Bands, Inc., as of December 31, 1937 -

A. Schedule IX relating to "Surplus" sets forth as an

addition to "Earned Surplus" under the caption "Profit on sale of assets purchased from affiliate" the sum of $3,595,120.54. The accompanying Note states that of this amount $345,120.54 represents the excess of realization over the cost to California Lands, Inc. of an undivided one-half interest in certain notes, parts of notes, deficiency judgments, etc., theretofore written off on the books of Bank of America N.T. & S.A. and purchased from the Bank by Inter-America Corporation and from Inter-America Corporation by California Lands, Inc., and that the remaining $3,250,000 represents the share of California Lands, Inc. in $6,500,000, which on July 14, 1937, Bank of America N.T. & S.A. agreed to pay to California Lands, Inc. and Capital Company for the right to future recoveries on these same assets. The Note further states that in connection with this purchase Transamerica Corporation entered into an agreement whereby it guaranteed that the Bank would recover the amount of $6,500,000 at an annual rate of $1,300,000.

In the light of the facts set forth above under paragraph IX-A, it appears to the Commission that the figure $3,595,120.54 set forth in Schedule IX as "Earned Surplus" under the caption "Profit on sale of assets purchased from affiliate" together with the accompanying Note, and the inclusion of this amount as "Earned Surplus" in the "Balance Sheet" are materially misleading.

XVI. With respect to the "Balance Sheet" of Capital Company as of December 31, 1937 -

A. Schedule IX relating to "Surplus" sets forth as an addition to "Earned Surplus" under the caption "Profit on sale of assets purchased from affiliate" the sum of $3,595,119.56. The accompanying Note states that of this amount $345,119.56 represents the excess of realization over the cost to Capital Company of an undivided one-half interest in certain notes, parts of notes, deficiency judgments, etc., theretofore written off on the books of Bank of America N.T. & S.A. and purchased from the Bank by Inter-America Corporation and from Inter-America Corporation by Capital Company, and that the remaining $3,250,000 represents the share of Capital Company in $6,500,000 which on July 14, 1937, Bank of America N.T. & S.A. agreed to pay to California Lands, Inc. and Capital Company for the right to future recoveries on these same assets. The Note further states that in connection with this purchase Transamerica

Corporation entered into an agreement whereby it guaranteed that the Bank would recover the amount of $6,500,000 at an annual rate of $1,300,000.

In the light of the facts set forth above under paragraph IX-A, it appears to the Commission that the figure $3,595,119.58 set forth in Schedule IX as "Earned Surplus" under the caption "Profit on sale of assets purchased from affiliate" together with the accompanying Note, and the inclusion of this amount as "Earned Surplus" in the "Balance Sheet" are materially misleading.

The Commission having reasonable grounds to believe that Transamerica Corporation has failed to comply with the provisions of Section 12(b) and Section 13(a) and (b) of the Securities Exchange Act of 1934, as amended, the rules, regulations, Form 24, Form 24-K, and the Instructions thereto, promulgated by the Commission thereunder, in that the application for registration on Form 24, the annual report on Form 24-K and the amendments thereto, filed by said Transamerica Corporation contain financial statements of Transamerica Corporation and its subsidiaries, which do not correctly reflect the true financial condition of Transamerica Corporation and its subsidiaries, as hereinafter more particularly set forth:

XVII. It appears to the Commission that the general policy of Transamerica Corporation and its subsidiaries with respect to the manner of creation and treatment of certain "reserves", and the adequacy thereof, is improper in the following respects:

A. In the elimination of "reserves" on the books of certain companies and the creation of fictitious "reserves" in similar or substantially similar amounts on the books of other companies in the Transamerica group for the purpose of utilizing such "reserves" to absorb losses with consequent distortion of the true financial condition of the separate corporate entities and of the entire group as a whole; in particular, with respect to the "reserves" set up on the "Balance Sheets" of Transamerica General Corporation as of December 31, 1936, and December 31, 1937, "for real estate losses and contingencies of controlled affiliates" in the amounts of $6,861,814.19 in 1936 and $1,700,050.22 in 1937, and $5,034,583.95 in 1936 and $1,168,002.25 in 1937, for Capital Company and California Lands, Inc., respectively;

B. In that the amount of the reserves provided on the books of the various companies in the Transamerica group is materially inadequate; in particular, the "Combined Report of Condition" of Bank of America N.T. & S.A., First National Bank in Reno, and Bank of America (California) as of December 31, 1936, shows "Loans and discounts" in the amount of $539,899,100.65 which includes, among other things, loans in the amount of $304,674,551.73 on "farm lands" and "other real estate". The only reserve in this "Combined Report of Condition" is designated as "Reserve for contingencies" and is set forth at $8,049,928.01, of which approximately $1,460,000 is a reserve for self-insurance, leaving a balance of $589,928.01. In its "Balance Sheet" as of December 31, 1936, Capital Company carried "Real Estate Held for Resale," at $51,379,652.11, which amount represented "Land, Buildings and Improvements", and as of the same date, California Lands, Inc. carried "Real Estate and Equipment Held for Resale" at $31,357,098.76, which amount included "Land, Buildings and Improvements" at $31,335,825.76, with no reserve on the books of either company applicable to such assets. As of the same date, Occidental Life Insurance Company (a wholly owned subsidiary of Transamerica General Corporation, itself a wholly owned subsidiary of Transamerica Corporation) showed on its books "mortgage loans on real estate" and "balance due on property sold under contract" in the amounts of $8,175,516.57 and $3,856,986.03, respectively, with no reserves applicable thereto. These various items of loans, discounts, and investments in real estate aggregate $634,668,354.12, against which there is an aggregate reserve of but $589,928.01.

In that because of the nature of the "reserves" referred to above under A, it was improper to charge losses and expenses against such "reserves";

D. In the treatment of losses and expenses which were not present at the date of a readjustment of accounts but resulted from events occurring subsequent thereto as charges to certain reserves created at the time of such readjustment.

XVIII. It further appears to the Commission that registrant, in its application for registration on Form 24 and in its annual report for 1937 on Form 24-K, has failed to file financial statements for itself and its subsidiaries certified in accordance with the requirements of paragraph II of the Instructions as to Financial Statements in the Instruction Books for Form 24 and Form 24-K, respectively.

It being the opinion of the Commission that the hearing herein ordered to be made is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Securities Exchange Act of 1934, as amended;

IT IS ORDERED, pursuant to Section 19(a)(2) of said Act, that a public hearing be held to determine whether Transamerica Corporation has failed to comply with Section 12(b) and Section 13(a) and (b) of the Securities Exchange Act of 1934, as amended, the rules, regulations and forms promulgated by the Commission thereunder, in the respects set forth above; and if so, whether it is necessary or appropriate for the protection of investors to suspend for a period not exceeding twelve months or to withdraw the registration of said Corporation's Capital Stock, $2 par value, on said New York Stock Exchange, Los Angeles Stock Exchange and San Francisco Stock Exchange;

IT IS FURTHER ORDERED, pursuant to the provisions of Section 21(b) of the Securities Exchange Act of 1934, as amended, that for the purposes of such hearing, Henry Fitts, an officer of the Commission, is hereby designated to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records deemed relevant or material to the inquiry, and to perform all other duties in connection therewith authorized by law;

IT IS FURTHER ORDERED, that the taking of testimony in this hearing begin on the 16th day of January, 1939, at 10:00 A.M. in Room 1101, Securities and Exchange Commission Building, 1778 Pennsylvania Avenue, N. W., Washington, D.C. and continue thereafter at such time and place as the officer hereinbefore designated may determine.

By the Commission.

Francis P. Brassor,
Secretary.

(SEAL)

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RE TRANS-AMERICA CORPORATION
S. E. C's. SHOW-CAUSE ORDER.

November 23, 1938.
4:30 P. M.

Office of Under Secretary
Hanes

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Present:
Mr. Hanes
Mr. Oliphant
Mr. Taylor
Mr. Gaston
Mr. Duffield
Mr. Foley
Mr. Young
Mr. Preston Delano - Comptroller's Office
Mr. C. B. Upham - Comptroller's Office
Mr. W. P. Folger - Comptroller's Office
Mr. Chester Lane - S. E. C.
Mr. Marriner Eccles - F. R. B.
Mr. Ronald Ransom - F. R. B.
Mr. S. H. Husbands - R. F. C.
Mr. C. B. Henderson - R. F. C.
Mr. J. G. Nichols - F. D. I. C.

Hanes: The Secretary asked us to have this meeting. He was sorry he couldn't be here, but he wanted to acquaint everybody here with the fact that the S. E. C. have decided to issue a "Show-Cause Order" against the Trans-America Corporation, to show cause why that Trans-America stock should not be delisted from the New York, San Francisco, and Los Angeles Exchanges.

We've got a copy here of this order; it is going to be issued on Friday afternoon. Our understanding is, it is going to be issued at three o'clock, our time, and served on the Trans-America Corporation.

It was to acquaint you with that fact, to tell you what was in the order, and then to take up with you the question of whether or not - and this comes from the President to Bill Douglas - to have us explore here the question as to whether or not some statement should be issued by some agency of the Government, or by some individual, bearing upon the financial condition of the bank itself.

In other words, is this show-cause order, directed against the Trans-America Corporation, going to produce any ill effect upon the bank itself, cause any undue alarm, or any run on the banks, or anything of the kind? The President was of the opinion, and expressed that opinion to Bill Douglas, that someone should be prepared to make some statement, in his opinion. However, he wanted this group of people to explore that possibility and to decide and advise on that particular question.

Now, before we get to that, just so that you will have some idea of the extent of this order, we have analyzed the order pretty carefully and we have picked out of that order all the things which have a bearing upon the bank itself. The charges made against the Trans-America Corporation are - well, Chester, you check me up on this and tell me where I am getting off the path. I am reading from pencil notes from the side of the order.

They charge the Corporation with issuing false and misleading statements; of the omission of material facts in their statements which they have given to the S. E. C.; a failure to disclose certain payments to Mr. A. P. Giannini, amounting to a million four hundred thousand dollars; certain balance sheet irregularities; that the Trans-America Corporation paid large sums of money to wholly-owned subsidiaries for payment for the distribution of its own stock, that - that is, in that those payments were charged to "paid-in surplus" account, and not taken from the current "profit" account.

The total amount paid to those subsidiaries from 1934, through 1936, amounted to two million three hundred fifty one thousand dollars. That made the profit and loss statement of those subsidiaries false and misleading; that the Bank Examiners .....

Lane: It is the profit and loss statement of Trans-America that is misleading and not the subsidiaries.

Hanes: Yes, the Trans-America. .... that the Bank Examiners caused to be written off, about thirty-five million dollars worth of assets of the bank, and that the Bank then turned around and sold these

doubtful assets to its own parents at their full value. In this particular transaction they charge them with a lot of fancy bookkeeping they haven't been able to balance or understand. They charge them with failing to disclose certain investments in Italy - ah, no, the failure to disclose that certain restrictions were placed upon those investments in Italy, and restrictions upon the transfer of any profits from Italy, or any other country, which materially affects that investment.

They charge them with a lack of reserve for losses on real estate, etc.; the write-up of Government securities of fourteen million dollars, and taking that fourteen million dollars into current profits.

Delano: That is the Bank now?

Hanes: No, I am skipping over those bank items; I am separating them and will tell them separately. I will tell about the Bank itself, running through the whole order.

They included this unrealized appreciation as income; they paid dividends in 1935 of more than 3½ million dollars in excess of their earnings; that the Bank sold to its parents certain of the Bank's assets which have been charged off, the total sum of three hundred thousand dollars in 1933 and '34; that in 1936 those parents in turn sold those same assets to two more subsidiaries for five hundred thousand dollars, and in 1937, that the Bank itself turned around and bought those assets back, or a portion of those assets, for six and a half million dollars.

The balance of the order refers, in different years, to practically the same thing; it's a good deal of reiteration of those same things. They are the high spots in the charges. It is about a twenty-page document, and anyone here is at liberty to read that.

Lane: Perhaps the lack of reserves in the Bank is one of the important things - real estate assets.

Hanes: I didn't touch on that because that deals with the Bank itself. I left that for the last.

The important question we ought to determine here at this meeting is whether or not this thing is going to cause some difficulty, and I'll report to you a conversation which I had with Mr. Jesse Jones, and tell you what his thoughts are.

"The following facts about the Bank of America which are mentioned in the Securities and Exchange Commission order against Trans-America Corporation, are noted by the Commission not as direct criticisms of the Bank but as facts which make the reports of the Bank's parent, Trans-America Corporation, misleading.

"Page 5 The Bank is said to have sold to an affiliate certain 'loss and doubtful' assets for a face amount of $35,214,000.

"Pages 6 and 7 The Bank is said to have reduced the amount due it from the affiliate under the above sale 'by a write-up of unrelated assets.'

"Page 8 The Bank is said to have had in 1936 $8,000,000 of 'losses and doubtful accounts' and $125,000,000 of 'slow accounts' among its real estate assets and to have made insufficient reserve provisions for real estate losses.

"Pages 8 and 9 The Bank is said to have included $9,000,000 of unrealized bond write-up in its 1935-36 earnings and to have failed to provide for security and other losses exclusive of real estate losses amounting to $700,000.

"Page 9 Elimination of the unrealized bond write-up and allowance for losses mentioned above, which are said to aggregate $13,000,000, would, according to the order, 'wipe out' the undivided profits of the Bank and 'require a reduction' in the Bank's surplus.

"Page 10 The Bank is said to have included unrealized write-up of Government bonds and of Trans-America stock in its 1935 earnings and to have made insufficient depreciation charges;

as a result of these and other facts the Bank is said to have paid dividends in 1935 which were more than $3,500,000 in excess of actual earnings.

"Pages 10 and 11 — The Bank is said to have included unrealized write-up of Government bonds and Trans-America stock in its 1936 earnings, to have made no provision from earnings for $3,700,000 of 'uncollectible foreign credits,' and to have made insufficient depreciation charges; as a result of these and other facts the Bank is said to have paid dividends in 1936 which were more than $1,500,000 in excess of actual earnings."

I thought that was three and a half million in excess of actual earnings.

Duffield: That is the previous year, Mr. Hanes.

Hanes:

"Pages 11, 12, 13, 14, 18 — The Bank is said to have repurchased in 1937 for $6,500,000 a portion of certain 'charged off' assets which it had sold to an affiliate in 1933 and 1934 for $300,000; Trans-America is said to guarantee the payment of the $6,500,000.

"Page 15 — The Bank is said to have purchased from Trans-America, subject to a repurchase agreement, 56,600 shares of National City Bank stock at $48 per share, and the order notes that the market price of the stock on December 31, 1937, was $27 per share.

"Page 20 — The inadequacy of reserves against the Bank's real estate assets, which together with real estate assets of related banks are placed at $529,899,100, is again asserted.

"The order nowhere states or strongly implies insolvency of the Bank or inability to meet depositors' demands."

Now, to get the whole story before you, so that you will know everything that we know, I called Mr. Jones on the phone, in Texas, and it was his suggestion - and I told him that I was going to repeat this to you gentlemen here - it was his suggestion that he would like to see the S. E. C. delete from its order, as much as was possible of any information concerning the Bank itself; that he didn't see that that would add to the order and that he thought it would be somewhat dangerous. That was his curbstone opinion, and he would like to have that thought conveyed. He said, at the same time, that if it was - he felt it was his place to do so, and if we wanted him to do so he would be prepared to make a statement concerning the Bank, because he knew about its ability to pay depositors, etc., etc.; that he would be in Houston and we could get in touch with him Friday morning and he would be glad to make whatever statement deemed wise or expedient.

I think that covers the conversation with Mr. Jones.

Have I left anything unsaid, Cy?

Upham: Not that I know of.

Hanes: Chester, anything else you want to add to that, from S. E. C's. standpoint?

Lane: No, except I may point out our approach in this order is an approach to misleading statements rather than an attack on Trans-America. Trans-America has included in its statements, filed with us, financial statements of the Bank, and we have made charges of misleading statements in those financial statements, because they are part of the Trans-America registration with us, and I believe that may have been understood anyhow.

Eccles: The S. E. C. has some discretion as to matters of this sort; that is, as to whether or not the facts are such as to feel obligated to take such action, have they not? After all, it is a question of discretion on the part of the S. E. C.

Lane: That is the case.

Eccles: The S. E. C. is an agent of the Government, charged, of course, with public interest. Therefore, it is a question of balancing, I suppose, the matter of public interest, represented by - in which they undertake to protect, through this action, against the question of public interest if a banking run should be started as a result of this action. Is it possible, at this time, for the Commission to consider getting the Trans-America to voluntarily delist and to take up with them the questions involved in this public - this is, I understand it will be public and will be published, will it not?

Hanes: Yes, it will be published, I understand, at five o'clock Friday afternoon. These orders are given out in mimeographed form to the press, I understand.

Eccles: The point is, has it been all determined that this is the only procedure that can be taken by the S. E. C.?

Hanes: You mean whether S. E. C. should issue any order at this time?

Lane: The question has been one which has been debated by the Commission, at intervals, for relatively two or three years, and the Commission has seriously considered the question you speak of. I can assure you it has considered it. I hesitate to speak on the policy of the Commission, but if it is the opinion of the group that it should be, I expect it could be reconsidered. But it has been considered.

Eccles: It is true, is it not, if it is - if it is a matter of purely - of having the stock delisted, that that could be accomplished voluntarily if the Trans-America people would voluntarily delist, and the influences - effect upon the bank would be very different than possibly the influences otherwise?

Lane: They can delist; they do so in compliance with the rules of the Exchanges. The Commission has no discretion except to impose conditions upon the delisting. The Commission has had a substantial amount of correspondence with Trans-America about

these, a large portion of the specific deficiencies referred to here, not, I believe, all of them, and that correspondence has not been particularly successful with Security amendments. So far as I know there has been no consideration given to suggesting to Trans-America that it delist, and my guess is that it would reject the suggestion. I can not be sure of that, but the importance of having an exchange market in collateral value of stock is so great I don't believe it would back out without a fight.

Eccles: I was wondering that if - if - if they had been given the opportunity, without this action being taken first - if the Commission had given them every opportunity to meet the requirement before taking an action as serious as this action is, if - if what the Commission wants is delisting, and the action is brought for the purpose of securing delisting, it would seem - it would seem that before action is taken that - that they should be advised of the desire of the Commission that they delist.

Lane: There is something a little more than that.

Hanes: There is something a good deal deeper.

Lane: Even from the Commission's standpoint of view, entirely apart from the delisting, the Commission has had on its public records now for many months, perhaps two years, statements upon which people have presumed to have relied in the purchase and sale of Trans-America stock, and even if there were a delisting at this time, I am sure the Commission would feel very seriously concerned at dodging its responsibility to point out to the public where those statements upon which a reliance had been placed, at that time, were misleading.

Eccles: If this has been going on for two years, what position is the Commission in by waiting for a period of two years?

Lane: They have been conducting an investigation to find the facts adequate to support an order. We have

had people out there in the past, and have just gotten in a report which made the Commission feel it couldn't delay longer than it has before issuing the order.

Eccles: In other words, the Commission feels that the facts are now such that they have no other course, if they follow what they interpret to be their obligation in accordance with the intent of Congress?

Lane: That is right, yes.

Eccles: Now, the question is the effect that this thing is likely to have upon the Bank. It would seem that the - if the one agency of the Government - S. E. C. - feels that in the matter of - that it is their duty to proceed along this line in order to protect the public interest, that it may also be well for the other agencies of the Government, particularly the Comptroller's Office, to be prepared, if extensive runs should develop, to protect the public in that instance.

Delano: You mean the right person there, for the Comptroller's Office.

Eccles: I'd be willing to take a chance.

Delano: Better include the F. D. I. C. there.

Hanes: Yes, better bring in the F. D. I. C.
Oliphant: Yes, F. D. I. C., F. R. B., and the R. F. C.
Henderson: The R. F. C. has no loans there at present.

Eccles: That's already been taken care of; that is a matter of mechanics already set up. What I was thinking of is the extent of the thing, of this sort, whether it is merely a question of rediscounting; it can take care of a temporary situation; it can't - the situation can not be taken care of if there is a question of confidence being lost to such an extent that - that people just withdraw their funds. The survival of this institution as a going, profitable concern depends upon the redemption of its deposits. It can't survive, it seems to me, in a manner that would be

a protection to the tens of thousands of stockholders and possibly even the depositors, the larger ones, except it is able to maintain the general public influence and do a profitable business and retain its deposits. Merely the providing of the discount facilities doesn't meet the permanent problem that is involved. It is a question of.....

Oliphant: That's the reason I mentioned R. F. C. also.

Henderson: That's all right.

Eccles: It is a question of the Comptroller's Office, when a situation of this sort has developed in the past, has set up conservatories in order to maintain a status quo until such time the panic blew over, or until such time they could create management and put in management, and in the meantime the R. F. C. could provide the necessary capital. Under such a management the R. F. C. could make it known that the facilities - the facilities for rediscounting were available, but while they - if this should - I don't say that it will; we are merely here for discussing it - it seems to me the possibility - the probability, and the desire of - if the panic situation should develop, then if, of being prepared to maintain, so far as possible, the status quo, until such a time the whole setup could be revamped and capital put in, and that can be done, of course, by - by a conservatory.

Delano: It might be well to have Mr. Folger give you a preliminary picture of the figures here in order to arrive - I imagine one of the things we have to arrive at here is some private investigation as to what is going to happen in case this order becomes public. One of the things that is difficult to arrive at is ....(speaking very low) .... if some way can be developed to meet withdrawals, and how far we might go. Mr. Folger, I think, has a pretty good preliminary picture in his mind of the deposit liabilities, how many loans can be realized quickly, and how much cash can be realized quickly against those, and the possibilities in that direction. We have been discussing that this afternoon as to whether - what this thing would precipitate in the way of withdrawal of

money, and what the Bank would do with the various agencies' disposals.

Oliphant: How much of Trans-America stock is owned by or pledged with ....

Folger: (Interposing) Not a great deal of that.

Lane: Forty-two per cent of the Trans-America stock.

Oliphant: How much Trans-America stock is owned by or pledged with the others.

Delano: Fifty or sixty million. You are going to have a (word misunderstood - speaking low) on Friday, I think.

Eccles: I would think so.

Delano: Something is going to happen if the price of nine or ten dollars sinks in the ....,

Oliphant: That would cost the Bank of America how much?

Folger: Twelve to fifteen million dollars.

Delano: It would wipe out half of that.

Folger: The Bank, in its most recent report, September 28, Bank Deposits, a billion three hundred thirty million dollars.

Husbands: How much has the Bank got now?

Folger: Around seventy million dollars.

Hanes: Around seventy million.

Folger: Including bank balances due to banks, it is a billion three hundred thirty million. They have United States Government bonds, four hundred four million; Cash on Hand and balances in other banks, and reserve with the Federal Reserve Bank, two hundred thirty million, which makes six hundred thirty-four million dollars; they've got a hundred ten million of sound municipal bonds, making seven hundred forty four million.

I'd say the Bank, by drawing its reserve, could pay forty per cent of its deposits.

Eccles: What?

Folger: Around forty per cent.

Eccles: A great bulk of those bonds are pledged for public funds, aren't they - city, county, state, and Federal? If they are not available for ....

Folger: No, no; not all available.

Eccles: What percentage, what total, that is in liquidation, that if the bank is going to close and liquidate, but - but it - but from the standpoint of these funds?

Folger: I'll admit it wouldn't be good for the Bank to have to pay out that much money.

Eccles: These securities you refer to are not available for borrowing to meet the shrinking deposits except as the public deposits which these securities are back of, see.

Folger: They are not up to secure borrowed money; they are to secure public deposits, that billion three hundred thirty million dollars.

Hanes: Have you got a break-down to tell you how many of those bonds are pledged against actual deposits?

Folger: About one half of the Governments are pledged.

Eccles: How much is that?

Folger: Two hundred fourteen million.

Husbands: How much of the municipal?

Folger: Four hundred four.

Oliphant: Have any discountable paper?

Folger: Oh yes. I wouldn't know how much; I haven't included that.

Upham: All of their good assets are discountable.

Eccles: Not discountable.

Oliphant: That is in that over-all figure he gave you. Short term.

Delano: The point I wanted to bring out was - I don't know whether this is pertinent to the discussion, but it seems to me it is important to know how much these other agencies, and the F. D. I. C. for help, and, of course, I am - I am - I'd like, if I may, Mr. Hanes, I'd like to have the opinion of you gentlemen who are bankers, close to the banking picture, as to what could be expected in the way of a run on this institution as a result of this action. I imagine the S. E. C. must have considered that.

Lane: It has had before it many opinions, and I think the S. E. C. - and I can't go beyond saying it is quite possible. The fact that the Bank of America and the Trans-America are tied in to each other, people who are holders of Trans-America stock or depositors - stockholders and depositors - are the little fellows on the street corner, who, if they are concerned about one, they are likely to be concerned about the other, not knowing the difference between the two.

Delano: What do you think?

Eccles: It doesn't involve the Bank of America alone; it concerns about half the state of Oregon, or the First National Bank of Oregon, which has branches through the entire state; the same thing is true in Washington, to a little less degree. It involves practically all the resources of the state of Nevada, and a large portion of the resources of the state of Arizona.

Lane: Is it a fact, from the psychological point of view, they are equally tied together?

Eccles: Oh yes; the whole thing will come into the picture. The possibilities are very difficult to see. It may be the general feeling that because of F. D. I. C. and increased facilities of the Reserve System, and the R. F. C., it may be that this wouldn't be as serious as otherwise would be the case. Again, with this particular institution it has the public's business, as any institution does. It is almost

primarily a savings institution, and it is the little fellow that does business with them, because they have taken care of him in a manner that no other type of institution has - the little fellow. They have gone into, very extensively, personal loans, in all types of installment credit, and the Federal Housing mortgages, the loans - direct loans to industry, etc. They have gone into that end of it in a manner that puts them particularly close to the average person, and they therefore have a great number of accounts in relation to the volume of business. They are a huge institution, but they are huge not so much because of a lot of big accounts but they are huge because they have such a great number of depositors.

Henderson: How many branch banks are there in California?

Eccles: Oh, four hundred something.

Taylor: What percentage of the deposits are insured, of the total deposit of that Bank?

Folger: Seven hundred million.

Eccles: Well, that shows how many little accounts they've got.

Taylor: Yeah.

Eccles: It is teriffic. Now, I wouldn't - I wouldn't be so much concerned about the ability of possibly meeting a run, because - because the depositor that has less than five thousand dollars is not going to be as much stirred; some of them might even then might say, "I don't want to wait to get my money," and still take it out, but there is, of course, a possibility of the big accounts, the bigger accounts moving up. In fact, I understand that some of them are already moving out; that there has been enough discussion with reference to this whole picture, some of them are already moving out. I haven't verified that; I just heard that

Now, with the facilities of the Governmental agencies, the prospect of a bank having to close, I - I - I think are extremely remote. I don't think that this necessarily - I don't believe

that is in the picture. It can meet a very great withdrawal and run, but the question is where are they when that has happened? They - they are in a far - they are far less able then to - to meet the situation than they are before the run; that if - if their business is lost to such an extent that their earning possibility is very greatly impaired that the public confidence in them is greatly impaired, then you have left a shell to build on. You are - what do you want to accomplish? Do you protect the stockholder of Trans-America or the stockholders of the Bank by reducing its - the value of the assets back of both of them? Do you protect the public by a procedure that greatly impairs or reduces the ability of the institution to protect the depositor itself?

I recognize the problem has existed with reference to the management, with reference to the Bank not retaining its earnings, or the Trans-America not retaining the earnings, paying the earnings out, but all of these other factors do seem to me to be - we should take into consideration in this situation. The question is, if you have the run and meet the thing, you have still got the same set-up out there; you have still got the same management. What have you accomplished? What has been accomplished through this procedure?

Duffield: Isn't it fair to say we don't stop here; there are other things in the fire.

Eccles: Yes, I - I - I realize that, but where do you stop then? I mean, I don't know of anything in the fire that tends to get at the solution of the problem.

Hanes: I would assume that the bridge had been crossed. What we are dealing here with is not what the S. E. C. ought to do or could do. The only one question we've got to think about is, the S. E. C. has already voted to go ahead with this order; they see what their duty is and they feel they are on the right foot when they go ahead. It seems to me the point that Mr. Jones brought up might be explored to see whether or not the order could be written in such a way as not to cast too many doubts upon the institution, or the Bank itself.

And then, having crossed that bridge, if they can't change the order, the order is going ahead; it is going ahead on Friday afternoon. The question we've got to decide is the one which the President has asked Bill Douglad to explore, and that is whether or not someone, or some agency, or some group, should be prepared to make a statement and if so, what kind of a statement should they make?

Lane: I may comment on your second suggestion about the revision of the form of the order. I assume that the Commission would consider that. I think there are two important considerations. One is that when a proposed program has become known to as many people as this one has, it begins to be learned about a little bit. We know that - we know that some of the newspapermen already know what is going on. Where they got the information we do not know. It is pretty dangerous to delay since it's gone this far. The second, the fact, from the point of view of confidence and the point of view of the public, the Bank of America and Trans-America are so closely identified makes me wonder where a revision of the order - whether an attack on the Trans-America wouldn't have precisely the same affect on the Bank, as an attack on the Bank would have on Trans-America. Those are very important considerations. Whether any revision in the order could be effected, I can't say, or whether it could be reconsidered.

Ransom: I think it is extremely difficult to foresee what the consequences may be. I think we are dealing in somewhat of a new field. The laws which have been passed since the Banking Holiday are so far reaching that we have yet to see an experiment tried, to see to what extent they contain public confidence in an institution of this kind. I think all of us recognize the thumb (?) of the temperamental peculiarities of the management of this particular institution, and we are not stretching our imagination when we think there may be some excitement, both internally and externally, as the result of such an order as this.

So far as the public interest is concerned, what disturbs my own thinking is the fact that the Comptroller, primarily, the other agencies that

are here, have got to consider the rights of the depositors.

Now we are assuming that this bank can pay itself down, I believe Mr. Folger said, to about sixty per cent of its deposits. Well, Mr. Eccles stated that he didn't think that necessarily meant that the Bank would have to close. I am going to draw it in as gloomy a view as we can, and see where we'd come out. Assuming we had such a run and pay off forty per cent of its deposits, the remaining sixty per cent would, I think, in the light of these statements made here this afternoon, be extremely doubtful. It is a duty on the part of all of us to consider what action is to be taken in an emergency such as this, to keep all of these depositors on an equal footing. I assume S. E. C. has considered the question of trying to keep all the stockholders and the depositors on an equal footing. These banking agencies seem to me to be confronted on the other side of the book; namely, how do we keep all of these depositors on equal footing? We can't do it by letting the Bank pay out all its cash, dis- - sell its bonds, discountable paper, borrow what we can from R. F. C., and then take a look at it and find about where it stands. I don't know where such an institution would then stand. I think it quite unlikely - I agree with Mr. Eccles - it is quite unlikely that the institution would close. It is quite probable that the small depositor who makes up such a large part of the deposits of this particular institution would feel that, F. D. I. C. standing behind them, there was no cause for concern and would go on their way, but, as has been suggested, there are probably stockholders in the Trans-America, and a great many of the others, and all things tied together - excited on one side, equally excited on the other.

I don't think it is possible to sit here this afternoon and guess what the result will be. I - I think the most we can guess is what can be done to try to cushion that result. Of course, the Federal Reserve of San Francisco stands ready to do its part; the F. D. I. C. has a definite part to play; it plays it somewhat automatically. I take it that R. F. C. is prepared to do whatever

it can do. That leaves the only question open for decision, it seems to me, one for the Comptroller's Office: Is the situation large enough - important enough to consider the appointment of a conservator? I don't see what other question we've got to consider.

Now, as to statements that are made, looking back over the last ten or fifteen years, I have not been greatly impressed with public statements as reassuring to the depositors of a bank. They are somewhat aggravating at times. I wouldn't know what to say. (Laughter)

Eccles: You bet your life.

Gaston: We have anticipated that in a little speech I made. "No statement until actual necessity is facing you."

Henderson: Until a request is made, because otherwise, you are giving to the public the wrong feeling, perhaps.

Gaston: If we are asked to give the statement, "Is this bank insolvent?" we'd say the Comptroller of the Currency, under the law, would of course close this bank and appoint a conservator if it were, and he has not done so.

Henderson: Then, in addition to what the Chairman just said about Mr. Jones making this statement, if necessary, the F. D. I. C. could come in.

Oliphant: I didn't hear your suggestion, Gaston.

Gaston: Well, I simply added my vote to what Mr. Ransom had said, that I think that a statement, issued in advance, or issued coincidentally with the issuance of this S. E. C. statement, would be a great mistake; it would be very difficult to find anything which would be reassuring, and on the contrary, I think anything that might be said at that time would be more disturbing than otherwise. The time when a statement would be in order is when we were actually faced with something; if there were a run, or some action needed, then we would make a statement. If the Comptroller's Office were asked, "Is this bank insolvent?" then we'd say, "The Comptroller is under obligation, by the

law, to close such insolvent bank, and he has not done so."

Eccles: It would have to be insolvent if the capital is impaired.

Folger: No, if the capital is impaired, if they failed to give the notice, and failed ... (speaking low) for three months.

Hanes: Mr. Nichols, how do you feel about this statement? Do you feel about the same way Mr. Ransom does?

Nichols: I do, very much, Mr. Secretary; very much as Mr. Gaston.

Hanes: Do you feel that way, Mr. Henderson?

Henderson: Well, I think that a statement could well be made upon a request to elicit a statement, but to voluntarily make a statement, right at that time, I feel would be unwise.

Hanes: Do you feel the same way about it?

Husbands: I don't think it is going to have an appreciable affect on the Bank. They've got some smart boys out there; they are going to answer that in the paper, and that answer is going to be logical as hell when it comes out.

Eccles: The ones affected will be the little fellows, and the F. D. I. C. insurance might prevent any run at all.

Husbands: We have had some experience in these banks, all over the country, the largest, up here in Camden, New Jersey. There, two banks had deposits of around thirty-five million dollars. For two or three months there was common talk on the street about the banks being insolvent, going to bust, etc., and the banks, altogether, lost twelve or fifteen thousand dollars in deposits. The public generally has a faith the Government is going to take care of them, and they go and claim they will be persecuted, etc. In the end I think it is going to revolve down to this: You have made these accusations, issued this order; then I think you

are going to have to change management. Logically saying, the man who would do this in Trans-America will do it in the Bank of America. I think it is up to the Comptroller, after this is done, to make his move to change that management. That is the sole question involved.

Taylor: Would the S. E. C., when it is issuing this order, would they normally describe in a press release or otherwise, what is involved, what their duties are, why they are doing it, and so on?

Lane: They would, normally, not; and consideration was given to that in this case, and the Commission decided it didn't want to; what it did propose to do was something which has been done in the past; that is, let the reporters in and look at the order, maybe fifteen minutes before it is released, so they can all read it over together before it's issued. They are all there at once, and it would prevent some of the smart boys getting a scoop on the dumb ones; avoid misunderstandings by some trying to get the story out quick. There's the possibility that we might have someone available to explain what a "reserve" is, or "dividends" but the Commission didn't want to do any more than that.

Hanes: They would give to them the whole order?

Lane: Yes, that is right.

Taylor: It seems to me the only place there is an opportunity for making an explanation which doesn't involve these various points, is for the S. E. C. to describe what the hell this is all about.

Lane: I think that may be true, and the difficulty of the S. E. C. doing it in this case, at the time of announcement, is the condition of the Bank, and it is way outside of the policy of the S. E. C. making a statement as to whether a bank is in good condition or not.

Taylor: If there isn't any statement that can be made at this time, it would be a natural thing to do - it would be fore the S. E. C. to describe what this is all about and what is involved. My opinion would probably stop at all the other statements,

because I agree with Sam (Husbands); I don't think the chances of a run are very great. In fact, I would say they are rather remote.

Delano: We feel that way in the Comptroller's Office.

Husbands: Cy says the deposits are going to increase.

Hanes: I take it that the sense of this meeting is, then, that no one should issue any statement of this kind upon the issuance of this order by the S. E. C.

I'll just say here, the Secretary told me before he went away that was his feeling; he felt that way; he thought those statements would do more harm than good. I think we are almost unanimous on that point. I take it there is no one here that ought to say anything.

Delano: If the situation develops later, I think we might have to change our opinions; I certainly don't think so at this time.

Eccles: If there is a substantial shrinkage of the deposits, it is likely to come through the mail, and it wouldn't be evident until they publish the next call statement, which, as far as the public is concerned, it is these runs in these banks where crowds get into them that create the panic, and the F. D. - the Insurance Deposits, I don't think that can happen.

Husbands: This Bank is primarily a savings bank anyway; in fact, it is the largest savings bank in the country. I think the savings will run seven hundred fifty million dollars, won't it, Gus?

Folger: Around seven hundred million.

Husbands: I think you will have to be quite circumspect in handling your Examiners so as not to create the appearance that the Examiners are rushing in.

Delano: Yes. And I think, to obtain confidence, - well, I don't like to make statements. I - one question here, I don't know about; that is that question of a conservator. A conservator would only come into the picture in case it becomes necessary to

protect the rights of the deposits in the equal distribution of the Bank's assets.

Ransom: Of course, that is obvious.

Delano: Unless it were clear this was going to be a severe drain on the Bank, the question of the conservator would not be a pertinent question.

Ransom: How do we determine what his happening inside of the Bank until we get another call report? Is the examination processed?

Delano: How about that, do we?

Folger: Yes. We have been able to get figures from banks having withdrawals, figures ever day - daily.

Ransom: So you can watch the pulse.

Delano: That is a very serious matter, that question of conservator.

Eccles: That is the last resort.

Ransom: It seems to me you have to bear in mind every possible source of protection you could throw around a situation of this kind.

Delano: It seems we are confronted in this particular case with the horns of a dilemma. Your Government agency is charged with protecting the public against mismanagement of the banks, and not hiding, and putting under the table things the management may do, which ultimately may result in a greater difficulty than this one that exists. The other one is that no one wants to go in here and pull down the financial structure as large as this or shatter the confidence of a whole number of states out there in the West, unless he is convinced that this responsibility largely overweighs the responsibility of not throwing finacial .....

Taylor: ..... men into the country.

Eccles: Something's got to be done. I don't say it is a dilemma. I think it is a question of weighing one against the other.

Delano: I think the S. E. C. has decided its obligation, responsibility, is to go ahead and do this. As I take it from this meeting, Mr. Secretary, it's not particularly to do that, but to see what we can do here to obviate such action.

Hanes: There is just one other thought the Secretary asked we bring out, and that was the matter, should trouble develop - you see this order will be issued before the Bank is closed, and before any of the banks are closed in California.

Delano: And the markets will be open.

Oliphant: It will be twelve o'clock in San Francisco, Friday?

Hanes: That is right. So that he wanted us to explore with the Federal Reserve and other proper authorities, the possibility of getting cash to these institutions in case trouble should develop.

Eccles: You mean the question of currency. Of course there is a branch in Los Angeles, and there is a branch in Frisco, and the Bank itself - do they know, do they know that this is likely to be issued, so that they can .....

Hanes: I don't know that.

Lane: They do not know it officially; I have reasons which I can't even formulate in my mind - I think they know it unofficially. They haven't known it from us but we have had enough indications they know it is coming, though I don't suppose they know it will be coming this Friday.

Eccles: It would be very difficult to get cash to four hundred and ninety branches in the state from those two Reserve banks. They - the bank itself should anticipate that and arrange to have cash sent out to them the first thing on Friday morning.

Ransom: Could I ask, Mr. Secretary, about the timing of it? Would it be possible to issue it after the closing time for the Bank, for the day?

Hanes: Well, we asked the Chairman of the Commission that question - would it be possible to, say issue this

order, instead of three, say issue it at six o'clock in the afternoon, instead of three?

Eccles: Or even five.

Hanes: My impression is that they had considered that matter very definitely and decided on three o'clock in the afternoon.

Lane: I don't want to try to commit the Commission, but I think if there were strong feeling in this group here that it be desirable that the order be not issued until six o'clock, they would reconsider it.

Hanes: You heard what he said?

Lane: If there were strong feeling in this group that the order not be issued until six o'clock, recognizing that at three o'clock, the time is still part of the banking day in San Francisco, I'd be perfectly willing to take back to the Commission any statements of strong feeling in this group, if there is strong feeling it should be held up until six o'clock.

Gaston: It would go on your Dow Jones ticker, they have out there in San Francisco and Los Angeles, so that your larger depositors would know it; they will know it well in advance of the Bank's closing in the day. The smaller depositors would not. It wouldn't get into the papers.

Delano: What was the objection to the six o'clock? Was there an objection to that?

Lane: I don't know what the objection was.

Delano: It seems to me much better to have it at six o'clock.

Lane: Perhaps one consideration was, the Commission .... (words inaudible - poor enunciation).... extremely nervous ..... decided they couldn't possibly put it off, but at the earliest possible time on Friday, because of the fears it might lead to. As I say, I'd be glad to get the impression of this group.

Oliphant: If the Bank's management's cooperation, as a matter of having cash, is important, the undesirability of advising anybody in advance of the action, with me weighs very heavily in favor of shifting the hour to six o'clock, because that could take care of the difficulty. The Bank then could, over-night, request funds.

Henderson: The next day is Saturday, and it closes at twelve o'clock.

Eccles: Well, that is a factor. I mean, it is difficult to say to what extent, but inasmuch as the Secretary asked that that be considered .....

Oliphant: When does the Bank close?

Eccles: Three o'clock.

Oliphant: Three o'clock is the closing time.

Eccles: It wouldn't be practical, of course, to get cash into a good many of those branches, without having some notice. They may not need it, but if they should need it, they ought to have a little time.

Oliphant: Six o'clock would give them - let them get it over-night.

Eccles: Yes. We can arrange with the Federal Reserve to keep open and be prepared to make a currency shipment that night to any branch that the Bank ordered cash to be sent to, and the Bank then, of course, couldn't accuse the S. E. C. of putting them in a position where they were unable to meet the cash withdrawal in these branches by not giving them notice.

Hanes: Shall we ask the S. E. C. to reconsider and ask - is it the sense of this meeting they should delay - we should ask them to delay until six o'clock?

Henderson: Unless they have some good reason for putting it out at twelve. Three there would be an advisable time.

Gaston: Another possibility, three o'clock on Saturday, your Bank closing at noon on Saturday, and that would give them all of Saturday afternoon and

Sunday.

Henderson: That is right. That's what I had in mind.

Lane: Well, one factor in releasing it at that time, I think the Commission feels in fairness to all the depositors and stockholders, it is desirable to have pretty wide publicity in a situation of this kind, so that all the people would know about it at one time.

Gaston: That would be Sunday to get the widest distribution possible.

Lane: One reason, the order, which I sent out by airmail last night - it probably hasn't gotten to San Francisco yet .....

Oliphant: If the Commission is asked to reconsider the matter, why not ask that both these questions be reconsidered.

Lane: We felt it would be extremely unwise to have an order of this kind come out on Thanksgiving morning in California. That really is important.

Henderson: And so soon after election.

Eccles: Saturday would, of course, be the best time, if it could be done on Saturday, because that would give the Bank an opportunity to prepare its paper over the week-end in case it wants to borrow money. After all, it can only draw in cash from the Reserve Bank against its balances there. And if it needs to either rediscount or to borrow on bills payable, it is necessary to get their rediscounts in, or their bills payable in, so they can get credit and draw against that credit, and the week-end interim gives them an opportunity to prepare for a very large run, if they're likely to have one.

Gaston: You have three issues of your daily newspapers appearing then after the order is public, and before the Bank opened, before anybody had a chance to make any withdrawals, you'd have your late Saturday editions in Los Angeles and San Francisco; you'd have your Sunday editions and you'd have your Monday morning papers, in addition, so equal notice gets to everyone.

Upham: And the possibility for an accumulation of panic, so that Monday morning you have a real run. I very much prefer to have it on Friday afternoon, with a shorter banking day on Saturday, so we will have some estimate and some sanctum of what is doing. I don't think it makes any difference whether it is twelve o'clock or three o'clock.

Broles: Well, I don't. I can't imagine enough of a run on Saturday morning to cause very much difficulty. It takes time to get momentum on these things, and it could, without much difficulty, get sufficient currency to meet any situation that could develop on Saturday morning, and then it could prepare over the weekend to get additional currency if the experiences of Saturday morning indicated it might be necessary. There is this other thing you mentioned, Herbert, and that is an equal notice to the little stockholders in Trans-America and the little depositor who is always likely to get information after the big stockholder, and the big depositor.

Upham: But the small depositors are all protected now, so it doesn't matter.

Gaston: There are two sides to that question of accumulative notices as generating a panic. Of course you have a chance there for all the replies that Mr. Giannini and his associates want to make in two issues of the daily newspapers, and if this thing is going to generate a panic sooner or later, we might as well have it.

Taylor: Further than that, the radio might be the means of communication.

Gaston: Yeah, if the radio thinks it important enough to mention.

Taylor: They will think it important enough to mention it.

Gaston: I wouldn't bet on it. Yes, there will probably be broadcasts.

Oliphant: Why not let's submit it to them that they consider both alternatives.

Hanes: Does anybody want to add anything?

Chester, will you take it up with the Commission and let us know what their decision is?

Lane: It is the sense of this meeting, is it, that it would be desirable to have it outside the banking hours, with no definite opinion as to whether it should be Saturday or Friday.

Gaston: Upham thinks it doesn't make any difference.

Upham: No, I don't think so. I think it ought to be Friday.

Eccles: I don't think it makes any difference whether it should be three o'clock or six o'clock. I don't think it makes sufficient difference to justify putting it off till Saturday, but from the currency standpoint, I don't think we ought to be in the position of letting the management of the banks say this notice came out without previous information to them, without an opportunity for them to get currency, that certainly if it should come out at five or six o'clock on Friday then they have got twelve hours in which to get currency if they don't happen to have it, and I think we ought to protect ourselves at least to that extent, the question of two or three hours, by taking a chance.

Hanes. Then the question you want to ask the Commission to determine is whether it should be on Friday at three or at six o'clock. That is all, not Saturday. The question is back to three or six, on Friday. If you will ask the Commission and let me know, I shall communicate it to the rest of you.

Herman, have I missed anything?

Oliphant: Not that I can think of.

Husbands: Ask S. E. C. to go over this matter to see whether they can delete .....

Hanes: I take it from what Mr. Lane says, this order is on the airplane, on its way to California.

Lane: That is the fact. The Commission would hesitate to slow up the proceeding, but I'd be glad to take back any such request, but the order is gone; it's a certified copy, to be held against my instructions to serve it at whatever time we finally determine.

Henderson: Then, Mr. Hanes, as I understand, this order will go out and be served sometime Friday afternoon, and that no voluntary statement will be made.

Hanes: That is, I think, the sense of the meeting, and I told Mr. Jones I would communicate with him, and he said if you wanted him to say anything .....

Henderson: How did he feel? Did he express himself on making a voluntary statement unless requested?

Hanes: He seemed to want to - I'll read you what he said. I said, "Do you think that the Comptroller should make the statement if any is made, or would you be willing to make a statement if the group felt it imperitive that somebody make such a statement?" He said, "If you will let me know the facts. If I may say so, the country has learned to believe the things I have told them about banks and I will be glad to tell them anything you want me to say."

Henderson: He expressed himself as being willing to go along with the expressed opinion here.

Hanes: That is right. He said, "I'll tell them anything you feel is desirable to tell them."

Ransom: We are not attempting to suggest the Comptroller may not make any statement he may want to make at any time he wants to make it. The suggestion was made a moment ago that it is the concensus of this meeting that no voluntary statement be made, and I wouldn't like to express the statement, on my own part, that the Comptroller shouldn't make any statement he desires.

Hanes: I didn't get the meaning of that to go beyond this particular crisis. The Comptroller, after this crisis, has got to make up his own mind about that.

Eccles: Well, you will advise us at what time this order is going to be served; then we can communicate

with the Federal Reserve Bank at Frisco so they will stand by and be prepared to supply such currency as may be required, otherwise.

Hanes: That is what the Secretary had in mind. The reason for bringing this up, we ought to be prepared for any emergency.

Taylor: When the thing is released and served out on the Coast, will the S. E. C. also have somebody available there, as you would have here in Washington, to talk to the reporters, to explain what the accounting terms mean?

Lane: We'll have Administrators etc., and though they have not been here and working with it, they have had charge of transmission of reports and have dealt with our investigations that took place out there. They might not be given as adequate an explanation of it, but they will undoubtedly be prepared to meet inquiries.

Hanes: Chester, will you report to Bill Douglas, because he is the one that got the instructions from the President to explore this matter, and you will report back to him.

Lane: I'll report that, and I'd like to add to it, John, that he asked me to say that if the decision was that no statement should be made, you would communicate that to the President, because he feels that an obligation has been put on him as the prime mover to see that something is done, or else the explanation is given to the President. Since he feels it is not our job to do the something, he wants you to follow it.

Hanes: I am going to call Henry and I'll ask Henry to call him. He knows about this request, because Bill called him. I am going to call him as soon as this meeting is over, and report all this to him. I think he is going to call the President any way.

Lane: Can I understand that you will either let the President know or see that he is informed?

Hanes: Or see that he is informed. Yes, I will.

Well, gentlemen, if there is nothing further.....

(Adjourned at 6:00 P. M.)

FOR THE SECRETARY: November 25, 1938.

A meeting was held in the office of Mr. Hanes at 4:30 p.m. and was attended by Messrs. Lane of the SEC, Eccles and Ransom of the Federal Reserve, Nichols of the FDIC, Henderson and Husbands of the RFC, Hanes, Taylor, Delano, Upham, Oliphant, Gaston, Duffield, Foley and Young of the Treasury.

Mr. Hanes explained that the President had asked through SEC Chairman Douglas that the group consider the feasibility of issuing a public statement on the condition of Bank of America, N.T. & S.A., at the time that the SEC order is issued against Transamerica Corp. Mr. Hanes summarized the SEC order for the group and read a separate summary of the features of the report involving the Bank. He added that he had talked with Mr. Jesse Jones by telephone and that Mr. Jones had suggested deleting mention of the Bank from the SEC order and had stated his willingness to issue a statement on the condition of the Bank if the group so desired.

Mr. Eccles asked whether the SEC had considered the possibility of asking Transamerica to delist its stock voluntarily to avoid the risk of public repercussions. Mr. Lane replied that his guess was that Transamerica would refuse to delist voluntarily, that the SEC might still feel obliged to inform investors of the facts about Transamerica in spite of a voluntary delisting, and that he believed the SEC had no course other than to proceed with its order.

Mr. Eccles said that the Federal Reserve Bank of San Francisco could meet any temporary demand for funds by the Bank but that the Comptroller might have to appoint a conservator and the RFC might have to furnish loans and capital to meet any long-term drain on the Bank.

At Mr. Delano's suggestion Mr. Folger reported that the Bank's last statement - as of September 28 - showed deposits, including $70,000,000 of inter-bank deposits, totalling $1,530,000,000. At that time the Bank had $404,000,000 of U. S. Government bonds, $250,000,000 of cash and deposits with the Federal Reserve, and $110,000,000 of high-grade municipal bonds, a total of $744,000,000. About $214,000,000 of the Government bonds were pledged behind deposits of public money, he noted. He estimated that the Bank could pay down 40% of its deposits and still be able to function. He said daily deposit figures could be obtained from the Bank if that was thought desirable. The Bank held between $12,000,000 and $15,000,000 of Transamerica stock directly or as collateral, he said.

Mr. Eccles pointed out that the Giannini banking interests spread over Oregon, Washington, Nevada, and Arizona as well as California, that the possibilities of difficulties for all these banks were hard to predict, but that he thought the chances of the Bank having to close were very remote. The existence of the FDIC may reassure small depositors of which the Bank has a great many, he remarked, adding that he had heard but not verified that some of the large deposits were already moving out of the Bank.

Mr. Ransom said the possibilities were hard to foresee but that, if the blackest picture developed, the Comptroller should be prepared to appoint a conservator so that withdrawal of large deposits did not strip the Bank of its good assets, leaving small depositors with nothing but poor assets. As to a public statement on the Bank's condition, he said that the last ten years had not convinced him of the wisdom of the public statements about banks' conditions.

Mr. Gaston agreed that no public statement should be volunteered; if questions are asked about the Bank, the obvious reply is: "If the Bank were insolvent, the Comptroller would have closed it. He has not done so." Mr. Nichols, Mr. Husbands, Mr. Henderson, Mr. Upham and Mr. Delano agreed that no statement should be volunteered and each added that he thought the chances of a run on the Bank very remote. Mr. Hanes asked if the concensus of the meeting was that no statement on the Bank should be volunteered at the time of the SEC order on Transamerica was issued. There were no dissents. Mr. Taylor subsequently suggested that at any SEC press conference on the Transamerica order a statement could be made in the ordinary course saying that the condition of the Bank is not questioned in the SEC action.

Mr. Hanes told the meeting that Secretary Morgenthau wanted each agency to be prepared to assist the Bank if any run developed. Mr. Eccles urged that the SEC order be announced after banking hours on Friday instead of at 12:00 noon, Pacific Coast time, as planned. The Reserve Board would then arrange with the San Francisco reserve bank to keep its vaults open and to ship currency Friday night if necessary, he said. Mr. Gaston suggested publication of the SEC order Saturday after noon. Mr. Oliphant suggested that the group ask the SEC to reconsider the time of the announcement, allowing it to choose between Friday evening and Saturday afternoon; this suggestion met with general approval.

Mr. Lane said he would take this request to the SEC. As to Mr. Jones' suggestion that mention of the Bank be deleted from the order, Mr. Lane pointed out that the order already was in the mail to the Coast and that delay for revision would invite leaks. He asked that Mr. Hanes arrange for notifying the President of the group's advice against a public statement on the Bank.

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November 23, 1938

Secretary Morgenthau

Mr. Oliphant

Consideration has been given to the question whether you may make available to the Securities and Exchange Commission information contained in reports of examination of a national bank, which information the Commission contemplates using in a public hearing under the Securities Exchange Act of 1934 in a proceeding to suspend or withdraw the registration of certain securities.

I am of the opinion that you have authority to make such information available upon such terms as you may prescribe in the public interest.

Section 161 of the Revised Statutes of 1873 (U.S.C. title 5, sec. 22), provides:

> "The head of each Department is authorized to prescribe regulations, not inconsistent with law, for the government of his Department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it."

With regard to that statute, it was said in (1906) 26 Op. Atty. Gen. 326 (at page 329):

> "It thus appears that the head of a Department has full charge and control of all the records and papers belonging to the Department. His authority to prescribe whatever rules and regulations he may

deem proper regarding their use and custody is unlimited, so long as 'not inconsistent with law.' Such broad discretion would necessarily include the right to determine whether certain documents should or should not be taken from the files of the Department for any purpose except for use in connection with departmental business, and in accordance with his determination so to instruct the chiefs of bureaus or other officers concerned."

Similarly, with respect to furnishing to another Government agency information in the files of the Treasury Department, it was stated in (1926) 35 Op. Atty. Gen. 5 (at pages 6 and 7):

"There is no statute which expressly authorizes the Public Health Service to give out copies of its hospital records, nor is there any prohibiting it from doing so. The Secretary of the Treasury, by section 161 Revised Statutes, is authorized to prescribe regulations, not inconsistent with law, for the government of his Department, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it. This statute, in the absence of statutory prohibition, authorizes the Secretary of the Treasury to make such rules and regulations respecting the furnishing of copies of the records of the Public Health Service as he may deem proper. It therefore lies within the sound discretion of the Secretary of the Treasury whether such records shall be made available to either of the parties requesting them -- that is, to the patient or his representative, or to the representative of the Emergency Fleet Corporation -- or whether such data shall be made available at all.

* * *

"In this respect the Emergency Fleet Corporation is a bureau of the Federal Government. As a Government agency it is charged with the duty of protecting the Government's interests in every way possible. To deny it access to official records of the Public Health Service, or copies of such records when required, either for use in defending a suit in

court or for the purpose of determining whether an allowance shall be made for injuries to seamen employed on merchant vessel of the United States Shipping Board operated by or under authority of the Emergency Fleet Corporation, would be to deny to a Government agency the use of the official records of another Government agency or bureau, necessary for the protection of the Government's interests."

See also my opinion of December 29, 1934, directed to the Surgeon General, United States Public Health Service.

With more specific reference to information in the files of the Office of the Comptroller of the Currency, your attention is directed to the opinion of Attorney General Wickersham to the President in (1912) 29 Op. Atty. Gen. 555. The following statements in that opinion are pertinent:

"Thus the banking laws clothe the Comptroller with authority to examine into the affairs of national banks for three main purposes: First, to ascertain the financial condition and soundness of management of national banks; second, to determine whether or not such banks are operating in conformity with the banking laws; third, to enable him to recommend amendments to the existing law.

"Nowhere in the law is there any express provision that the information thus acquired by the Comptroller shall be confidential. While, if in your opinion, the interests of the Government require that this information shall be so treated, you have the right to refuse to divulge it (Boske v. Comingore, 177 U.S. 459, 469), yet, I am clearly of the view that if, in your opinion, it is proper to give this information to the House committee you have the lawful power to do so.

* * *

"Since the comptroller exercises his functions under the general direction of the Secretary of the Treasury, and therefore of yourself, it follows that

> if either you or the Secretary think that the comptroller should have before him in the performance of his duties any of the information mentioned in Mr. Untermyer's letter, you have the lawful power of directing him to acquire it." (Underscoring supplied.)

See also my opinion to you of September 13, 1938.

The only remaining point is whether there are any statutes enacted since Attorney General Wickersham's opinion which bear upon the matter under consideration.

Section 22 of the Federal Reserve Act, 38 Stat. 272, as amended (U.S.C., Sup. III, title 12, sec. 594), as it appears in the Code, provides, in part, as follows:

> "No examiner, public or private, shall disclose the names of borrowers or the collateral for loans of a member bank or insured bank to other than the proper officers of such bank without first having obtained the express permission in writing from the Comptroller of the Currency, as to a national bank, the Board of Governors of the Federal Reserve System as to a State member bank, or the Federal Deposit Insurance Corporation as to any other insured bank, or from the board of directors of such bank, except when ordered to do so by a court of competent jurisdiction, or by direction of the Congress of the United States, or of either House thereof, or any committee of Congress, or of either House duly authorized."

That provision recognizes the authority of the Comptroller of the Currency, who, of course, acts subject to the direction of the Secretary of the Treasury.

Two more recent statutes should be considered together. Section 101 of the Banking Act of 1935 (amending section 12B of the Federal Reserve Act), as amended, 49 Stat. 694 (U.S.C., Sup. III, title 12, sec. 264(k)(4)), as it appears in the Code, provides, in part, as follows:

"The [Federal Deposit Insurance] Corporation shall have access to reports of examinations made by, and reports of condition made to, the Comptroller of the Currency or any Federal Reserve bank, may accept any report made by or to any commission, board, or authority having supervision of a State nonmember bank (except a District bank), and may furnish to the Comptroller of the Currency, to any Federal Reserve bank, and to any such commission, board, or authority, reports of examinations made on behalf of, and reports of condition made to, the Corporation."

Section 1 of the Agricultural Credits Act of 1923, 42 Stat. 1458, as amended (U.S.C. title 12, sec. 1091), as it appears in the Code, provides:

"In order to enable each Federal intermediate credit bank to carry out the purpose of this subchapter, the Comptroller of the Currency is hereby authorized and directed, upon the request of any Federal intermediate credit bank, (1) to furnish for the confidential use of such bank such reports, records, and other information as he may have available relating to the financial condition of national banks through or for which the Federal intermediate credit bank has made or contemplates making discounts, * * *."

Those statutes clearly do not limit the availability of records of the Comptroller's office to other agencies of the Government but rather give certain agencies a privileged position with respect to such records.

With regard to several lending agencies of the Government, there are statutes expressly authorizing the Comptroller of the Currency to make available certain information to those agencies.

Section 8 of the Reconstruction Finance Corporation Act, 47 Stat. 8, as amended (U.S.C. title 15, sec. 608), as it appears in the Code, provides:

"In order to enable the corporation to carry out the provisions of this chapter, the Treasury Department, the Federal Farm Loan Board, the Comptroller of the Currency, the Federal Reserve Board, the Federal reserve banks, and the Interstate Commerce Commission are hereby authorized, under such conditions as they may prescribe, to make available to the corporation, in confidence, such reports, records, or other information as they may have available relating to the condition of applicants with respect to whom the corporation has had or contemplates having transactions under this chapter, or relating to individuals, associations, partnerships, corporations, or other obligors whose obligations are offered to or held by the corporation as security for loans under this chapter, and to make, through their examiners or other employees for the confidential use of the corporation, examinations of applicants for loans. Every applicant for a loan under this chapter shall, as a condition precedent thereto, consent to such examination as the corporation may require for the purposes of this chapter and that reports of examinations by constituted authorities may be furnished by such authorities to the corporation upon request therefor."

Section 22 of the Federal Home Loan Bank Act, 47 Stat. 739, as amended (U.S.C., Sup. III, title 12, sec. 1442), as it appears in the Code, provides:

"(a) In order to enable the [Federal Home Loan Bank] board to carry out the provisions of this chapter, the Treasury Department, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal reserve banks are hereby authorized, under such conditions as they may prescribe, to make available to the board in confidence for its use and the use of any Federal Home Loan Bank such reports, records, or other information as may be available, relating to the condition of institutions with respect to which any such Federal Home Loan Bank has had or contemplates having transactions under this chapter or relating to persons whose obligations are offered to or held by any Federal Home Loan Bank, and to make through their examiners or other employees, for the confidential use of the board or any Federal Home Loan Bank, examinations of such institutions.

"(b) Every institution which shall apply for advances under this chapter shall, as a condition precedent thereto, consent to such examination as the bank or the board may require for the purposes of this chapter and/or that reports of examinations by constituted authorities may be furnished by such authorities to the bank or the board upon request therefor."

Section 31 of the Farm Credit Act of 1937 (amending section 208(e) of the Federal Farm Loan Act), 50 Stat. 716 (U.S.C., Sup. III, title 12, sec. 1095), provides:

"The executive departments, boards, commissions, and independent establishments of the Government, the Reconstruction Finance Corporation, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Reserve banks are severally authorized under such conditions as they may prescribe, upon the request of the Farm Credit Administration to make available to the Farm Credit Administration or any district bank or district corporation operating under its supervision, in confidence, all reports, records or other information they may have relating to the condition of any institution to which the Administration, such district bank, or corporation has made or contemplates making loans or for which it has discounted or contemplates discounting paper, or which it is using or contemplates using as a custodian of securities or other credit instruments, or as a depositary."

Since, as shown above, there was already ample authority for making records of the Comptroller of the Currency available to other Government agencies, those statutes must be regarded as having been enacted out of an excess of caution — to make assurance doubly sure. Cf. Jordan v. Roche, (1913) 228 U.S. 436, 446; Helvering v. New York Trust Co., (1934) 292 U.S. 455, 469.

Thus it will be seen that there is nothing in the recent statutes that is inconsistent with the conclusion stated at the outset of this opinion.

Finally, your attention is directed to Department Circular No. 591 of August 15, 1938 (superseding Department Rule IX), Regulations Governing the Disclosure of Official Information, issued pursuant to section 161 of the Revised Statutes of 1873 (U.S.C. title 5, sec. 22), quoted above. Paragraph 5 of that Circular provides:

> "These regulations shall not be applicable to official requests of other governmental agencies or officers thereof acting in their official capacities, unless it appears that compliance therewith would be in violation of law, or inimical to the public interest. Cases of doubt should be referred for decision to the Secretary, the Under Secretary, an Assistant Secretary, or the Administrative Assistant to the Secretary."

(Signed) Herman Oliphant

General Counsel.

DJS/RHD/avp
Typed: 11/20/38.

C
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November 25, 1938

Secretary Morgenthau

Mr. Oliphant

Consideration has been given to the question whether you may make available to the Securities and Exchange Commission information contained in reports of examination of a national bank, which information the Commission contemplates using in a public hearing under the Securities Exchange Act of 1934 in a proceeding to suspend or withdraw the registration of certain securities.

I am of the opinion that you have authority to make such information available upon such terms as you may prescribe in the public interest.

Section 161 of the Revised Statutes of 1875 (U.S.C. title 5, sec. 22), provides:

> "The head of each Department is authorized to prescribe regulations, not inconsistent with law, for the government of his Department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it."

With regard to this [illegible] (1905) 25 Op. Atty. Gen. 326 (at page 329):

> "It thus appears that the head of a Department has full charge and control of all the records and papers belonging to the Department. His authority to prescribe whatever rules and regulations he may

deem proper regarding their use and custody is unlimited, so long as 'not inconsistent with law.' Such broad discretion would necessarily include the right to determine whether certain documents should or should not be taken from the files of the Department for any purpose except for use in connection with departmental business, and in accordance with his determination so to instruct the chiefs of bureaus or other officers concerned.'

Similarly, with respect to furnishing to another Government agency information in the files of the Treasury Department, it was stated in (1925) 35 Op. Atty. Gen. 5 (at pages 6 and 7):

"There is no statute which expressly authorizes the Public Health Service to give out copies of its hospital records, nor is there any prohibiting it from doing so. The Secretary of the Treasury, by section 161 Revised Statutes, is authorized to prescribe regulations, not inconsistent with law, for the government of his Department, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it. This statute, in the absence of statutory prohibition, authorizes the Secretary of the Treasury to make such rules and regulations respecting the furnishing of copies of the records of the Public Health Service as he may deem proper. It therefore lies within the sound discretion of the Secretary of the Treasury whether such records shall be made available to either of the parties requesting them -- that is, to the patient or his representative, or to the representative of the Emergency Fleet Corporation -- or whether such data shall be made available at all.

* * *

"In this respect the Emergency Fleet Corporation is a bureau of the Federal Government. As a Government agency it is charged with the duty of protecting the Government's interests in every way possible. To deny it access to official records of the Public Health Service, or copies of such records when required, either for use in defending a suit in

> court or for the purpose of determining whether an allowance shall be made for injuries to seamen employed on merchant vessel of the United States Shipping Board operated by or under authority of the Emergency Fleet Corporation, would be to deny to a Government agency the use of the official records of another Government agency or bureau, necessary for the protection of the Government's interests."

See also my opinion of December 29, 1934, directed to the Surgeon General, United States Public Health Service.

With more specific reference to information in the files of the Office of the Comptroller of the Currency, your attention is directed to the opinion of Attorney General Wickersham to the President in (1912) 29 Op. Atty. Gen. 555. The following statements in that opinion are pertinent:

> "Thus the banking laws clothe the Comptroller with authority to examine into the affairs of national banks for three main purposes: First, to ascertain the financial condition and soundness of management of national banks; second, to determine whether or not such banks are operating in conformity with the banking laws; third, to enable him to recommend amendments to the existing law.
>
> "Nowhere in the law is there any express provision that the information thus acquired by the Comptroller shall be confidential. While, if in your opinion, the interests of the Government require that this information shall be so treated, you have the right to refuse to divulge it (Boske v. Comingore, 177 U.S. 459, 469), yet, I am clearly of the view that if, in your opinion, it is proper to give this information to the House committee you have the lawful power to do so.
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>
> "Since the comptroller exercises his functions under the general direction of the Secretary of the Treasury, and therefore of yourself, it follows that

> if either you or the Secretary think that the comptroller should have before him in the performance of his duties any of the information mentioned in Mr. Untermyer's letter, you have the lawful power of directing him to acquire it." (Underscoring supplied.)

See also my opinion to you of September 13, 1938.

The only remaining point is whether there are any statutes enacted since Attorney General Wickersham's opinion which bear upon the matter under consideration.

Section 22 of the Federal Reserve Act, 38 Stat. 272, as amended (U.S.C., Sup. III, title 12, sec. 594), as it appears in the Code, provides, in part, as follows:

> "No examiner, public or private, shall disclose the names of borrowers or the collateral for loans of a member bank or insured bank to other than the proper officers of such bank without first having obtained the express permission in writing from the Comptroller of the Currency, as to a national bank, the Board of Governors of the Federal Reserve System as to a State member bank, or the Federal Deposit Insurance Corporation as to any other insured bank, or from the board of directors of such bank, except when ordered to do so by a court of competent jurisdiction, or by direction of the Congress of the United States, or of either House thereof, or any committee of Congress, or of either House duly authorized."

That provision recognizes the authority of the Comptroller of the Currency, who, of course, acts subject to the direction of the Secretary of the Treasury.

Two more recent statutes should be considered together. Section 101 of the Banking Act of 1935 (amending section 12B of the Federal Reserve Act), as amended, 49 Stat. 694 (U.S.C., Sup. III, title 12, sec. 264(k)(4)), as it appears in the Code, provides, in part, as follows:

"The [Federal Deposit Insurance] Corporation shall have access to reports of examinations made by, and reports of condition made to, the Comptroller of the Currency or any Federal Reserve bank, may accept any report made by or to any commission, board, or authority having supervision of a State nonmember bank (except a District bank), and may furnish to the Comptroller of the Currency, to any Federal Reserve bank, and to any such commission, board, or authority, reports of examinations made on behalf of, and reports of condition made to, the Corporation."

Section 1 of the Agricultural Credits Act of 1923, 42 Stat. 1468, as amended (U.S.C. title 12, sec. 1091), as it appears in the Code, provides:

"In order to enable each Federal intermediate credit bank to carry out the purpose of this subchapter, the Comptroller of the Currency is hereby authorized and directed, upon the request of any Federal intermediate credit bank, (1) to furnish for the confidential use of such bank such reports, records, and other information as he may have available relating to the financial condition of national banks through or for which the Federal intermediate credit bank has made or contemplates making discounts, * * *."

These statutes clearly do not limit the availability of records of the Comptroller's office to other agencies of the Government but rather give certain agencies a privileged position with respect to such records.

With regard to several lending agencies of the Government, there are statutes expressly authorizing the Comptroller of the Currency to make available certain information to these agencies.

Section 8 of the Reconstruction Finance Corporation Act, 47 Stat. 8, as amended (U.S.C. title 15, sec. 608), as it appears in the Code, provides:

"In order to enable the corporation to carry out the provisions of this chapter, the Treasury Department, the Federal Farm Loan Board, the Comptroller of the Currency, the Federal Reserve Board, the Federal reserve banks, and the Interstate Commerce Commission are hereby authorized, under such conditions as they may prescribe, to make available to the corporation, in confidence, such reports, records, or other information as they may have available relating to the condition of applicants with respect to whom the corporation has had or contemplates having transactions under this chapter, or relating to individuals, associations, partnerships, corporations, or other obligors whose obligations are offered to or held by the corporation as security for loans under this chapter, and to make, through their examiners or other employees for the confidential use of the corporation, examinations of applicants for loans. Every applicant for a loan under this chapter shall, as a condition precedent thereto, consent to such examination as the corporation may require for the purposes of this chapter and that reports of examinations by constituted authorities may be furnished by such authorities to the corporation upon request therefor."

Section 22 of the Federal Home Loan Bank Act, 47 Stat. 739, as amended (U.S.C., Supp. III, title 12, sec. 1442), as it appears in the Code, provides:

"(a) In order to enable the [Federal Home Loan Bank] board to carry out the provisions of this chapter, the Treasury Department, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal reserve banks are hereby authorized, under such conditions as they may prescribe, to make available to the board in confidence for its use and the use of any Federal Home Loan Bank such reports, records, or other information as may be available, relating to the condition of institutions with respect to which any such Federal Home Loan Bank has had or contemplates having transactions under this chapter or relating to persons whose obligations are offered to or held by any Federal Home Loan Bank, and to make through their examiners or other employees, for the confidential use of the board or any Federal Home Loan Bank, examinations of such institutions.

"(b) Every institution which shall apply for advances under this chapter shall, as a condition precedent thereto, consent to such examination as the bank or the board may require for the purposes of this chapter and/or that reports of examinations by constituted authorities may be furnished by such authorities to the bank or the board upon request therefor."

Section 51 of the Farm Credit Act of 1937 (amending section 208(e) of the Federal Farm Loan Act), 50 Stat. 715 (U.S.C., Supp. III, title 12, sec. 1028), provides:

"The executive departments, boards, commissions, and independent establishments of the Government, the Reconstruction Finance Corporation, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Reserve banks are severally authorized under such conditions as they may prescribe, upon the request of the Farm Credit Administration to make available to the Farm Credit Administration or any district bank or district corporation operating under its supervision, in confidence, all reports, records or other information they may have relating to the condition of any institution to which the Administration, such district bank, or corporation has made or contemplates making loans or for which it has discounted or contemplates discounting paper, or which it is using or contemplates using as a custodian of securities or other credit instruments, or as a depositary."

Since, as shown above, there was already ample authority for making records of the Comptroller of the Currency available to other Government agencies, those statutes must be regarded as having been enacted out of an excess of caution — to make assurance doubly sure. Cf. Jordan v. Hughes, (1913) 228 U.S. 436, 446; Helvering v. New York Trust Co., (1934) 292 U.S. 455, 469.

Thus it will be seen that there is nothing in the recent statutes that is inconsistent with the conclusion stated at the outset of this opinion.

Finally, your attention is directed to Department Circular No. 591 of August 15, 1938 (superseding Department Rule XI), Regulations Governing the Disclosure of Official Information, issued pursuant to section 161 of the Revised Statutes of 1875 (U.S.C. title 5, sec. 22), quoted above. Paragraph 5 of that Circular provides:

> "These regulations shall not be applicable to official requests of other governmental agencies or officers thereof acting in their official capacities, unless it appears that compliance therewith would be in violation of law, or inimical to the public interest. Cases of doubt should be referred for decision to the Secretary, the Under Secretary, an Assistant Secretary, or the Administrative Assistant to the Secretary."

(Signed) Herman Oliphant

General Counsel.

HO:HMD:mvp
Typed: 11/20/38.

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November 25, 1938

Secretary Morgenthau

Mr. Oliphant

Consideration has been given to the question whether you may make available to the Securities and Exchange Commission information contained in reports of examination of a national bank, which information the Commission contemplates using in a public hearing under the Securities Exchange Act of 1934 in a proceeding to suspend or withdraw the registration of certain securities.

I am of the opinion that you have authority to make such information available upon such terms as you may prescribe in the public interest.

Section 161 of the Revised Statutes of 1873 (U.S.C. title 5, sec. 22), provides:

> "The head of each Department is authorized to prescribe regulations, not inconsistent with law, for the government of his Department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it."

With regard to that statute, it was said in (1905) 25 Op. Atty. Gen. 326 (at page 329):

> "It thus appears that the head of a Department has full charge and control of all the records and papers belonging to the Department. His authority to prescribe whatever rules and regulations he may

> deem proper regarding their use and custody is unlimited, so long as 'not inconsistent with law.' Such broad discretion would necessarily include the right to determine whether certain documents should or should not be taken from the files of the Department for any purpose except for use in connection with departmental business, and in accordance with his determination as to instruct the chiefs of bureaus or other officers concerned."

Similarly, with respect to furnishing to another Government agency information in the files of the Treasury Department, it was stated in (1925) 35 Op. Atty. Gen. 5 (at pages 6 and 7):

> "There is no statute which expressly authorizes the Public Health Service to give out copies of its hospital records, nor is there any prohibiting it from doing so. The Secretary of the Treasury, by section 161 Revised Statutes, is authorized to prescribe regulations, not inconsistent with law, for the government of his Department, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it. This statute, in the absence of statutory prohibition, authorizes the Secretary of the Treasury to make such rules and regulations respecting the furnishing of copies of the records of the Public Health Service as he may deem proper. It therefore lies within the sound discretion of the Secretary of the Treasury whether such records shall be made available to either of the parties requesting them -- that is, to the patient or his representative, or to the representative of the Emergency Fleet Corporation -- or whether such data shall be made available at all.
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> "In this respect the Emergency Fleet Corporation is a bureau of the Federal Government. As a Government agency it is charged with the duty of protecting the Government's interests in every way possible. To deny it access to official records of the Public Health Service, or copies of such records when required, either for use in defending a suit in

> court or for the purpose of determining whether an allowance shall be made for injuries to seamen employed on merchant vessel of the United States Shipping Board operated by or under authority of the Emergency Fleet Corporation, would be to deny to a Government agency the use of the official records of another Government agency or bureau, necessary for the protection of the Government's interests."

See also my opinion of December 29, 1934, directed to the Surgeon General, United States Public Health Service.

With more specific reference to information in the files of the Office of the Comptroller of the Currency, your attention is directed to the opinion of Attorney General Wickersham to the President in (1912) 29 Op. Atty. Gen. 555. The following statements in that opinion are pertinent:

> "Thus the banking laws clothe the Comptroller with authority to examine into the affairs of national banks for three main purposes: First, to ascertain the financial condition and soundness of management of national banks; second, to determine whether or not such banks are operating in conformity with the banking laws; third, to enable him to recommend amendments to the existing law.
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> "Nowhere in the law is there any express provision that the information thus acquired by the Comptroller shall be confidential. While, if in your opinion, the interests of the Government require that this information shall be so treated, you have the right to refuse to divulge it (Boske v. Comingore, 177 U.S. 459, 469), yet, I am clearly of the view that if, in your opinion, it is proper to give this information to the House committee you have the lawful power to do so.
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> "Since the Comptroller exercises his functions under the general direction of the Secretary of the Treasury, and therefore of yourself, it follows that

> if either you or the Secretary think that the comptroller should have before him in the performance of his duties any of the information mentioned in Mr. Untermyer's letter, you have the lawful power of directing him to acquire it." (Underscoring supplied.)

See also my opinion to you of September 15, 1938.

The only remaining point is whether there are any statutes enacted since Attorney General Wickersham's opinion which bear upon the matter under consideration.

Section 23 of the Federal Reserve Act, 38 Stat. 272, as amended (U.S.C., Sup. III, title 12, sec. 594), as it appears in the Code, provides, in part, as follows:

> "No examiner, public or private, shall disclose the names of borrowers or the collateral for loans of a member bank or insured bank to other than the proper officers of such bank without first having obtained the express permission in writing from the Comptroller of the Currency, as to a national bank, the Board of Governors of the Federal Reserve System as to a State member bank, or the Federal Deposit Insurance Corporation as to any other insured bank, or from the board of directors of such bank, except when ordered to do so by a court of competent jurisdiction, or by direction of the Congress of the United States, or of either House thereof, or any committee of Congress, or of either House duly authorized."

That provision recognizes the authority of the Comptroller of the Currency, who, of course, acts subject to the direction of the Secretary of the Treasury.

Two more recent statutes should be considered together. Section 101 of the Banking Act of 1935 (amending section 12B of the Federal Reserve Act), as amended, 49 Stat. 694 (U.S.C., Sup. III, title 12, sec. 264(k)(4)), as it appears in the Code, provides, in part, as follows:

> "The [Federal Deposit Insurance] Corporation shall have access to reports of examinations made by and reports of condition made to, the Comptroller of the Currency or any Federal Reserve bank, may accept any report made by or to any commission, board, or authority having supervision of a State nonmember bank (except a District bank), and may furnish to the Comptroller of the Currency, to any Federal Reserve bank, and to any such commission, board, or authority, reports of examinations made on behalf of, and reports of condition made to, the Corporation."

Section 1 of the Agricultural Credits Act of 1923, 42 Stat. 1460, as amended (U.S.C. title 12, sec. 1091), as it appears in the Code, provides:

> "In order to enable each Federal intermediate credit bank to carry out the purpose of this subchapter, the Comptroller of the Currency is hereby authorized and directed, upon the request of any Federal intermediate credit bank, (1) to furnish for the confidential use of such bank such reports, records, and other information as he may have available relating to the financial condition of national banks through or for which the Federal intermediate credit bank has made or contemplates making discounts, ..."

These statutes clearly do not limit the availability of records of the Comptroller's office to other agencies of the Government but rather give certain agencies a privileged position with respect to such records.

With regard to several lending agencies of the Government, there are statutes expressly authorizing the Comptroller of the Currency to make available certain information to these agencies.

Section 8 of the Reconstruction Finance Corporation Act, 47 Stat. 8, as amended (U.S.C. title 15, sec. 608), as it appears in the Code, provides:

"In order to enable the corporation to carry out the provisions of this chapter, the Treasury Department, the Federal Farm Loan Board, the Comptroller of the Currency, the Federal Reserve Board, the Federal reserve banks, and the Interstate Commerce Commission are hereby authorized, under such conditions as they may prescribe, to make available to the corporation, in confidence, such reports, records, or other information as they may have available relating to the condition of applicants with respect to whom the corporation has had or contemplates having transactions under this chapter, or relating to individuals, associations, partnerships, corporations, or other obligors whose obligations are offered to or held by the corporation as security for loans under this chapter, and to make, through their examiners or other employees for the confidential use of the corporation, examinations of applicants for loans. Every applicant for a loan under this chapter shall, as a condition precedent thereto, consent to such examination as the corporation may require for the purposes of this chapter and that reports of examinations by constituted authorities may be furnished by such authorities to the corporation upon request therefor."

Section 26 of the Federal Home Loan Bank Act, 47 Stat. 739, as amended (U.S.C., Supp. III, title 12, sec. 1446), as it appears in the Code, provides:

"(a) In order to enable the [Federal Home Loan Bank] board to carry out the provisions of this chapter, the Treasury Department, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal reserve banks are hereby authorized, under such conditions as they may prescribe, to make available to the board in confidence for its use and the use of any Federal Home Loan Bank such reports, records, or other information as may be available, relating to the condition of institutions with respect to which any such Federal Home Loan Bank has had or contemplates having transactions under this chapter or relating to persons whose obligations are offered to or held by any Federal Home Loan Bank, and to make through their examiners or other employees, for the confidential use of the board or any Federal Home Loan Bank, examinations of such institutions.

"(b) Every institution which shall apply for advances under this chapter shall, as a condition precedent thereto, consent to such examination as the bank or the board may require for the purposes of this chapter and/or that reports of examinations by constituted authorities may be furnished by such authorities to the bank or the board upon request therefor."

Section 31 of the Farm Credit Act of 1937 (amending section 209(a) of the Federal Farm Loan Act), 50 Stat. 716 (U.S.C., Supp. III, title 12, sec. 1095), provides:

"The executive departments, boards, commissions, and independent establishments of the Government, the Reconstruction Finance Corporation, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Reserve banks are severally authorized under such conditions as they may prescribe, upon the request of the Farm Credit Administration to make available to the Farm Credit Administration or any district bank or district corporation operating under its supervision, in confidence, all reports, records or other information they may have relating to the condition of any institution to which the Administration, such district bank, or corporation has made or contemplates making loans or for which it has discounted or contemplates discounting paper, or which it is using or contemplates using as a custodian of securities or other credit instruments, or as a depositary."

Since, as shown above, there was already ample authority for making records of the Comptroller of the Currency available to other Government agencies, those statutes must be regarded as having been enacted out of an excess of caution -- to make assurance doubly sure. Cf. Jordan v. Hughs, (1913) 228 U.S. 436, 446; Helvering v. New York Trust Co., (1934) 292 U.S. 455, 469.

Thus it will be seen that there is nothing in the recent statutes that is inconsistent with the conclusion stated at the outset of this opinion.

Finally, your attention is directed to Department Circular No. 591 of August 15, 1938 (superseding Department Rule IX), Regulations Governing the Disclosure of Official Information, issued pursuant to section 161 of the Revised Statutes of 1873 (U.S.C. title 5, sec. 22), quoted above. Paragraph 5 of that Circular provides:

> "These regulations shall not be applicable to official requests of other governmental agencies or officers thereof acting in their official capacities, unless it appears that compliance therewith would be in violation of law, or inimical to the public interest. Cases of doubt should be referred for decision to the Secretary, the Under Secretary, an Assistant Secretary, or the Administrative Assistant to the Secretary."

(Signed) Herman Oliphant

General Counsel.

DJS/RHD/avp
Typed: 11/20/39.
Copied 1/17/39
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My dear Mr. Douglas:

I have your letter of November 23, 1938, and copy of the Commission's proposed order for a hearing in the proceedings against Transamerica Corporation.

Pursuant to your request I hereby consent to the public official use by the Securities and Exchange Commission as part of the proposed proceedings against Transamerica Corporation of such of the information obtained from the twenty examiner's reports of the condition of the Bank of America N. T. & S. A., and five reports of examination of Transamerica Corporation heretofore furnished your Commission as bears on the allegations contained in the proposed order or amendments thereto.

Sincerely yours,

(Signed) H. Morgenthau, Jr.

Secretary of the Treasury

Hon. William O. Douglas
Chairman
Securities and Exchange Commission
Washington, D. C.

Nov. 23. 1938
12:08 P.M.
(Signed & dated by the Secy.)

EHFJr/met 11-23-38

Delivered to Mr. Rogge 12:58 P.M. Nov. 23, 1938 mct.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON

OFFICE OF THE CHAIRMAN

November 23, 1938.

The Honorable
The Secretary of the Treasury.

My dear Mr. Secretary:

Pursuant to my request, you have caused to be furnished to the Commission for its confidential use twenty Examiner's Reports of the Condition of the Bank of America, N.T.& S.A., dated February 28, 1931, August 31, 1931, March 31, 1932, November 9, 1932, April 10, 1933 (two reports), September 18, 1933 (two reports), June 22, 1934 (two reports), February 11, 1935 (two reports), October 7, 1935, April 27, 1936, October 14, 1936, April 20, 1937, August 31, 1937 (two reports), and April 28, 1938 (two reports), respectively, and five reports of an examination of Transamerica Corporation dated January 29, 1934, June 30, 1934, January 31, 1935, August 31, 1935, and March 31, 1936, respectively.

From an examination of these reports it appears that all contain information relevant to the proceeding authorized by the Commission under Section 19(a)(2) of the Securities Exchange Act of 1934, as amended, to determine whether the Capital Stock, $2 par value, of Transamerica Corporation should be suspended or withdrawn from listing and registration on the New York, Los Angeles and San Francisco Stock Exchanges. I am attaching a copy of the Commission's proposed order for hearing in the proceedings authorized.

The Honorable
The Secretary of the Treasury. 2.

May I respectfully request your consent to make public official use, as part of the proposed proceedings, of such of the information obtained from these twenty-five reports as bears on the allegations contained in the proposed order or amendments thereof?

Yours faithfully,

William O. Douglas,
Chairman.

UNITED STATES OF AMERICA
BEFORE THE SECURITIES AND EXCHANGE COMMISSION

At a regular session of the Securities and Exchange Commission, held at its offices in the City of Washington, D. C., on the day of November, A. D., 1938.

In the Matter of Proceeding under Section 19(a)(2) of the Securities Exchange Act of 1934, as amended, to determine whether the registration of TRANSAMERICA CORPORATION CAPITAL STOCK, $2 PAR VALUE should be suspended or withdrawn	ORDER FOR HEARING AND DESIGNATING OFFICER TO TAKE TESTIMONY File No. 1-2964

It appearing to the Commission that Transamerica Corporation is the issuer of Capital Stock, $2 par value, and that said Transamerica Corporation registered 11,590,784 shares of such stock on the New York Stock Exchange, the Los Angeles Stock Exchange, and by amendment, on the San Francisco Stock Exchange, all national securities exchanges, by filing on or about August 7, 1937, an application on Form 24 signed for the Corporation by John M. Grant, President, with the said exchanges and with the Commission pursuant to Section 12(b) of the Securities Exchange Act of 1934, as amended, and pursuant to Rule JB1 (now Rule X-12B-1) as amended, promulgated by the Commission thereunder, which application became effective September 10, 1937; and

The Commission having reasonable grounds to believe that Transamerica Corporation has failed to comply with the provisions of Section 12(b) of the Securities Exchange Act of 1934, as amended, the rules, regulations, Form 24 and the Instructions thereto, promulgated by the Commission thereunder, in that the application for registration on Form 24 and the amendments thereto, filed by said Corporation contain false and misleading statements of material

facts, including financial statements of said Corporation and its subsidiaries, which do not correctly reflect the true financial condition of the Corporation and its subsidiaries, all as hereinafter more particularly set forth;

The false and misleading statements which the Commission has reasonable grounds to believe exist in the application on Form 24 and the amendments thereto being more particularly as follows:

I. Item 4(b) and Item 11, Col. G call for certain information with respect to all parents of the registrant. The Instructions to Form 24 define the term "parent" to include a person in control of the registrant and the term "control" is defined to mean "the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise."

The Commission has reasonable grounds to believe that in 1934 general proxies, to remain in full force and effect, unless revoked, for a term of seven years, were delegated to a Committee composed of A. P. Giannini, John M. Grant and L. M. Giannini, that such proxies were voted at the annual meeting of stockholders on March 29, 1934, and were in effect at the date of the application on Form 24, and that at such date these proxies conferred upon A. P. Giannini, John M. Grant and L. M. Giannini the power to direct the management and policies of the registrant. It therefore appears to the Commission that the failure in Item 4(b) and Item 11, Col. G to disclose the committee composed of A. P. Giannini, John M. Grant and L. M. Giannini as a parent of the registrant constitutes an omission of a material fact.

II. Item 28 and Item 29 call for information with respect to the remuneration paid by the registrant and its subsidiaries to certain of its officers, directors and employees.

The Commission has reasonable grounds to believe that on January 20, 1930, the sum of $1,400,000 was placed on the books of Bankitaly Company of

America (then a subsidiary of Transamerica Corporation) to the credit of A. P. Giannini; that of this $1,400,000 all but $792,000 had been paid to A. P. Giannini by September, 1931, at which time counsel for the then existing management of Transamerica Corporation advised that further payment would be illegal; that thereafter subsequent to the change in management in 1932, A. P. Giannini withdrew from the balance of $792,000 the following sums:

1932 -	$134,826.58
1933 -	132,896.92
1934 -	100,596.24
1935 -	351,952.03
1936 -	65,914.28

It appears to the Commission that the failure to disclose these facts in Items 28 and 29 renders registrant's response to these items materially misleading.

III. With respect to the "Balance Sheet" of Transamerica Corporation as of December 31, 1936 -

A. In Schedule VI the figure $1,171,714.56 is set forth as a charge to "Paid-In Surplus" in 1936 under the caption "Charge resulting from cancellations and redistribution of capital stock."

The Commission has reasonable grounds to believe that of this amount $1,124,734.78 represents commissions and other monies paid by Transamerica Corporation to Associated American Distributors, Inc. (at that time a wholly-owned subsidiary of Inter-Continental Corporation which was itself a wholly-owned subsidiary of Transamerica Corporation), in connection with the following activities:

From 1934 to April 1937, Associated American Distributors, Inc. engaged in the business of soliciting orders to purchase Transamerica Corporation stock on the various stock exchanges on which such stock was listed. It does not appear that in any case Associated American Distributors, Inc. solicited orders for the

purchase of capital stock held by Transamerica Corporation. The solicitations were effected by means of contracts entered into by Associated American Distributors, Inc. with independent dealers and through a large number of salesmen employed directly by Associated American Distributors, Inc. Associated American Distributors, Inc. paid commissions to the dealers and to its salesmen for the orders obtained and, to encourage retention of the stock so purchased, additional commissions were paid in proportion to the duration of "placements." To support these activities, Transamerica Corporation paid the following amounts to Associated American Distributors, Inc.: In 1934, $336,857; in 1935, $891,202.17; in 1936, $1,124,724.78. These payments were treated by Associated American Distributors, Inc. as current earnings and were set up on its books as income in the years received.

In the light of the facts set forth above, it appears to the Commission that the commissions and other monies paid to Associated American Distributors, Inc., in the amount of $1,124,724.78 in 1936, represent a current expense properly chargeable to profit and loss and that registrant's treatment of this item as a charge to "Paid-In Surplus" and its failure to reflect this item as a current expense with a consequent reduction in "Earned Surplus" renders the "Balance Sheet" and Schedule VI materially misleading.

IV. With respect to the "Profit and Loss Statement" of Transamerica Corporation -

A. Schedule VI sets forth as charges to "Paid-In Surplus" under the caption "Charge resulting from cancellations and redistribution of capital stock" the figures $495,152.72 in 1934, $891,202.17 in 1935 and $1,171,714.56 in 1936.

The Commission has reasonable grounds to believe that of these figures $336,857 in 1934, $891,202.17 in 1935, and $1,124,724.78 in 1936 represent commissions and other monies paid by Transamerica Corporation to Associated American Distributors,

Inc. (then a wholly-owned subsidiary of Inter-Continental Corporation which was itself a wholly-owned subsidiary of Transamerica Corporation) in connection with the activities described above in paragraph III-A. In the light of the facts and for the reasons set forth above in paragraph III-A, it appears to the Commission that registrant's treatment of these items renders the profit and loss statements for 1934, 1935, and 1936 materially misleading.

V. With respect to the "Balance Sheet" of Inter-America Corporation as of December 31, 1936 -

A. Under the caption "Reserves - For liability and possible loss under outstanding contract of guaranty", and in Schedule V relating to additions and charges to "Reserves", there is set forth the figure $9,302,381.82. The accompanying Note states that this amount relates to a contract of guaranty given to Bank of America N.T. and S.A. in connection with certain assets of the Bank.

The Commission has reasonable grounds to believe that certain facts having a material bearing on this matter are as follows:

In 1931, in the course of an examination of Bank of America N.T. & S.A., the national bank examiners classified certain assets of the Bank in the face amount of approximately $35,214,000 as losses and doubtful accounts of such unsatisfactory character as to require their elimination from the Bank's balance sheet. Under three contracts dated June 26, 1931, December 31, 1931, and February 13, 1932, Bank of America N.T. & S.A. and Corporation of America (both of which were at that time 98.65% owned by Transamerica Bank Holding Company, itself a wholly-owned subsidiary of Transamerica Corporation), entered into agreements which provided that Bank of America N.T. & S.A. "agrees to sell, transfer and set over and does hereby sell, transfer and set over to the Corporation, and the Corporation agrees to purchase and does hereby purchase from the Bank" all such assets. As consideration

for these assets, Corporation of America agreed to pay the face amount of $38,214,000. To secure performance Corporation of America pledged with the Bank the assets purchased together with additional collateral. Corporation of America failed to give effect on its books to the assets acquired by these contracts of purchase and sale or to reflect any direct liability thereunder, but apparently treated the obligation arising under the contracts as a guaranty by setting up a reserve from capital surplus in an amount approximately equal to the aggregate purchase price under the contracts.

In 1933, the three contracts were transferred to Transamerica Bank Holding Company, and Transamerica Bank Holding Company by a resolution of its Board of Directors, dated August 30, 1933, agreed to "assume all of the obligations of Corporation of America under those three certain contracts between said Corporation of America and Bank of America N.T. & S.A." In connection with this transfer, Corporation of America eliminated the reserve set up to cover its obligation under the contracts, then aggregating approximately $34,994,376.57, and a reserve in the same amount appeared on the books of Transamerica Bank Holding Company. At a "Special Stockholders Meeting" on April 20, 1938, the name of Transamerica Bank Holding Company was changed to Inter-America Corporation. From time to time Bank of America N.T.& S.A. reduced the item set up on its books to reflect the obligation of Inter-America Corporation under the three contracts by a write-up of unrelated assets and by various other means as set forth below under paragraphs VII to XI, and XV to XVII, both inclusive.

In the light of the facts set forth, it appears to the Commission that the items "Reserves - For liability and possible loss under outstanding contract of guaranty" together with the accompanying Note, Schedule V, and the "Balance Sheet" are materially misleading:

1. In treating the contracts described and the obligation of Inter-America Corporation thereunder as a guaranty rather than as a purchase and sale which should have been recorded by setting up the assets purchased with a corresponding direct liability for the purchase price and, in view of the character of the assets, a reserve for the losses which would be borne by Inter-America Corporation;

2. In that the amount set up as "Reserves" for this obligation does not reflect the true amount of the liability due nor the possible losses under the contracts;

3. In the use of the term "recoveries" in Schedule V as charges to the "Reserve" originally set up to cover Inter-America's obligation under the three contracts, in that the term "recoveries" fails to indicate and falsifies the true nature of the reduction of Inter-America's obligation by conveying the impression of actual cash recoveries on assets written down, whereas in fact the "recoveries" were accomplished by the write-up by Bank of America N.T. & S.A. of unrelated assets as set forth below in paragraphs VII to XI and XV to XVII, both inclusive.

VI. With respect to the "Balance Sheet" of Transamerica General Corporation as of December 31, 1936 -

A. Under the caption "Investments in Securities of Affiliates" and in Schedule II there is set forth the figure $8,982,180.20 as the carrying value of the investment in the capital stock of Banca d'America e d'Italia.

The Commission has reasonable grounds to believe that certain restrictions imposed by the Italian Government upon the transfer of any profits or other funds from Italy to any other country materially affects this investment. It therefore appears to the Commission that it is materially misleading to set forth the figure $8,982,180.20 as the carrying value of the investment in the capital stock of Banca d'America e d'Italia without indicating the effect that the restrictions referred to above may have upon the investment.

VII. With respect to the "Combined Report of Condition" of Bank of America N.T.& S.A., First National Bank in Reno, Bank of America (California) as of December 31, 1936 -

A. The item "Loans and discounts" under "Assets" and in Schedule E is stated to be $539,899,100.65. This figure includes, among other things, loans in the amount of $304,674,551.73 on "farm lands" and "other real estate." The Commission has

reasonable grounds to believe that the item of $539,899,100.85 includes estimated losses and doubtful accounts aggregating in excess of $8,000,000 and slow accounts in excess of $125,000,000 held by Bank of America N.T.& S.A. Registrant has failed to disclose these losses, doubtful items and slow accounts in the "Report of Condition", either in Schedule E or elsewhere in the registration statement, has failed to provide any reserve for such losses and doubtful accounts, and, in the supplementary data furnished in accordance with paragraph I(5) of the Instructions as to Financial Statements in the Instruction Book for Form 24, has affirmatively stated that there are no losses on loans and discounts not provided for.

B. "United States Government obligations, direct and/or fully guaranteed" and "Other bonds, stocks and securities" are set forth under "Assets" and in Schedule F and Schedule G at $478,019,771.38 and $175,078,108.60, respectively. The Commission has reasonable grounds to believe that these items include United States Government and Municipal securities held by Bank of America N.T.&S.A. which were written up in 1935 and 1936 to the extent of approximately $14,000,000 and which at the date of the "Report of Condition" included an unrealized appreciation of approximately $9,000,000. The registrant has failed to disclose this fact in either Schedule F, Schedule G, the supplementary data furnished in accordance with paragraph I(5) of the Instruction Book for Form 24, or elsewhere in the registration statement.

C. The only provision for a reserve, captioned "Reserve for contingencies", is set at $2,049,928.01. The Commission has reason to believe that $1,971,058.48 of this figure is applicable to Bank of America N.T.& S.A., and that of this $1,971,058.48, approximately $1,460,000 is a reserve for self-insurance. The Commission further has reason to believe that this reserve is misleading because of its inadequacy -

1. In failing to provide for losses and doubtful accounts of Bank of America N.T. & S.A. other than loans on "farm lands" and "other real estate" included in the "Assets" to the extent of approximately $8,000,000;

2. In failing to provide sufficient reserves for the $304,674,581.73 of loans on "farm lands" and "other real estate";

3. In failing to provide for losses on real estate other than bank premises held by Bank of America N. T. & S. A. to the extent of approximately $1,600,000;

4. In failing to provide sufficient depreciation for bank premises, furniture, and fixtures of Bank of America N.T. & S. A.;

5. In failing to provide for losses on bonds and other securities held by Bank of America N.T. & S. A. to the extent of approximately $400,000 and for losses on other asset items to the extent of approximately $300,000.

D. "Undivided profits - net" is set forth at $22,503,612.05. The Commission has reasonable grounds to believe that this figure is false and misleading -

1. In that it includes approximately $9,000,000 of unrealized appreciation resulting from the $14,000,000 write-up in 1935 and 1936 of United States and Municipal securities held by Bank of America N.T. & S.A.;

2. In failing to include a reserve for losses and doubtful accounts, losses on real estate, depreciation of bank premises, furniture and fixtures of Bank of America N.T. & S.A. and losses on securities and other assets in excess of $15,000,000;

3. In that the total of (1) and (2) would wipe out that portion of the "Undivided profits - net" which may be attributed to Bank of America N.T. & S.A. and would require a reduction of the "surplus" account of Bank of America N.T. & S.A.

VIII. With respect to the "Combined Report of Earnings and Dividends" for Bank of America N.T. & S.A., First National Bank In Reno and Bank of America (California) -

A. For the year ended December 31, 1935 -

1. The items "Recoveries on bonds, stocks and other securities" and "Profits on securities sold" are stated to total $14,942,992.67. The Commission has reason to believe that this figure includes unrealized appreciation of approximately $7,000,000 resulting from an approximately $9,000,000 write-up in 1935 of United States Government and Municipal securities held by Bank of America N.T. & S.A., and, in addition, includes a substantial amount of unrealized appreciation resulting from the write-up of certain Transamerica Corporation stock held by Bank of America N.T. & S.A. as collateral for written off loans, and that the inclusion of this unrealized appreciation as income is false and misleading;

2. The provision for loss and depreciation on "banking house, furniture and fixtures" is set at $1,055,223.40. The Commission has reason to believe that this figure is inadequate;

3. The deficiencies set forth in (1) and (2) are reflected in the statement of net profits and undivided profits and render these items false and misleading to an amount in excess of $7,000,000. It appears that the dividends paid in 1935 by Bank of America N.T. & S.A. were more than $3,500,000 in excess of its actual current earnings.

B. For the year ended December 31, 1936 -

1. The item "Recoveries on bonds, stocks and other securities" is stated to be $6,309,400.26. The Commission has reasonable grounds to believe that this figure includes unrealized appreciation of approximately $2,000,000 resulting from a $6,000,000 write-up in 1936 of United States Government and Municipal securities held by Bank of America, N.T. & S.A., and, in addition, includes a substantial amount of unrealized appreciation resulting from the write-up of certain Transamerica Corporation stock held by Bank of

America N.T. & S.A. as collateral for written off loans, and that the inclusion of this unrealized appreciation as income is false and misleading;

2. The report of Earnings and Dividends further appears misleading in that no provision from earnings has been made for doubtful accounts and uncollectible foreign credits held by Bank of America N.T. & S.A. which the Commission has reasonable grounds to believe aggregated approximately $3,700,000;

3. The provision for losses and depreciation on "banking house, furniture and fixtures" is set at $1,082,748.86. The Commission has reasonable grounds to believe that this figure is inadequate.

4. The deficiencies set forth in (1), (2) and (3) are reflected in the statement of net profits and undivided profits and render these items false and misleading to an amount in excess of $6,000,000. It appears that the dividends paid in 1936 by Bank of America N.T.& S.A. were more than $1,500,000 in excess of its actual current earnings.

II. With respect to the "Balance Sheet" of California Lands, Inc., as of December 31, 1936 -

A. Schedule VII relating to "Surplus" sets forth as an addition to "Earned Surplus" under the caption "Profit on sale of assets purchased from affiliate" the sum of $297,918.26. The accompanying Note states that this amount represents the excess of realization over the cost to California Lands, Inc. of an undivided one-half interest in certain notes, parts of notes, deficiency judgments, etc., theretofore written off on the books of Bank of America N.T. & S.A. and purchased from the Bank by Inter-America Corporation and from Inter-America Corporation by California Lands, Inc.

The Commission has reason to believe that certain facts having a material bearing on this matter are as follows:

on February 1, 1933, Bank of America N.T. & S.A. sold to Corporation of America (both of which were at this time 99.65% owned by Transamerica Bank Holding Company, itself a wholly-owned subsidiary of Transamerica Corporation), for a consideration of $250,000, all of the Bank's charged off assets, including those to be charged off up to July 1, 1933. This agreement was transferred for the same consideration to Transamerica General Corporation and then to Transamerica Bank Holding Company (both wholly-owned subsidiaries of Transamerica Corporation). On January 8, 1934, Bank of America N.T. & S.A. sold to Transamerica Bank Holding Company for a consideration of $50,000 all of the assets of the Bank chargedoff from July 1, 1933, to July 1, 1937. At a Special Stockholders Meeting on April 20, 1935, the name of Transamerica Bank Holding Company was changed to Inter-America Corporation.

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On October 1, 1936, Inter-America Corporation transferred the charged off assets covered by the two aforementioned agreements to California Lands, Inc. and Capital Company (both wholly-owned subsidiaries of Transamerica General Corporation which corporation was 100% owned by Transamerica Corporation) for an aggregate consideration of $500,000.

On July 14, 1937, California Lands, Inc. and Capital Company transferred these same assets less $1,486,185.67 collected by Inter-America Corporation (for the account of California Lands, Inc. and Capital Company) to Bank of America N.T. & S.A. for a consideration of $6,500,000. Thus, in 1937, Bank of America N.T. & S.A. paid $6,500,000 for a portion of the same assets which the Bank had originally sold in 1933 and 1934 for $300,000.

As part of this same transaction, Transamerica Corporation entered into an agreement guaranteeing the Bank against loss to the extent of $6,500,000 on the charged off assets repurchased.

In the light of the facts set forth above, it appears to the Commission that the figure $297,918.28 set forth in Schedule VII as "Earned Surplus" under

the caption "Profit on sale of assets purchased from affiliate", together with the accompanying Note, and the inclusion of this amount in the "Earned surplus - deficit" in the "Balance Sheet" are materially misleading.

X. With respect to the "Balance Sheet" of Capital Company as of December 31, 1936 -

A. Schedule VII relating to "Surplus" sets forth as an addition to "Earned Surplus" as "Profit on sale of assets purchased from affiliate" the sum of $297,919.23. The accompanying Note states that this amount represents the excess of realization over the cost to Capital Company of an undivided one-half interest in certain notes, parts of notes, deficiency judgments, etc., theretofore written off on the books of Bank of America N.T. & S.A. and purchased from the Bank by Inter-America Corporation and from Inter-America Corporation by Capital Company.

In the light of the facts set forth above under paragraph IX-A, it appears to the Commission that the figure $297,919.23 set forth in Schedule VII as "Profit on sale of assets purchased from affiliate" together with the accompanying Note, and the inclusion of this amount as "Earned Surplus" in the "Balance Sheet" are materially misleading.

It appearing to the Commission that pursuant to Section 13(a) and (b) of the Securities Exchange Act of 1934, as amended, and Rules KA1 and KA2 (now Rules X-13A-1 and X-13A-2) promulgated by the Commission thereunder, Transamerica Corporation filed on or about June 27, 1938, its annual report on Form 24-K for the fiscal year ended December 31, 1937, signed for the Corporation by John M. Grant, President; and

The Commission having reasonable grounds to believe that said Transamerica Corporation has failed to comply with the provisions of Section 13(a) and (b) of the Securities Exchange Act of 1934, as amended, the rules, regulations, Form 24-K and the Instructions thereto, promulgated by the Commission thereunder, in that the annual report on Form 24-K filed by said Transamerica Corporation contains false and misleading statements of material facts including financial statements of said Transamerica Corporation and its subsidiaries, which do not correctly reflect the true financial condition of the Corporation and its subsidiaries, all as hereinafter more particularly set forth;

The false and misleading statements which the Commission has reasonable grounds to believe exist in the annual report referred to above being more particularly as follows:

XI. With respect to the "Balance Sheet" of Transamerica Corporation as of December 31, 1937 -

A. Note B referring to the items captioned "Marketable Securities" and "Investments in Securities of Affiliates" states that securities having a market value of $1,338,835 and investments in securities of affiliates having a carrying value of $5,636,676.32 were pledged as security "(1) in connection with a contract of guarantee and (2) on an option to purchase certain securities." Note I referring to "Contingent Liabilities" states that "At December 31, 1937, the Corporation was reported as being contingently liabile /sic/ under certain conditions of contract in the amount of $5,838,123.74."

1. The Commission has reasonable grounds to believe that certain additional facts having a material bearing on the "contract of guarantee" referred to in Note B are as follows:

In connection with the transactions described above under paragraph IX-A, in which a portion of the charged off assets of Bank of America N.T. & S.A., originally sold by the Bank in 1933 and 1934 for an aggregate consideration of $300,000, were repurchased by the Bank on July 14, 1937, from California Lands, Inc. and Capital Company for a consideration of $6,500,000, Transamerica Corporation entered into an agreement guaranteeing the Bank against loss to the extent of $6,600,000 on the assets repurchased. The reference in Notes B and I to a "contract of guarantee" apparently refers to this agreement.

In the light of the facts set forth above in this paragraph and in paragraph IX-A, and in the light of the apparent disparity between the actual value of the assets repurchased by the Bank and the amount of recovery guaranteed by Transamerica Corporation, it appears to the Commission that Notes B and I and the "Balance Sheet" are grossly inadequate to reflect the nature of Transamerica's obligation under the contract of guarantee.

2. The Commission has reasonable grounds to believe that certain additional facts having a material bearing on the "option to purchase certain securities" referred to in Note B are as follows:

In July, 1937, Bank of America N.T. & S.A. purchased from Transamerica Corporation 56,600 shares of stock of National City Bank at the then market price of $48 per share. It appears that the stock purchased was set up on the books of Bank of America N.T. & S.A. at $2,716,800, the purchase price, and that payment was made by crediting $2,716,800 to Inter-America Corporation to reduce by that amount the balance of the $35,214,000 obligation originally undertaken by Inter-America Corporation under the circumstances set forth in paragraph V-A. As part of the contract of purchase and sale of National City Bank stock, Transamerica Corporation agreed to repurchase the stock at $48 per share over a period of 5 years at the rate of 11,320 shares each year, and pledged an additional block of 18,400 shares to secure this agreement. It further appears that on December 31, 1937, the market value of National City Bank stock was approximately $27 per share. The reference in Note B to "an option to purchase certain securities" apparently relates to this transaction.

It appears to the Commission that the foregoing transaction was a device employed in an attempt to reduce or eliminate the balance of the obligation originally undertaken by Inter-America Corporation, and that the designation and treatment of this transaction as an "option" and the failure to disclose the additional information set forth above and the circumstances surrounding this transaction renders Notes B and I and the "Balance Sheet" materially misleading.

B. In Schedule VIII the figure $444,000 is set forth as a charge to "Paid-In Surplus" in 1937 under the caption "Contribution to Associated American Distributors (Incorporated) in connection with redistribution of capital stock."

The Commission has reasonable grounds to believe that this amount represents commissions and other monies

paid by Transamerica Corporation to Associated American Distributors, Inc., (then a wholly-owned subsidiary of Inter-Continental Corporation which was a wholly-owned subsidiary of Transamerica General Corporation, itself a wholly-owned subsidiary of Transamerica Corporation) in connection with the activities described above in paragraph III-A.

In the light of the facts and for the reasons set forth above in paragraph III-A, it appears to the Commission that registrant's treatment of this item renders the "Balance Sheet" and Schedule VIII materially misleading.

XII. With respect to the "Profit and Loss Statement" of Transamerica Corporation -

A. In Schedule VIII the figure $444,000 is set forth as a charge to "Paid-In Surplus" in 1937 under the caption "Contribution to Associated American Distributors (Incorporated) in connection with redistribution of capital stock."

The Commission has reasonable grounds to believe that this amount represents commissions and other monies paid by Transamerica Corporation to Associated American Distributors, Inc., (then a wholly-owned subsidiary of Inter-Continental Corporation which was a wholly-owned subsidiary of Transamerica General Corporation, itself a wholly-owned subsidiary of Transamerica Corporation) in connection with the activities described above in paragraph III-A.

In the light of the facts and for the reasons set forth in paragraph III-A, it appears to the Commission that registrant's treatment of this item renders the "Profit and Loss Statement" and Schedule VIII materially misleading.

XIII. With respect to the "Balance Sheet" of Inter-America Corporation as of June 30, 1937 -

A. Under the caption "Reserves - For liability and possible loss under outstanding contract of guaranty", and in Schedule VI relating to additions and charges to "Reserves", there is set forth the figure $8,561,099.82.

In the light of the facts set forth above under paragraph V-A, it appears to the Commission that the items "Reserves - For liability and possible loss under outstanding contract

of guaranty", Schedule VI, and the "Balance Sheet" are materially misleading:

1. In treating the contracts described in paragraph V-A and the obligation of Inter-America Corporation thereunder as a guaranty rather than as a purchase and sale which should have been recorded by setting up the assets purchased with a corresponding direct liability for the purchase price, and, in view of the character of the assets, a reserve for the losses which would be borne by Inter-America Corporation;

2. In that the amount set up as "Reserves" for this obligation does not reflect the true amount of the liability due nor the possible losses under the contracts;

3. In the use of the term "recoveries" in Schedule VI as charges to the "Reserves" originally set up to cover Inter-America's obligation under the three contracts, in that such term fails to indicate the true nature of the reduction of Inter-America's obligations.

XIV. With respect to the "Balance Sheet" of Transamerica General Corporation as of December 31, 1937 -

A. Under the caption "Investments in Securities of Affiliates - Banks" there is set forth the figure $9,374,148.06. In Schedule II it is stated that the investment in the capital stock of Banca d'America e d'Italia is carried on the balance sheet at the amount of $8,982,321.85.

In the light of the facts set forth above under paragraph VI-A, it appears to the Commission that it is materially misleading to set forth the figure $8,982,321.85 as the carrying value of the investment in the capital stock of Banca d'America e d'Italia without indicating the effect that the restrictions referred to in paragraph VI-A may have upon this investment.

XV. With respect to the "Balance Sheet" of California Lands, Inc., as of December 31, 1937 -

A. Schedule IX relating to "Surplus" sets forth as an

addition to "Earned Surplus" under the caption "Profit on sale of assets purchased from affiliate" the sum of $5,595,120.54. The accompanying Note states that of this amount $345,120.54 represents the excess of realization over the cost to California Lands, Inc. of an undivided one-half interest in certain notes, parts of notes, deficiency judgments, etc., theretofore written off on the books of Bank of America N.T. & S.A. and purchased from the Bank by Inter-America Corporation and from Inter-America Corporation by California Lands, Inc., and that the remaining $5,250,000 represents the share of California Lands, Inc. in $6,500,000, which on July 14, 1937, Bank of America N.T. & S.A. agreed to pay to California Lands, Inc. and Capital Company for the right to future recoveries on these same assets. The Note further states that in connection with this purchase Transamerica Corporation entered into an agreement whereby it guaranteed that the Bank would recover the amount of $6,500,000 at an annual rate of $1,300,000.

In the light of the facts set forth above under paragraph IX-A, it appears to the Commission that the figure $5,595,120.54 set forth in Schedule IX as "Earned Surplus" under the caption "Profit on sale of assets purchased from affiliate" together with the accompanying Note, and the inclusion of this amount as "Earned Surplus" in the "Balance Sheet" are materially misleading.

XVI. With respect to the "Balance Sheet" of Capital Company as of December 31, 1937 -

A. Schedule IX relating to "Surplus" sets forth as an addition to "Earned Surplus" under the caption "Profit on sale of assets purchased from affiliate" the sum of $5,595,119.56. The accompanying Note states that of this amount $345,119.56 represents the excess of realization over the cost to Capital Company of an undivided one-half interest in certain notes, parts of notes, deficiency judgments, etc., theretofore written off on the books of Bank of America N.T. & S.A. and purchased from the Bank by Inter-America Corporation and from Inter-America Corporation by Capital Company, and that the remaining $5,250,000 represents the share of Capital Company in $6,500,000 which on July 14, 1937, Bank of America N.T. & S.A. agreed to pay to California Lands, Inc. and Capital Company for the right to future recoveries on these same assets. The Note further states that in connection with this purchase Transamerica Cor-

poration entered into an agreement whereby it guaranteed that the Bank would recover the amount of $6,500,000 at an annual rate of $1,300,000.

In the light of the facts set forth above under paragraph IX-A, it appears to the Commission that the figure $5,595,119.56 set forth in Schedule IX as "Earned Surplus" under the caption "Profit on sale of assets purchased from affiliate" together with the accompanying Note, and the inclusion of this amount as "Earned Surplus" in the "Balance Sheet" are materially misleading.

The Commission having reasonable grounds to believe that Transamerica Corporation has failed to comply with the provisions of Section 12(b) and Section 15(a) and (b) of the Securities Exchange Act of 1934, as amended, the rules, regulations, Form 24, Form 24-K, and the Instructions thereto, promulgated by the Commission thereunder, in that the application for registration on Form 24, the annual report on Form 24-K and the amendments thereto, filed by said Transamerica Corporation contain financial statements of Transamerica Corporation and its subsidiaries, which do not correctly reflect the true financial condition of Transamerica Corporation and its subsidiaries, as hereinafter more particularly set forth;

XVII. It appears to the Commission that the general policy of Transamerica Corporation and its subsidiaries with respect to the manner of creation and treatment of certain "reserves", and the adequacy thereof, is improper in the following respects:

A. In the elimination of "reserves" on the books of certain companies and the creation of fictitious "reserves" in similar or substantially similar amounts on the books of other companies in the Transamerica group for the purpose of utilizing such "reserves" to absorb losses with consequent distortion of the true financial condition of the separate corporate entities and of the entire group as a whole; in particular, with respect to the "reserves" set up on the "Balance Sheets of Transamerica General Corporation as of December 31, 1936, and December 31, 1937, "for real estate losses and contingencies of controlled affiliates" in the amounts of $6,861,814.19 in 1936 and $1,700,050.22 in 1937, and $5,034,583.95 in 1936 and $1,168,002.25 in 1937, for Capital Company and California Lands, Inc., respectively;

B. In that the amount of the reserves provided on the books of the various companies in the Transamerica group is materially inadequate; in particular, the "Combined Report of Condition" of Bank of America N.T. & S.A., First National Bank in Reno, and Bank of America (California) as of December 31, 1936, shows "Loans and discounts" in the amount of $539,899,100.65 which includes, among other things, loans in the amount of $304,674,551.73 on "farm lands" and "other real estate". The only reserve in this "Combined Report of Condition" is designated as "Reserve for contingencies" and is set forth at $2,049,928.01, of which approximately $1,460,000 is a reserve for self-insurance, leaving a balance of $589,928.01. In its "Balance Sheet" as of December 31, 1936, Capital Company carried "Real Estate Held for Resale," at $51,379,652.11, which amount represented "Land, Buildings and Improvements", and as of the same date, California Lands, Inc. carried "Real Estate and Equipment Held for Resale" at $31,357,098.76, which amount included "Land, Buildings and Improvements" at $31,336,825.76, with no reserve on the books of either company applicable to such assets. As of the same date, Occidental Life Insurance Company (a wholly owned subsidiary of Transamerica General Corporation, itself a wholly owned subsidiary of Transamerica Corporation) showed on its books "mortgage loans on real estate" and "balance due on property sold under contract" in the amounts of $8,175,516.57 and $3,856,986.05, respectively, with no reserves applicable thereto. These various items of loans, discounts, and investments in real estate aggregate $634,668,354.12, against which there is an aggregate reserve of but $589,928.01.

C. In that because of the nature of the "reserves" referred to above under A, it was improper to charge losses and expenses against such "reserves";

D. In the treatment of losses and expenses which were not present at the date of a readjustment of accounts but resulted from events occurring subsequent thereto as charges to certain reserves created at the time of such readjustment.

XVIII. It further appears to the Commission that registrant, in its application for registration on Form 24 and in its annual report for 1937 on Form 24-K, has failed to file financial statements for itself and its subsidiaries certified in accordance with the requirements of paragraph II of the Instructions as to Financial Statements in the Instruction Books for Form 24 and Form 24-K, respectively.

It being the opinion of the Commission that the hearing herein ordered to be made is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Securities Exchange Act of 1934, as amended;

IT IS ORDERED, pursuant to Section 19(a)(2) of said Act, that a public hearing be held to determine whether Transamerica Corporation has failed to comply with Section 12(b) and Section 13(a) and (b) of the Securities Exchange Act of 1934, as amended, the rules, regulations and forms promulgated by the Commission thereunder, in the respects set forth above; and if so, whether it is necessary or appropriate for the protection of investors to suspend for a period not exceeding twelve months or to withdraw the registration of said Corporation's Capital Stock, $2 par value, on said New York Stock Exchange, Los Angeles Stock Exchange and San Francisco Stock Exchange;

IT IS FURTHER ORDERED, pursuant to the provisions of Section 21(b) of the Securities Exchange Act of 1934, as amended, that for the purposes of such hearing, Edward C. Johnson, an officer of the Commission, is hereby designated to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records deemed relevant or material to the inquiry, and to perform all other duties in connection therewith authorized by law;

IT IS FURTHER ORDERED, that the taking of testimony in this hearing begin on the 16th day of January, 1939, at 10:00 A.M. in Room 1101, Securities and Exchange Commission Building, 1778 Pennsylvania Avenue, N. W., Washington, D.C. and continue thereafter at such time and place as the officer hereinbefore designated may determine.

By the Commission.

Francis P. Brassor
Secretary

TREASURY DEPARTMENT
COMPTROLLER OF THE CURRENCY
WASHINGTON

ADDRESS REPLY TO
"COMPTROLLER OF THE CURRENCY"

November 23, 1938

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

Gentlemen:

In further reference to your letter of October 11, 1938, this office has given much thought and attention to the matters under discussion between us. We shall be pleased to comply with your request for a meeting with the management of your bank to clarify the issues raised in our letter of September 23, 1938, at any time they may care to come to Washington.

In the meantime, we want to reiterate our position as to the necessity for the correction of certain practices which, for several years, have been the subject of so much criticism in our reports of examination as well as in communications from this office and in interviews with your officers. We must continue to insist upon (1) proper standards of banking practice, (2) a reduction in the percentage of criticised assets, and (3) an increase in capital ratio. We again emphasize the necessity of immediate action to achieve these corrections, including the conservation of earnings.

We can not urge too strongly that you proceed with every power at your command to the end that these tasks be performed effectively and expeditiously.

Very truly yours,

Preston Delano
Comptroller of the Currency

November 22, 1938

Further reference is made to your letter of October 11, 1938 signed by the individual members of the Board of Directors who attended the special meeting of the Board held on September 30, 1938 to consider the letter of September 23, 1938 from the Acting Comptroller of the Currency to the Board of Directors. It is noted that Mr. A. P. Giannini, Chairman of the Board, did not sign the letter although he was present at the special meeting of the Board of Directors of September 30.

The Board of Directors, in its letter, states that Examiner Palmer suddenly appeared before the Board at its meeting on September 13, 1938 with a telegram from the Acting Comptroller of the Currency, which he read to the Board, and in a startling performance, delivered criticisms of the bank on items with respect to which the Comptroller of the Currency had never theretofore communicated formally with the management or the Board of Directors, and that the Board feels that, for such reason, there was not sufficient background to justify the telegram and the criticisms delivered by the examiner.

At 1:30 P.M. on September 13, Examiner Palmer had arranged with the Chairman of the Board to read a telegram from the Acting Comptroller of the Currency to the Board of Directors at 4:00 P.M. on that day, the time fixed for the meeting of the Board and the time set by the Chairman for the appearance of the examiner before the Board. The examiner was required to wait a considerable length of time past the appointed hour before he was permitted to appear before the Board, during which interval the Board of Directors declared a dividend. Even though the dividend may have been declared prior to the reading of the telegram from this office to the Board of Directors by Examiner Palmer, and even though the Board may have had no knowledge of the contents of the telegram at the time of the declaration of the dividend, the meeting of the Board of Directors, at which the dividend was declared, had not been adjourned until after the telegram had been read to, and discussed by, the Board of Directors, and there remained ample opportunity for the Board of Di-

rectors to have reconsidered the action taken by them, had they been so disposed. The fact that the bank's management may have given out a press notice, subject to release, in advance of the declaration of a dividend by the Board of Directors, does not justify the failure of the Board to have reconsidered the action taken by it after the warning contained in the telegram had been read to the Board by Examiner Palmer. This failure is indicative of the fact that the Board has not been fully advised by the management as to the problems of the bank or of the fact that the Board did not exercise its independent judgment, but approved the decision and policy determined upon by the management. Reports of examination have repeatedly criticised the dividend policy of the bank over a long period of time. These reports of examination were transmitted to the bank, addressed to the Board of Directors. The Board is expected to acquaint itself with, and is chargeable with knowledge of, the contents thereof. If the directors had familiarized themselves with the reports of examination they would have known of the repeated criticisms by this office of the highly unsatisfactory asset and capital condition of the bank and of the hazard, under these circumstances, of the policy of paying dividends at an ever-increasing rate. The management of the bank has reviewed reports of examination with the examiner and the services of the examiner are and always have been available to the Board or a committee thereof, to review reports of examination of the bank.

The Board of Directors, in its letter, criticises the manner in which this office transmitted its letter of criticism of September 23 to the individual members of the Board, as a consequence of which, it is asserted, a number of persons not connected with the bank became apprised of all the criticisms which this office asked the Board to consider and answer. This office did take proper precautions to secure the delivery of this letter to the person addressed without its going through the hands of other individuals, and, of course, it can assume no responsibility for the imprudent acts of employees of the directors. The letter of criticism, based upon the report of examination as of April 28, 1938, was sealed in an envelope, on the front of which was placed the name of the director and the words "Personal and Con-

fidential." This sealed envelope was enclosed in a second sealed envelope, addressed to the individual director, and the words "Special Delivery" and "Registered - Return Receipt Required" were placed on the outside envelope. If that precaution was not taken with the letter of September 16, in which was enclosed a copy of the telegram of September 13, this office has genuine regret for that circumstance.

The Directors, in their letter, assert that they do not understand why the management should be criticised for being desirous of publishing large earning statements and that their published earning statements have always conformed to the facts. This office does not object to any national bank publishing its earnings as long as the amount of earnings conforms to the facts and the information published is not misleading to the general public. The office criticism was directed at the fact that the amount of net earnings as revealed in published statements has not conformed with the amount of net addition to profits reported by the bank to the Comptroller of the Currency. The following table illustrates the wide variance between the net addition to profits of the bank officially reported to this office, and the net earnings published for the benefit of the public.

(Amounts in thousands of dollars)

	(1) Net current operating earnings reported to Comptroller	(2) Net addition to profits reported to Comptroller	(3) Published net earnings	Col. (3) as percent of Col. (2)
1934	7,216	(red) 2,638	8,369	
1935	8,164	9,858	16,276	166
1936	11,495	12,452	22,522	180
1937	12,666	12,549	19,203	152
1938- 1st half	6,793	7,988	12,321	154

How is the difference between the figures reported to the Comptroller of the Currency as net addition to profits and reported to the public as net earnings in the above table in any year accounted for? Does the figure published

for the benefit of the public as net earnings fail to make provision for the charge off of losses and the setting up of required reserves for bond amortization and criticised assets? If so, what is the purpose in publishing that misleading figure rather than the net addition to profits, which is the true net earnings of the bank. Comparative figures reveal that the net addition to profits of the bank is not particularly impressive compared with the net addition to profits of other banks. In the fiscal years 1936 and 1937 the net addition to profits of Bank of America was less, in relation to its assets, than the average for all national banks. On the other hand, Bank of America paid out a greater proportion of its profits in dividends than the average of all national banks, or of all national banks in the Twelfth Federal Reserve District.

The Chairman of the Board, in his letter to this office of September 15, 1938, states that the discussions had by himself and by the Vice President and Cashier of the bank with the Chief National Bank Examiner at this office concerning the bank's dividend policy and the position of this office in relation thereto, were in no respect formal and were incidental to discussions of branch permits. The fact remains that in January and August of this year the Chairman of the Board and the Vice President and Cashier of the Bank were definitely apprised of the criticisms of the bank's dividend policy by this office, and of the reasons for such criticism. It is the attitude of the management in subordinating major problems of the bank to its expansion program, with which this office disagrees. Rather than subordinating these problems to the expansion of the bank through additional branches, the unsatisfactory capital conditions of the bank should be the primary consideration of the Board and the management and should be corrected before consideration is given to any further expansion.

The Directors are required to give to the bank that degree of supervision contemplated by law and their oaths of office, and to see that the matters brought to their attention are corrected or adjusted. Unsatisfactory

conditions in banks are due generally to the failure of the directors to direct. While directors are not required to devote their entire attention to the details of the business management of the bank, and may commit routine matters to their duly authorized officers, provided that they retain and exercise a general supervision, they do not discharge the duties imposed upon them by law by reposing the entire administration of the business affairs of the bank to the active management. The national banking laws place upon directors the responsibility for the selection and retention of officers, for defining their duties and for prescribing the manner in which the business of the bank shall be conducted. In short, the responsibility for the proper conduct of the affairs of the bank is placed by law upon the Board of Directors, and that responsibility can not be passed by them to the officers of the bank, to the bank examiners, or to the supervising authority. It is the duty of the Board of Directors to determine the policy of the bank and of the management to execute that policy. The Board is not performing that duty when it permits the management to usurp its prerogatives nor when it gives blanket authority to the management to conduct the affairs of the bank.

The Board, in its letter, comments that the very nature of the powers conferred upon the Comptroller of the Currency should imbue him with the desire, should he contemplate their exercise, to subject himself to the most deliberate restraint. It is the policy of the Comptroller of the Currency to subject himself to the most deliberate restraint in the exercise of the powers vested in him by law, but for some time past it has been becoming more apparent that such restraint on the part of the Comptroller of the Currency has been misconstrued persistently by the management of the bank as condoning its unsafe or unsound practices. It was only as a last resort, in order to bring the situation to the attention of the Board of Directors and to make the management realize its seriousness, that this office felt constrained to adopt the measure of warning the Board of Directors under Section 30 of the Banking Act of 1933, and to use the method chosen to give that warning.

office notes the assurances given by the Board of Directors of its co-operation in every effort to further the progress of the bank. If the contentions advanced and the statements made in its letter of October 11 represent the fully considered and informed opinions of the directors whose names are attached thereto, this office fears that the directors do not yet fully appreciate the situation and that the cooperation which is necessary from the Board in order to work out an effective solution of the problems of the bank is still lacking. The statement in the Board's letter is also noted that it will appreciate this office affording the management of the bank an opportunity to clarify some of the issues raised and that the main criticisms contained in the report of examination are fundamental questions of policy with respect to which the Board feels that the management should be accorded the privilege of direct contact and conference with this office. The management of the bank has always been accorded the privilege of direct contact and conference with this office and has availed itself of this privilege on many occasions. This office will continue to give the management of the bank, the Board of Directors or any committee thereof, or representatives of both the Board and the management, an opportunity to confer with either this office or the office of the Chief National Bank Examiner located in San Francisco, at any time. It is felt, however, that because of the attitude of the management in refusing to recognize the fundamental problems of the bank and attempting to speciously refute the criticisms contained in the report of examination, such conferences may be destined to be as futile as have been past conferences with the management, unless the Board, or their representatives, are prepared to present a constructive program looking toward the solution of the problems of the bank.

Ever since the bank was converted into the national banking system this office has sought to cooperate with the directorate and management of the bank, but has found cooperation impossible due to the arbitrary and antagonistic attitude of the management towards well-founded criticism and to the attitude of the management towards supervision. An examination of a

bank is made for the purpose of informing the supervisory authority of the bank's condition, so that that authority may perform the duties imposed upon him by law. Copies of the report of examination of a bank are sent to its Board of Directors to disclose to the board the bank's condition, and to indicate to the bank's management those problems of the bank that require the management's special attention. The examination of a bank is not made for the purpose of complimenting the bank's management, and if any criticism is necessary to advise the Comptroller of the Currency and the Board of Directors as to the bank's condition, the examiner is required to make such criticism and to continue the same until it has been corrected. The primary function of a bank supervisory authority is the protection of the funds of depositors. A bank supervisory authority does not consider a bank from the viewpoint of its being the principal earning asset of a stockholder, either corporate or individual. It is just as important for the directors of a bank to be thoroughly familiar with its affairs in order that they may discharge their legal responsibilities as it is for the supervisory authority to be accurately informed concerning the condition of the bank in order that he may perform those obligations which the law imposed upon him. The problems of the bank can be more quickly cured if the management of the bank would cooperate with this office and its examiners to that end.

This office notes the Board's statement that it believes that the chief difficulty between the examiners and the bank is the examiner's low opinion of real estate as security. The report of examination does not disclose any warrant whatsoever for the Board's conclusion that the examiners have a low regard for real estate, as such, as security for obligations. No criticism has been made of the conforming real estate loans being carried by the bank. Of a total of $304,000,000 of real estate loans in the bank, approximately $250,000,000 are not classified by the examiner. The criticism is directed at the large volume of distressed loans from which [illegible],000,000 of real estate has been acquired since 1927, which is [illegible] of proporation to the total outstanding real estate loans.

the real estate loans classified by the examiner, $14,004,000 represent distressed items, of which amount real estate loans aggregating $7,177,543 are under actual foreclosure, as shown by the foreclosure records of the bank, and the remainder represents probable foreclosures according to the field examiners. The foregoing indicates that the bank has in no way reached the end of its real estate problem, and that future acquisitions under foreclosure will continue the present frozen real estate concentration.

The Board also takes exception to the use of the annual normal earnings of the bank for the five year period from 1933 to 1937 as a basis for the criticism of its dividend policy, and states that it does not appear reasonable for the examiner to use the years 1933, 1934 and 1935, the three lean years in the cycle of depression, in calculating the annual normal earnings of the bank. The examiner used the same period in the examination of your bank that is used in the examination of all national banks, as provided by the schedule on page 4 of the examination report form. The Board further states that the losses charged off by the bank since 1932 have resulted from the greatest period of inflation and deflation that the world has experienced. An analysis of the earnings of the bank from the date of its conversion into the national banking system in 1927 to the end of the year 1937, which includes both an inflationary and a deflationary period, indicates that the examiner, in using the five year average, has used figures more favorable to the bank, as the annual average net operating profit for the period 1927 to 1937 is approximately $1,500,000 less than the figures used by the examiner. The use of the average of the past five years is considered more reasonable than the use of the average of the years 1936 and 1937, the two most favorable years in the history of the bank, as suggested in the Board's letter.

The Board, in its letter, states that it had instructed its Secretary to communicate with this office with a view to formulating a plan for keeping satisfactory minutes of the proceedings of the Board, which he has done. No set rule or formula can be developed relative to a method of keeping the minutes of the Board. The statute requires specific approval by the Board of Directors in certain instances and all matters of policy, reports of committee, and matters of major importance should be specifically approved by the Board of Directors. In addition

thereto, should be in sufficient detail to indicate that the directors are [illegible] and specifically advised on the affairs of the bank. The minutes [illegible] a permanent record of the proceedings of the Board and should disclose the approval or disapproval by the Board of acts of its committees and of the [illegible]. Other large national banks with a large volume of transactions do not [illegible] any physical limitations to recording the proceedings of the Board of Directors and its committees in sufficient detail to provide adequate record of the Board's determination of matters of policy and of its position on matters of major importance to the bank.

The Board further states that it is keeping close watch on the economic trend and earnings and that this office may rest assured that should a change in the future economic trend adversely affect the earnings, their dividend action will be regulated accordingly. Sound banking practice requires that the earnings of the bank be conserved, not only to provide against possible future adverse conditions, but first to eliminate from the assets of the bank the results of part adverse conditions. This should be accomplished normally during periods of prosperity by the elimination of such assets through the proper application of earnings instead of dissipating such earnings by consistently increasing the dividend rate from the rate of 6% in 1933 to the rate of 19.2%, which was the basis of the last dividend payment. The elimination of such assets should not be accomplished by resorting to such unsound measures as recapturing losses by writing up previously charged off assets as collateral values appreciate and by writing up securities and applying the proceeds of such write-up to the forgiveness of the debts of solvent affiliates of Transamerica Corporation. It is expected that the Board of Directors will hereafter establish a dividend policy consistent with sound banking principles and will conserve the bank's earnings until such time as the capital structure is adequate and the asset condition of the bank is satisfactory.

Reference is also made to the letter of the Chairman of the Board of Directors of the bank addressed to the Acting Comptroller of the Currency under date of May 6, 1938. The Chairman of the Board, in his letter, claims that the examiner has deliberately concocted problems to enable him to present a warped picture of the condition of the bank by an exaggeration of

problems and underestimation of progress; that because of certain gross errors and lack of understanding on the part of the examiner, the management of the bank is being subjected to undue criticism and malicious and slanderous harassment; that the progressive improvement in the condition of the bank since the Chairman's return to management in 1932 is minimized by undue criticism; that the management of the bank has overcome obstacles that were generally viewed as insurmountable; that economic conditions since 1932 have not favored improvement in the condition of the bank; and that the problems of the bank can be more quickly cured if the bank receives a slight degree of cooperation from some of the government agencies and representatives concerned, instead of being subjected to the critical and highly technical tactics presently employed, which condition tends to absorb too great a proportion of the time and effort of the bank's management. ¶ This office does not concur in the opinion of the Chairman of the Board that there have been misrepresentations of the condition of the bank in the reports of examination, or that there has been any exaggeration therein of the problems of the bank, or any underestimation of its progress in solving them. Nor does the office agree that the management of the bank has been subjected to malicious and slanderous harassment and has overcome obstacles that were generally viewed as insurmountable. If the obstacles had been generally viewed as insurmountable the bank would not have been licensed to reopen after the banking holiday in 1933. Nor does this office agree that economic conditions since 1932 have not favored improvement in the condition of the bank. If such had been the case, national banks throughout the country would not have shown the general improvement in their condition, due in a large part to prevailing economic conditions, that comparative figures discloses. The improvement in the condition of your bank does not exceed or even compare favorably with the improvement in the condition of many other national banks, more specifically those of similar size. In the case of your bank, the extent of the assistance offered by improved economic conditions can readily be appreciated from the fact that the profits to the bank during the period from the sale of securities alone has exceeded $40,000,000, or a sum

equal to approximately 72% of the net operating profits of the bank during that period, without taking into consideration the losses averted and recovered by the enhancement in the value of securities, as well as the improvement and increased activity in the real estate market.

It is noted that the Board asserts that the average loss experienced on the average total of outstanding loans made since 1932, when the present management took control, has been only 1/20 of 1% per annum, or 3/10 of 1% for a six year period which may be taken as a fair indication of the extent of future losses which may be expected to result in a charge against current earnings. The further statement is made that losses in the amounts charged off since 1932 may properly be considered non-recurrent. This office is unable to find any major criticism of the examiner directed at the general character of the loans now being made. The criticism is specifically directed at the large volume of criticised loans that have been in the bank for years which neither the interim nor the present management has corrected or collected, and from which source the major portion of the losses are developing. From the date of conversion of the bank into the national banking system to June 30, 1938, the total of losses charged off was approximately $82,000,000, while the net operating profit for the same period was approximately $88,000,000. Losses shown in the report of examination as of April 28, 1938, which was not delivered to the bank until subsequent to the filing of its report of earnings and dividends as of June 30, 1938, shows additional losses of approximately $8,000,000. It is apparent that the losses of the bank have exceeded its net operating profit from 1927 to June 30, 1938. The position is taken that in the future the bank's earnings will progressively increase but the bank's losses will be non-recurrent.

A more conservative and reasonable position would be the opposite, namely, that the large bond profits of the past few years will be non-recurrent and that there will be a continuous necessity for charging off developing losses.

The Chairman of the Board further states in the Nov. Letter that he came back into the Bank of America picture for the express purpose of bringing the institution

out of the sore predicament in which the former management had placed it. Who constituted the so-called former management referred to by the Chairman of the Board? What was the so-called sore predicament in which the bank had been placed by it? This office has understood that the management of the bank has, since its conversion in 1927, always been selected with the approval of the present Chairman of the Board. It has understood, further, that, for practical purposes, the management of the bank since 1932 also was the management of the bank prior to 1930, and is the same management that laid the foundation for the present underlying weakness in the bank, in that such management acquired most of the currently criticised assets through the original acquisition of the banks from which these assets emanated. Apparently the Chairman of the Board refers to the management of the bank's affairs in the years immediately preceding his return to the Bank of America picture in 1932. During the year 1929 Mr. A. J. Mount became President of the bank and continued as such until the early part of 1932. Prior to Mr. Mount's election to the Presidency of the bank he had been its Senior Executive Vice President and was reputed to have been the personal selection of the Chairman of the Board for the office of President. The records further reveal that, since the bank was converted into the national banking system in 1927, the present Chairman of the Board and the present President of the bank, together with Directors W. E. Blauer, Dr. C. E. Cagliari, Paul B. Fay, George J. Giannini, A. J. Gock, Marshal Hale, C. N. Hawkins and A. E. Sbarboro, have been continuously or intermittently directors of the bank. In addition, Directors C. H. Baker, Leon Bocqueraz, A. deBretteville, Fred L. Dreher, F. W. Flint, Jr., Dr. A. H. Giannini, John E. Marble, and J. M. Schenck have been directors of the bank continuously since Bank of America of California consolidated with Bank of Italy National Trust and Savings Association in 1930. Many present executive officers of the bank have continuously served the bank in executive capacity since 1927. There is no indication that the interim management had any detrimental effect upon the past or present condition of the bank. During the years 1930 and 1931 the "Inter-America Corporation contracts" were negotiated, through which losses and unsatisfactory assets in

the aggregate amount of $35,213,902 were taken out of the bank and the bank's position further improved through charge off of losses aggregating $13,315,700 against the undivided profit account. An analysis of the reports of the bank from the date of its conversion into the national banking system in 1927, through the year 1937, discloses that the present problems of the bank are more attributable to the policies of its present management than to the policies of its interim management. Is it possible that the Chairman of the Board has confused the interim management of the bank with the interim management of Transamerica Corporation?

Both the Chairman and the Board, in their respective letters, claim that approximately $35,000,000 of the losses charged off since 1932 originated in the Merchants National Trust and Savings Bank of Los Angeles, the elimination of which is claimed to be one of the major accomplishments of the present management. Were the losses resulting from the acquisition of Merchants National Trust and Savings Bank charged off since the Chairman returned to the bank's management in 1932, or were they eliminated by sale to Transamerica Corporation in 1931 through the medium of the "Inter-America Corporation contracts" by the interim management, now charged with having placed the bank in a sore predicament? Our records reveal that the Merchants National Trust and Savings Bank of Los Angeles was originally acquired in 1928 by Transamerica Corporation interests following an examination made by its own representatives, at which time the present Chairman of the Board and the present President of the bank were President and Executive Vice President, respectively, of Transamerica Corporation. If it was through this transaction that an asset loss of $35,000,000 was suffered, then by what line of reasoning can this loss be charged to the interim management of the bank during the years 1930 and 1931? Transamerica Corporation acquired these losses in 1928, liquidated them at face value by sale in 1928 to the Bank of America of California, which latter became a part of the present bank through consolidation. Transamerica Corporation subsequently repurchased these losses from the bank under the Inter-America Corporation contracts. Then by what line of reasoning can it be contended that Transamerica Corporation was in no way responsible for the original acquisition of this [illegible] losses; that the "Inter-America Corporation contracts, regardless of [illegible] wording to the contrary, were merely guarantees; that Transamerica

...ation only pledged its credit to the Bank; and that the Bank is, therefore, ...fied in the forgiveness of the indebtedness of a solvent corpora... ...at the expense of further weakening its asset condition and its capital ...structure? If the major portion of the losses charged off since the Chairman re... ...to the Bank of America picture in 1929 arose out of the Merchants National ... and Savings Bank transaction in 1929, as claimed, then what management of ... bank is responsible for the losses charged off in 1930 and 1931, and for the ... provided for through the "Public Liquidation Corporation contracts", aggregating in excess of $42,500,000?

The Chairman of the Board, in his letter, states that he is hopeful that fair-minded and unbiased authorities in Washington will shortly see to it that proper consideration is given to the affairs of the bank and proper treatment afforded the institution; that it is not the Chairman's disposition to relax his efforts in the face of unwarranted harassment; and further, that he can not and will not relax his efforts in behalf of the institution while an unfriendly attitude exists in Washington. The attitude of the office of the Controller of the Currency toward the Bank of America is and always has been fair and impartial. This office does not consider that the setting forth of bona fide criticisms in reports of examination or that positions taken by this office in its supervisory capacity give any basis for the statement that the bank and the management have been subjected to unwarranted harassment.

This office notes the reference in the Moore's letter, to certain correspondence, designated Exhibit 65, concerning Messrs. Bell, Nolan and Hellman. Reports of Mr. P. C. Reed, Assistant Auditor of Bank of America, concerning alleged irregularities and violations of the criminal provisions of the National Banking Act on the part of Messrs. Bell, Nolan, Hellman and others, were transmitted by the bank to the Chief National Bank Examiner in San Francisco, and by him, in turn, transmitted to this office. The reports of your auditor were promptly transmitted by this office to the Attorney General of the United States, who is charged by law with the determination as to the prosecution of matters of this kind, for such action as he may have

deemed to be appropriate. Although the reports showed circumstances which might tend to indicate that certain of the officers of Bank of America had engaged in irregular transactions involving the borrowing of money, nevertheless, the reports did not give clear or concise proof of any such irregularities. Most of the alleged irregularities and violations arose out of transactions as to which the Statute of Limitations had run at the time the reports were turned over to the examiner, or which occurred with some of the State banks which subsequently merged or consolidated with Bank of America. The Chairman of the Board, who wrote the letters of November 21, 1932 and November 26, 1932 and June 10, 1933 included in Exhibit #5, was advised on June 30, 1933 by the Chief National Bank Examiner in San Francisco of the reference of the matters by this office to the Attorney General and, on July 7, 1933 the Chairman of the Board communicated directly with the Attorney General about the matter.

The Board, in its letter, states that it is a general rule of the bank to subject commercial and savings accounts, whether dormant or active, to service charges, and that such charges are supported by an agreement which the depositor signs. It is the long established position of this office that the only justification for making a service charge upon an account is to cover the expense of caring for that account and such charge should not exceed a fair relationship to the actual cost of the service rendered. A dormant account does not entail any material expense and there is no objection to transferring it to an inactive ledger. A dormant account is the property of the depositor no matter how long it remains in the bank, and must be carried by the bank as a deposit as long as it exists, unless the depositor consents to the imposition of a service charge. The forms attached to the opinion of Mr. Parrott with reference to the legality of service charges made by the bank, indicate consent on the part of the depositor to the imposition of a service charge upon his active account, but the bank would probably have serious difficulty in showing, from the language of such forms, a consent by the depositor to

the imposition of a service charge upon his dormant account. Deposits made under deposit agreements which do not specifically give to the bank the right to make service charges, cannot now be subject to such charges, unless and until such deposit agreements are so modified. For the bank to make a improper service charge against a dormant account, credit the amount thereof to its profits results in the falsification of records of the bank and in the bank's statement incorrectly reflective of the liabilities of the institution, with a consequent possible criminal liability upon the bank officials for making a false report. Any service charges heretofore made contrary to the foregoing must be promptly restored to the accounts of the depositors.

Reference is made to the information, submitted in comparative form, showing changes in certain conditions of the bank between March 31, 1932 and April 28, 1933, and which the Board of Directors claims is indicative of the progress made by the bank under the present management. The figures submitted in the Board's letter in connection with non-conforming real estate loans are at variance with the figures contained in the reports of examination. The non-conforming real estate loans as of March 31, 1932 amounted to $89,009,000 and not to $97,423,000 as stated in the Board's letter, and as of April 28, 1933 amounted to $58,093,000, of which $18,613,000 were illegally acquired, and not to $27,718,000 as stated in the Board's letter. Consequently, the decrease between the said dates amounted to $30,916,000 and not to $39,705,000. What portion of the illegal and non-conforming real estate loans of the bank as of March 31, 1932 and as of April 28, 1933 were acquired by purchase from other banks? What portion of the progress claimed is represented by the acquisition of "Other Real Estate" through foreclosure of illegal and non-conforming real estate loans, the major portion of which real estate is now represented by the indebtedness of California Lands, Inc. and Capital Company to the bank? Certificates authorizing the establishment of branches of your bank are granted by this office with the understanding that all assets acquired by purchase from other banks, which are illegal or inadmissible, will be eliminated. Consequently, all inadmissible assets, including illegal real estate loans and illegally acquired stock and bonds so acquired and now held by your bank, should immediately be eliminated from its assets for cash.

It is noted that the Board gives credit to the management for a decrease of $15,718,000 in the aggregate of loans dependent upon Transamerica Corporation stock. This sum included $2,305,862 of loans now secured by and dependent upon Bank of America stock which was substituted as collateral when the number of outstanding shares of stock of Transamerica Corporation was reduced and shares of stock of Bank of America distributed in the form of an asset dividend by Transamerica Corporation. What portion of this decrease was occasioned by the various changes made in the method of calculating the dependency of loans upon the security of Transamerica Corporation stock? What portion of this decrease is represented by the charge off of loans secured by stock of Transamerica Corporation? What portion of this decrease is represented by actual cash collection?

By reason of the fact that this office does not have available to it information as to what items make up the classified loans to affiliates as of November 9, 1932, or loans to affiliates classified adversely, as of the same date, it can not be determined to what extent the decrease claimed for the present management by the Board represents an actual correction. To what extent are the corrections claimed represented by cash reductions and to what extent are they represented by assets still in the bank, but in different form?

With reference to unlawfully acquired bonds and securities, the attention of the Board is directed to the fact that the bond account of the bank includes twenty-three separate unlawfully acquired issues having a book

value of $1,384,358. In addition, the bank illegally purchased from Transamerica General Corporation on March 14, 1935, 1,800 shares of stock of National City Bank of New York, having a book value of $79,600 and a market value at the time of the last examination of $41,850. This stock acquisition has been set up since its acquisition in reports of examination as illegal and the management has been repeatedly requested to remove these shares of stock from the assets of the bank. The Board's attention is also directed to the illegal purchase from Transamerica Corporation on July 14, 1937 of 56,600 shares of stock of National City Bank of New York for a consideration of $2,716,800. The last report of examination revealed a loss of $973,000 therein. All illegally acquired stocks and bonds should be removed from the assets of the bank for cash. The bond account of the bank further shows the acquisition of sixty issues of bonds having a rating of B- or less, carried on the books at $6,188,021 and thirty issues of convertible bonds carried on the books at $2,619,541. The legality of the acquisition of these issues is questioned, and they should be disposed of. Detailed information in connection with the foregoing may be found in the Administration Department report on Page 6, inserts A, B, C, and 1 - 52, inclusive.

There are three major problems in your bank. The first two have to do with the asset condition of the bank and the policy of the management in relation thereto. The third has to do with the failure to allocate sufficient of the bank's earnings to provide for criticised assets and an adequate capital structure, as well as the dissipation of such earnings through the payment of excessive dividends.

The Board, in its letter, states that it does not believe that the items designated in the report of examination as Guaranteed Loans $5,524,096; Option to Purchase $2,716,800; California Lands, Inc. $12,051,526; and Capital Company $27,687,820, totaling $47,980,242 represented extensions of credit by the bank, and that, therefore, these items should not be included in the report as part of the concentration in the bank's assets of direct and indirect obligations of Transamerica Corporation. This office does not concur in that position. The circumstances surrounding these transactions and the liability of the parties thereto do not support the Board's position. In the opinion of this office, these items constitute extensions of credit and are properly so shown in the report of examination. The elimination of this concentration along constructive lines of actual asset improvement and cash reduction is necessary in the interest of sound banking, instead of the mere change of obligor or form of obligation or the reacquisition by the bank of unsatisfactory or illegal assets.

In 1931 the bank was faced with the necessity of eliminating certain assets classified as "Loss" and "Doubtful" and otherwise unsatisfactory, in order to rehabilitate its capital structure, or the shareholders were faced with the necessity of making contributions to the bank for the same purpose. Substantially all of the stock of Bank of America National Trust and Savings Association was then owned by Transamerica Corporation, which was, therefore, the shareholder to which the bank had to look for assistance. To relieve the bank of such assets, a wholly owned subsidiary of Transamerica Corporation purchased from the bank, under three seperate contracts, dated June 26, 1931, December 31, 1931 and February 15, 1932, now known as the "Inter-America Corporation contracts", certain notes, portions of notes, obligations, claims, demands, causes of action, equities, future appreciation in bond and other written-down accounts, and recoveries on losses and other assets, together with certain mortgages, deeds of trust, collateral on other security securing the same, and all the right, title and interest of the bank therein and thereto, for a consideration of $35,213,902. The payment of this purchase price in accordance with the terms of these contracts was secured by the assets sold by the bank and by the pledge of certain listed and unlisted securities.

Trust ... addition to the above transactions, Bank of America National ... Association entered into an agreement on February 1, 1933 with a ... owned subsidiary of Transamerica Corporation, whereby the bank sold to ... subsidiary all of the bank's charged off assets including those to be ... off in the future up to July 1, 1933, for a consideration of $250,00... Did the Board of Directors approve this sale for such consideration? On Janua... 1934 the bank entered into an additional agreement with a wholly owned subsidiary of Transamerica Corporation whereby the bank sold to that subsidiary all of the bank's charged off assets from July 1, 1933 to July 1, 1937 for a consideration of $50,000. Did the Board of Directors approve the sale of this group of charged off assets for such consideration, which included those to be charged off in the future between the dates of January 2, 1934 and July 1, 1937?

These two contracts for the sale of charged off assets, dated February 1, 1934 and January 2, 1934 are hereinafter designated as the "three hundred thousand dollar contracts."

The Board's attention is directed to the manner in which contracts dated June 26, 1931, December 31, 1931 and February 11, 1932, known as the "Inter-America Corporation contracts", have been eliminated, as fully set forth in detail under the "Large Line"schedule in the Consolidated Report. The sum of $14,500,000 was credited upon the "Inter-America Corporation contracts" through charge off and bond write-up. The sum of $2,716,800 was credited upon the "Inter-America Corporation contracts" in consideration of the transfer to the bank by Transamerica Corporation, then obligated under those contracts, of 56,600 shares of stock of National City Bank of New York. The sum of $1,486,185 was credited upon the "Inter-America Corporation contracts", which sum was realized by California Lands, Inc. and Capital Company out of the liquidation of the charged off assets described in the "three hundred thousand dollar contracts." The bank subsequently repurchased from California Lands, Inc. and Capital Company the residue of such charged off assets for an additional sum of $6,500,000 under a guarantee by Transamerica Corporation as to the liquidating value of such assets. Of the sum of $6,500,000 paid by the bank to California Lands, Inc. and Capital Company to repurchase from those companies its previously charged off assets, the sum of $5,3[illegible],287 was made available to Transamerica Corporation through a series of inter-company book entries, and was credited upon the "Inter-America Corporation contracts." Why was the payment of $1,486,185 by Capital Company and California Lands, Inc., realized out of the liquidation of charged off assets purchased under the "three hundred thousand dollar contracts" applied as a credit on the "Inter-America Corporation contracts when those companies were not obligated thereon? Was it sound banking for the bank to have sold these charged off assets for $300,000 when the subsequent owner of such assets, a wholly owned subsidiary of Transamerica Corporation, realized a minimum of $8,000,000 out of the liquidation thereof and will further participate, until 1947, on a parity with the bank in future recoveries on such charged off assets in excess of $6,500,000? The credits of $14,500,000 on

the "Inter-America Corporation contracts" through charge off of $500,000 and bond write-up of $14,000,000 were unwarranted voluntary partial reductions by the bank's management on the purchase price agreed to be paid by a reputedly solvent corporation for assets sold by it to that corporation, under the terms of contracts additionally secured by the pledge of collateral. What legal authority had the bank to purchase the 56,600 shares of stock of National City Bank of New York? Why are not the formerly charged off assets repurchased from Capital Company and California Lands, Inc. carried as individual assets on the bank's books. Do all the assets so repurchased conform with legal requirements? Why should Transamerica Corporation participate until 1947 on a parity with the bank in all recoveries above $6,500,000 on assets repurchased by the bank? At the time the bank paid $6,500,000 to Capital Company and California Lands, Inc. to repurchase the residue of its previously charged off assets and at the time that it illegally purchased 56,600 shares of stock of National City Bank of New York for $2,716,800, the entire indebtedness of Transamerica Corporation under the "Inter-America Corporation contracts" was adequately secured by listed collateral and was not classified by the examiner in his report of examination. Did the Board of Directors approve the release to Transamerica Corporation of the listed collateral held to secure the balance due the bank under the "Inter-America Corporation contracts"?

The Board, in its letter, claims that through the "Guaranteed Loans" and "Option to Purchase" it has materially strengthened the bank's position by providing a definite program of liquidation, whereas, it is claimed, such program did not exist under the "Inter-America Corporation contracts." The "Inter-America Corporation contracts" speak for themselves and reveal that in each case there was a definite maturity of one year from the original date of each contract. Subsequent extensions of maturities by the bank were made annually to December 31, 1935. During December, 1935, the maturity of the contracts was further extended to December 31, 1938. Had performance in accordance with the terms of any of these repeatedly extended contracts been demanded, they could have been removed from the bank by not later than December 31, 1938, whereas under the terms of the "Guaranteed Loans" and the "Option to Purchase", the final liquidation of the substituted assets is extended to July 14, 1947. The assets repurchased by the bank from Capital Company and California Lands, Inc. for $6,500,000 under the guaranty by Transamerica Corporation should be eliminated from the bank immediately for cash.

The original contracts under which the bank disposed of its "Other Real Estate" were contracts made with National Bankitaly Company, and provided for the down payment of 25% of the book value of the real estate sold, together with 6% interest on unpaid balances due under the contract, payment in full for the real estate sold within a period of five years, including the payment of taxes. The National Bankitaly Company was wholly owned by the shareholders of the bank. Subsequently, these contracts were cancelled and new contracts entered into between the bank and Capital Company and California Lands, Inc., under the terms of which 10% of the value of the property was paid to the bank on account of the purchase price, and 10% was due each year thereafter. Under these contracts the rate of interest on the unpaid balance was reduced from 6% to 1% and the payment of taxes on the real estate was assumed by the bank. Under these contracts Capital Company and California Lands, Inc. were obligated to purchase real estate acquired by the bank under foreclosure, at the cost thereof to the bank regardless of its actual value. These Capital Company and California Lands, Inc. contracts were subsequently cancelled and new contracts, now in effect, entered into between the same parties, whereby no down payment was required and 10% per annum was to be paid each year after the second year after acquisition. The bank retains title to the real estate until it is sold by California Lands, Inc. and Capital Company. The bank agrees to accept at face value cash, notes, or sales contracts received by these corporations in payment for the real estate sold by them. The cost of the rehabilitation or improvement of the properties covered by the contracts by these corporations is added to the unpaid balance due from them under the contracts. All real estate covered by these contracts is carried by the bank on its books as "Real Estate Sales Contracts" and shown as "Loans and Discounts" in published reports of condition. The amount of real estate covered by these contracts has increased from 2% of the bank's book capital structure of $97,419,543 as of June 30, 1934, the date of the first examination of the bank subsequent to the contracts of April, 1934 between Bank of America and Capital Company and California Lands, Inc.,

to 35% of the bank's book capital structure of $112,420,311 as of April 28, 1938. In 1935 the basis of determining the sale price of such properties to the companies was changed so as to eliminate accrued interest and foreclosure cost, and the properties were sold by the bank at appraised value or bid-in-price. The amount received by the bank in the case of sale by the companies of the real estate covered by these contracts is credited to the total amount due to the bank under the contracts, with the result that some properties can be carried indefinitely by the companies and the liability of the companies to the bank for the sale price of such properties could be carried indefinitely in loans and discounts.

The national banking law provides that no national bank shall hold possession of any real estate, except such as shall be necessary for its accommodation in the transaction of its business, for a longer period than five years. The terms and conditions of the original contract for the sale of the bank's "Other Real Estate" to National Bankitaly Company were consonant with the policy of the law. Were the terms and conditions in the subsequent contracts revised so that the bank could hold its real estate for longer periods than the law permitted in its loans and discounts, or for the purpose of enabling the bank to hold its real estate without showing it in its published statements as "Other Real Estate?"

California Lands, Inc., a corporation wholly owned by Transamerica General Corporation, was indebted, directly and indirectly, to Bank of America to the extent of $12,402,542. California Lands, Inc. owns, operates, leases, and sells farm properties for its own account and properties acquired under foreclosure for the account of Bank of America and subsidiaries of Transamerica Corporation. The contracts now in force between California Lands, Inc. and Bank of America were executed on April 4, 1934. Since that date, California Lands, Inc. has acquired additional real estate under these contracts to the extent of $8,322,207, and has reduced its indebtedness to the bank under the contracts to the extent of $7,435,335 through resale of real estate of that account. As of April 30, 1938, Bankamerica Company was indebted to California Lands, Inc. to the extent of $7,823,000, secured by 61,281 shares of Bank of America stock; California Lands, Inc. had an investment of $660,000 in 15,000 shares of Bank of America stock; and there was due to California Lands, Inc.

from Transamerica General Corporation $2,553,899. Why should the funds of California Lands, Inc. which it could well utilize to reduce its liability to Bank of America amounting to $12,402,542 be tied up in a large loan to a corporation in the Transamerica Corporation group, secured by the stock of the bank, as well as in a large investment in the stock of the bank, when its losses on real estate acquired from the bank under contract are made good to California Lands, Inc. by another corporation in the Transamerica Corporation group? An examination of the minutes of the proceedings of the Board of Directors during the last examination failed to disclose an approval by the Board of Directors of the sale of "Other Real Estate" of the bank to California Lands, Inc. under these contracts. Did the Board of Directors approve such sales under such contracts?

Capital Company, a corporation wholly owned by Transamerica General Corporation, was indebted, directly and indirectly, to Bank of America to the extent of $29,130,861. Capital Company owns, operates, leases and sells urban properties for its own account and properties acquired under foreclosure for the account of Bank of America and subsidiaries of Transamerica Corporation. The contracts now in force between Capital Company and Bank of America were executed on April 4, 1934 and subsequent dates. Since April 4, 1934 Capital Company has acquired additional real estate under these contracts to the extent of $35,254,457 and has reduced its indebtedness to Bank of America in the amount of $23,158,410 through resale of that amount. As of April 30, 1938 Capital Company had an investment of $5,000,000 in 10,000 shares of Class "B" non-voting stock of Western States Corporation of the par value of $2,500,000; and there was due to Capital Company from Transamerica Corporation the net amount of $7,102,522. Why should the funds of Capital Company, which it could well utilize to reduce its liability to Bank of America amounting to $29,130,861 be tied up in a large investment in the non-voting stock of Western States Corporation, which purchased Bankamerica Co., ~~a former securities dealing affiliate of Bank of America~~, and First National Corporation of Portland, which holds a substantial interest in the stock of First National Bank of Portland, when the Company's losses on real estate acquired from the bank are made good to it by another corporation in the Transamerica Corporation group? An examination of the minutes of the

proceedings of the Board of Directors during the last examination failed to disclose an approval by the Board of Directors of the sale of "Other Real Estate" of the bank to Capital Company under such contracts? Did the Board of Directors approve such sales under such contracts?

The performance of California Lands, Inc. and Capital Company under these contracts, which represent a major portion of the total Transamerica Corporation concentration, demonstrates that the indebtedness of these corporations to Bank of America under those contracts is dependent primarily upon the liquidation of the underlying real estate rather than upon the capacity of the corporations to make payments under the contracts [illegible] of such liquidation, as any payments under the contracts, other than [illegible] from the proceeds of the sale of the real estate included therein, would have to be realized by the Companies from the liquidation of their own other real estate.

The Board in its letter states that it does not believe the indebtednesses of California Lands, Inc. and Capital Company represent extensions of credit by the bank to those companies, and, at the same time, quotes with approval the opinion of Mr. Ferrari, Vice President and General Counsel of the bank, to the effect that the real estate [illegible] under the contracts with these companies has been sold by the bank under bona fide, valid and binding contracts. If the bank has sold the real estate included in these contracts, how can it be contended that the unpaid balance due under the contracts to the bank is not an extension of credit to the purchasers by the bank? And, if the bank does not own the real estate included in these contracts, how could the bank offset taxes paid by it on real estate it did not own against franchise taxes due from the bank to the State of California?

The extensions of credit to subsidiaries of Transamerica Corporation, namely, Inter-Continental Corporation $7,150,000; Transamerica Service Corporation $7,600,000; and First National Corporation of Portland $1,000,000, aggregate $15,750,000. These loans are supported [illegible] various other non-borrowing, as well as borrowing, subsidiaries of Transamerica Corporation. This interchange of collateral and the series of intercompany accounts shown by balance sheets of various controlled subsidiaries, indicate that these loans are for the direct accommodation of Transamerica

Corporation and its enterprises. The major portion of the securities pledged as collateral to this indebtedness is represented to be permanent investments of the Transamerica Corporation corporate enterprise.

First National Corporation of Portland was indebted to Bank of America National Trust and Savings Association to the extent of $1,000,000 at a time when First National Corporation of Portland showed among its assets notes receivable from the First Securities Company in the amount of approximately $838,000, which funds First Securities Company used actively as the medium for the purchase of independent banks in the State of Oregon in the expansion program of the First National Bank of Portland.

Why should Inter-Continental Corporation be indebted to Bank of America and to other banks to the extent of approximately $14,000,000 at a time when its balance sheet does not reflect sufficient assets to adequately secure such indebtedness and it was forced to borrow collateral from other subsidiaries of Transamerica Corporation, while at the same time there was due to it from Transamerica General Corporation an amount in excess of $10,000,000, and Transamerica General Corporation, in turn, showed as an asset due from Transamerica Corporation, an amount in excess of $7,000,000?

The report of examination of the bank of April 28, 1938 discloses an unwarranted concentration in the bank's assets of real estate aggregating $97,660,265, which sum represents 87% of the bank's total book capital structure. This concentration includes the contracts of California Lands, Inc. and Capital Company in the amount of $39,739,346. ~~The real estate concentration~~ It also includes real estate shown in the report of examination of April 28, 1938 as "Banking House" in the amount of $27,613,727, of which properties having a book value of $1,578,005 are not used as banking premises, and ~~should~~ must, accordingly, be transferred to and carried as part of "Other Real Estate Owned."

The directors, in their letter, state that the investment in banking premises and in the Merchants National Realty Corporation is within the limitations of the provisions of Section 24a of the Federal Reserve Act, as amended, and that during the year 1937 the sum of $1,404,000 was reserved for

depreciation on banking premises and equipment, which rate was more than sufficient to provide for the depreciation therein. The reports of examination of the bank do not reveal that any question of violation of the provisions of Section 24a of the Federal Reserve Act, as amended, has ever been raised. They do reveal, however, that the present carrying value of these assets is $3,200,553 in excess of the depreciation allowed by the Internal Revenue Bureau during the years 1931 to 1936, for which the bank has taken credit in its income tax returns. In view of the heavy investment in these fixed assets, sound banking practice requires that the bank not only charge off the above amount but, in the future, take the full allowable rate of depreciation as a charge-off on its books as well as for income tax purposes. The history of the acquisition and the subsequent sale and reacquisition of the properties referred to as "ex-banking premises" supports this requirement.

On October 1, 1931, Bank of America sold to Transamerica Corporation, for a consideration of $9,155,786, certain real estate carried on the bank's books as banking premises but which were not being used for banking purposes. The contract provided for a down payment, with the balance payable within five years from the date of the contract, or on or before October 1, 1936. Subsequently, Transamerica Corporation resold the properties acquired by it under this contract to Capital Company. On July 14, 1937, more than nine months after the date on which the balance due to Bank of America under the October 1, 1931 contract was to have been paid to it, Bank of America contributed $5,875,000 in cash to the surplus of Merchants National Realty Corporation and increased the book value of the bank's investment in the stock of this corporation by the same amount. On the same date Merchants National Realty Corporation purchased from Capital Company for the sum of $5,874,457, the "ex-banking premises" then held by Capital Company which had been purchased by it from Transamerica Corporation, such sum being the balance remaining due to Bank of America under the original contract of October 1, 1931 between Bank of America and Transamerica Corporation. Capital Company then paid to Transamerica Corporation the proceeds of this sale to eliminate

Capital [illegible] liability under its contract with Transamerica Corporation. Transamerica Corporation, in turn, used the same funds to make payment to Bank of [illegible] to eliminate Transamerica Corporation's liability to Bank of America under the contract of October 1, 1931. The net result of these transactions is that Bank of America increased, in the sum of $5,875,000, its investment in the stock of Merchants National Realty Corporation carried in the bond account and eliminated the direct obligation of Transamerica Corporation to the bank. The above procedure was a reacquisition by the bank of "other real estate" which it had formerly sold under contract to Transamerica Corporation and exemplifies one of the methods employed by the bank's management in attempting to effect technical correction of criticised assets and to eliminate the direct liabilities of Transamerica Corporation to the bank through intercorporate transactions. Under what legal authority did Bank of America contribute to the surplus of Merchants National Realty Corporation to enable it to purchase real estate not necessary for the accommodation of the bank in the transaction of its business? The report of examination of April 28, 1938 shows "Investment in and Advances to Companies or Nominees Holding Title to Banking House" in the sum of $19,332,734. This sum represents an investment of the bank's funds in the stock of Merchants National Realty Corporation and includes the sum of $6,039,920 which represents all real estate owned by the corporation and not used as banking premises. To the extent that such real estate has been illegally acquired, that portion must be removed for cash and the remainder thereof, if any, must be transferred to and carried on the books of the bank as "Other Real Estate Owned".

The Board, in its letter, states that it is not its policy to write up [illegible]. On March 21, 1935 the management wrote up securities to the [illegible],000,000. This write-up was criticised in the subsequent report of [illegible]. On December 24, 1935 the bank's management wrote up municipal [illegible] to the extent of $3,000,000. This write-up was criticised in the [illegible] report of examination. On October 13, 1936 the bank's management [illegible] up United States and municipal securities to the extent of [illegible]. This write-up was criticised in the subsequent report of

examination. The Board, in its letter, claims that if the bank had sold the bonds written up, realized the profit and paid it out in dividends, and then received such profits back from Transamerica Corporation as payment on account of that Corporation's obligation to the bank, taxes amounting to $2,900,000 would have resulted from the procedure; whereas, by crediting Transamerica Corporation's obligation to the bank by the amount of the write-up such taxes were avoided. In view of the asset condition and inadequate sound capital of the bank, sound banking practice would have required that had the bank sold the bonds written up and realized the profit, the profit should not have been paid out in dividends to Transamerica Corporation but should have been retained by the bank, thus materially assisting in the correction of the present undercapitalized condition of the bank. The avoidance of a tax liability is not a justification for the use of an unrealized profit resulting from a write-up of the carrying values of securities to effect the forgiveness of a part of a well-secured debt to the bank.

It is not urged in the Board's letter that there was any necessity for the forgiveness of the debt of Transamerica Corporation to the extent of the $14,000,000 bond write-up. This indebtedness of Transamerica Corporation to the bank apparently could have been collected by the bank at maturity by resort, if necessary, to the collateral pledged to secure the indebtedness. An examination of the proceedings of the Board of Directors made during the last examination did not disclose that the Board of Directors had approved either the bond write-up or the application of the proceeds thereof as a credit on the indebtedness of Transamerica Corporation. Did the Board of Directors approve the bond write-up or approve the application of the proceeds of the write-up as a credit upon the Transamerica Corporation indebtedness? The last several reports of examination have reflected market losses on this group of written-up bonds. Instead of charging off the losses estimated [illegible] the Vice President and Cashier of the bank has devoted much time [illegible] pricing the bonds as of favorable dates subsequent to the dates of

examination and then maintained that market appreciation had eliminated the estimated losses, yet subsequent examinations disclose the continued presence of such estimated losses. It is contended [illegible] documentation relative to the bank's bond account that market appreciation on several unlisted securities carried in the bond account has eliminated the losses estimated thereon in the report of examination as of April 28, 1938. As instructed in office letter to the Board under date of September 23, 1938, the loss shown in connection with this write-up and other losses on securities should be charged off and, in addition thereto, the remaining unliquidated portion of the original write-up should be reversed in its entirety, in accordance with the requirements of the examination procedure adopted by Federal and State supervisory authorities.

In further connection with the bond write-up, your attention is called to the fact that during the past ten years there have been three occasions on which the difference in the value of the securities account of the bank between the height of appreciation and the low point of depreciation in the same cycle amounted to between $13,500,000 to $18,300,000 with an extreme between the highest point of appreciation and the lowest point of depreciation within such ten years of more than $31,500,000. If the management stands ready to take advantage of a rising securities market to capitalize an unrealized profit represented by appreciation, then it must stand ready to make adequate provision for depreciation in the market value of its investment securities so written up.

Reference is made to the Board's comment in connection with the impounded German credits, and the statement is noted that there apparently has been a misunderstanding with regard to the verbal agreement entered into with the examiner. It is the Board's position that the agreement made with the examiner in 1936 contemplated the [illegible] annually until the carrying value should be reached [illegible] reference in the reports of examination, [illegible] of October 11, 1938, had never been questioned. [illegible] the agreement with the examiner contemplated the [illegible]

upon ea[illegible]tion of the bank until the carrying value should be reduced [illegible]ently to absorb the exchange loss in such credits, regardless of [illegible]t loss may be. The classifications by the examiner of these cr[illegible] is considerably more lenient than the charge-offs voluntarily taken by [illegible]r large national banks holding these credits.

The report of examination of October 21, 1927 shows $1.00 of net sound capital ($54,273,088) for each $10.76 of deposits ($583,946,000), while the report of examination of April 28, 1938 shows $1.00 of net sound capital ($96,447,599) to each $14.36 of deposits ($1,385,494,290). During this period of time the net sound capital of the bank was increased approximately $42,000,000. None of this increase of net sound capital can be attributed to the application by the Board of Directors of the earnings of the bank to its capital structure, for during the period in question, that capital was increased in 1928 to the extent of $40,000,000 by the sale of common stock of a par value of $12,500,000 at a premium of $27,500,000, and to the extent of $6,565,800 by voluntary contributions. The assets classified in the October 21, 1927 report ($33,709,000) represent 5% of the total assets of the bank amounting to approximately $670,000,000, while the assets classified in the April 28, 1938 report ($137,318,000) represent 9% of the total assets of the bank amounting to approximately $1,512,000,000. The assets classified in the October 21, 1927 report represented 57.7% of the bank's book capital of approximately $58,373,000, while the assets classified in the April 28, 1938 report represented 122% of the bank's book capital of approximately $112,420,000.

The law imposes upon the Board of Directors of a national bank the [illegible]onsibility for the determination of the disposition of the earnings of [illegible]bank. Sound banking practice requires that the losses of a bank be [illegible] off and that its earnings be conserved to provide and maintain an [illegible] sound capital structure. An adequate capital is not supplied merely by [illegible]liance with legal minimum requirements. A bank with the highest grade [illegible] should have a minimum of $1.00 of capital for every $10.00 of de[illegible], irrespective of the type of such deposits. The determination, of

course, of what constitutes an adequate capital in any given case necessitates a consideration of the nature of the assets of the bank as well as the nature of its liabilities. The opinion of Mr. Ferrari, Vice President and General Counsel of the bank, on the capital requirements of national banks, which was attached to the Board's letter of October 11, is noted. No question has been raised by this office that the capital of the bank did not meet legal requirements. This office criticised the dissipation of earnings of the bank and the failure to provide and maintain an adequate sound capital. Mr. Ferrari's opinion in no wise affects the position taken by this office as to the adequacy of the net sound capital of the bank. Mr. Ferrari must be well aware that, by the test set forth by him in his opinion, a national bank organized in any one of our largest cities with a capital of $200,000 could accept deposits of hundreds of millions of dollars without any increase in its capital. Mr. Ferrari must know that, by the test, your own institution could, if it confined its branches to San Francisco, satisfy the legal requirements for capital by providing merely $200,000. Does Mr. Ferrari or the Board of Directors seriously contend that Congress, when it provided for a minimum capital, intended that the Comptroller of the Currency should be powerless, in supervising banks for the protection of depositors, to insist upon increases of capital as deposit liability increases? If Mr. Ferrari is familiar with the discussion of this matter in the banking committees of Congress, to which he refers, he knows that they have no such idea. The position taken by this office is not a technical one. It is noted that the point is made that more than half of the deposits of your bank are not payable on demand, and, accordingly, a large proportion of the loans of your bank are, pursuant to law, secured by real estate. There is no provision of the law requiring that where deposits are not payable on demand, loans must be secured by real estate. Time and savings deposits, in periods of stress, become demand deposits through necessity.

It is noted that the Board takes the position that assets classified as "slow" in the report of examination include assets that are unquestionably sound. If such assets were deemed to be unquestionably sound they would

not have been classified as "slow". A slow asset is one in which there appears to be a substantial and unreasonable degree of risk involved by reason of an unfavorable record or other unsatisfactory characteristics, and in which there is a possibility of future loss unless given the careful and continued attention of the management. It bears a direct relationship to the capital structure of the bank because of the probability of eventual loss therein, and to the extent to which this may be true, the bank's capital structure will be reduced. This has been repeatedly demonstrated in the past in your bank by the large number of instances wherein the examiner classified a distressed real estate loan as "slow" on the basis of the then most recent appraisal furnished by the bank. However, on the basis of the appraisal furnished at the time the loan was placed in foreclosure, a substantial loss was revealed. This loss is later defined by the price at which the real estate thus acquired is disposed of by the bank. In all such instances the resultant loss had theretofore been indicated only by a "slow" classification but its elimination was accomplished by a charge against the capital structure of the bank. We cannot, therefore, agree with the directors that slow assets are unquestionably sound and that it is unreasonable that they should be taken into consideration in determining the condition of the bank or in comparing them with its total capital structure. The primary purpose of classifying an asset as slow is to call the attention of the directors and the management to some weakness therein, in order that immediate corrective measures can be taken to avoid further deterioration in the value of the asset and to protect the bank's interests. Most bankers are aware of their losses and doubtful assets and consider the slow classification as the most informative and valuable part of a report of examination.

The report of examination discloses the violation of Section 5200 of the Revised Statutes, as amended, by the making of an excessive loan to Transamerica Corporation and its subsidiaries. It is not certain that, at the time of the examination of the bank as of April 28, 1938, Transamerica Corporation was not an affiliate of the bank. If Transamerica Corporation was then an af-

filiate of the bank or if Transamerica Corporation subsequently becomes an affiliate of the bank, the same extensions of credit that constituted the violation of Section 5200, set forth in the report of examination, would be a part of the extensions of credit that would constitute a violation of Section 23a of the Federal Reserve Act, as amended.

Section 5136 of the Revised Statutes, as amended, has been violated by the purchase by the bank for its own account of shares of stock of corporations and by the purchase for its own account of investment securities in violation of the limitations and restrictions prescribed by the Comptroller of the Currency by the Investment Securities Regulation.

Section 5137 of the Revised Statutes, as amended, has been violated by the purchase, through Merchants National Realty Corporation, of real estate not necessary for the accommodation of the bank in the transaction of its business and by holding real estate not necessary for such accommodation of the bank for longer periods than five years.

Section 5201 of the Revised Statutes, as amended, has been violated by the making of loans on the security of the shares of the stock of the bank.

Section 24 of the Federal Reserve Act, as amended, has been violated by the making and purchasing of real estate loans that do not conform with the provisions of the said section.

Sound banking practice requires that no unwarranted extension of credit be made, directly or indirectly, to Transamerica Corporation and/or its directly or indirectly owned or controlled subsidiaries or affiliates; or to any partnership, corporation or association and/or its directly or indirectly owned or controlled subsidiaries or affiliates, in which Transamerica Corporation and/or its directly or indirectly owned or controlled subsidiaries or affiliates owns or own a substantial part of the invested capital; or, for the benefit of Transamerica Corporation and/or its directly or indirectly owned or controlled subsidiaries or affiliates, directly or indirectly, to any person, partnership, corporation or association on the security of obligations or assets of Transamerica Corporation and/or its directly or indirectly owned or

controlled [illegible] diaries or affiliates.

[illegible] banking practice requires that the earnings of the bank be conserved in order to provide an adequate net sound capital structure in keeping with the accepted standards and with due consideration to the fixed nature of a large portion of the assets of your bank and, further, that the Board of Directors declare no further dividend unless, in addition to meeting all statutory conditions precedent, all assets classified as estimated losses in the last preceding report of examination and any other assets known to be losses first shall have been charged off, and all other assets adversely classified shall have been properly provided for through write-down or through the establishment and allocation of adequate reserves.

This office is unwilling to permit a bank under its supervision, with such a volume of criticised assets as has your bank, with such a large concentration in credits extended to Transamerica Corporation and its subsidiaries and affiliates for a long period of time, with such a heavy concentration in real estate and in assets dependent upon the liquidation of real estate for their elimination from the bank, with such a weak capital position, with such a tremendous amount of insured deposits, with so many and so widely dispersed branches, with so many inter-related affiliates, with such violations of law, and with continued acts of unsafe and unsound banking, to continue to conduct its business in its customary manner without challenge.

Pursuant to the provisions of Section 30 of the Banking Act of 1933, the Comptroller of the Currency hereby warns the bank, its officers, the Board of Directors and members thereof, to discontinue the unsafe and unsound practice of extending credit in such a manner as to result in an unwarranted concentration; of declaring any dividend unless proper provision for the criticised assets of the bank be first made; and to discontinue the violations of law [illegible] set forth.

This letter should be read at the next meeting of the Board of Directors and recorded in the minute book of its proceedings. The Board of Directors should reply in detail to the several questions propounded in this letter

and to [illegible]rs referred to, over the individual signatures of the attending [illegible]rs, setting forth the corrections effected in each of the critic[illegible]rs, and the Board's plan for the complete elimination of the [illegible]ies thereof should be forwarded to Chief National Bank Examiner Willi[illegible]s, Jr., 155 Montgomery Street, Room 1103, San Francisco, California, and to National Bank Examiner L. H. Sedlacek, at the same address.

November 25, 1938

FOR THE SECRETARY:

The Banking Group — Messers Hanes, Taylor, Delano, Upham, Gaston, Duffield and Foley — met in Mr. Hanes office. The concensus of the meeting was that Secretary Morgenthau need not call President Day of the San Francisco Federal Reserve Bank on the Transamerica-Bank of America situation which might develop following the issuance of the SEC order against Transamerica.

Mr. Upham said that he would have ready Monday a draft of a formal letter of warning to go to the Bank of America and that he wanted it sent because he felt he was subject to some criticism for delay on the letter. Those present, other than Mr. Upham, expressed the opinion that the Bank should be given a reasonable time in which to answer the Comptroller's letter of Nov. 23 before the letter of warning is sent.

Mr. Duffield suggested that the SEC be advised to subpoena the copies of the bank examiners' reports which are in the possession of the Bank of America to forestall possible legal obstacles and criticism of the Comptroller for making available office copies. Mr. Foley said he would pass the suggestion on to SEC counsel.

Mr. Delano said that Tommy Corcoran had brought to him, after a conversation with Mr. Oliphant, a ~~xxxx~~ proposal for a bill to insured small business loans up to 80% and to raise the insurance fund by a 1% tax on bank deposits. He said that Corcoran wanted Treasury clearance on the bill, having obtained SEC approval, and that a draft of the details of the plan was to be sent to him. Mr. Hanes, Mr. Taylor, Mr. Gaston and Mr. Duffield expressed disapproval of the bank deposit tax feature.

EHO

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DELIVER TO

Miss Chauncey

ROOM

REMARKS

Get this to
Mr. M Jr. if
you can.
Thanks.

FROM C. B. Upham
(Name, not initials)

full but not read. 198

November 28, 1938

MEMORANDUM

To: Mr. Delano

From: Mr. Upham

The attached letter is intended as a reply to the Bank of America letter of October 11th. It outlines briefly those major bad policies and practices which have resulted in unsafe conditions criticised in our letter of September 23rd with the view to clarifying the real and tangible issues. The letter is also intended to serve as a general warning.

I believe it should go forward at once to each director:

(1) It will save time by constituting agenda for conferences with the management.

(2) It will answer statements by A.P. Giannini that we can not or dare not answer his letter.

(3) We cannot disregard bank practices now brought to public attention by SEC, especially since Transamerica points to

the fact that their independent auditors (Ernst & Ernst) made up their reports from data supplied to the Comptroller of the Currency.

(4) Delay in action by the Comptroller's Office in this and other matters is being cited as evidence that there was no necessity for prompt action by the Secretary in making a change in this Office.

The attached draft of letter does not contain:

(1) Answers to technical questions (reserved).

(2) Justification for telegram September 15th and letter September 23rd.

(3) Discussion of Stewart Line.

(4) Discussion of German Credits.

(5) Answer to bank's agreement to charge off part of loss on investment securities.

(6) Reiteration of instructions carrying value of investment securities.

(7) Discussion of legal requirements of capital and proper tests (savings bank).

(8) Discussion of management dominating directors.

(9) Discussion of service charges.

(10) Discussion of violation of 5201.

(11) Discussion of publication of earnings.

(12) Discussion of classification of "slow" as criticised.

(13) Instructions as to how to keep minutes.

I think we should move ahead with a citation to the Federal Reserve Board under Section 30 as rapidly as possible.

Upm

Enclosure

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

Gentlemen:

With further reference to the letter signed by individual directors of your bank under date of October 11, 1938, which has heretofore been acknowledged, I have carefully reviewed and studied the information at hand relating to the activities engaged in, methods employed and results obtained by your management and Board of Directors over the past several years. That there has been a failure to cooperate with this office in correcting criticisms is amply evidenced by the fact that the same general criticisms are found in each successive report covering that period.

The time has arrived when an understanding between the bank and this office must be reached, for I assure you that continued failure to correct existing weaknesses and discontinue unsound and unsafe practices will not go unchallenged.

The office letter of September 23, 1938, outlined the wholly unsatisfactory capital and asset condition of your bank. This two-fold weakness is manifestly attributable to such unsafe and unsound policies as (a) refusal of management and directorate to frankly recognize asset problems in general, (b) failure, if not refusal, to enforce and liquidate legally and morally binding obligations of Transamerica Corporation and allied interests, (c) refusal to retain a substantial portion of earnings to create adequate reserves and correct under-capitalization, (d) persistent dealings with Transamerica Corporation and allied interests in other than conventional and accepted methods employed in dealings with other clients of the bank, (e) refusal to make and keep the bank independent of rather than subservient to the interests and expansion ambitions of Transamerica Corporation.

With the view of clarifying the issues, it is deemed advisable at this time to outline briefly several major unsound policies and practices which have resulted in the present criticized condition.

Inter-America Corporation Contracts

(Nonbankable Assets)

In 1931 and 1932, assets which were classified as nonbankable and loss aggregating more than $35,000,000 were made the subject of three contracts, known as the Inter-America Corporation contracts, entered into by and between the bank and a wholly-owned subsidiary of the Transamerica Corporation. Without indulging at this time in a discussion of whether or not the written agreements technically constitute contracts of sale or contracts of guaranty, a glance at the manner in which the obligations created by these contracts were eliminated reveals that the bank has not realized any substantial part of these obligations by way of cash payments out of funds or assets belonging to the debtor. On the contrary, a large portion of the obligations arising out of these contracts was eliminated (in round numbers) by:

(1) Writing up the book value of Government and municipal bonds owned by the bank and writing down the liability on the contracts .. $14,000,000

(2) Making a charge to undivided profits of the bank and a credit on the contracts 500,000

(3) Applying proceeds of liquidation of charged off assets purported to have been sold under 1933 and 1934 contracts (referred to hereinafter) 1,480,000

(4) So-called guaranteed loans (executed in July, 1937) 5,840,000

When the 1931 and 1932 contracts were entered into there was an outward manifestation by the Transamerica Corporation of a purpose to strengthen the capital position of the bank by causing a wholly-owned subsidiary to enter into the agreements. These contracts purported to represent, not only to the public, but also to the Comptroller, legal and binding obligations of the subsidiary, as well as valid assets of the bank. At that time, the Transamerica Corporation owned over 99% of the stock of the bank and was responsible either directly or indirectly for the threatened impairment of the bank's capital position. By the devious means outlined above (the legality of which is open to serious question), the binding obligations of the Transamerica Corporation and/or its subsidiaries, under these contracts, are now represented to have been eliminated.

Nothing is accomplished at this time by quibbling over the question of whether or not the Inter-America Corporation contracts were "extensions of credit to the bank" or "extensions of credit by the bank". It should suffice to state that these binding obligations have not been performed by the real obligors and that while the Board of Directors and/or the management were willing to give token recognition to the asset problems of the bank in 1931 and 1932, yet they have failed, neglected or refused to enforce and collect from the real obligor the $35,000,000 in obligations then acquired. On the contrary they have placed, as well as kept, the interests of the bank and its creditors subservient at all times to the interests of the Transamerica Corporation and its allied interests by making what are, in effect, gifts to that corporation.

Capital Company and California Lands, Inc., Contracts

(Charged-off Assets)

In 1933 and 1934, assets which had been charged-off, as well as those which were to be charged off from them until July, 1937, were the subject of two contracts of sale entered into by the bank with wholly-owned subsidiaries of the Transamerica Corporation, for a total consideration of $300,000. It now appears that the proceeds of liquidation of these assets to the extent of more than $1,480,000 have been utilized for the purpose of eliminating a like portion of the liability under the 1931 and 1932 contracts discussed above. The residue of these charged-off assets appears to have been sold back to the bank in July, 1937, for $6,500,000 under an agreement whereby the Transamerica Corporation is to share equally with the bank in recoveries over and above the $6,500,000 purchase price until the year 1947. If the 1933 and 1934 agreements were contracts of sale, then the consideration of $300,000 paid or agreed to be paid therefor was totally inadequate and the sale transactions are subject to close scrutiny and are probably voidable. If on the other hand the 1933 and 1934 agreements constitute in effect either

guaranties or contributions to the bank to the extent of $300,000 then the assets remained the property of the bank and by no process of reasoning can it be said that the Transamerica Corporation and/or its affiliates are entitled to (1) credit for the proceeds of liquidation to the extent of more than $1,480,000, (2) the benefit of the proceeds of the purported resale of these charged off assets for $6,500,000, or (3) a participation in any recovery over and above the purchase price.

All of the recoveries (past, as well as future) on the charged off assets should have been and should be used to take care of other losses and to strengthen the capital structure of the bank, rather than be made the subject of gifts either directly or indirectly to the Transamerica Corporation and its allied interests.

Real Estate Concentration

The last several reports of examination contain no major criticisms of the examiner directed at the general character of real estate loans now being made.

In general, the criticisms of the real estate concentration can be epitomized as follows:

(1) Real estate, formerly securing distressed loans acquired through foreclosure or otherwise, has not been disposed of within the five-year period prescribed by statute but rather has been made the subject of several successive contracts of sale, the terms of which were varied from time to time to meet the exigencies of the purchasing corporations rather than to protect and benefit the bank.

(2) Banking premises, including those properties acquired in July, 1937, by the Merchants National Realty Corporation, are not bankable assets and should be disposed of for a cash consideration rather than be retained and manipulated through affiliated corporations over a long period of years.

A brief chronology of the changes made in each successive resale of foreclosed properties will demonstrate the soundness of the criticisms in this respect. The original contracts under which the bank disposed of its "Other Real Estate" were made with National Bankitaly Corporation (wholly owned by the shareholders of the bank), and provided for initial payments of 25% of the book value of the real estate sold with interest

at 6% on unpaid balances, payment in full to be made within a period of five years, the purchasing corporation to pay the taxes. Subsequently, these contracts were canceled and new contracts were entered into between the bank and Capital Company and California Lands, Inc., (both corporations wholly owned by Transamerica). The first contracts entered into with these corporations provided for initial payments of 10% of the purchase price of the property (determined by actual cost to the bank rather than estimated value), and 10% each year thereafter with interest at the rate of 1% per annum on unpaid balances, the taxes to be paid by the bank. These contracts were subsequently canceled and new contracts entered into between the bank and the same corporations whereby no initial or down payment was required and 10% per annum was to be paid from and after two years from the date of acquisition. The new contracts provided for the acceptance by the bank, at face value, of any notes or sale contracts received by these corporations in payment for the real estate sold by them. The annual 10% payments have no relationship to each property sold under the contracts but rather to the aggregate of the purchase price of all properties sold to each corporation.

If the bank's action in agreeing to paying for the taxes on these properties was impelled by a desire to save income or capital stock taxes, then it would appear (a) the reason for this clause no longer exists, and (b) it is difficult to reconcile the notion that the bank had sold the real estate under the contracts but yet still owns it for taxation purposes.

With respect to the acquisition in July, 1937, by the Merchants National Realty Corporation of several properties from the Capital Company, it is significant to note that the Capital Company (which is wholly owned by Transamerica Corporation) was relieved from any risk or hazard of loss through depreciation in value of the real estate, while the Merchants National Realty Corporation (wholly owned by the bank) assumed that risk. Furthermore, the agency contract between the Merchants National Realty Corporation and the Capital Company appears to be a most desirable and profitable one from the latter company's point of view, and wholly unnecessary for the Merchants Realty Corporation to enter into in view of its extensive real estate holdings and operations. In addition, we can see no legal or practical justification of the use of bank funds to the extent of $5,875,000 for the purpose of indirectly purchasing real estate not necessary for its accommodation in the transaction of its business, theretofore sold under legal and binding contracts.

Transamerica Corporation Concentration

The technical questions of whether the "Guaranteed Loans" and the "Option to purchase National City Bank stock" constitute extensions of credit within the meaning of Section 5200, U.S.R.S., and Section 23A of the Federal Reserve Act, or are otherwise legally objectionable, are reserved for further consideration and study. Aside from the above technical features, the fact remains that obligations totaling $76,000,000 (of which more than $44,700,000 is classified as slow), and representing about 68% of the bank's capital structure, (as shown by the books), are substantially dependent upon the future prosperity, earning power, success, etc., of the Transamerica Corporation and its allied interests. That fact is sufficient to demonstrate the unsoundness of the practice of placing such a large percentage of the bank's resources in obligations or investments which are dependent for realization upon substantially one source.

As pointed out in the last report of examination, there has been comparatively little actual improvement in the total amount of the loans set out under the Transamerica Corporation large line for the last several years. Such reductions as have taken place are the result, to a large extent, of substituting different types of obligations, or obligations of other affiliates, for those previously existent. A considerable portion of the proceeds of the items classified under the large line of Transamerica Corporation has reverted either directly or indirectly to the benefit of Transamerica, and to further its expansion ambitions.

Real Estate contracts entered into with the Capital Company and the California Lands, Inc., have been commented upon under the heading of "Real Estate Concentration". Those comments, together with the observations made directly above, clearly evidence the unsafe and unsound policy of persistently placing the interests of the Transamerica Corporation and its allied interests above those of the bank and its depositors.

Dividend Policy

This office has not been and is not now unmindful of the substantial earning capacity of the Bank of America National Trust and Savings Association. If the capital position and asset condition of the bank were satisfactory, objection would not lie to the utilization of a reasonable portion of the current earnings in the payment of dividends to stockholders. But when consideration is given to the fact that since the date of conversion of the bank into the National Banking System to June 30, 1938, losses actually charged off amounted to approximately $82,000,000 (with additional losses as shown by the last report of examination amounting to approximately $8,000,000), while the net operating profit for the same period was approximately $88,000,000, it is apparent that the record made in the past ten year period does not prove that the net operating profit is

commensurate with the dividends paid during that period amounting to $69,203,300, or consonant with the progressive increase of the dividend rate from 8% in 1933 to 19.2% in 1938.

There is a large aggregate of assets which have not been and are not now in bankable form. Sound banking requires that the earnings of a bank be conserved not only to provide against possible future adverse conditions, but to eliminate from the assets of the bank the results of past adverse conditions, regardless of how they arose or were created, or who was responsible therefor.

In the past, the substantial dividend payments have benefited in the main, but one shareholder, namely, the holding company affiliate which owned 99.65% of the bank stock, and even at this time the Transamerica Corporation, as owner of approximately 42% of the bank stock, will be the largest single beneficiary of any dividend payment.

Re-Arrangement of Transamerica Corporation Affairs in July, 1937

As of June 30, 1937, the assets of the Interamerica Corporation, as well as its liabilities, were taken over by the Transamerica Corporation, which owned all of the stock of the Interamerica Corporation. The Transamerica Corporation, as the new owner of the assets of the Interamerica Corporation, became a holding company affiliate of the Bank of America.

At that time, the Interamerica Corporation, as successor in interest to the Corporation of America, was obligated to the bank to the extent of more than $8,500,000 on the contracts to purchase the non-bankable assets, and the Capital Company (wholly owned by the Transamerica Corporation) was obligated to the bank to the extent of about $6,000,000 on contracts originally entered into in 1931 by the Transamerica Corporation to purchase former and future banking premises.

On July 14, 1937, the Transamerica Corporation substituted $5,844,299.82 of the proceeds of the alleged resale to the bank of its previously charged off assets plus the option to purchase National City Bank stock, which then had a market value of $2,716,800, for its liability on the original $35,000,000 contracts executed by the Corporation of America. The statement in your letter to the effect that the Bank desired to purchase the charged off assets, and the further fact that the agreement under which these assets were repurchased provides for a participation by the Transamerica Corporation in the proceeds of liquidation over and above $6,500,000, are pretty clear indications that the Transamerica Corporation is not assuming any

substantial liability in guaranteeing the liquidating value of these assets. An analysis of the so-called option to purchase National City Bank stock discloses first that the stock was sold when the market was high and second that there is no liability in persons on the part of the Transamerica Corporation, the recourse of the bank being limited to the stock actually sold as well as the additional shares pledged to secure the purchase option.

On July 14, 1937, another adjustment was made, namely, the substitution of the obligation of the Merchants National Realty Corporation for that of the Capital Company to purchase unused banking premises. If any loss is sustained on the real estate covered by these contracts, the bank will suffer that loss because the Merchants National Realty Corporation is wholly owned by the Bank, whereas if the contracts had remained as they were prior to July 14, 1937, the risk of loss would have been borne by the Capital Company, which is wholly owned by the Transamerica Corporation.

Whatever the motive may have been for the readjustment of the affairs of the Transamerica Corporation in July, 1937, it resulted in (1) relieving the Transamerica Corporation from liability and risk of loss before it distributed 58% of the bank stock to its shareholders, and (2) placing the risk of loss on the Bank of America.

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It is the spirit rather than the letter of the law which fixes the duty of the Comptroller. It is his duty to insist upon the correction of practices or conditions which violate accepted and proven sound banking principles, whether or not they violate the letter of the statutes. This is especially true in the case of the Bank of America because of its size and the extensiveness of its field of service. Therefore, it is deemed fair and appropriate to advise you that it shall be the unwavering aim and purpose of this office to carefully scrutinize:

1. All practices and actions which have resulted or which may result in weakening the capital structure whether by way of unjustified dividends, the improvident use of the credit facilities of the bank by, contributions to, or the forgiveness of obligations of, allied or special interests.

2. The substance rather than the form of all methods employed in correcting unsound or criticised conditions, practices or policies.

Furthermore, you may rest assured that this office will insist with every power at its command that the bank establish an adequate sound capital position, that it refrain from unjustifiable favoritism to allied special interests, that it correct the weaknesses and remove the bases of criticisms before making any unjustifiable use of bank funds to pay dividends and that it take appropriate steps to eliminate the undue concentration in real estate including that portion thereof which has been camouflaged through the use of allied corporations.

All of the unsafe and unsound practices which have been criticised must be discontinued and you are hereby so warned.

The future course of action to be taken by this office will depend to a large extent upon the steps taken by the directors and management of the bank to correct the conditions and practices heretofore criticised. The task confronting the Board of Directors and the management is not underestimated but we will insist that that task be performed adequately and expeditiously. At the same time we wish to cooperate to the fullest extent and to that end we will gladly confer with your committee or representatives of the management at any time with a view to formulating sound future policies.

Very truly yours,

November 28, 1938.

FOR THE SECRETARY:

At a meeting of the Comptroller's staff, to which I was invited as representing the Secretary, two questions were raised about the attitude of the Treasury on the Anglo-California National Bank case:

1. Would the Treasury object to a cut-back in the preferred stock from $20,000,000 or $17,000,000 cash value to $5,000,000 par value provided full disclosure on all statements is required?

2. Would the Treasury object to the RFC suggestion that the Bank be allowed from the outset to pay dividends, if earned, on the common stock not to exceed 3% of the par value annually?

My only suggestion was that the Comptroller ask the questions of the Treasury banking group.

On the first question, the amount of the preferred stock to be bought may vary between $20,000,000 and $17,000,000, cash value, depending upon the number of assets charged off. The par value would be $5,000,000 regardless of which sum was invested. The RFC wants to arrange a two to one voting control.

On the second question, Mr. Husbands of the RFC, who was present, said the RFC thought that, because of the wide distribution of the Bank's common stock and the active trading in it, continuation of the dividends on it, if earned, might be desirable even from the point of view of the RFC. He admitted that the dividend would be a "come-on" to support the value of the common stock. A dividend of 3% on the par value of the common stock would be a dividend of from 7% to 9% on the sound value of the stock but

would take only about $360,000 annually, whereas, the Bank has been earning between $2,000,000 and $3,000,000, enough to pay both common and preferred dividends, he said.

As to the general progress of the program, Mr. Sedlacek, the examiner, reported that everything is awaiting consummation of the deal whereby Standard Oil is to lend the Fleishhakers about $2,600,000 so that the Fleishhakers can repay the Bank. Mr. Jesse Jones has been working on the consummation of the loan and will report on it upon his return Wednesday, Mr. Husbands said.

Mr. Sedlacek reported that conversations and letters with persons on the West Coast convinced him that uncertainty among people generally about the future of the Anglo-California was beginning to hurt the Bank and that action should be taken within a week if the management of the Bank as well as public confidence is not to become demoralized. The Bank's Washington lawyer had quoted Mortimer Fleishhaker to Mr. Sedlacek as saying that the "picture looked bad" and that he was "very much worried" about unnamed developments Saturday following release of the SEC Transamerica order.

E.D.

November 28, 1938

FOR THE SECRETARY:

Mr. Crowley of the FDIC and the members of the Treasury Banking Group - Messrs. Hanes, Taylor, Delano, Upham, Oliphant, Gaston, Duffield, and Foley - met in Mr. Hanes' office to discuss a proposed letter of warning to the Bank of America, N. T. & S. A., which was prepared under Mr. Upham's direction.

Mr. Delano raised the question of whether the letter of warning should be sent before the Bank had had an opportunity to answer the Comptroller's letter of Nov. 23 which left the way open for a conference with the Bank.

Mr. Crowley warned that Mr. Giannini would make capital out of any long delay in answering his letter of Oct. 11. Mr. Oliphant said that he believed the Treasury had determined to proceed as rapidly as possible under section 30 and that the letter of warning should go as soon as it is ready. Mr. Gaston, also urging that the letter go as soon as possible, said that sending the letter would show the Treasury's determination to proceed and also would prevent the Bank from claiming in any conference with the Comptroller that its detailed defense was unanswered; the letter could be worded to avoid any implied discourtesy in sending it before having a reply to the Nov. 23 letter.

Mr. Hanes said that he thought sending of a second letter without waiting for a reply to the first would be discourteous and would be so considered if the record of the case were ever made public. If no reply to the Nov. 23 letter were received within four days, the second letter could go, and, if a reply were received, the second letter

could be sent as an agenda of the conference to be held with the Bank, he suggested.

Mr. Upham urged that the letter as written be sent today and that no longer delay was to be tolerated. He said he was greatly influenced in his opinion by the fact that the morale of his staff had been harmed by the letter of Nov. 23 which the staff considered to be more of the temporizing tactics characteristic of the past 10 years.

Mr. Duffield suggested that the Group might want to go over the letter carefully with the technicians who had written it and that this procedure would consume enough time so that the letter would not be ready to go to the Bank until the Bank had had ample opportunity to answer the Nov. 23 letter. Mr. Taylor expressed a similar view emphasizing his desire to check the letter carefully.

A meeting was arranged for 3:15 p.m. Nov. 30 to permit the Group to discuss the proposed letter with its drafters.

Mr. Delano said that he wanted the letter carefully prepared because he had received intimations from the Federal Reserve Board that the Treasury's case should be a good one before it is laid before the Board under section 30. Mr. Crowley said he believed Giannini was drawing comfort from a feeling that the Federal Reserve was not supporting the rest of the supervisory agencies.

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During the meeting Mr. Gaston told Mr. Delano that newspapermen wanted to see him about the SEC Transamerica order. At Mr. Delano's request the Group expressed the opinion that the Comptroller answer no questions about the Bank's condition and decline to discuss the SEC order.

ESD

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ESD

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

Gentlemen:

With further reference to the letter signed by individual directors of your bank under date of October 11, 1938, which has heretofore been acknowledged, I have carefully reviewed and studied the information at hand relating to the activities engaged in, methods employed and results obtained by your management and Board of Directors over the past several years. That there has been a failure to cooperate with this office in correcting criticisms is amply evidenced by the fact that the same general criticisms are found in each successive report covering that period.

The time has arrived when an understanding between the bank and this office must be reached, for I assure you that continued failure to correct existing weaknesses and discontinue unsound and unsafe practices will not go unchallenged.

The office letter of September 23, 1938, outlined the wholly unsatisfactory capital and asset condition of your bank. This two-fold weakness is manifestly attributable to such unsafe and unsound policies as (a) refusal of management and directorate to frankly recognize asset problems in general, (b) failure, if not refusal, to enforce and liquidate legally and morally binding obligations of Transamerica Corporation and allied interests, (c) refusal to retain a substantial portion of earnings to create adequate reserves and correct under-capitalization, (d) persistent dealings with Transamerica Corporation and allied interests in other than conventional and accepted methods employed in dealings with other clients of the bank, (e) refusal to make and keep the bank independent of rather than subservient to the interests and expansion ambitions of Transamerica Corporation.

With the view of clarifying the issues, it is deemed advisable at this time to outline briefly several major unsound policies and practices which have resulted in the present criticized condition.

Inter-America Corporation Contracts

(Nonbankable Assets)

In 1931 and 1932, assets which were classified as nonbankable and loss aggregating more than $35,000,000 were made the subject of three contracts, known as the Inter-America Corporation contracts, entered into by and between the bank and a wholly-owned subsidiary of the Transamerica Corporation. Without indulging at this time in a discussion of whether or not the written agreements technically constitute contracts of sale or contracts of guaranty, a glance at the manner in which the obligations created by these contracts were eliminated reveals that the bank has not realized any substantial part of these obligations by way of cash payments out of funds or assets belonging to the debtor. On the contrary, a large portion of the obligations arising out of these contracts was eliminated (in round numbers) by:

(1) Writing up the book value of Government and municipal bonds owned by the bank and writing down the liability on the contracts ..	$14,000,000
(2) Making a charge to undivided profits of the bank and a credit on the contracts	800,000
(3) Applying proceeds of liquidation of charged off assets purported to have been sold under 1933 and 1934 contracts (referred to hereinafter)	1,480,000
(4) So-called guaranteed loans (executed in July, 1937)	5,840,000

When the 1931 and 1932 contracts were entered into there was an outward manifestation by the Transamerica Corporation of a purpose to strengthen the capital position of the bank by causing a wholly-owned subsidiary to enter into the agreements. These contracts purported to represent, not only to the public, but also to the Comptroller, legal and binding obligations of the subsidiary, as well as valid assets of the bank. At that time, the Transamerica Corporation owned over 99% of the stock of the bank and was responsible either directly or indirectly for the threatened impairment of the bank's capital position. By the devious means outlined above (the legality of which is open to serious question), the binding obligations of the Transamerica Corporation and/or its subsidiaries, under these contracts, are now represented to have been eliminated.

Nothing is accomplished at this time by quibbling over the question of whether or not the Inter-American Corporation contracts were "extensions of credit to the bank" or "extensions of credit by the bank". It should suffice to state that these binding obligations have not been performed by the real obligors and that while the Board of Directors and/or the management were willing to give token recognition to the asset problems of the bank in 1951 and 1952, yet they have failed, neglected or refused to enforce and collect from the real obligor the $55,000,000 in obligations them acquired. On the contrary they have placed, as well as kept, the interests of the bank and its creditors subservient at all times to the interests of the Transamerica Corporation and its allied interests by making what are, in effect, gifts to that corporation.

Capital Company and California Lands, Inc., Contracts

(Charged-off Assets)

In 1953 and 1954, assets which had been charged-off, as well as those which were to be charged off from them until July, 1957, were the subject of two contracts of sale entered into by the bank with wholly-owned subsidiaries of the Transamerica Corporation, for a total consideration of $300,000. It now appears that the proceeds of liquidation of these assets to the extent of more than $1,480,000 have been utilized for the purpose of eliminating a like portion of the liability under the 1951 and 1952 contracts discussed above. The residue of these charged-off assets appears to have been sold back to the bank in July, 1957, for $6,500,000 under an agreement whereby the Transamerica Corporation is to share equally with the bank in recoveries over and above the $6,500,000 purchase price until the year 1967. If the 1953 and 1954 agreements were contracts of sale, then the consideration of $300,000 paid or agreed to be paid therefor was totally inadequate and the sale transactions are subject to close scrutiny and are probably voidable. If on the other hand the 1953 and 1954 agreements constitute in effect either

guaranties or contributions to the bank to the extent of $300,000 then the assets remained the property of the bank and by no process of reasoning can it be said that the Transamerica Corporation and/or its affiliates are entitled to (1) credit for the proceeds of liquidation to the extent of more than $1,600,000, (2) the benefit of the proceeds of the purported resale of these charged off assets for $6,500,000, or (3) a participation in any recovery over and above the purchase price.

All of the recoveries (past, as well as future) on the charged off assets should have been and should be used to take care of other losses and to strengthen the capital structure of the bank, rather than be made the subject of gifts either directly or indirectly to the Transamerica Corporation and its allied interests.

Real Estate Concentration

The last several reports of examination contain no major criticisms of the examiner directed at the general character of real estate loans now being made.

In general, the criticisms of the real estate concentration can be epitomized as follows:

(1) Real estate, formerly securing distressed loans acquired through foreclosure or otherwise, has not been disposed of within the five-year period prescribed by statute but rather has been made the subject of several successive contracts of sale, the terms of which were varied from time to time to meet the exigencies of the purchasing corporations rather than to protect and benefit the bank.

(2) Banking premises, including those properties acquired in July, 1937, by the Merchants National Realty Corporation, are not bankable assets and should be disposed of for a cash consideration rather than be retained and manipulated through affiliated corporations over a long period of years.

A brief chronology of the changes made in each successive resale of foreclosed properties will demonstrate the soundness of the criticisms in this respect. The original contracts under which the bank disposed of its "Other Real Estate" were made with National Bank Italy Corporation (wholly owned by the shareholders of the bank), and provided for initial payments of 25% of the book value of the real estate sold with interest

at 6% on unpaid balances, payment in full to be made within a period of five years, the purchasing corporation to pay the taxes. Subsequently, these contracts were canceled and new contracts were entered into between the bank and Capital Company and California Lands, Inc., (both corporations wholly owned by Transamerica). The first contracts entered into with these corporations provided for initial payments of 10% of the purchase price of the property (determined by actual cost to the bank rather than estimated value), and 10% each year thereafter with interest at the rate of 1% per annum on unpaid balances, the taxes to be paid by the bank. These contracts were subsequently canceled and new contracts entered into between the bank and the same corporations whereby no initial or down payment was required and 10% per annum was to be paid from and after two years from the date of acquisition. The new contracts provided for the acceptance by the bank, at face value, of any notes or sale contracts received by these corporations in payment for the real estate sold by them. The annual 10% payments have no relationship to each property sold under the contracts but rather to the aggregate of the purchase price of all properties sold to each corporation.

If the bank's action in agreeing to paying for the taxes on these properties was impelled by a desire to save income or capital stock taxes, then it would appear (a) the reason for this clause no longer exists, and (b) it is difficult to reconcile the notion that the bank had sold the real estate under the contracts but yet still owns it for taxation purposes.

With respect to the acquisition in July, 1937, by the Merchants National Realty Corporation of several properties from the Capital Company, it is significant to note that the Capital Company (which is wholly owned by Transamerica Corporation) was relieved from any risk or hazard of loss through depreciation in value of the real estate, while the Merchants National Realty Corporation (wholly owned by the bank) assumed that risk. Furthermore, the agency contract between the Merchants National Realty Corporation and the Capital Company appears to be a most desirable and profitable one from the latter company's point of view, and wholly unnecessary for the Merchants Realty Corporation to enter into in view of its extensive real estate holdings and operations. In addition, we can see no legal or practical justification of the use of bank funds to the extent of $5,978,000 for the purpose of indirectly purchasing real estate not necessary for its accommodation in the transaction of its business, theretofore sold under legal and binding contracts.

Transamerica Corporation Concentration

The technical questions of whether the "Guaranteed Loans" and the "Option to purchase National City Bank stock" constitute extensions of credit within the meaning of Section 5200, U.S.R.S., and Section 22A of the Federal Reserve Act, or are otherwise legally objectionable, are reserved for further consideration and study. Aside from the above technical features, the fact remains that obligations totaling $72,000,000 (of which more than $44,700,000 is classified as slow), and representing about 68% of the bank's capital structure, (as shown by the books), are substantially dependent upon the future prosperity, earning power, success, etc., of the Transamerica Corporation and its allied interests. That fact is sufficient to demonstrate the unsoundness of the practice of placing such a large percentage of the bank's resources in obligations or investments which are dependent for realization upon substantially one source.

As pointed out in the last report of examination, there has been comparatively little actual improvement in the total amount of the loans set out under the Transamerica Corporation large line for the last several years. Such reductions as have taken place are the result, to a large extent, of substituting different types of obligations, or obligations of other affiliates, for those previously existent. A considerable portion of the proceeds of the items classified under the large line of Transamerica Corporation has reverted either directly or indirectly to the benefit of Transamerica, and to further its expansion ambitions.

Real Estate contracts entered into with the Capital Company and the California Lands, Inc., have been commented upon under the heading of "Real Estate Concentration". These comments, together with the observations made directly above, clearly evidence the unsafe and unsound policy of persistently placing the interests of the Transamerica Corporation and its allied interests above those of the bank and its depositors.

Dividend Policy

This office has not been and is not now unmindful of the substantial earning capacity of the Bank of America National Trust and Savings Association. If the capital position and asset condition of the bank were satisfactory, objection would not lie to the utilization of a reasonable portion of the current earnings in the payment of dividends to stockholders. But when consideration is given to the fact that since the date of conversion of the bank into the National Banking System to June 30, 1938, losses actually charged off amounted to approximately $32,000,000 (with additional losses as shown by the last report of examination amounting to approximately $8,000,000), while the net operating profit for the same period was approximately $88,000,000, it is apparent that the record made in the past ten year period does not prove that the net operating profit is

commensurate with the dividends paid during that period amounting to $69,805,800, or consonant with the progressive increase of the dividend rate from 0% in 1933 to 19.2% in 1939.

There is a large aggregate of assets which have not been and are not now in bankable form. Sound banking requires that the earnings of a bank be conserved not only to provide against possible future adverse conditions, but to eliminate from the assets of the bank the results of past adverse conditions, regardless of how they arose or were created, or who was responsible therefor.

In the past, the substantial dividend payments have benefited in the main, but one shareholder, namely, the holding company affiliate which owned 99.65% of the bank stock, and even at this time the Transamerica Corporation, as owner of approximately 42% of the bank stock, will be the largest single beneficiary of any dividend payment.

Re-Arrangement of Transamerica Corporation Affairs in July, 1937

As of June 30, 1937, the assets of the Interamerica Corporation, as well as its liabilities, were taken over by the Transamerica Corporation, which owned all of the stock of the Interamerica Corporation. The Transamerica Corporation, as the new owner of the assets of the Interamerica Corporation, became a holding company affiliate of the Bank of America.

At that time, the Interamerica Corporation, as successor in interest to the Corporation of America, was obligated to the bank to the extent of more than $8,000,000 on the contracts to purchase the non-bankable assets, and the Capital Company (wholly owned by the Transamerica Corporation) was obligated to the bank to the extent of about $6,000,000 on contracts originally entered into in 1931 by the Transamerica Corporation to purchase former and future banking premises.

On July 14, 1937, the Transamerica Corporation substituted $5,844,299.82 of the proceeds of the alleged resale to the bank of its previously charged off assets plus the option to purchase National City Bank stock, which then had a market value of $2,716,800, for its liability on the original $38,000,000 contracts executed by the Corporation of America. The statement in your letter to the effect that the Bank desired to purchase the charged off assets, and the further fact that the agreement under which these assets were repurchased provides for a participation by the Transamerica Corporation in the proceeds of liquidation over and above 90,500,000, are pretty clear indications that the Transamerica Corporation is not assuming any

substantial liability in guaranteeing the liquidating value of these assets. An analysis of the so-called option to purchase National City Bank stock discloses first that the stock was sold when the market was high and second that there is no liability in persons on the part of the Transamerica Corporation, the recourse of the bank being limited to the stock actually sold as well as the additional shares pledged to secure the purchase option.

On July 14, 1937, another adjustment was made, namely, the substitution of the obligation of the Merchants National Realty Corporation for that of the Capital Company to purchase unused banking premises. If any loss is sustained on the real estate covered by these contracts, the bank will suffer that loss because the Merchants National Realty Corporation is wholly owned by the Bank, whereas if the contracts had remained as they were prior to July 14, 1937, the risk of loss would have been borne by the Capital Company, which is wholly owned by the Transamerica Corporation.

Whatever the motive may have been for the readjustment of the affairs of the Transamerica Corporation in July, 1937, it resulted in (1) relieving the Transamerica Corporation from liability and risk of loss before it distributed 58% of the bank stock to its shareholders, and (2) placing the risk of loss on the Bank of America.

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It is the spirit rather than the letter of the law which fixes the duty of the Comptroller. It is his duty to insist upon the correction of practices or conditions which violate accepted and proven sound banking principles, whether or not they violate the letter of the statutes. This is especially true in the case of the Bank of America because of its size and the extensiveness of its field of service. Therefore, it is deemed fair and appropriate to advise you that it shall be the unwavering aim and purpose of this office to carefully scrutinize:

1. All practices and actions which have resulted or which may result in weakening the capital structure whether by way of unjustified dividends, the improvident use of the credit facilities of the bank by, contributions to, or the forgiveness of obligations of, allied or special interests.

2. The substance rather than the form of all methods employed in correcting unsound or criticised conditions, practices or policies.

Furthermore, you may rest assured that this office will insist with every power at its command that the bank establish an adequate sound capital position, that it refrain from unjustifiable favoritism to allied special interests, that it correct the weaknesses and remove the bases of criticisms before making any unjustifiable use of bank funds to pay dividends and that it take appropriate steps to eliminate the undue concentration in real estate including that portion thereof which has been camouflaged through the use of allied corporations.

All of the unsafe and unsound practices which have been criticized must be discontinued and you are hereby so warned.

The future course of action to be taken by this office will depend to a large extent upon the steps taken by the directors and management of the bank to correct the conditions and practices heretofore criticised. The task confronting the Board of Directors and the management is not underestimated but we will insist that that task be performed adequately and expeditiously. At the same time we wish to cooperate to the fullest extent and to that end we will gladly confer with your committee or representatives of the management at any time with a view to formulating sound future policies.

Very truly yours,

November 29, 1938

FOR THE SECRETARY:

The Comptroller's lawyers who have been working on the so-called letter of warning to the Bank of America told me today in Mr. Foley's office that they did not think that the Treasury has a case against the Bank under section 30. The letter which they had written and to which a formal warning paragraph had been added was drafted merely as a letter of criticism and not as a letter of warning in the legal sense, they said.

I told them I thought we had a case and under questioning they conceded that they would agree to basing a case on (1) the dividend policy, (2) the real estate juggling of the Bank and possibly (3) the large extension of credit to Transamerica by the Bank. Pointing out the decision of the Banking Group to proceed, as did the SEC, on the basis of those charges of which we are sure, I urged that the proposed warning letter be edited down to those charges and sent. Their objection to this suggestion was that they preferred to develop the whole case instead of only parts of it.

During my absence from the room to attend another conference the lawyers and bank examiner present decided to suggest to the Banking Group that the letter drafted under Mr. Upham's direction and sent to you by him not be used as the letter of warning. Instead the lawyers decided to write a new letter of warning based on a 30-page detailed draft prepared by two of the examiners and one of the lawyers. This procedure they said might take two or three weeks. I objected to the prospective delay and said I hoped they would try to complete two or three big charges quickly.

The whole matter will go before the banking group. HSD

November 30, 1938

FOR THE SECRETARY:

The following persons met in Mr. Hanes' office to discuss a letter of warning to the Bank of America, N.T.& S.A., Hanes, Taylor, Oliphant, Delano, Upham, Duffield, Foley, Robertson, Kane, Mulroney, Folger, and Smith of the Treasury, and Crowley and Jones of the F.D.I.C.

Mr. Oliphant said that the letter of warning proposed by Mr. Upham under the date of November 28th was not one for which he would like to take responsibility. He said that he wanted to start with a more complete letter worked out by the bank examiner and one lawyer and to take from it those portions of which he could be certain. Such a procedure he said would take two weeks or more.

Mr. Delano agreed with Mr. Oliphant and added that the letter of warning should be prepared in final form as soon as possible and should be very complete.

Mr. Robertson of the General Counsel's office said that he thought the letter proposed by Mr. Upham should be sent not as a letter of warning, but as an interim letter to answer the reply of the Bank made on October 11th.

Mr. Duffield objected to the sending of the letter saying he thought it was an inadequate reply to the Bank's October 11th letter and that the Legal Department should not take the time to make it adequate, but should proceed with work on the letter of warning. Mr. Foley said he thought the letter should not be sent.

Mr. Upham said he strongly favored sending the letter, Mr. Hanes said he thought it should go, and Mr. Taylor said he thought whether it was sent or not made little difference.

Mr. Delano, although saying that he preferred not to confuse the issue with too many letters, said that he would send the letter proposed by Mr. Upham as an interim letter if that was the sense of the group, and if the Legal Division assured him that there was nothing in the letter which would prejudice the sending of a warning letter later. Mr. Oliphant said the Legal Division would be glad to go over the letter with this point in mind, to tell Mr. Delano whether the letter would hamper later action and to leave with him the matter of whether the letter should be sent.

ESD

November 29, 1938

FOR THE SECRETARY:

Elliott Thurston informed me this morning that, although today is the deadline for expiration of the Transamerica voting permit for its bank stocks, the Board of Governors plans to take no action pending word from the Coast. I asked him:

"Then failure of the company to notify you of compliance does not mean that you will act against it?"

He replied that the Board would not act until it had a report from the San Francisco reserve bank, which had been instructed to ascertain whether Transamerica had complied, and that after hearing from San Francisco the Board would have to pass on the merits of the case. In other words, several weeks will pass before anything conclusive is done.

The Wall Street Journal this morning carries a brief paragraph saying that J. M. Grant, president of Transamerica, announced sale of the company's interest in Bancamerica Blair corp.; if the sale is bona fide it would help the company meet the requirement for continuation of its voting permit. The name of the purchaser was not given.

HSD

November 29, 1938

To: The Secretary

From: Mr. Hanes

Last night Bill Douglas called me on the telephone and told me that he had received during the afternoon a call from Marriner Eccles, who told him that he had just returned from Warm Springs. Marriner told Bill Douglas that the President had asked for information and his opinion on the Transamerica order issued by the SEC. In response to the President's question, Marriner told Bill that he had said that he thought the order was hastily drawn, had not been thoroughly thought out, that it was likely to cause a great disturbance on the Pacific Coast and that he, Marriner, was very much upset by the whole procedure. He told the President that he had not known about the order and that the SEC had not consulted with him. Bill Douglas was very angry and felt that Marriner had done the Commission a great injustice, and told him so over the telephone.

Bill Douglas said that he wanted to acquaint us with this fact because Marriner had also dealt very critically with the Treasury and with the Comptroller's office about the manner in which they had handled the West Coast situation. Bill asked me to transmit this information to you in the hope that the SEC and the Treasury would straighten the matter out in the mind of the President as Bill was under the impression that the President had been upset by Marriner. I thought it might be advisable for you to call Bill and have him tell you the full details of his conversation with Marriner.

November 30, 1938

To: The Secretary

From: Mr. Hanes

I have just talked with Jesse Jones who had just finished talking with the Standard Oil people in re. the Standard Oil and Anglo American preferred stock. He said that the Standard Oil and the Fleishhackers had not yet reached an agreement, that there was a difference of opinion between them; and that Mortimer Fleishhacker wanted to come on to see him (Jones). Jesse Jones would not consent to Mortimer Fleishhacker coming here, but told him that he was going to proceed at once and wanted the Standard Oil and the Fleishhackers to get into agreement at the earliest possible moment. He said he saw no reason why his group could not arrive at a decision and give us some information by noon tomorrow. Gene Duffield and I will follow this through tomorrow.

JWH

November 30, 1938

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ESD