Book 354

Bank of America

Upham Chronology, October 22, 1937--May 11, 1939,
together with file prepared in July 1939
for Smith, Spencer, and Ottley

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CHRONOLOGY OF EVENTS RELATIVE TO

THE BANK OF AMERICA NATIONAL TRUST AND

SAVINGS ASSOCIATION

OCTOBER 22, 1937

TO

MAY 11, 1939

Prepared by Mr. Upham
June 20, 1939

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1. October 22, 1937

Mr. Crowley submitted a memorandum of "Notes Concerning the Bank of America National Trust and Savings Association" to Herman Oliphant. (Index Tab No. 1)

2. December 8, 1937

Hearings before the Subcommittee of the House Committee on Appropriations relative to the Treasury Department Appropriation Bill for 1939: Secretary Morgenthau stated that he was bothered about holding companies for bank stock.

3. December 31, 1937

Examiner Sedlacek in letter to the Comptroller of the Currency reported on conference with A. P. Giannini, reviewing major criticisms in past several reports of examination. Sedlacek urged a more conservative dividend policy, improvement of asset position, and a better ratio of capital to deposits. Mr. Sedlacek said "A great deal would be performed if your office could impress Mr. Giannini with the tremendous importance of his bank to the entire State of California and to inspire him with the desire to clean it so thoroughly that nothing could destroy its stability. That is what your examiner has been striving to accomplish . . . ." (Index Tab No. 2)

4. January 21, 1938

Chairman Douglas of the SEC sent to Secretary Morgenthau a report on a preliminary survey of Transamerica Corporation. (Index Tab No. 3)

5. January 26, 1938

Summary of SEC report on preliminary survey of Transamerica Corporation prepared by Upham for Secretary Morgenthau. (Index Tab No. 4)

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6. January 28, 1938

At a group meeting in the office of the Secretary of the Treasury, attended by Messrs. Eccles, Jones, Crowley, Douglas and O'Connor, being one of a series of meetings to discuss a paragraph on group banking for the President's forthcoming message, Secretary Morgenthau was insistent that prompt steps be taken with reference to Transamerica Corporation and the Bank of America National Trust and Savings Association. Mr. Crowley gave expression to some of the views set forth in the FDIC memorandum of October 22nd (No. 1 above) and suggested that there should be no more expansion by Transamerica Corporation and that no more branches should be granted to the Bank of America N.T. & S.A. Mr. Eccles and Mr. O'Connor were of the opinion that the Bank of America is very greatly improved over its condition in 1933 and saw no cause for alarm over the condition of the bank. Mr. Eccles agreed that the capital ratio is lower than we like to see in any bank. He said the Comptroller's office was responsible for any branch expansion and said that if the Federal Reserve System had had the power to stop expansion, they would have done so. Secretary Morgenthau asked Mr. Jones to take a look at the Bank of America and see whether they have sufficient capital, and Mr. Jones agreed to do so. Mr. Morgenthau said that it was important to see that they had ample capital in view of the SEC's plans with respect to Transamerica Corporation.

7. January 28, 1938

Letter from Comptroller O'Connor to Secretary Morgenthau expressing surprise at the statements made at the group meeting on that day by Chairman Crowley with respect to the Bank of America. The next day a memorandum from Secretary Morgenthau to Comptroller O'Connor suggested that as a member of the Board of the Federal Deposit Insurance Corporation, he ask Mr. Crowley to bring formally before the Board any information which he desires relative to the Bank of America. Mr. O'Connor replied on the same date to the Secretary that Mr. Crowley was of the opinion there was nothing the Board of the FDIC could do at this time with reference to the Bank of America. (Index Tab No. 5)

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8. January 31, 1938

Memorandum by Mr. Folger on his conference with A. P. Giannini on examiner criticisms of the Bank of America N.T. & S.A. Mr. Folger stated his agreement with the examiner's criticism of dividend policy. (Index Tab No. 6)

9. January 31, 1938

Memorandum from Chairman Crowley to Secretary Morgenthau on group banking, and especially Transamerica Corporation. (Index Tab No. 7)

10. February 16, 1938

At Secretary Morgenthau's staff meeting the Secretary gave to Mr. Upham Chairman Jones' report on the capital position of banks in holding company groups. (Index Tab No. 8)

11. March 18, 1938

At Secretary Morgenthau's staff meeting he asked Mr. Upham to follow the day-by-day developments in the SEC with respect to Transamerica Corporation, keeping him and Assistant Secretary Taylor advised. He said that he was "not at all satisfied with what's going on," and that "Every time I take a nibble at it, it gets worse--smells worse."

- NOTE -

During the months of January, February and March, there were a number of conferences between representatives of the Treasury and the SEC with respect to the program for SEC action against Transamerica. There were also a number of meetings between the representatives of the various banking agencies to agree upon a recommendation on group banking to the President for inclusion in his message. Many

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memoranda were prepared by each of the agencies on the fact situation with respect to group banking and the effect of the Glass Bill and other proposals.

During this period also Secretary Morgenthau inquired freely as to the progress being made by the Comptroller's office with respect to the Bank of America N.T. & S.A.; urged that the current report of examination be expedited and that dividend dates be watched.

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12. May 6, 1938

Letter from A. P. Giannini to Acting Comptroller Diggs complaining about "misrepresentation of condition of Bank of America N.T. & S.A. in recent reports of the National Bank Examiner. (Index Tab No. 9)

13. July 8, 1938

Excerpts from memorandum prepared by Mr. Upham covering meeting at 10:30 A.M. of Messrs. Taylor, Diggs and Upham with the Secretary:

"Mr. Morgenthau said that he was sick and tired of hearing about Giannini and the German credits and the fact that he wouldn't do what the Comptroller wanted him to do and said that he thought the Comptroller's office ought to handle it without bringing it to him. He expressed the opinion that the people in the Comptroller's office and the FDIC as well were "sissies," or they would do something about it. He said that he felt that Mr. Giannini was awfully smart from his own standpoint but he thought the bank supervisors ought to be equally as smart. Mr. Morgenthau gave as his offhand opinion that the Bank ought either to increase its capital or cut its dividends in half.

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13. July 8, 1938 - Continued

"Mr. Morgenthau said on second thought that he was inclined to the view that the Comptroller ought to insist on the Bank taking whatever house-cleaning steps were felt to be necessary and that if they do, he would then treat them just like any other bank and agree to RFC money going into the Bank on the same basis that they put it into other institutions. If not, he said he would personally be inclined to 'sit still until Hell freezes over' before doing anything in the way of permitting additional branches. In any event, he said he would make no promises on branches but let them come to see us when they have complied with our requirements.

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

14. September 1, 1938

Memorandum by Mr. Folger of his conference with Russell G. Smith, Vice President and Cashier of the Bank of America, with respect to the major examiner criticisms of the bank. (Index Tab No. 10)

15. September 8, 1938

Acting Comptroller Diggs recommends to the Secretary (at his request) that the dividend rate of the Bank of America be reduced from 19.2% to not over 6%; that the bank charge off promptly losses estimated by examiners in semi-annual examinations; that the bank discontinue the practice of transferring other real estate to affiliates by substituting therefor the form of contract now in use; and that the bank be given little if any authority to operate additional branches until its condition has been materially improved. (Index Tab No. 11)

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16. <u>September 9, 1938</u>

Memorandum to Secretary Morgenthau from Upham briefly reviewing the examiner criticisms of the Bank of America in all examining reports since its reopening in 1933. (Index Tab No. 12)

17. <u>September 12, 1938</u>

Memorandum by Upham briefly reviewing the correspondence file with the Bank of America from 1933 to 1938. (Index Tab No. 13)

18. <u>September 12, 1938</u>

Acting Comptroller Diggs informs Upham that the Bank of America N.T. & S.A. will hold board meeting in Los Angeles on September 13th at which time it is expected dividend action will be taken.

19. <u>September 13, 1938</u>

Deputy Comptroller Gough makes detailed reply to A. P. Giannini's letter of May 6th complaining about examiner's criticisms. Refers to "maze created by numerous loans to affiliates, the mass of real estate held directly and indirectly, the under-capitalized condition of the bank . . . and payment of dividends at exorbitant rates," besides many other details. (Index Tab No. 14)

20. <u>September 13, 1938</u>

At a meeting in Secretary's office at which Chairman Crowley and Acting Chairman Ransom were present, it was decided to send a warning telegram protesting dividend to board meeting of Bank of America N.T. & S.A. Mr. Crowley expressed himself as 100% in favor of the telegram which had been prepared and urged that the three banking agencies cooperate to bring about corrections in the bank. Mr. Ransom said that if he were the Secretary of the Treasury, he would follow the recommendation of the Comptroller of the Currency after he had analyzed it and reached the conclusion that it was correct. He said that

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20. September 13, 1938 - Continued

inasmuch as the Federal Reserve Board was quasi judicial and may be called upon later to sit as judges in a Section 30 procedure, he would not like to decide in advance whether the warning was justified. At this meeting Mr. Ransom was told by Secretary Morgenthau about the relationship of the Chairman of the Board of the Federal Reserve Bank of San Francisco to the Bank of America and its affiliates.

21. September 13, 1938

Warning telegram sent over the signature of Acting Comptroller Diggs to Examiner Palmer to be read to the meeting of the Board of Directors of the Bank of America N.T & S.A. √(Index Tab No. 15)

22. September 14, 1938

Memorandum from Mr. Hanes to Secretary Morgenthau with respect to transmittal of reports of examination of the Bank of America N.T. & S.A. to the SEC. √(Index Tab No. 16)

23. September 15, 1938

Letter from A. P. Giannini to Acting Comptroller Diggs protesting the telegram of September 13th. √(Index Tab No. 17)

24. September 15, 1938

Memorandum from Mr. Upham in San Francisco to Secretary Morgenthau. √(Index Tab No. 18)

25. September 15, 1938

At a meeting in the Secretary's office, Chairman Jones said "It is absolutely necessary to convince the Bank of America management that we mean business"; and that "I know the kind of a shop he's got. He's got a kind of mean mess." . . . "It's time to turn on the screws." At this same meeting Under Secretary Hanes told the Secretary "I go right along with you."

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26. <u>September 20, 1938</u>

Telegram from L. M. Giannini to Acting Comptroller Diggs informing him that the bank had requested a hearing before the Board of Governors of the Federal Reserve System. (Index Tab No. 19)

27. <u>September 21, 1938</u>

Memorandum from Mr. Upham to Mr. Oliphant in which Mr. Upham stated that on many occasions, between March 1938 and September 1938, the Secretary had asked him to inquire about aspects of the Bank of America situation and to press for action based on examination reports. Upon many occasions Mr. Upham brought those requests to the attention of the Comptroller's office. (Index Tab No. 20)

28. <u>September 21, 1938</u>

Memorandum prepared by Clarence F. Smith for Secretary Morgenthau reviewing the relationship of the Comptroller's office with the Bank of America from 1928 to date. (Index Tab No. 21)

29. <u>September 23, 1938</u>

Letter to each director of the Bank of America from Acting Comptroller Diggs outlining their personal liability as directors. (Index Tab No. 22)

30. <u>September 23, 1938</u>

Letter to each director of the Bank of America from Acting Comptroller Diggs summarizing the criticisms in the latest report of examination. Letter refers to "ever-increasing ill-advised dividends . . . frozen and unbankable assets . . . inadequate reserves . . . and undercapitalized condition"; summarizes examiner criticisms in some detail. (Index Tab No. 23)

31. <u>September 29, 1938</u>

Mr. Prentiss, District Chief Examiner in San Francisco, telephoned Chief Examiner Folger that the cashier of the bank had suggested that Mr. Prentiss call on A. P. Giannini for a "satisfactory arrangement" of the difficulties. Mr. Prentiss was instructed not to approach Mr. Giannini. (Index Tab No. 24)

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32. September 30, 1938

Memorandum from Mr. Oliphant to Mr. Upham, advising that the telegram of September 13, 1938, which was read to the Board of Directors of the Bank, constituted a sufficient warning to serve as a basis for certifying the facts with reference to the declaration of the dividend to the Board of Governors of the Federal Reserve System under Section 30 of the Banking Act of 1933. New general letter of warning sent to the directors of the Bank should treat the telegram of September 13, 1938, as a warning with reference to the declaration of the dividend. (Index Tab No. 25)

33. October 1, 1938

Letter received from secretary of board stating that a committee of nine directors had been named to review the communications from the Office of the Comptroller. (Index Tab No. 26)

34. October 11, 1938

Letter, and enclosures, to the Comptroller of the Currency signed by 20 members of the board of the bank. Strongly criticized the procedure of the Comptroller's office in sending critical communications concerning the bank to individual directors rather than to the board as a unit. Such procedure advised persons not connected with the bank of the criticisms. Indicated that press releases announcing the dividend had been issued before the telegram by the Acting Comptroller was read to the board of directors. Disagreed with the criticisms in Mr. Diggs' letter of September 23 (above). (Index Tab No. 27)

35. October 27, 1938

Letter from Mr. Eccles to the Secretary transmitting a memorandum concerning the procedure to remove bank directors under section 30 of the Banking Act of 1933. Mr. Eccles indicated that it would be a mistake to proceed under Section 30 because of the possible delay and complicated procedure. (Index Tab No. 28)

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36. October 29, 1938

Letter from Mr. Russell G. Smith, Vice President and Cashier of the Bank, to the Comptroller discussing certain items in the report of examination completed September 15, 1938. (Index Tab No. 29)

37. October 29, 1938

Letter from Chairman Crowley to Comptroller Delano outlining chief weaknesses of Bank of America as seen by FDIC. They are: Large volume of real estate; small relative net sound capital; unsound relations with affiliates; unjustifiable expansion; unwarranted dividends. (Index Tab No. 30)

38. November 3, 1938

Letter from Acting Comptroller Upham to Chairman Eccles stating that the general counsel of the Treasury is prepared to discuss Section 30 procedure with the Federal Reserve Board staff. (Index Tab No. 31)

39. November 5, 1938

Memorandum from Mr. Duffield to the Secretary advising of Mr. Duffield's meeting with representatives of the Federal Reserve Board to discuss their activities in the Transamerica matter. Although the Board had warned Transamerica, the corporation had not complied with the Board's requirement that it either (1) cease to be a bank holding company, or (2) divest itself of all interest in securities companies. If no plan were presented by November 29, the vice president of the San Francisco Reserve Bank had been instructed to investigate and report to the Board. (Index Tab No. 32)

40. November 9, 1938

Letter from Secretary of the Board of the Bank enclosing copy of letter from Cashier Russell G. Smith to President L. M. Giannini claiming that the net sound capital of the Bank had been improved by $2 million since September 30th. (Index Tab No. 33)

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41. November 12, 1938

Memorandum from Mr. Duffield to the Secretary, suggesting coordinated action of all three banking agencies. Federal Deposit Insurance Corporation should take the first step to terminate the Bank's insurance and the Federal Reserve should take the first step to remove the Bank from the System. If the Section 30 proceeding by Comptroller to remove directors were successful, the proceedings by the Federal Deposit Insurance Corporation and the Federal Reserve could be dropped. ✓(Index Tab No. 34)

42. November 14, 1938

Letter from Chairman Eccles to the Comptroller assuring him that the Board and its staff "are ready to cooperate to the fullest extent possible to expedite the proper disposition of any Section 30 proceeding instituted by your office." ✓ (Index Tab No. 35)

43. November 17, 1938

Letter from Secretary Morgenthau to A. P. Giannini. ✓ (Index Tab No. 36)

44. November 17, 1938

Consensus of banking group meeting in Under Secretary's office was that reply to letter of October 11th from directors of Bank should stress fundamental points in Comptroller's position and that a more detailed letter of warning should be prepared and sent as soon as possible thereafter, to reach the Bank before the end of 1938. ✓ (Index Tab No. 37)

45. November 19, 1938

Letter from Secretary Morgenthau to Chairman Douglas transmitting reports of examination of Bank of America N.T. & S.A. ✓ (Index Tab No. 38)

46. November 21, 1938

New examination of Bank of America N.T. & S.A. begun.

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47. November 21, 1938

Mr. Upham transmitted to Secretary Morgenthau proposed reply to directors of Bank of America. (Index Tab No. 39)

48. November 23, 1938

Letter from Comptroller Delano to directors of Bank agreeing to a conference in Washington with representatives of bank; also continuing 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. Conservation of earnings was also mentioned. (Index Tab No. 40)

- NOTE -

During this period several drafts of replies to the letter of October 11th, signed individually by the directors of the Bank of America N.T. & S.A. were prepared. Some of them included a formal warning under Section 30 and some not, it being felt by some of the staff that the warning letter should be separate. One of these letters initialed by Messrs. Oliphant, Foley, Folger, Upham, Mulroney, Barse, Kane, Robertson, Smith, Sedlacek, Sherbondy, Tietjens and Kelly, was to be sent if no reply to Comptroller Delano's letter of November 23rd was received within a reasonable time. In the meantime it was learned that representatives of the bank would be here for a conference on December 8th.

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49. November 23, 1938

Letter from the Secretary to Mr. Douglas, consenting to the "public official use" of the information in the reports bearing on the allegations in the SEC order. This action was supported by opinion of counsel. (Index Tab No. 41)

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50. November 23, 1938 - December 7, 1938

Comptroller's office prepares agenda for meeting with representatives of Bank of America. Short agenda includes immediate elimination by Transamerica and affiliates of approximately $15,000,000 in assets purchased by the bank; bank to agree not to write up on its books value of assets; elimination of other real estate and real estate contracts within 5-year period; cessation in the expansion program of Bank of America and Transamerica; conservation of earnings; increase in capital of $50,000,000 at once. Major emphasis was to be placed on the last three items. Additional details were contained in a technical "long agenda."
(Short Agenda Index Tab No. 42)
(Long Agenda Index Tab No. 43)

51. November 25, 1938

Meeting of the banking group in Mr. Hanes' office. (Tab No. 44)

52. November 28, 1938

Meeting of the banking group in Mr. Hanes' office. (Index Tab No. 45)

53. November 29 and November 30, 1938

Memoranda from Mr. Duffield to Secretary Morgenthau. (Index Tab No. 46)

54. December 5, 1938

Memorandum setting forth the opinion of the Comptroller of the Currency with respect to the forthcoming conference with officers of the Bank of America. (Index Tab No. 47)

55. December 6, 1938

Letter to Eccles. Comptroller Delano advises Chairman Eccles of the major points of criticisms upon which he hopes to get substantial agreement in conferences with the Bank of America representatives. They include: cessation of expansion; conservation of earnings, with dividends not in excess of 6%; elimination of "other real estate" and real estate contracts within five years; increase in capital by not less than

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55. December 6, 1938 - Continued

$25,000,000 by the sale of new stock at once; elimination by Transamerica Corporation and its affiliates of approximately $15,000,000 in assets illegally purchased by the bank; and immediate elimination of Transamerica excessive loan. (Index Tab No. 48)

56. December 7, 1938

Chairman Crowley informs Comptroller Delano of major corrections which bank should make. They include: $50 million immediate capital increase; conservation of earnings with dividend policy subject to approval of Comptroller; no expansion of number of offices; program for elimination of "other real estate"; elimination by Transamerica of assets illegally purchased; restriction of credit extension to Transamerica and affiliates. (Index Tab No. 49)

57. December 8 to December 15, 1938

Various conferences were held between President L. M. Giannini, Vice President W. E. Blauer, and Vice President and Cashier Russell G. Smith, and Comptroller Delano and other Government officials. Coordinately, technical matters were discussed in conferences with Chief Examiner Folger and Assistant Chief Examiner Smith.

58. December 15, 1938

Letter from Chairman Jones to L. M. Giannini agreeing to finance preferred stock program. (Index Tab No. 50)

59. December 15, 1938

Letter from Chairman Jones transmitting letter to Comptroller from L. M. Giannini submitting memorandum program of 17 points that he agreed to present to his Board with his recommendation for their acceptance. Major part of program was agreement to "effect and reasonably maintain a sound capital structure having a ratio to its

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59. December 15, 1938 - Continued

entire deposits of 1 to 10"; to furnish as much additional capital as may be required for this ratio as determined by the Comptroller of the Currency after the result of the examination then in progress, the Board being free to declare a semi-annual dividend in March 1939 provided steps have been taken by the Bank to increase its capital as outlined above, the increased capital to be paid into the Bank as early as practicable but in no event later than June 30, 1939. No dividends to be declared after June 30, 1939, unless the sound capital structure bears a ratio to entire deposits of substantially 1 to 10. (Index Tab No. 51)

60. December 17, 1938

Memorandum from Mr. Foley to the Secretary, making certain objections to the program worked out with Mr. L. M. Giannini by certain administrative officers, and indicating that the General Counsel's office had not participated in the negotiations. Mr. Foley pointed out that the proposed agreement would have no binding legal effect and that there would be no way of enforcing it since it implied that no letter of warning would be sent. The agreement would waive the dividend warning contained in the telegram of September 13, 1938. In addition the proposed agreement ignored certain illegal activities engaged in by the Bank. (Index Tab No. 52)

61. December 22, 1938

Letter from Comptroller Delano to L. M. Giannini stating that Comptroller cannot bind his official action by agreement and stating that he is glad to know that Mr. Giannini believes program outlined will be acceptable to the Board of Directors of the bank. (Index Tab No. 53)

62. December 23, 1938

Chart showing organization of Transamerica Corporation. (Index Tab No. 54)

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63. December 31, 1938

Letter to Comptroller from L. M. Giannini stating that December 15th memorandum was not of Mr. Giannini's authorship but was prepared in the office of the Comptroller. Mr. Giannini repeated that he would recommend to the Board that the Bank undertake to follow the program outlined in the memorandum. (Index Tab No. 55)

64. January 11, 1939

Letter signed by L. M. Giannini to Comptroller Delano stating that at a meeting of the Board on January 10th, upon his recommendation the Board authorized the management to follow the program outlined in the memorandum of December 15th. (Index Tab No. 56)

65. February 6, 1939

Memorandum by Mr. Upham to Comptroller Delano in re applications for branches at Galt and Campbell, San Francisco, California. (Index Tab No. 57)

66. February 15, 1939

Mr. Hanes memorandum to the Secretary in re current audit of Bank of America. (Index Tab No. 58)

67. February 17, 1938

Memorandum from Mr. Foley to Mr. Delano, pointing out that Mr. Delano might desire to give consideration to the question of whether the Bank of America was to be warned before the date for the board of directors' meeting in March, at which a new dividend would probably be declared. (Index Tab No. 59)

68. February 20, 1939

Letter from Comptroller Delano to L. M. Giannini stating tentative figures of current examination show necessity for capital increase of $33 million to $38 million. (Index Tab No. 60)

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69. February 21, 1939

Two memorandums, both initialed by Mr. Thurman Arnold at the Department of Justice, of a conference of Mr. Arnold with Messrs. Delano, Foley and Sherbondy, to advise him of facts in the Bank of America situation which might involve criminal violations. Mr. Arnold agreed that it appeared inadvisable at that time for the Comptroller of the Currency to refer formally to the Department of Justice any possible criminal violations. (Index Tab No. 61)

70. February 25, 1939

Letter from Chairman Jones to President Giannini in furtherance of conference between them and Comptroller Delano. Giannini told that RFC will lend to stockholders of Bank of America money necessary to enable them to subscribe for any increase in capital stock determined upon and approved by the Comptroller. Preferred stock to bear 4%; loans to be at 3½%. (Index Tab No. 62)

71. March 7, 1939

Letter signed by President Giannini to Comptroller Delano objecting to program outlined but stating willingness to follow it out nevertheless. (Index Tab No. 63)

72. March 9, 1939

Memorandum from Mr. Sherbondy (through Mr. Foley) to Mr. Wenchel, advising him of certain facts in the Bank of America situation which might involve tax avoidance. (Index Tab No. 64)

73. March 9, 1939

Mr. Delano's memorandum to Mr. Hanes in re letter of March 7th from Giannini. (Index Tab No. 65)

74. March 11, 1939

Mr. Folger's memorandum on the latest report of examination. (Index Tab No. 66)

75. March 11, 1939

Mr. Upham's memorandum to the Comptroller in re the Bank's latest examination and the "contracts" of Inter-America Corporation, California Lands and Capital Company. (Index Tab No. 67)

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76. March 14, 1939

Memorandum by Mr. Upham to Comptroller Delano stating if office approves dividend rate of 4% on proposed issue of preferred stock, Transamerica will be enabled to net one half of one per cent. (Index Tab No. 68)

77. March 14, 1939

Directors of bank appointed a special committee to work out details of plan to increase capital. Board also voted regular semi-annual dividend at previous rate of 19.2. (Index Tab No. 69)

78. March 16, 1939

Memorandum from Mr. Duffield to Secretary Morgenthau on preferred stock plan for Bank of America. (Index Tab No. 70)

79. March 18, 1939

Letter of criticism prepared based upon report of examination recently received. Criticisms substantially same as those of letter of September 23, 1938.

80. March 22, 1939

Memorandum from Mr. Upham to Mr. Foley, requesting a legal opinion as to whether Transamerica is a holding company affiliate of the Bank of America, in view of the fact that Mr. Russell G. Smith, Vice President and Cashier of the Bank, had informed Mr. Folger that at the January meeting of the Bank's stockholders, Transamerica had voted the Bank stock owned by it. (Index Tab No. 71)

81. March 23, 1939

Another series of conferences begun between officials of the Bank and Chief Examiner Folger with regard to the recently completed examination.

82. March 30, 1939

Memorandum from Mr. Foley to Mr. Delano, advising that if Mr. Russell G. Smith's statement that

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82. March 30, 1939 - Continued

Transamerica had voted its Bank stock at the last meeting of the Bank's stockholders was true, Transamerica was a holding company affiliate of the Bank of America. (Index Tab No. 71, attached to Mr. Upham's memorandum of March 22, 1939)

83. March 30, 1939

Memorandum from Mr. Upham to Comptroller expressing view that in next examination office should seek cooperation of FDIC, Federal Reserve Bank of San Francisco and borrow appraisers from Farm Credit Administration, Home Loan Bank System and Federal Housing Administration; also examination should include Transamerica. (Index Tab No. 72)

84. March 31, 1939

Memorandum of a conference at the Treasury between Mr. Louis Ferrari, Counsel for the Bank, and Mr. Russell G. Smith, Vice President and Cashier of the Bank, and Messrs. Clarence F. Smith, James L. Robertson and Donald J. Sherbondy, of the Treasury Department, to discuss the matter of service charges by the Bank against its dormant accounts. Representatives of the Treasury made no commitments in the matter and the representatives of the Bank agreed that they would forward additional information requested by the Treasury representatives.

85. April 3, 1939

L. M. Giannini wrote Chairman Jones that he would suggest the Bank increase its capital funds by $25,000,000 and that he would recommend to the directors of Transamerica that any dividend received on stock subscribed to by them in excess of the interest paid to the RFC would be remitted to the Bank. Mr. Giannini asked Mr. Jones to treat his letter as an application for a loan or loans up to $25,000,000 in line with Mr. Jones' letter of February 25th.

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86. April 4, 1939

Letter from Mr. Hanes to the Secretary, transmitting copies of the following letters with reference to the proposed $25,000,000 loan by the RFC to the Bank to increase its capital, and advising that a complete file was being transmitted to the President at Warm Springs:

(1) April 4, 1939

Letter from Mr. Jones to Mr. Hanes, transmitting the following:

(a) February 25, 1939

Letter from Mr. Jones to Mr. L. M. Giannini, advising that upon request of the Secretary of the Treasury and the approval of the President, the RFC would lend to stockholders of the Bank money to enable the stockholders to subscribe for preferred stock of the Bank. The loan would be at 3½% and the preferred stock would carry 4%;

(b) March 31, 1939

Letter from Mr. Douglas to Mr. Jones, advising that the SEC had no objection to the proposed RFC loan; and

(c) April 3, 1939

Letter from Mr. L. M. Giannini to Mr. Jones, making application on behalf of the Bank's stockholders for a loan up to $25,000,000 upon the terms and conditions outlined in Mr. Jones' letter of February 25th.

(2) April 4, 1939

Letter from Mr. Jones to the Secretary recommending that the RFC loan $25,000,000 on the preferred stock of the bank, and advising that the usual formal recommendation would be sent to the Secretary in due course.

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86. April 4, 1939 (Continued)

(3) April 4, 1939

Letter from Mr. Crowley to the Secretary, advising that the proposed increase in the capital of the Bank was in line with the program developed by the Comptroller of the Currency and that the new capital would materially strengthen the position of the Bank.

(4) April 4, 1939

Letter from Mr. Hanes to the Secretary recommending that the Secretary request the RFC to make the loan.

✓(Index Tab No. 73)

87. April 4, 1939

Letter from Comptroller Delano to Secretary Morgenthau outlining the procedure to be followed in financing the increase in capital and stating that this is a necessary step toward the effecting and maintenance of a ratio of 1 to 10. Mr. Delano gave as his opinion that "Because of the asset condition of the Bank of America, the securing of these additional funds is a very important and necessary part of our program for the improvement of the capital position of the bank." ✓(Index Tab No. 74)

88. April 7, 1939

General Counsel's proposal relative to preferred stock sale. ✓(Index Tab No. 75)

89. April 7, 1939

Under Secretary Hanes advised Comptroller Delano that the Comptroller was to clear with the FDIC and the Federal Reserve the letter which Mr. Giannini will be asked to sign and send to the Comptroller, stating that as a condition of any loan which the RFC might make to stockholders of the bank, the bank would agree to declare no further dividend if in the opinion of the

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89. April 7, 1939 - Continued

Comptroller the FDIC and the Federal Reserve, the payment of such dividend would impair the capital stock of the bank or constitute an unsafe or unsound banking practice. (Index Tab No. 76)

90. April 10, 1939

Proposed draft of a letter from Mr. L. M. Giannini to the Comptroller advising that as a condition to the RFC loan, the Bank would agree to declare no further dividend if in the opinion of either the Comptroller of the Currency, the Federal Reserve Board, or the Federal Deposit Insurance Corporation, the payment of such dividend would impair the capital stock of the Bank or would constitute an unsafe or unsound banking practice. (Index Tab No. 77)

91. April 12, 1939

Memorandum from Mr. Duffield to Secretary Morgenthau objecting to the procedure in the Bank of America case. (Index Tab No. 78)

92. April 13, 1939

Memorandum from Mr. Delano to the Secretary, digesting the criticisms of the Bank as shown by the report of examination, dated February 28, 1939. (Index Tab No. 79)

93. April 13, 1939

Comptroller Delano asked the FRB for their opinion as to this procedure and if they were prepared to assume the responsibility. (Index Tab No. 80)

94. April 13, 1939

Assistant Secretary Bethea of the FRB informed Comptroller Delano that it could not properly assume this responsibility and could not approve of the procedure outlined. (Index Tab No. 81)

95. April 13, 1939

Mr. Crowley advised Comptroller Delano that he agreed with the principle of control of dividends

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95. April 13, 1939 - Continued

paid by banks which are in an unsatisfactory condition and that the Bank of America should reduce its dividend. He said he would dislike to see the provision as to dividends be the reason for the Bank of America not increasing its capital. (Index Tab No. 82)

96. April 14, 1939

Letter from Mr. Delano to the Board of Directors of the Bank of America discussing the report of examination of the Bank completed February 28, 1939. (Index Tab No. 83)

97. April 15, 1939

Comptroller Delano orally informed by Secretary Morgenthau that President Roosevelt had approved change in proposed letter to be secured from L. M. Giannini eliminating from the letter the Board of Governors of the Federal Reserve System and the FDIC as agencies having veto power over the declaration of future dividends by the Bank of America. (Index Tab No. 84)

98. April 15, 1939

Comptroller Delano asked L. M. Giannini to sign letter agreeing to veto by Comptroller of dividends on Bank of America stock. Mr. Giannini told that President desired letter signed as condition precedent to underwriting or financing of increased stock by RFC. Mr. Giannini took exception to the proposal as entirely unjustified, discriminatory and evidence of persecution. Mr. Giannini asked a letter reciting the fact that this is a condition imposed by the President. (Index Tab No. 85)

99. April 16, 1939

Letter from L. M. Giannini to Comptroller Delano stating his willingness to proceed with the program outlined in December but omitting any reference to the matter of veto by the Comptroller of

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99. April 16, 1939 - Continued

dividends by Bank of America and objecting to the imposition of new conditions at this time as a breach of the mutual good faith pledged in December. (Index Tab No. 86

100. April 19, 1939

Letter from Secretary Morgenthau to Jesse Jones. (Index Tab No. 87)

101. April 25, 1939

Letter from Comptroller Delano to L. M. Giannini informing him with respect to publicity necessary in publishing financial statements as to dividend rate payable on preferred stock and subscribed price upon which dividends based and repayment made in event of retirement or liquidation of stock. (Index Tab No. 88)

102. May 11, 1939

In view of press statements that L. M. Giannini had sent telegrams to Senator Wagner and Congressman Steagall requesting an investigation of the Controversy with the Bank, at the Secretary's request Mr. Bernard and Mr. Spingarn in the legislative section of the General Counsel's office took personally to Senator Wagner and Congressmen Steagall copies of the opinions in the case of Bank of America v. Douglas and Securities and Exchange Commission v. Mahaney. Both gentlemen indicated that they approved the actions of the Treasury Department in this matter and that they had not given any serious consideration to the telegrams from Mr. Giannini.

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October 22nd, 1937

Notes Concerning the Bank of America National Trust and Savings Association

1. Significance to the Federal Deposit Insurance Corporation.

The Bank of America National Trust and Savings Association had insured deposits of $621,000,000 on May 13, 1936. This figure is more than twice the capital of the Federal Deposit Insurance Corporation and gives some indication of the significance of the one bank to the insurance organization. No other single bank or banking group of chain has as much as one-half this volume of insured deposits. Most nearly comparable are Security First National Bank of Los Angeles with $298,000,000 of insured deposits, and National City Bank of New York with $241,000,000 of such deposits. The insured deposits in the Bank of America N. T. and S. A. are greater than the insured deposits in the 4,000 smallest insured banks combined. If this one bank were to fail, the Federal Deposit Insurance Corporation would be required to pay out a greater amount than if the 4,000 smallest banks failed simultaneously. In fact, the one bank seems to be a greater problem than the 4,000 small banks since it represents such a concentration of risk. There is reason to believe that if 5,000 new small banks with $200,000 of deposits each were to come into existence, they would not represent so great a financial hazard to the Federal Government as does this one bank.

2. Status of the Bank in California

As indicated by the accompanying table, this bank is the dominant element in the banking system of the state.

December 31, 1936

	Offices	Percent of total offices	Percent of total assets
Bank of America N.T. & S.A.	466	44	33
Security First National Bank of Los Angeles	120	11	15
American Trust Company of San Francisco	70	7	7
All branch banks	876	83	85
Unit banks	186	17	15
All banks	1,062	100	100

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The wide ownership of its stock and the stock of Transamerica Corporation and the fact that it is the only branch system covering all parts of the state further increase the importance of this bank.

3. Importance in the United States

Even in the United States as a whole the Bank of America N. T. & S. A. is the prime case of branch banking. It is the fourth largest bank in the country. No other bank carries on operations over so wide a territory or has nearly so large a number of branches. The only comparable institutions in this country are the two other large branch banks of the state of California and two branch systems of Oregon, one of which is also owned by Transamerica Corporation.

4. Condition of the Bank

On June 30, 1937, the total capital account of this bank amounted to approximately 7½ percent of the assets of the bank. This indicates that a depreciation of its assets by as little as 8 percent would more than wipe out the bank's capital and thus render it insolvent. Whether or not great alarm should be expressed over this low capital ratio depends in part upon the nature of the assets which the bank holds. Consideration of reports of examination of this bank made by national bank examiners indicates that large loans have been made to affiliates and other inside interests. Large volumes of loans are secured by the stock of the bank's holding company affiliate, which in effect reduces the sound capital of the bank even below the 7½ percent figure.

Moreover, in 1933-1934 this bank had over $100,000,000 of non-conforming real estate loans, and in October 1936 (date of the latest examination) this figure was still above $75,000,000. More than one-fourth of the real estate loans of the corporation do not conform to the requirements of the national bank law and, therefore, should be considered illegal loans. Approximately $48,000,000, or nearly half the capital funds of the bank are invested in banking house, furniture and fixtures, (the comparable figure in 1933 was $42,000,000) and beside this it has real estate other than banking house of $58,000,000 (including real estate placed in the hands of affiliates under contract),

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loans to affiliates of $20,000,000 (exclusive of loans to affiliates holding real estate acquired by the bank), and loans on stock of Transamerica Corporation to the extent of $8,824,000. Loans on Transamerica Corporation stock increased from $7,800,000 to $9,400,000 between November 1935 and April 1936. On April 10, 1933, 22 percent of the loans of this bank were to directors, officers and employees and to corporations in which they were largely interested, and 15 percent of the loans of the bank were still of that nature at the time of the latest examination available - October 14, 1936. On this date, extensions of credit to affiliates were 65 percent of sound capital.

There is considerable evidence to indicate that during the rise in bond prices in 1935 and 1936 this bank followed the practice of writing up its securities to market price. In part this was done by selling securities in the market and buying new ones at the same high price level; but in part values were simply marked up on the books of the bank. Records in the office of the Comptroller of the Currency show that in 1935, government bonds were written up $5,000,000 and municipal bonds $8,000,000, and that in 1936 further write-ups of $6,000,000 occurred. During these same two years some $14,000,000 of profits were realized from sale of securities. Thus, in the two years, some $28,000,000 of "profits" came from the bond market boom. It would thus appear that at the beginning of 1937 when bond prices reached a peak, the Bank of America was carrying its bonds at practically market price. If this is the case, then the decline in bond market prices during 1937 must leave the bank with its bonds valued far above current market price.

On December 31, 1936 the bank held $461,000,000 of U. S. Government securities and $162,000,000 of other securities, or a total portfolio of $623,000,000. A conservative estimate indicates that the market value of these securities must have fallen at least $25,000,000 from January 1 to October 15, 1937. Since the realized security profits and write ups of 1935 and 1936 were not used to increase capital, the $25,000,000 of security depreciation in 1937 may be deemed to reduce capital materially. If it were reasonable for the bank to use profits on securities sales and write-ups of securities values in computing net profits and paying dividends when the market was rising, then it must be necessary that the decline shall be reflected in profits or losses when the market is falling. If this be accepted at least tentatively, the bank must be suffering net losses of some $13,000,000 this year. If at best this bank was but breaking even after dividend payments in the years of rising bond prices, then its condition must now be rapidly retrograding.

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5. Policies of the Bank

Misrepresented Earnings

The most reprehensible practices of this bank appear to be connected with earnings and dividends policy. Earnings figures as presented to the public cannot be reconciled with the examination reports or the other reports made to the Comptroller of the Currency. The reports of examination and the call reports showed the bank to have net operating earnings of $8,200,000 and net profits of $9,900,000 in 1935, while the net earnings as presented in Moody's Manuel amounted to $16,300,000. In 1934 the corresponding figures were $7,200,000, a negative $2,600,000 and $8,900,000. In 1936 the bank reported to the Comptroller of the Currency net current operating earnings of $11,500,000 and net profits, after losses, of $12,500,000, while the figure presented in Moody's is $22,500,000. For the first half of 1937, the bank reported to the Comptroller net current operating earnings of $5,900,000, net profits after losses, of $6,000,000, while the Moody's Manual presents net earnings as $10,000,000. (Cf. Table I)

Some question is thrown upon the net earnings figures appearing in the Moody's Manual simply from examining the balance sheets presented therein. (Compare the Moody figures of column (5) and column (7) of Table I). An estimate of net profits may be made by adding the net change in capital account during the year to the dividends paid in that year. On this basis one may compute from Moody's that the earnings of the bank were $9,700,000 in 1935, whereas it was stated in Moody's that net earnings were $16,300,000. Corresponding figures for 1936 are $12,200,000 and $22,500,000, while the corresponding figures for the first half of 1937 were $6,200,000 and $10,000,000. It is to be noted that the net profits figures presented by the examiners of the Comptroller of the Currency and reported to the Comptroller by the bank include both profits realized from the sale of securities and write-ups of the value of securities on the books of the bank. If write-ups were excluded the net profits of the bank in 1935 would have been $1,900,000 and in 1936 $6,400,000. If write-ups and profits realized from the sale of securities had both been eliminated the bank would have shown net losses of $4,000,000 in 1935 and of $1,800,000 in 1936. We have noted that in no sense did the bank have earnings adequate to pay its dividends in 1934. In 1935 and 1936 it had net profits after losses sufficient to pay the dividends declared only by virtue of the fact that it did write up securities on its books.

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BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION

(Amounts in thousands of dollars)

From Comptroller's figures:

	(1) Net current operating earnings	(2) Recoveries, profits on securities and write-ups	(3) Net profits before losses (1)-(2)	(4) Realized losses and Charge-offs	(5) Net profits after losses (3)-(4)	(6) Dividends paid	(7) Net change in undivided profits (5)-(6)	(8) Net change 1/ in capital account per balance sheet	(9) Net profits per share (5)/2,000,000	(10) Dividend paid per share (6)/2,000,000	(11) Net profits excluding write-ups	(12) Net profits excluding profits on securities and write-ups
Year ending Dec. 1934	7,216	2,709	9,925	12,563	2,638	3,750	6,388		1.32		2,638	5,302
Year ending Dec. 1935	8,164	14,776	22,940	13,082	9,858	6,000	3,858	3,881	4.93	3.00	1,858	4,084
6 mos. ending June 1936	5,770	3,902	9,672	4,302	5,370	4,000	1,370	1,372	2.69	2.00	5,370	1,514
Year ending Dec. 1936	11,495	14,645	26,140	13,688	12,452	8,000	4,452	4,539	6.23	4.00	6,445	1,818
6 mos. ending June 1937	5,884	4,287	10,170	4,191	5,979	4,000	1,979	2,072	2.99	2.00	5,979	3,123

From Moody:

	Total net earnings	Dividends paid	Dividends paid plus net change in capital account (6)-(8)	Net change 2/ in capital account per balance sheet	Earnings per share	Book value per share
Year ending Dec. 1934	8,869	3,500			4.43	48.58
Year ending Dec. 1935	16,276	6,000	9,703	3,703	8.14	50.43
6 mos. ending June 1936	11,009	4,000			5.50	
Year ending Dec. 1936	22,527	8,000	12,157	4,157	11.26	52.51
6 mos. ending June 1937	10,007	4,000	6,245	2,245	5.00	53.63

1/Capital, surplus, undivided profits and reserve for contingencies differ between two periods.
2/Capital, surplus, undivided profits, but excluding all reserves.

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Dividend Policies

In 1935 the bank paid dividends upon the par value of its stock at the rate of 12 percent and upon book value at the rate of 6 percent. In 1936 these figures were raised to 16 percent and 8 percent respectively. Beginning in the second half of 1937, dividends are being paid at the rate of 19 percent on par capital and 9 percent on book capital.

Bank of America National Trust and Savings Association

	Dividends paid as percent of:		
Year ending December -	Par Value	Book Value	Market Value
1934	-	-	-
1935	12	6	-
1936	16	8	-
1937 (1st half)	16	8	-
1937 (2nd half)	19	9	5 (Sept.)

The unsoundness of this extraordinary dividend policy is indicated on several bases. First, the earnings data which we have just discussed show that such dividends were not earned. Second, the volume of substandard assets held by the bank further indicates the undesirability of such a policy. Even if there were no substantial volume of substandard assets in the bank the present capital ratio would indicate the desirability of building up the capital of the bank either out of earnings or otherwise. Congress, in 1936, saw fit to exempt banks from the undistributed profits tax in order to permit those with inadequate capital structures to apply all or part of earnings thereto. But this gigantic branch bank which is of so much significance to the banking system and the whole country has followed the opposite course. Furthermore, it is to be noted that this bank, with its weak capital structure, did not sell stock to the Reconstruction Finance Corporation. In view of this fact it is especially necessary that earnings of the bank be devoted to its rehabilitation rather than to pursuance of the irresponsible dividend policy indicated above. Until the second half of 1937, practically all the dividends of the bank were paid to Transamerica Corporation and used primarily to maintain dividend payments to the stockholders of Transamerica Corporation. During the period 1934-36, Transamerica paid out in cash dividends amounts equal to 96.5 percent of cash dividends received. (Cf. Table II)

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6. Price of the Stock of Bank of America National Trust and Savings Association.

Since previous to July 1937 practically all of the stock of this bank was in the hands of Transamerica Corporation, it was not quoted upon the market and consideration can only be given to the course of the market since July. Beginning with July, more than 2,300,000 out of a total of 4,000,000 shares outstanding of $12.50 par value have been in the hands of the public. Thus, the par value of the Bank of America stock now in the hands of the public amounts to approximately $29,000,000 of a total of $50,000,000 outstanding. This stock, with a par value of $12.50 per share and a book value, based on June 30, 1937 figures, of $26.82, sold in the over-the-counter market during August 1937 in the neighborhood of $56.00 per share, but by September 27, its price had fallen to $46.00 per share, and on October 18, the bid price was $41.00.

Table II

Transamerica Corporation
(Amounts in thousands of dollars.)

Year	Dividends received	Dividends received from Bank of America	Cash dividends paid	Excess of dividends received over dividends paid
1932	-	None	None	-
1933	5,946	2,242	None	5,946
1934	5,636	3,737	5,903	-267
1935	8,113	5,979	6,484	1,629
1936	11,072	7,972	11,577	-505
1937 - 1st half	-	3,986	4,636	-
1934-36	24,821	17,688	23,964	857

We may summarize the pertinent facts concerning the Bank of America National Trust and Savings Association as follows:

1. The capital ratio is low and the management shows no disposition to improve it.

2. Overvalued substandard assets are large; banking house, furniture and fixtures and other real estate are as great as capital.

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3. The public is grossly misled with respect to earnings.

4. The book value of assets is subjected to unprincipled juggling.

5. An inordinately liberal dividend policy is followed.

6. The relations of the bank with its affiliates have apparently never been thoroughly investigated by supervisory authorities.

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COPY

TREASURY DEPARTMENT
Office of
Comptroller of the Currency

San Francisco, California
December 31, 1937

Comptroller of the Currency,
Washington, D. C.

Dear Sir:

During a recent conference held with Mr. A.P.Giannini, Chairman of the Board of Bank of America National Trust and Savings Association of San Francisco, at which time the subjects of major criticism contained in the past several reports of examination were discussed, serious exception was taken by him to the repeated criticism of his dividend policy as being wholly unjustified. Inasmuch as this is one of the many subjects that he will review with your office in the near future, the following data has been prepared for your information which sets forth the principal reasons for the criticism.

The following is a seven year transcript of operating earnings, net earnings after recoveries and charge offs together with the amount of dividends paid:

YEAR	OPERATING EARNINGS	NET GAIN BEFORE	DIVIDENDS PAID
1930	8 315 461 09	4 587 909 05	6 000 000 00
1931	7 537 502 59	2 183 525 39	7 800 000 00
1932	3 478 441 07	468 832 83-Red	-0-
1933	6 104 864 55	772 436 69	2 250 000 00
1934	7 216 358 72	2 637 627 37-Red	3 750 000 00
1935	8 163 856 00	9 858 095 00	6 000 000 00
1936	11 494 909 00	12 452 418 00	8 000 000 00
Totals	52 311 393 02	26 747 923 93	33 800 000 00

It will be noted from the foregoing that the dividends paid during the period covered exceeded net earnings by $7 052 076 07, the only omission being in 1932. Mr. Elisha Walker was in charge of the active management of both the bank and Transamerica Corporation during the year 1931, at which time he caused $880,000,000.00 of losses to be charged off against the surplus of the corporation. Between the periods of June 26, 1931 and February 13, 1932, he also arranged for the sale of $35,214,000.00 of bank leases to Inter-America Corporation on contracts, the origin and liquidation history of which is contained in a memorandum attached to my letter of December 23rd, to which reference is made. Of the $880,000,000.00 charge off made by the corporation, approximately $350,000,000.00 was allocated to the reduction of the carrying value of the stock in the subject bank, which it is assumed, represented the capitalization of excessive premiums paid for the purchase of unit banks for conversion into branches. In addition thereto, approximately $75,000,000.00 more has been charged off against the undivided profit account of the bank since conversion into the national system in October of 1937. The combined

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amounts of $425,000,000.00 which do not include the $35,214,000.00 of contracts would appear therefore, to represent the loss to Transamerica Shareholders for the building up of this branch bank system whose present entire capital structure is less than $120,000,000.00.

Following the historical proxy fight, Mr. Giannini again succeeded to the active management of both the bank and the corporation during the latter part of February 1932. Dividend payments were resumed in 1933 and have been steadily increased each ensuing year, the same being true of the corporation who, as 99.65% owner, derived its chief income from the bank. It will be noted from the foregoing transcript that the only years in which net earnings exceeded the dividends paid were 1935 and 1936. Attention is directed to the fact, however, that included in the net earnings for those two years are non-recurrent profits emanating from the bond account in the amounts of $13,882,341.00 and $14,269,968.00 respectively, an aggregate of $28,152,309.00, which includes the write up of Government and Municipal bonds in the aggregate amount of $14,012,788.00, which was the subject of my letter referred to in the paragraph next above. With the former bond appreciation capitalized to a point where a depreciation of over $6,100,000.00 is revealed in the current report of examination and all the previously charged off assets capitalized for $6,500,000.00 over a five year period, the only funds that will be available for some time to come for the payment of dividends will be the net operating earnings after the deduction of present and developing losses and even those earnings will now be impaired to the extent of the additional reserve required for amortization on those bonds that were written up.

The par value of the bank stock has been reduced during the current year from $25.00 to $12.50 while the dividend rate has been again increased from $2.00 to $2.40 per share on which basis the annual dividend requirement will be $9,600,000.00 as opposed to the $8,000,000.00 paid in 1936. The stock of the corporation has also been changed during the current year from a no par to a $2.00 par value, the present dividend rate being fifty cents with newspaper publicity released to the effect that consideration is being given to the possibility of increasing the rate to seventy-five cents a share in the very near future.

The liberal dividend policy of Transamerica Corporation has also long been under criticism for the reason that it has been felt that instead of draining its affiliates and subsidiaries of their cash for its dividend requirements, that the major portion of such cash should be used toward the elimination of the constantly increasing group indebtedness to the bank, its investments in stocks and bonds therein and loans predicated upon the stock and bonds of affiliates, the extent of which is revealed by the following schedule:

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California Foundries	7,999 shares Stock	20,000.00
California Lands	R/E Contracts	12,117,111.74*
California Lands	Discounts	380,545.22*
Capital Company	R/E Contracts	29,044,503.51*
Capital Company	Discounts	171,398.11*
Capital Company	R/E Loans	775,000.00*
Capital Company	R/E Advances	439,055.74*
Downtown Properties	543MDefaulted Bonds	524,520.00*
Downtown Properties	2,403 Shares Stock	2,400.00*
Guaranteed Loans	T A C Guarantee	6,380,315.53
Inter-Continental Corp.	Direct	8,500,000.00
Merchants National Realty Corp.	40,000 shares Stock	19,332,734.88*
Transamerica Corporation	200 shares Stock	1,600.00
Transamerica General Corp.	Direct	750,000.00
Transamerica Service Corp.	Direct	750,000.00
Sub-total		79,189,184.73
Loans predicated on stock of Transamerica as of 4-20-37		8,887,569.80
Grand Total		88,076,754.53

The foregoing concentration is in excess of the capital and surplus of the bank and in addition thereto, it is believed that the recent loan to the Pacific Coast Mortgage Company in the amount of $2,500,000.00 should be included in the above total. It has every appearance of being an accommodation note for Transamerica Corporation since it is secured by collateral formerly owned by Transamerica and the proceeds were used to finance the purchase of a large block of stock in the two national banks in Phoenix, Arizona, recently advertised as having been acquired by the corporation. The items followed by asterisks total over $62,787,000.00 and indicate that liquidation is entirely dependent upon the sale of real estate. Certainly the earnings of this group should be used toward the liquidation of these thoroughly frozen assets rather than passing the same on to Transamerica Corporation for disbursement in the form of ever increasing dividends.

The item of $6,380,315.53 identified as "Guaranteed Loans" represents the capitalization of previously charged off assets and the surrender of a well secured direct liability of an affiliate as set forth in the memorandum attached to my letter of December 23rd.

In explanation of the increased carrying value of the Merchants National Realty Company stock, at the time of the previous examination, Transamerica Corporation was obligated to the bank in the amount of $5,879,633.70, represented by a five year contract entered into on October 1, 1931, covering the purchase of a group of future and former banking premises. The contract did not provide for a liquidating program other than through the sale of the properties purchased. It matured on September 30, 1936, following which it was extended for one year. The corporation recently sold the properties to the affiliated Capital Company, thereby extinguishing its direct liability. They were then immediately resold to the Merchants National Realty Company whose entire capital stock is owned by the

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bank and is carried in the bond account. Its only function heretofore has been to own and manage active banking premises. Payment for this group of inactive former banking premises was made by merely increasing the carrying value of the affiliates' stock from $13,457,734.88 to its present carrying value of $19,332,734.88. Simultaneous with the latter sale, Capital Company entered into an agreement whereby it would liquidate the properties involved over a ten year period at the rate of $590,000.00 annually even though it had to purchase some of the properties for its own account in order to provide the stipulated liquidation.

The result of the foregoing manipulations has been the elimination of the direct liabilities of both Transamerica Corporation and Capital Company by the purchase of $5,875,000.00 of other real estate by the affiliate and the transfer of like amount of real estate into the bond account. The questions arise as to whether the wholly owned bank affiliate had any legal right to purchase the real estate outright since it was never interested in the properties purchased and if so, can the stock of the affiliate still be carried in the bond account as a legal investment since it is no longer solely engaged in the ownership and management of active banking premises? An office ruling will be appreciated relative to the foregoing. As far as the public and the depositors of the bank are concerned, the call report of condition that will be published in the near future will not reveal that $41,161,615.25 of other real estate is now being carried as a current investment in the loans and discounts represented by the ten year contracts of California Lands and Capital Company, and that an additional $5,875,000.00 of real estate is now being carried in the bond account as a liquid investment in the same manner as the $13,457,734.88 investment in banking premises is being carried. This is not considered fair to either the depositors or the competing local banks, the latter being aware of the practice but not the extent thereof.

The real estate problem of the bank remains a major one and while the following contains certain duplications with the foregoing schedule, it serves to reveal in another manner the extent to which bank's funds are invested in fixed and non-liquid assets:

Banking Premises Owned	27,455,453.07	
Merchants National Realty Co.	19,332,734.88	
Furniture and Fixtures	7,813,078.63	54,601,266.58
Other Real Estate Owned	2,393,791.02	
California Lands Contracts	12,117,111.74	
Capital Company Contracts	29,044,503.51	43,555,406.27
Completed and Actual Foreclosures 4-20-37		6,368,091.39
Probable Foreclosures 4-20-37		12,089,711.86
Total Fixed Investments		116,614,476.10

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Current figures are not available for the last two items above listed and inasmuch as all probable foreclosures do not develop into real estate, it is believed more than equitable to deduct one half the amount shown or $6,000,000.00 from the final total leaving over $110,000,000.00 tied up in fixed investments. The percentage of acquired properties to total real estate loans since conversion is over 15% while the percentage of loss on sales by California Lands on property acquired from the bank approximates 30%, and the Capital Company approximates 16%, which indicates the character of the real estate loans and real estate acquired. Real estate sales have fallen off very noticably during the current half year and while acquisitions are decreasing, sales are also and the net improvement will not be as favorable as heretofore. The fact that the two companies have either increased the sale price of or taken the more desirable real estate off the market is responsible in a large measure for the decreased sales that will be shown during the current half year period.

Aside from the frozen conditions of the bank, it is felt that the following items should be removed from the assets before the bank should be permitted to pay other than a nominal or reasonable dividend:

Net Bond Depreciation	6,161,163.27
Impounded Foreign Credits	4,009,967.36
Depreciation in Premises	1,055,190.11
Depreciation in Fixtures	1,646,927.36
Dormant Accounts	421,255.97
Guaranteed Loans	6,380,315.52
Merchants National Realty Company Stock	326,192.48
Total assets that should be eliminated	20,001,012.07

This list was recently reviewed with Mr. Giannini who registered stremuous objections to each and every one of them for the following enumerated reasons. He maintains that the bond depreciation has again been corrected by subsequent appreciation and therefore, non-existant. This subject was dealt with in detail in my letter of December 23rd, to which reference is made.

He refuses to admit any further loss in the impounded foreign credits, the full details of which are contained in my letter of November 27th.

The depreciation on the banking premises and furniture and fixtures represents the amounts deducted in income tax returns for tax purposes but not charged off on the books of the bank. The reason given for this action is that the banking

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houses are now worth twice the amount at which they are carried on the books of the bank; that they are a good hedge against the inflation that is certain to come, and that they produce a good return. Since the return is governed entirely upon the amount of rent branches are required to pay, whether excessive or not, the return can be made to be any amount the bank wishes to show and the excessive rentals paid would be hidden in the reduced net earnings of the entire system. Since the cost to the bank and Transamerica Corporation for the development of this system was $425 000 000 00, as previously shown, and the major portion of the banking houses were purchased during the boom years, it is inconceivable that they were purchased so far below their actual value as to reveal a 50% present profit as now contended.

In connection with the dormant accounts, branch managers have been instructed to transfer all balances unclaimed for a period of ten years or more to the Administration Department where a service charge of $1 00 per month is assessed and credited to the undivided profit account. In the past, when balances have been subsequently claimed, refund in full has been made by a charge against the undivided profit account. From April 10, 1933 to April 20, 1937, a total of $488 631 01 has been assessed against these accounts of which amount $67 375 04 has been refunded to claimants, leaving a balance of $421 255 97 still in the undivided profit account. The remaining dormant accounts still being carried by the Administration Department total $1 508 352 88. The practice of assessing service charge against these accounts has been criticised for years in past reports of examination, without effect, and advice would be appreciated as to what further local action should be taken in the premises.

The item "Guaranteed Loans" has been included in this group for the reason that it is no longer a well secured direct obligation of an affiliate as it formerly was and since bank profits were used in the past to eliminate a large portion of the basic obligation, it is not known to what extent they will again be used to eliminate this criticised indirect obligation. Most serious objection has been taken to the inclusion of this asset in this group, the origin and liquidation history of which is set forth in detail in the two memorandums attached to my letter of December 23, which should be read in connection herewith.

The loss of $326 192 48 has been estimated in the stock of the wholly owned Merchants National Realty Company stock for the reason that it represents the difference between its value as shown by its own financial statement and the amount at which it is being carried upon the books of the bank. Its assets consist entirely of banking premises and other real estate purchased from the bank in order that they can be carried in the bond account and shown in published statements as liquid rather than fixed investments.

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At the time of the previous examination, the net sound capital structure of the bank was $95 256 474 48 with deposits of $1 266 016 477 68 or a ratio of $1.00 to $13.29. Since the final review in connection with the current examination has not been completed it is not possible to determine the present sound capital structure but the work has progressed sufficiently to estimate that the ratio will not be improved.

The present combined capital and surplus of the bank is $85 000 000 00 with deposits of $1 243 804 722 12 or a ratio of $1.00 to $14.63. On this basis, the bank is undercapitalized to the extent of $40 000 000 00 with no provisions being made for the correction of this condition other than increasing the surplus in the amount required by recent law as revealed by the following:

EXAMINATION	INCREASE	TOTAL SURPLUS
6-22-34	-0-	30 000 000 00
2-11-35	-0-	30 000 000 00
10- 7-35	2 500 000 00	32 500 000 00
4-27-36	500 000 00	33 000 000 00
10-14-36	1 100 000 00	34 100 000 00
4-20-37	900 000 00	35 000 000 00
8-31-37	-0-	35 900 000 00

While dividend payments were resumed in 1933 after the omission of the year 1932, and steadily increased from $2 250 000 00, the amount paid in 1933, to the present annual dividend rate of $9 600 000 00, it is significant to note that no portion of the earnings were transferred to the surplus fund to correct the undercapitalized condition until 1935 when it became mandatory and then only by the amount required by law.

The main arguments that will be advanced by Mr. Giannini will be that for practical purposes all losses have been charged off; that the bank has no problems that are not self correcting during the coming extensive period of recovery and attending inflation; that the bank is in all respects in better condition than any other bank; that it has recovered all losses that have been charged off in the past; that no other bank in the country has increased its surplus fund as much as $5 000 000 00 in the past two years; that other banks that he knows to be in bad condition are being permitted to pay liberal dividends even though they have not retired their preferred stock and that in view of the foregoing and in keeping with the policy of the Administration, his shareholders should be paid the largest dividends possible. He will also have data in his possession to substantiate many of his arguments, as he presents them, but all will not bear up under thorough investigation.

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In order that real accomplishment may result, it will be necessary for your office to determine whether the assets totaling $20,001,012.07 are proper assets for continued carrying in view of the large and ever increasing dividend rate being paid in comparison to the operating earnings of the bank; whether the earnings of the many affiliates indebted to the bank should not be used to liquidate such indebtedness rather than passing them on to Transamerica Corporation to be disbursed in the form of ever increasing dividends; whether the bank is in as good a condition as he will represent; whether the tremendous real estate problem is a self correcting one and unworthy of concern; whether it is true that the bank has recovered all of its losses after reading the memorandum captioned "Inter-America Corporation Contracts" attached to my letter of December 23rd, which will reveal that only $ 8,629,931.97 was actually recovered from approximately $100,000,000.00 of assets charged off, the balance of the contracts having been cancelled by both the forgiveness of debt and filtering of assets back into the bank; whether the $5,000,000.00 increase in the surplus fund can be considered such a major improvement in view of the fact that the asset position of the bank has been weakened to the extent of $20,500,000.00 by bond depreciation alone, during the past sixteen month period, not to mention the capitalization of the charged off assets in the amount of $6,500,000.00 in order to relieve an affiliate of an unclassified, well secured legal obligation due the bank and whether, in view of the information contained in this and other letters directed to your office on matters in connection with the bank, it is felt that continued criticism of the dividend policy has been and is unjustified.

Mr. Giannini is a man of great force and determination of purpose who is not easily deterred from any path of contemplated action. He is the visionary, highly optimistical, promotional type of executive who thinks in terms of billions instead of millions with all his native ability and tireless energy bent toward the further expansion of the large empire he has built, leaving details to subordinates and never turning back to inspect or correct the weak spots that have developed in the foundation upon which it has all been constructed, and that foundation is the subject bank. That he is a masterful leader and promotor is attested to by his accomplishments in view of the fact that he and his family only own two-fifths of one percent of the stock of Transamerica Corporation and one-fifth of one percent of the stock of the subject bank. That he is not a particularly sound builder was proven by the fact that it became necessary to charge off $880,000,000.00 of losses out of the assets of Transamerica Corporation by his successor in 1931 as well as $75,000,000.00 of losses from the bank in addition to the $35,214,000.00 removed by the former

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Inter-America Corporation contracts.

Since his restoration to control in 1932, the bank has made remarkable strides forward but with the job still incomplete, his attention has been suddenly diverted to the expansion of his branch bank system to eventually include the entire Twelfth Federal Reserve Bank District. This will require unlimited additional capital that can only be obtained from the sale of stock, the value of which he is endeavoring to build up by the payment of excessive dividends and it is felt that the bank is being forced by a minority shareholder to contribute to this program far beyond its present ability to do so and still leave the foundation strong enough to bear an even greater burden through another depression.

A great duty would be performed if your office could impress Mr. Giannini with the tremendous importance of his bank to the entire State of California and to inspire him with the desire to clean it so thoroughly that nothing could destroy its stability. That is what your examiner has been striving to accomplish and all efforts in that direction have been construed as constructive by all bank officers except Mr. Giannini.

Early advice as to agreements reached during the conference and the manner in which it is desired the various subjects be treated in the current report of examination will be greatly appreciated.

Respectfully,

(Signed) L. H. SEDLACEK
L. H. SEDLACEK
National Bank Examiner
12th Federal Reserve District

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SECURITIES AND EXCHANGE COMMISSION

WASHINGTON

January 21, 1938

My dear Mr. Secretary:

Pursuant to your request transmitted by the Hon. Roswell Magill, Under Secretary of the Treasury, I am herewith sending you, for your confidential use, a copy of a document relating to the Transamerica Corporation, which was prepared in connection with the Commission's study of investment companies pursuant to Section 30 of the Public Utility Holding Company Act of 1935.

In order to obtain some data to determine whether the Transamerica Corporation was an investment company within the purview of Section 30, the Commission sent one accountant and one lawyer of its staff to San Francisco to make a cursory preliminary survey of the situation. This survey was not intended to be a comprehensive or detailed study of the activities or financial condition of the corporation or any of its affiliated banks or other organizations; but was rather a preliminary and limited inquiry into the history and nature of the corporation and was confined almost exclusively to the Transamerica Corporation. No examination whatsoever was made of any of the banks or other organizations affiliated with the Transamerica Corporation.

Since the survey of Transamerica Corporation was made only by two men for the purpose of obtaining some information as to the nature of that corporation and is based solely upon the books and documents furnished to the Commission's representatives by the officials of this corporation, the examination necessarily was superficial. No attempt whatsoever was made to check the accuracy of any of the figures contained in these books and documents or to analyse any of the transactions. The document being transmitted to you, is, therefore, based solely on secondary information; has not even been checked back as yet to the supporting data in our files, and should be treated as being entirely tentative and preliminary in nature.

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The document does not constitute in any way a report of the Commission and the fact that it is being transmitted to you should not be construed as an approval of its contents by the Commission.

We have the accountant's working papers, copies of the minutes of Transamerica Corporation and of certain other affiliated companies, and copies of the other documents upon which this summary is based. The Commission will be pleased to make this material and data also available for your confidential use.

The Commission is bending every effort to conclude its study of investment trusts and investment companies and to transmit its conclusions and recommendations to the Congress in the near future. The members of our investment trust study staff who have been in touch with matters feel that a complete understanding or analysis of the Transamerica Corporation could not be obtained except after a study of that corporation and of every bank or other organization affiliated with that corporation. The magnitude of the task of such a study, together with the limitations of staff and funds of the Commission, make it impossible for the Commission to undertake any further survey of the Transamerica Corporation group as part of the investment trust study.

If there is any additional information which you desire, please do not hesitate to call upon me.

Yours faithfully,

Wm. O. Douglas (signed)

William O. Douglas
Chairman

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

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January 26, 1938

Summary of Report
on Preliminary Survey of
Transamerica Corporation

California and New York (1904-1928)

1. The Bank of Italy (a California state bank) was organized in 1904 with a capital of $150,000.

2. Between 1909 and 1917 it acquired 11 branches. Even these early acquisitions of branches were in circumvention of the State law. Giannini and other individuals would buy a controlling interest in other banks, (their operations being financed by the Crocker National Bank) and these banks would then be merged with Bank of Italy and turned into branches.

3. Beginning in 1917, the Stockholders Auxiliary Corporation was used in similar fashion as the medium for acquiring state banks to be converted into branches of Bank of Italy.

4. In 1919 Giannini formed the California Joint Stock Land Bank.

5. In 1919 Bank of Italy became a member of the Federal Reserve System.

6. In 1919 also Giannini formed the Bancitaly Corporation in New York to serve as the Giannini top holding company and to acquire New York banks for merger into an outstanding Giannini bank in the East.

7. In 1919 Bancitaly Corporation acquired the East River National Bank.

8. In 1919 Bancitaly Corporation acquired Capital Company, a California urban real estate holding company.

9. In 1919 Bancitaly Corporation acquired a bank in Naples, Italy.

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10. In 1924 Americommercial Corporation was formed by Stockholders Auxiliary Corporation.

11. In 1924 Bancitaly Corporation acquired Commercial Trust Company in New York and merged it with East River National.

12. In 1925 Bancitaly Corporation acquired the Bowery Bank and merged it with the East River National.

13. Between 1917 and 1924 Giannini, acting through Stockholders Auxiliary Corporation and Americommercial Corporation (and to some extent through the Bancitaly Corporation) acquired 124 banks and converted them into branches of the Bank of Italy.

    (During this period, although the SEC report does not mention it, considerable sentiment against Giannini grew up among the bankers of California, and there were many complaints about his methods in forcing them out of business and into Bank of Italy as branches. Some banks were forced to sell at low prices; for others high prices were paid.)

14. Later Bancitaly Corporation acquired the Pacific National Fire Insurance Company and the Bankitaly Agricultural Credit Corporation.

15. In 1927 Bancitaly Mortgage Company was formed.

16. In 1927 the name of Stockholders Auxiliary Corporation was changed to National Bankitaly Corporation.

17. In 1927 the Bank of Italy took a national charter and became the Bank of Italy, National Trust and Savings Association.

18. During this period Bancitaly Corporation acquired a number of

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California banks, most of which were merged to form the Bank of America in Los Angeles. These operations resulted in mergers into the Bank of Italy, N.T. and S.A. following the enactment of the McFadden Branch Banking Act, and a new method was used to avoid the restrictions of that act on branch banking by national banks.

19. During 1926 and 1927, Bancitaly issued many of its own shares in exchange for shares of banks acquired, with repurchase agreements at prices substantially above the market, to mature in a period of about a year. Thus a constant rise in price of the stock, encouraged by market operations, was necessary to the growth of the organization. The market operations were conducted through National Bankitaly Company (the affiliate of the Bank of Italy, N. T. & S. A.) who derived profits from trading in the shares of Bancitaly Corporation of $9,725,245.41 and $3,371,455.50 for 1927 and 1928, respectively. Bancitaly Corporation, in turn, operated the trading activities for shares of the Bank of Italy, N.T. & S.A. and Banca D'America ed' Italia. Such trading resulted in net profits to Bancitaly Corporation as follows:

Security	Total	1927	1928
Bank of Italy, National Trust and Savings Assn.	$39,795,284.50	$26,861,218.33	$12,934,066.17
Banca d'America ed' Italia	6,494,041.23		6,494,041.23
	$46,289,325.73	$26,861,218.33	$19,428,107.40

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It is quite apparent from the above that there must have been an enormous amount of trading in the shares of these affiliated companies to effect such large profits.

Acquisition of Bank of America, of New York.

20. As a beginning toward a real Wall Street bank, Giannini acquired in 1928 through Bancitaly Corporation 33,244 shares of Bank of America.

21. He wanted to consolidate East River National, Commercial Exchange Bank (apparently acquired in the meantime) and Bank of America.

22. Morgan and the Delafield interests agreed to Giannini's entrance into Wall Street.

23. The New York Clearing House and the Federal Reserve Bank of New York approved the deal if Bancitaly Corporation would dispose of all but 20 per cent of its projected holdings in the consolidated bank. Later they compelled Bancitaly Corporation to agree to dispose of all of the shares to be owned under the consolidation.

24. Bank of America, N.A. and Bankamerica Corporation, a security affiliate, were formed, Bancitaly Corporation received 514,207 shares of the 1,000,000 shares of the new bank, paying $103.73 per share and with plans to dispose of 500,000 shares at $225. a share, and thus make a gross profit of some $60,000,000 out of the merger.

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25. 300,000 shares of the new bank were offered to the shareholders of Bank of Italy, N.T. & S.A. and of Bancitaly Corporation and 200,000 shares were to be sold to National Bankitaly Company for sale to the public through the bond department of Bank of Italy, N.T. & S.A.

26. Bear raids began in June, 1928 on the stock of Bank of America, N.A., and it fell in one day from 250 to 148. Some of the buyers of stock at the offering price of $225 repudiated their purchases and the $60,000,000 expected profit was reduced to $22,000,000.

(The Bancitaly Corporation claimed taxable profit of $6.3 million; the Commissioner of Internal Revenue claimed $41.4 million.)

27. Bancitaly Corporation was left with 43,000 shares of Bank of America, N.A. which it transferred to Capital Company and a reacquisition of shares of Bank of America, N.A. by the Giannini interests was begun, apparently without interference this time by the New York Clearing House or the Federal Reserve Bank of New York.

The Formation of Transamerica

28. Reputed bear raids in June, 1928 on stock of Bank of Italy, N. T. & S. A. and Bancitaly Corporation showed their vulnerability and led to the formation in October, 1928 of Transamerica Corporation. They also influenced shareholders of Bank of Italy, N.T. & S.A. and Bancitaly Corporation to exchange their shares for shares of Transamerica Corporation, so as to give it 99 per cent control in both the bank and the investment company.

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29. Transamerica Corporation also acquired, through Capital Company and Bankitaly Company of America (successor to Bancitaly Corporation) by the end of 1929, nearly 730,000 shares of Bank of America, N.A. Of these 558,254 shares were acquired by exchange on a basis of unrealized loss to the sellers of $34.50 a share.

30. In 1928, Transamerica Corporation, in exchanging its shares for those of Bank of Italy, N.T. & S.A., and in forming Bankitaly Company of America (to take over Bancitaly Corporation and National Bankitaly Company), wrote up on its books the value of the new securities over the old by more than $600 million.

31. In April, 1929, Giannini interests became affiliated with Blair & Company, Inc., headed by Elisha Walker. Bancamerica Corporation became Bancamerica-Blair Corporation. The Blair interests received an unrealized profit of some $46 million from this deal, referred to in the report as "excessive consideration".

32. In 1929 the Transamerica group realized trading profits of about $56,000,000. To increase trading profits, Intercoast Trading Company was formed but after the market crash was taken over by Inter-Continental Corporation, with a loss of about $25,000,000 to stockholders.

33. As of the end of 1929 Transamerica Corporation showed investments in affiliated and controlled companies aggregating $1.1 billion and approximate resources of $2.3 billion.

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34. In 1930, Transamerica Corporation acquired more than 50 per cent of the stock of The First National Bank of Portland, Oregon.

Walker replaces Giannini

35. In 1930 Elisha Walker of the Blair group, became the head of Transamerica and Giannini retired.

36. Walker and his Blair Associates had to turn in the 131,658 of the shares of Bank of America, N.A. (which they had received in 1929 at a nice profit in the Blair & Company merger) for Transamerica stock. A special corporation called General Enterprises, Inc. was formed for the express purpose of making this exchange.

37. It should be noted that 129,525 of the 131,658 shares came from 13 personal holding companies which had been formed by the Blair partners--seven in Newfoundland, two in Quebec, two in Panama and two in Guernsey.

38. Here again the Blair interests made money, the exchange netting them an excess market valuation of $11.5 million.

39. Moreover, while at this time the Blair partners were given 5 shares of Transamerica for each share of Bank of America, N.A. the general public was being offered only 3 shares of Transamerica for each share of Bank of America, N.A.

40. When Elisha Walker took over Transamerica management a new policy was agreed up which embraced, among other things:

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A. Development of nation-wide branch banking.

B. Acquisition of foreign banks.

C. Expansion in the insurance field.

D. Acquisition of stocks of industrials and public utilities.

E. A directorate representing national and international industrial interests.

F. Listing of Transamerica stock in London, Paris and New York.

G. A profit sharing plan for officers.

Walker-Giannini contest for control.

41. Giannini soon became dissatisfied with Walker's policies and in 1931 and 1932 engaged in a proxy fight with Walker, in which Giannini regained control of Transamerica.

42. When it is considered that at the period of the proxy fight there were approximately 248,000 stockholders in Transamerica Corporation, three-fourths of whom were residents of California, and that added to these, there were 12,000 employees of the group, together with over 2,500,000 depositors in the controlled banks, it can easily be seen that " . . . Transamerica with its 248,000 stockholders is more than a private enterprise. It is a great semi-public institution." (Front page editorial, San Francisco News, December 19, 1931.)

43. Giannini's policies had been based on expansion, a managed market in his securities, close control, and a liberal dividend policy. A rising market was almost essential to his activities.

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44. Walker found a declining market, reduced values and earnings, and inflated Transamerica with complicated interrelationships, and a generally depressed and baffling situation. Dividends were cut, spreading dissatisfaction.

45. In a shift of policy on earning emphasis, Walker played down banking and stressed participation in industrial enterprises. Banks were to be disposed of and nationwide branch banking forgotten. This precipitated the proxy fight.

46. In 1931 the Bank of America, N.A. was sold to the National City Bank of New York, Transamerica getting about 9 per cent of the stock of the National City.

47. Through 1930 and 1931 Walker was engaged in reorganizing the various Transamerica companies, selling securities, liquidating bank loans, writing off losses, and generally consolidating position. There were formed

Transamerica Bank Holding Company
Transamerica Service Company
Transamerica Public Utility Holding Company
Transamerica Insurance Holding Company
Transamerica Mortgage Holding Company
Transamerica International Corporation

48. In 1931 Transamerica wrote down its investment in controlled and affiliated companies on the basis of their net asset value. The total write down exceeded a billion dollars.

49. In February, 1932, Giannini resumed control.

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50. Giannini resumed his branch bank expansion, and has acquired branch bank system in Oregon, Washington, Nevada (and Arizona). Many new branches of Bank of America, N.T. & S.A. in California have been acquired.

51. Dividends which had been suspended in 1931 were resumed in 1934.

52. Accounting methods were again changed to enable profits in security transactions and in security holdings to be shown and to be available for dividends.

53. Profits on sales of securities which had been written down in 1931 totalled $4.3 million in 1932-36, one tenth of the total income for the first five years of Giannini's new control is thus accounted for by profits on sales of written down securities.

54. In 1937 Transamerica holdings of Bancamerica-Blair Corporation were distributed to avoid registration as a public utility holding company under the 1935 Act.

55. In 1937 58 per cent of Transamerica's holdings of the stock of Bank of America, N.T. & S.A. were distributed to Transamerica stockholders in an attempt to bring it out from under the Federal Reserve Act definition of bank "holding company affiliate."

56. The several holding companies are being collapsed and other companies dissolved in a "simplification " move.

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57. In 1930 and the early part of 1931, when, at the demand of the National Bank Examiner, $35,000,000 of unbankable assets were taken out of Bank of America N.T. & S.A. by Corporation of America, $7,800,000 of these assets, represented by city realty, were taken over by Capital Company at carry value. However, this deal, transacted on the books of the participating companies as of February 28, 1931, was rescinded on May 6, 1931.

58. There are indications that Occidental Life Insurance Company besides selling to Capital Company those real estate holdings which showed a loss, purchased mortgages from Capital Company—thus supplying the latter company with funds to take over the insurance company's realty.

59. The following statement of shrinkage of capital paid-in shows, subject to notations thereon, that of a total net capital paid-in of $1,536,782,124.35, (including stock dividends of $378,725,500.00) there was the enormous shrinkage of 88.12% or $1,354,362,467.31. Thus the adjusted paid-in capital as of December 31, 1936, amounted to the sum of $182,419,657.04.

60. The minutes of some of the companies in the Transamerica group indicate the extent of the control of Mr. Giannini over the group:

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"Upon motion of Director Hecker, seconded by Director Weller and duly carried that President A. P. Giannini be given authority to act in the matter of establishing interest rates to be charged by banks owned by the Stockholders Auxiliary Corporation to the different business enterprises for the coming season."

- Stockholders Auxiliary Corporation Minutes
  Board Meeting June 8, 1920.

"RESOLVED: that Mr. A. P. Giannini's actions in the purchasing of stock of various banks and other corporations and of real estate, be approved."

- Bancitaly Corporation Board Meeting Minutes
  December 5, 1923

And, in connection with an issue of 100,000 new shares of

Bancitaly Corporation authorized at the end of 1925:

"38,916 shares thereof to A. P. Giannini, the undersigned President of the Corporation, at the price of $300 per share, in order to enable him to restore borrowed stock to stockholders and to make such other adjustments as may be necessary in the matter of the recent more or less successful efforts which he, on his own initiative and responsibility, but for the best interests of the Corporation and its stockholders, put forth to hold the market value of the stock within reasonable bounds."

Bancitaly Corporation Board Meeting Minutes,
December 28, 1925.

"On motion duly made and seconded, A. P. Giannini, President, was authorized to reduce the par value of the stock and declare such dividends as he might deem proper."

61. It is difficult to trace the full amount of payments made to A. P. Giannini, but it would appear, that exclusive of the $1,500,000 paid to the University of California, at least $3,765,157.69 was paid to him during the period from 1925 to 1936 inclusive.

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62. From the above, it would appear that the consolidated balance sheet thus presented does not follow the orthodox method of consolidation.

63. In view of the small cash position, the pledging of a large part of the assets, and the possible inability to dispose of readily, the remaining free marketable securities, it would seem Transamerica Corporation with its consolidated subsidiaries is in a somewhat unliquid position.

64. With a somewhat depleted cash position and taking into account current revenues, it may be that Transamerica Corporation will have to borrow from its affiliated banks.

65. Capital Company and California Lands Company, Inc. owe Bank of America, N.T. & S.A. $51.6 million for real estate purchased from them under long-term contracts and mortgages assumed. (Of the $51,616,432.78, $42,384,123.79, is due to the Bank of America, N.T. & S.A. for purchases as related previously to relieve the bank of frozen real estate owned by it.)

66. Capital Company and California Lands Company, Inc. have a reserve for depreciation and revaluation of $11,896,398.14. This amount is equal to 14.35% of the total book value of $83,907,771.33. It would seem that the rate of 14.35% is exceptionally low considering the drastic decline in real estate values, particularly when compared with the average per cent

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of loss on real estate sold by Capital Company and California lands, Inc. during 1935 and 1936 which was 22.84%. On the hypothetical basis of 22.84% of a total carrying value of $82,907,771.33 for real estate owned, the reserve for depreciation and revaluation would be $18,936,134.97. The $18,936,134.97 compares with a reserve for depreciation and revaluation provided of $11,896,398.14 or a deficiency in the reserve of $7,039,736.83

67. That substantial trading activities were conducted in the capital stock of Transamerica Corporation and its subsidiary and affiliated organizations is evidenced by the fact that at December 31, 1929, the various subsidiaries of Transamerica Corporation were long 1,086,123.75-5/6 shares of that corporation at an average price of $61.29, having an aggregate book value of $66,578,201.01.

68. The New York Stock Exchange Committee on Stock List remonstrated with Transamerica Corporation for its activities in its own shares.

69. "the constant shifting of shares between companies." p. 132.

70. "the tremendous trading volume that took place in the shares of Transamerica Corporation by Transamerica Corporation and its subsidiaries and affiliated companies." p. 135.

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COPY

TREASURY DEPARTMENT
COMPTROLLER OF THE CURRENCY
WASHINGTON

January 28th, 1938.

PERSONAL

My dear Mr. Secretary,

In view of the fact that I am leaving Monday evening and will not have a chance to participate in further conferences, I thought I should give you a few reflections I have had as a result of the conference this morning.

1st. I was dumfounded at the statement of Chairman Leo Crowley with reference to the Bank of America. He has never indicated to me directly or indirectly any dissatisfaction or criticism with reference to the Bank of America. The first information I had that he was critical of the situation was in his statements this morning. Mr. Crowley has never discussed or presented the matter to the Board of Directors of the Federal Deposit Insurance Corporation.

2nd. Under the law it is the duty of the Federal Deposit Insurance Corporation to serve notice on any insured bank who engages in unsound or unsafe practices. If Mr. Crowley's statements were correct he should have presented the facts to the F.D.I.C. Board and a notice should have been sent to the Bank of America.

3rd. I was even more surprised when Dr. Viner stated he had a report given to him by Chairman Leo Crowley on this matter. As you perhaps know, these reports are confidential information and it was a great surprise to know that Mr. Crowley would divulge information of this kind to any individual without the authority of the Board of Directors. We regard this as a dangerous precedent and violation of the law.

4th. Any person designated by you has full access to all of the records of this office at any time and we are rather surprised that Dr. Viner should not have secured such an authorization from you to get such information from this office if he cared to make a study of any bank.

5th. Chairman Crowley's serious error was immediately corrected by Chairman Eccles. This matter cannot be handled without the most careful consideration, and of course Dr. Viner could easily be led into error by Crowley, because Dr. Viner does not hold himself out as a bank expert. Nor does he claim to be an expert examiner. He has fine judgment when the facts are presented to him.

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6th. I have always known of Chairman Crowley's hostility to the National Banking system, as evidenced by the effort on the part of his representatives, whenever mergers of banks in communities are involved, to establish a state bank rather than a national bank.

7th. It occurs to me that whenever Government money goes into mergers, which investments must be approved by the Secretary of the Treasury, that we should make an effort to have the bank nationalized and bring it under the control of the Treasury.

8th. Dissolution of holding companies will have a more pronounced effort on the holding companies in the northwest - Minnesota, North Dakota, South Dakota, Montana, and other northwestern states - for the reason that the banks there are unit banks, and if the stock of these banks is distributed you will have a bank in some instances with $20,000 of capital stock distributed among twenty to thirty thousand shareholders. This inconvenience will not be suffered by any bank which has branches.

9th. I pointed out this morning an illustration of denial by this office of an application of the Bank of America to establish a branch at El Monte, California. Subsequently the Bank of America made application for one of its state banks at the same point, to which I objected before the Federal Deposit Insurance Corporation, and the application was denied. Transamerica then purchased one of the going banks in that city.

10th. For several months there has been on my desk applications for additional branches in Nevada and for several weeks in Oregon, of banks controller by Transamerica, and these branches have been declined because the ratio was not according to the standard fixed by this office. Otherwise, these banks are in excellent condition.

11th. This office has made some criticism of the Bank of America, since it is the duty of the office to call the attention of the management to unfavorable loans in any bank. We have criticized the Bank of America for an excess of real estate owned, and also we consider loans to affiliates based on real estate subject to criticism. These criticisms were contained in the report which Mr. Crowley secured from this office.

12th. Chairman Eccles pointed out rather briefly this morning the astonishing recovery made by the Bank of America from 1933 to 1937. Heretofore we have furnished you with a memorandum on this subject. Two or three facts stand out rather pointedly -

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(a) The sound capital structure has been increased $42,395,000.

(b) Cash and Governments are now at $512,000,000.

(c) This bank never sold any preferred stock to the Government. In 1932 it owed the Reconstruction Finance Corporation, the Federal Reserve and correspondents $138,182,000. This indebtedness had been completely liquidated by June, 1933.

(d) Deposits have increased from $713,346,000 to $1,349,700,000.

(e) This bank has more Federal Housing loans than all of the other banks in California combined, something like $55,000,000.

13th. Mr. Crowley's erroneous criticism of the bank in no way reached the point of the discussion at the conference. While the discussion was entirely outside of the purpose of the conference, yet I feel these observations are pertinent.

14th. Affiliate and holding company loans should be watched with care and a policy should be adopted looking toward the entire elimination of all such loans.

15th. Chairman Douglas' statement that there was some evidence of manipulation of stock in Transamerica is a matter to be condemned if it exists, but that is a matter entirely under the jurisdiction of the Securities and Exchange Commission.

16th. Chairman Eccles stated that he had discussed with the Chairman of the Federal Reserve Bank in San Francisco the Transamerica policy of extension and instructed him to advise Mr. Giannini that if this extension continued in the northwest, he would be compelled to ask for legislation. This is the first information this office has had of this position on the part of the Federal Reserve Board.

17th. We have an appointment with Mr. Giannini for tomorrow to discuss some criticisms we have of the bank. Chairman Douglas stated that he also had an appointment with Mr. Giannini for 9:30 tomorrow morning. It would seem highly important that Mr. Crowley discuss whatever he has in mind with Mr. Giannini tomorrow also.

18th. I have stated on numerous occasions that I am absolutely opposed to holding companies of bank stocks which tends to go to the extent of controlling the banking system of

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the nation. We cannot permit the banking structure of the nation to ever get into the control of one or two groups of men through holding companies.

I believe the conference was of definite value in bringing out the points enumerated in this letter.

Cordially yours,

(Signed) J. F. T. O'Connor

Comptroller.

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

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COPY

January 31, 1938

MEMORANDUM:

Re — Bank of America N.T. & S.A.

While in San Francisco last November, at which time the above-named bank was under examination, the writer conferred with Mr. A. P. Giannini for a few minutes only. He stated that he disagreed with the examiner regarding about $8,000,000 of so-called German stand-still loans carried in the assets of the bank. He said that he thought they would be paid in full and didn't think it proper to make any charge-off on account of them.

At that time arrangements were made for a conference with Mr. Giannini to be held in Washington the latter part of December. Later he wrote that his trip to Washington had been deferred a short time on account of illness in the family. Another letter was received from him stating he would arrive here on January 29.

The writer had prepared for this conference and Mr. Giannini came to the office about ten thirty. More than an hour was consumed in a discussion of the bank's affairs and all the principal criticisms of the bank reflected by the reports of examination were brought out by the writer.

Mr. Giannini presented statements made by Mr. Harvey Gibson, President of the Manufacturers Trust Company in New York, regarding German credits. He was told that that simply gave one man's opinion and that it was not believed anyone could accurately place a value on the German loans. He was also told that the writer instructed the examiners in Boston, New York and Chicago more than a year ago to have the national banks holding these loans to write off at least the exchange loss, which amounted to approximately 50% of the book value and when such letter of instructions reached San Francisco with respect to the Bank of America the examiner called on the telephone and said he had reached an agreement with Mr. Giannini to charge off $1,000,000 at the time of each semi-annual examination until the book value had been reduced by 50% and strongly recommended that this arrangement be allowed to stand.

The facts are that Mr. Giannini charged off $1,000,000 on the German credits but when he was told at the next two examinations he failed to charge off anything. He admitted this agreement, except that he stated his agreement at that time covered only that part of the German loans known as the Lee Higgins credits, which are about one-half of the total book value.

The writer at this point began to call attention to a large aggregate of unsatisfactory assets in the bank which are criticised in the report of examination, copies of which were furnished to the bank's management, and

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to the unsatisfactory policies, especially dividend policies. Attention was also called to the matter of increasing the book value of United States and municipal bonds to the extent of $14,000,000 in 1935 and 1936, which amount was applied toward the reduction of obligations of the former affiliate Interamerica Corporation, which obligation was placed in the bank in 1931 and 1932 to take out objectionable assets. He was told that this practice was very objectionable and, as he knew, his bank had been criticised in reports of examination for the incident. He claimed that the matter had now been entirely cleared up, but the examiner's last report shows approximately $6,000,000 of the amount as not having been corrected.

Mr. Giannini's attention was called to what is believed to be the most serious criticism and that is the obligations of Transamerica Corporation and its various subsidiaries, which at the time of last examination aggregated $74,000,000, which has been a matter of criticism for some time. Practically all of this indebtedness is secured by or based on real estate. This includes $12,000,000 to California Lands Company, which is probably nothing more than other real estate, as the obligations were given for farm lands which the bank acquired at a foreclosure of the mortgages and also includes $29,000,000 to Capitol Company, the obligations of which were given to the bank for city real estate acquired by it through foreclosure of mortgages. Mr. Giannini stated that in his opinion this was one of the best assets in the bank and was worth considerably more than the book value.

He was told that this entire amount should be eliminated from the assets of the bank as quickly as possible and while efforts are being made to liquidate the slow and undesirable indebtedness the bank should charge off periodically on the various items. This matter has been criticised at each of the examinations of the bank.

Mr. Giannini apparently did not like the criticism and at one time stated we could take the bank and run it. He reviewed briefly some of the improvements that had been made in the bank since the Banking Holiday of 1933 and referred to the condition of other national banks. The writer promptly agreed as to the improvement he had made after being reinstated as head of the bank in 1932, but the affairs of other banks would not be discussed with him in any way.

His attention was called to numerous other smaller objectionable assets, aggregating $20,000,000, in which here is no doubt considerable loss, also, the objectionable practice of making service charges on dormant deposit accounts.

He was told that in view of the very fact that his bank was operating in practically every town and city throughout the State of California it certainly should be one of the strongest banks in the country. He claimed to believe that it is the strongest bank in the United States.

The bank's dividend policies were then discussed. He was told that the writer thoroughly agrees with the examiner's criticism of such policies and that instead of writing off liberally and periodically on the large aggregate of real estate and other objectionable assets the dividend rate of the

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bank had been increased each year during the past five years.

The schedule which had been prepared showing the operating earnings, net earnings and dividends paid covering the past seven years was reviewed. In 1933 the bank paid $2,250,000 or 4½% of the capital; in 1934 $3,750,000, at the rate of 7½%; in 1935 $6,000,000, at the rate of 12%; in 1936 $8,000,000, at the rate of 16%, and in 1937 $8,800,000, at the rate of 17.6%.

Mr. Zach Lamar Cobb was with Mr. Giannini during this entire conference. Following the conference Mr. Giannini sent Mr. Cobb back to this office with a number of schedules of criticised assets and letters which had been forwarded from the bank, evidently for the purpose of having this office instruct the examiner regarding the classification of same in his report of examination which is now being written in San Francisco. The German credits were again discussed briefly and with this exception Mr. Cobb was told that any additional information regarding the assets should be taken up with the examiners at the San Francisco office.

(signed) W.P. FOLGER
Chief National Bank Examiner

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FEDERAL DEPOSIT INSURANCE CORPORATION
WASHINGTON

OFFICE OF THE CHAIRMAN

January 31, 1954.

MEMORANDUM TO:
The Honorable Henry Morgenthau
Secretary of the Treasury

Re: The Bank Holding Company Question, with Special Reference to Transamerica Corporation

As a result of our conference, I wish to set before you the essence of my position with respect to this problem in an effort to assist in its solution.

It is my opinion that the group banking system should never have been permitted to come into existence. However, now that it has appeared and become an established institution in some parts of the country, treatment of it must be predicated upon serious consideration of the incidental effects which may flow from any particular action. These organizations have been permitted by law to come into existence and have possibly 500,000 stockholders. Care should be taken, if possible, to avoid causing any undue hardship to these stockholders, most of whom are small investors, and to avoid impairing the economic usefulness of the banks now contained in the groups. It must not be forgotten that most of the groups and their constituent banks have cooperated most commendably in putting their institutions in good order and in maintaining banking standards since 1933. My concern is primarily with those exceptional groups and banks which have not given evidence of a willingness to clean house and to restrict expansion. When an attitude of irresponsibility is manifested on the part of the management of dominant banking institutions operating over wide areas, a serious situation exists.

My recommendations are, briefly, as follows:

(1) No further bank holding companies should be permitted to come into existence.

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(2) Existing bank holding companies should be absolutely prohibited from further expansion, either through acquisition of additional banks, either directly or indirectly, or through establishment of additional branches by banks now in the groups.

(3) Banks should be required, within three years, to collect loans which they have made to their affiliates.

(4) If the respective groups do clean house and seem, after three years, to be operating in a socially desirable fashion, it seems to me a debatable question whether the general welfare would be best promoted by rigidly requiring dissolution by a certain date. If they have cleaned house and are not being permitted to expand, possibly the "death sentence" should not be carried out; or dissolution in certain cases or under varying conditions could be prescribed by the supervisory authorities; or possibly mild pressure for dissolution should be exerted through some device such as withholding of dividends.

While it is quite necessary that public attention be confined to group banking in general, it is necessary, as was discussed at our conference, that we recognize that our big immediate problem is not group banking but the Transamerica Corporation and the Bank of America. At the present time the Bank of America has 490 branches. This represents a large concentration of credit in one group, or in fact, in the hands of one man. The Bank of America would not be touched by holding company legislation. Already Transamerica Corporation has distributed 60 percent of the stock of this bank and there appears to be no reason why it cannot readily distribute the remainder without any effect for the better upon the condition and policies of that bank.

Our information relative to the condition of the Bank of America is based on the last examination report made available to us, that is, the report received in Washington May 10, 1937 on the national bank examination begun October 14, 1936. That report and particularly the comments in the confidential section set forth several unsound aspects of the bank's condition which merit our careful consideration. Furthermore, it appears that there can be no real understanding of the condition of the bank without a thorough examination of Transamerica Corporation, Capital Company (holds city real estate), California Lands (holds rural real estate), Occidental Life

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Insurance Company and Pacific National Fire Insurance Company. Further expansion in the banking field by this group into neighboring states or even in the State of California through additional branches or additional affiliates will greatly add to the already difficult problem of satisfactory examinations and proper supervision. Such a situation could easily get out of hand.

Therefore, my opinion is that our most important problems are to restrict the further expansion of such groups either through branches or affiliates and to exercise close supervision over them with a view to correcting any existing unsatisfactory conditions.

While the opinions which I have here set down may deviate somewhat in emphasis from the views expressed by the President, I want you to know that I recognize him as the final one to determine policy. Whatever the final decision in this connection, so long as I remain in the Government, the President will find me loyal to whatever decision he may make.

Leo T. Crowley
Chairman

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GROUP BANKS (000 omitted)

NAME OF BANK	LOCATION	NO. OF BANKS	PAR VAL. COMMON	SOUND VALUE COMMON	PREFERRED A	PREFERRED B	TOTAL SOUND	DEPOSITS
Almours Securities, Inc.	Jacksonville	9	2,550	4,669	-	-	4,669	49,722
American National Bank	Nashville	8	3,430	4,149	4,095	-	8,244	57,284
Anglo-Natl. Corporation	San Francisco	9	11,075	12,878	5,000	-	17,878	218,875
Atlantic National Bank	Jacksonville	7	3,650	4,040	-	-	4,840	51,506
Bancohio Corporation	Columbus	16	7,440	11,232	-	-	11,232	108,227
Citizens & Southern Holding Co	Savannah	7	6,200	10,086	46	-	10,132	109,595
Commerce Trust Co.	Kansas City	4	6,700	12,020	-	-	12,020	180,384
First Bank Stock Corp	Minneapolis	79	19,185	41,282	-	-	41,282	390,447
Old Colony Trust Associates	Boston	14	36,293	106,481	1,000	-	107,481	643,786
First National Bank	Chicago	7	32,400	73,165	396	-	73,561	945,449
First National Bank Trustees	Louisville	6	2,450	7,202	225	-	7,427	43,555
First Security Corporation	Ogden	5	1,889	6,166	1,290	15	7,471	67,503
First Trust & Deposit Co	Syracuse	12	2,543	398(R)	8,638	1,172	7,410	64,071
Hamilton National Assoc. Inc.	Chattanooga	18	3,745	5,784	1,941	100	7,825	75,797
Hartford-Connecticut Tr. Co	Hartford	5	325	675	-	-	675	5,424
Marine Bancorporation	Seattle	3	2,625	6,463	-	-	6,463	73,952
Marine Midland, Inc.	Buffalo	18	22,800	52018	1,920	-	53,938	399,635
National Shawmut Bank	Boston	7	10,925	29,045	297	150	29,492	185,439
Transamerica Corporation	San Francisco	7	56,300	109,905	450	-	110,355	1,499,042
Northwest Bancorporation	Minneapolis	94	17,563	30,226	9,017	-	39,243	394,363
Trust Co. of Ga. Associates	Atlanta	6	3,850	22,872	-	-	22,872	39,520
Union Tr. Co. & MellbankCorp.	Pittsburgh	24	30,675	225,278	1,415	100	226,793	726,136
Wisconsin Bank Shares Corp.	Milwaukee	18	8,005	14,769	11,162	-	25,931	261,523
			282,689	790,407	44,390	1,637	837,234	6,520,235

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May 6, 1938

Honorable Marshall R. Diggs,
Acting Comptroller of the Currency,
Treasury Department,
Washington, D. C.

Dear Mr. Diggs:

As Acting Comptroller of the Currency you no doubt desire to be kept well informed regarding the true condition of the major banks in the United States which operate under your supervision. Since the reports of the National Bank Examiners on their examinations of banks should constitute an indubitable source of correct information in this respect, it is reasonable to assume that you refer chiefly to these reports for your information and that you base your conclusions on them. It follows, therefore, that in writing reports, examiners should present a true picture not only of the financial condition of a bank at the time of examination, but also of the progress it has been making, utmost care being taken to avoid incorrect statements on essential points.

With a full realization, then, of the importance to your office of having on file true reports of the condition of the banks under your supervision, I feel that your attention should be drawn to the misrepresentation of the condition of Bank of America National Trust and Savings Association in recent reports of the National Bank Examiner. Exaggeration of problems and underestimation of progress appears to be the obvious theme of the reports, and, while the condition of the bank has been progressively improving since I returned to the management in 1932, the importance of this progress is minimized by undue criticisms. This is particularly true of the report of examination made as of August 31, 1937, and completed on April 20, 1938, which I have just received.

Knowing the condition of the bank as well as I do, I am constrained to remark that the writer of the last report either failed to make a proper study of certain matters which he has seen fit to criticise, or he has concocted problems for reasons best known to himself. He has succeeded in presenting a warped picture of the condition of the bank by the simple but effective process of over-emphasizing the importance of matters having minor significance, making obscure the reference to improved conditions, and exaggerating problems to the extent that even though certain progress has been reported, its importance is dwarfed by the enormity of the exaggerations.

In support of my attitude in this matter, I wish to draw your attention to the following items appearing in the last report of examination, and to my comments in regard thereto.

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1. "INSERT 1, PAGE 11, OF THIS REPORT SHOWS A RECAPITULATION OF SLOW, DOUBTFUL AND LOSS CLASSIFICATIONS, TOGETHER WITH NET UNCLASSIFIED DEPRECIATION. THE TOTAL BOOK VALUE OF ASSETS SO CLASSIFIED IS $143,652,116.47, OR 29.47% OF THE ENTIRE BOOK VALUE OF THE BOND ACCOUNT."

The above statement is either an error, or an intentional, misrepresentation because on examination of insert 1, page 11, it is disclosed that bonds referred to include U. S. Government and municipal bonds aggregating $141,430,063.12 in connection with which the sum of $2,523,115.71 is classified as a loss because of depreciation in market value below a previously written up book value.

The classification is summarized in the report as slow, $307,377.67, doubtful $11,334.42, and loss $2,836,769.31.

The actual total book value of bonds subject to adverse classification is $2,223,053.35, less than 1/2 of 1% of the total bond account and not $143,652,000, or 29.47%.

2. CLASSIFICATION OF $2,523,000 OF DEPRECIATION IN U. S. GOVERNMENT AND MUNICIPAL BONDS AS A LOSS.

This classification represents the market depreciation, without allowance for reserves for amortization of premium, as of the date of the examination, below book value on bonds previously written up. The classification was left in the completed report although prior to completion of the examination, the market price of the bonds had advanced to approximately $1,000,000 over the book value.

3. "THE AMOUNT OF UNLAWFUL AND SUB-STANDARD INVESTMENTS ARISING FROM BANK TAKEOVERS IS NOW SUBSTANTIALLY REDUCED, IT BEING THE PRESENT PLAN TO DISPOSE OF SUCH SECURITIES IMMEDIATELY UPON ACQUISITION. HOWEVER THE NUMBER OF SUCH ITEMS REMAINING ON THE BOOKS, SOME OF THEM FOR OVER THREE OR FOUR EXAMINATIONS, DOES NOT BESPEAK FULL APPLICATION OF THE ANNOUNCED POLICY. **********ELIMINATION OF THESE ITEMS AS CLASSIFIED SHOULD BE EFFECTED TO AVOID FURTHER SEVERE CRITICISM."

Securities classified as "bonds unlawfully acquired, etc." amount to $1,394,000 and on analysis discloses

6 issues with a book value of $1,261,000 purchased in the market and classified as unlawful by the examiner who has an opinion different from ours with regard to their acceptability under regulations relating to conversion features. These bonds are convertible into common stock at the option of the holder, whereas the regulation of the Comptroller prohibits the purchase of bonds convertible into

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stock at the option of the issuer. We know of no prohibition against the purchase of bonds convertible at the option of the holder;

5 issues with a book value of $97,000 acquired to avoid a loss on investments already held and therefore in our opinion lawful within the provisions of the Comptroller's regulations;

2 issues with a book value of $29,000 acquired to avoid litigation and possible loss from litigation;

9 issues with a book value of $7683, three of which are carried at $1.00 each, acquired in the takeover of banks.

From the above it is seen "that the number of unlawful items acquired in the takeover of banks" required by the examiner to be eliminated to avoid "severe criticism" are determined on analysis to be only 9 items with a book value of $7683. While the examiner is technically correct in listing these items, the emphasis in his remarks on the avoidance of further severe criticism would lead the reader to believe that this was a relatively important item in the report.

4. "INASMUCH AS OVER 35% OF THE BANK'S TOTAL ASSETS ARE IN ITS BOND ACCOUNT WITH OVER 75% COMPRISED OF U. S. GOVERNMENT ISSUES CARRIED ON THE BOOKS AT A HIGHLY INFLATED FIGURE OVER PAR VALUE, THE SITUATION AS PRESENTED INDICATES A POTENTIALLY DANGEROUS POSITION."

As of the date of the examination the bank held $367,799,000 par value U. S. Treasury and guaranteed issues with a book value of $376,829,000 indicating a premium of $8,964,000. The market value of these issues, at that time, was $371,415,000, a market depreciation of $5,423,000.

Before completion of the examination the excess of market value over book value of U.S. Government bonds held by the bank had increased to $2,800,000 and as of April 28, 1938 was $8,256,000. Government and guaranteed issues at the present time are selling on an average of 4.97 over par value. With our investment of $376,899,000 carried at a premium of only 2½ points, we do not admit "a highly inflated situation". Moreover, premiums are amortized to the first call date and to imply a dangerous situation with respect to our investment in U.S. Government bonds is to impugn the credit of the Federal Government. Furthermore, it is inconsistent for a Federal examiner to refer to a large holding in securities of the Government as indicating a potentially dangerous condition when the safety of depositors' funds in postal savings, the insurance of banks by the Federal Deposit

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Insurance Corporation, and the old age benefits of the Social Security Act, are all contingent upon the safety of funds in Government bonds.

5. "REFERENCE IS MADE TO LARGE LINES, PAGE 8 INSERTS 2 TO 31, OF THIS REPORT. CONTAINED THEREIN ARE EXTENSION OF CREDIT TOTALING $112,708,496.08 REPRESENTING APPROXIMATELY 8.24% OF THE BANK'S TOTAL ASSETS. THE CONCENTRATIONS OF CREDIT AS REFLECTED IN THIS GROUP CONSTITUTE THE MAJOR ASSET PROBLEM OF THE BANK."

This total of $112,708,496.08 referred to as a major asset problem included $50,300,000 of well secured and unclassified items which appear to have been added to the figure in order to place emphasis on this so-called "major asset problem". The remainder of these loans are classified as follows: slow $57,408,000, doubtful $3,327,000, and loss $1,751,000, and represent 4½% of the total assets.

The exaggeration lies in the fact that loans aggregating $112,700,000 are referred to as constituting a major asset problem, whereas on analysis the adverse classification is found to be $3,327,000, doubtful, and $1,750,000 loss, less than 4/10 of 1% of total assets. The major portion of the doubtful and loss classification is in German credits which are again referred to in the report under separate subdivision of criticisms entitled "Foreign Credits."

6. "THE LARGE LINES OF TRANSAMERICA CORPORATION AND ITS SUBSIDIARIES TOTALLING $74,531,155.68 IS THE LARGEST SINGLE CONCENTRATION. AMONG THIS GROUP (REFERRING TO LARGE LINES) FROM A COMPARATIVE POINT OF VIEW THERE HAS BEEN LITTLE FUNDAMENTAL LIQUIDATION IN THE AGGREGATE TOTAL OF THESE LINES."

That this statement of the examiner is grossly misleading is demonstrated by a comparison of the examination report of March 31, 1932 and the current examination.

Loans secured by Transamerica Corporation stock have been decreased from $20,500,000 on March 31, 1932 to $6,157,302.36.

Obligations of Transamerica Corporation and its subsidiaries were classified in the report of March 31, 1932 as follows:

Slow	$28,618,000
Doubtful	8,341,000
Loss	17,488,000
Total Classified	$54,448,000

By comparison, in the current report the obligations of the subsidiaries of Transamerica Corporation are as follows:

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Slow	$47,621,000
Doubtful	0
Loss	425,000
Total Classified	$48,046,000
Unclassified	$20,327,000

While the total amount due from these companies has increased, that there has been a very substantial improvement is indicated by the change in classification of the loans. The classified obligations of 1932, with the exception of real estate contracts, have been largely liquidated while the obligations listed in the current report, with the exception of real estate contracts, consist of well secured or collateral loans or livestock loans eligible for rediscount at the Federal Land Bank.

7. "THE ENTIRE HISTORY OF PERFORMANCE IN REGARD TO LIQUIDATION OF OTHER REAL ESTATE ACQUIRED WOULD INDICATE THAT EVEN GREATER EFFORT SHOULD BE DIRECTED TOWARD THE REDUCTION AND ELIMINATION OF THIS LARGE CONCENTRATION."

The above statement implies that liquidation of other real estate has not been sufficiently rapid or pursued aggressively by the management of the institution, although elsewhere in the report figures are quoted to show that between March 31, 1932 and the date of the examination, the total of real estate sales by Capital Company and California Lands applied on liquidation of their contracts has been $34,210,000. The sales since the date of the examination to May 4, 1938 have increased that total to $37,133,000 representing average sales per year of $6,000,000.

The Comptroller's office should be able to judge the efficacy of selling methods which disposed of $37,000,000 of foreclosed properties, in view of its experience in the liquidation of real estate held by insolvent banks. This is particularly to be noted since in the Comptroller's report for 1935, it is stated that approximately 19,000 various parcels of real estate are being held for liquidation and a page and a half is devoted to recounting events of a sale from which there was realized $178,672. In the report of the Comptroller for 1937, a tabulation indicates that real estate sales from 1935 to October 31, 1937 disposed of 5571 items for a total of $2,736,000. By comparison our sales of $6,000,000 per year should be indicative of aggressive action.

8. "LOSSES OF $50,000,000 CHARGED OFF DURING A 4½ YEAR PERIOD."

These losses with the exception of $358,000 for loan losses and $4,683,000 for depreciation were in the main on assets acquired prior to 1932 from predecessor banks, many of which would have failed, had they continued to operate independently. Approximately $35,000,000 of this amount originated in the Merchants National Bank and Trust Company, Los Angeles. The elimination

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of these losses, in addition to those otherwise provided for through contracts with Transamerica Corporation and certain of its subsidiaries is one of the major accomplishments of the present management. While these losses were not made in the ordinary conduct of business during the period quoted, a reader of the report might easily infer that the examiner expected losses from year to year to continue at the same rate.

While I attribute certain gross errors appearing in the examination reports to the lack of understanding on the part of the examiner, it has become increasingly apparent to me that the management of this bank is being subjected to undue criticism, and malicious and slanderous harassment. Slight consideration is given to the fact that since 1932, not only has the management overcome obstacles that were generally viewed as insurmountable, but without preferred stock from the Reconstruction Finance Corporation it has carried the institution forward to a point which marks the most successful era in the history of the bank, and this in the face of economic conditions which it must be admitted have not favored such an advance.

A summary of certain information scattered throughout the report which clearly indicates the substantial progress of the bank might be of interest to you. I therefore am presenting such a summary in the following facts and figures, all of which are taken from the report, except as otherwise noted:

Since September 18, 1933.

NON-CONFORMING REAL ESTATE LOANS have been reduced $60,000,000

LOANS TO AFFILIATES OF TRANSAMERICA CORPORATION have been reduced $20,000,000

LOANS DEPENDENT UPON TRANSAMERICA CORPORATION STOCK have been reduced $8,200,000

UNPLEDGED U. S. BONDS increased $208,000,000

Since March 31, 1932

LOANS CLASSIFIED AS SLOW LOANS reduced from 30.1% of total loans to 19.58%

LOANS CLASSIFIED AS DOUBTFUL LOANS reduced from 4.2% of total loans to .79%

LOANS CLASSIFIED AS LOSS reduced from 5.9% to .51% of total loans

TOTAL CLASSIFIED LOANS reduced $83,000,000 - from 40.2% to 20.89% of total loans

NET OPERATING EARNINGS increased from $6,104,000 in 1933 to $11,766,000 in 1937

EXPENSES reduced from $20,063,000 in 1932 to $12,253,000 in 1936

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TOTAL OPERATING INCOME increased from $22,765,000 in 1932 to $34,007,000 in 1936

CORPORATION OF AMERICA CONTRACT FOR $34,833,000 classified as

Slow	$ 9,573,000
Doubtful	8,341,000
Loss	16,918,000

reduced to "guaranteed loan" balance of $6,380,000, classified as slow, further reduced since examination, through recoveries to $5,525,000.

A comparison of the examination report of March 31, 1932 with the report of August 31, 1937, discloses in addition:

BILLS PAYABLE $146,500,000 eliminated

NET CAPITAL POSITION improved $41,097,000.

BONDS AND SECURITIES UNLAWFULLY acquired - 30 issues with book value of $11,822,000 eliminated with exception of 3 issues carried at $28,000.

DEFAULTED BONDS - 135 issues with a book value of $2,553,000 have been eliminated with the exception of 27 issues with a book value of $139,439.

A comparison of the report under discussion with the last previous report, April 30, 1937 discloses that in the four month period the following improvement in loans was made:

LOANS CLASSIFIED ADVERSELY decreased $16,200,000

REAL ESTATE LOANS LISTED AS PROBABLE FORECLOSURES decreased $2,171,000

REAL ESTATE UNDER FORECLOSURE decreased $1,257,000

NON-CONFORMING ON DPC REAL ESTATE LOANS reduced $5,560,000

STATUTORY BAD DEBTS decreased $2,799,000

The bank is currently being examined and reports of 370 branches have been received. In these reports, before review, loans aggregating $29,178,000 are classified out of total loans examined of $310,000,000, a classification of less than 10%. This includes DPC real estate loans taken in connection with foreclosed properties classified as slow. The loans adversely classified comprise less than 1/2 of 1% of the total loans. Earnings for the first four months of this year have averaged more than $1,500,000 per month. A Comparison of the bank's capital accounts today with the figures shown in the examination report of March 31, 1932 indicates that since that date net capital position has been improved $54,000,000 without taking $10,500,000 of bond appreciation into consideration.

I have labored under the impression that the Comptroller and other Government departments were desirous of helping, not hindering, the progress of

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the banks under its supervision, and am therefore perplexed by the unsympathetic attitude towards our constructive efforts which has been expressed in recent reports of examinations and in other ways. To illustrate a point in this connection I have only to refer to the recent refusal of your office to cooperate with us in our efforts to reduce the classification of non-conforming and past due paper. As you may not be well acquainted with the matter, I am relating the following circumstances:

It is the practice in California for banks to make real estate loans secured by deeds of trust for a period of one year, and to permit loans to run past due for an additional four years if payments of principal and interest are made in accordance with agreements. Our counsel, in cooperation with counsel for the Federal Reserve Bank, devised a form of note and deed of trust which would provide for extension of maturity, so that a loan might be collectible at annual periods. The use of this note, which has already been introduced in our branches, should eliminate a very substantial portion of the past due paper now classified in our report. We are informed, however, that your office has ruled that loans made on this revised form will still be classified as past due after one year.

We are told that a ruling has been made by your office that real estate loans classified as unlawful bacause of non-conformity will continue to be so classified as long as they remain in the bank, regardless of reduction in amount, improvement in security value, or any other changes which should make the loans conforming. This ruling appears to us to be further evidence of the lack of cooperation on the part of your office.

It may not be out of place for me to remark that I came back into the Bank of America picture for the express purpose of bringing the institution out of the sore predicament the former management had placed it in, not only in the interests of the depositors of the bank but also in the interests of the general economy of the State of California and the country as a whole.

There are no problems in this institution that cannot be cured through continued constructive efforts of the highly competent and incomparably efficient organization that we have developed. The desired results can be more quickly achieved if we can receive 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 continue to absorb too great a proportion of our time and effort.

I am still hopeful that fair-minded and unbiased authorities in Washington will shortly see to it that proper consideration is given to the affairs of this bank and proper treatment afforded the institution. It has been my desire to secure some relief from heavy responsibilities and worries to which I feel my many years of service in the economic field entitle me. However, this

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is not possible as it is not my disposition to relax my efforts in the face of unwarranted harassment, and I cannot and will not relax my efforts in behalf of the institution while an unfriendly attitude exists in Washington.

Yours very truly,

(Signed) A. P. Giannini
Chairman,
Board of Directors.

Regraded Unclassified

September 1, 1938

M E M O R A N D U M -

Re: Bank of America, National Trust & Savings Association
San Francisco, California

Mr. Russell G. Smith, Vice President & Cashier of the above named bank, was in the office today and stated that he desired to discuss the matter of the losses estimated by the national bank examiner in the report of the examination which was begun in August, 1937, amounting to $6,004,866.18.

Examiner L. J. Sedlacek visited the bank in July of this year for the purpose of determining whether or not all estimated losses had been charged off and stated in his letter to this office under date of July 21, that items estimated as losses in the report of examination above referred to aggregating $1,718,702.39 had not been eliminated.

Mr. Smith stated that the remaining estimated losses as reported by Mr. Sedlacek had since been written off, with the exception of certain items aggregating $324,000 and explained in considerable detail why the above amount was not written off, part of it being covered by reserves and $195,000 consisting of real estate, which by agreement with the local examiner was to be written off when foreclosure proceedings were completed.

Mr. Smith stated he had been informed that several applications filed with this office for additional branches could not be granted because the estimated losses had not been charged off.

He was told that the matter of writing off losses as determined by when estimated by the examiner was an important one but in this particular institution it was not nearly as much so as other matters, principally the condition of the assets and the policies of the management. The writer referred to a conference held with Mr. A. P. Giannini in this office in January of this year and from a memorandum in the file of a conference held with Mr. Giannini practically the same statements were repeated to Mr. Smith with respect to the large aggregate of highly undesirable assets and the management's policies with respect to dividends paid.

His attention was again called to the large and unsatisfactory obligations of Transamerica and its various subsidiaries amounting to $74,000,000, which is one of the most serious criticisms of the bank and which condition has existed for some time. The indebtedness includes $41,000,000, which may properly be considered as other real estate, as $12,000,000 consists of unsatisfactory contracts given to the bank by California Lands Co. for farm lands which the bank acquired by the foreclosure of mortgages and includes $29,000,000 unsatisfactory contracts of the Capital Company, which obligations were given to the bank for city real estate acquired by it through foreclosure of mortgages.

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He was told that most of the national banks sustained losses of 40% to 50% in liquidating other real estate accounts and it was felt by this office that the examiners in the Twelfth District had been quite reasonable in extimating losses in his bank, inasmuch as no loss has been estimated in the obligations of the California Lands Company and the Capital Company and was told that the writer if examining this bank would estimate considerable loss in these and similar items.

Mr. Smith's attention was called to the number of other unsatisfactory assets, including stock of the Merchants Realty Company, amounting to $19,000,000, carried in the securities account, which largely represents other real estate; and German credits of $8,000,000, which were believed to have but little value, if any.

He was told that the bank's dividend policies were wrong and the rate entirely too generous. Notwithstanding the fact that the bank has considerably more than its capital of $50,000,000 invested in highly undesirable, frozen and questionable assets and that the aggregate of such assets, together with banking houses, exceeds by several million dollars the combined capital, surplus and reserves, the management has continued to increase the divicend rate each year since 1933 from 4½% of the capital to 19.2%.

A schedule which had been prepared was explained to Mr. Smith, showing that from 1930 to June 30, 1938, inclusive, the bank had net earnings of $47,285,016.74 and during the same period had paid out in dividends $47,400,000.

Mr. Smith stated that the writer had made a statement of facts and that he could not argue with the writer regarding the condition and policies outlined above, but said he did not believe the granting of a few more additional branches would change the situation, nor would it have any ill-bearing on the condition of the institution, to which the writer disagreed and stated that additional branches simply meant further expansion. He was told that the condition of the bank is such that it would require several years of most careful management to place it in satisfactory condition and that a major portion of the bank's earnings should be utilized to write down the book value of the questionable and undesirable assets.

The excessive dividend rate was made a matter of criticism in the report of examination of August, 1937, and was discussed at some length with Mr. A. P. Giannini in January of this year. Notwithstanding the above, the bank declared a divigend on March 8 of this year, payable March 31 and June 30, at the excessive rate of 19.2% of the capital.

W. P. Folger
Chief National Bank Examiner

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September 8, 1938

A program to be followed by Bank of America, National Trust & Savings Association, San Francisco, California.

* * * * * * * * *

1. The dividend rate of 19.2% should be reduced to an annual rate not exceeding 6%.

The last report of examination of the bank shows a ratio of $1 of sound capital to $12.79 deposits. Furthermore, the bank is carrying in its assets a very large concentration of highly undesirable obligations represented by loans and contracts to Transamerica Corporation and its affiliates amounting to $74,000,000, which amount includes approximately $41,000,000 unsatisfactory contracts of the California Lands, Inc. and the Capital Company, which actually represent other real estate acquired by the bank at the time of foreclosure of mortgages.

The bank also carries in its assets $6,000,000 of German credits and numerous other items of extremely doubtful value.

The reports show that from 1930 to June 30 of this year inclusive, the net earnings of the bank amounted to $47,285,016.74 and during this period the bank paid out in dividends $47,400,000 and the records show the dividend rate paid by the bank since 1933 has been increased each year from a rate of 4.5% to 19.2%.

The reduction in the dividend rate as outlined above would give the bank an additional amount of $6,600,000 annually for the purpose of eliminating losses and reducing the book value of assets of unknown or questionable value and in addition to improving the asset condition of the institution will serve to increase its ratio of sound capital to deposits.

2. Losses estimated by the national bank examiners at the time of each semi-annual examination are to be charged off promptly upon receipt of reports.

The bank will be furnished with a copy of the report of an examination within a few days showing approximately $9,000,000 estimated losses.

3. The practice of transferring the bank's other real estate to the California Lands, Inc. and Capital Company and substituting therefor the form of contract in use at this time should be discontinued.

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It is understood that the bank has in the recent past changed the contracts which it accepts from both of the companies named, which now provide that the title to the real estate will remain in the name of the bank; no down payment to be made; no payments to be made within the first two years; 10% to be paid annually thereafter; the bank paying the taxes and insurance and it is not believed, therefore, to be a bona fide sale by the bank of its other real estate.

The bank also carries in its bonds and securities account stock of the Merchants National Realty Corporation, in the amount of $19,332,000, which includes approximately $6,000,000 of other real estate, which should be eliminated from the account and properly shown as other real estate.

As the result of such unusual and objectionable practices the bank carries on its books and reports in its published reports of condition approximately $2,000,000 in other real estate, when as a matter of fact, it has approximately $49,000,000 in other real estate. This condition is caused largely by the form of contract accepted from the companies referred to.

In addition to correcting these existing matters, care should be exercised by the management in the future to carry assets on its books in the proper account in order that published reports of condition may be correct.

4. There should be very little, if any, further expansion of this bank by way of establishing additional branches until its condition has been materially improved.

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September 9, 1938

For the Secretary:

I have taken all of the reports of examination of the Bank of America, N.T. & S.A. of San Francisco made since its reopening in 1933 and made a hasty survey of the criticisms made by the examiner. Many of these criticisms reach back into examinations made prior to the banking holiday as well. You are perhaps familiar with the fact that there was considerable opinion to the effect that the Bank of America was not in proper shape to be reopened in 1933. One important reason for its being reopened was the adverse effect on Pacific Coast banking in general that would have resulted from any other course. There was talk at that time of efforts being made to improve the condition of the bank.

Since the bank reopened it has been examined ten times by the Office of the Comptroller of the Currency. In each of these examination reports the same criticisms are made and the same recommended corrections indicated by the examiner. Some of them are of major importance and some of them are minor matters.

Running through every report since the reopening, there has been criticism of the excessive and steadily

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increasing dividends that have been declared by the bank. There have been suggestions that perhaps on a strict basis the dividend was illegally declared. This was excused in the early years because the dividends, going largely to the principal stockholder, Transamerica Corporation, were utilized for a reduction in the debts of that Corporation and its affiliates to the bank. But this practice was soon abandoned, and there are evidences of transactions which are in effect dividends to Transamerica although not declared as such and not appearing as such. Regularly and repeatedly the examiner has recommended that all earnings be devoted to the elimination of undesirable and illegal assets. In the examination that ended in August, 1937, the examiner again stressed this point and stated that a further increase in the dividend was believed to be in contemplation.

The dividends have actually been increased steadily from a rate of 4.5% in 1933 to 7.5% in 1934, to 12% in 1935, to 16% in 1936, to 17.6% for the first half of 1937, to 19.2% for the second half of 1937 and continuing at 19.2% to date.

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From the beginning there have been criticisms of the excessive amounts of loans for account of Transamerica Corporation and its affiliates. This large line has been constantly criticised as in continued violation of Section 23(a) of the Federal Reserve Act.

There has been continued criticism of the contract relationships with affiliates of Transamerica Corporation whereby assets which would be classified as "other real estate" are disguised as loans. The contract entered into with these affiliates is of such a character that the real ownership of assets does not pass to the affiliate but remains with the bank.

There has been continued criticism of the disproportionate investment in real estate loans and a steady increase in illegal real estate loans and in illegal acquisition of real estate in connection particularly with the purchase of banks to be converted into branches.

There has been continued criticism of the so-called German credits that are in the bank and Mr. Giannini agreed in 1936 that $1 million should be charged off at each semi-annual examination. Later he refused to honor that agreement and the charge-offs are at least $1 million behind schedule at the present time.

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In 1933 after agreeing to charge off losses on real estate loans as appraised by his own officers, Mr. Giannini refused to do so and insisted upon the establishment of a reserve instead.

In 1934 the Executive Committee of the bank agreed to furnish to the Comptroller in the near future a definite program for effecting correction of the examiner's criticisms. I find no record of any such program having been furnished.

There has been repeated criticism of the large line to A. O. Stewart, now chairman of the board of the Federal Reserve Bank of San Frandisco.

During the second examination in 1934 Mr. Giannini refused to concur on losses agreed to by other officers of the bank.

There has been repeated criticism of the practice of the bank "writing up" Government bonds and other investment securities.

The annual meeting of the bank in 1934 was held with 1684 shares represented out of a total of 2 million outstanding.

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A statement repeated in several of the examinations is that there has been "no verification of the liabilities due to the ineffectiveness of the same in a far-flung branch system, nor were accounts between the branches and the head office reconciled."

Throughout the examiner's criticism there appears the warning over and over again that this or that "must be stopped." But there is no stop.

There is repeated criticism of loans against the stock of Transamerica Corporation.

In one or two examinations there have been evidences of a certain degree of reasonableness on the part of the bank's officials and some disposition to cooperate. This is particularly noted in the examination which was completed in May, 1935. Since that time friction has increased.

There seems to be very little available in the files of the Office of the Comptroller of the Currency in the way of correspondence with the Bank of America or memoranda of conversations with its officers in regard to the examiner's criticisms.

On January 31, 1938 Mr. Giannini and Mr. Folger had a long conversation in Washington. The main important

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criticisms of the bank were presented to Mr. Giannini but apparently only arguments against the validity of such criticisms were elicited from him. Apparently no progress was made.

On September 1, 1938 the Cashier of the bank, Mr. Russell G. Smith, had a conference in Washington with Mr. Folger. Mr. Folger went over again with Mr. Smith much the same material that he had gone over with Mr. Giannini previously. Apparently Mr. Smith's only interest was in securing approval of pending applications for branch permits. Neither he nor Mr. Giannini appeared to have any comprehension of or concern about the condition of the bank.

I find no record of action taken by the Comptroller of the Currency or the Acting Comptroller of the Currency during this entire period.

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September 12, 1938

CORRESPONDENCE FILE WITH THE BANK OF AMERICA, N.T. & S.A.

Letter of May 23, 1933 from Giannini to McIntyre speaking of the "very important part played by the President" in connection with the reopening of the Bank of America, N.T. & S.A. after the bank holiday. Mr. Giannini speaks of being given at that time a "100% clean bill of health" by the Chief National Examiner.

On July 19, 1933 Mr. Gough sent a letter addressed "Board of Directors, Bank of America, N.T. & S. A., San Francisco, California" asking for certain corrective actions and suggesting that a reply be made "over your individual signatures." A reply was received from A. P. Giannini, Chairman of the Board, making excuses and claiming the protection of his "clean bill of health." He closed "with constructive cooperation from your Department and a little time, all conditions still subject to criticism can and will be corrected."

Mr. O'Connor wrote a memorandum to Mr. Folger under date of January 27, 1934 reporting claims by Mr. Giannini et al that Examiner Beise was discriminating against the bank. Mr. O'Connor seemingly was firm about one of the minor bad practices of the bank. Mr. Beise later became an employee of the bank and still is.

In a letter dated February 9, 1934 Mr. Clary, Vice President of the Bank of America, N.T. & S.A. wrote a long letter to Mr. Folger explaining why examiner criticisms were not valid. He expressed the view that German credits "do not in our opinion involve any possible loss to the bank."

On April 26, 1935 Mr. Gough write a memorandum summarizing a conference which he had had with Mr. Giannini about a week prior thereto. At that time Mr. Giannini was interested in taking over the American Trust Company of San Francisco but was reluctant to agree to any increase in capital.

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On December 15, 1936 Mr. Gough wrote to Mr. Giannini stating that the office had approved the establishment of five additional branches in Los Angeles but stated that "The staff of this office has been reluctant to recommend approval because it is inconsistent with the general office policy." At that time Mr. Gough insisted on an increase in the capital of the Bank of America and said "It is hoped that before making plans for further expansion, or applications to this office for the establishment of additional branches, that the foregoing matters will receive your most careful consideration."

Mr. Giannini answered this letter on December 24th giving the reasons why no additional capital was needed. At that time Mr. Giannini said that if they were to be continually harassed and discriminated against, they ought to give serious consideration to the possibility of operating under a state charter.

It appears that on January 5, 1937, Mr. O'Connor and Mr. Giannini had an extended conference to discuss the affairs of the bank. The file contains no account of what transpired.

On December 31, 1937 Mr. Sedlacek wrote a long letter to the Comptroller of the Currency reporting a conference with Mr. Giannini on the major criticisms on his bank. He suggested that "a great duty would be performed if your office could impress Mr. Giannini with the tremendous importance of his bank to the entire State of California and to inspire him with the desire to clean it so thoroughly that nothing could destroy its stability. That is what your examiner has been striving to accomplish and all efforts in that direction have been construed as constructive by all bank officers except Mr. Giannini."

On January 28, 1938 Mr. O'Connor wrote a memorandum to Secretary Morgenthau stating that he was having a conference the next day with Mr. Giannini to discuss criticisms of the bank. I find no record of what transpired at this conference.

On July 21, 1938 Mr. Sedlacek wrote to the Comptroller of the Currency that "More has been accomplished toward the elimination of losses within the past several weeks than ever before and there are some indications pointing toward an improved spirit of cooperation which is greatly to be desired."

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September 13, 1938.

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

Dear Mr. Giannini:

With further reference to your letter of May 6, 1938, please be advised as follows:

In insert 2 to page 2 reference to the schedule on insert 1 to page 11 does not mean that bonds having par value of $141,430,063.12 were themselves subject to criticism. The reference does mean that losses of $2,523,115.71 were caused by depreciation on bonds having par value of $141,430,063.12. Your letter indicates you have noted from the schedule on page 3 that, except for estimated losses of $2,836,769.31, relatively small amounts of bonds were criticised from a credit standpoint. The amounts, as you have observed, were $307,773.67 "slow", and $11,334.32 "doubtful". It should be plain to you, therefore, that the examiner's sole objection to your holdings of $141,430,063.12 was that they were subject to depreciation of $2,523,115.71 which amount, under the circumstances, was a "loss".

The policy of this office permits national banks to carry bonds not in default at cost or less, and does not permit banks to take profits due to advances in market prices of securities until and unless the securities are actually sold.

During the years 1935 and 1936, according to information received through reports of examinations, your bank in disregard of what this office considers sound practice wrote up the book value of certain of its securities without making actual sales. The result appears to have been a book profit of $14,012,788.00.

Prior to the examination, a large part of the "profit" was realized by actual sales of affected securities, or written off upon sales of such securities. At the time the examination was made, however, $6,284,316.17 of the original write-up remained. Subsequent to the write-up examiners were required to report as a loss the difference between the market and the written-up book value of securities. At the time of the examination such difference in your bank appears to have been $2,523,115.71, so it was shown in the report as a loss. Although created by depreciation in United States and Municipal bonds, the loss was shown because the bonds were carried on the books above cost and above the market.

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The examination was begun on August 31, 1937, so if $2,523,115.71 was the amount of depreciation reasonably near that date, it is the amount that should have been shown in the report. The preparation of the report of an examination of any large bank would be an interminable process, and in fact an impossible one, if on the date it was forwarded to the Comptroller the report were required to contain last minute information regarding the state of the bond account and the other assets.

Consideration has been given to your remarks relative to the comments the report contained regarding the bank's holdings of securities in the amount of $1,394,000, which in the examiner's opinion did not conform to the requirements of law and the regulations. The securities referred to were acquired in the purchase of other banks and in large part were convertible bonds. You state that the bonds are convertible into common stock at the option of the holder and that you are aware of no prohibition against their purchase. If, however, you will refer to Section II (3) of the Comptroller's Regulations of February 15, 1936, you will find that "the purchase of 'investment securities' in which the investment characteristics are distinctly or predominantly speculative ***** is prohibited."

Bonds convertible into common stock at the option of the holder may and frequently do fail to conform to legal requirements because the conversion privileges so affect markets as to increase prices above what the bonds would bring solely as credit instruments. When a convertible bond is bought at a price so high as to indicate that the benefit of the conversion privilege has influenced a bank to purchase it, the position of this office is that the bond has been bought for speculative reasons and is unlawfully held. If any of the convertible bonds held by your bank are eligible investments otherwise and were purchased at prices that indicated no consideration was given to the value of the conversion privilege in any case, they may be lawfully retained. They may not be retained simply because there is in the regulations no express prohibition against the purchase of bonds convertible at the option of the holder.

It may be that some of the five issues with book value of $97,000 and the two issues with book value of $26,000 were lawfully acquired. It is suggested that you furnish the examiner with detailed information showing why you believe they are lawfully held. It would be better, of course, if such bonds as those comprising the nine issues, with book value of $7,683, were not acquired at all; having acquired them the bank should dispose of them promptly if it has not already done so.

On page 3 of your letter you quote the last sentence of the last paragraph of the two page comment upon "Bonds and Securities" appearing on inserts 2, 3 and 4 to page 2 of the examiner's report. The sentence follows:

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"INASMUCH AS OVER 35% OF THE BANK'S TOTAL ASSETS ARE IN ITS BOND ACCOUNT WITH OVER 75% COMPRISED OF U. S. GOVERNMENT ISSUES CARRIED ON THE BOOKS AT A HIGHLY INFLATED FIGURE OVER PAR VALUE, THE SITUATION AS PRESENTED INDICATES A POTENTIALLY DANGEROUS POSITION."

Among your remarks in the past paragraph on page 3 of your letter are the following sentences:

"Moreover, premiums are amortized to the first call date and to imply a dangerous situation with respect to our investment in U. S. Government bonds is to impugn the credit of the Federal Government. Furthermore, it is inconsistent for a Federal examiner to refer to a large holding in securities of the Government as indicating a potentially dangerous condition when the safety of depositors' funds in postal savings, the insurance of banks by the Federal Deposit Insurance Corporation, and the old age benefits of the Social Security Act, are all contingent upon the safety of funds in Government bonds."

Careful consideration of all comment upon "Bonds and Securities" and not merely the last sentence, no doubt, would have enabled you to better understand the nature of the examiner's criticism. Do not think there was criticism because the bank held large amounts of United States Government bonds. Undoubtedly, the examiner was glad your holdings were large. Nevertheless, prices for investment securities, including U. S. bonds, are not immune from market fluctuations. The lack of immunity is so well recognized that it is not unusual for conservatively managed banks to write bonds, including Governments, down instead of up. Immediately after a purchase of securities some banks write off any premiums paid because par is all the obligor will pay at maturity.

At the time of the examination United States obligations, direct and guaranteed, as you say, were carried at premiums aggregating $8,964,000. Of that amount $2,774,311.05 was created by an arbitrary write-up in the book value of the bonds. The original write-up on Government obligations is reported to have been $9,000,000, but about 70% of it had been provided for when securities that had been written up were sold. The whole write-up on all securities, as stated heretofore in this letter, was $14,012,788. If the write-up had not occurred and none of the securities written up had been sold or collected, there would thus have been a cushion of at least $14,000,000 in the bond account, reduced, of course, by $6,000,000.00 of depreciation on the day of the examination.

When the ups and downs of the market are remembered, a substantial cushion in the bond account must be regarded as something desirable to have. You may thus be sure that the criticisms of the examiner to which you refer were directed not at the character of the securities that were written up but at the policies which permitted your bank to depart from conservative practice by inflating their book values. Please read the examiner's entire comment on pages 2, 3 and 4 to page 2 of his report and particularly read again the whole

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paragraph from which you quote.

You are of the opinion the Examiner's statements regarding the lines of credit aggregating $112,708,496.08, listed on page 8, insert 2 of the report, are unwarranted. The fact remains, however, that the aggregate which includes an investment of over $19,000,000 in stock of the Merchants National Realty Corporation is more than twice the amount of the bank's capital stock and more than its entire capital structure. With the exception of those adequately secured by listed collateral, liquidation of loans comprising the lines to affiliates is largely dependent upon sale of capital assets or earnings of the various makers.

Since the early part of 1932 it has been the bank's practice to sell Real Estate acquired through foreclosure to California Lands, Incorporated or to the Capital Company under contracts. At the time of the examination of the bank the amounts of these contracts were as follows:

California Lands, Inc.	$ 12,117,111.74
Capital Company	29,044,503.51
Total	$ 41,161,615.25

Of classified Real Estate loans amounting to $56,455,000 approximately $14,496,000 are reported as distress items. Of these distress items the examiner states there are loans amounting to $6,237,344 under foreclosure and he is of opinion the remainder will probably reach the foreclosure stage. It is estimated that the major portion of the items under foreclosure will result in acquisition of more Real Estate. It is understood that no payments are required on the purchase contracts of the companies above named during the first two years and that after two years payments of only one-tenth of the purchase prices are required; that provisions were made for the capitalization of improvements; that title remains in the name of the bank and taxes are paid by the bank and that the companies receive all of the income out of which they keep the properties insured against fire and pay the bank 1% interest semi-annually.

It appears that in the year 1936 the bank received approximately $415,000 in interest and paid out $1,123,939 in taxes so that there was a net loss of more than $800,000.

The contracts of California Lands, Inc., and the Capital Company, held in the amount of $41,000,000 appear to be substantially Other Real Estate. In the opinion of this office these contracts and the Real Estate loans already under foreclosure, together with those upon which foreclosure appears probable, amounting in the aggregate to more than $50,000,000, without considering the obligations of any other affiliates, present a major asset problem which should be recognized as such by the management. No advantage to the bank can be seen in making sales to the two companies, and no reason is apparent why the bank should not itself retain and sell the "other real estate" it is forced to acquire in the course of its business.

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There were carried in the International Banking Department, San Francisco, extensions under German Credits of $7,914,307.47 which are classified:

$ 3,586,631.49	Slow
3,327,675.98	Doubtful
1,000,000.00	Loss
$ 7,914,307.47	

Your attention is invited to the examiner's comments on page 2, insert 1, in connection with these items, which reads as follows:

> "At the time of the October 14, 1936 examination a loss of $1,000,000 was estimated and subsequently charged off on these items. By verbal agreement a like amount was to have been charged off at each succeeding examination until the exchange loss, presently represented by the doubtful classification was entirely eliminated. At the time of the April 30, 1937 examination the management refused to charge off the second estimated loss of $1,000,000, and this amount is again being set up for elimination. It is believed that the classification is liberal, and that further loss should continue to be charged off as originally agreed upon. Liquidation of these impoinded credits involves their conversion into Registered Marks, the value of which in relation to Free Marks is considered a fair present day value, and is the basis upon which this unsatisfactory concentration has been classified as loss and doubtful under the verbal agreement."

You are requested to charge off the estimated loss of $1,000,000 at this time.

On page 2, insert 2, of the consolidated report the examiner refers to certain violations of Section 23-A of the Federal Reserve Act. You are requested to take immediate steps to eliminate from the bank's assets any loans made in contravention of the provisions of that section and advised that this office will insist upon your strict observance of the law relating to loans to affiliates.

It is noted from your letter that at the time it was written the so-called "guaranteed loans" had been reduced since the examination from $6,380,000 to $5,525,000. These loans should be adequately secured with

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There were carried in the International Banking Department, San Francisco, extensions under German Credits of $7,914,307.47 which are classified:

$ 3,586,631.49	Slow
3,327,675.98	Doubtful
1,000,000.00	Loss
$ 7,914,307.47	

Your attention is invited to the examiner's comments on page 2, insert 1, in connection with these items, which reads as follows:

> "At the time of the October 14, 1936 examination a loss of $1,000,000 was estimated and subsequently charged off on these items. By verbal agreement a like amount was to have been charged off at each succeeding examination until the exchange loss, presently represented by the doubtful classification was entirely eliminated. At the time of the April 30, 1937 examination the management refused to charge off the second estimated loss of $1,000,000, and this amount is again being set up for elimination. It is believed that the classification is liberal, and that further loss should continue to be charged off as originally agreed upon. Liquidation of these impounded credits involves their conversion into Registered Marks, the value of which in relation to Free Marks is considered a fair present day value, and is the basis upon which this unsatisfactory concentration has been classified as loss and doubtful under the verbal agreement."

You are requested to charge off the estimated loss of $1,000,000 at this time.

On page 2, insert 2, of the consolidated report the examiner refers to certain violations of Section 23-A of the Federal Reserve Act. You are requested to take immediate steps to eliminate from the bank's assets any loans made in contravention of the provisions of that section and advised that this office will insist upon your strict observance of the law relating to loans to affiliates.

It is noted from your letter that at the time it was written the so-called "guaranteed loans" had been reduced since the examination from $6,380,000 to $5,525,000. These loans should be adequately secured with

Regraded Unclassified

readily marketable collateral. In making this statement the bank's action in eliminating the contracts of the Inter-America Corporation by writing up United States and Municipal securities approximately $14,000,000 heretofore referred to, and applying that amount upon such contracts has been considered. The contracts are understood to have been adequately secured by marketable collateral and it was the impression here the contracts were to be collected to the extent possible and if there was any deficiency, the deficiency was to be provided for by sales of the securities pledged.

On page 10, insert 9, the examiner has set out the manner in which the bank acquired $505,000 of Earl Fruit Company bonds which it is not clear are conforming investments. If you do not agree that these bonds were unlawfully acquired, please advise why and at the same time advise why the transaction as handled does not represent a participation in an underwriting in violation of Section 5136 U.S.R.S.

You are requested to advise also whether the following transactions were approved by your Board of Directors, and if so, the dates they were approved:

(1) The extensions of credit to Transamerica Corporation and its subsidiaries.

(2) The various sales of charged off assets and other real estate to affiliates.

(3) The substitution of liabilities of Transamerica Corporation and its various subsidiaries and the releases of listed collateral whereby the bank's asset condition was weakened.

(4) The purchase of stock in the National City Bank of New York from an affiliate and the granting of a long-term graduated option to repurchase.

(5) The recent purchase of $505,000 of Earl Fruit Company bonds.

(6) The credit extensions in contravention of Section 23A of the Federal Reserve Act.

(7) The capitalization of bond appreciation and charged off assets to enable the elimination of the well secured uncriticised obligation of an affiliate to facilitate its liquidation.

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(8) The sale of other real estate to the wholly owned Merchants National Realty Corporation whose stock is carried in the bond account at $19,332,734.88; and to California Lands, Inc., and Capital Company whose contracts are carried in the loans and discounts.

Estimated losses aggregating $6,004,866.18 have been set up in the last report of examination which you are requested to charge off, with advice to this office of your action.

This office does not in the slightest degree concur in your opinion that there has been misrepresentation of the condition of the bank in the reports of examinations, nor that there has been exaggeration of its problems or under-estimation of its progress in solving them. The maze created by the numerous loans to affiliates, the mass of real estate held directly and indirectly, the under-capitalized condition of the bank, not to mention other matters of importance, furnish problems sufficient to require the full time and energy of the management in their solution. During the past few years, when the earnings of the bank might have rendered some of its problems less acute, the condition of the bank has been disregarded and the earnings so far as the bank is concerned have been wasted by payment of dividends at exorbitant rates.

This letter should be read to your board of directors and recorded in your minute book. If it is not so read and recorded, a copy of the letter will be mailed to each director.

Respectfully,

(sgd.) E. H. GOUGH

E. H. GOUGH,
Deputy Comptroller.

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September 13, 1938

R E A Palmer
835 H. W. Hellman Bldg.
Los Angeles, California

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

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

(Signed) Marshall R. Diggs
Acting Comptroller

Fourth and final draft

(Taken to Secretary's office shortly after 12:00 noon by Herman Oliphant and Marshall R. Diggs. Huntington Cairns, Edward H. Foley, Jr., Bernard Bernstein, D. J. Sherbondy and L. A. Kelly present when drafted. Sent in code by office of Acting Comptroller.)

cc: Mr. Ronald Renson
Mr. Leo T. Crowley
Mr. C. B. Upham
Mr. Marshall R. Diggs
Mr. L. A. Kelly
Mr. Herman Oliphant

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September 14, 1938

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To: The Secretary

From: Mr. Hanes

At your suggestion I asked for a conference today with the members of the Securities and Exchange Commission to discuss with them the Bank of America and the Transamerica Corporation situation. Present at the meeting were the following: Commissioners George Mathews, Robert Healy, Jerome Frank, and Mr. David Schenker of counsel to the Commission, who was instrumental in drawing up the preliminary report on the Transamerica Corporation which was the result of the Investment Trust investigation.

I advised them that the Comptroller of the Currency had submitted to the Board of Directors of the Bank of America his objections to the payment of any further dividends. I also advised them that it was the opinion of the Secretary of the Treasury, as well as my own opinion, that the Securities and Exchange Commission should proceed further with their investigation into the affairs of the Transamerica Corporation. The Commissioners agreed and, in order to get all the information which was available for the determination of whether false and misleading statements regarding Transamerica Corporation stock have been made by the Corporation, asked that we furnish them with a copy of the last examination report on the affairs of the Bank of America. I stated to the Commissioners that I would make such request to the Secretary and, if he agreed, would furnish them with such report promptly.

I am now advised by Mr. Herman Oliphant that it is quite proper for the Secretary to give this report to the Commission. The report is being photostated, and will be ready for delivery tomorrow, and letter of transmittal has been prepared by Mr. Oliphant.

s/d J.W.H.

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BANK OF AMERICA
Trust and
National Savings Association
Los Angeles
California

A. P. Giannini
Chairman of the Board of Directors

September 15, 1938

Los Angeles Main Office
660 South Spring Street

Hon. Marshall R. Diggs,
Acting Comptroller of the Currency,
Washington, D.C.

Dear Sir:

I am enclosing an excerpt from the record of proceedings of the Board of Directors of this Bank held on September 13, 1938, which is self-explanatory.

We were very much surprised to hear the contents of your telegram referred to in the excerpt, which Mr. Palmer read to the meeting, particularly in view of the fact that at the time Mr. R. G. Smith, our Vice President and Cashier, recently discussed with you and Mr. Folger, at a meeting requested by you in regard to certain applications for branches, the last report of examination of the Bank, you had an opportunity to inform him of any important matters which you felt should be brought to our attention.

Instead of following this procedure, without any warning you sent Mr. Palmer, your Los Angeles representative, to call on me at 1:30 P. M., on the day our meeting was to be held at 4:00 P. M., with a mysterious message to the effect that he had been advised by Mr. Folger that he would receive a code message that he was directed to read to the Board of Directors.

In the circumstances, it appears to us that the method employed of getting your message to our Board of Directors was entirely unwarranted. As you are well aware, banks are dependent upon the confidence of the public for their existence, and it is therefore regrettable that your message and the method of its delivery were calculated to disturb this confidence.

As you will observe from the enclosed excerpt, our Board has directed me to request a reply to the comments made in my letter to you of May 6, 1938, regarding the last report of examination of the bank. Complying with this direction, I therefore request such a reply, in order that our Board of Directors may be fully informed as to the exceptions, if any, which your office takes to my comments on the various matters referred to in that letter.

In your telegram to Mr. Palmer, you made the following statement:

"In view of the unsatisfactory asset condition of the bank, of other real estate in excess of forty million dollars carried in loans and discounts

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Hon. Marshall R. Diggs September 15, 1938

and in the securities account, of German credits of six million dollars, of other items carried in assets of questionable value and of the aggregate of assets classified as doubtful and loss, it is imperative that the earnings of the bank be used to write off and reduce book value of such assets."

This is an astounding statement in view of the fact of the recent discussions regarding the write off of losses classified in the last report. We understood such write offs had been made to the satisfaction of you and your Chief Examiner. No intimation has heretofore been given us that any charge off was expected in connection with assets not adversely criticized in the report.

Your reference to the other real estate in loans and discounts undoubtedly applies to real estate sold under contract to Capital Company and California Lands, Inc. These contracts represent the obligations of financially sound companies and provide for a specific schedule of payments. They therefore are sound loans and cannot be classified as "Other Real Estate." The contracts are secured not only by the underlying real estate, but also by the substantial net worth of the obligors, which, according to the financial statements of the companies, amounted on August 31, 1938 to $22,768,000 in the case of the Capital Company, and $17,008,000 in the case of California Lands, Inc.

Since April 4, 1934 and up to June 30, 1938, the two companies mentioned have bought real estate from the Bank aggregating a purchase price of $31,456,000, and have paid to the Bank the sum of $34,550,000 on account of the principal of the contracts. This total payment represents more than twice the amount of payments called for by the terms of the contracts.

Referring to the German credits; the requirements of the Department have been fully complied with.

Referring to your statement that "it is imperative that the earnings of the bank be used to write off and reduce value of such assets"; since January, 1933, we have applied $55,000,000 to the writing off of losses and the reduction of book value of assets. During the same period surplus and undivided profits have been increased by $12,300,000. This improvement of $67,300,000 in net capital position is conclusive evidence that we have adequately provided for losses and that we have consistently followed a sound dividend policy.

You state in your telegram that the dividend policy has been repeatedly criticized, that the situation was discussed at length by the Chief National Bank Examiner in Washington with the Chairman of the Board in January and again with the Vice President and Cashier of the Bank in August of this year, and that the declaration of any dividends at this time would, in the opinion of the Comptroller of the Currency, be unsafe and unsound unless proper provision is made for criticized assets.

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The discussions referred to in your wire were in no respect formal, and your references to dividend policy were incidental to discussions of branch permits. Our records fail to disclose any formal protest by the Comptroller regarding our dividend policy, which at no time have we considered as unsound or unsafe, and which, on the contrary, has been an important factor contributing to the success of this institution, in which more than 150,000 Californians have a stockholder's interest.

The record does disclose the fact that proper provision has been made to care for assets adversely classified, including such assets referred to in the last examination report, and the further fact that for the period from January 1, 1933 to June 30, 1938, only 36% of the earnings has been paid in dividends. It is true that the rate of dividend on the total par value of the capital stock has been increased from 6% in 1933 to 19.2% in 1938, but a logical comparison of dividend rates would be based on the relation of dividends to earnings. Dividends paid in the year 1933 amounted to 31% of the earnings, while in 1938 percentage of dividends paid to earnings was only increased to approximately 40%. In the first eight months of the year 1938, net actual income amounted to $15,910,882, while current dividend requirements amount to $800,000 per month.

This is the first time to our knowledge that the assets of this Bank have been characterized as "unsatisfactory" by anyone. Why has this question not been raised previously in the past six years during which improvement of $67,300,000 in net capital position has been made? When our Vice President and Cashier talked with you two weeks ago, he reported a friendly attitude in your office and telegraphed me that he confidently expected to have favorable action taken without further delay on at least three of the pending branch applications. What has happened in the short time since then to so completely change the attitude of your office?

Another recent change in the attitude of your office caused us considerable embarrassment and inconvenience, from which we are still suffering. I refer to the withholding of a charter on our Gonzales application after approval had been given and the time for opening the branch extended. As a consequence, bank premises, ready for our occupancy, stand idle in Gonzales, to the wonderment of the community.

We believe the successful accomplishments of the management of this Bank are without parallel, and we therefore resent the reference in your telegram to "unsafe and unsound practice" and to the provisions of Section 30 of the Bank Act of 1933. Having made every required provision for the protection of our assets, we are entitled to have you withdraw your statement that the assets are in an unsatisfactory condition. If you feel otherwise, I request that the management of this Bank be summoned before the Federal Reserve Board for a hearing on this issue.

Yours very truly,

(Signed) A. P. Giannini
Chairman,
Board of Directors.

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EXCERPT FROM THE RECORD OF PROCEEDINGS OF THE MEETING OF THE BOARD OF DIRECTORS OF BANK OF AMERICA N. T. & S. A., HELD ON SEPTEMBER 13, 1938.

At the opening of the meeting, the Chairman reported that Mr. Palmer, a representative from the National Banking Department, had informed him that day at 1:30 P. M. of his instructions from the Comptroller's office to deliver a message to the Directors.

The Chairman stated that upon receipt of this information, he had requested Mr. R. G. Smith, Vice President and Cashier of the Bank, to come to Los Angeles by plane and bring with him a copy of the last report of examination of the Bank and data relating thereto. He further stated that he had informed Mr. Palmer that he would be called to appear before the Board upon the arrival of Mr. Smith.

. . . . . .

At the conclusion of the order of business of the Board, the Chairman announced the fact that Mr. R. G. Smith, Vice President and Cashier of the Bank had not yet arrived from San Francisco for an appearance before the Board as arranged, and that he deemed it desirable that Mr. Palmer not be kept waiting. Whereupon, with the consent of the Board, Mr. Palmer was introduced to the meeting and extended the courtesy of the floor.

Thereupon Mr. Palmer read to the meeting the contents of a private wire addressed to him by Mr. Marshall R. Diggs, Acting Comptroller of the Currency, and shortly afterwards withdrew from the meeting.

The contents of the telegram were discussed at length by the board members present, and, at the Chairman's suggestion, on motion duly made, seconded, and unanimously carried, the Chairman of the Board was directed to address a response to the Acting Comptroller of the Currency and authorized to request a hearing for the managing officers of the Bank before the Federal Reserve Board in view of the Acting Comptroller's reference to Section 30 of the Bank Act of 1933.

The Chairman directed that a copy of the telegram read to the Board by Mr. Palmer be filed with the records of the meeting.

The Secretary then reported that Mr. Smith had arrived from San Francisco and was waiting to be called into the meeting. Mr. Smith was then called into the meeting.

The President obtained from Mr. Smith and read to the meeting a copy of a letter addressed by Mr. A. P. Giannini, Chairman of the Board, to Mr. Marshall R. Diggs, Acting Comptroller of the Currency, under date of May 6,1938, referring to the last report of the examination of the Bank, made as of August 31, 1937, and received in April, 1938.

The Chairman reported that no reply to the comments made in said letter had been received, and the Board thereupon directed the Chairman of the Board to respectfully request a reply.

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The Chairman commented on his reported discussion referred to in the telegram and invited Mr. Smith to report to the Board in detail his recent discussions in Washington, D.C. with Mr. Folger, Chief National Bank Examiner, and with Mr. Marshall R. Diggs, Acting Comptroller of the Currency.

Mr. Smith reported to the Board as requested, and the Board, by motion regularly made, seconded and carried, expressed its inability to reconcile the information conveyed to it by the Chairman of the Board and the Cashier and the information furnished in the letter of the Chairman of the Board addressed to the Acting Comptroller of the Currency under date of May 6, 1938, with the contents of the aforementioned telegram from the Acting Comptroller of the Currency to Mr. Palmer.

Before adjournment, the Board, by motion regularly made, seconded, and unanimously carried, expressed its complete confidence in the management of the Bank and its appreciation of the management's outstanding record of achievement.

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San Francisco, California,
September 15, 1939

Dear Mr. Secretary:

The new examination report for Bank of America, NT & SA will show the line to Stewart interests of over eleven million. In addition, Transamerica is loaning to Stewart interests two and a half million.

Curiously enough, a Transamerica loan to Stewart personally is secured by stock of the Bank of America. It can't be his own stock, surely, because Class C directors of reserve banks can't own stock in member banks. So it must be an accommodation loan for someone else (or else he illegally owns bank stock).

Giannini claims that Eccles and Bennett are stockholders in the Pacific Coast Mortgage Co -- the Stewart Company that borrows from Bank of America.

Angle California declared a dividend (semi-annual) of 30¢ a share, payable Oct. and Dec. on Sept. 13th.

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COPY

September 20, 1938
San Francisco, California

HONORABLE MARSHALL R. DIGGS

WE HAVE RECEIVED FROM YOUR OFFICE LETTER DATED SEPTEMBER THIRTEENTH MAILED SEPTEMBER FIFTEENTH WHICH WE SHALL READ TO OUR BOARD AS REQUESTED. WE ARE PREPARING DATA WHICH WHEN COMPLETED WILL WE BELIEVE CONCLUSIVELY DEMONSTRATE THE LACK OF JUSTIFICATION FOR THE PROCEDURE BEING FOLLOWED BY YOUR OFFICE. IN THE HOPE OF ACCELERATING THE FINAL DETERMINATION OF THE ISSUES RAISED BY YOU I HAVE THIS DATE COMMUNICATED WITH THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM BY TELEGRAM AS FOLLOWS QUOTE SINCE SENDING YOU A COPY OF OUR LETTER DATED SEPTEMBER FIFTEENTH ADDRESSED TO ACTING COMPTROLLER OF THE CURRENCY WE HAVE RECEIVED PARTIAL RESPONSE TO OUR LETTER OF MAY SIXTH TO THE ACTING COMPTROLLER. EACH OF OUR DIRECTORS RECEIVED FROM COMPTROLLER'S OFFICE BY LETTER DATED SEPTEMBER SIXTEENTH THE DATE ON WHICH PRESUMABLY OUR LETTER OF SEPTEMBER FIFTEENTH WAS RECEIVED BY COMPTROLLER'S OFFICE A COPY OF THE TELEGRAM READ TO OUR BOARD SEPTEMBER THIRTEENTH BY EXAMINER. THE COURSE OF PROCEDURE BEING FOLLOWED BY COMPTROLLER'S OFFICE IS HIGHLY DETRIMENTAL TO THE WELFARE OF THIS INSTITUTION AND THE TONE AND CONTENTS

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OF THE REPLY TO OUR LETTER OF MAY SIXTH REVIVING AS IT DOES IN PART ISSUES LONG SINCE DISPOSED OF ARE SUCH THAT WE DESIRE TO PLACE THE ENTIRE MATTER IN THE HANDS OF YOUR BOARD FOR PROMPT AND PROPER ADJUDICATION. THEREFORE PURSUANT TO AUTHORIZATION OF OUR BOARD OF DIRECTORS WE RESPECTFULLY REQUEST THAT YOU SET AN EARLY DATE FOR A HEARING BEFORE THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM ON THE ISSUES RAISED AS REQUESTED IN THE LAST PARAGRAPH OF OUR LETTER OF SEPTEMBER FIFTEENTH TO ACTING COMPTROLLER. I AM PREPARED TO ATTEND SUCH HEARING AND TO LEAVE HERE AT A MOMENTS NOTICE. UNQUOTE.

L M GIANNINI PRESIDENT BANK OF AMERICA NT & SA

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September 21, 1938

MEMORANDUM

TO: Mr. Oliphant

FROM: Mr. Upham

Attention: Mr. Foley
Mr. Sherbondy

I think the chronology of incidents indicating the continuous interest of the Secretary in the Bank of America situation over the last several months should include this statement by me:

There have been many occasions between March, 1938, and September, 1938, when Secretary Morgenthau has asked me to inquire about one or another aspect of the situation and has requested me to press for action based on examination reports. There have been many occasions upon which I have brought to the attention of the Comptroller's Office these requests.

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C O P Y

September 21, 1938

MEMORANDUM:

In re: Bank of Italy National Trust and Savings Association,
San Francisco, California.

Examined June 20, 1928 to August 11, 1928. No letter of criticism was written on this report and no board meeting was held by examiner but matters of criticism were discussed by him with President Bacigalupi and Vice Presidents Mount, Blauer and Gock during examination.

Examined December 14, 1928 to February 15, 1929. No board meeding held. Correspondence file for 1929 shows that Vice President A.W. Hendrick called at this office in January or February and discussed with the Comptroller the matter of the bank's granting second mortgage loans in critical cases.

Examined again April 8, 1929 to August 1, 1929. No board meeting but assets criticised by examiner were reviewed with Vice President Gock and his subordinates. Subjects of examination discussed with administrative officers.

Examined December 31, 1929 to April 11, 1930. No letter written to the bank but Chief Examiner Harris in a letter dated June 17, 1930 was given express permission to discuss the bank's affairs with Mr. Elisha Walker, Chairman of the Board of Transamerica Corporation and in doing so to disclose the names of borrowers and the collateral for its loans.

Examined June 30, 1930 to October 28, 1930. Consolidated with Bank of America of California, San Francisco, November 1, 1930 and title changed to Bank of America National Trust and Savings Association. Examination was made of the State bank from September 24, 1930 to October 31, 1930 and details of the consolidation required a great deal of work by the Chief Examiner, the field examiners and this office.

No letter was written to the bank but the examiner stated in his report that a meeting was to be held with the executive committee on November 13, 1930.

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

Examined February 28, 1931 to May 5, 1931. Conference held by Comptroller in New York with Transamerica officials on May 28, 1931 relative to matter of providing for losses in Bank of America. Report thereof made to Chief Examiner on May 30, 1931 and he was instructed to discuss matter further with Mr. Monet of Transamerica.

Letter of criticism dated June 5, 1931 addressed to Board of Directors in connection with this report, supplemented by a letter dated June 8, 1931 signed by the Comptroller in which a change in management in the Los Angeles

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trench was urged. Chairman of the Board, Mr. Jas. A. Bacigalupi conferred with the Comptroller, Mr. Pole, about subject matter of office letters and assurance given in letters from President Mount dated June 10, 1931 and June 12, 1931 that elimination of loss items would be effected and the management of the Los Angeles office "re-vamped".

Examined August 31, 1931 to January 12, 1932. No letter of criticism issued on this report. Examiner in confidential section stated "All criticisms of major importance will be closely followed by this office in an endeavor to effect correction". Air mail report of Acting Chief Examiner September 29, 1931 advises of daily discussions with Governor Calkins of the Federal Reserve Bank re bank's borrowings.

Examined March 31, 1932 to July 23, 1932. Following letters have to do with taking care of losses in Bank of America:

Letter dated January 27, 1932 from Comptroller to President of Transamerica Corporation referring to recent examination of Bank of America and requesting that the Corporation protect the bank against losses shown.

Another letter to Transamerica Corporation February 8, 1932 dealing with same subject - (from Comptroller).

Letter from Mr. Harris to Bank of America February 8, 1932 requesting that losses shown in last report (August 31, 1931 to January 12, 1932) be removed.

Letter from Mr. Harris February 19, 1932 to Bank of America regarding prompt liquidation of Corporation of America obligations.

Letter March 29, 1932 from Mr. Harris to Board of Directors, Bank of America requesting information regarding obligations of the Corporation of America to the Bank of America.

August 13, 1932 memorandum of conference which Examiner had with Mr. Giannini. Regarded as a supplemental report of examination completed July 23, 1932. Request made that losses be charged off. Mr. Giannini exceedingly arbitrary and practically refused to carry out examiner's suggestions except so far as they suit him.

Letter of criticism dated September 27, 1932 on report of examination (March 31, 1932 to July 23, 1932) asking bank to advise progress in correcting examiner's criticisms.

On November 14, 1932 reply to letter of September 27, 1932 requested. Apology from bank on October 20, 1932 for failure to reply.

November 21, 1932 memorandum for Mr. Harris from Examiner Price re-[illegible]ing Mr. Giannini's arbitrary attitude re charging down to appraised values real estate loans and re Mr. Russell Smith's call at his (Price's) office to discuss a revaluation of notes purchased by and included in Corporation of America contracts.

Examined November 9, 1932 to April 12, 1933. Letter of criticism was addressed to the Board of Directors on July 19, 1933, and request was made that a reply be furnished over their individual signatures. However, Mr. Giannini replied thereto under date of August 5, 1933.

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Examined April 10, 1933 to October 4, 1933. Chief National Bank Examiner Madland in forwarding report on November 14, 1933, recommended that no action be taken inasmuch as another examination was then in process and the new report would be ready for mailing early in December.

Examined September 18, 1933 to January 12, 1934. This report was reviewed by Chief National Bank Examiner Madland with President Morrish and other officers following the examination, Mr. Giannini not being available.

Conference held in this office with Mr. O'Connor, Comptroller; Mr. Giannini, Mr. Collins and Mr. Clary, Vice President of the bank on January 26, 1934.

Another conference was held in this office February 9 with Mr. Folger and Mr. Clary.

Examined June 22, 1934 to October 13, 1934. No letter of criticism based on this report. Exception taken by bank to certain of examiner's classifications in letters dated November 9, 1934 addressed to Examiner Beise. Copies were forwarded to this office by the Chief Examiner. Mr. Beise was later employed by the bank in the capacity of Vice President and still occupies the same position with the bank.

Examined February 11, 1935 to May 15, 1935. Matters discussed with Finance Committee.

Copy of letter from Mr. Giannini to Mr. Beise January 9, 1935 submitting information about bank's condition.

Record of Mr. Giannini's conference in April, 1935 with Mr. Gough re purchase by Bank of America of American Trust Company of San Francisco, and incidentally about capital structure.

Examined October 7, 1935 to December 4, 1935. Report discussed with General Finance Committee.

Examined April 27, 1936 to November 24, 1936. Report discussed with General Finance Committee.

Letter of criticism addressed to Mr. Giannini as Chairman of the Board, Bank of America, under date of December 15, 1936, taking up conditions reflected by report of examination completed November 24, 1936 and disapproving further expansion until unsatisfactory conditions have been corrected. Reference is made in this letter to a call by Vice President Clary.

Mr. Giannini replied under date of December 24, 1936, strenuously objecting to the policy of requiring a deposit-capital ratio of 10 to 1.

Examined October 14, 1936 to March 23, 1937. Report discussed with General Finance Committee.

Telegrams December 30, 1936 between Mr. O'Connor and Mr. Giannini arranging for a conference first week in January.

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Examined April 20, 1937 to August 17, 1937. No board meeting held by examiner, but all matters of criticism were reviewed by him with Executive Finance Committee responsible for all credits of entire system.

No letter written on report.

Examined August 31, 1937 to April 20, 1938. No letter of criticism based on this report. Examiner reviewed all matters with Executive Finance Committee responsible for all credits of the entire system.

Mr. Folger discussed situation with Examiner Sedlacek during his visit to San Francisco the latter part of 1937.

Conference held by Examiner Sedlacek with Mr. Giannini and detailed report thereof dated December 31, 1937 together with a letter dated December 23, 1937 furnished this office for use in connection with Mr. Giannini's contemplated visit here early in 1938.

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September 23, 1938

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

My dear Mr. Giannini:

It has been brought to my attention that the Board of Directors of the Bank of America National Trust and Savings Association at its meeting held in Los Angeles on September 13, 1938, declared a dividend half of which is payable October 1, 1938, despite the warning contained in my telegram dated September 13 and communicated to the meeting by R. E. A. Palmer, National Bank Examiner. This warning was prompted by my duty to protect the depositors as well as the shareholders of your Bank.

It is my desire in this matter to be fair to all concerned. Accordingly, your personal attention, as director of the Bank, is called to the provisions of U.S.C., title 12, section 93, which provides as follows:

> "If the directors of any national banking association shall knowingly violate, or knowingly permit any of the officer, agents, or servants of the association to violate any of the provisions of this chapter, all the rights, privileges, and franchises of the association shall be thereby forfeited. Such violation shall, however, be determined and adjudged by a proper district, or Territorial court of the United States, in a suit

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brought for that purpose by the Comptroller of the Currency, in his own name, before the association shall be declared dissolved. And in cases of such violation, every director who participated in or assented to the same shall be held liable in his personal and individual capacity for all damages which the association, its shareholders, or any other person, shall have sustained in consequence of such violation." (Underscoring supplied)

There is enclosed, for your information inthis connection, a copy of my letter of criticism based upon the report of the latest examination of your Bank. A complete copy of this report of examination has been sent to, and is open for your inspection at, the main office of the Bank of America National Trust and Savings Association, No. 1 Powell Street, San Francisco, and at the office of the Chief National Bank Examiner, Room 1103, 155 Montgomery Street, San Francisco, and at the sub-district office of the Chief National Bank Examiner, 835 H. W. Hellman Building, Los Angeles. Your attention is directed to the comments, criticisms and conclusions of the examiner contained in the report, and particularly to the last two pages thereof.

Very truly yours,

MARSHALL R. DIGGS
Acting Comptroller of the Currency

mct

typed 9-23-38

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TREASURY DEPARTMENT

COMPTROLLER OF THE CURRENCY

WASHINGTON

ADDRESS REPLY TO "COMPTROLLER OF THE CURRENCY"

September 23, 1938

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

Gentlemen:

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

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

On page 8, insert 2, there is shown under "Large Lines" the extension of credit to Transamerica Corporation and its subsidiaries, which has been criticised for years, aggregating approximately $76,000,000, or in excess of one and one-half times the capital stock of the bank. It is noted that the so-called "Guaranteed Loans" amount to $5,500,000 in round numbers. This amount should be fully collateralized by readily marketable securities, particularly in view of the method used to eliminate the contracts of the Inter-America Corporation by writing up United States and municipal securities approximately $14,000,000 and applying that amount as a credit on such contracts, which were then indicated to have been adequately secured by marketable collateral. It is the position of the Office of the Comptroller of the Currency that these contracts should have been eliminated, not by a weakening of the asset condition of the bank through writing up certain assets as indicated above, but by actual collection, with any deficiency taken care of out of the securities pledged.

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

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and which amounts were carried in the assets of the bank, were as follows:

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

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

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

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

A recapitulation of the amount invested in banking houses, furniture and fixtures and other real estate owned is shown on page 14, insert 1, and aggregates $97,660,265.39, including contracts of the California Lands, Inc., and Capital Company, totaling $39,739,346.46, previously referred to. These are included in this schedule to show properly the bank's entire real estate investments. Of the aggregate of $97,660,265.39 the amount of $47,685,166.67 represents banking houses and equipment, and $49,975,098.72 represents other real estate owned. When $14,004,116.02 of actual and probable foreclosures on real estate loans carried in loans and discounts, are added to the aggregate of $97,660,265.39 referred to, the total is $111,664,381.41 or approximately the entire amount of the bank's capital structure as shown by its books. It is self-evident that an asset concentration of this magnitude constitutes a problem demanding immediate corrective steps.

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

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

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

At the time of the October 14, 1936 examination a loss of $1,000,000.00 was estimated and subsequently charged off on these items. By verbal agreement a like amount was to have been charged off at each succeeding examination until the amount classified as doubtful, which represented the exchange loss, was completely eliminated. At the time of the April 20, 1937 examination the management refused to charge off the second estimated loss of $1,000,000.00 and it is included in the present classified loss of $2,000,000.00. However, a recent communication from the bank states that on August 18, 1938 an additional reserve of $1,000,000.00 representing the loss estimated in the April 20, 1937 report, has been transferred to the International Banking Department, making an aggregate of $2,000,000.00, which has been applied to reduce the carrying value of these assets. Consequently there remains an additional loss of $1,000,000.00 yet to be charged off in order to comply with the verbal agreement above referred to. Both the agreement and classifications are believed to be liberal and the exchange loss should continue to be charged off at the rate of $1,000,000.00 at each succeeding examination. This arrangement is considerably more lenient than the charge offs voluntarily made by other large national banks holding these obligations.

On page 8, insert 1, under the schedule "Loans exceeding the limits prescribed by Section 5200 of the Revised Statutes", there are listed obligations of Transamerica Corporation and obligations of certain subsidiaries thereof in which the Corporation owns or controls a majority interest, aggregating $23,118,152.87, resulting in a $14,118,152.87 excessive extension of credit. This violation of Section 5200, U.S.R.S. must be reduced to the bank's legal loaning limit of $9,000,000.00.

Your attention is directed to the examiner's comments under the heading of "Bonds and Securities" relating to certain substandard bonds carried and the option to purchase granted to the Transamerica Corporation covering 56,600 shares of National City Bank of New York at $48.00 a share; also his statements

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under the caption "Bond Write Up". During the years 1935 and 1936, the management wrote up certain government and municipal securities in amount of approximately $14,000,000.00 by various book entries and applied that amount as a reduction on the former fully secured Inter-America contracts, reference to which was briefly made elsewhere in this letter. The loss as shown in this report in connection with this write-up should be charged off, and in addition thereto, the remaining unliquidated portion of the original write-up should be reversed in its entirety. In the future investment securities must be carried not in excess of actual cost to the bank, less the required amortization.

A depositor is entitled to the protection of an adequate sound capital structure. According to the analysis of capital position as shown on page 3, insert 1, the net sound capital of your bank at the time of examination amounted to $96,447,599.77 after deducting estimated losses, doubtful items and liabilities not shown on the books, with deposits totaling $1,385,494,280.80, or a ratio of 1 to 14.36. The bank is under-capitalized to the extent of at least $42,000,000.00 without taking into consideration its asset condition. The need for such additional capital should be apparent and sound banking policy dictates that steps should be taken to provide it.

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

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

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

Your particular attention is directed to the recapitulation of criticised and fixed assets, showing the major problems of the bank and their relation to its total capital structure, set forth in the conclusions of the examiner. The

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criticised and fixed assets of the bank aggregate $226,002,313.26 book value, of which $137,818,327.86 is subject to adverse classification. The serious nature of the problems involved is evident when it is realized that the adversely classified assets exceed the total capital structure of the bank by more than $25,000,000.

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

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

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

You are requested to consider the present letter at a special meeting of the Board called for this specific purpose and to reply in detail over the signatures of the attending members, setting out the corrections effected in each of the criticised matters and your plans for the complete elimination of

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the same. Copies of your reply to this letter should be forwarded to Chief National Bank Examiner William Prentiss, Jr., and National Bank Examiner L. H. Sedlacek, 155 Montgomery Street, Room 1103, San Francisco, California.

Very truly yours,

Marshall R. Diggs

MARSHALL R. DIGGS
Acting Comptroller of the Currency

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September 29, 1938

During the course of the afternoon Mr. Folger called me to say that he had heard from Mr. Prentiss in San Francisco who informed him that Mr. Russell Smith, cashier of the Bank of America, N.T. & S.A., had called on him and suggested that everything could be arranged satisfactorily if Prentiss would go to see A. P. Giannini. Mr. Folger told Mr. Prentiss that the matter was now in the hands of Washington and he was not to seek out Mr. Giannini.

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TREASURY DEPARTMENT

Sept. 30, 1938

TO MR. UPHAM

FROM MR. OLIPHANT

Re: Bank of America National Trust and Savings Association.

Reference is made to your memorandum of September 28, 1938.

Regardless of the date on which the general letter of warning to the Bank of America is mailed, the telegram of September 13, 1938 from the Acting Comptroller of the Currency, which was read to the Board of Directors of the Bank of America by Mr. Palmer, National Bank Examiner, during the meeting of the Board at which the dividend, half of which is payable on October 1, 1938, was declared, constituted a warning that the declaration of the dividend would be and continue an unsafe and unsound practice. Accordingly, since the Board of Directors declared the dividend despite the warning, the Comptroller of the Currency could certify the facts with reference to the declaration of the dividend to the Board of Governors of the Federal Reserve System pursuant to section 30 of the Banking Act of 1933 (U.S.C. title 12, sec. 77).

The general letter of warning which is to be transmitted to the Directors of the Bank of America should be drafted in such a manner that it will treat the telegram of September 13, 1938 as a warning that reference to the declaration of the current dividend. The general letter of warning can serve as a basis for certifying to the Board of Governors the facts with reference to the continuance of unsafe and unsound banking practices, other than the declaration of the dividend.

(Signed) W.O.

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CABLE ADDRESS—BAMERICAL

13044

RECEIVED
OCT 3 - 1938
REGISTERED
COMPTROLLER OF THE CURRENCY.

Bank of America
NATIONAL TRUST AND SAVINGS ASSOCIATION

SAN FRANCISCO HEADQUARTERS

SAN FRANCISCO, CALIFORNIA

October 1, 1938.

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

Dear Sir:

Please be advised that, pursuant to the request of Mr. Marshall R. Diggs, Acting Comptroller of the Currency, a Special Meeting of the Board of Directors of Bank of America N. T. & S. A. was held on September 30, 1938, for the purpose of considering and taking action upon a communication addressed to the Board of Directors of this Association by Mr. Diggs under date of September 23, 1938.

All the Directors were present with the exception of one who is now in Europe and two who are in the eastern part of the United States.

The communication referred to was considered at length and in detail, and a special committee consisting of nine members of the Board was appointed by resolution, a copy of which is enclosed.

The Committee was instructed to act promptly in order that the Board might respond specifically to said communication at an early date.

Respectfully,

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

Enclosure

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WHEREAS, Marshall B. Diggs, Acting Comptroller of the Currency, has sent to each member of the Board of Directors of Bank of America National Trust and Savings Association a communication under date of September 23, 1938, directing the attention of the members of the Board to the report of examination of the Bank of America, completed September 15, 1938, and to the examiner's comments under various specific headings; and

WHEREAS, Mr. Diggs has requested the Board of Directors to consider his letter at a special meeting of the Board called for the specific purpose and to reply in detail to the matters contained therein;

NOW, THEREFORE, BE IT

RESOLVED, by the Board of Directors of Bank of America National Trust and Savings Association at a special meeting of said Board called for the 30th day of September, 1938, in compliance with the request of Mr. Diggs, Acting Comptroller of the Currency, and in accordance with the By-laws, a quorum being present and voting affirmatively hereon, that the following members of the Board of Directors

Marshal Hale
C. H. Baker
Dr. G. E. Caglieri
F. W. Flint, Jr.
Dr. A. H. Giannini
C. N. Hawkins
H. A. Mazzera
Wm. Wallace Mein
Dr. C. J. Sullivan

are hereby appointed, authorized and directed to analyze all of the items contained in the report of the examination of this Association completed September 15, 1938, and the letter of the Acting Comptroller of the Currency of September 23, 1938, and submit a written report of facts found by such analysis for the information, review and consideration of the Board of Directors so that the Board, with the complete statement of facts before them, may reply in detail to the letter of the Acting Comptroller of the Currency and take all necessary and constructive steps required by the facts.

I, R. P. A. EVERARD, the duly elected and qualified Secretary of BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, a national banking association organized and existing under and by virtue of the laws of the United States of America, and having its principal place of business in the City and County of San Francisco in the State of California, hereby certify and declare that the foregoing resolution is a full, true and correct copy of a resolution duly passed and adopted by the Board of Directors of said bank at a special meeting thereof held on the 30th day of September, 1938, pursuant to the By-laws, at which meeting a quorum of the Board of Directors was present and voted unanimously in favor of said resolution; that said resolution has not been rescinded or amended and that the same is still in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Association on this 1st day of October, 1938.

Secretary of BANK OF AMERICA NATIONAL
TRUST AND SAVINGS ASSOCIATION.

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CABLE ADDRESS—BAMERICAL

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Bank of America
NATIONAL TRUST AND SAVINGS ASSOCIATION

RECEIVED
OCT 17 1938
REGISTERED
COMPTROLLER OF THE CURRENCY

SAN FRANCISCO HEADQUARTERS

SAN FRANCISCO, CALIFORNIA

October 15, 1938

COMPTROLLER OF CURRENCY
RECEIVED
OCT 17 1938
ORGANIZATION DIVISION

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

Dear Sir:

There is forwarded to you herewith a communication addressed to you by the Directors of Bank of America National Trust and Savings Association.

This communication is signed by all the Directors of the Bank who attended the Special Meeting of the Board of Directors held on September 30, 1938, for the purpose of considering your letter addressed to the Board under date of September 23, 1938, with the exception of Mr. A. P. Giannini and Mr. Jos. M. Schenck.

Mr. Schenck participated in the proceedings of the meeting, in which all motions were carried unanimously. He resigned as a Director of the Bank under date of October 10, 1938.

Yours very truly,

M. P. A. Everard,
Secretary of the Board of Directors.

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Bank of America
NATIONAL TRUST & SAVINGS ASSOCIATION

COMPTROLLER OF THE CURRENCY
OCT 17 1938
ORGANIZATION DIVISION

Los Angeles, California,
October 11, 1938.

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

Dear Sir:

By way of acknowledgment of your letter of September 23, the Secretary of the Board sent you by registered mail on October 1, the following communication:

"Hon. Comptroller of the Currency,
Washington, D. C.

Dear Sir:

"Please be advised that, pursuant to the request of Mr. Marshall B. Diggs, Acting Comptroller of the Currency, a special meeting of the Board of Directors of Bank of America N. T. & S. A. was held on September 30, 1938, for the purpose of considering and taking action upon a communication addressed to the Board of Directors of this Association by Mr. Diggs under date of September 23, 1938.

"All the Directors were present with the exception of one who is now in Europe and two who are in the eastern part of the United States.

"The communication referred to was considered at length and in detail, and a special committee consisting of nine members of the Board was appointed by resolution, a copy of which is enclosed.

"The Committee was instructed to act promptly in order that the Board might respond specifically to said communication at an early date.

Respectfully,

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

Enclosure

(Resolution)

"Resolved, Marshall B. Diggs, Acting Comptroller of the

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Currency, has sent to each member of the Board of Directors of Bank of America National Trust and Savings Association, a communication under the date of September 23, 1938, directing the attention of the members of the Board to the report of examination of the Bank of America, completed September 15, 1938, and to the Examiner's comments under various specific headings; and

"WHEREAS, Mr. Diggs has requested the Board of Directors to consider his letter at a special meeting of the Board called for the specific purpose and to reply in detail to the matters contained therein;

"NOW, THEREFORE, BE IT

RESOLVED, by the Board of Directors of Bank of America National Trust and Savings Association at a special meeting of said Board called for the 30th day of September, 1938, in compliance with the request of Mr. Diggs, Acting Comptroller of the Currency, and in accordance with the By-laws, a quorum being present and voting affirmatively hereon, that the following members of the Board of Directors

Marshal Hale
C. H. Baker
Dr. G. E. Caglieri
F. W. Flint, Jr.
Dr. A. H. Giannini
C. N. Hawkins
H. A. Mazzera
Wm. Wallace Mein
Dr. C. J. Sullivan

are hereby appointed, authorized and directed to analyze all of the items contained in the report of the examination of this Association completed September 15, 1938, and the letter of the Acting Comptroller of the Currency of September 23, 1938, and submit a written report of facts found by such analysis for the information, review and consideration of the Board of Directors so that the Board, with the complete statement of facts before them, may reply in detail to the letter of the Acting Comptroller of the Currency and take all necessary and constructive steps required by the facts.

"I, B. P. A. EVERARD, the duly elected and qualified Secretary of BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, a National banking association organized and existing under and by virtue of the laws of the United States of America, and having its principal place of business in the City and County of San Francisco in the State of California, hereby certify and declare that the foregoing resolution

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[illegible] full, true and correct copy of a resolution duly passed and [illegible] by the Board of Directors of said bank at a special meeting thereof held on the 30th day of September, 1938, pursuant to [illegible] by-laws, at which meeting a quorum of the Board of Directors was present and voted unanimously in favor of said resolution; that said resolution has not been rescinded or amended and that the same is still in full force and effect.

"IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Association on the 1st day of October, [illegible].

R. P. A. Everard
Secretary of BANK OF AMERICA
NATIONAL TRUST AND SAVINGS ASSOCIATION."

[illegible] Board has given consideration to all of the items set forth in [illegible] letter of September 23, and our reply in detail as requested is given [illegible].

[illegible] Board respects the authority which the law has conferred upon [illegible] office, and we think that we, at least in a measure, appreciate the [illegible] responsibility which rests upon you. We have noted with satisfaction [illegible] statement in your letter of September 23 that the purpose of [illegible] of the examiner, and of those in the above mentioned letter, [illegible] our Board in a constructive manner to protect the interests of [illegible] as well as of the shareholders of our Bank. We feel that this [illegible] offers a basis of cooperation upon which there can be no [illegible] of opinion between us and the Comptroller of the Currency.

In your letter of September 23 to each individual member of our Board, [illegible] refer to your duty to protect the depositors as well as the [illegible] of our Bank, you say specifically that it is your desire in this matter to be fair to all concerned. We wish to express our appreciation of [illegible] sentiment.

Nevertheless, we are constrained to comment upon the procedure which [illegible] fit to adopt, a procedure which, as indicated below, might [illegible] have caused harm to the very persons you desire to protect, namely, [illegible] and the shareholders.

[illegible] your instructions, Examiner Palmer on September 13, 1938, [illegible] appeared before our Board with your telegram and delivered criticisms [illegible] on items with respect to which the Comptroller of the Currency had [illegible] communicated formally with the Management or our Board. [illegible] startling performance, and our Board feels that there was not sufficient background to justify it since there had been no prior communication [illegible] on the subject.

When you instructed the examiner to read to our Board this last minute [illegible] at our meeting at which a dividend was due to be declared, you apparently did not take into consideration the practice of corporations to send out press releases in advance of the actual hour of a dividend declaration, [illegible] release.

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[illegible]ember 16, 1938, three days later, you sent through the mail to [illegible]ectors a copy of this telegram. Contrary to the custom with [illegible]ed, the envelope was marked neither "personal" nor "confidential". [illegible] at the various business addresses of members of the Board in [illegible] elsewhere, and opened in the ordinary course by office em- [illegible] contents thus got into the hands of various persons for whom it [illegible].

[illegible] not understand why you decided to send this telegram through the [illegible] of us after it had already been read to the Board and apparently [illegible] purpose.

[illegible]ending to each Director your letter of September 23, 1938, with a [illegible] important letter of September 23, 1938, addressed to the Board [illegible]tached, you followed a similar procedure. As a consequence, a [illegible] persons not connected with the Bank became apprised of all of the [illegible] which you ask us to consider and answer.

We shall not comment further at this point on this aspect of the matter, [illegible] say that it seems to us most extraordinary that the only two communica- [illegible] Board has ever received from the Comptroller of the Currency on this [illegible] should come in the nature of warnings that the existence of the manage- [illegible] of the charter of the Bank itself might be attacked if certain con- [illegible], greatly improved under this administration, were not satisfactorily

We do not question the good faith of the Comptroller of the Currency, [illegible] are at a loss to understand why he saw fit to address the letter of [illegible]ber 23, 1938, to each Director, calling his individual attention to the [illegible]rastic penalty on the statute books relating to the regulations of [illegible]al banks and pointing to his potential personal liability. There had [illegible] prior communication from him on this subject either to the Management [illegible] us.

The items in question, as set forth in your letter of September 23, 1[illegible] [illegible] replied to below.

[illegible]ES TO PUBLISH [illegible] POLICY

We do not unde[illegible] [illegible] criticised for bein[illegible] [illegible] of "publishin[illegible] [illegible] is made [illegible] the letter, [illegible]

As a matter [illegible] [illegible] earnings [illegible] [illegible] did not [illegible] [illegible] approxima[illegible]

Apart f[illegible] [illegible] [illegible]ts.

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[illegible] criticism of our dividend policy the examiner has used the annual [illegible] of the Bank for the years 1933 to 1937 inclusive, approximating [illegible] the basis for his conclusion that the Management looks to recover[illegible] for the elimination of losses. The report indicates that the [illegible] earnings for the years 1933 to 1935 inclusive, averaged approximate[illegible].

[illegible] were extremely lean years in a cycle of depression, and the report [illegible] indicates that in the years 1936 and 1937, when normal conditions were [illegible], the annual normal earnings averaged $11,000,000. Furthermore, the [illegible] for the current year on a comparable basis are running at the [illegible] $12,000,000 per year. It does not appear reasonable for the examiner [illegible] the three lean years in the calculation of normal earnings in order to [illegible] his conclusion.

As the Bank is steadily increasing its earnings, despite the low rate [illegible] on investments prevailing, it is not to be expected that its earnings [illegible] sink back to the low level of earnings in the three depression years [illegible]. The normal income for the years 1936, 1937 and 1938 (nine months [illegible]) is at the average rate of $12,500,000 per annum.

The net normal income of the Bank shows an increasing trend upward, be[illegible],000 for September, against an average of $1,283,574 for the second [illegible] period of last year. Net actual income in September, 1938, was [illegible]. It appears certain that the earnings will progressively increase [illegible] recovery and expansion progress.

The examiner has criticised the disbursement of a major portion of the [illegible] earnings through dividends. We feel that consideration of divi[illegible] should be related to the net actual earnings of the Bank, as current [illegible] are not a charge against future earnings, and the report illustrates [illegible] earnings in excess of dividends are sufficient to provide for [illegible] that do arise. Furthermore, the losses charged off by this Bank since [illegible] have resulted from the greatest period of inflation and deflation that the [illegible] experienced, and it is reasonable to assume that these losses are non-[illegible] and that a greater portion of the Bank's net earnings in excess of divi[illegible] will hereafter be available to increase the Bank's capital structure.

[illegible] dividend rate is not permanently fixed, and is not based entirely [illegible] normal earnings, but it is based upon the total current earnings of the [illegible] all sources. Our Board is keeping close watch on economic trends and [illegible], and you may rest assured that should a change in future economic trends [illegible] affect our earnings, our dividend action will be regulated accordingly.

[illegible] average loss experienced on the average total of outstanding loans [illegible] 1932, when the present Management took control, has been only 1/20 of [illegible] annum, or 3/10 of 1% for a six year period. On the basis of the present [illegible] loans, this may be taken as a fair indication of the extent of future [illegible] which may be expected to result in a charge against current earnings.

We believe that a thorough consideration by you of all the circumstances, [illegible] into account our large capital structure and great earning capacity and [illegible] relatively small percentage of doubtful and loss items in relation thereto,

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Comptroller of

"Examiner's [illegible]
"Optics [illegible]
California [illegible] 12,[illegible],526.00
Capital Company [illegible] 27,[illegible],820.00
[illegible] 47,980,242.00

These items have been reduced by $5,670,000 since examination.

With this total of $47,980,242 deducted, the so-called "large lines" are reduced to approximately $28,000,000. Of this amount, a total of $4,800,000 represents loans to clients of the Bank secured by stock of Transamerica Corporation, and it seems to us that this total should also be excluded from the line to Transamerica Corporation and its subsidiaries, because Transamerica Corporation has nothing to do with them.

For your further consideration, we submit below an analysis of the items in question.

(a) "Guaranteed Loans" - This transaction resulted from the settlement of the contracts originally made in 1931 and 1932. In conference with

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[illegible] of the Currency and with his approval, Transamerica [illegible] guaranteed certain assets of the Bank to the extent of [illegible],000,000. At that time the Bank was under another management with a different Board of Directors. It was not an [illegible] credit to Transamerica Corporation by the Bank, but the [illegible] was, as Transamerica Corporation pledged its credit to [illegible].

[illegible] the past six years this item has been reduced to approximately [illegible],000,000. This item is listed in the report as [illegible], and the reduction therefore since April 28, 1938, has [illegible] approximately $300,000.

Transamerica Corporation permitted one of its affiliated [illegible], the Corporation of America, to execute these contracts, [illegible] subsequently assumed the obligation through its wholly owned [illegible], Inter-America Corporation. When the stock control of [illegible] America was to be distributed by Transamerica Corporation [illegible] Corporation liquidated, it became apparent to [illegible] officers of the Bank that it would be necessary to [illegible] the setup of this contract while unity of ownership still [illegible]. The balance of the $35,000,000 contracts at that time was [illegible].82 and Transamerica Corporation subsidiaries liquidated [illegible] balance by payment of the sum of $5,844,239.82 and through [illegible] of 50,000 shares of the National City Bank of New York to [illegible] Bank, which was then worth at the market $2,716,300. An option [illegible] was executed by which Transamerica Corporation would [illegible] from the Bank 11,300 shares of National City Bank stock [illegible] at $48.00 per share, thus completing the purchase of the [illegible] 55,200 shares in a five year period. As a consideration for [illegible], Transamerica Corporation delivered to the Bank 18,400 [illegible] the National City Bank of New York, the equivalent of more [illegible] the book value of the shares under option.

[illegible] part of the general plan of settlement, the Bank was [illegible] of reacquiring all of the charged off assets, aggregating [illegible] $55,000,000, which were covered under the original [illegible] contracts and subsequent transactions, and which it was [illegible] from an appraisal had a determinable minimum recovery value [illegible],000,000. The Bank therefore acquired these assets for the [illegible] $2,800,000, properly supported by pledge of securities. If [illegible] assets fail to provide recoveries to the extent of $1,300,000 [illegible] year, the Bank will receive cash or may liquidate the pledged [illegible] to make up any deficiency; except that any excess accum[illegible] in any year will be permitted to carry into a future year [illegible] against any deficit.

The Bank materially benefited by the settlement of the

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$35,000,000 contracts effected through these transactions. No specific liquidation program had been established under the old contracts, whereas the new arrangement provided for a very definite program of liquidation within a five year period, the remaining term of which is now four years. Further, under the settlement agreement the Bank will receive the benefit of recoveries anticipated on the charged off assets after the full amount of the guaranty is recovered. Under the terms of the original $35,000,000 contracts, such further recoveries, as well as future appreciations in bond accounts, as indicated by the examiner on page 8, insert 7, of his report, would have gone to Transamerica Corporation in the full amount. An additional benefit to the Bank is the income on dividends received on the National City Bank of New York stock amounting to $56,600 a year.

With respect to the guaranteed item of $6,500,000, the first year's requirements have been satisfied and the item reduced by approximately $1,500,000 in a fourteen months' period.

The option to purchase shares of the National City Bank of New York has been reduced by $543,360 through the sale of 11,320 such shares to Transamerica Corporation at the option price of $48 per share.

Bank of America has pledged with it by Transamerica Corporation as security for its guaranty of $6,500,000, now reduced to $5,011,000, the following collateral:

86,560	shares	Central Bank, Oakland	$ 4,060,160.00
5,445	"	First National Bank of Portland	1,470,150.00
10,000	"	Bankamerica Agricultural Credit Corporation	1,243,000.00
28,300	"	National City Bank of New York	755,800.00
71	"	Bank of Amador County	30,175.00
40	"	Bank of A. Levy & Co.	18,000.00
21	"	Bank of Davis	6,410.00
			$ 7,663,695.00
Balance Guaranteed Loans October 6, 1938			$ 5,011,000.00

From the above it is apparent that the guaranty is secured by good collateral having a value of $2,[illegible] in excess of the remaining balance. [illegible] classified as either doubtful or loss.

(b) CAPITAL [illegible]

These contracts are listed by you as $39,739,246.46. They have been reduced since the examination to $36,972,000.

While these contracts represent a substantial amount, we believe that the obligations are money good and that they should be regarded as [illegible] obligations. In addition to the real estate purchased by the land companies and underlying the contracts as security, the companies each have a net [illegible] represented by other assets which affords the Bank more than adequate protection. Until January 1, 1935, these companies purchased the properties from the Bank at the amount invested in them by the Bank, but since that time the companies have acquired properties at the foreclosure bid price which has approximated the actual market value.

On the real estate purchased prior to 1935, and especially those taken over during the early stages of the depression, the companies have sustained substantial losses, but since January, 1935, the acquisitions have been at prices which should show little, if any, loss to the companies. Since June 1, 1938, with one exception, no further sales of real estate have been made to either company, and we do not contemplate any further sales to the companies.

Included in the properties sold to Capital Company under contract are properties known as Subdivision Trusts. These properties originated through loans made by the Merchants National Trust & Savings Bank, Los Angeles, secured by beneficial interests in trusts which held title to properties either improved for subdivision or planned to be subdivided. These trusts have been dissolved, title to the property acquired by the Bank, and the properties sold to Capital Company. On several occasions it appears that the examiner has implied that sales of subdivision properties were inconsequential. However, we point to the record. Sales in 1936 amounted to $1,693,000 and in 1937 amounted to $2,072,000.

These contracts provide a definite program of liquidation. Under the terms of the contracts, the total amount due is payable within 10 years, and under this provision the maximum term of payment is now 8 years. The minimum liquidation required is 10% annually of the original purchase price. Liquidation on these contracts has been twice the annual requirements. In the period from April 4, 1934, to June 30, 1938, Capital Company and California Land sold $38,500,000 book value of real estate, and this amount has been applied on the contracts. During each of the years 1936 and 1937, $11,000,000 was applied to their liquidation.

With reference to the items referred to in the third paragraph of the second page of the letter of September 23, we call attention to the fact that during the years 1934 and 1935 there was applied on the land company contracts $2,158,000 and $5,910,000 respectively, whereas, the inference to be drawn from your letter is that no payments were made in these years.

The payment of taxes by the Bank results from the fact that when this general type of contract was first entered into by the former management, with the approval of the Comptroller, real estate taxes were an offset to prevailing taxes in this state and such payment therefore was not a net cost to the [illegible]

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Attention is called to the fact that losses of $1,665,000 were absorbed on sales in the year 1936 by the land companies and comparable losses were absorbed in other years. This would more than offset any amount of real estate taxes paid by the Bank and, in addition, the Bank received interest on the contracts and saved the cost of maintenance and operation of other real estate, which is also borne by the land companies.

The Comptroller of the Currency in his letter expresses the opinion that the real estate sold to Capital Company and California Lands Inc. under contract should be shown as "Other Real Estate Owned" on the books of the Bank and so shown in future published reports of the Bank.

We have obtained opinion of Counsel with respect to these contracts and he holds that they are bona fide, valid and binding, and that even should we be disposed to treat the real estate sold thereunder in the manner suggested by the Comptroller, we could not properly do so unless the contracts were first cancelled by the mutual agreement of all parties at interest. To carry the contracts on our books as "Other Real Estate Owned" and so to show them in future published reports of the Bank would, in the opinion of our Counsel, be a misrepresentation of the facts; such treatment of these contracts would imply that the Bank had equitable title to the real estate and was in a position to dispose of it at will, whereas the facts are that such real estate is not subject to further disposition by the Bank, as it has already been disposed of, and that the Bank is obligated legally, morally and otherwise to carry out all the terms of said contracts. (See opinion of Mr. Louis Ferrari, Counsel, hereto attached and marked "Exhibit 2").

N. CONCENTRATION OF OTHER REAL ESTATE -- BANKING PREMISES

Our attention is called to the amount of investment in banking houses, furniture and fixtures.

In our opinion, the banking premises of the Bank of America are thoroughly sound assets necessary for the proper conduct of the Bank's business. Experience of the Bank has indicated that it is more economical to own banking premises than to rent them. According to the examiner's report, page 14, insert 5, our occupancy expense for 1937 was in ratio of .0023 to each dollar of capital and deposits. This, we observe, compares with a ratio of .0041 for 284 reporting banks in all parts of the country reported in a survey published by the American Bankers Association. This indicates an occupancy expense for Bank of America of approximately one half of the average for the reporting banks referred to above.

Since 1932 the total occupancy expense of the Bank has been decreased $123,000 per year. This has occurred in a period during which 83 additional banking premises were added.

Our investment in banking premises and in Merchants National Realty Corporation is within the limitations of the provisions of Section 24 A of the Federal Reserve Act as amended June 16, 1933.

In the year 1937 the Bank and Merchants National Realty Corporation

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reserved the sum of $1,404,000 for depreciation on banking premises and equipment. The net book value of the depreciable assets in banking premises and equipment was approximately $31,248,948, and it is therefore evident that the depreciation taken on such depreciable assets in 1937 was at the rate of 4½%, a rate more than sufficient to provide an adequate reserve for depreciation of the depreciable banking premises and equipment.

Reference is made to the former banking premises carried in Merchants National Realty Corporation. As a result of the merger of the Bank of Italy National Trust and Savings Association and the Bank of America of California as Bank of America National Trust and Savings Association, a number of properties owned by both banks were no longer occupied as banking premises due to the consolidation of branches. These properties referred to as "Ex-Bank Premises" were ultimately acquired by Capital Company for a total price of $9,155,786.66. During the life of the agreement, $3,281,000 was applied to the reduction of the purchase price, leaving an unpaid balance of $5,874,000.

When the date for the distribution of Bank of America stock approached, the Bank determined that it would be in its best interests to make a final settlement of this obligation along with certain other obligations which Transamerica subsidiaries had incurred for the purpose of removing certain assets from the Bank. Transamerica Corporation was still the owner of practically all the capital stock of the Bank, and it therefore was possible for the Bank to effect an arrangement whereby Capital Company would continue to manage the properties and in addition undertake to purchase or otherwise dispose of them on a definite program so that the entire amount of the existing contract would be liquidated within a maximum period of 10 years. Such an arrangement was thereby consummated, and Merchants National Realty Corporation acquired the properties under an agreement obligating Transamerica Corporation's subsidiary, Capital Company, to sell or purchase for its own account such properties to the extent of not less than $590,000 per annum. The first payment of this amount has been made and the balance now payable is $5,284,000, and will be similarly liquidated each year.

Under the old contract Transamerica Corporation retained the net income from the properties, which was approximately $250,000 per annum, while the Bank received only 1% on the balance owing on the contract. The receipt by Merchants National Realty Corporation of the net annual income of approximately $250,000 from these properties has resulted in a substantial benefit to the Bank, which is reflected in a decrease to the extent of such net income in the amount of rentals which the Bank is obliged to pay to Merchants National Realty Corporation for properties leased from the Corporation.

4. A. O. STEWART LINE

The total indebtedness of A. O. Stewart, both direct and contingent, as of April 28, 1938, was $8,088,003.96 and not $11,013,003.96, which figure apparently included the credit of $2,925,000 to Pacific Coast Mortgage Company, which is in no way connected with the Stewart line. We are informed that Mr. Stewart is by no means a major stockholder in this concern, his holdings amounting to less than 3% of the total shares outstanding. It appears to us that the Mortgage Company credit is adequately secured.

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Approximately 40% of the total amount owing by Mr. Stewart, direct and indirect, is secured by U. S. Government obligations and over 70% of the contingent liability is secured by Government obligations and listed securities, present value of which is $4,922,382. Other securities are valued at [illegible], making a total value of $14,590,133 securing the line.

Reductions of $105,391.85 in his direct liability and $292,536.22 in the contingent liability have been effected since the examination and in the intervening period an additional advance was granted to the Reclaimed Island Land Company A. & B. of $509,727.70 secured by $550,000 par value U. S. Government bonds.

His loans are always kept in good current condition and his dealings with us at all times have been entirely satisfactory. This is unquestionably a sound credit. He has been a desirable and profitable client for 25 years.

5. GERMAN CREDITS

With regard to this item to which you call our attention, the Department was informed prior to the completion of the examination of April 28, 1938, that the loss classification of $1,000,000 listed in the report of August 31, 1937, had been charged off. This, we are informed, was the subject of correspondence and conversation with your office. Previously, $1,000,000 had been charged off as required in the examination report of October, 1936.

There apparently has been a misunderstanding with regard to the verbal agreement recounted by the examiner. We are informed that at the time of the October 14, 1936, examination $4,000,000 was classified adversely in connection with these credits and by agreement with the examiner, this was listed as $3,000,000 doubtful and $1,000,000 loss on our agreement that $1,000,000 would be charged off annually until the carrying value should be reduced $4,000,000. One of the reasons for requesting this classification was to enabl us to spread the deduction for tax purposes over a period of years. $2,000,000 has been charged off to date and upon completion of the charge off required by this examination, though it is contrary to our understanding, the carrying value will have been reduced $3,000,000. The Management appears to have fully complied with each specific request for charge off. We nevertheless are not convinced that the amounts charged off are actual losses.

6. SECTION 5200 [illegible]

On page three of your letter you make the charge that the Bank has violated Section 5200 U.S.R.S. by exceeding the lawful limit in the case of loans to Transamerica and its subsidiaries in the amount of $14,118,162.67. In arriving at the aggregate total of these loans, the examiner included the "Guaranteed Loans," amounting to $8,824,096, which, for reasons already explained, cannot be considered as involving an extension of credit to Transamerica Corporation. He also included certain advances made to Capital Company in the sum of $687,040, which were for the purpose of reimbursing

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[illegible] for expenditures on bank premises. These two items reduce the [illegible] $28,118,152 to $17,097,026. By payments totaling $3,156,316 made [illegible] obligations listed in this category subsequent to the date [illegible], the amount of $17,097,016 is further reduced to $13,940,700.

[illegible] the legal question here involved, we have advice of Counsel that [illegible] violation of Section 5200 U.S.R.S. (See opinion of Mr. Louis [illegible], Counsel, hereto attached and marked "Exhibit 3").

[illegible] CAPITAL

Quoting from your letter, on page 4, second paragraph, you make the [illegible] statement, "The Bank is undercapitalized to the extent of at least $42,000,000.00, without taking into consideration its asset condition." [illegible] analysis of our capital position shows the net sound capital of our Bank, after deducting estimated losses, doubtful items, and liabilities not shown [illegible] our books, to be $96,447,539.77

On September 30, 1938, the total capital structure as shown by the books of the Bank amounted to $112,615,000, after provision for dividend of [illegible] payable December 31, 1938. Deducting losses after partial review [illegible] and one half of doubtful assets, as required by Comptroller's [illegible], amounting to $2,548,000, and adding $3,220,000 charged off since [illegible] examination, and the reduction in bond "loss" classification of $1,760,000, [illegible] current net sound capital structure of the Bank is $107,090,000, which, [illegible] bond appreciation of approximately $9,000,000, amounts to more [illegible], which exceeds the amount shown by the examiner, and indicated [illegible] above paragraph, by approximately $20,000,000.

[illegible] Banking Act of 1933, Congress permitted national banks to ex[illegible] branches to the boundary lines of the state. At that time, only five [illegible] Congress fixed the capital requirements of statewide national branch [illegible] systems. Under this legislation, our requirement for capital and sur[illegible] $[illegible],000,000. Our capital position is therefore more than twice as [illegible] the law requires.

We have opinion of Counsel on the question of the legal requirements [illegible] (See opinion of Mr. Louis Ferrari, Counsel, hereto attached and [illegible] "Exhibit 4"). He holds that the capital requirements of the national [illegible] are on the basis of population and not on ratio to deposits; that [illegible] the law is concerned, our Bank is over-capitalized by more than [illegible]. He further holds that there is no authority for the Comptroller [illegible] to make any regulation, or rule, for the capital of a national [illegible] upon a ratio of capital to deposits.

As the Bank's net sound capital position has been steadily improving, [illegible] substantially all of the losses charged off since 1932 resulted from [illegible] prior to that time, the Bank's position has been bettered by the [illegible] off of losses on loans and other items amounting to $50,218,000, de[illegible] on Banking Premises, Furniture and Fixtures, amounting to $7,618,000,

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Comptroller of [illegible] October 11, [illegible]

depreciation [illegible]
total $62,6[illegible]
since 1933. [illegible]
sfk, appro[illegible]
bank, [illegible]
trolled by [illegible]
hibit[illegible]

As [illegible] dends, losses in the amounts
charged off [illegible] recurrent, and it is our
belief, [illegible] expenses of the Bank
and the [illegible] to total capital
accounts [illegible] follows.

We have, however, no disposition to take a technical position in this matter. We think, regardless of the law, that the capital of a national bank should bear a relationship to the nature of its deposits and its loans. In our case we are largely a savings bank. More than half of our deposits are not payable on demand, and, accordingly a large proportion of our loans are, pursuant to law, secured by real estate.

8. CRITICISED AND FIXED ASSETS

$137,818,327.00 of criticised and fixed assets listed in the examination report are classified as follows:

Slow	$124,766,349.00
Doubtful	5,095,402.00
Loss	7,956,576.00
	$137,818,327.00

The Comptroller in his letter compares this total with the total capital structure of the Bank.

We fail to understand the reason for such a comparison, which includes a[illegible] that are unquestionably sound and not classified adversely as doubtful or loss. The implication, when this item is applied to the capital structure, [illegible] there results an insufficiency of more than $25,000,000, which, of [illegible], is not the case. There might be a point in comparing the "doubtful" a[illegible] classifications with the capital structure, but the inclusion of [illegible] classification in the total destroys the comparison. While we do [illegible]ve that the examiner's "slow" classification is correct, we do believe [illegible] comparison of sound "slow" assets with the total assets of the Bank would [illegible] reasonable one.

The "loss" classification listed by the examiner totals $7,956,576. [illegible] amount, $3,219,688 had been eliminated prior to the receipt of the [illegible]tion report, which does not seem to us to indicate a reluctance on the [illegible] the management to admit known losses and voluntarily charge them off, [illegible] in the second paragraph of your letter.

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Your statement that $137,818,327.86 is subject to adverse classification has caused us to review the regulations which seem to indicate clearly that the item of "slow" classification of $124,766,349 is not subject to inclusion in "adverse classification," which classification apparently should include only those items classified as "doubtful" or "loss".

C. BONDS AND SECURITIES CLASSIFIED

(a) Bonds and securities in classified groups are having close attention and, as indicated by the examiner, represent a relatively small amount as compared with the Bank's total Bond Account.

The examiner's comments under the heading of "Bonds and Securities" relating to the option granted to Transamerica Corporation to purchase 56,000 shares of National City Bank of New York at $48 a share have been responded to in the discussion under the caption "Guaranteed Loans."

The officers of the Bank have not refused to charge off bond depreciation classified as a loss, but have pointed out that in each previous case where such loss has been classified, the loss has been eliminated by market appreciation or the sale of bonds. The loss classification of $2,523,000 in the examination report of August 31, 1937, originating through market depreciation on bonds which had been written up was fully reviewed with the Chief National Bank Examiner in Washington by the Vice President and Cashier of the Bank, and the Chief National Bank Examiner agreed that the item could be considered as eliminated.

The classification of $257,068 in the current report is estimated upon certain municipal bonds previously written up which remain in the Bank's portfolio. When the premiums already written off through regular amortization but not taken into consideration by the examiner are deducted from the gross carrying value, this estimated loss is reduced to $87,019.32. Reserve of $294,000 has already been set up for the amortization of the premium on these bonds as a block.

On date of examination there remained on the books unrealized $[illegible],[illegible],897.55 of the original write-up of government and municipal bonds amounting to $14,007,000. This amount has been further reduced by sales of bonds to [illegible],[illegible],000 against which there has been written off premium of $630,1[illegible].97, the balance of the write-up remaining on our books, to which attention is directed, is therefore $2,056,000, which it was and still is our intention to eliminate in an orderly manner.

All securities listed in examiner's report on Administration as illegally acquired (insert 25-28 inclusive) have been eliminated through sale.

Classified bonds and securities, $8,480,913.96, with a loss classification of $2,343,287.12. The classifications include stock of the National City Bank of New York, which is being purchased by Transamerica Corporation under

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[illegible] (see reference under caption "Guaranteed Loans"). Deducting [illegible] of this stock at the time of examination, namely, $2,[illegible], [illegible] classified bonds and securities is reduced to $5,764,113. Deducting [illegible] loss on these shares through market depreciation at the time [illegible], namely, $273,050, the total of the "loss" classification is [illegible] 1,970,271. Subsequent sales, amounting to $[illegible],131 and market [illegible] amounting to $772,177 of the remainder of the classified [illegible] further reduce the "loss" classification to $631,[illegible], which will be [illegible] an asset of the Bank if agreeable to you.

(b) Unlawfully Acquired Bonds - Securities

Seven issues with a total book value of $1,204,990.51 are held by us [illegible] "predominantly speculative." This figure has been reduced to [illegible],[illegible].51 by sale of portion of Carriers & General Corporation 5s due 1950 [illegible] $[illegible],340.00.

The remaining 16 issues amount to $110,707.53, of which 10 have been eliminated through sale for $14,671.17. The balance of $104,036.36 consists of:

	Book Value
National City Bank - 1300 shares (Acquired from TAC in settlement of Insurance Reserve Fund)	$ 78,000.00
West End Chemical Company - 367,122 shares (This item will be eliminated by application of dividends already received)	7,146.36
Caribbean Sugar 7s due 1941	17,250.00
	$ 104,036.36
The present market value of West End Chemical Company shares is ...	$ 256,985.40

(c) Bonds rated B2 or less

The greater part of the above securities were purchased prior to March, 1936, and received a sound credit rating at the time of purchase. The lower ratings since purchase are responsible for the total of bonds criticised. At the time those bonds were bought, our investigation of the issues led us to believe they were satisfactory investments for the Bank. The items are gradually being reduced.

(d) Convertible bonds

Of these bonds, $543,889.27 book value have been sold subsequent to the report of April 28, 1938, leaving a balance of $3,875,651.73. With the exception of those previously mentioned under "Classified Bonds", these issues

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[illegible] considered conforming to the regulations relating to convertible bonds or bonds "predominantly speculative." However, a substantial reduction of [illegible] holdings is being effected under a definite program of sale.

(e) Bond Write-Up

It is not the "policy" of the Bank to write up securities. The reasons for the writing up in value of certain United States Government and municipal bonds to the extent of $14,000,000 have been heretofore discussed.

If the Bank had sold the bonds in the instance referred to, realized the profit, paid it in dividends, and then received such profit back from Transamerica Corporation as payment on account of the obligations which have been reduced by application of the write-up, additional taxes amounting to $2,900,000 would have resulted from the procedure in the years 1935 and 1936. Considering all the facts and circumstances relating to the Corporation of America contracts, we are of the opinion that this write-up was justified, though, as stated, it is contrary to the policy of the Bank and will not be repeated.

The bond account at October 11, 1938, had an appreciation in excess of $5,000,000.

10. SERVICE CHARGES ON DORMANT ACCOUNTS

It is the rule of the Bank to subject accounts to service charges. This is a general rule applicable to commercial and savings accounts whether dormant or active, and is supported by an agreement which the depositors sign.

Refunds of such charges are frequently made to depositors, but the Bank does not recognize any right of the depositor to such refund. It does the refund purely as a matter of public relations policy in an effort to re-establish a customer relationship.

Our Counsel has advised us that our contract with the depositor is valid and enforceable and that there is no legal reason why the contract should not be enforced. (See opinion of Mr. Louis Ferrari hereto attached and marked "Exhibit 6 ").

11. VIOLATION OF SECTION 5201 U.S.R.S.

The largest loan listed in the examination report was not made in violation of Section 5201, but was made upon the security of shares of stock of Transamerica Corporation. Following the making of the loan, Transamerica Corporation distributed to its stockholders shares of stock of Bank of America N. T. & S. A. This distribution from the capital assets of the corporation had the effect of reducing the value of the corporation's own stock, and, therefore, as a matter of good business procedure and to prevent possible loss, as permitted by provisions of Section 5201, the Bank took collateral of the Bank shares distributed to the borrower.

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In the case of the other loans found not being made in violation of Section [illegible], corrective measures have already been taken and the situation explained or remedied.

Under miscellaneous criticisms the Examiner reports the Bank's ownership of [illegible] shares of its own stock. These shares were acquired on debts previously [illegible] and have been sold.

12. MANAGEMENT AND SUPERVISION BY THE BOARD OF DIRECTORS

We have considered your criticism in which you call to our attention the duties and responsibilities which rest upon us as Directors of the Bank. With respect to the essential principles there can be no room for disagreement between you and our Board. The question of procedure in the discharge of these duties and responsibilities does, however, lend itself to further consideration.

We do not in the least minimize our responsibilities for the policies of our Bank. We are solicitous for the welfare of our depositors, our borrowers, our stockholders and for the high quality of services which we extend to the people of the State of California.

It is our desire that our minutes give to your office all of the information of our transactions which you may require, but there are naturally physical limitations to the volume of matter which can be recorded. We had understood that your office had agreed to our procedure of incorporating our committee minutes into our Board's minutes by reference and placing the full committee report on file. The Secretary has been instructed to communicate with your office and, in collaboration with you, formulate a plan of procedure for keeping minutes that will be satisfactory.

13. THE MANAGEMENT

Our Board is working in complete accord with the Management of the Bank. We know at first hand all of the aspects of the great fight they have made in bringing the Bank through the lean years of 1932-33 to its present state of prosperity. We know of no other bank management which can compare with ours in initiative, enterprise, courage, and devotion to the best interests of the Bank and the people of California.

On Page 6, second paragraph, of your letter, you imply that the Management has taken an antagonistic attitude toward the Examiner and your office with respect to the affairs of the Bank. While there are no doubt some misunderstandings and some differences of opinion, we are sure that there exists on the part of the Management no fundamental opposition to you in your supervision of the Bank. Both ourselves and the Management have devoted our energies to the improvement of the assets of the Bank, and have, it seems to us, made good progress. We shall continue our efforts in this direction until every necessary correction has been duly made, and you may count on the cooperation of our Management to this end.

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As indicative of the progress made by the institution under the present management, we submit the following information in comparative form:

	3-31-32	4-28-38	Increase	Decrease
		.000 omitted		
Conforming Real Estate Loans	$ 195,076	$ 220,409	$ 25,333	
Nonconforming Real Estate Loans	97,423	57,718		$ 39,705
Total Classified Loans	207,202	123,873		83,329
Slow	155,333	115,456		39,877
Doubtful	21,428	3,689		17,739
Loss	30,441	4,728		25,713
Loans Dependent Upon Transamerica Stock	20,535	4,817		15,718
Total of all Loans	499,655	571,663	72,008	
Uncollected Interest	8,070	6,502		1,568
Bonds & Securities	249,504	598,187	348,683	
Cash & Due From Banks, etc.	58,214	209,740	151,526	
Capital, Surplus & Profits	94,209	110,621	16,412	
Demand Deposits	162,638	492,430	329,792	
Time Deposits	432,296	771,851	339,555	
Cashier's & Certified Checks	8,164	26,029	17,865	
Total Deposits	622,530	1,385,491	762,961	
Bills Payable	138,182	Nil		138,182
Loans to Affiliates Classified (11-9-32)--74,569		45,099		29,470 (40%)
Loans to Affiliates Classified Adversely (11-9-32)--14,315		336		13,980 (98%)

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	1-31-[illegible]	4-31-[illegible]	Increase	Decrease
	,000 omitted			
[illegible]	23,[illegible]	[illegible] 1,[illegible]		[illegible] 1[illegible],[illegible] (4[illegible]
[illegible] (1[illegible])	50,200	[illegible],[illegible]	[illegible] 40,1[illegible] (80%)	
[illegible]	--	7,636	7,636	
[illegible] Reserve (1[illegible])	-- 22,[illegible]	(1[illegible])-30,026	1[illegible],[illegible] (3[illegible])	
[illegible] (1932)	-- 20,323	(1[illegible])-27,496	7,173 (35%)	
[illegible] Adversely	11,9[illegible] (10% of total [illegible])	[illegible],417 (1.4% of total [illegible])		40,651 (9[illegible] Impr.
[illegible] Depreciation, (1932) [illegible], Reserves & Dividends	7,601	(1[illegible])-12,224	11,[illegible] (263%)	

These figures in themselves tell the story of the constant and successful effort of the Management in behalf of the Bank.

14. [illegible]

In the foregoing communication we have attempted to reply in detail, as you requested, to each of the criticised items set forth in your letter of September 23, 1938. In the discussion of each item we have disclosed to you our views with respect to the criticism and our plans regarding its ultimate disposition. All figures used in this communication have been verified by responsible officers and department heads.

Each of us has read and re-read your letter of September 23, 1938. We are still at a loss to understand why you thought such a communication to us was necessary.

The national banking laws confer upon the Comptroller of the Currency two rare and extraordinary powers. One in the Act of 1864 which permits the Comptroller of the Currency to bring suit in his own name for the forfeiture of the charter of a national bank when the Directors knowingly violate or knowingly permit a violation of the law, and the other in the Banking Act of 1933 which permits the Comptroller of the Currency to make a citation to the Federal Reserve Board for the removal of an officer or director for violation of law, or engaging in unsafe or unsound banking practices despite warning to desist.

No graver responsibilities could have been imposed by Congress upon a supervising officer of the government. The very nature of the powers conferred, it seems to us, should imbue the Comptroller with the desire, should he ever contemplate their exercise, to subject himself to the most deliberate restraint. These provisions are no doubt designed to put into the hands of the executive branch of the government, the means to prevent occasions of gross abuse by

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[illegible] and officers in order to save the depositors from losses due to [illegible] capital and losses in assets. They are desperate remedies and [illegible] were intended to be employed only after all other efforts at [illegible] have failed.

[illegible] our case, a national bank with great earning capacity, a net [illegible] position in excess of $100,000,000, twice the legal requirement, and [illegible] in any emergency situation, the Comptroller of the Currency, [illegible] intimating therefore to our Board, or to the Management, that he [illegible] that any such procedure was even remotely contemplated, suddenly [illegible] space of ten days threatened, in effect, to invoke both of these [illegible] against us. Frankly, Mr. Comptroller, it is inconceivable to us [illegible] you would ever feel it necessary to adopt any such radical procedure.

Whatever may have been the circumstances which moved you thus to act, we should like to take this occasion to assure you of our desire to co-operate with you in every effort to further the progress of the Bank. We feel that this can be accomplished in the ordinary manner by conferences from time to time between your office and the Management. We believe that the chief difficulty between the examiners and the Bank is in the matter of the attitude toward real estate as security for loans. We have no reason to believe that this difficulty rests on anything else than an honest difference of opinion. The examiners seem always to have held a low opinion of real estate as security. We, on the other hand, taking into consideration our type of bank, have a high regard for the value of real estate as security for obligations.

Real estate is the backbone of the country. It represents a greater proportion of the wealth of the country than does any other form of property. From it as a source of taxation the State, County and Municipal governments obtain their chief revenues. Ownership of real estate gives stability to the citizen. Our homes, farms, business houses, and industrial plants offer a fruitful field for long term financing. It is necessary for us to satisfy the diverse credit requirements of all the communities which we serve.

Bank of America National Trust and Savings Association, as its name implies, is in a large measure a savings bank. Its savings deposits in fact exceed those of any savings bank in the country. We therefore feel that the examiner should consider our real estate security in the light of the principles which should govern a sound savings bank practice.

The Management has had from time to time disagreements with the national bank examiners, but it has never thought it had any quarrel with the Comptroller of the Currency. We have never felt that a position taken by an examiner was necessarily the position of the Comptroller of the Currency on important questions of law and banking policy. While we do not question the right of the examiner to call attention to such matters as capital requirements, dividend policy, real estate loan policy, and other such large questions, we feel that the decision in these important matters should rest with you. These are the fundamental questions of policy with respect to which we feel the Management should be accorded the privilege of direct contact and conference with you.

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We trust that this communication will be accepted for what it is intended to be, a frank response to your letter of September 23, 1938. Within the short time at our disposal, we have not been able to go fully into all of the details of the examiner's report. Through our special committee, we shall give further consideration to the matters under discussion and collaborate with the management to the end that satisfactory disposition may be made of such matters. In the meantime, for the information and satisfaction of your office, we shall appreciate your affording the management an opportunity to clarify some of the issues raised.

With renewed assurances of our continued cooperation, we remain

Respectfully,

Guido E. Caglieri
John A. Corotto
Joseph Caughino
C. N. Hawkins
Wallace Mein
Paul B. Fay
A. C. Pritchett
Harry C. Mazzera
Fred L. Decker
Marshall Hale
Julius Gentner
R. J. Giannini

MEMBERS OF THE BOARD OF DIRECTORS

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C
O
P
Y

Board of Governors
of the
FEDERAL RESERVE SYSTEM

Office of the Chairman

October 27, 1938.

Dear Henry:

Upon my return from the west just following my visit to San Francisco, I asked some of our legal and operating staff who have had practical experience with Section 30 proceedings to let me have for my own information a brief memorandum on both the legal and practical aspects and the time element involved in such a proceeding, as contrasted with possible alternative procedures, assuming that the case in question related to a large banking institution and that a variety of complaints were alleged, including the question of dividend disbursements.

While I knew in a general way about Section 30 procedure from our experience with minor cases, I was frankly dismayed, on reading this memorandum, at the possibilities of interminable delay and infinite complexity involved in a case such as is envisioned here.

I am particularly impressed by the fact that in dealing with a case that needs prompt correction, this procedure at best means delay after delay--that, first, it must be found that there is a violation of law or that unsafe or unsound practices are being pursued; that a warning must then be issued; that next, "a reasonable time" must be allowed to permit of corrections; that it must then be shown and subsequently proved that the violations or unsound practices were continued, notwithstanding the warning and allowance of a reasonable time for correction; and that all this must precede the filing of a certificate with this Board. Then there must be further time allowances wholly aside from the time wasting tactics that could be employed by a resourceful defendant, to say nothing of the enormously complicated accounting and valuation problems affecting real estate and other assets that would arise if, as must be assumed, defendant attorneys undertook to disprove the Comptroller's charges by the testimony of experts of their own choosing.

On the basis of the facts developed in this memorandum, I have concluded that it would be a great mistake to proceed along these lines and that I ought to let you know how I feel about it personally. I hope you will have an opportunity to look this memorandum over yourself.

Sincerely yours,

/s/ M.S. ECCLES
M. S. Eccles,
Chairman.

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

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Problems of procedure under Section 30.

The following are the steps to be taken in the Section 30 proceeding:

1. There must be a violation of law or unsafe or unsound practices by the officer, employee or director.
2. A warning must be issued by the Comptroller's Office.
3. A reasonable time must elapse after the warning to permit of corrections.
4. Despite the warning the violations of law or the unsafe or unsound practices must have continued.
5. A certificate reciting the above facts and setting forth the specific matters complained of must be filed by the Comptroller's Office with the Board.
6. The accused must be given notice and such reasonable time as will meet the requirements of "due process".
7. The hearing proper.

Comptroller's proof of certificate.

In many of his actions the Comptroller of the Currency acts in a so-called quasi-judicial capacity and, except under certain exceptional circumstances, a court will not look behind his actions. For instance, his determination of losses and his resulting finding of an impairment in a bank's capital or its insolvency, his appointment of a receiver, and the levy of an assessment against shareholders are all actions which the courts have regarded as final. Similarly, it would seem that a finding by him of the necessity to appoint a conservator "in order to conserve the assets of any bank for the benefit of depositors and other creditors" would not be reviewable by the courts. This, however, would not be true with respect to the institution of a proceeding under Section 30. "Certifying the facts" does not prove the facts. Accordingly, there must be evidence to support such charges, not necessarily of the type admissible only under the technical rules of evidence applicable to judicial proceedings but certainly of the type entitled to consideration under the general rules applicable to administrative proceedings.

For instance, the legality or illegality of a dividend payment by a bank, if that should be an issue, would depend upon the amount of the bank's losses and statutory bad debts at a given date. Proof would be necessary with respect to each item of loss and each statutory bad debt until collectively such items aggregated "an amount greater than its net profits then on hand". In many instances it probably would be necessary to fix the value of collateral, real estate and otherwise, concerning which no doubt there would be wide differences and conflicts in the testimony which would have to be resolved. Furthermore, since Section 30 involves a failure to discontinue violations of law and unsafe and unsound practices after warning, it would be necessary to establish the case on at least two dates, to wit, before the warning and after the warning. This would be true with respect to each charge in the certificate and to each asset involved in each charge.

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Opportunities for attack and delay by defendant in an important case.

With representation of the accused director or officer in the hands of the best talent available, it is reasonable to expect attacks upon the procedure as a whole, attacks upon each step in the procedure, claims with respect to reasonableness of the time afforded, requests for delay, and other objections, none of which could be lightly considered and the effect of all of which would be to impede and delay action upon the merits. Then, with respect to the merits of the case it is reasonable to expect that repeated attempts would be made to color the entire picture by emphasizing the fact that the bank was licensed as a sound bank subsequent to which the Comptroller's own examinations have shown periodic improvement in the bank's position; and that further, the bank has been permitted, with the approval of the Comptroller of the Currency, to establish approximately fifty de novo branches, which would seem to indicate that at the time of the establishment of each such branch the Comptroller found the bank to be in satisfactory condition else he would not have permitted its establishment. Also, it is to be expected that with respect to each asset involved not only will there be an attempt to establish the value thereof by their own witnesses, but also it is reasonable to expect that the examiner will be cross-examined with respect to each asset, the value placed thereon at each examination by him, and his prior criticism thereof. The amount of time which could be consumed in a proceeding conducted along such lines staggers the imagination, and yet if a hearing is to be conducted so as to meet the test of fairness imposed by the courts, it would be almost impossible to prevent the use of such tactics if chosen to be used.

It may be seen, therefore, that action under Section 30 at best is a long and tedious process. Moreover, it does not operate directly upon the bank but only upon officers and directors of the bank. If the removal of an officer would not have the effect of changing the directors' policies, nothing would be accomplished. And, if removal of the directors would mean only that stockholders would elect directors that would carry out the same policies, nothing would be accomplished. It might be well, therefore, first to consider the situation from a standpoint of control and whether the removal of particular individuals would affect such control before attempting to effect correction by removing such individuals from nominal office.

Other available procedures.

On the other hand, it would seem that if the situation is so critical as to require immediate action the bank's license could be revoked by the Secretary or the Comptroller could appoint a conservator. Either of these alternative would be effective without delay and would operate directly upon the bank.

Another proceeding of a direct nature would be to institute a suit to forfeit the bank's charter. However, such a suit would not be considered as a measure of prompt relief.

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Finally, correction might be obtained through the normal exercise of supervisory powers. Many of the facts which would have to be established by evidence in either a Section 30 proceeding or a suit to forfeit a bank's charter could be determined by the Comptroller of the Currency through the normal processes of examination. For instance, if the examiner should find losses and the Comptroller of the Currency should support him in such findings and determine them so to be, the bank's profit account as a measure for the payment of dividends and its capital and surplus account (if impaired by such determination) as a measure for the bank's loan limit, would be fixed and its earnings absorbed.

Effect of an important Section 30 hearing upon the banking situation.

However important it is to cure the particular ailment, it is equally important not to select a remedy which may kill or permanently injure the patient. In this connection it is important to remember that there are hundreds of thousands of uninformed people involved who, because they are uninformed, may be swayed by extraneous and irrelevant considerations, and that indirect as well as direct repercussions on the banking structure might follow drastic action. It is hard to conceive of any circumstances in which the interest of depositors would best be served if attempted correction is accompanied by wide publicity and long drawn out proceedings during which rights of creditors are constantly changing (which may account for the negligible number of suits to forfeit charters which have been instituted in the past.) Particularly would this seem to be true when it is reasonable to expect that such publicity would include recriminations, charges of persecution, and claims that the action is political in its nature. The ill-effects consequent upon such an open fight might prove very disastrous and far out weigh the possible good sought to be accomplished in pursuing the remedy.

In conclusion, it is difficult to see how a procedure such as one would have to be under Section 30 could remain long without publicity and therefore before initiating it or any other procedure likely or certain to receive wide publicity, serious consideration should be given to the possibility of effecting correction by other means which are available under the law and are within the discretion either of the Secretary of the Treasury or the Comptroller of the Currency.

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CABLE ADDRESS - BAMERICAL

13044

Bank of America
NATIONAL TRUST & SAVINGS ASSOCIATION

SAN FRANCISCO HEADQUARTERS

RUSSELL G. SMITH
PRESIDENT AND CASHIER

SAN FRANCISCO, CALIFORNIA

October 29, 1938.

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

Dear Sir:

This refers to the report of the examination of this bank as of April 28, 1938, completed September 15, 1938. In order to advise you currently regarding the action which has been taken with respect to this report, I am summarizing herewith the loss classification and the amounts charged off or otherwise eliminated.

The total loss classification (page 3, insert 2) after review was (Administration report not reviewed) $7,956,576.49
Of this amount we have charged off or there has been eliminated through the sale of securities, or real estate, a total of - - - - - - - - - - - - - - - - - - - $5,472,245.09
as follows:

Loans and Discounts	$3,352,471.18	
Overdrafts	11,071.49	
Bonds, Securities, etc.	918,984.93	
Banking House	21,486.58	
Furniture & Fixtures	63,641.14	
Other Real Estate Owned	207,851.28	
Other Assets	356,043.08	
Merchants National Realty Corp.	440,695.41	
	$5,472,245.09	

The balance of - - - - - - - - - - - - - - - - - - - $2,484,331.40
not charged off includes the following:

Real estate in process of foreclosure These losses will be charged off as the individual foreclosures are completed, as agreed with Mr. Folger.	$ 667,746.15
Admitted loan losses at branches being charged off in the regular routine	316,500.60
Bonds, Securities, etc., upon which we have requested review by the examiner	1,424,296.19
Furniture & Fixtures, Other Real Estate and other assets upon which we have requested review	75,788.46

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You will observe, therefore, that all of the assets classified as loss either have been or will be shortly eliminated with the exception of approximately $1,500,000 on bonds, securities, and other assets upon which we have requested a review. These assets are all listed in the Administration report which was not reviewed with us in the usual manner prior to its completion. We believe that a review of these remaining items with the examiner will remove the loss classification, and for that reason we are withholding further action with respect to them until it is convenient for the examiner to review the report with us.

It may be of interest to your office to know that in addition to the elimination of losses, above referred to, the following progress has been made with respect to the more important criticised items since the date of the examination:

Guaranteed loans reduced	$ 593,437.12
Option to purchase reduced	543,360.00
Real Estate sales contracts reduced	3,172,155.81
Real Estate loans discounted for California Lands, Inc., reduced	103,731.39
Loans to subsidiaries of Transamerica Corporation reduced	3,718,436.12
Loan to affiliate - Merchants National Realty Corporation - paid in full	435,000.00

With the charge-offs which have now been made, the loss and doubtful classification of loans in the examination of April 28, 1938, has been reduced from $8,710,697.25 to $5,273,509.00 or 4/5 of 1% of total loans. We observe that this compares with an average of 2½% of total loans classified as loss and doubtful for 7500 banks reported by the Federal Deposit Insurance Corporation at the close of 1937.

Yours very truly,

R. G. Smith

Russell G. Smith,
Vice President and Cashier.

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FEDERAL DEPOSIT INSURANCE CORPORATION
WASHINGTON

OFFICE OF THE CHAIRMAN

October
29th
1938

Dear Mr. Delano:

We have studied with considerable care the report of examination of the Bank of America, National Trust and Savings Association as of April 28, 1938, which was supplied by your office. Comparison of this examination report with those of earlier years has enabled us to gain a general estimate of the condition of this California bank. We wish to take this opportunity to state our reaction to the problem presented.

We have more reason to be interested in the condition of the Bank of America, National Trust and Savings Association than in that of any other bank in the country. This single bank has more than $600,000,000 of insured deposits (total deposits in the bank amount to approximately $1,350,000,000), nearly three times the amount of insured deposits in any other bank and a half larger than the total assets of this Corporation. The importance of the condition of this bank to us is further increased by the fact that the same controlling interests operate other banks and exercise a dominating influence in the territory in which the bank operates.

As we see it, the following are the chief weaknesses of the bank:

1. Large volume of real estate (approximately $49 million) acquired through foreclosure. This is 51 percent of the net sound capital of the bank.

2. Small net sound capital in relation to the estimated value of the assets of the bank. (A decline of 6.4 percent in estimated value of assets would render the bank insolvent. This compares with possibly 11 percent for the commercial banks of the country as a whole.) This low capital is, in itself, an alarming condition, but its true significance lies in connec-

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tion with the fact that an amount more than twice as great as the capital is invested in hazardous and fixed assets.

3. Unsound relations with affiliates and other corporations controlled by the same interests. This includes use of the bank's funds to expand banking activities in other states. Obligations of Transamerica Corporation and its affiliates are held in an illegally large amount.

4. The expansion of activities (particularly opening of new offices) to a degree which is not justified by the asset and capital condition of the bank. Since 1932, the bank has added 150 new branches without adding to capital.

5. Payment of unwarranted dividends. Payments are now at the rate of 19.2 percent of the par capital. Apparently in several recent years dividends have been greater than profits as measured by reasonable accounting standards.

6. The bank appears to be operated primarily with an eye to the effect on market quotations of its stock and the stock of Transamerica Corporation. The management consistently refuses to make charge-offs on items which seem to have but a small chance of realization. Apparently the bank has failed properly to depreciate its bank premises, and these assets are now carried on the books at too high a figure. The public seems to be continually misled concerning the profits of the bank.

We appreciate very much being kept informed concerning the condition of this bank. It is certainly of the utmost importance that the bank shall not continue the violations of law and the unsafe and unsound practices which have characterized its activities in the past. If at any time our organization can be of any help in this connection, do not hesitate to call upon us. The fact that supervisory authorities have in the past permitted this bank flagrantly to violate the law and to operate in an unsafe and unsound manner makes it all the more important that such practices shall not be permitted in the future.

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We recognize that no matter what immediate steps are taken to remedy the conditions, it will be necessary to examine and analyze the bank in a more thorough-going manner than has ever been attempted in the past. I have no doubt that the examiners will be able to make a much more enlightening analysis of the situation when they know that the Washington office is genuinely interested and that some use will be made of the results. It is my understanding that no real examinations of Transamerica Corporation, California Lands, and Capital Company have ever been made. It appears to me that such examinations are necessary in order to get a complete grasp of the problem involved. If we can help by loaning personnel or in any other way, we will be only too happy to do so.

We have under our supervision a relatively small bank controlled by the same interests — the Central Bank, Oakland, California - a $50 million organization. The operation of this bank is so closely linked with the Bank of America, National Trust and Savings Association that the rehabilitation of the former must inevitably proceed hand in hand with that of the latter. In this respect, as in others, we wish to collaborate closely with your office.

Very truly yours,

Leo T. Crowley

Leo T. Crowley
Chairman

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

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COPY

November 3, 1938

Dear Mr. Eccles:

The Secretary of the Treasury has referred to me your letter of October 27th relating to procedure under Section 30 and the memorandum accompanying it. The matter had been under discussion with Mr. Ransom, representing your Board, for some weeks on the basis that the procedure under Section 30 was available. Moreover, I see no insuperable difficulty of our continuing to go forward on this basis.

The procedure under Section 30 is the responsibility of this office up to the time of the filing of the certificate with your Board. All of that, we are prepared to handle with reasonable promptness and with fairness to all concerned. Beyond that, I suggest an exchange of letters between this office and your Board agreeing upon a wholly fair and expeditious procedure for all cases of this sort. This is the method which Congress has provided for cases of this sort, it seems to me. There should be no great difficulty in working out a mutually satisfactory procedure that will operate as expeditiously as is reasonably to be expected in handling such matters and will amply safeguard the interests of the Government, as well as those of bank depositors and stockholders.

I am advised by the General Counsel of the Treasury Department that he holds himself in readiness to discuss this matter with the legal and operating staffs of the Board and of this office.

Sincerely yours,

(Signed) C. B. Upham

Acting Comptroller of the Currency

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

HO:EHFJr/bjs
Revised 11/3/38 UPM:pm

Regraded Unclassified

COPY November 5, 1938

FOR THE SECRETARY:

Mr. Taylor arranged through Chairman Eccles for me to see the Federal Reserve examiners and lawyers who have been handling the Transamerica case for the Board, and I met with three of them Friday afternoon.

Although the Board has warned Transamerica of the legal requirements it must meet, the Board has not been informed by Transamerica of any specific plan for complying with the requirement that the company either (1) cease to be a bank holding company or (2) divest itself of all interest in securities companies. If no plan has been presented by November 29, the deadline, the vice president of the San Francisco Reserve bank in charge of examinations has been instructed to find out what the situation is and report to the Board.

One of the lawyers present Friday expressed the opinion that, if Transamerica failed to comply, the Board would be morally if not legally compelled to revoke the permit under which the corporation votes its stock in the Oregon and Nevada banks. The other lawyer, however, pointed out that this revocation could take place only after hearings and much argument from Transamerica.

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The Board's recent activities on this problem are as follows:

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Last spring the Board reminded Transamerica of the necessity of getting out of the banking business or the securities business by the end of November. Transamerica informed the Board that it had divested itself of one of its securities companies, Bankamerica Company, by selling it to Western States Corporation on December 27, 1937.

Western States Corporation is a mysterious creature. One of Transamerica's subsidiaries had put $5,000,000 into the non-voting stock of this corporation, thereby furnishing the money with which Western States could buy Bankamerica Company. But the voting stock of Western States Corporation, which has a par value of only $50,000, is held by persons whose identity is not known, and the corporation itself was formed, according to the Federal Reserve examiner, by "four stenographers."

Because of these circumstances, the Reserve Board told Transamerica that, in the Board's opinion, the company was not complying with the law. The Board held that Transamerica may have divested itself of "control" of Bankamerica Company by the sale to Western States, but "ownership" of Bankamerica company still remained with Transamerica because of its heavy investment in Western States non-voting stock. Transamerica was so informed early in June.

The Board subsequently heard that Transamerica was stocking to its original argument, and the Board, to be as definite as possible, formally ruled in September that

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Transamerica had not divested itself of its interest in Bankamerica Company. Transamerica expressed surprise at the Board's ruling but said it would endeavor to comply. It asked the Board's lawyers to suggest an acceptable plan, but this request was refused.

No further official action has been taken, but newspaper stories have said that Transamerica has also sold its stock in the Oregon banks to Western States Corporation. I find this sale reported to the SEC. One of the lawyers present Friday said, if these reports are true, he expects that, when the Board checks up on Transamerica at the end of this month, Transamerica may claim that it has turned enough of its bank stocks over to Western States Corporation to escape the bank holding company classification. The Board will then have to determine: (1) whether the sale of bank stock to Western States is bona fide and (2) whether Western States Corporation itself has not become a bank holding company.

ESD

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CABLE ADDRESS - BAMERICAL

13044

Bank of America
NATIONAL TRUST AND SAVINGS ASSOCIATION

SAN FRANCISCO HEADQUARTERS

SAN FRANCISCO, CALIFORNIA
November 9, 1938.

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

Dear Sir:

At the direction of the Board of Directors of Bank of America N. T. & S. A., I am enclosing a copy of a letter which was read to the Board at its regular meeting held today.

Respectfully,

R. P. A. Everard
Secretary
Board of Directors

Enclosure

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CABLE ADDRESS - BANCAMERICA

12044

C O P Y

U O P Y

Bank of America
NATIONAL TRUST AND SAVINGS ASSOCIATION

SAN FRANCISCO HEADQUARTERS

SAN FRANCISCO, CALIFORNIA

November 7, 1938.

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

Dear Mr. Giannini:

Total net actual income of the bank for the month of October was $2,482,000 before provision for amortization of bond premiums and depreciation on banking premises, but after accrual for taxes and all other expenses. This brings the total net actual income for the ten months' period since January 1, 1938, to $20,329,000.

On the basis of ten months' actual income and estimates for November and December, it is estimated that the total actual income for the year 1938 will be $25,125,000.

Of the estimated total of $25,125,000 of net actual income for the year, $9,020,000, or approximately 36½% will be allocated to provide for the write-down of assets. This provision will include the following:

Losses as classified in examination reports	$5,900,000
Amortization of bond premiums	2,000,000
Depreciation on banking premises	1,120,000

After payment of dividends amounting to $9,600,000, or 38%, and the allocation of $1,200,000 to employees under the profit-sharing bonus plan, $5,305,000 will be added to capital funds for this year.

Provision has been made for all of the loss classification in the latest examination report with the exception of $2,484,331.40 which includes the following:

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Real Estate loans in process of foreclosure These losses will be charged off as the individual foreclosures are completed. This procedure was approved by the Chief National Bank Examiner in connection with the last previous examination.	$667,746.15
Admitted loan losses at branches being charged off in the regular routine	316,500.60
Bonds, Securities, etc., upon which we have requested review by the examiner	1,424,296.19
Furniture & Fixtures, Other Real Estate and other assets upon which we have requested review	75,788.46

The following amounts have been charged off, or eliminated through the sale of securities or real estate:

Loans and Discounts, including $2,000,000 on German credits	3,352,471.18
Overdrafts	11,071.49
Bonds, Securities, etc.	918,984.93
Banking Houses	21,486.58
Furniture & Fixtures	63,641.14
Other Real Estate Owned	207,851.28
Other Assets	356,043.08
Merchants National Realty Corporation	440,695.41
	$5,472,245.09

On October 31, 1938 the total of the capital accounts of the bank was $113,108,000. After deducting the remaining loss classification of $984,000 and one-half of the doubtful classification amounting to $2,548,000, the net capital position is $107,808,000. With the addition of bond appreciation of $8,500,000 the net sound capital position is $118,076,000. This is an improvement of $2,000,000 since September 30.

Yours very truly,

(Signed) R. G. Smith

Russell G. Smith,
Vice President and Cashier.

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COPY

November 12, 1938

FOR THE SECRETARY:

At the group meeting on November 9 I suggested united action by all Federal banking agencies against the Bank of America as opposed to action by the Comptroller alone. The object of united action would be to put the bank on notice that all Federal agencies considered its practices unsafe and unsound and to impress Giannini with the futility of further temporizing. The purpose would not be to proceed so harshly that the Bank would have to close.

I suggest that the FDIC be asked to take only the first step in the lengthy process of terminating the Bank's deposit insurance, informing the Bank that the process has been started. The first step is for the FDIC to cite the Bank to the Comptroller. The law requires no further FDIC action for four months. At the end of the four months, the FDIC must fix a hearing, but this hearing can be as far distant in the future as the FDIC wishes to make it.

Similarly I suggest that the Federal Reserve System take only the first step toward suspending the Bank from the System. That step would be for the Federal Reserve Bank of San Francisco to cite the Bank of America to the Board of Governors in Washington, notifying the Bank of the citation. The Board can then call a hearing at any time it wishes.

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If these two actions were taken when the Comptroller warns or cites the Bank, the Bank would be on notice from all Federal banking agencies. Thereafter the Comptroller's action under section 30 could be pressed while the FDIC and Reserve proceedings were left temporarily suspended in mid-air.

If the section 30 action succeeds, the FDIC and Reserve System could drop their proceedings on the grounds that the section 30 case had removed the unsafe and unsound practices which were the basis for their citations of the Bank.

If the section 30 action fails, Congressional leaders could be told that not only the Comptroller, but all the Federal banking agencies, had used all the persuasive powers at their command and had taken all concrete action except to suspend the Bank from the reserve system and from insurance, final steps which might mean closing of the Bank. The leaders could be asked: Should this final action be taken in spite of its risks, or will Congress supplement the existing law so that Transamerica-Bank of America can be cleaned up?

Unless the FDIC and Reserve System go at least part way with the Comptroller, Congressional leaders might point out that these two agencies still had disciplinary powers which had not been invoked against the Bank.

ESD

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COPY

BOARD OF GOVERNORS
of the
FEDERAL RESERVE SYSTEM
Washington

November 14, 1938

My dear Mr. Comptroller:

This is to acknowledge receipt of the letter of November 3d from your office advising that the Secretary of the Treasury has referred to your office my personal letter to him of October 27th and the accompanying memorandum relative to the legal and practical aspects and the time element involved in a Section 30 procedure as contrasted with possible alternative procedures in dealing with an important and complicated banking situation requiring prompt correction.

Much to my regret, there seems to be some misunderstanding of my purpose in transmitting this memorandum to the Secretary. Neither the memorandum nor my letter questioned the fact that a Section 30 procedure is available and that the prerogative and responsibility for determining what procedure is to be followed rests entirely with the Comptroller's office. Such discussion as I have had respecting the matter in question was with the Secretary rather than with your office, and consequently I knew of the Secretary's deep interest in the situation. It was, therefore, natural that I should transmit this informal memorandum to him since it seemed

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to me to bring out a number of important considerations, and that I should express to him likewise my personal opinion that the situation could be met most effectively and expeditiously by other procedure.

While the responsibility for determining what procedure shall be followed is, of course, that of the Comptroller's office, such responsibility does not end with the filing of a certificate with the Board, because the Board does not make the examinations on which charges are based and is not in a position, therefore, to present the evidence necessary to sustain the charges or to rebut opposing evidence. It seems to me that after the filing of such a certificate there is a joint responsibility for the conduct of a case from that point on. I agree that there should be no difficulty in carrying out a mutually satisfactory procedure in the event that Section 30 is invoked since such proceedings have heretofore been held and some experience has been gained by both our offices.

I see no reason, however, why an exchange of letters should be necessary, nor do I think this would solve the questions of procedure. This could best be accomplished, it seems to me, by your calling together the legal and technical staff from time to time as occasion arises, and I need not assure you that the Board

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and its staff are ready to cooperate to the fullest extent possible to expedite the proper disposition of any Section 30 proceeding instituted by your office, should that course be decided upon.

Sincerely yours,

/s/ M. S. Eccles

M. S. Eccles,
Chairman.

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November 17, 1938.

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

Dear Mr. Giannini:

This is to acknowledge your letter of November 10th. I must repeat that the issues between the Bank and the Comptroller of the Currency, which you review, are very grave and are to be settled with that office. The welfare of the Bank's depositors has always been foremost in my mind and I am pleased that you should say that you too believe it is the most important consideration. I hope that the Bank of America N. T. & S. A., acting in the best interests of its depositors, will make a sincere effort to meet the Comptroller's criticisms.

Sincerely yours,

Secretary of the Treasury.

AIR MAIL
REGISTERED

Return Receipt Requested

(Initialed by:
E.S.D. J. W. H.
E. H. Fh. Upm
W. S. G. W. C. T.
H. O.

ESD:tew

Regraded Unclassified

November 17, 1938

The Banking Group - Messrs. Hanes, Taylor, Gaston, Oliphant, Upham, Foley and Duffield - met in Mr. Hanes office to consider preferred stock cut-back, a reply to the Giannini letter of Nov. 10, a reply to the Bank of America directors' letter of Oct. 15, and the "Wilcox Letters".

Cut-back: Members of the group unanimously agreed the memorandum to the Secretary dated Nov. 3 on cut-backs of preferred stock still expressed the opinion of the group. Therefore, the group asks for an opportunity to discuss the problem with the Secretary. The question needs to be settled so that the Comptroller of the Currency can reply to the directors of Anglo-California on a cut-back procedure.

(Messrs. Oliphant and Gaston were absent during this discussion, but Mr. Gaston subsequently indicated his assent to the decision.)

Giannini letter: A reply to the Giannini letter of Nov. 10 was agreed to and prepared for the Secretary's signature.

Bank of America letter: Mr. Upham reported that he had a 30-page draft of a reply to the Bank's directors but that he was dissatisfied with it and had another group working on another draft which would be completed by the end of the week. He asked the opinion of the group on whether the letter should be a broad rebuttal of the directors' letter or a point-by-point refutation of each statement made by the directors. He also asked whether the reply should be made the formal letter of warning under section 30.

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Congensus of the group was that the reply to the directors should be one stressing the few fundamental points in the Comptroller's position and that a separate, more detailed letter of warning should be prepared and sent as soon as possible after the reply to the directors. This letter of warning, it was pointed out, should reach the Bank before the end of the year so that the regular examination of the Bank, which will begin early in 1939, can be used to determine whether the letter of warning has been heeded.

Wilcox Letters: Portions of the letters referring to the Bank of America case are to be photostated.

ESD

Regraded Unclassified

11/19/38

Dear Mr. Douglas:

I have your letter of November 17 in which you request that we furnish the Commission, for inspection and use in public hearings authorized by the Commission, reports of the national bank examiners on Bank of America N. T. & S. A. for the period 1931 to 1938 inclusive together with copies of any contracts, agreements, and other sources of material referred to in the reports as may be available in the files of the Comptroller of the Currency.

Pursuant to your request, I am attaching for the confidential use of the Securities and Exchange Commission the examiners' reports requested on condition, however, that none of the material in these reports will be used in any public hearings without first obtaining my approval in writing.

Sincerely yours,

(Signed) H. Morgenthau, Jr.,

Secretary of the Treasury

Mr. William O. Douglas
Chairman
Securities and Exchange Commission
Washington, D. C.

EHFJr/met 11-18-38

(Initialled Upm)

Regraded Unclassified

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.

Regraded Unclassified

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

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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 thecapital 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 probably 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 mangement. 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.

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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 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 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

Preston Delano
Comptroller of the Currency

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COPY

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.

EHFJr/met 11-23-38

(Signed and dated by the Secretary Nov. 23, 1938, 12:08 p.m.)

Initialled: Upm
PD
E.H.Fn.
WCT
HO
JWH
ESD

(Delivered to Mr. Rogge 12:58 P.M., Nov. 23, 1938 Met)

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COPY

12/8/38

(1) Immediate elimination of the Transamerica excessive loan.

(2) The elimination by Transamerica Corporation and its affiliates of approximately $15,000,000 in assets purchased by the bank.**

(3) Bank to agree that it will not write up on its books the value of any asset which it retains and that no profit will be taken by the bank on any asset sold to an associated company unless such sale is bona fide and without recourse on the bank.

(4) Elimination of the "other real estate" and the real estate contracts of Capital Company and California Lands, Inc., within a five year period.

(5) A cessation in the expansion program of the Bank of America, N.T. & S.A. and of Transamerica.

(6) A conservation of earnings.

(7) Increase in the capital by $50,000,000 by the sale of new stock at once.

**	56,600 shares National City Bank NYC purchased from TAC on 7-14-37	$2,716,800.00
	Guaranteed Loans Charged off assets repurchased from TAC subsidiaries on 7-14-37	6,500,000.00
	Merchants National Realty Corp. Other real estate purchased from TAC	5,875,000.00
	TOTAL	$15,091,800.00

(In Mr. Delano's office 12/8/38 with B of A officers)

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COPY

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	TOTAL	$15,091,800.00

Regraded Unclassified

C O P Y

MEMORANDUM WITH RESPECT TO "SHORT AGENDA".

****

1. Immediate elimination of the Transamerica excessive loan.

   While we do not agree that this is an excessive loan under Section 5200, U.S.R.S. the total amount has been reduced $4,700,000 since the examination.

2. The elimination by Transamerica Corporation and its affiliates of approximately $15,000,000 in assets purchased by the bank.

   This has been responded to under numbers 2, 3 and 4 of the "Long Agenda."

3. Bank to agree that it will not write up on its books the value of any asset which it retains and that no profit will be taken by the bank on any asset sold to an associated company unless such sale is bona fide and without recourse on the bank.

   We agree with this principle.

4. Elimination of the "other real estate" and the real estate contracts of Capital Company and California Lands, Inc., within a five year period.

   We agree with this program.

5. A cessation in the expansion program of the Bank of America.

6. A conservation of earnings.

7. Increase in the capital by $50,000,000 by the sale of new stock at once.

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MEMORANDUM WITH RESPECT TO "LONG AGENDA"

* * * * * * * * * *

1. "Real estate in the amount of $1,578,005.49 now being carried under Banking Houses should be transferred to the other real estate account."

   This item consists of various parcels of real estate, some of which have been sold and some of which have now been occupied by branches. The remainder will be transferred to the other real estate owned account as requested, with the exception of property at Pine and Montgomery Streets, San Francisco, carried at $1,280,000. This latter property is planned for use as a head office and the bank has agreed to transfer this amount to other real estate owned account if its plans for the occupancy of it have not matured by the second examination next year.

2. "Real estate in the amount of $5,875,000.00 illegally purchased by the Merchants National Realty Corporation, a wholly owned affiliate, from Transamerica Corporation through Capital Company should be removed for cash."

   This item has been reduced to $4,700,000. While the terms of the contract would permit 8½ years more for the complete liquidation we will endeavor to obtain liquidation completely by July 15, 1942.

3. "The illegal repurchase of the charged off assets in the amount of $5,524,096.03 from subsidiaries of Transamerica Corporation and guaranteed by it should be removed for cash."

   Now reduced to $4,700,000. We will insist upon the terms of this contract being carried out. This calls for liquidation at the rate of not less than $1,300,000 per year and complete elimination of the items by July 15, 1942.

4. "The illegal sale of National City Bank stock in the amount of $2,716,800.00 by Transamerica Corporation to the bank should be removed for cash."

   Now reduced to $2,200,000. In order to improve this asset we will endeavor to obtain a definite agreement of purchase from Transamerica by which this stock will be repurchased

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in annual installments of 11,300 shares on July 15, 1939 and annually with the complete elimination by July 15, 1942. Further we will endeavor to obtain a general pledge agreement from Transamerica Corporation tying in the collateral now pledged to secure their guarantee.

5. "The illegal purchase of National City Bank stock in the amount of $79,600.00 from Transamerica General Corporation should be removed by it for cash."

   We will either sell this item or eliminate it by charge off.

6. "Stocks and bonds illegally acquired totaling $1,384,358.04 should be disposed of by sale."

   All items in this group either have been or will be removed, with the exception of $505,000 par value Earl Fruit Company, with respect to which the examiners and the bank have agreed as to legality.

7. "The remaining balance of $2,825,597.55 of the original bond write up, less applicable amortization reserves, should be charged off."

   This item will be removed by the next examination.

8. "Depreciation on banking houses and fixtures in the amount of $3,200,553.76 taken for income tax purposes should be charged off and full allowable rate taken in the future."

   We request that our present depreciation schedule which would eliminate the depreciable investment in banking premises, furniture and fixtures by 1952 be continued.

9. "The sixteen loans illegally made on 1277 shares of bank's own stock should be immediately corrected."

   This item has been corrected.

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10. "The illegal and other criticised portions of the Transamerica Corporation Large Line in the aggregate amount of $76,203,902.44 should be eliminated. Of this amount $44,763,677.92 is classified as slow, $1,325,943.34 as loss and $15,750,000.00 is criticised under "Other Loans Especially Mentioned!"

This concentration has been reduced $8,200,000 since the date of the examination. Guaranteed loans and option to purchase have been referred to under numbers 3 and 4 above. Real estate contracts on the basis of sales are expected to entirely liquidate in approximately 4 years.

11. "The A. O. Stewart Large Line in the amount of $11,013,003.96 which is classified as $4,500,000.00 slow should be relieved of its heavy dependency upon defaulted railroad bonds either by reduction or substitution of more readily marketable collateral."

We have not agreed with the classification of this item and request a detailed review on the next examination.

12. "The Impounded German Credits in the amount of $7,964,961.76 which is classified as $3,723,441.32 slow, $2,097,219.46 doubtful and $2,000,000.00 loss should be charged down to its present liquidating value."

The loss classification of $2,000,000 has been charged off. An additional $1,000,000 will be charged off during the current examination now in progress and the balance of the loss classification will be charged off at the next examination.

13. "Practice of acquiring illegal assets from unit banks converted into branches must cease. The major portion of the $18,613,693.74 of illegal real estate mortgages were acquired in this manner as well as the $96,391,242.02 of other real estate acquired since conversion in 1927."

We agree with this principle.

Regraded Unclassified

14. "Dormant balances in the amount of $520,732.94 have been confiscated since 4-10-33 through service charges which should be restored and properly shown as a deposit liability."

We have requested that this be considered by our counsel and counsel for the department.

15. "All dividends declared and unpaid should be deducted from the undivided profit account and properly shown as a liability."

Correction has been made.

16. "No new loans should be made on the bank's own stock and that of Transamerica Corporation and all such loans now held should be eliminated as rapidly as possible."

With regard to loans on Transamerica stock we agree with the principle, with occasional exception where stockholders may require moderate amounts for their business purposes and can demonstrate their ability to repay without relying upon the sale of the stock.

17. "All loans to Transamerica Corporation and its allied interests should bear the prior approval of the Board of Directors which should be specifically noted in the minutes."

We agree to this procedure.

18. "All loans to Transamerica Corporation, its subsidiaries and their allied interests should be limited in the aggregate to 10% of the unimpaired capital and surplus of the bank other than those given for the legal purchase of assets and those that can be legally made based upon listed securities of corporations other than those allied with Transamerica Corporation."

We agree to conform to the provisions of Section 5200.

Regraded Unclassified

19. "The welfare of Transamerica Corporation must be completely divorced from the welfare of the bank at least until such time as it has been restored to a satisfactory condition."

It is our conviction that Transamerica has primarily held the welfare of the bank foremost in its consideration and we are confident will continue to do so. There can be no basis for disagreement on the principle enunciated.

Copied 12/12/38

Regraded Unclassified

COPY

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 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

Regraded Unclassified

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.

(Initialled) ESD

Regraded Unclassified

COPY

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

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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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COPY

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

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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.

ESD

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COPY

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

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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

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(COPY)

December 5, 1938

MEMORANDUM

The Comptroller of the Currency is of the opinion that if in a forthcoming conference with the representatives of the Bank of America, N.T. & S.A. of San Francisco agreement can be reached on the major points of criticism listed below, a satisfactory basis for the development of a program of correction by the bank will have been reached:

(1) A cessation in the expansion program of the Bank of America, N.T. & S.A. as it relates to the establishment of branches.

(2) A conservation of earnings and payment of dividends not in excess of six per cent per annum on par value.

(3) Elimination of the "other real estate" and the real estate contracts of Capital Company and California Lands, Inc., within a five-year period.

(4) Increase in the capital by not less than $25 million by the sale of new stock at once.

(5) The elimination by Transamerica Corporation and its affiliates of approximately $15 million in assets illegally purchased by the bank.

(6) Immediate elimination of the Transamerica excessive loan and all criticised borrowings of its affiliates.

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COPY

December 6, 1938

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

Dear Mr. Eccles:

Confirming our discussion of last evening, and for the confidential information of yourself and the other members of the Federal Reserve Board, there is itemized below the major points of criticism which will be used as a basis for a conference with representatives of the Bank of America National Trust and Savings Association of San Francisco.

It is believed by this office that if substantial agreement can be reached on these major points of criticism a satisfactory basis for the development of a program of correction will have been reached.

(1) A cessation in the expansion program of the Bank of America, N.T. & S.A., as it relates to the establishment of branches.

(2) A conservation of earnings and payment of dividends not in excess of six per cent per annum on par value.

(3) Elimination of the "other real estate" and the real estate contracts of Capital Company of California Lands, Inc., within a five-year period.

(4) Increase in the capital by not less than $25 million by the sale of new stock at once.

(5) The elimination by Transamerica Corporation and its affiliates of approximately $15 million in assets illegally purchased by the bank.

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(6) Immediate elimination of the Transamerica excessive loan.

We would be pleased to receive any suggestions which you may care to offer.

Very sincerely yours,

(Signed)

Preston Delano
Comptroller of the Currency

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December 7, 1938

Dear Mr. Delano:

Concerning our conversation of this afternoon, regarding Bank of America, National Trust and Savings Association Transamerica Corporation and related interests, in connection with which you submitted to me a memorandum prepared for you by your technical staff, I enclose herewith my ideas as to what should be done in this connection. Furthermore, in order that the progress which has already been made may not be lost, I feel that while these requirements are being presented and met your program should be rapidly carried forward preparing a formal warning concerning any violation of law or unsafe or unsound practices which your office has found to have been engaged in by this bank or its officers or directors in the past.

This Corporation has insured deposits in this one bank amounting to over $600,000,000 and is vitally interested in all the banks controlled by this same management. In our opinion the condition and practices of the bank are such as to jeopardise materially our interest therein. We have the utmost confidence that your office will be able to secure corrections such that this bank will no longer constitute a hazard to this Corporation.

If we can be of any service to you in connection with securing such corrections, rest assured that we will be most happy to do anything within our power.

Very truly yours,

LEO T. CROWLEY,
Chairman.

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

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December 7, 1938

The major corrections which need to be secured in
The Bank of America N.T.&S.A.

1. Capital must be immediately increased by sale of additional stock in an amount not less than $50,000,000.

2. The dividend policy has been entirely too liberal. Earnings must be conserved to eliminate unsatisfactory assets and to build up capital. Dividend policy must be subject to the approval of the Comptroller of the Currency. Until notified to the contrary by the Comptroller of the Currency, all realized bond appreciation must be placed in a security valuation account which must be used only to meet security losses. Accounting practices must be followed which will accurately reflect realized net profits.

3. This bank must not expand the number of its offices. The management of this bank must agree to engage in no further expansion of banking operations until, in the opinion of the Comptroller of the Currency, the assets of the banks presently operated by this management are placed in a satisfactory condition. The management must not expand its banking operations through the Transamerica Corporation or in any other manner. This applies to operations both within and without the State of California.

4. The bank must present to the Comptroller of the Currency a satisfactory program for elimination of the Other Real Estate including that presently carried by the bank as contracts of California Lands and Capital Company to purchase. These contracts must be included in the Other Real Estate Account. Future acquisitions of real estate by the bank must be carried as such on its books. The real estate which has been held for more than five years must be disposed of immediately or very rapidly written off the books. All real estate which henceforth comes to have been held for five years must be written off immediately at the end of such period or complete valuation reserves must be set up.

5. Transamerica Corporation and its affiliates must eliminate from the bank the assets which the latter illegally purchased from them.

6. Loans to Transamerica Corporation and its affiliates must be brought within the limits of the law and all criticized portions of these loans must be adequately secured or eliminated. No further extensions of credit should be made by the bank to these Corporations or associated enterprises.

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7. Loans on Transamerica Corporation stock, loans upon the stock of the bank itself, and shares of the stock owned by the bank must be removed from the bank.

8. A program must be submitted to the Comptroller of the Currency for reducing the carrying value of the Banking House, Furniture and Fixtures, to the amount which would prevail if proper depreciation had been taken in the past. Proper depreciation must be taken currently in the future.

9. The dormant deposit accounts which have been confiscated through service charges must be restored as a liability of the bank.

10. All losses classified by the examiner as of April 28, 1939, must be charged off. If assets so classified have been sold then the realized loss must be reflected.

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COPY

December 15, 1938

Dear Mr. Giannini:

Should your bank determine to increase its capital stock between now and June 30, 1939, through the issuance of preferred stock, this Corporation will purchase on our usual terms any of such stock not subscribed for by stockholders, or we will lend upon any such stock.

The dividend rate on preferred stock which we buy or lend upon is 3-1/2% per annum upon the price paid for or loaned upon such stock, but so long as dividends are paid promptly as they mature 3% is accepted for the current payment. This arrangement continues until the stock is retired and we will accept Government bonds at par and accrued interest in retirement of all or any part of the stock at any time.

We can only buy or lend upon preferred stock in a bank at the request of the Secretary of the Treasury and approval of the President, but I am sure this will be readily forthcoming when the criticized items now in the bank are adjusted to the satisfaction of the Comptroller, including an understanding with regard to further expansion by your bank and that of Transamerica Corporation as a bank holding company.

Sincerely yours,

/s/ Jesse H. Jones

Chairman

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

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RECONSTRUCTION FINANCE CORPORATION

WASHINGTON

E H. JONES
N OF THE BOARD

December 15, 1938

Dear Johnnie:

I beg to enclose herewith letter from Mr. L. M. Giannini, President of the Bank of America, to Honorable Preston Delano, Comptroller of the Currency, with an attached memorandum covering the understanding reached with Mr. Giannini respecting criticized items and the future policy of the bank.

The memorandum is as agreed upon by you and me over the telephone. Leo Crowley has also agreed to it in the same manner, as well as Mr. Delano. It is my understanding that Messrs. Upham, Folger, Smith and others of the Comptroller's office, concurred with you.

In an effort to assure Mr. Giannini that neither the Comptroller nor Mr. Folger were unfair to his bank but were only trying to discharge the duties of their office impartially, I explained to him that Mr. Folger had stated to Mr. Delano and me that, if an agreement was reached covering the short agenda, it would be satisfactory to him if the three principal items in Paragraph 15 were liquidated substantially according to the program now set for them and on which we were all more or less in agreement. In view of this, he could not understand why those three items were set for further negotiations.

I assured Mr. Giannini that he would get fair treatment on these and all other matters, and I am convinced of his desire to cooperate with the Comptroller in arriving at an amicable adjustment of any differences that may arise.

With best wishes,

Sincerely yours,

Jesse Jones

Chairman

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

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Washington, D. C.
December 15, 1938

Dear Mr. Comptroller:

While I do not feel that our bank should be required to have a capital structure of 1 to 10 when this does not apply to other banks, and while I do not agree to many of the criticisms that have been made in the report of examination and letters of the Department, in the interest of arriving at an amicable adjustment of differences and a desire to cooperate with the Department, I believe the attached program will be acceptable to my Board of Directors and I will present it to them for approval with my recommendation.

In this connection I want to express my appreciation for the courteous and considerate cooperation that I have received from you, Chairmen Jones and Crowley, of the RFC and FDIC respectively, and Under Secretary Hanes of the Treasury, as well as other members of your Department who participated in the discussions.

Very truly yours,

President
Bank of America

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

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December 15, 1938

MEMORANDUM

Re: Bank of America

Reference is made to the various communications in recent weeks between the Comptroller's Office and the Bank of America N. T. & S. A. dealing with departmental criticism of the bank's management, including dividend policies and certain specified items, and with particular reference to the department's letters to the bank of September 23 and November 23.

After several conferences between L. M. Giannini, President, W. E. Blauer, Vice Chairman, and Russell Smith, Cashier, of the bank, Chief National Bank Examiner Folger, Assistant Chief National Bank Examiner Clarence Smith, and Examiner Sedlacek, some of which conferences were attended by Comptroller Preston Delano, Deputy Comptroller Upham, Under-Secretary of the Treasury Hanes, Leo Crowley, Chairman of the Federal Deposit Insurance Corporation, Chairman Jones and Sam Husbands of the RFC, the following would seem to constitute an acceptable program for the adjustment of the items referred to herein.

1. Due to the widespread operations of the bank, its great number of branches, and close affiliation with Transamerica Corporation and its allied interests, the bank will effect and reasonably maintain a sound capital structure having a ratio to its entire deposits of one to ten. The bank agrees to furnish as much additional capital as may be required for this ratio, as determined by the Comptroller of the Currency after the result of the examination now in progress, including a review of the items classified as slow. The increased capital will be paid into the bank as early as practicable after the amount shall have been determined, but in no event later than June 30, 1939. No dividends will be declared thereafter unless the then sound capital structure bears a ratio to the entire deposits of substantially one to ten.

2. Real estate in the amount of $1,578,005.49 now carried under the heading of "banking houses" will be immediately adjusted satisfactory to the Comptroller.

3. Stocks and bonds listed on inserts 48 to 50, inclusive to Page 6 of the Administration Department Report, with the exception of the Earl Fruit Company bonds in the par value amount of $505,000.00, will be adjusted to the satisfaction of the Comptroller by June 30, 1939.

4. The remaining balance of approximately $1,500,000 of unrealized bond write-up will be eliminated by June 30, 1939.

5. The 16 loans made on 1277 shares of the bank's own stock will be immediately collected or corrected to the satisfaction of the Comptroller.

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6. The A. O. Stewart line listed at approximately $11,000,000, of which $4,500,000 is classified as slow, will be made satisfactory to the Comptroller.

7. The bank will not acquire the assets or assume the liabilities of any other bank for the purpose of merger or consolidation without the prior written approval of the Comptroller of the Currency.

8. Any dividends declared will at the time of the declaration be deducted from the undivided profit account and carried as a reserve for dividends.

9. The statute which prohibits a national bank from lending upon its own stock will be strictly enforced, and the same principle will be applied to loans on Transamerica stock. The bank may extend temporary accommodations to stockholders of Transamerica Corporation in small amounts for their business purposes, accepting Transamerica stock as supporting security, when they can demonstrate their ability to repay the loan without relying upon the sale of the stock to pay it.

10. Any loans to Transamerica Corporation and its allied interests will have the prior approval of the Board of Directors of the bank and such approval will be recorded in the minutes of the board meeting.

11. Loans to Transamerica Corporation and its allied interests will be brought within the legal limit allowed to one interest as soon as possible, and not later than July 15, 1942, except as set forth in item (15) below.

12. The bank will not write up on its books the value of any of its assets, and no profit will be taken by the bank on any assets sold to a related company, unless such sale is a bona fide sale and without recourse on the bank. If any such sale is made other than for cash, the note or notes taken in payment or part payment therefor will be properly secured.

13. The bank will eliminate "other real estate" and the real estate contracts of Capital Company and California Lands, Inc., such elimination to be diligently pursued, and completed by December 15, 1943.

14. The bank agrees that any criticized items not covered herein will have prompt and effective attention, and that it will cooperate with the Comptroller of the Currency in an effort to bring all matters pertaining to the bank in line with his requirements.

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15. It is understood that proposals by the bank with respect to real estate purchased from Transamerica Corporation by Merchants National Realty Corporation on or about July 14, 1937; with respect to the charged off assets repurchased by the bank from subsidiaries of Transamerica Corporation on or about July 14, 1937; with respect to stock of National City Bank of New York acquired by the bank on or about July 14, 1937, which items should, in the opinion of the Comptroller of the Currency, be removed from the bank's assets for cash; with respect to depreciation on bank building, and with respect to service charges on dormant accounts, are unacceptable to the Comptroller of the Currency and further negotiations will be conducted as to them, after completion of the examination now in process and in connection with increasing the capital stock.

16. Upon the bank's agreement to the program outlined herein, approved by its Board of Directors, it will be free to declare a semi-annual dividend in March, 1939, if its directors elect to do so, provided steps have been taken by the bank to increase its capital stock as set forth in item (1) herein.

17. The foregoing constitutes the principal items criticized in office letters of September 23 and November 23, 1938, and when the present examination now in progress is completed, the bank will endeavor to adjust any other matters of criticism not included herein to the satisfaction of the Comptroller of the Currency.

It is understood that failure on the part of the bank to satisfactorily carry out any of the foregoing proposals, unless specifically waived by the Comptroller of the Currency, in writing, will serve as a complete release on the part of the Comptroller of the Currency from any consent, implied or otherwise, to the foregoing program.

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December 17, 1938

Mr. Morgenthau

Mr. Foley

Without having had the advantage of participating in the recent negotiations with representatives of the Bank of America, I make the following comments concerning the memorandum of December 13, 1938, which resulted from those negotiations:

1. The proposed agreement set forth in the memorandum would have no binding legal effect on the Bank, since there would be no method of enforcing it in case of violation. I understand that the agreement implies that no letter of warning will be sent, so there would be no basis upon which the directors or officers could be cited for removal if they continued unsafe and unsound practices.

2. Should the Comptroller of the Currency concur in the proposed agreement he would agree that the Bank might declare another large dividend in March 1939 without a very substantial improvement in the asset condition of the Bank by that time. The agreement would waive the dividend warning contained in the telegram of September 13, 1938, in so far as the next dividend is concerned.

3. The memorandum ignores the following situations which involve illegal activities:

(a) The last report of examination reveals that real estate loans aggregating $18,613,593.74 were made or purchased in violation of section 24 of the Federal Reserve Act, which sets forth definite requirements, such as, the requirement that the loans be secured by a first lien on improved real estate.

(b) No provision is made for the reimbursing of the Bank by Transamerica Corporation for what amounted to illegal gifts from the Bank, such as, the use of a $14,000,000 write-up of Government and municipal securities in 1935 and 1936 to eliminate part of a valid obligation of Transamerica to the Bank under the so-called Inter-America Corporation contracts.

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4. Point 11 of the memorandum provides that "Loans to Transamerica Corporation and its allied interests" will be taken care of, but one of the most fundamental points at issue here is whether certain extensions of credit are within the characterization "loans". The memorandum makes no attempt to define the term "loans".

5. If it should be determined that Transamerica Corporation is a holding company affiliate of the Bank, the Bank could not legally make loans secured by Transamerica stock, as provided in point 9 of the memorandum, to a total amount in excess of 10% of the capital stock and surplus of the Bank.

(Signed) E. H. Foley, Jr.

DJS:es typed 12.17.38

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COPY

December 22, 1938

My dear Mr. Giannini:

Your letter of December 15, 1938, with its enclosure in which you outline a program to meet certain criticisms of this office as to managerial policy in the conduct of the Bank of America, N. T. & S. A. is acknowledged received. Let me say in reply that I am glad to be informed of the corrective measures enumerated in your memorandum. I am glad also to know that you believe the program you outline will be acceptable to your Board of Directors. It seems that this program would, as matters now stand, provide a satisfactory solution of the points it purports to cover. This opinion is, of course, necessarily based upon the assumption of diligence and meticulous good faith, in both of which I am placing my confidence.

In order that there can be no possible misunderstanding, I think I should state to you some of my further thoughts following our recent conferences concerning certain controlling considerations of public policy in relation to the duties implicit in such public offices as the one I now hold. The Comptroller of the Currency is only at liberty to call attention to practices requiring correction, and to observe whether corrective changes have been made. He is not at liberty, by contract or agreement, either expressed or implied, oral or tacit, to bind his official action in the future, or otherwise to surrender the discretion

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which the legislation creating the office vests in him. These general remarks are addressed primarily to the final paragraph of the memorandum which you enclose.

More specifically, I am not at liberty to consider either paragraphs 1 or 16 of the memorandum as constituting any implied agreement on the part of my office that a dividend may be paid pursuant to declaration in March, 1939, if, viewing the matter at the time of such proposed payment, it is my judgment that such payment would be an unsafe or unsound practice.

Referring to paragraphs 11 and 13 of your memorandum, the references therein to named dates should not be taken as any understanding or agreement on the part of my office to forego whatever official action in connection with these matters may from time to time be required in the proper discharge of the duties of my office.

May I close by again expressing my appreciation of the steps being taken to correct the conditions in your Bank now under criticism by my office.

Very sincerely,

Comptroller of the Currency

Mr. L. M. Giannini, President
Bank of America
Los Angeles, California

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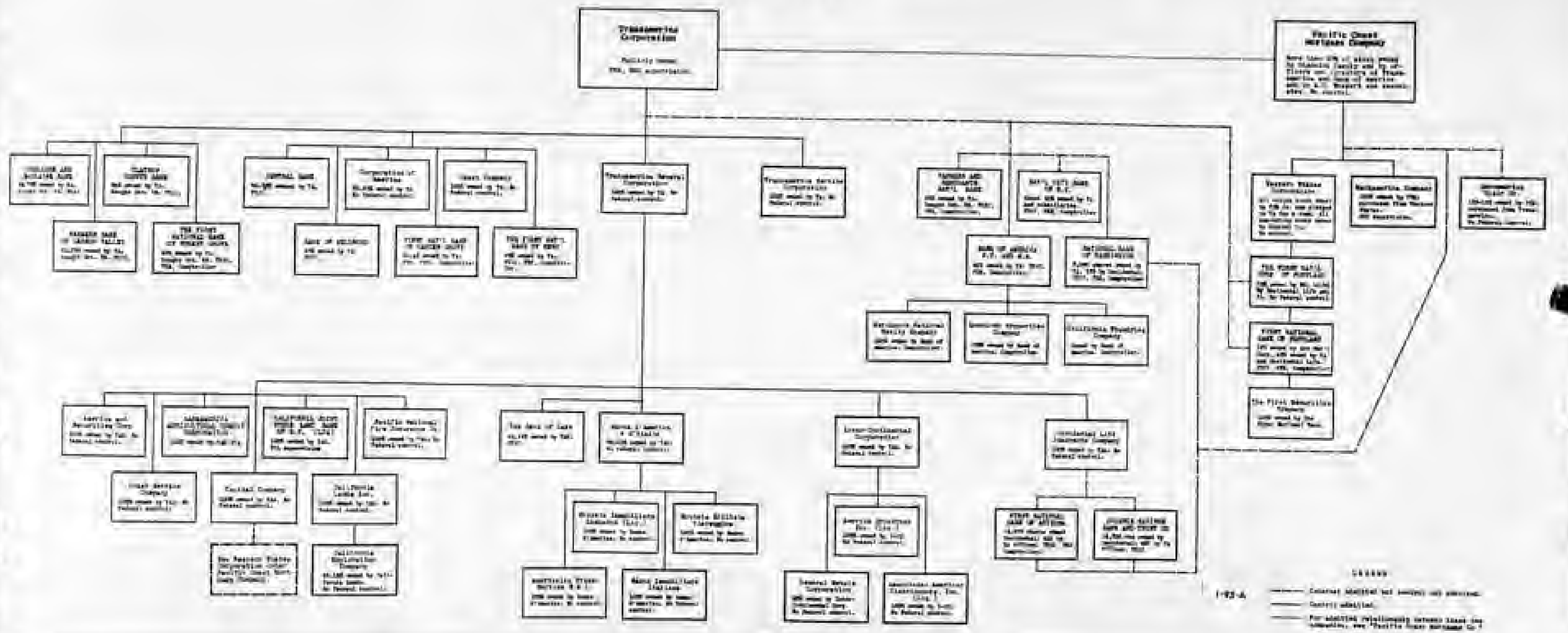
ORGANIZATION OF TRANSAMERICA CORPORATION

As of December [illegible]



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Bank of America
NATIONAL TRUST AND SAVINGS ASSOCIATION

SAN FRANCISCO HEADQUARTERS

L. M. GIANNINI
PRESIDENT

SAN FRANCISCO, CALIFORNIA

December 31, 1938.

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

Dear Mr. Comptroller:

Your letter of December 22 has been received, and its contents noted. I will submit the letter to our Board along with the memorandum for adjusting the differences between your Department and our Bank, and, as previously indicated, will recommend to the Board that we undertake to follow the program outlined in the memorandum.

As stated to you, the three principal items referred to in Paragraph 15 of the memorandum should, in our opinion, be liquidated in an orderly manner according to the original tentative agreement, but not later than July 1942. Nevertheless, we will proceed on all matters as rapidly as possible without unnecessary loss to the Bank.

I do not wish to be technical, but should like to call to your attention the fact that the memorandum was not of my authorship but was prepared in the Treasury after the several conferences in which we all participated.

I felt at the time and still feel that some of the language and contents of the agenda and memorandum were not warranted by the circumstances, and that certain facts and figures set forth in the letter of our directors addressed to the Comptroller of the Currency under date of October 11, 1938, were not sufficiently weighed. However, I placed my faith in the assurances given to me and my associates by the conferees that they are not going to be unfair to this institution, and accepted the program as submitted in order to arrive at a prompt and amicable adjustment of differences.

We feel that we have done a good job in restoring the Bank to a prosperous state and to public confidence, and in greatly improving its sound capital structure, its volume of loans and deposits, and its service

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to the State since we again came into control of the Bank in 1932. We are proud of the fact that we were able to do this without calling upon the Government for capital. Substantial losses absorbed in common with several thousand other banks, which, in our particular case, for the most part resulted from the acquisition of other banks, are non-recurrent, and therefore, taking this into consideration and the earnings record and past improvement, it seems reasonable to anticipate that improvement of the capital structure henceforth will be more rapid and substantial than in the past.

In our conference Mr. Folger discussed the enclosed tabulations of earnings, losses, and dividends, showing a net addition of $2,187,000 to capital funds from earnings for the years 1927 through the first half of 1938. We have checked these figures and enclose a more detailed tabulation prepared by our accountants. From this you will observe that net profits in the years mentioned were $73,009,000, and cash dividends paid, $61,703,000, leaving a net addition to capital funds from earnings of $11,306,000. The difference between this figure and the one shown by Mr. Folger results from his inclusion of a stock dividend of $7,500,000 in 1927, which he treats as a cash disbursement, and the understatement of earnings for 1930 to the extent of $1,620,000. This understatement results from an error in the preparation by Examiner Arnold in 1931 of an amended earnings and dividend report for the period ending December 31, 1930, which error was recognized in Mr. Gough's letter to us of July 31, 1931, but apparently never corrected upon your office records. We are enclosing copies of letters relating to this matter. The net increase in capital funds from earnings will be further increased on the closing of the Bank's books for this period to approximately $13,200,000. This does not include the rehabilitation of surplus to the extent of $12,000,000 which has taken place during the past four years.

We are just closing the best year in the history of the Bank. Our deposits and earning assets have reached an all time high in the face of the adverse action to which we have been subjected, and our net earnings will be more than $24,000,000. Of this amount, approximately $1,200,000 has been allotted to the Bank's personnel under a profit-sharing bonus plan, and $9,600,000 has been paid to stockholders in dividends, leaving more than $13,000,000 for reserves and increase in capital funds. Our Bank has prospered through the resourcefulness and foresight of its management and because, since we again came into control, we have kept its funds profitably and safely employed.

Please be assured of our continued desire to cooperate with your Department, the Federal Reserve, and the Federal Deposit Insurance Corporation.

May I take this opportunity to wish you and yours the best of health and prosperity in the New Year.

Sincerely yours,

President

P-12

TREASURY DEPARTMENT
WASHINGTON

mptroller of the Currency

July 31, 1931.

Cashier,
Bank of America Natl. Tr. & Sav. Assn.,
San Francisco, Calif.

Dear Sir:

Receipt is acknowledged of your letter of July 6, enclosing an amended report of earnings, expenses and dividends of your bank for the six months period ended December 31, 1930, which your letter states is made in accordance with the examiner's recommendations, but which is found upon examination to be out of balance in items 16 and 21 by $1,620,478.47. The June 30 report is likewise out of balance in the same items as a result.

Further, upon examination it is noted that although the dividend payable from the previous period of $2,100,000 together with the dividend declared March 10, 1931 gives a total of $4,500,000 item 13 of the June 30 report shows $4,800,000. Presumably the $300,000 dividend which the special notification received March 4 shows paid by the predecessor of your bank has been included in error in the June 30 report of earnings, expenses and dividends.

Please be advised in this connection that only dividends declared by the national association (No. 13044) should be reported to this office. Blanks are enclosed and you are requested to forward corrected reports for December 31, 1930 and June 30, 1931.

Yours very truly,

(signed) E. H. Gough

Deputy Comptroller

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S. F. Headquarters,
Accounting Department.

Mr. W. L. Vincent, Cashier,

San Francisco Headquarters.

August 14, 1931.

Dear Mr. Vincent:

Mr. Price, the National Bank Examiner called today and read the letter which had been sent to us by the Controller of Currency, concerning the Earnings and Dividend Report of the National Bank for the period ending June 30, 1931.

I showed him our work sheets for the tentative revised report, but he said he would address a letter to the Controller, which would obviate the necessity of presenting a revised report.

He took the file copy of the report which he prepared, together with the letter from the Controller, stating that he would write to the Controller and have these records, together with a copy of his letter, returned to us on Monday.

Yours very truly,

P. E. Warner,
Assistant to the Cashier.

PEW/RT

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	Net Operating earnings	Profits on securities sold	Recoveries	Losses on loans	Losses on bonds	Depreciation	Other Losses
1927	3,217,187.53	8,185,542.70	58,226.40	473,604.46	-	1,266,645.05	113,424.26
1928	3,582,012.78	5,026,067.05	90,087.82	578,969.72	80,086.49	1,794,370.14	73,420.91
1929	7,306,070.36	4,810,903.40	7,988.87	859,786.07	879,947.47	1,532,304.65	95,460.17
1930	8,313,451.09	1,995,908.48	57,541.07	2,471,082.10	1,037,308.27	2,144,825.36	127,674.92
Difference in Examiner's Revised Report	-	-	-	-	-	-	-
1931	7,687,502.89	1,447,121.80	740,327.84	1,859,907.52	2,163,937.34	1,713,021.55	1,791,160.18
1932	5,478,441.07	606,791.24	1,702,104.66	3,256,623.07	651,232.14	1,677,360.18	890,011.01
1933	6,104,564.88	1,020,650.37	169,796.12	4,081,070.62	661,767.19	1,013,742.42	977,287.09
1934	7,218,356.72	2,413,672.00	295,082.13	7,714,039.72	1,455,[illegible]	1,025,812.02	1,360,313.71
1935	9,162,956.12	8,292,014.00	2,000,000.00(1) 1,423,210.55	5,000,000.00(2) 8,542,081.60	225,512.55	1,276,319.08	276,542.56
1936	11,494,939.32	6,282,179.84	6,007,788.54(3) 375,242.45	6,007,788.54(4) 4,938,033.95	102,026.37	1,089,296.44	1,519,356.41
1937	12,868,609.97	3,958,763.84	1,686,686.52	2,623,820.55	719,174.80	1,135,674.50	1,282,125.62
1st half 1938	6,793,421.32	4,529,259.41	74,541.72	2,174,900.25	704,142.24	562,653.18	277,283.14
	88,075,896.42	45,210,585.08	20,904,777.50	56,543,067.56	9,136,542.01	16,001,116.74	9,119,060.79

	Net addition to profits	Dividends declared	Stock dividends	Voluntary contributions to profits	Capital paid in	Net addition to Capital Funds	Unex. Depr. in Capital	Unex. Depr. in Surplus	Unex. Depr. in U. S.	Unex. Depr. in Reserves
1927	8,272,274.34 ✓	4,125,537.34	7,500,000	11,239,087.35	-	14,[illegible]	7,500,000	13,750,000	6,921,436.71	-
1928	8,722,383.32 ✓	6,000,000	-	27,500,000.00	12,500,000	42,755,980.35	12,500,000	31,400,000	1,326,079.88	-
1929	8,798,250.47 ✓	6,000,000	-	-	-	2,798,250.47	-	-	2,398,250.47	400,000
1930	4,537,309.05 ✓	6,500,000	-	7,112,312.47	-	9,050,700.47	-	8,000,000	7,154,375.93	8,161,875.40
Difference in Examiner's Revised Report	1,620,478.47	-	-	-	-	-	-	-	-	-
1931	2,163,225.39 ✓	3,400,000	-	874,154.91	-	2,942,307.88			103,257.28	3,168,244.92
1932	448,632.53 ✓	-	-	[illegible]	-	379,247.84	-	30,000,000	9,600,422.61	4,020,249.61
1933	722,432.39 ✓	3,[illegible]	-	[illegible]	-	1,414,384.27	-	8,000,000	4,700,830.50	1,115,894.77
1934	2,257,627.37 ✓	3,750,000	-	31,021.14	-	6,356,428.23	-	9,000,000	2,572,758.61	5,909,162.14
1935	8,856,095.46 ✓	[illegible]	-	[illegible]	-	9,930,479.52	-	7,500,000	1,302,986.98	177,513.26
1936	12,468,418.26 ✓	[illegible]	-	97,000.18	-	4,529,468.43	-	1,800,000	3,566,826.76	362,980.68
1937	12,348,128.44 ✓	6,800,000	-	100,630.94	-	5,849,772.54	-	1,400,000	2,182,911.61	221,061.05
1st half 1938	7,367,453.57 ✓	4,800,000	-	-	-	2,567,453.57	-	4,000,000	573,216.79	61,186.16
	78,209,886.12	61,748,337.34	7,500,000	43,747,708.58 ✓	12,500,000	67,575,256.36	20,000,000	60,000,000	7,771,111.75	1,621,146.41

Difference in Examiner's Revised Report for 2nd half 1930
Credit 1,620,478.47

(1) Appreciation of U.S. Securities 5,000,000
" " Bonds Exempt 3,000,000

(2) " " U.S. Securities 4,000,000
" " Bonds Exempt 2,007,788.54

(3) Write-down of Inter-American Corp. Contracts 5,000,000

(4) " " " " " 6,007,788.54

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ANALYSIS OF EARNINGS AND DIVIDEND REPORTS OF
BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, SAN FRANCISCO, CALIFORNIA,
FROM DATE OF CONVERSION TO JUNE 30, 1938, INCLUSIVE.

Supplemental tabulation.

Date	Net Operating Profit	Profit on Securities Sold	Other Recoveries	Losses	Net Profits	Dividends	Net Addition to Profits
1927	$3,217,200	$5,195,600	$33,200	$1,873,700	$6,572,300	$10,478,300	$3,906,000 (red)
1928	5,582,000	5,886,600	90,000	2,824,700	8,733,900	5,625,000	3,108,900
1929	7,506,100	4,620,900	8,000	3,326,700	8,798,300	6,000,000	2,798,300
1930	8,315,500	1,995,900	57,200	5,779,800	4,588.800	5,700,000	1,111,200 (red)
1931	7,537,500	1,442,100	740,700	7,536,900	2,183,400	7,800,000	5,616,600 (red)
1932	3,478,500	895,500	1,412,400	6,255,100	468,700 (red)	—	468,700 (red)
1933	6,104,800	1,025,700	164,700	6,522,800	772,400	2,250,000	1,477.600 (red)
1934	7,216,300	2,664,800	44,700	12,562,600	2,637,600 (red)	3,750,000	6,387,600 (red)
1935	6,163,800	14,708,800*	75,000	13,081,600	9,858,000	6,000,000	3,858,000
1936	11,454,900	14,270,000**	375,100	13,687,600	12,452,400	8,000,000	4,452,400
1937	12,665,800	3,935,800	1,886,900	5,959,300	12,549,200	8,800,000	3,749,200
1938 (Jan.1 to June 30)	6,995,400	4,529,300	74,600	3,409,400	7,987,900	4,800,000	3,187.900
Total 1927-1938 inc.	88,075,800	61,178,300	4,962,500	82,828,200	71,390,300	69,203,300	2,187,000

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BANK OF AMERICA

SAN FRANCISCO

January 11, 1939

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

Dear Mr. Comptroller:

At a meeting of our Board of Directors held yesterday, I presented to the Board various communications and memoranda relating to our recent conferences in Washington, including your letter of December 22.

Upon my recommendation the Board of Directors authorized the management to follow the program developed in the conferences and to present to the Board of Directors from time to time such matters in regard to the program as may require specific action of the Board.

I should like to supplement the reference which I made in my letter of December 31, to the net addition of $11,306,000 to capital funds for the period 1927 through the first half of 1938. This figure was furnished for the express purpose of correcting Mr. Folger's statement referred to in the letter. However, I now wish to add that the improvement in net sound capital from earnings between the examination report of March 31, 1932, and June 30, 1938, is $66,119,000, arrived at as follows: Increase in Surplus and Undivded Profits accounts, $18,022,000; Losses existing prior to 1932 written off, $48,097,000.

My kindest regards and very best wishes to you.

Sincerely yours,

(Signed) L. M. Giannini
President.

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February 6, 1939

MEMORANDUM TO MR. DELANO:

Attached are applications for branches at Campbell and Galt of the Bank of America N. T. & S. A., San Francisco, California.

You will note that the application for these two branches were rejected by Acting Comptroller Diggs on September 24, 1938.

The renewed applications are reported on unfavorably by the Assistant Chief National Bank Examiner, Mr. Smith, the Chief National Bank Examiner, Mr. Folger, and the Deputy Comptroller, Mr. Gough, on the basis of the present under-capitalization of the parent bank and its asset condition. The attached letter to Mr. Giannini indicates that the applications are being approved in view of the commitment by the bank to increase its capital after the examination now in progress has been completed.

In view of the history of the relationship of the Bank of America to this office, the FDIC and the Secretary of the Treasury in the matter of branches over the period of the past year, I suggest that you inform the Secretary of the Treasury and the Chairman of the FDIC that these two branch applications are being granted.

C. B. Upham

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MEMORANDUM TO SECRETARY MORGENTHAU:

When Mr. L. M. Giannini was in Washington for conference with this office in December, he asked that we authorize the establishment of two branches which had been pending for some time. I was informed at that time that the only bar to granting the applications was the policy of the office with respect to requiring improvement in the asset position of the bank and an increase in its capital. In view of the commitment by the Board of Directors to increase their capital following the pending examination, I more or less committed myself to approve of the applications. Accordingly and so that this office will not appear arbitrary or unduly harsh, and in order to indicate our good faith toward the institution and our expectation that they will be bona fide in living up to their commitment, I am authorizing the establishment of two additional branches, one at Campbell and one at Galt. The request was for branches at Campbell and Gonzales but we are unwilling to authorize the Gonzales branch.

Preston Delano
Comptroller

Copy to Mr. Leo Crowley

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February 15, 1939

To: The Secretary

From: Mr. Hanes

I have discussed with Leo Crowley, Jesse Jones, and Preston Delano, the subject of our current audit of the Bank of America. In view of the fact that one of the conditions laid down by the Comptroller for the Bank of America to meet prior to its March dividend declaration was adequate capital to produce a ratio of 1 to 10, and the fact that our audit will not be complete until about the 1st of March, we have decided that it is advisable for the Comptroller to send a letter to Mr. Giannini notifying him that preliminary figures, not final, seem to show the necessity for an additional amount of capital approximating $30,000,000. We think it fair to give him this advance information in order that he may not have the excuse when the final figures do come in that he could not take such preliminary steps as we think necessary for getting this additional capital prior to the time when it will be necessary for him to declare dividends in March. We are hopeful that Mr. Giannini is going to live up to the letter and spirit of the terms laid down by the Comptroller.

This brings up for discussion one matter which we will have to decide upon. Mr. Giannini, I hope, is going to agree to put in the necessary additional capital. I believe he is going to do it through the medium of offering to his present stockholders the right to subscribe to additional stock.' You will remember that Jesse agreed to underwrite such an offer if Giannini would agree to make it. Mr. Giannini will probably want the RFC to lend money on the stock so offered to stockholders which would of course not be a departure from past precedent. In this event doubtless the question will arise whether or not in the request by the Secretary of the Treasury that the RFC advance such accommodation to the Bank of America, we should insert a management clause. My attitude on this question, which I stated very frankly to Delano, Jones, and Crowley, is that we should not depart in any way in this case from the usual practice pursued in the case of any other bank. In other words, I think we should treat Mr. Giannini just as we would treat Mr. X or Mr. Y. I am advised by Jesse that in other cases where the amount of the investment involved, represents less than 50 percent of the equity of the bank a management clause has not been required.

If you approve of the position taken above, I will not bother you further about this matter until something concrete comes up.

(Initialed by J.W.H.)

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February 18, 1939

TO: Mr. Delano

FROM: Mr. Foley, Acting General Counsel.

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

It will be recalled that in the negotiations with representatives of the Bank of America, the Bank agreed to remedy criticised conditions and to furnish such additional capital as would be required to establish a ratio of the net sound capital structure to entire deposits of 1 to 10. Although representatives of the Bank apparently desired an agreement that the Comptroller of the Currency would not object to the declaration of a semi-annual dividend in March 1939, you pointed out in your letter of December 22, 1938 that the Comptroller was not at liberty to bind his official action in the future in that respect.

It will be recalled that the Acting Comptroller warned the Board of Directors of the Bank by telegram, which was read to the Board at its meeting on September 13, 1938, that the declaration of the contemplated dividend of 19.2% without proper provision for criticised assets would be and continue to be an unsafe and unsound practice. In later correspondence, objection was made by the Bank that the warning in question was received too late because (1) the Bank had already sent out press notices with reference to the contemplated declaration of the dividend in advance of the actual hour of that declaration, and (2) because the dividend was declared shortly before our national bank examiner read the telegram to the Board.

Although not admitting the validity of those two objections, if consideration is given to the advisability of warning the Bank with reference to the declaration of the next dividend, I would suggest that legally our position probably would be strengthened if any such warning were sent to the Bank some days before the date of the meeting at which any such dividend is to be declared.

It is my understanding that it is the custom of the Bank to declare dividends semi-annually. I believe that the last dividend was declared on September 13, 1938. Accordingly, it would seem that the Board of Directors probably will meet about March 13, 1939 to declare the next semi-annual dividend.

I assume that before any decision can be made on the question of a further warning to the Bank, it will be necessary to determine to what degree the Bank has taken steps to comply with its recent understanding with the Comptroller.

s/d E.H. Fb

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February 20, 1939

Mr. L. M. Giannini, President,
Bank of America National Trust and Savings Association,
San Francisco, California.

My dear Mr. Giannini:

Permit me to refer to the various conferences between representatives of the Bank of America National Trust and Savings Association and the Comptroller of the Currency held in my office during the week of December 5, 1938. You will recall that these conferences culminated in your memorandum of December 15, 1938, outlining a course of action to be followed by the Bank of America in meeting the criticisms directed by this office against the Bank's dividend policy and certain other practices of its management.

One of the important provisions of the program proposed in the memorandum, and later adopted as policy by your directorate, is the maintenance of a ratio of 1 to 10 between net sound capital, as determined by the Comptroller, and total deposit liability. The examination of your bank which is now in process will determine the amount of additional capital necessary to validate this provision and inaugurate the proposed ratio. The work of examination, however, will not be completed until about March 1, 1939. It seems only fair, therefore, to forward you at this time a preliminary approximation of the figures now in the

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making and which bear upon this particular question. This will enable you to proceed with early plans for new capital, and in case you are contemplating a dividend declaration in March, to meet that provision of your memorandum which states that steps will be taken to establish a 1 to 10 ratio as a condition precedent to such a declaration.

Subject to the reservations necessary at this stage of the examination it is estimated that the figure of net sound capital will fall between one hundred million and one hundred five million dollars. Measuring this against total deposits of one billion three hundred eighty million, or a capital requirement of one hundred thirty eight million, a capital increase of from thirty-three-to thirty-eight million dollars is indicated. These figures are sufficiently accurate to enable you to formulate preliminary plans and you will be furnished with the final determinations as soon as they are available.

Very sincerely yours,

(Signed) Preston Delano

Preston Delano
Comptroller

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COPY

February 21, 1939

CONFIDENTIAL MEMORANDUM

Re: Possible criminal violations in the management of Bank of America National Trust and Savings Association.

Mr. Preston Delano, Comptroller of the Currency, Mr. Edward F. Foley, Acting General Counsel of the Treasury Department, and Mr. Donald J. Sherbondy, an attorney in Mr. Foley's office, discussed today with Mr. Thurman Arnold, as Acting Attorney General, possible violations of the criminal laws in the management of the Bank of America National Trust and Savings Association, San Francisco, California.

Mr. Foley explained briefly the charges against the Bank, which are contained in the attached letter, dated January 10, 1939 from National Bank Examiner Sedlacek. The difficulties with present prosecution, he stated, were as follows:

Sufficient evidence to prove the charges made in the examiner's letter is not available at present. It would require an extensive investigation to prepare the case for trial. At the present time the Securities and Exchange Commission is in the midst of an investigation involving the same transactions, which will probably develope the evidence required, as an incident to the charge of false registration statements. Therefore, if the Department of Justice were to embark on an independent investigation, it would cause confusion and duplication of effort.

Mr. Arnold pointed out that the Department of Justice has already appeared in connection with the proceedings against Transamerica and byspecial request of the Securities and Exchange Commission was keeping in close touch with those proceedings in an advisory capacity.

In view of the foregoing it was considered advisable to delay independent action by the Department of Justice until the facts have been more fully developed by the Securities and Exchange Commission. Such a delay would, it was pointed out, not be an actual delay at all, but a method of avoiding embarrassment caused by two government agencies investigating the same things.

It was further pointed out that in the event the facts stated by the examiner could not be substantiated, the duplicate investigation might cause irreparable injury to the bank by disrupting pending plans to get new capital.

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It was, therefore, informally agreed that a separate investigation by the Department of Justice at this time would not contribute to speeding up the collection of evidence, and that it might result in unnecessarily impairing the position of the bank in the event that the statements of the bank examiner could not be substantiated. It was decided that the Department of Justice and the Treasury should keep in close touch with the Securities and Exchange Commission investigation, and be in a position to act with reference to the facts set out in the examiner's letter as soon as such action was advisable. It appeared that the Securities and Exchange Commission were willing to keep the Department of Justice and the Treasury informed of evidence concerning the statements made in the examiner's letter.

Mr. Arnold agreed to advise Attorney General Murphy on his return of the necessity of having a man in the Criminal Division assigned to the case to keep in close touch with the investigation and report whatever further action he thought advisable.

(Noted in long-hand -

Mr. Arnold stated that he preferred this memorandum but that he would initial both and Mr. Foley could use the other if he preferred.

D.J.S. 2/28/39

Approved on 28th)

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February 21, 1939

CONFIDENTIAL MEMORANDUM

Re: Possible criminal violations in the management of Bank of America National Trust and Savings Association.

Mr. Preston Delano, Comptroller of the Currency, Mr. Edward H. Foley, Acting General Counsel of the Treasury Department, and Mr. Donald J. Sherbondy, an attorney in Mr. Foley's office, discussed today with Mr. Thurman Arnold, as Acting Attorney General, possible violations of the criminal laws in the management of the Bank of America National Trust and Savings Association, San Francisco, California.

Mr. Foley, in explaining the background of this matter to Mr. Arnold, pointed out that although the information obtained by the Comptroller's national bank examination staff (which is condensed in the attached copy of a letter, dated January 10, 1939, to the Comptroller of the Currency from Mr. S. L. H. Sedlacek, National Bank Examiner) did not appear to furnish a very substantial basis for a criminal case, Mr. Delano was most desirous that he fully perform his duty of keeping the Department of Justice advised as to any information in his office indicating violations of the criminal laws. Mr. Foley further explained that since the Securities and Exchange Commission was in the midst of its hearing relative to Transamerica Corporation, of which the Bank of America is a subsidiary, ~~the representatives of the Commission had indicated that it would assist them materially if no action were taken concerning possible criminal violations until their hearing was near completion. Mr. Foley also pointed out that the hearing being conducted by the Securities and Exchange Commission~~ would probably develop helpful information and evidence relative to possible criminal transactions.

Mr. Delano stated that if available information or evidence with reference to the possible criminal violations under discussion were, in the opinion of his counsel, sufficient to indicate a clear-cut violation of criminal banking statutes, he would insist that the evidence be turned over to the Attorney General without delay. However, he stated that he had been advised by his counsel that the facts disclosed by the examiners' reports and the other information in the possession of his office would not, without a great deal of additional investigation, appear to be sufficient to warrant the institution of an immediate criminal action. In the light of this background he felt that any premature investigation with reference

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to criminal violations might disrupt his pending plans to get new capital into the Bank, since, if such an investigation were begun, the officials of the Bank might refuse to go through with the plan for obtaining new capital.

It was also pointed out to Mr. Arnold that the only transaction in the attached letter which it appeared might be barred by the statute of limitations in the near future was the transaction involving the 1936 write-up of government and municipal bonds, under (1) of the attached letter, that write-up having been made on or about June, 1936.

Mr. Arnold agreed that, in view of all the circumstances, it would be inadvisable at the present time for the comptroller of the Currency to refer formally to the Department of Justice any possible criminal violations in this case, or for the Department of Justice to institute an investigation with reference thereto. Mr. Arnold also agreed that this memorandum was sufficient evidence that Mr. Delano had fully complied for the present with his duty to advise the Department of Justice as to any information in possession of the Office of the Comptroller of the Currency indicating possible violations of the criminal laws in the management of the Bank of America National Trust and Savings Association.

DJS PD. E.H.F.

T.A.

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RECONSTRUCTION FINANCE CORPORATION

WASHINGTON

February 25, 1939

Dear Mr. Giannini:

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

I am authorized by our Directors to advise you that, upon the request of the Secretary of the Treasury and approval of the President, the RFC will lend to the stockholders of the Bank of America N. T. & S. A., individually or in group, the money necessary to enable each stockholder to subscribe for his pro rata share of any increase in the capital stock of your Bank that you may determine to make and that is approved by the Comptroller of the Currency. The stock to be preferred stock bearing 4% per annum, preferred both in dividends and distribution. The loans will be at 3½% per annum, payable quarterly, and will mature one-tenth each year for five years and the balance in six years.

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

Sincerely yours,

Jesse H. Jones /s/
Chairman

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

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BANK OF AMERICA

SAN FRANCISCO, CALIFORNIA
March 7, 1939

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

My dear Mr. Comptroller:

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

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

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

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

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

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

My kind regards to you.

Yours very truly,

S/d L. M. Giannini

President.

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March 9, 1939.

Mr. Gechel

Mr. Sherbondy

Pursuant to your telephone request of yesterday, the following is a rough outline of what appears to be the facts with reference to the situation involving the Bank of America National Trust and Savings Association, San Francisco, California:

In 1931 and 1932 assets of the Bank of America totaling almost $60,000,000 were classified as "non-bankable and loss" in reports of examination made by national bank examiners. These assets to the extent of more than $35,000,000 were made the subject of three contracts of sale (referred to hereafter as Inter-America Corporation contracts) entered into between the Bank and the Corporation of America, which was a wholly-owned subsidiary of Transamerica Corporation. Each contract provided for payment of the purchase price by the Corporation of America at the end of one year from date of execution. Maturity dates of the original contracts were extended from time to time. At that time Transamerica Corporation owned 99.85% of the stock of the Bank and was, therefore, responsible directly or indirectly for the threatened impairment of the Bank's capital structure. Subsequently, Transamerica Corporation took over the assets of Inter-America Corporation (successor to the Corporation of America) and assumed its liabilities, one of which was the balance remaining due on the $35,000,000 obligation represented by the aforementioned three contracts.

In 1933 and 1935 the appreciation in value of certain unrelated government and municipal bonds owned by the Bank was written up on the Bank's books to the extent of more than $14,000,000. Simultaneously, the Bank repurchased like amounts of the "non-bankable and loss" assets previously sold under the Inter-America Corporation contracts, the proceeds of these repurchases being applied toward the reduction of the liability of Transamerica Corporation to the Bank under the said contracts. On or about the dates the "non-bankable and loss" assets were repurchased, they were charged off as losses on the books of the Bank. In justification for these transactions it appears to be the position of the officers of the Bank that if the unrealized profits on the securities which were written up had been realized by a sale of such securities and those profits had been untilized in the payment of a dividend, more than 99% of that dividend would have inured to the benefit of Transamerica Corporation or its subsidiaries,

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and the return of that dividend by Transamerica Corporation or its subsidiaries to the Bank for application on the Inter-America contracts would have brought about substantially the same result as would have been accomplished in the manner indicated above, except that by the means adopted, the payment of taxes in an approximate amount of $3,000,000 was avoided. Apparently reference is to tax savings by both the Bank and Transamerica Corporation.

Mr. Foley requests that no action be taken with reference to this matter without clearing with him.

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March 9, 1939

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

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

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

P.D.

Regraded Unclassified

March 10, 1939

To: The Secretary

From: Mr. Hanes

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

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

JWH:JR:ce

Regraded Unclassified

March 11, 1939

BANK OF AMERICA

The Bank of America in the year 1938:

Earned approximately	$ 14,000,000
paid in dividends	9,600,000
placed into dividend profits	4,400,000

As of November 21, 1938, our latest examination shows:

net sound capital	$102,324,000
losses	5,883,000
doubtful classification	7,585,000
slow	112,468,000
deposits	1,379,000,000

There is no acute difference of opinion between our examiner and the bank officials as to the loss and doubtful classifications. In the criticisms made by the examiner of the practices which may be considered to be unsound and unsafe (and possibly involving some criminal liability) from the standpoint of the Comptroller's office, there are three notable cases which are typical of a great many others.

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The first of these involves a transaction in which certain notes held by the Bank, and classified as losses, were sold by the Bank to Inter-American Corporation, the Corporation being liable to the Bank under the contract agreement for the purchase price. The notes sold to the Inter-America Corporation were secured by collateral in the form of Transamerica stock. The loss classification made by our examiner did not apply to the full face value of the notes but only to that portion of the face value which exceeded the market value of the collateral at the time of the examination. It was only this surplus above market value of the collateral which was sold to Inter-America and later when the value of the Transamerica stock held as collateral appreciated, the appreciation was credited on the amount of the original loan classified as losses and which had been assumed by this wholly owned subsidiary of Transamerica. Still later when the market receded there was no corresponding entry increasing the obligation of Inter-America to the Bank. This whole transaction between the Bank and Inter-America actually amounts to a guaranty rather than a sale; a guaranty without consideration.

A second example is the case of the bank foreclosing a real estate loan held against a country club. The bank loan was $66,000, and after acquiring title under foreclosure the

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property was sold to California Lands for $82,000, a profit of $16,000. California Lands made no down payment but the full amount was added to the obligation of California Lands to the Bank on their contract. One month later a profit of $14,000 was credited on the guaranteed loans of Transamerica Corporation. This transaction apparently traded a good asset of $14,000 for a doubtful one of the same amount, it being assumed that the Transamerica paper was sounder than the paper of California Lands.

The third example is the so-called Gentzer loan of $10,000 secured by real estate valued at $7,000. Apparently the bank sold the loan to Transamerica Corporation, increasing their guaranteed loans obligation to the bank. The bank was then allowed to acquire title to the property and sold the property to the Capital Company for $12,000, crediting Transamerica with $10,000. A few days later the bank charged off a loss of $5,400 on the sale price to Capital Company but no portion of the credit to guaranteed loans was reversed. Since the bank only realized $7,000 on the asset in the final analysis, the difference of $3,000 credited as a recovery on guaranteed loans in equivalent to a donation to the bank fund to reduce the obligation of Transamerica Corporation. This looks like a clear case of the Bank of America being miled for $3,000 in favor of Transamerica Corporation.

(Initialed: W. P. F.)

Regraded Unclassified

March 11, 1939

For the Comptroller:

The instances I spoke of today as having been gleaned from the latest report of examination of the Bank of America, N.T. & S. A. are as summarized below.

They do relate, I find upon review, to the "contracts" of Inter-America Corporation, California Lands and Capital Company.

(1) Portions of certain notes classified as loss, and otherwise unbankable assets, were sold by the bank to Inter-America Corporation, the Corporation being liable to the bank under a contract agreement for the purchase price. Many of these notes were secured by stock of Transamerica. As the market value of the Transamerica stock increased, the charged-off portions of these notes were reinstated as active assets of the bank by writing up the active portion of the loans. The amount due under the contract from Inter-America Corporation was correspondingly reduced by a credit on the bank books.

A loan by the bank to Boskowitz, secured by Transamerica stock, was charged off in part and the charged-off

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portion sold to Inter-America Corporation. Later, the active portion of the loan was written up $21,000 with a corresponding credit on the Inter-America Corporation contract obligation to the bank. Still later, $20,000 of this loan was charged against the undivided profits account, but the credit given the Inter-America Corporation was not reversed. This represents a diversion of bank earnings to Transamerica Corporation and its subsidiaries.

(2) The bank had a loan of $66,000 to a country club. The bank foreclosed and sold the property to California Lands for $82,000, or a profit of $16,000. California Lands made no down-payment but the full amount was added to the obligation of California Lands to the bank on their contract. One month later a profit of $14,000 was credited on the "guaranteed loans" of Transamerica Corporation. If there was any profit in this transaction, it should have gone to the bank.

(3) A loan to Gantser for $10,000 secured by real estate valued at $7,000 was in default. The bank eliminated the loan, then acquired title to the property, sold it to Capital Company for $12,000, added the full

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amount to Capital Company's contract indebtedness and reported a recovery of $10,000 on the sale. This $10,000 was credited as a payment on the "guaranteed loans" of Transamerica Corporation. A few days later, the bank charged off a loss of $5,400 on the sale price to Capital Company but no portion of the credit to "guaranteed loans" was reversed. Since the bank only realized $7,000 on the asset in final analysis, the difference of $3,000 credited as a recovery on "guaranteed loans" is equivalent to a donation of bank profit to reduce the obligation of Transamerica Corporation.

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March 14, 1939

For the Comptroller:

One thing occurs to me in connection with the letter of February 25th from Mr. Jesse Jones to Mr. L. M. Giannini, a copy of which you have given me. Assuming that Transamerica Corporation exercises its preemptive right to subscribe for approximately half of the new issue of preferred stock, and assuming that Transamerica will borrow the money for such purchase from the Reconstruction Finance Corporation at the rate of 3½%, the result would be that through U. S. Government financing Transamerica will net one-half of one per cent if the dividend rate on the proposed issue of preferred stock is 4%.

According to law, it is necessary that the Comptroller of the Currency approve, among other things, the dividend rate to be paid on preferred stock to be issued by national banks. Therefore, if this office approves a dividend rate of 4% on the proposed issue of preferred stock, Transamerica will thereby be enabled to net the aforementioned one-half of one per cent, which is in effect an additional dividend over and above the more than ample dividend presently being received by Transamerica on the bank's common stock.

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c o p y

BANK OF AMERICA
NATIONAL TRUST AND SAVINGS ASSOCIATION

SAN FRANCISCO, CALIFORNIA

March 15, 1939

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

Dear Sir:

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

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

Respectfully,

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

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COPY

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

NOW, THEREFORE, BE IT

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

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

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

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

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

R. P. A. EVERARD /s/
Secretary of BANK OF AMERICA
NATIONAL TRUST AND SAVINGS ASSOCIATION

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RESOLVED, that a dividend of $1.20 per share be and the same is hereby declared out of the net profits of this Association upon the issued and outstanding shares of the capital stock of this Association payable in the following manner, to wit:

(a) 60 cents per share payable on March 31, 1939, to shareholders of record at the close of business on March 15, 1939;

(b) 60 cents per share payable on June 30, 1939, to shareholders of record at the close of business on June 15, 1939.

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

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

Secretary of BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION.

SEAL

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March 15, 1939

MEMORANDUM FOR MR. DELANO:

The board of directors of the Bank of America NT & SA at their meeting last evening declared a dividend of $1.20 per share payable one-half March 31 and the balance June 30, which is at the same rate as those declared last year, namely, 19-2/10% on the capital.

The directors passed a resolution appointing a committee consisting of thirteen, including three of the Gianninis, to review the recent report of examination, to confer with the office of the Comptroller of the Currency with a view to determining the amount of preferred stock to be sold and to report its findings and recommendations.

W. P. FOLGER
Chief National Bank Examiner

Regraded Unclassified

March 16, 1939

FOR THE SECRETARY:

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

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

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

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

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

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

In this connection, it is interesting to note that a continuation of dividends on the common stock at the present

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

ESD

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March 22, 1939

MEMORANDUM

To: Mr. Foley

From: Mr. Upham

The Comptroller would like a legal opinion as to whether Transamerica Corporation is a holding company affiliate of the Bank of America N. T. & S. A. of San Francisco, California, as suggested in the attached memorandum from Mr. Folger to the Comptroller and the photostatic copy of pages from the latest report of examination of the bank.

Upm

Enclosure

Regraded Unclassified

March 30, 1939

To: Mr. Delano, Comptroller of the Currency

From: Mr. Foley, Acting General Counsel

Reference is made to the memorandum of March 22, 1939 from your office requesting a legal opinion as to whether Transamerica Corporation is a holding company affiliate of the Bank of America, N.T. & S.A. of San Francisco, California.

It is my opinion that Transamerica Corporation is a holding company affiliate of the Bank of America, N.T. & S.A., as defined in section 2 of the Banking Act of 1933, as amended (U.S.C., Sup. IV, title 12, sec. 221a).

Subsection (c) of section 2 of the Banking Act of 1933, as amended, provides as follows:

> "The term 'holding company affiliate' should include any corporation, business trust, association, or other similar organization --
>
> "(1) Which owns or controls, directly or indirectly, either a majority of the shares of capital stock of a member bank or more than 50 per centum of the number of shares voted for the election of directors of any one bank at the preceding election, or controls in any manner the election of a majority of the directors of any one bank; or
>
> "(2) For the benefit of whose shareholders or members all or substantially all the capital stock of a member bank is held by trustees."

Under paragraph (1) of subsection (c) a corporation is a holding company affiliate of a member bank of the Federal Reserve System if it falls into one or more of the three following categories:

(a) It owns or controls, directly or indirectly, a majority of the shares of capital stock of such member bank;

(b) It owns or controls, directly or indirectly, more than 50 per centum of the number of shares voted for the election of directors of such bank at the preceding election; or

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(c) It controls in any manner the election of a majority of the directors of such bank.

In view of the attached memorandum, dated March 27, 1939, initialed by Mr. W. P. Folger, Chief National Bank Examiner, it is unnecessary to determine at this time whether Transamerica Corporation is a holding company affiliate of the Bank of America, N.T. & S.A. under either category (a) or (c) above, since it is obvious Transamerica Corporation is a holding company affiliate of the Bank under category (b).

According to Mr. Folger's memorandum, Mr. Russell G. Smith, Vice President and Cashier of the Bank of America, N.T. &. S.A., told Mr. Folger personally, on March 23, 1939, that the stock of the Bank owned by Transamerica Corporation was voted by proxy at the last annual meeting of the Bank's stockholders on January 10, 1939, at which meeting a complete board of directors of 25 members was elected. According to a letter, dated January 12, 1939, addressed to the Comptroller of the Currency and signed by Mr. R.P.A. Everard, Secretary of the Board of Directors of the Bank, there were 2,040,695 shares represented at the meeting on January 10, 1939. The current report of examination of the Bank, which commenced on November 21, 1938 and closed on February 28, 1939, reveals that Transamerica Corporation owned directly 1,506,158 shares of the Bank's stock, while the subsidiaries of Transamerica (California Lands, Inc., Capital Company, General Metals Corporation, Occidental Life Insurance Company, and Pacific National Fire Insurance Company) owned 131,475 shares, and two nominees (Le Ray & Co. and Reiser & Co.) owned 143,617 shares, which, according to the examiner, are controlled by Transamerica Corporation.

From the foregoing, it is obvious that if Mr. Russell G. Smith's statement to Mr. Folger is correct, even if proxies on behalf of Transamerica Corporation voted only those shares owned directly by Transamerica Corporation, namely, 1,505,158 shares, Transamerica Corporation is a holding company affiliate of the Bank of America, N.T. & S.A., under the definition contained in section 2 of the Banking Act of 1933, as amended, since those shares constituted more than 50 per centum (in fact more than 73 per centum) of the total number of shares voted at the January election (even assuming that all the other shares represented at the meeting voted).

E.H.

Upm

Regraded Unclassified

March 27, 1939

MEMORANDUM FOR THE FILES:

Mr. Russell G. Smith, Vice President and Cashier of the Bank of America, N.T. & S.A., was in the office on the morning of Thursday, March 23, for the purpose of discussing the last report of examination of the bank.

Mr. Smith was asked a few questions regarding the annual meeting of the bank's stockholders in January. He stated that the stock of the bank owned by Transamerica Corporation was voted by proxy at the annual meeting of the bank's stockholders in January of this year and further stated that the Corporation did not vote its stock at the annual meeting in January, 1937, nor did it vote in January, 1938.

W.P.F.

W.P.Folger,
Chief National Bank Examiner

Regraded Unclassified

March 30, 1939

For the Comptroller:

Last summer I came to the conclusion that at the next examination of the Bank of America N. T. & S. A. this office should appraise the real estate by some fairly comprehensive sampling, at least.

My idea was that at the examination begun in November last, we should seek the cooperation of the Federal Deposit Insurance Corporation, the Federal Reserve Bank of San Francisco, and in addition borrow appraisers from the Farm Credit Administration, the Home Loan Bank System and Federal Housing Administration. Because of the time limits necessarily involved in that examination, I did not press this point of view.

I think, however, that in the next examination, which should begin shortly and which should include an examination of Transamerica Corporation, we should follow the plan outlined above.

At present, I believe we accept without question or investigation the appraisal made by the bank. It is quite possible that this is 100% too high.

(Note: "I understand from Folger
this is being done---P.D.")

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THE UNDER SECRETARY OF THE TREASURY

WASHINGTON

April 4, 1939

Dear Henry:

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

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

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

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

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

(5) Letter of recommendation by Preston Delano.

(6) Letter of recommendation by Leo Crowley.

(7) Letter of recommendation by Under Secretary Hanes.

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

I trust this is the information you desire.

Sincerely,

John W Hanes

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

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RECONSTRUCTION FINANCE CORPORATION
WASHINGTON

April 4, 1939

Dear Mr. Secretary:

I am authorized by our Board to recommend that we lend all or any part of $10,000,000 on the preferred stock of the Bank of America National Trust and Savings Association, California, to enable the Bank to increase its capital funds by this amount.

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

Sincerely yours,

Jesse Jones
Chairman

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

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RECONSTRUCTION FINANCE CORPORATION

WASHINGTON

JESSE H. JONES
CHAIRMAN OF THE BOARD

April 4, 1939

Dear Johnnie:

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

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

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

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

Sincerely yours,

Jesse H. Jones
Chairman

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

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February 25, 1959

Dear Mr. Giannini:

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

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

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

Sincerely yours,

Chairman

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

CC - The Comptroller of the Currency

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SECURITIES AND EXCHANGE COMMISSION

WASHINGTON

2

March 31, 1939

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

Dear Mr. Jones:

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

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

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

Yours faithfully,

(Signed) Wm. O. Douglas

William O. Douglas,
Chairman.

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April 3, 1939

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

Dear Chairman Jones:

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

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

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

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

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

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

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

Sincerely yours,

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

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THE UNDER SECRETARY OF THE TREASURY

WASHINGTON

April 4, 1939

Dear Mr. Secretary:

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

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

Faithfully yours,

John W Hanes

The Honorable

The Secretary of the Treasury.

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COPY

April 4, 1939

My dear Mr. Secretary:

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

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

Very truly yours,

/s/ Leo T. Crowley
LEO T. CROWLEY
Chairman

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

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Upon my return from home yesterday the letter addressed to the Secretary regarding the preferred stock of the Bank of America was called to my attention. This letter does not specifically cover the point in question. At the luncheon which you, Mr. Jones, Mr. Delano and I attended, we all concurred in the plan outlined by Mr. Jones, and each of us agreed to write a letter endorsing it. In order to straighten the record, I am sending this memorandum to confirm the understanding as indicated.

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

/s/ Leo Crowley

The above is a copy of letter from Mr. Crowley to Under Secretary of the Treasury Hanes in further confirmation of his letter of April 4 to the Secretary of the Treasury

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COPY

April 4, 1939

My dear Mr. Secretary:

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

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

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bank stock and the charge made by the Reconstruction Finance Corporation for such financing, will be remitted by the Transamerica Corporation to the issuing bank.

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

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

As a result of these conferences Mr. L. M. Giannini despatched a memorandum to the Comptroller of the Currency outlining in considerable detail certain steps which the bank management proposed to take to meet some of the criticisms which had been directed in previous examinations by the Office of the Comptroller against the conduct of the bank. The Comptroller's office, through its examination procedure, is in constant touch with the management of the Bank of

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America looking toward the carrying out of the corrective program outlined in Mr. Giannini's memorandum. One of the important provisions of the memorandum in question was an undertaking by the bank's management to maintain a ratio of 1 to 10 between the sound capital structure of the bank and its total deposits. The present request of Mr. Giannini to the Reconstruction Finance Corporation for financing additional capital is a necessary step toward the effecting and maintenance of such a ratio. It is my opinion that because of the asset condition of the Bank of America the securing of these additional funds is a very important and necessary part of our program for the improvement of the capital position of the bank.

Very sincerely yours,

Preston Delano
Comptroller

The Honorable,
The Secretary of the Treasury.

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COPY

April 7, 1939

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

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

(1) It would be wholly inadequate merely to provide in the letter that a dividend would not be paid if it would impair the capital stock of the Bank. Such a statement would be superfluous since it would amount to saying that no dividend would be paid in violation of law. Under existing law (U.S.C. title 12, sec.55), if the capital stock of a national

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bank becomes impaired by losses or otherwise, the deficiency must be paid by assessment upon the shareholders. If the deficiency is not paid and the bank refuses to go into voluntary liquidation, the Comptroller of the Currency may appoint a receiver to close the bank.

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

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

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an unsafe and unsound banking practice, after warning from Comptroller of the Currency, would furnish the basis for a proceeding before the Board of Governors of the Federal Reserve System to remove officers or directors of the bank.

(2) The draft of the letter provides that the opinion of either the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation that a contemplated dividend will impair the capital stock of the Bank or constitute an unsafe or unsound banking practice, shall be sufficient to deter the Bank from declaring or paying such dividend. The three banking supervisory agencies were included since all of them have an interest in the matter.

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

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

The Board of Governors of the Federal Reserve System is the agency which determines, after proper hearing, whether or not a director or officer of a national bank should be removed for continuing unsafe or unsound banking practices (U.S.C. title 12, sec. 77). If a national bank is insolvent and a receiver is appointed by the Comptroller of the Currency, the stock held by such bank in the Federal Reserve bank of the district is cancelled and the bank automatically ceases

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to be a member of the Federal Reserve System (U.S.C. title 12, sec. 288). In addition, the Federal Reserve Act provides that if a bank (including national banks) is not carrying its required reserve balance with the Federal Reserve bank of the district, such bank may pay no dividends unless and until the total reserve balance required by law is fully restored (U.S.C. title 12, sec. 464).

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April 7, 1939

To: Mr. Delano

From: Mr. Hanes

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

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

JWH

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4/10/39

My dear Mr. Comptroller:

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

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

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will notify the Comptroller of the Currency within a reasonable time before any such dividend is declared of the contemplated rate of such dividend.

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

Sincerely yours,

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

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

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April 12, 1939

FOR THE SECRETARY:

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

My objections to the arrangement are as follows:

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

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

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

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

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

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R.F.C. money -- in the capital structure of the Bank; Transamerica claims to have $65,000,000 of cash and marketable securities.

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

ESD

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April 13, 1939

FOR THE SECRETARY:

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

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

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

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

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

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

Preston Delano

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April 13, 1939

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

Gentlemen:

You will please find enclosed herewith draft of a proposed letter to be submitted by the directorate of the Bank of America to the Comptroller of the Currency. In this proposed letter the Bank of America would agree to declare no dividend which, in effect, had not previously been approved by the Federal Reserve Board, the Federal Deposit Insurance Corporation and the Comptroller's Office.

Will you advise me, please, whether the Federal Reserve Board is prepared to assume this responsibility, and further, the opinion of the Board as to the procedure outlined therein?

Very sincerely yours,

Preston Delano,

Comptroller.

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BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON

April 13, 1939

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

My dear Mr. Comptroller:

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

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

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

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

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

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

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

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

Very truly yours,

L. P. Bethea,
Assistant Secretary.

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FEDERAL DEPOSIT INSURANCE CORPORATION
WASHINGTON

OFFICE OF THE CHAIRMAN

April 13, 1939.

Dear Preston:

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

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

Sincerely yours,

Leo T. Crowley

Chairman.

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

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WRIGHT

S 13044

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

Gentlemen:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

After placing the "Guaranteed Loans" on the books at $6,500,000.00 as part payment on the Inter-America Corporation contracts the remainder of these contracts was eliminated from the bank's books on July 14, 1937 through the purchase by the bank from Transamerica Corporation of 56,600 shares of stock in the National City Bank of New York at a market price of $48.00 a share. The stock thus acquired was set up on the bank's books at $2,716,800.00 and an option granted to Transamerica Corporation to purchase the shares it had sold within a five year period at not less than 11,320 shares a year. Under the terms of the option, in the event that 11,320 shares are not purchased in any one year, the bank may sell at market any additional shares necessary to make up the dollar quota. At the expiration of the first year on July 14, 1938 the Corporation elected to exercise its option and did purchase 11,320 shares from the bank. However, instead of the bank demanding payment of the option price of $543,360.00 in cash, in order to eliminate that portion of the investment which could have been accomplished through the sale of sufficient shares in the market, it accepted from Transamerica Corporation an illegal second deed of trust obligation

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of the Western Furniture Exchange Corporation, which is approximately 71% owned by the Capital Co pany, and released a liquid asset having a market value of $388,660.00 at that time. This second deed of trust is subject to a prior lien in favor of the Metropolitan Life Insurance Company in the amount of $1,000,000.00, and has a maturity in excess of 15 years. The remainder due at the time of its acceptance by the bank was $580,000.00 plus interest of $2,497.22 or a total of $582,497.22, of which amount $543,360.00 was taken in consideration of 11,320 shares of the stock referred to and the remainder of $39,137.22 was applied on the delinquent payments due from Capital Company under the real estate contracts. The loan is payable $20,000.00 each six months and is now carried on the books at $560,000.00 and is fully described on page 8, inserts 27 and 28 of the report. You are requested to immediately remove this illegal asset from the bank for cash.

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

During the past seven years the bank has pursued the policy of selling the real estate acquired by it through foreclosure to California Lands, Inc., and Capital Company under contracts. The indebtedness of California Lands, Inc. at the time of examination amounted to $12,235,719.73 of which $11,658,436.09 is a real estate sales contract. The indebtedness of the Capital Company aggregated $25,827,358.96, of which $24,911,358.96 is a real estate sales contract. These combined contracts total $36,569,795.05.

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

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Inc., have been carried for periods ranging from 1929 to 1933, inclusive, while on page 8, insert 21 there are shown 521 properties under the contract with Capital Company with a present book value of $12,337,498.94 carried for like periods.

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

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

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

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

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

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

In connection with your bonds and securities, there are listed on

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

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

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

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

It is noted from the schedules on page 2, inserts 12 and 13, of depreciation on banking houses and furniture and fixtures that only in 1931 was the allowable rate by the Bureau of Internal Revenue actually charged off the books. Since that date to the end of 1937 it is shown that you have

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actually taken depreciation for income tax purposes of $3,200,553.16 in excess of the amount charged off against the undivided profit account of the bank. In view of the heavy investment in fixed assets it is not believed the bank has been charging off a sufficient amount of depreciation against banking houses and furniture and fixtures. However, the examiner will make a further analysis of this situation during the course of the examination now in progress and you are requested to give this important matter careful consideration with a view to arriving at a satisfactory program.

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

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

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

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

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

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

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

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

Yours very truly,

Comptroller of the Currency.

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9:15 A.M.

April 15, 1939

Mr. Delano was orally informed by the Secretary of the Treasury that the President had approved the change in the proposed letter from Mr. Giannini to the Comptroller of the Currency. The change approved was the elimination from the letter of the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation as agencies having veto power over the declaration of future dividends by the Bank of America.

Mr. Delano was authorized by the Secretary to make this change in the proposed letter and submit the letter to Mr. Giannini.

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April 15, 1939

Mr. dear Mr. Comptroller:

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

As a condition to any loan which the R. F. C. may make pursuant to these letters, the Bank will agree to declare no further dividend if in the opinion of the Comptroller of the Currency the payment of such dividend would impair the capital stock of the Bank or would constitute an unsafe or unsound banking practice. In order to facilitate carrying out this agreement, the Bank will notify tho Comptroller

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of the Currency within a reasonable time before any such dividend is declared of the contemplated rate of such dividend.

Sincerely yours,

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

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

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COPY

April 16, 1939

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

Dear Comptroller Delano:

On April 3, 1939, in compliance with the provisions of the memorandum and correspondence of December 15, 1939, between our bank and your office, I filed with the RFC on behalf of our stockholders an application for a loan or loans to enable our stockholders to subscribe to $25,000,000 or preferred stock to be issued by our bank when you request it.

We have reviewed our articles of incorporation with representatives of your office and the RFC, and are in substantial agreement on the changes in them that would be necessary to effect the capital increase.

In the course of the discussions with you and other representatives of your office prior to filing the application with the RFC, we reported on the present status of all matters covered in the December conference and it was agreed that good progress had been made; and that as long as the program was followed, the Department would be satisfied. I asked if there were any further matters to be discussed or clarified and was advised that there were none.

On the basis of your last examination, we now have sound capital funds of substantially more than $120,000,000 (net asset value in excess of liabilities) and can point with pride to our record in working out of the unprecedented conditions that confronted the country in 1932 and '33. We have been able to make substantial increases in our sound capital funds through earnings and to pay substantial dividends to our large number of stockholders which has been helpful in promoting recovery. In addition our deposits have more than doubled since we assumed responsibility for the management of the bank in February, 1932.

We have cooperated with practically every department of this Administration in its effort to promote recovery and are proud of our contribution in this respect.

We do not need any additional capital since our capital funds are now more than double legal requirements and adequate to meet all standards of sound banking practice. It is therefore unfair that we should be forced to maintain a 1 to 10 ratio of capital when this is not required of other banks. However, we agreed to meet this requirement in the interest of arriving at an amicable adjustment of differences and to cooperate with your office.

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In view of the delay that has taken place through no fault of ours and the fact that our April directors' meeting was held on the eleventh, it will probably be necessary to defer the effective date of the capital increase should you decide that you want us to proceed with it. We are ready to do so on the basis of the agreed plan. To impose new conditions at this time that were not discussed or contemplated then, it appears to me, would constitute a breach of the mutual good faith pledged at the time of the December conferences.

Notwithstanding the fact that my wife has been ill in a hospital in New York, I have been in Washington almost constantly for the past three weeks in an effort to conclude the arrangements contemplated in our December agreement. As she has recovered sufficiently to enable her to travel, I am now taking her to California, but I want again to reiterate that our bank is prepared to comply with every agreement I have made.

My kindest regards to you.

Sincerely yours,

(signed)

L. M. Giannini, President

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COPY

April 19, 1939

Dear Mr. Chairman;

I acknowledge receipt of your letter of April 13th, together with enclosures: (1) letter from Mr. Cooksey; (2) your Schedule National No. 391; and (3) memorandum to the Board dated April 4th, signed by Sam Husbands.

You are aware of the fact that the Comptroller of the Currency had a meeting on Saturday, April 15th, with Mr. L. M. Giannini, President of the Bank of America, and that he discussed with Mr. Giannini the question of the dividend policy to be maintained in the future by the Bank.

Mr. Giannini has returned to California and formal action upon the application will await further consideration of the subject matter.

Sincerely yours,

/s/ H. Morgenthau, Jr.

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

Secretary signed while in
Mr. Hanes' office - 4-19-39-
5:30 P.M. - mailed from 278
4-19-39 - 5:35 P.M.

Initialled J.W.H.

P.D.

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COPY

April 25, 1939

Mr. L. M. Giannini, President,
Bank of America National Trust and Savings Association,
San Francisco, California.

Dear Sir:

I do not know definitely whether either the Reconstruction Finance Corporation or this office advised you or Mr. Smith, during your recent visit here in connection with the proposed increase in capital of the bank, that the Secretary of the Treasury imposes a condition in his request to the Reconstruction Finance Corporation to purchase, or to make loans upon, preferred stock issued by banks at a retirement price in excess of the par value thereof. The condition imposed by the Secretary of the Treasury in his request to the Reconstruction Finance Corporation in the type of case above mentioned, is substantially as follows:

> Subject to the condition that in all the bank's financial statements, including statements made and published as required by law, as well as condensed statements for general distribution, and in all other forms of advertising and publication wherein a financial statement of the bank is used, there be included an explanatory note disclosing the dividend rate payable on the preferred stock and the subscription price upon which dividends will be based and repayment made in the event of retirement or liquidation of the stock.

There is enclosed, for your guidance, a form of notice of special meeting of shareholders of Bank of America National Trust and Savings Association for use in connection with the proposed increase in the capital of the bank, which form, in the opinion of this office, constitutes an adequate notice of the time, place and purpose of the meeting of shareholders. As a general rule, this office advises that no notice of a special meeting of shareholders should be

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sent out by the bank until the approved form of proposed amendments to the articles of association and instructions from this office in connection with the holding of such meeting have been received by the bank. Such instructions include a copy of a form of notice. In the instant case, this office advises that no notice of the special meeting of shareholders should be sent out by the bank until after the Secretary of the Treasury has requested the Reconstruction Finance Corporation to purchase, or to make loans on, the shares of Cumulative Convertible Class A Stock proposed to be issued by the bank, the Board of Directors has adopted its resolution respecting the issuance of Cumulative Convertible Class A. Stock, application has been made to this office for its approval of an increase in capital of the bank by the issuance of such stock, and the form of the proposed amendments to the articles of association of the bank is satisfactory to the Reconstruction Finance Corporation and has been approved by this office.

Very truly yours,

/s/ P.D.

Preston Delano
Comptroller of the Currency

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June 23, 1939

Memorandum to: Mr. Smith
Mr. Spencer
Mr. Ottley

Mr. Smith has asked me to suggest the questions that I think your Committee should be asked to answer, together with my ideas as to steps to be taken from here on in the current effort of the Comptroller's Office to secure corrections in the Bank of America N.T. & S.A. of San Francisco.

It occurs to me that your opinions with respect to the following matters would be helpful to this office:

(1) Should the office insist upon an improved relationship between capital structure and total deposits?

(2) Should capital be increased by the issuance of new stock?

(3) Should dividends on common stock be reduced and more earnings conserved

(a) If new stock is sold;

(b) If no new stock is sold?

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(4) Does the bank have sufficiently prudent reserves?

(5) Are loss charge-offs required by the Comptroller and made by the bank sufficiently large?

(6) Should the bank be freed from the complexities of the tie-up with its numerous affiliates?

There are, of course, many detailed questions of bank operation and policy upon which your assistance would be helpful if we had more of your time at our disposal, but the main problems from our standpoint, it seems to me, have to do with the quality of the assets, the adequacy of the capital, the wisdom of the dividend policy, and the intricacies of the corporate ownership relationships.

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Granted then that the three main goals to be reached are an improved asset position, a higher capital ratio, and greater conservation of earnings (plus an enhanced dignity and prestige for the Comptroller's Office in dealing with the bank, and hence in dealing with all banks), what are the steps to take?

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The bar to the issuance of more capital stock is the requirement imposed by the President that before Federal funds can be loaned to Transamerica and other stockholders, the bank must agree to control of its dividends by the Comptroller. The President might be prevailed upon to waive that requirement. I should not recommend it. It appears to me to be a concession which would make our future negotiations with the bank more rather than less difficult. I am not unmindful of the fact that it would put $25,000,000 more "protection" into the bank. I should prefer that we continue to firmly insist that the necessity for an increase in capital exists.

The long run way to fundamental improvement is constant insistence on conservation of earnings, backed up by a realistic loss classification and charge-off program which will make payment of big dividends illegal.

To this should be added bank holding company legislation.

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May 24, 1939

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

On September 13, 1938, following an extensive series of criticisms by national bank examiners a telegram was forwarded by Acting Comptroller Diggs to National Bank Examiner Palmer directing him to personally advise the Board of Directors of the Bank of America which was then in session, that on account of the unsatisfactory asset condition of the bank the declaration of any dividend (unless proper provision for criticized assets was first made) would be and would continue to be an unsafe and unsound practice in conducting the business of the bank. Disregarding this warning the Board declared a dividend of $4,800,000 or at the annual rate of 19.2%.

On September 23, 1938 Acting Comptroller Diggs forwarded a detailed letter of criticism to each member of the Board of Directors based on the report of examination completed September 15, 1938. Under date of October 11, 1938 the Board replied in detail to all items set forth in this letter. The reply of the Board was signed by twenty directors.

This letter was concluded by a request on the part of the directors for a conference between representatives of

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the bank and the Comptroller of the Currency. On November 23, 1938 Comptroller Delano replied to the directors' letter of October 11, 1938 acquiescing in the Board's request for a conference and suggesting that the bank send representatives to Washington at their convenience.

As a result of this exchange of correspondence there was held in the Comptroller's office during the week of December 5-12, 1938, a series of conferences between representatives of the bank, the Comptroller of the Currency, the Under Secretary of the Treasury, the Chairman of the Reconstruction Finance Corporation and the Chairman of the Federal Deposit Insurance Corporation. These conferences culminated on December 15 in a letter addressed to the Comptroller by Mr. L. M. Giannini in which there was enclosed a memorandum outlining certain steps which the bank proposed to take to meet some of the criticisms directed against its management. The memorandum covered seventeen items, the first and most important of which provided that the bank "will effect and reasonably maintain a sound capital structure having a ratio to its entire deposits of one to ten." The bank's representatives proposed that this increased capital should be put into the bank as early as practicable but in any event not later than June 30, 1939. It was generally understood by all concerned that the Reconstruction Finance Corporation would underwrite or furnish such additional capital.

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At its meeting on March 14, 1939 the Board of Directors declared a dividend of $4,800,000, payable one-half on March 31, and one-half on June 30, 1939. This is at the annual rate of 19.2%. At the same meeting a committee of thirteen was appointed to work out the details of a plan to increase the capital stock of the bank.

On March 23, 1939 Mr. L. M. Giannini, President, and Mr. R. G. Smith, Vice President and Cashier, called at the office of the Comptroller for the purpose of discussing the report of examination completed February 28, 1939. Mr. Smith stated that he was disappointed with the report in that the Examiner had continued to criticise matters which had been criticised in previous reports of examination, including the dividend rate. He assured the writer that the provisions of the agreement dated December 15, 1938 were being followed.

The examination which was completed on February 28, 1939 indicated that additional capital funds of 36 million dollars would be required as of that date to bring the ratio between capital and deposits to the one to ten basis. However, Mr. Giannini took the position that on June 30, 1939, there would be sufficient changes in the position of the bank to make it certain that an increase of 25 million dollars would provide the required ratio. On April 3, 1939

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Mr. Giannini filed an application with the Reconstruction Finance Corporation for a loan or loans to enable the bank's stockholders to subscribe for 25 million dollars of preferred stock.

Under date of April 4, 1939 Mr. Jesse Jones advised the Secretary that he was authorized by his Board to recommend that the Reconstruction Finance Corporation lend all or any part of 25 million on the preferred stock of the Bank of America National Trust and Savings Association to enable the bank to increase its capital funds by that amount.

At a conference held in the Comptroller's office on April 15, 1939 the Comptroller informed Mr. L. M. Giannini that the President of the United States was unwilling for the Reconstruction Finance Corporation to underwrite the new capital issue of the bank or furnish the funds therefor unless Mr. Giannini in a letter to the Comptroller would agree that further dividends which the bank proposed to declare would be subject to approval by the Comptroller. In other words, the dividend policy of the bank in the future would be under the control of the Comptroller of the Currency. Mr. Giannini refused to consider this condition unless it was placed before him in writing. Under date of April 16, 1939 he addressed a letter to the Comptroller stating he was willing to proceed with the increase in capital on the

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basis of the agreed plan but to impose new conditions at this time would constitute a breach of good faith pledged at the December meeting. The matter rests here.

Four alternatives present themselves:

(1) To further press the bank for additional capital, insisting that it either secure it without the assistance of the Reconstruction Finance Corporation, or if forced to resort to such assistance that the Directors acquiesce in the President's demand that the Comptroller shall have veto power over their dividend policy.

(2) To exert pressure against the bank for reduction of dividend, insisting that in the absence of new capital there must be a conservation of earnings to build up the capital structure.

(3) To build a case through further warnings for a Section 30 citation of the Bank of America management before the Federal Reserve Board. I am convinced that, under the present circumstances, we cannot successfully prosecute such a case.

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(4) To follow the suggestion of the Secretary of the Treasury and summon into conference a group of three representative bankers placing the entire matter in all its ramifications before them and requesting their opinion and advice. I favor this procedure.

Preston Delano
Comptroller

Retyped June 20, 1939

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Bank of America National Trust and Savings Association, San Francisco, California, is the third largest national bank in the United States, and is the largest bank in the country outside of New York City. It has approximately 500 branches and serves over 300 communities - all in the State of California. It has 2,000,000 depositors, nearly 200,000 shareholders and over a billion-and-a-half of assets. One of its stockholders, namely, Transamerica Corporation, now owns 42% of its capital stock. The bank does a general banking business and maintains Trust and International Banking Departments. It has a foreign branch in London. Its employees number in excess of 8,000. Its business is principally small business, it being an aggregate of a large number of small community banks, together with some larger units in the centers of population. The total insured deposits in Bank of America exceed by far the total resources of the Federal Deposit Insurance Corporation.

The facts and figures set forth in the following paragraphs are taken from the most recent report of examination, which was commenced on November 21, 1938 and was concluded on February 28, 1939:

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Loans and discounts totaled $648,000,000. 16.5% of the loans were classified in the report of examination, That percentage is unusually large. $73,000,000, a sum equal to 150% of the common capital, or 11.2% of total discounts, was loaned to Transamerica Corporation and its subsidiaries. The loan obligations of Transamerica Corporation, plus the obligations of subsidiaries thereof in which the corporation owns or controls the majority interest, total $22,000,000, which is more than $12,000,000 in excess of the bank's legal loaning limit; thereby causing a violation of Section 5200.

$59,000,000 of the total commercial loans, as distinguished from real estate loans, were classified in the report of examination, and of that total $41,000,000 are represented by loans to Transamerica Corporation and its subsidiaries. In other words, the classified commercial loan problem is concentrated chiefly in the extensions of credit to Transamerica Corporation and its subsidiaries.

Real estate loans totaling $51,000,000 are classified in the report of examination, and $12,000,000 of that sum represent distressed items. Of the latter amount, $7,000,000 are under actual foreclosure. The majority of these trouble items were acquired by the purchase of unit banks or from Transamerica Corporation and its subsidiaries in order to reduce their indebtedness of the bank.

In giving consideration to the fixed asset problems of the bank, the balance sheet shows banking house, furniture and fixtures and other real estate as being carried at $58,700,000. However, after

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taking into consideration the contracts carried in the loans and discounts, which in fact represent other real estate, that total is increased to $95,000,000, and is in excess of the capital and surplus of the bank. If the true condition were shown, banking houses and furniture and fixtures would be carried at $48,500,000, and other real estate would be carried at $46,500,000. Past experience of the bank in selling properties indicates a sizable loss hazard in other real estate.

During the past five years, 1934 to 1938 inclusive, Bank of America has charged off loans, investments and other assets totaling $53,000,000, which is in excess of the common capital of the bank. In that same period, $36,000,000 has been paid out in dividends. After the foregoing expenditures, there remained $10,000,000 of earnings which were left in undivided profits. However, during the period, the deposits of the bank increased $450,000,000. In other words, if no dividends had been paid, the accumulation of profits would have been approximately sufficient to furnish the desired capital protection for increased deposits. The bank at this time is in need of approximately $40,000,000 additional capital funds to provide adequate capital protection for depositors.

The ills of Bank of America are attributable to the past expansion program of the management. The primary need is an appreciation by the management of the necessity of conserving the earnings of the bank in order to provide an adequate net sound capital structure in keeping with accepted standards and with due consideration to the

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nature of the bank's assets. If the earnings of the bank were used to charge off losses and to provide for other assets adversely classified, prior to the payment of dividends, the rate of dividend paid would necessarily be reduced and the net sound capital structure of the bank increased.

The maintenance of a high dividend rate by Bank of America has been necessitated in the past by the need of Transamerica Corporation, which until August 1937, owned 99-2/3% of the stock of Bank of America, for funds with which to carry out this expansion program and at the same time to pay dividends on its (Transamerica Corporation) stock so as to maintain its price on the exchange.

Transamerica Corporation still owns 42% of the stock of Bank of America, and Transamerica's need for funds to liquidate its and its subsidiaries obligations to the bank and to maintain its dividend rate on its own stock is still present. As stated before, the problem is primarily one of management. The proper liquidation of the large volume of assets possessed of definite loss potentialities, as well as obligations of Transamerica Corporation and its subsidiaries to Bank of America, is a matter that will require some time of accomplishment, even if the bank management does admit and recognize the situation and adopts a conservative policy in connection with the payment of dividends on its stock.

Reports of examinations have for years called the attention of the directors and management of the bank to the foregoing matters, as well as numerous other criticisms, some of major importance which

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have not been included in this brief memorandum.

The continued use of the bank in a detrimental manner to further the interests of Transamerica Corporation and affiliates, and particularly the payment of dividends on common stock, equal to a rate of 19.2%, brought forth from the Comptroller of the Currency a warning that such dissipation of earnings, so urgently needed for capital protection, was considered to be an unsafe and unsound banking practice. Over a period of years many conferences have been held in this office with representatives of the bank in an effort to correct various objectionable practices and strengthen the asset condition of the bank.

Until the latter part of 1938 all of the efforts of the Comptroller's office to induce the management of the bank to cooperate for the much needed betterment of the institution produced no tangible results. In December of 1938 conferences were held in Washington between officials of the government and representatives of the bank. President L. M. Giannini, Vice President W. E. Blauer, and Vice President and Cashier Russell G. Smith represented the bank. Conferences with respect to major matters of policy were had with Comptroller Delano, Under-Secretary Hanes, Chairman Jones and Chairman Crowley. Conferences on technical matters were had with the Chief National Bank Examiner and his staff.

Growing out of these conferences, a memorandum was prepared, dated December 15, which purported to be an agreement on the part of the bank to certain corrections. Most important of these was an agreement

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that the bank "would effect and reasonably maintain a sound capital structure having a ratio to its entire deposits of 1 to 10." The bank agreed that it would "furnish as much additional capital as may be required for this ratio, as determined by the Comptroller of the Currency after the result of the examination now in progress", the increased capital to "be paid into the bank as early as practicable after the amount shall have been determined, but in no event later than June 30, 1939." The agreement stated that if steps had been taken to increase its capital stock as set forth above, it would be free to declare a semi-annual dividend in March, 1939.

The bank made application for approval of an increase in its capital of $25,000,000 ($10,000,000 par value retirable at $25,000,000), the Reconstruction Finance Corporation having agreed to finance the transaction either by purchase of preferred stock or loans to purchasing shareholders.

The President of the United States stipulated as a condition to the financing of the capital increase by the Reconstruction Finance Corporation that the bank should agree to give the Comptroller of the Currenct veto power over the declaration of dividends by the bank. The president of the bank regarded this as an addition to the arrangement reached in December, and a condition to which he could not agree. The negotiations for an increase in the capital stock are, accordingly, at a standstill.

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COMMENTS ON MEMBERS OF BOARD OF DIRECTORS
OF BANK OF AMERICA N.T. & S.A.

Mr. C. H. Baker

Owns and operates the Baker Shoe Stores, principally in Los Angeles. Several years ago his stores were hard pressed and owed a substantial bank debt, which has since been paid off. It is believed that presently the operations are fairly successful.

The principal asset represented in his estimated net worth of $50,000 would be the interest in the business mentioned above.

Mr. W. E. Blauer

Vice President of Bank of America N.T. & S.A. in charge of the Credit Department; is also Vice Chairman of the Board of Directors.

Mr. Blauer was formerly of San Jose where he was in the banking business. He sold his bank to Mr. A.P. Giannini in the earlier years of Bank of Italy expansion and has since been connected with the Gianninis. It is believed that Mr. Blauer reflects good credit sense, and that the

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problems arising from his supervision are within reason. It is not known to what extent his knowledge is relative to the major asset problems of the bank, which are primarily shown as between the Bank and Transamerica Corporation.

His net worth is reported to be $25,000.00, which it is believed would consist principally in real estate (his home at Saratoga, California) and miscellaneous investments. He borrows money in modest amounts from Transamerica Corporation and other banks on an unsecured basis. To the writers knowledge Mr.Blauer kept himself free of Transamerica Corporation stock ownership--and the subsequent heavy debts with which some of his fellow officers are saddled.

Leon Bocqueraz

Mr. Bocqueraz came into the Bank of America through the merger of his bank (The French-America Bank of San Francisco) with various other banks into what was known as the United Security Bank & Trust Company. This latter bank was merged with the Merchants N. T. & S. Bank of Los Angeles

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to form the Bank of America of California, which was consolidated in 1930 with Bank of Italy to form the present Bank of America National Trust and Savings Association. He has been a Director since that consolidation.

He is reported to have an estimated net worth of $100,000.00, but the writer has no knowledge of his assets. He is interested in the Western Industries Company, which owes the Bank $108,684.37 and represents a debt of long standing currently criticised Slow $58,400.00 and Doubtful $20,000 with $2,451.33 charged off. During previous problem eruptions of the bank with the Comptroller's Office, Mr. Bocqueraz is believed to have voiced independent judgment of a conservative nature. He is a Frenchman and highly regarded among the French Colony of San Francisco.

Dr. Guido E. Caglieri

Is a physician with offices in North Beach. There is little known that would indicate an outstanding position within his profession. He has a reported net worth of $25,000.00, but this is believed to be high. He owes the

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Bank $173,017.35 of which $137,919.37 has been charged off and of the balance, $35,097.98 active, $4,040.00 is classified as Loss. This loan is secured principally by Transamerica Corporation and Bank of America stock, and is entirely dependent upon the collateral. In addition to his bank debt Dr. Caglieri owes Transamerica Corporation $276,311.85 secured by Transamerica Corporation and Bank of America stock, which debt is entirely dependent upon the collateral, showing a market value deficit in excess of $33,000.00

Mr. J. Cereghino

Is Superintendent for the American Can Company in Los Angeles, and is believed to hold a responsible position. His reported net worth is $50,000.00, but little is known of his assets. He owes the Bank $12,970.00 secured.

Mr. John A. Corrotto

Is retired and has a reported net worth of $200,000. It is believed that a substantial portion of this worth is represented by stocks of Transamerica Corporation and Bank of America.

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A. de Bretteville

Is shown as a capitalist, is connected with the Spreckels Sugar interests in the West. He married one of the Spreckels girls. While his reported net worth is $25,000, it is believed that he represents considerably more wealth than that through the above connection.

Fred L. Dreher

Is an attorney with a reported net worth of $100,000. Little is known of his assets, but he owes the bank $6,000 unsecured and endorses $1500 unsecured, both of which debts are unclassified.

Paul B. Fay

Came on the Board after Father, C. W. Fay, died and is a pavement contractor with a reported net worth in excess of $100,000. As is generally known paving contracts and politics go hand-in-hand. What specific connection Mr. Fay has with such powers is not known; however, his worth, if true, is modest for a large operator in such business.

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F. W. Flint, Jr.

Is in the real estate and insurance brokerage business in Los Angeles and has a reported net worth of $25,000. He owes the bank $339,734.06 of which $211,634.06 is classified as Slow. He came in as a Director through the Merchants National Trust and Savings Association and Bank of America of California series of takeovers and consolidations.

Dr. A. H. Giannini

Is connected with the Motion Picture Industry as a financial adviser to producers and actors. He has been associated with his brother for many years and pioneered their invasion of New York through the acquisition of several banks that became lastly identified as the Bank of America National Association (later sold by Walker to the National City Bank). During that period of his career he informed the examiners that loans to the motion picture industry were better than Government bonds and proved it. After the sale of Bank of America National Association-New York, he returned to California and became Vice President

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and Vice Chairman of Bank of America N.T. & S.A. as a more or less self-appointed overseer of the principality of Los Angeles. He was quite active in the management, possessing a common Latin quality of being heard. His activities and association with the Motion Picture Industry continued, resulting in many stars' bank accounts and loans to producers. In 1935 or 1936 he became President of United Artists at a reported salary of $100,000 per annum and remarked that now he was being paid for much that he had previously done free. In 1937 or 1938 he resigned this lucrative position due to internal strife among the owners of United Artists, apparently deluded to the thought that free advice at least gives one a sense of self-importance even though it may not be accepted.

His net worth is reported to be over $600,000, and without any knowledge of his assets, it is conceivable that the figure is conservative. He has earned good salaries for many years and his associations may have helped him. As is ofttimes true of brothers, he and A. P. Giannini do not always agree, but A. P. predominates. Since leaving

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the United Artists, he has not resumed an official capacity in the bank other than continuing as a Director. He now occupies small quarters in the Beverly Hills Branch of the Bank, where he continues to advise and be advised.

A.P. Giannini

Is to widely publicised for one to attempt further comment about him.

George J. Giannini

Is a brother of A. P. Giannini (if not a brother, a close relative) and differing from the others, stayed with his first love, the produce commission business. Little is ever heard of George. He has a reported net worth of $10,000 and only came on the Board in 1938 as a result of several prior vacancies.

L.M. Giannini

Is A. P. Giannini's son and President of the Bank of America N.T. & S.A.; also high in the powers that be in Transamerica Corporation and its subsidiaries. In recent

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years his Father has pushed him to the front so here again publicity allows little further comment.

Al G. Gock

Is one of San Francisco's finest fellows--a native of San Francisco, he has many friends and is widely known. He has been connected with the Bank for years in various capacities and presently holds the title of Vice President and Vice Chairman of the Board in charge of public relations. He was recently potentate of the Shriners in San Francisco and is also a member of other groups. His reported worth is $75,000, which is possibly true as an accumulation over many years. As far as is known he has kept himself free of debt, being neither a prince nor a pauper. Presently, he owes Transamerica Corporation $6,250 secured by shares of Pacific Coast Mortgage Company.

Marshal Hale

Came on the Board upon the death of his brother, P. C. Hale. The Hale Brothers Stores are among the finest managed in the Northern California Area. The association

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of the Hales with the Gianninis goes back many years to early days in San Jose from whence they both came. The Hale family represents substantial wealth and position. Marshal Hales' reported net worth is $500,000, probably a conservative figure. Their stores have been free of debt, but some of their real estate companies have borrowed from the bank and at present their Panama Realty Company owes $215,000 unsecured classified as Slow.

C. N. Hawkins

Is a rancher and livestock operator in the Hollister County of California. His reported worth is $200,000, but this is highly questionable. He owes the Bank $206,086.95 of which $51,861.74 is charged off, of the balance $105,668.55 is classified as Slow. This debt is of long standing and a workout of real estate and livestock. In addition he endorses $120,000 second lien real estate loan of Fort Klamoth Meadows Company in which he is substantially interested; this company also owes another $90,000 unendorsed secured by real estate. Also, some of the livestock operations are financed through Bankamerica Agricultural Credit Corporation, a subsidiary of Transamerica Corporation. A recent borrowing from another bank reveals that Mr. Hawkins has hypothecated his shares of Bank of America N.T. & S.A., thereby disqualifying himself as a Director.

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John E. Marble

Is in the real estate and mortgage investment business in Los Angeles. He has a reported net worth of $100,000, believed to be represented principally by his interest in the John E. Marble Company operating in real estate and insurance.

Harry Mazzera

Is an attorney from Stockton, California, and has been on the Board for several years. He is an old friend of the Gianninis. His reported net worth is $200,000 with little knowledge of his assets.

Wm. Wallace Mein

Was elected to the Board in 1938 to fill a vacancy. At the time of his election he purchased 1000 shares of Bank of America N.T. & S.A. from Transamerica Corporation giving his note of $40,000. His share thus pledged disqualified him as Director. Later after a reduction of the loan, Transamerica Corporation released 100 shares, thereby correcting his disqualification.

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Mr. Mein is reputedly a wealthy man. For years he was a Director of the American Trust Company of San Francisco. It is not presently known whether or not he still holds this place. He is president of the Calaveras Cement Company and in the past was reported as being successful in South African mining ventures. His reported net worth of $500,000 is believed conservative.

Angelo Petri

Is a cigar manufacturer and has been on the Board for years. His company, the Petri Cigar Company, has a good financial record: Recently it has borrowed $819,450 from the bank to promote an expansion of its activities in the wine distributing business; what success this latter venture may have remains to be seen. Mr. Petri is borrowing personally $30,000 on a real estate loan and $29,000 secured. His reported net worth of $100,00 is believed conservative.

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Dr. Celestine J. Sullivan

Is a Commissioner of the State Harbor Board, and it is believed that this is his chief claim to fame. Little is known of his accomplishments. He has a reported net worth of $25,000 and borrows $3,450 from the bank secured.

Julius Zentner

Has been a Director for years and is connected with Levy-Zenture Company, produce merchants. The company is considered highly successful in this business and borrows $240,000 from the bank unsecured. Mr. Zentner's reported net worth of $100,000 is believed conservative and he borrows $8,500 from the bank, of which $6,500 is secured.

June 21, 1939

Regraded Unclassified

July 24, 1939

Miss Chauncey,

This is the complete file of material which was made available to Messrs. Smith, Spencer and Ottley when they were here recently to review the Bank of America case.

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ANALYSIS OF EARNINGS AND DIVIDENDS [illegible]
BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, SAN FRANCISCO, CALIFORNIA.
FROM DATE OF CONVERSION TO JUNE 30, 1938, INCLUSIVE.

	Total Earnings	Total Expenses	Net Operating Profit	Profit on Securities Sold	Recoveries on Securities	Other Recoveries	Operating Profit, Profit on Securities Sold, Recoveries on Securities and Other Recoveries	Losses	Net Profits	Dividends	Net Additions to Profits
1927	$32,274,600	$29,057,400	$3,217,200	$5,195,600	---	$33,200	$8,446,000	$1,473,700	$6,972,300	$10,478,300	$3,506,000 - nil
1928	42,958,200	37,378,200	5,582,000	5,886,600	---	90,000	11,558,600	2,824,700	8,733,900	5,625,000	3,108,900
1929	47,369,700	39,863,600	7,506,100	4,610,900	---	8,000	12,125,000	3,326,700	8,798,300	6,000,000	2,798,300
1930	53,174,600	44,861,100	8,313,500	1,923,300	---	57,200	10,368,600	5,779,800	4,588,800	5,700,000	1,111,200 - nil
1931	53,857,500	45,720,000	7,537,500	1,440,100	$174,800	641,900	9,720,300	7,536,900	2,183,400	7,800,000	5,616,600 - nil
1932	42,824,600	39,350,100	3,474,500	893,500	1/	1,917,400	5,765,400	6,255,100	468,700 - nil	—	468,700 - nil
1933	39,222,000	33,117,200	6,104,800	1,025,700	1/	164,700	7,295,200	6,522,800	772,400	2,250,000	1,477,600 - nil
1934	39,593,900	32,377,600	7,216,300	2,104,000	1/	44,700	9,925,000	12,562,600	2,637,600 - nil	3,750,000	6,387,600 - nil
1935	41,902,500	33,739,700	8,163,800	2/14,700,800	1/	75,000	22,939,600	13,081,600	9,858,000	6,000,000	3,858,000
1936	46,261,500	34,766,600	11,494,900	3/14,270,000	58,000	343,100	26,140,000	13,687,600	12,452,400	8,000,000	4,452,400
1937	51,289,700	38,623,900	12,665,800	3,955,800	---	1,886,900	18,508,500	5,559,300	12,949,200	6,800,000	3,149,200
1938 (Jan. 1 to June 30)	26,635,600	19,842,300	6,793,400	4,529,300	---	74,600	11,397,300	3,409,400	7,987,900	4,800,000	3,187,900
Total 1927-1938, inclusive	516,770,400	428,594,600	88,175,800	61,177,200	160,800	4,901,700	154,210,500	82,880,700	71,330,300	69,203,300	2,127,000
Annual Average 1927-1938, inclusive	44,236,556	37,217,791	7,658,765	5,318,327	13,968	417,530	13,409,608	7,201,756	6,207,852	6,017,678	190,174
Total 1932-1938, inclusive	287,715,800	234,216,300	53,517,500	42,041,100	32,000	4,001,400	101,992,000	61,478,400	40,513,600	33,600,000	6,913,600
Annual Average 1932-1938, inclusive	44,206,734	35,684,046	8,522,688	6,467,861	4,923	615,600	15,691,076	9,458,715	6,232,861	5,169,231	1,063,630
Total 1935-1938, inclusive	165,089,300	125,971,400	39,117,900	37,455,900	32,000	2,379,600	78,985,400	36,157,900	42,647,500	27,600,000	15,047,500
Annual Average 1935-1938, inclusive	47,454,045	36,277,542	11,176,543	10,701,686	9,142	679,886	22,567,257	10,329,114	12,242,143	7,885,714	4,356,429

1/ Recoveries on Bonds and Securities included with Profits on Securities Sold.

2/ Includes write-up of book value of bonds, $5,000,000.

3/ Includes write-up of book value of bonds, $6,007,800.

X [illegible]

Y X [illegible]

ANALYSIS OF EARNINGS AND DIVIDEND REPORTS OF
BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, SAN FRANCISCO, CALIFORNIA,
FROM DATE OF CONVERSION TO JUNE 30, 1938, INCLUSIVE.
(CONTINUED)

	Voluntary Contributions	Net Change in Profits	Capital Increase	Capital	Surplus	Profits	Reserves	Total Capital Structure	Increase or Decrease Capital Structure
1927	$12,809,700	4,303,700 —	7 [illegible]	$37,500,000	$13,200,000	$10,439,200	$1,125,000	$62,264,200	7 [illegible]
1928	27,500,000	30,608,900	$12,500,000	50,000,000	45,000,000	6,473,100	1,500,000	105,373,100	$43,108,900
1929	—	2,796,300	—	50,000,000	45,000,000	11,271,400	1,900,000	108,171,400	2,798,300
1930	3,818,300	2,307,100	—	50,000,000	50,000,000	4,136,400	7,961,700	112,098,100	3,926,700
1931	894,200	5,392,400 — red	—	50,000,000	50,000,000	4,290,300	2,415,400	106,705,700	5,392,400 - red
1932	89,600	379,200 — red	—	50,000,000	40,000,000	9,890,800	6,435,700	106,326,500	379,200 - red
1933	62,700	1,424,900 — red	—	50,000,000	35,000,000	14,951,600	5,320,000	104,911,600	1,424,900 - red
1934	51,800	6,336,400 — red	—	50,000,000	30,000,000	17,164,300	1,410,900	98,575,200	6,336,400 - red
1935	22,400	3,880,400	—	50,000,000	32,500,000	16,367,300	1,588,400	102,455,700	3,880,500
1936	87,000	4,539,400	—	50,000,000	34,100,000	20,504,100	1,972,100	106,995,200	4,539,500
1937	100,700	3,849,900	—	50,000,000	36,000,000	23,104,900	1,760,000	110,864,900	3,869,700
1938 (Jan. 1 to June 30)—		3,187,900	—	50,000,000	40,000,000	28,231,700	1,801,100	114,032,800	3,187,900
1931 (July) to Jan. 1		[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
	$3,765,800	$[illegible]	$12,500,000						$[illegible]

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ANALYSIS OF EARNINGS AND DIVIDENDS REPORTS OF
BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, SAN FRANCISCO, CALIFORNIA,
FROM DATE OF CONVERSION TO JUNE 30, 1938, INCLUSIVE.
(CONTINUED)

	Losses on Bonds	Losses on Loans	Losses on Banking House	Other Losses	Total Losses	Recoveries on Loans	Other Recoveries, Except on Bonds	Total
1927	—	$ 473,700	$ 1,286,600	$ 113,400	$ 1,873,700	$ 8,200	$ 25,000	$ 33,200
1928	$ 80,000	877,000	1,794,300	75,400	2,824,700	23,600	66,400	90,000
1929	979,900	699,700	1,593,700	93,400	3,326,700	3,700	4,300	8,000
1930	1,037,200	2,470,200	2,144,800	127,600	5,779,800	36,800	20,400	57,200
1931	2,403,900	1,628,800	1,713,100	1,791,100	7,536,900	412,000	199,900	611,900
1932	631,200	3,256,500	1,677,400	690,000	6,255,100	420,400	992,000	1,412,400
1933	451,800	4,081,000	1,012,700	977,300	6,522,800	68,900	95,800	164,700
1934	1,933,000	7,714,000	1,025,300	1,890,300	12,562,600	1,800	42,900	44,700
1935	226,600	11,542,000	1,036,400	276,600	13,081,600	44,500	30,500	75,000
1936	252,100	10,846,700	1,068,900	1,519,900	13,687,600	312,700	30,400	343,100
1937	718,100	2,823,600	1,135,500	1,282,100	5,959,300	620,300	1,266,600	1,886,900
1938 (Jan. 1 to June 30)	398,500	2,174,800	562,500	277,600	3,409,400	10,200	64,400	74,600
	9,108,300	46,568,000	16,053,200	9,112,700	82,820,200	1,363,100	2,838,600	[illegible]

Regraded Unclassified

NET SOUND CAPITAL STRUCTURE AS OF REPORTS OF EXAMINATION OF
BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, SAN FRANCISCO, CALIFORNIA,
FOR YEARS 1927 TO 1937, INCLUSIVE.

	Oct. 21, 1927	June 30, 1928	Dec. 14, 1928	Apr. 8, 1929	Dec. 31, 1929	June 30, 1930	Feb. 28, 1931	Aug. 31, 1931	Dec. 31, 1932	Dec. 9, 1932
Capital Stock	$50,000,000.00	$50,000,000.00	$50,000,000.00	$50,000,000.00	$50,000,000.00	$50,000,000.00	$50,000,000.00	$50,000,000.00	$50,000,000.00	$50,000,000.00
Surplus	20,700,000.00	45,000,000.00	45,000,000.00	45,000,000.00	45,000,000.00	45,000,000.00	50,000,000.00	50,000,000.00	40,000,000.00	40,000,000.00
Profits	7,673,704.15	7,426,602.97	8,668,922.66	10,564,447.94	11,171,350.23	10,918,178.58	5,270,140.94	5,389,363.29	4,208,935.51	7,973,411.47
Reserves	—	—	—	—	400,000.00	1,387,575.43	11,191,484.05	1,405,768.33	11,640,023.42	9,657,918.74
Total Capital	58,373,704.15	102,426,602.97	103,668,922.66	105,564,447.94	106,571,350.23	107,305,754.11	116,461,624.99	106,795,131.62	105,848,959.93	107,631,330.21
Less: Loss, Doubtful and Depreciation	4,103,315.16	6,366,633.08	8,260,326.38	14,373,188.25	11,981,601.61	8,159,430.07	29,276,388.38	40,441,992.95	66,400,777.35	54,594,166.88
Net Sound Capital	54,270,388.99	96,059,969.89	95,408,596.28	91,191,259.69	94,589,748.62	99,146,324.04	87,183,236.61	66,353,138.67	39,448,182.58	53,037,163.33
Slow	29,606,445.86	35,166,948.26	34,941,836.89	41,700,471.48	52,820,378.19	56,683,487.69	110,712,881.77	138,145,808.83	173,371,214.46	205,371,323.35
Doubtful	2,550,256.78	3,736,114.61	2,462,466.26	5,873,345.00	4,400,199.76	3,639,474.45	14,575,416.03	20,208,964.90	22,409,268.89	28,990,754.94
Loss	1,553,058.38	1,521,663.69	1,528,320.79	4,499,843.25	7,561,401.85	4,526,955.62	14,702,972.35	20,233,028.05	31,494,493.95	16,132,872.10
Depreciation	—	1,108,858.78	4,249,535.33	(9,494,478.42)	(4,053,705.96)	(1,570,621.20)	(2,665,319.57)	(6,891,212.16)	12,497,014.51	9,470,939.84
Total Classified	33,709,761.02	42,533,581.34	43,202,163.27	56,073,659.73	64,801,975.80	64,642,927.76	139,991,270.15	178,587,901.78	239,771,951.83	259,965,490.23
Less, Doubtful and Depreciation	4,103,315.16	6,366,633.08	8,260,326.38	14,373,188.25	11,981,601.61	8,159,430.07	29,276,388.38	40,441,992.95	66,400,777.35	54,594,166.88
Appreciation - Bonds	3,262,705.17	—	—	—	—	1,602,326.37	41,932.16	—	—	—
Deposits:										
Demand	156,815,797.15	240,107,000.00	235,952,000.00	242,088,000.00	211,658,000.00	178,165,000.00	197,166,000.00	199,933,000.00	136,926,000.00	144,000,000.00
Time	390,565,654.35	350,291,000.00	361,246,000.00	379,012,000.00	571,760,000.00	521,984,000.00	641,958,000.00	566,639,000.00	451,147,000.00	465,520,000.00
Certified and Cashier's Checks, etc.	36,564,891.92	72,524,000.00	49,915,000.00	41,938,000.00	168,916,000.00	120,343,000.00	79,661,000.00	39,674,000.00	33,817,000.00	49,974,000.00
Total Deposits	583,946,553.42	662,922,000.00	647,113,000.00	663,038,000.00	850,374,000.00	820,492,000.00	918,785,000.00	826,242,000.00	621,890,000.00	659,494,000.00
Total Resources	669,942,433.57	796,283,000.00	793,773,000.00	804,910,000.00	1,043,214,000.00	969,146,000.00	1,097,295,000.00	992,079,000.00	888,690,000.00	858,006,000.00

Regraded Unclassified

NEW BOND CAPITAL STRUCTURE AS OF REPORTS OF EXAMINATION OF
BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, SAN FRANCISCO, CALIFORNIA,
FOR YEARS 1927 TO 1937, INCLUSIVE.
(CONTINUED)

	Apr. 10, 1933	Sept. 18, 1933	June 22, 1934	Feb. 11, 1935	Oct. 7, 1935	Apr. 27, 1936	Oct. 14, 1936	Apr. 20, 1937	Aug. 31, 1937
Capital Stock	$50,000,000.00	$50,000,000.00	$50,000,000.00	$50,000,000.00	$50,000,000.00	$50,000,000.00	$50,000,000.00	$50,000,000.00	$50,000,000.00
Surplus	40,000,000.00	35,000,000.00	30,000,000.00	30,000,000.00	32,500,000.00	33,000,000.00	34,100,000.00	35,000,000.00	35,000,000.00
Profits	10,535,174.32	12,462,933.25	16,045,008.42	15,283,965.63	18,595,941.89	18,268,130.30	20,999,778.39	21,039,231.44	24,394,001.21
Reserves	3,871,699.60	5,304,884.80	1,374,531.92	2,004,297.19	1,928,952.00	1,617,505.69	1,742,416.07	2,054,030.14	1,811,171.52
Total Capital	104,406,873.92	103,767,818.05	97,419,540.34	98,287,262.82	103,024,893.89	102,885,635.99	106,842,194.46	108,093,261.58	111,205,172.73
Less: Loss, Doubtful and Depreciation	71,564,356.45	43,729,807.78	10,397,078.90	10,340,447.51	7,057,297.70	12,478,121.39	10,743,768.95	13,432,158.64	13,969,020.38
Net Sound Capital	32,842,517.47	60,038,010.31	87,022,461.44	87,947,415.31	95,967,596.19	90,407,574.60	95,698,425.51	94,661,102.94	97,236,152.35
Slow	199,214,403.01	203,638,273.17	200,179,106.66	179,765,388.80	164,993,461.77	146,951,147.26	131,344,768.78	121,783,572.13	125,354,504.56
Doubtful	36,121,834.71	23,823,411.17	7,404,572.48	8,069,444.30	5,487,898.85	8,480,625.28	6,394,286.89	5,564,807.25	4,793,131.01
Loss	18,335,523.39	11,526,690.23	2,988,486.42	2,271,003.21	1,569,398.85	3,997,496.11	4,389,542.10	5,788,399.17	6,004,866.18
Depreciation	17,108,997.75	8,379,706.38	—	—	—	—	—	1,074,952.32	3,171,023.19
Total Classified	270,778,759.46	247,368,080.95	210,576,185.56	190,103,836.31	172,050,759.47	159,469,268.66	142,088,537.73	135,216,030.77	137,327,524.94
Less, Doubtful and Depreciation	71,564,356.45	43,729,807.78	10,397,078.90	10,340,447.51	7,057,297.70	12,478,121.39	10,743,768.95	13,432,158.64	13,969,020.38
Appreciation - Bonds	—	—	8,316,954.64	11,288,539.75	5,155,205.62	14,329,984.28	12,482,458.96	—	—
Deposits:									
Demand	123,747,000.00	152,550,000.00	163,930,000.00	217,707,000.00	252,863,000.00	275,521,000.00	345,512,000.00	458,383,000.00	431,350,000.00
Time	487,912,000.00	491,851,000.00	592,577,000.00	658,264,000.00	691,421,000.00	801,747,000.00	770,760,000.00	723,654,000.00	725,803,000.00
Certified and Cashier's Checks, etc.	29,830,000.00	48,307,000.00	95,689,000.00	103,229,000.00	105,618,000.00	130,697,000.00	138,272,000.00	83,967,000.00	86,608,000.00
Total Deposits	641,489,000.00	692,708,000.00	852,196,000.00	979,200,000.00	1,049,902,000.00	1,207,965,000.00	1,258,544,000.00	1,266,014,000.00	1,243,801,000.00
Total Resources	835,718,000.00	856,508,000.00	1,000,155,000.00	1,133,663,000.00	1,162,274,000.00	1,322,904,000.00	1,379,650,000.00	1,394,[illegible]	[illegible]

Regraded Unclassified