

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

A. P. Giannini  
Chairman of the Board of Directors

September 15, 1938.

Hon. Marriner S. Eccles,  
Chairman of the Board of Governors,  
Federal Reserve Board,  
Washington, D. C.

Dear Governor Eccles:

I am enclosing a copy of a telegram from the Acting Comptroller of the Currency to Mr. Palmer of the National Banking Department. The telegram was read by Mr. Palmer to our Directors at their board meeting held on September 13th last.

A copy of my letter in response to the Acting Comptroller's message is also enclosed, together with the excerpt from Directors' proceedings referred to in the letter.

These enclosures are self-explanatory and are sent to you so that you and the other members of your Board may be informed on the matters referred to therein.

Kindest regards to you and to the other members of the Board!

Yours sincerely,

(signed) A. P. Giannini

Enclosures

R E A PALMER

835 H W HELLMAN BUILDING      LOS ANGELES

YOU ARE INSTRUCTED PERSONALLY TO ADVISE THE BOARD OF DIRECTORS <sup>B of A - N.T.S.A.</sup> (13044) WHO ARE MEETING THERE TODAY, TUESDAY, THE FOLLOWING:

QUOTE 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 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 STOP NOTWITHSTANDING THE CONDITION AS OUTLINED ABOVE AND THE FACT THAT THE DIVIDEND POLICY HAS BEEN REPEATEDLY CRITICISED, THE DIVIDEND RATE HAS BEEN REPEATEDLY INCREASED FROM FOUR AND FIVE TENTHS PERCENT IN NINETEEN THIRTY-THREE TO THE PRESENT RATE OF NINETEEN AND TWO TENTHS PERCENT STOP THIS SITUATION WAS DISCUSSED AT LENGTH BY THE CHIEF NATIONAL BANK EXAMINER IN WASHINGTON WITH THE CHAIRMAN OF THE BOARD IN JANUARY AND AGAIN WITH THE VICE PRESIDENT AND CASHIER OF THE BANK IN AUGUST OF THIS YEAR STOP IN THE OPINION OF THE COMPTROLLER OF THE CURRENCY THE DECLARATION OF ANY DIVIDENDS AT THIS TIME WOULD, UNLESS PROPER PROVISIONS FOR SUCH CRITICISED ASSETS WERE FIRST MADE, BE AND CONTINUE AN UNSAFE AND UNSOUND PRACTICE IN CONDUCTING THE BUSINESS OF THE BANK STOP ACCORDINGLY THE COMPTROLLER OF THE CURRENCY PURSUANT TO SECTION THIRTY OF THE BANK ACT OF NINETEEN THIRTY THREE HEREBY WARNS THE BANK, ITS OFFICERS, THE BOARD OF DIRECTORS AND THE MEMBERS THEREOF TO DISCONTINUE SUCH UNSAFE AND UNSOUND PRACTICE UNQUOTE

(Signed) MARSHALL R. DIGGS

ACTING COMPTROLLER

Copy as de-coded from  
original telegram

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.

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.

Bank of America

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September 15, 1938.

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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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.

Hon. Marshall R. Diggs

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September 15, 1938.

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 the 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,

Chairman,  
Board of Directors.