

Counter proposals submitted by
Bank of America

Response to Memo Presented by the Committee with Regard to Bank of America N. T. & S. A.

Upon acceptance of the following as a program, and with the express understanding that the matters pending before the S.A.C. will be disposed of at the same time, the President of the Bank will recommend to its Board of Directors that the Bank:

1. Increase its capital structure by \$30,000,000, to be done within 90 days, if possible, but in no event later than June 30, 1940. This will be done by the issuance of common or preferred stock or part common and part preferred as may be decided upon by the Bank. Steps to this end will be initiated promptly. Amendment to the Bank's articles of association for this purpose shall be agreed upon by the Bank and the Committee, and also by the R.F.C. if any part of the funds are to be made available through the R.F.C. either by way of purchase of any such stock or by making loans on the security thereof.

2. Immediately upon obtaining the new capital, set up an unallocated reserve of \$5,000,000.

3. Amortize bond premiums in accordance with statutory provisions and regulations of the Comptroller applicable to all national banks.

Comments upon Bank's Response to Comptroller's Proposed Requirements.

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1. Offer of capital increase, either common or preferred, in the total amount of \$30,000,000 capital funds. Amount seems inadequate in consideration of entire program offered.

(a) Would suggest preferred stock for any increase in capital, whether sold to shareholders, the public, or the Government, because (1) it should be cheaper capital and would provide more cushion from earnings for other corrections, and (2) the sale of preferred stock would create less problem with respect to representations than would the sale of common stock, and (3) preferred stock carries with it certain rights or privileges of retirement and conversion which are to the advantage of the management and the common stockholders.

2. Interpose no objection to unallocated reserve of \$5,000,000 for a correction of write-ups and inadequate depreciation as determined by a complete survey and analysis of the banking premises, including future and former premises, with the understanding that in case the facts as subsequently developed indicate that \$5,000,000 is inadequate, the deficiency will have to be met out of current earnings.

3. No comment if it is understood that amortization applies to entire portfolio. In addition one-half of net bond profits to be set aside as additional reserves to accelerate the elimination of the premium account until such reserve is adequate as determined by the Comptroller's office.

4. Furnish to the Comptroller complete information with respect to the actual cost to it of each banking premise,

5. Charge off all items classified as loss in the last report of examination not otherwise discussed herein which have not heretofore been charged off. (For your information, this has already been done.)

6. Insist that California Lands and Capital Co. furnish property to additionally secure their contracts. Such property will be in an amount equal to the difference between the unpaid purchase price under the contracts and the valuation of the property thereunder as such valuation appears in the schedule contained in the report of examination begun August 31, 1939. (For your information, sales of real estate to California Lands and Capital Co. under contract were discontinued as of June 1, 1938.)

7. Continue to treat real estate currently acquired by foreclosure or in satisfaction of debt as Other Real Estate and carry the same at cost or appraised value, whichever is lower.

8. Eliminate the amount of investment in stock under option on the basis of the program now in effect, the annual reduction amounting to \$545,360.

9. Require continuation of the program of liquidation now in effect with regard to the commitments of Transamerica and its subsidiaries.

10. Eliminate, within a reasonable period, any loans carried in excess of legal limits if any such exist. (It is the Bank's policy not to permit loans to exceed legal limits.)

11. Give vigorous attention to any real estate holdings or real estate loans which may not conform to statutory requirements.

4. See No. 2.

5. No comment.

6. Proposed additional collateral consisting of free assets of these companies should be in an amount equal in value to at least 25% of the unpaid balance of their respective contracts with the bank.

7. No comment, provided "costs" are defined and understood by committee. Prefer "book value of loan" to "cost".

8. No comment.

9. We still recommend the treatment of large lines in substantially as suggested in the Comptroller's original requirements, with proper safeguarding language.

10. No comment.

11. No comment.

12. Initiate steps to ascertain whether the Bank is entitled to recover any part of Transamerica General Corporation's reserve for fidelity losses and to recover any part thereof to which the Bank may be entitled.

The foregoing response is presented as an expression of the Bank's sincere desire to cooperate constructively in arriving at an understanding. It shall not be deemed or construed as admitting any statement or implication in the Committee's memo or assenting to anything therein except as herein expressed, or as admitting that there is any legal requirement or factual necessity for any change suggested therein or herein. This memo is not to be used for any other purpose or by any other agency.

12. No comment.

The bank's response, to which the foregoing comments have been directed, does not cover the following points, which should be included:

1. The bank should take immediate steps through Merchants National Realty Company to obtain the pledge by Capital Co. of collateral equal in value to at least 25% of the amount of the contracts between it and the Realty Company. To cover any deficiency in additional collateral, the bank shall set up a reserve from its undivided profits in an equivalent amount.
2. Other real estate carried as such on the books of the bank. There should be set up an additional reserve from undivided profits equivalent to 25% of the carrying value of such other real estate.