HEAD OFFICE
SAN FRANCISCO, CALIF.

CABLE ADDRESS
"BAMERICAL"

Bank of America
NATIONAL TRUST & SAVINGS ASSOCIATION

March 18, 1942.

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

Dear Sir:

The Comptroller's letter of February 17, 1942, addressed to the Board of Directors was read to the Board at its meeting on March 10, 1942. The Board was pleased with the Comptroller's recognition of the fact that the Bank is complying with the requirements of his office.

An analysis of the items composing the so-called "large line to Transamerica Corporation, its subsidiaries and closely related companies" and "fixed assets and criticized loans", aggregating $139,388,165, fails to disclose any good reason why these particular assets should have been selected in preference to any other group of items of the Bank's assets of approximately $2,000,000,000 as criteria in the determination of the sufficiency of capital structure. The following tabulation of items included in the figure of the so-called Transamerica large line and the relative comments, should illustrate the point:

Loans to individual borrowers secured by stock of Transamerica Corporation $1,719,501

> These are not loans to Transamerica Corporation, a subsidiary or a closely related company, but they are loans to independent individual borrowers.

Livestock loans discounted with us by Bankamerica Credit Corporation $7,153,770

> These are readily re-discountable loans to independent individual borrowers, discounted by us within specific provisions of law, and in connection with which the Examiner states in his report: "not subject to adverse criticism and listed only for record purposes."

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Direct short-term loan to Bankamerica Credit Corporation .... $ 200,000

This loan, which is not criticised in the report, has been paid in full.

Direct loan to Bankamerica Company .... $ 244,324

Indirect liability of Bankamerica Company on outstanding drafts accompanied by securities .. 115,310

Bankamerica Company is not a subsidiary of nor is it closely related to Transamerica Corporation. These items are not classified and the comment in the report is: "fully secured."

Real Estate loans to Capital Company ..... $ 630,000

Indirect liability of Inter-America Corporation as endorser on insurance premium contracts .... $ 507,369

These loans to Capital Company are conventional conforming real estate loans; and the liability of Inter-America Corporation is on contracts of responsible individuals. The items are not classified in the report.

Loan to Pacific Coast Mortgage Company ... $2,903,496

This indebtedness is not properly included in the Transamerica Corporation line. None of this is classified as doubtful or loss.

The remaining items included in the figure of the so-called Transamerica large line are covered by the "Requirements of the Comptroller", and on February 28, 1942, they had been reduced to a balance of $28,600,261, a reduction of $4,823,458 since the last examination. None of these items is adversely classified.

As used in the Comptroller's letter, the figure of $139,388,165 tends to mislead because it includes all of the items appearing in the foregoing tabulation and the remaining items above referred to, amounting to — in total $46,897,522. To make up the larger figure there is added to this latter amount the investment in bank premises and furniture and fixtures amounting to $49,159,907, which is not classified. These banking premises are necessary

38 mil. 85
classified IV

to the proper conduct of the Bank's business and are being carried at sound values and are being depreciated as agreed upon with the Comptroller's office.

Also included in the larger figure is an amount of $35,569,390 in loans classified as II, which loans have been so classified by the Examiner largely, it appears, because he considers that they have slow tendencies and not because of inherent loss possibilities, and an amount of $6,009,271 representing other real estate carried at depreciated conservative values, and against which substantial reserves have been provided.

These not included in total

In the final analysis, the impressive figure of $139,388,165 includes adversely classified assets amounting to only $2,994,991, a relatively small sum, and of this amount $1,242,206, classified as IV, has been charged off, and the remainder, amounting to only $1,752,784, is classified as III or doubtful.

It has never been evident to us that there was a "necessity" for adding to the capital structure of this bank as required by the Comptroller's office. Its capital, exclusive of preferred stock, is now and has been at all times throughout the discussions which preceded the promulgation of the "Requirements" of the Comptroller's office very much in excess of the statutory requirement. It will be recalled that in the numerous conferences that preceded the "Requirements" I and other persons present representing the Bank consistently maintained that no additional capital of any kind was needed, and that it was inequitable to require our institution to provide additional capital when the same requirements were not imposed upon other institutions which had a far lower ratio of capital to deposits than had the Bank of America. It should be obvious that the position taken at that time was fully justified, since in the period of approximately eighteen months between January 31, 1940, the date of the examination which preceded the promulgation of the "Requirements", and August 8, 1941, the date of the most recent examination, $21,448,886 was added to the net sound capital structure, on the Examiner's figures, giving no consideration to the net increases in capital funds resulting from the issuance of preferred stock which, on the latter date, amounted to $27,000,000. This increase in net sound capital structure was almost equal to the net increase in capital funds resulting from the issuance of preferred stock. Between the date of the last examination and February 28, 1942, as computed on the Examiner's formula, there was further substantial improvement, so that on that date the total increase was more than the retirable value of the outstanding preferred stock.

During the conferences none of us contemplated that the preferred stock should remain outstanding for twenty years. As a matter of fact the loan of the Reconstruction Finance Corporation made to finance the preferred stock issue was made on a basis that it would be paid in full in not to exceed ten years. A careful reading of the pertinent provisions of paragraphs 5 and

8 of Article FIFTH of the Amendments to the Articles of Association will reveal the inaccuracy of the conclusion reached by the Comptroller's office in regard to the question of retirement.

It will be noted that paragraph 5 of the Articles of Association approved by the stockholders and by the Comptroller's office provides that the only restriction against the retirement of the preferred stock is that the aggregate amount of capital, surplus, and reserve for increase in common capital shall not be reduced below the aggregate amount of capital and surplus existing immediately after the issuance of convertible preferred stock. Any funds "lawfully available" may be transferred to the preferred stock retirement fund in the discretion of the Board of Directors, provided that not more than $1,000,000 of the undivided profits accounts existing at the time of the issuance of the preferred stock might be so transferred in each of the years ending on June 30, 1941 and 1942. Thus it is apparent that all of the net profits plus those amounts are available for the retirement of preferred stock. There was no other restriction, express or implied, nor was there any agreement in any of our conferences that was or was intended to be inconsistent with the above provisions of the Articles of Association. On December 31, 1941, there was available in the capital structure of the Bank for the retirement of preferred stock, pursuant to the provisions of the Articles of Association, approximately $14,500,000, of which only $3,500,000 was used in connection with the retirement which took place on January 2, 1942, an amount somewhat less than 25% of the amount available.

Under the circumstances, we see no justification for the Comptroller to question the conservatism, wisdom or prudence of those who are responsible for the conduct of the affairs of this bank, and who have established a record of outstanding achievement throughout the past. In view of the fact that assets adversely classified in the last examination amounted to only $3,309,201, now reduced to $1,293,468 principally by the elimination of the IV classification, and the further fact that the Bank's capital funds approximate $160,000,000, it is considered that the statements in the third paragraph of the Comptroller's letter are particularly unfair and unjust.

In the final analysis, when consideration is given to the fact that the Comptroller estimated the Bank's adjusted capital structure at about $93,000,000, as shown in the examination report of March 31, 1939, and to the further fact that the capital structure of the Bank as shown in its annual report on December 31, 1941, was approximately $160,000,000, exclusive of substantial bond appreciation, it is obvious that there was an increase of approximately $40,000,000 without giving effect to preferred stock, or an over-all increase in the period of approximately $67,000,000 - more than 70% - a phenomenal increase in so short a period of time, apart from the question of whether or not classifications at the time were proper.

Not only has the Bank provided a reserve for war contingencies of one-half of the net additions to profits for the year 1941, but it has gone beyond this and has included in this account unallocated reserve to the extent of approximately $5,000,000. The earnings of this bank for a number of years have greatly exceeded those which might normally have been expected of it in comparison with institutions of comparable importance. In the light of this and of our accomplishments since the issuance of the preferred stock and of our compliance with the "Requirements", there appears to be no logical basis for the Comptroller's criticism. We cannot consistently subscribe to a requirement which violates the agreement with the Comptroller's office and the provisions of the Articles of Association heretofore specifically approved by his office. We do not believe that we would be acting in good faith toward those interested in this institution were we to abdicate the authority, powers and responsibilities specifically imposed upon us by the Articles of Association, nor would we be keeping faith with ourselves if we did so.

We sincerely desire to act at all times with the utmost courtesy and consideration toward the Office of the Comptroller of the Currency, and we hope that the continuous harassment to which we have been subjected in recent years may soon be terminated so that we can work in closer harmony in furtherance of the war effort which is so vitally important at this time.

There is no objection to advising the Comptroller's office promptly when transfers are made to the Convertible Preferred Stock Retirement Fund and when convertible preferred stock is retired within the provisions of the Articles of Association, and we want to assure the Comptroller that no such action will be taken outside of the provisions of the Articles of Association without securing the previous approval of his office.

Respectfully yours,

President.

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