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L. M. GIANNINI
THREE HUNDRED MONTGOMERY STREET
SAN FRANCISCO - 4

June 28, 1947

Honorable Chas. W. Tobey
United States Senator
Senate Office Building
Washington, D. C.

Dear Senator Tobey:

In writing to you on June 18 I thought I was placing before you all the facts necessary to obviate any possible misunderstanding of the issues I had raised in my previous telegrams to the committee. However, it seems that it is difficult at this distance to keep abreast of the communications of the proponents of S. 829 and I did not then have before me, as I do now, a copy of the letter dated June 13, 1947 addressed to you by Chairman Eccles. That letter, after presuming to state my attitude and that of Mr. A. P. Giannini towards S. 829 and kindred subjects, is devoted to the issues raised in my first telegram to you, which you received on June 11. I assumed, of course, that Mr. Eccles' full response was contained in the transcript of the June 11 hearing, which was received by me on the 17th. Evidently he realized the inaccuracy of his presentation to the committee and attempted to correct it by his long letter.

I am sorry that Mr. Eccles has construed my statements to you as a personal attack on him. There was no such intention on my part. Since not only my attitude with respect to the bill but the facts known to Mr. Eccles concerning Transamerica Corporation's operations had been misrepresented, I thought it entirely proper to advise you of the facts mentioned in my telegrams and to suggest that Mr. Eccles could supply accurate information about a company with which he was thoroughly familiar and relating to the general subject before your committee. I quite agree with Mr. Eccles that in the holding company field, at least, he is an expert; and now that he has at last spoken authoritatively, though reluctantly, there are some actual facts before the committee that none can dispute. We will note these presently, but first I should like to make some observations concerning my attitude and that of Transamerica as I understand it. Mr. A. P. Giannini can speak for himself if he is so disposed when he returns from South America.

Mr. Eccles says that public regulation of Transamerica has been fought off for many years. This is an astounding statement considering the source from which it comes. Transamerica's shares are

listed on three stock exchanges and the corporation is therefore regulated by the Securities and Exchange Commission as provided in the Securities Exchange Act of 1934, and by the rules and regulations of the exchanges as well. The corporation likewise holds a voting permit to vote the stock it owns in three major national banks, two of which are controlled by it. (Bank of America not being controlled by Transamerica, the statistics on concentration given to the committee are false.) It is therefore subject to examination by the Board of Governors and to all provisions of law and regulations applying to such holding companies. Mr. Eccles' own statement before a committee of the Congress of the United States made in April of 1943, is that up to that time he had made no recommendation for any legislation such as that now before your committee. That was not "many years" ago. In addition to that, Mr. Eccles knows as well as any man in public life in Washington of the extreme measures employed over the past nine years to disrupt the efforts of Transamerica Corporation in the building of sound financial institutions to serve the needs of the masses of people in the rapidly growing and developing area of its operations. Some of these measures proceeded with an utter disregard of realities and of consequences and they were vigorously and successfully resisted. The corporation's position was completely sustained after a long siege of malicious persecution. I think such resistance was highly creditable and if that is what he had in mind in speaking of fighting off public regulation I consider that he has paid the corporation's management an unintended compliment.

Mr. Eccles is very familiar, too, with a type of attempted un-American "public regulation" with which Transamerica has never been in accord and has resisted on all proper occasions. This consists of attempts to force regulated companies to accede to his requests or demands not based on legal authority, accompanied by the threat that unless acceded to the Congress of the United States would be likely to pass some drastic anti-holding company legislation. It has been my belief that administrative bodies should confine their activities to their delegated authority and that Congress is competent to take care of the legislative powers delegated to it by the Constitution. There is fresh in Mr. Eccles' mind, no doubt, one of his attempts to exercise dictatorial and despotic powers with respect to the membership in the Federal Reserve System of one small bank in California, which was resisted in the courts. The language used in a recent opinion of the Court of Appeals of the District of Columbia regarding this attempt is pertinent, I believe, and I shall quote it: "All the Board's power springs from the statute. **** its regulations must fall within the limits of the authorizing statute, and must be such as will carry into effect the will of Congress. The broad discretion confided to the Board of Governors continues only so long as it acts within its statutory scope. When the Board reaches the border of the Federal Reserve Act it must stop, for to go beyond would be to impinge on Congressional prerogatives." I think that is sound policy.

Transamerica has evidenced a disinclination to enter into any diversionary conspiracy to avert the exercise of legislative power. If this is what Mr. Eccles means by resisting "public regulation," again I think he has paid the corporation an unintended compliment.

The charge that Transamerica Corporation is out to defeat uniform and proper regulation of bank holding companies is false and without any foundation in fact. The larger truth is attested by a record for which no apologies need be offered. It cannot be shown that it has ever resisted any lawful regulation, but the corporation has been alert to resist despotic attacks which find no sanction in the law of the land. To it tyranny is hateful, even when accompanied by the beguiling promise of some ultimate gain.

Mr. Eccles seems to resent my reference to S. 829 as being his program and to prove his point he speaks of an array of groups reflecting banking opinion which he says I have ignored. I respectfully call your attention to the fact that much of this support was obtained through his acceptance and subsequent recommendations to the committee of compromising amendments, and some of it -- perhaps most of it -- still raises serious question as to those features of the bill which vest undefined discretionary power that can readily furnish a mask to hide discriminatory action. I do not profess to know what would be the calm judgment of many of the prominent individuals referred to by Mr. Eccles and included in his generalization of support concerning a bill which, with much justification, is becoming known as the "anti-Transamerica bill." I wonder if all of them had observed how some of its provisions are so phrased as to exclude the Eccles Investment Company (the company which owns 44% of the voting stock of the First Security Corporation) from the effects of one of the salient features of the bill -- divorcement of non-banking interests.

Now a word with respect to the First Security Corporation of Ogden, Utah. It is obvious that I was correct in suggesting to the Committee that Mr. Eccles could give full information concerning it. He has quite agreed with that statement -- saying that he organized the company -- and he professed expert knowledge of it. I cannot understand why Mr. Eccles should construe as a personal matter my reference to that company and related companies in which persons associated in its control have an interest. It seemed to me that in pursuing any effort to bring about a divorcement of non-banking from banking interests of those associated in the control of banks there would necessarily be involved a consideration of the manner in which bank control through a holding company is exercised. Thus, if the company itself is subject to control and through it the banks, those having the requisite ownership of voting shares of the company or the requisite controlling influence to all intents and purposes control the subsidiary banks. I knew of the classification

of the stock of the First Security and because of this unusual feature and the professed objectives of the bill I felt justified in calling it to your attention. This fact is now confirmed by Mr. Eccles as he states that the Eccles Investment Company owns "a little more than 4 percent of the outstanding shares of the First Security" and that in that 4 percent there is one-half of 1 percent of the non-voting stock and "44 percent of the voting shares." He further says: "A similar number of its voting shares are owned by another family investment company, the J. J. & M. S. Browning Company." Why should there be any reluctance to mention such facts? Is any company sacrosanct? Judging by the freedom with which Mr. Eccles had spoken of Transamerica I thought the bars were down for open discussion, at least to the extent of considering control mechanisms.

Let us not mince words or become supertechnical or enmeshed in personalities in which I am not at all interested. The bald fact is that if the definition contained in the Public Utility Holding Company Act of 1935 had been employed in S. 829 the Eccles Investment Company would have been automatically classed as a bank holding company because on Mr. Eccles' own statement it owns 44% of the voting shares of a company which is admittedly a bank holding company. Further, Mr. Eccles has left little, if any, room to speculate as to why this definition was not used. That reason appears in his letter wherein he says "the Eccles family /which owns the Eccles Investment Company in which Mr. Eccles says he has a one-ninth interest/ does not control First Security, either directly or through any company." So here we have it on the strength of Mr. Eccles' expert testimony that in one instance with which he is entirely familiar the ownership of 44% of the voting shares of one company does not result in its control, directly or indirectly. Nevertheless, when dealing with companies owning or controlling voting shares in a bank, 15% of the voting shares is taken as the criterion for "automatic coverage." Has Mr. Eccles proposed to except from the effects of this bill a company or companies that control a bank holding company? Let us see what else he says about that.

Mr. Eccles says in his letter that two companies having related interests own 88% of the voting shares of a large bank holding company in equal parts. This, according to S. 829 -- and certainly according to his own statement -- does not result in direct or indirect control of the holding company by either one. But even if it did, says Mr. Eccles, "the matter would still be irrelevant because under the plain terms of S. 829 that company would then also be a bank holding company and as such would be subject to all the regulatory provisions of the bill." I should like to ask by what "plain terms"? Certainly if the draftsmen had used the complete language of the Public Utility Holding Company Act it would have been a holding company by the plain terms of the bill because it would have been covered by virtue of the ownership of 15% or more of the voting shares

of a holding company. But with this language omitted as it was, it will be covered, if at all, only by a decision of the Board of which Mr. Eccles is Chairman, spokesman and a member, to the effect that it exercises a controlling influence. It is conceivable that if and when this bill is passed in the form recommended by Mr. Eccles the Board will be embarrassed in deciding this question of controlling influence by the now expressed expert opinion of Mr. Eccles himself that "the Eccles Company has neither the power to nor does it in fact control First Security" although it alone owns 44% of First Security's voting shares. Mr. Eccles, among those who know him best, whether in Utah or Washington is reputed to have a dominating influence on his associates, and if the words of the Public Utility Holding Company Act had been incorporated in this bill there could be little justification for exempting him personally from the obligations and restrictions imposed by the bill.

Mr. Eccles' letter goes still further and attempts to explain the silence of S. 829 on the subject of voting and non-voting shares of a bank holding company. It says that neither the present bill nor any previous draft of new legislation (several of which have been sponsored by him) contains any such provision and that the reason is found in the declared purpose of S. 829 "to subject the business and affairs of bank holding companies to the same type of examination and regulation as the banks which they control"; also, that in the light of this purpose and in the absence of any requirement of a legislative formula applicable to the stock of national banks respecting voting power, it was not felt that such a requirement should be provided with regard to bank holding companies. This is said in justification of a bill that will not affect an arrangement whereby 4% (or 8% if the related Browning Company interest is included) of the investment in a holding company can absolutely dominate it and the banks it controls without disturbing other extensive interests, according to Mr. Eccles, of such controlling company or companies which he admits his investment company has. This excuse is incredibly flimsy. It furnishes no reason at all and it seems to me it might better have been left unsaid. Now the facts are that in the National Bank Act there have always been provisions whereby the shareholders could vote upon all matters committed to them (such as election of directors, increase or decrease of capital stock, amendments to the articles of association, etc.) in proportion to their ownership of the capital stock. This time-honored formula has never been deviated from. In recent years when Congress authorized national banks to issue preferred stock voting rights were extended to such stock with the approval of the Comptroller of the Currency and the shareholders. The National Bank Act is distinctly not a precedent for the failure to provide in such a bill as S. 829 for equitable distribution of voting power. But even this does not tell the whole story of omissions by experts.

Had the draftsmen been astute to follow the precedent so often adverted to by the proponents of S. 829, they would have found

in Section 11 of the Public Utility Holding Company Act express provisions relating to the subject of distribution of voting power. There it is made the duty of the regulatory body to examine the corporate structure of every registered holding company with a view to eliminating complexities and seeing to it that "voting power /is/ fairly and equitably distributed among the holders of securities thereof." It would seem to me that concentration of 88% of the voting power in 8% of the investment in a holding company that in turn controls many banks would have a rather direct bearing upon "concentration of economic power" which this bill is ostensibly designed to regulate. Just when is economic power unduly concentrated? When it is placed in 8% of the investment or when it is distributed proportionately among 150,000 shareholders as in the case of Transamerica?

Perhaps it is unfortunate that in directing attention to the fact of the exclusion of the Eccles Investment Company from the provisions of the proposed act, as now disclosed by Mr. Eccles himself, a construction should have been placed upon my efforts to the effect that I was "casting innuendos" or impugning motives. But it is at least equally unfortunate that a citizen of the United States, with knowledge of facts bearing upon a legislative proposal, cannot call to the attention of a member or members of the committee having the responsibility of considering legislation facts bearing directly upon its subject matter without loosing a barrage from the sponsor. As I have already said, I am not interested in innuendos or motives. Now that the facts to which I have alluded are out, I trust that all can lay personalities aside and let the facts speak.

You have been most considerate and indulgent in entertaining my former communications and I appreciate your patience and courtesy very much. However, inasmuch as the hearing record is finally closed I shall not further impose upon you but take the liberty of sending a copy of this letter to each member of the committee.

Again with kindest regards, I am

Sincerely yours,

(Signed) L. M. Giannini

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