

C O P Y

BANK OF AMERICA  
National Trust and Savings Association

San Francisco Headquarters

San Francisco, California

Mayflower Hotel  
Washington, D. C.  
February 20, 1940

Mr. C. B. Upham  
Deputy Comptroller of the Currency  
Washington, D. C.

Dear Sir:

This has reference to your letter dated February 16 regarding the proposed proceeding before the special representative of the Comptroller.

The Comptroller's letter of January 11 announced a proceeding to be held before a "special representative of the Comptroller of the Currency". But in his wire of January 20 to the Secretary of the Board of Directors of our Bank he refers to the proceeding as giving the Bank "an opportunity to present before a disinterested tribunal any relevant matter." Without attempting a technical definition of a disinterested tribunal, it seems to me that under the American theory of government a disinterested tribunal is one like a court which is established by constitution or statute, independent of either the executive or the legislative branches of government.

The Comptroller's letter of January 11 gives notice of a possible publication of the report of examination of the Bank as of March 31, 1939 which examination was completed July 21, 1939. Since then, there was completed on December 20, 1939 the report of the examination of the Bank as of August 31, 1939. The December report of examination shows that the July report of examination contains erroneous conclusions and definite misstatements of fact and that the condition of the assets commented on in the July report has improved since March 31, 1939. It is thus evident that publication of the July report of examination would result in misleading the public as to the condition of the Bank. We do not believe that the Comptroller would choose to do that. If it were published, clearly the responsibility therefor would not be that of the Bank or its Directors.

February 20, 1940

The only other "sanction" expressly mentioned in the Comptroller's letter of January 11 is the possible transmittal to the Board of Governors of the Federal Reserve System of "a certificate for the removal of directors and officers of the Bank." We believe that the Comptroller has no authority to do that but that, in conformity with the statute, he "may certify the facts to the Board of Governors of the Federal Reserve System." We understand that such certification is the means provided by law to arrive at a decision on the questions such as those now pending between the Comptroller and the Bank. Since the Comptroller alone has the power to decide whether such a certification shall be made, a proceeding before any other person to that end necessarily would be futile, because such person could not make the decision.

Frankly, we do not understand why the Comptroller should contemplate invoking any "sanctions" against the Bank in view of its continuous and substantial progress. As one item of such progress, the December report shows the adjusted capital structure of the Bank as computed by the National Bank Examiner to be more than \$100,000,000, after giving effect to all deductions made by the Examiner for items classified by him as doubtful or loss, in which classifications we cannot concur. The figure fixed by the Examiner shows an increase of more than \$7,000,000 in five months over the Bank's adjusted capital structure as shown by the Examiner's figures in the next preceding report of examination.

Representatives of the Bank are now engaged in an effort to come to an understanding with the Comptroller. If that effort should fail and the Comptroller should decide to certify the facts to the Board of Governors of the Federal Reserve System, the officers and directors, confident that they are operating the Bank in accordance with law and safe and sound banking practice, will welcome the opportunity to present the matter before that Board in the hope that a hearing there may resolve the existing differences.

Very truly yours,

(Signed) L. M. Giannini

L. M. Giannini, President  
BANK OF AMERICA NATIONAL TRUST  
AND SAVINGS ASSOCIATION.