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San Francisco, California.
October 7, 1940.

Dear Mr. Dreibelbis:

As a background for this correspondence, you may wish to have withdrawn from your files the following:

April 18, 1940, memorandum "Bank of America"
(General Files) by Assistant
General Counsel Dreibelbis;

April 20, 1940, letter from First Vice President
Clerk to Assistant General
Counsel Dreibelbis;

May 2, 1940, letter from Mr. Dreibelbis to
Mr. Clerk, together with--

April 29, 1940, letter from Mr. Clerk to Deputy
Comptroller of the Currency
Mulroney;

May 8, 1940, letter from Mr. Clerk to
Mr. Dreibelbis.

Yours very truly,

(initialed) I

Mr. J. P. Dreibelbis,
Board of Governors of the
Federal Reserve System,
Washington, D. C.

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FEDERAL RESERVE BANK OF SAN FRANCISCO

October 7, 1940

Mr. J. P. Dreibelbis,
Assistant General Counsel,
Board of Governors of the Federal Reserve System,
Washington, D. C.

Subject: Bank of America N.T. & S.A.
Bank Premises

Dear Mr. Dreibelbis:

Shortly after the Committee charged with the duties set forth in Paragraph 5 of the Requirements of the Comptroller of the Currency commenced its work, it became apparent to me that the procedure being followed by the Committee would not reach the goal contemplated.

You will probably recall that I have had correspondence and telephonic conversations with you regarding my misgivings. I have also had telephonic conversations with Governor McKee. On the occasion of his recent visit to the bank, Comptroller of the Currency Preston Delano was made fully acquainted with my views, including the fear that, if the Committee did not have its understandings revised, an unwarranted breach between the management of the Bank of America and the Comptroller would occur. The repair of such a breach could only end in humiliating the Comptroller, which, it seems to me, must be avoided.

Subsequent to the visit of the Comptroller, Chairman Eccles was here, and the opportunity was taken to have Mr. West, Vice President in charge of examinations, and a member of the Committee, obtain an independent view of the understandings leading up to the drafting of Paragraph 5 of the Agreement. After this discussion with Chairman Eccles, Mr. West was convinced that the interpretations of the Agreement given him and other members of the Committee by me were in accord with the understandings reached in Washington.

There is enclosed a copy of a memorandum addressed by Mr. West to me, under date of October 2, which covers an outline of the work of the Committee since its inception. There is also enclosed a memorandum, dated May 8, 1940, prepared by me for the Committee's guidance.

As you participated in the discussions leading up to the language incorporated in Paragraph 5 of the Agreement, I should appreciate your discussing the question with Chairman Eccles and Governor McKee, and tendering my recommendation that Messrs. Wright, Funsten, and West be called to Washington to review, in the presence of Messrs. Eccles, McKee, Bell, Delano, and Crowley, the present status of the Committee's findings. This would afford the San Francisco Committee an opportunity to have settled any divergence of opinion as to the interpretation of the Agreement. Also, it would show that the Washington Committee had been active in seeing that the Bank of America has no proper grounds for charging that unwarranted delays have occurred in enabling the Bank to carry out the terms of the Agreement because the San Francisco Committee lacked proper instructions.

Yours very truly,

(signed) I. Clerk

Enclosures.

First Vice President.

(enclosure with Mr. Clerk's letter of 10-7-40)

October 2, 1940.

MEMORANDUM TO MR. CLERK:

It seems appropriate at this time to review the activities of the committee charged with the responsibility of determining the fair value of bank premises criticized in the August 31, 1939, report of examination of the Bank of America National Trust & Savings Association.

It will be recalled that at the conference in Washington, D. C., last February, which was participated in by representatives of the Bank of America National Trust & Savings Association, the Treasury, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Board of Governors of the Federal Reserve System, there was promulgated what is known as "Requirements of the Comptroller of the Currency", executed in the form of an agreement with the bank, dated March 6, 1940.

This agreement, among other things, provided for the establishment of an unallocated reserve of \$6,900,000, and that such reserve was to be reduced by the difference between the present carrying value of each bank premise and the value of such premise as determined by the committee, in the manner set forth in paragraph 5, reading as follows:

"5. The bank shall, as soon as possible, furnish to a committee composed of the Vice President in Charge of Examinations of the Federal Reserve Bank of San Francisco, or some officer of the bank designated by him, the Supervising Examiner of the Federal Deposit Insurance Corporation for the Twelfth District, and the Chief National Bank Examiner for the Twelfth Federal Reserve District, all obtainable records and information with respect to the acquisition of each banking premise criticized in the report of examination of August 31, 1939, including those shown on the bank's books and in its investment in Merchants National Realty Corporation, dating back to the time such premise was acquired either by the bank or any member (either bank or company) of the group presently or then comprising the Transamerica organization.

"The Committee shall consider the fair value of each premise at the time of such acquisition, and the special conditions which had to be met in fixing the price paid. From these considerations, the committee shall determine the amount which shall be used by the committee as the estimated cost amount of each premise to the bank. The value of each premise shall then be established at such estimated cost amount, plus the amount of any expenditures subsequent to acquisition found by the committee to have been appropriately capitalized, less the appropriate amount of depreciation at the depreciation rate allowed by the Bureau of Internal Revenue for each year of ownership. The unallocated reserve set up by the bank shall be reduced by the difference between the present carrying value of each such premise and the value of such premise as determined by the committee in the manner hereinabove stated. The decision of a majority of the members of the committee shall be binding. The remainder of such reserve, if any, may be returned to the undivided profits account. A partial

release of the reserve, or a decrease in the amount of the reserve to be set up, may be made as soon as that procedure is justified, in the opinion of the committee."

Immediately upon your return from the conference meetings above mentioned, you designated the writer to act as a member of the committee. The other members of the committee are Mr. Irwin D. Wright, Chief National Bank Examiner for the Twelfth Federal Reserve District, and Mr. William P. Funsten, Supervising Examiner of the Federal Deposit Insurance Corporation for the Twelfth District. At the same time you asked the members of the committee to meet with you in order that they might have the benefit of your personal contact during the discussions leading to the final agreement with the bank. At this meeting you emphasized that these discussions provided background for the understanding that the price paid by the bank or any member of its group of organizations, at the time of acquisition, for any criticized premise, plus capitalized improvements to be determined proper by the committee, would be considered as the cost, from which should be deducted appropriate depreciation, and that this formula was to be used as the basis for determining the bank's present carrying values. In those cases where land and building values had not been segregated or had arbitrarily been adjusted by the bank at the time of acquisition, it was understood that the committee should allocate a reasonable value for the land, the balance to be carried as building and appropriate depreciation.

It was agreed that the staff of the Chief National Bank Examiner would analyze the information submitted by the bank and present such analyses to the committee for consideration.

A day or two later an informal meeting of the committee was held, to which Mr. L. M. Giannini, President, and Mr. Russell G. Smith, Executive Vice President, of the Bank of America National Trust & Savings Association were invited. You also attended this meeting. There were again reviewed the discussions of the Washington conference pertaining to the matter of valuation of bank premises, and the bank was requested to furnish the committee with any obtainable information showing the cost to it or any member of its group of organizations in connection with the premises under review. In compliance with the committee's request, the bank subsequently furnished information on Treasury Department Form 1430, supplemental page 14, which it felt met all of the requirements of the agreement to provide data covering the cost of each property at the time it was acquired, supplementing this with figures from ^{an} appraisal report of the American Appraisal Company.

While the figures submitted by the bank as to acquisition cost are not conclusive, the writer feels that it has made reasonable efforts to comply with the agreement in this respect.

Formal meetings of the committee for review of the information submitted by the bank, after analysis had been completed by the staff of the Chief National Bank Examiner, were held as follows:

April 30	May 1	August 22	September 23	October 1
	2	23	24	
	8	24	25	
	9	26	27	
	10			
	13			
	14			
	15			

The work of accumulating and analyzing the information for the consideration of the committee, as may well be understood, was a big assignment and explains why the first formal meeting of the committee for considering such information was not held until April 30. The gap between meetings of May 15 and August 22 may be explained by the fact that there was considerable delay in obtaining additional information requested by the committee from the bank, as well as by the necessity for Mr. Wright's frequent absences from the city. During the early part of August, Mr. Funsten and the writer were also unavailable. At all other times, the latter members of the committee held themselves in readiness to meet for the consideration of any information which Mr. Wright was ready to present.

Early in the deliberations of the committee, there developed a decided difference of opinion as to whether the committee should be bound by any specific formula in the determination of the fair carrying values of each of the criticized premises. It appeared to be the opinion of Mr. Wright and Mr. Funsten that the agreement, as signed, left the committee with full freedom to determine such value as in its judgment it considered to be fair as applied to each property under present conditions. When this discussion arose, you furnished the committee with copies of notes which you had made during the Washington conference, and indicated that only through the establishment of a definite formula was it possible to reach an agreement between the bank and the Comptroller of the Currency. The data furnished by you was submitted by both Mr. Wright and Mr. Funsten to their superiors in Washington for confirmation that the "cost" formula was to be used. Neither was able to obtain a commitment that the committee was to be bound by any formula. In fact, the following telegram from Mr. Preston Delano, Comptroller of the Currency, to Mr. Wright, dated May 2, 1940, indicates the Comptroller's apparent disinclination to make any commitment:

"Acknowledging your telegram of April 30 concerning the interpretation of paragraph five of the quote requirements of the Comptroller of the Currency unquote dated March 6, 1940 it is the opinion here that all questions of this nature should be resolved by the committee composed of yourself Mr. Clerk or his nominee and Mr. Funsten stop. At the time of the drafting of these requirements of the Comptroller it was clearly understood that the committee as named would have a free hand in its deliberations and that its findings would not be reviewed.

DELANO COMPTROLLER"

Notwithstanding this difference of opinion as to the interpretation of the agreement, it was agreed that Mr. Wright's office should develop and analyze the information, both from the "cost-plus" viewpoint and from the point of view of what the other members of the committee considered proper values based on the rule of reason. However, as it has developed, the theory of "cost-plus" has been almost totally disregarded, and in submitting analysis sheets for each of the properties to the committee, there have been allocations of valuations, both as to land and buildings, which in many cases are arbitrary and which,

in the writer's opinion, would be very difficult for the committee to substantiate. It should also be mentioned here that, while the agreement provides the depreciation deduction shall be at the rates allowed by the Bureau of Internal Revenue, such rates have not been used in all instances in the analyses furnished to the committee for consideration.

From the information furnished to the committee, it would appear that there are many instances where the premises are being carried by the bank at values and in amounts considerably in excess of those which prudent management would dictate. However, in view of the bank's apparent understanding with the Federal agencies which formulated the agreement subscribed to, regarding the method to be used in arriving at a fair carrying value, and the difficulties that would result from an attempt to value the properties on a basis of appraisal, it seems to the writer that the formula basis as referred to herein offers the most practical approach to the problem. While this will result in some excess valuation in certain properties under present conditions, a fair allocation of land values in most instances would eventually result in reasonable carrying values through future depreciation charges.

The committee has just finished its final review of the information which has been presented to it, and the result is a loss allocation by the Chief National Bank Examiner of \$6,543,023.08. The writer's impression is that a majority of the committee would be unwilling to concur in a report based on the information as presently developed.

The writer has at all times taken the position that the agreement as finally concluded should be interpreted in the light of the information and background which has been submitted to the committee by you. All of the data and correspondence received from the bank which is in the hands of the committee indicates that the bank unquestionably has the understanding that its original cost figure for each premise should be used as the basis for allocating a fair value of the property at acquisition. The writer has, therefore, pointed out on several occasions that the bank, having received apparent assurances supporting its understanding, might consider any other interpretation as not having been arrived at in good faith and in accordance with the understanding reached in Washington.

As the matter now stands, Mr. Wright is to submit, informally, to the Comptroller of the Currency, the analysis of information prepared on each bank premise, together with a list showing the amount of loss as determined by such analysis, and request his comments. It is the writer's understanding that this information will not be submitted to the Comptroller as having the approval of the committee, but rather as a representation of the Chief National Bank Examiner's views. Mr. Wright stated at the October 1 meeting that he would also write an informal note to Mr. Upham, prior to submission of the information to the Comptroller, stating that there was not agreement among the members of the committee and advising him to be prepared for the informal report, and making the suggestion to Mr. Upham that, if the Comptroller was not in agreement with the analysis, the committee be called to Washington for the purpose of getting the matter straightened out.

(signed) R. B. WEST

May 8, 1940

MEMORANDUM FOR COMMITTEE (Copies delivered to Mr. Wright, Mr. Funsten, and Mr. West)

SUBJECT: Requirements of the Comptroller of the Currency -
Bank of America National Trust & Savings Assn. -
In Relation to Carrying Value of Bank Premises.

In the discussions in regard to the policies followed by the bank in dealing with its banking premises, the following charges had been made by the examiners:

Charge A

That certain banking premises were entered on the books of the Bank of America N. T. & S. A., or of one of its associated predecessors, at a value greater than that paid when acquired in the first instance by a member of the Transamerica family of organizations.

In the course of arguing the merits of this claim, it became obvious that many elements had to be considered in determining the actual price paid for banking premises. It was agreed, however, that a write-up was justified whenever it could be shown that:

1. The purchase price of the shares of the selling bank were increased by the difference between the amount at which the premises were carried on the books of the seller, and the amount agreed upon by specific negotiations as being the fair value of the premises.
2. The premises were carried on the books of the seller at a nominal amount, obviously far below the fair value.
3. The premises were carried on the books of the seller below their fair value because of extraordinary unearned increment.

Charge B

That in entering certain banking premises on the books of the Bank of America N. T. & S. A., or of one of its associated predecessors, a greater value than justified was placed on the land, so as to avoid the annual depreciation charge required on improvements.

It was agreed that the Committee should determine a fair value for the land and require the prescribed depreciation on the improvements.

Charge C

That in acquiring certain sites for FUTURE premises (since improved and occupied), the full purchase price, including the cost of demolishing the old structure, was included and carried as the value of the land.

It was agreed that the price paid for the land and premises, including the cost of demolishing, was to be considered the price paid for the land.

Note: This does not apply to cases in which the bank demolished banking premises being occupied by it to reconstruct a new building. In such

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an instance, the Committee should determine what would be considered a fair value for the land on which to superimpose the cost of constructing the new building.

Charge D

That in certain instances, expenditures had been capitalized which properly should have been charged to current expenses.

It was agreed that the Committee determine which expenditures may properly be capitalized.

Charge E

That certain banking premises had been sold to members of the Trans-america family of organizations for an amount greater than their carrying value, and that subsequently the bank reacquired the same property at the increased sale price.

The Committee was to regard such a transaction as a write-up to be charged against the unallocated reserve of \$6,900,000.

In the discussions between the bank's representatives and those acting as a committee, comprising the Comptroller, the Under Secretary, the Chairman of the Federal Deposit Insurance Corporation, and two members of the Board of Governors, the foregoing expresses briefly the guiding principles for the Committee of three. It will be observed that nothing in the Comptroller's requirements directs the Committee to appraise the present value of premises criticized in the August 31, 1939, report of examination. On the contrary, the burden of the instructions is to determine the fair value of the premises at the time of acquisition, after taking into consideration any special conditions which had to be met in fixing the price paid. Any unwarranted write-up is to be eliminated and the carrying value of the property adjusted by the appropriate depreciation.

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TELEGRAM
BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
Leased Wire Service
Received at Washington, D. C.

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DREIBELBIS

PRONTO. RETEL 9TH. IN MY OPINION COMMITTEE HAS NOT DEVELOPED INFORMATION WHICH COULD BE USED TO ESTABLISH AMOUNT REQUIRED TO BE CHARGED AGAINST SPECIAL RESERVE BASED UPON TERMS OF AGREEMENT AND UNDERSTANDINGS REACHED IN WASHINGTON. FOR THIS REASON NO DEPENDABLE ESTIMATE CAN BE MADE OF DIFFERENCE IN AMOUNTS LIKELY TO BE REACHED ACCORDING TO THE SEPARATE VIEWPOINTS OF COMMITTEE MEMBERS. I AM OF THE FURTHER OPINION THAT USING THE PRESENTLY DEVELOPED INFORMATION WOULD LEAD TO ESTABLISHMENT OF AN AMOUNT SUBSTANTIALLY IN EXCESS OF THAT WHICH MAY BE ESTABLISHED IF ANALYSIS WERE MADE ACCORDING TO AGREEMENT AS UNDERSTOOD BY ME AND OTHERS IN WASHINGTON

CLERK.

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Clinton

TELEGRAM
Board of Governors
of the
Federal Reserve System
Leased Wire Service
Received at Washington, D. C.

1940 OCT 24 AM 9 45

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DREIBELBIS

AT TODAY'S MEETING BANK PREMISES COMMITTEE DECIDED TO RE-ANALYZE
PROPERTY VALUATIONS. HOWEVER THIS SHOULD NOT BE TAKEN AS
INDICATION THAT CONCLUSIONS WILL BE BASED UPON MY UNDERSTANDING
OF WASHINGTON AGREEMENT.

CLERK

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