Draft of letter for the Board acted upon.
Chairman.

The Board believes that, in the interest of all concerned, its position with respect to the problems surrounding Bank of America should be clarified. On September 13 and 16, 1938, Governor Ransom attended meetings called by the Secretary of the Treasury at his office. The discussion at both meetings related to the institution of a proceeding under section 30 of the Banking Act of 1933 to remove officers and directors of the bank from office. Since the institution of such proceedings in the case of a national bank is an exclusive power of the Comptroller of the Currency and since, in the hearing which may follow, the Board's position is analogous to that of a judge, it was the Board's position that it should not express any opinion in advance with respect to whether or not action should be taken under section 30 or with respect to the merits of the charges. It is believed, however, that it made its position clear that it did have responsibilities with respect to and an interest in the affairs of every member bank and this interest could not be disregarded because of the imminence of a section 30 proceeding. The Board does not believe that the responsibility of any one of the supervisory agencies is lessened or that its interest should be diminished because of the existence and possible use of discretionary powers in the hands of another of the agencies.

Supervision of national banks is primarily the responsibility of the Comptroller of the Currency and he is vested with a number of supervisory powers, the exercise of which are necessarily the sole prerogatives of his office. His responsibility, however, is not exclusive. Both the Federal Deposit Insurance Corporation and the Federal Reserve Board also have general and specific supervisory responsibilities with respect to national banks.

Notwithstanding the division of powers and responsibilities in varying degrees among the three agencies, they have a common objective. Recognizing this fact it has been the practice of the Comptroller of the Currency to obtain the comments and suggestions of the Federal Deposit Insurance Corporation and Federal Reserve authorities before issuing a charter for a national bank; it has been the practice of the Board to obtain the comments and suggestions of the Comptroller of the Currency before issuing a permit to a national bank to exercise trust powers or, in cases involving problems, a voting permit to a holding company affiliate; it has been the Board's practice to obtain the comments and suggestions of the Federal Deposit Insurance Corporation before admitting a State bank to membership; and in the case of a problem national bank it has often been the practice for the three agencies to collaborate in working out a program designed to bring about correction.

Since the September 1938 meetings the Board has received copies of reports of examination of the bank and copies of some of the correspondence of the Comptroller with the bank. It has also, from time to time, received communications from the management of the bank enclosing copies of communications to the Comptroller. Recently the management of the bank called upon members of the Board and informally discussed the position of the bank from their viewpoint, at which time they stated that they were considering making a request that the Board examine the bank. The Board does not feel that it is fully informed with respect to the situation and believes that it would be helpful for it to offer its services for the purpose of working out with the other supervisory agencies a program designed to bring about any needed corrections and thus best serve the public interest.

There is nothing inconsistent in the Board's keeping itself informed with respect to the affairs of its member banks, performing its supervisory functions under law, and, at the same time, hearing and deciding a proceeding instituted under section 30 of the Banking Act of 1933.

Those who condemn "administrative law", that is to say the exercise of quasi-judicial powers by an administrative agency of the Government, generally do so upon the grounds that it is a violation of a fundamental principle of natural justice for such an agency to sit as a judge in a cause which it is prosecuting. On the other hand, there must be some reason for the growth of the practice in which agency after agency possessed of quasi-judicial powers has been created and why the courts have dismissed complaints arising out of their acting in the dual capacities with such summary statements as "The criticism that the statute makes the commission both judge and prosecutor is too unsubstantial to justify discussion." National Harness Manufacturers Association v. Federal Trade Commission, 268 Fed. 705, 707.

Aside from the fact that the courts are not equipped to decide the questions with sufficient promptness to meet present needs, there are other good reasons for the administrative process.

Agencies possessing such powers act in the public interest and the powers which they exercise are related to policies which they determine and fix. The powers are the implements with which they enforce their policies. Their respective fields of action are narrow and limited in order that they may attain the expertness which accompanies singleness of purpose, intimate association with the problems and continued exploration of the factual situation within their fields. Indeed, the primary reason for investing them with such powers is because, being experts and professionals, they are better able to obtain and interpret the facts. It would have been a simple matter for Congress, in enacting section 30 of the Banking Act of 1933, to have provided for removal proceeding to be instituted by the Department of Justice and to be heard in the regularly constituted courts, but, instead, it selected the Board.

Since there would appear to be good reason for putting this particular function in a board continuously concerned with the affairs and condition of its member banks (national and State) and continuously engaged in keeping itself informed better to meet its responsibilities, it can hardly be argued that the Board, because it has the function, has less responsibility for keeping itself informed or exercising its other functions. Nor can it be fairly said that because it exercises its other functions or because it keeps itself informed concerning the affairs of its member banks that it cannot, if and when the occasion arises, conduct a hearing under section 30 and fairly and impartially decide the issues involved. Especially would this seem to be true when it can remove an officer or director from office only when it has found certain facts (in itself a limitation) and when its findings of fact are based only upon evidence which the accused officer or director has been given an opportunity to hear and rebut.

One of the avowed purposes of the Federal Reserve Act was "to establish a more effective supervision of banking" and, under it the Federal Reserve Board, as well as the Federal Deposit Insurance Corporation, has supervisory responsibilities with respect to national banks.

For instance, the Federal Deposit Insurance Corporation may proceed for the termination of a national bank's deposit insurance, a proceeding which, if the insurance is terminated, results in the appointment of a receiver. Enumerating some of the major supervisory functions of the Federal Reserve Board it may be noted that the Board, upon its own motion, may examine national banks and require reports of condition. It may direct suits by the Comptroller of the Currency for the forfeiture of the charter of a national bank for noncompliance with the provisions of the Federal Reserve Act. When the Comptroller of the Currency has certified the facts to the Board, derelict officers and directors of a national bank, after notice and hearing by the Board, may be removed from office upon its order. Federal Reserve banks are required to keep themselves informed of the general character and amount of loans and investments of national banks and to give to the Board such information as may be demanded concerning the condition of national banks in their district. The right of a national bank to use the credit facilities of the Reserve System, under some circumstances, may be suspended by the Board. The Board grants permits to national banks to exercise trust powers and issues regulations designed to enforce compliance with the law and to secure the proper exercise of trust powers. It is charged with the enforcement of the Clayton Act dealing with interlocking directorates. Finally, voting permits to holding company affiliates of national banks are issued by the Board upon conditions partly imposed by statute and partly by the Board, one of its standard conditions being as follows:

> "That the undersigned (holding company) will take such action within its power as may be necessary to cause each of its subsidiary banking institutions to maintain a sound financial condition and to cause the net capital and surplus funds of each such subsidiary banking institution to be adequate in relation to the character and condition of its assets and to the deposit liabilities and other corporate responsibilities of such subsidiary banking institution."