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THE COMPTROLLER OF THE CURRENCY
Washington

February 21, 1940

Honorable Marriner S. Eccles
Chairman, Board of Governors
Federal Reserve System
Washington, D. C.

Dear Mr. Chairman:

There are enclosed herewith for your files
copies of the following correspondence pertaining
to the Bank of America N. T. & S. A. matter:

Feb. 14, 1940 Letter to the Comptroller from
Mr. Cushing

Feb. 16, 1940 Letter from the Deputy Com-
ptroller to Mr. Cushing

Feb. 20, 1940 Letter from L. M. Giannini
to Mr. Upham.

Very sincerely yours,

(signed) Preston Delano

Encls.

Preston Delano

C O P Y

CUSHING & CUSHING
Attorneys at Law
1 Montgomery Street
San Francisco, Cal.

Mayflower Hotel
Washington, D. C.
February 14, 1940

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

Dear Sir:

This has reference to your communication to the Bank of America N. T. & S. A. and its Directors dated January 11, 1940 in which you announce a proceeding for the purposes specified in your communication, on February 14 before Henry M. Bates as your special representative.

We believe you have been advised by Mr. Everard, the Secretary of the Bank, that we are authorized to represent the Bank and its Directors.

12 U.S.C.A., Section 484 provides that "No bank shall be subject to any visitorial powers other than such as are authorized by law * * *." In our opinion, the proposed proceeding involves the exercise of visitorial powers which are not authorized by law and any decision of your representative would have no legal validity and would bind neither you nor the Bank.

One purpose of the proceeding, as described in your communication, relates to the possibility of a hearing before the Board of Governors of the Federal Reserve System pursuant to a statute (12 U.S.C.A., Section 77) which prohibits publicity of any order of the Board and findings of fact upon which it is based. The publicity that has already been given to your notice of the proposed proceeding seems to run counter to that statute.

The Bank, of course, is willing to give you any information for which you may ask concerning its business or affairs, but the Bank and its Directors very respectfully decline to participate in this proceeding.

Yours very respectfully,

CUSHING & CUSHING

By s/ O. K. Cushing

C O P Y

February 16, 1940

O. K. Cushing, Esq.
Mayflower Hotel,
Washington, D.C.

Dear Mr. Cushing:

In the Comptroller's absence I am acknowledging your letter of February 14, 1940 declining on behalf of the Bank of America N.T. & S.A. and its directors to participate in the proceeding before Henry M. Bates as his representative, which was scheduled to commence on February 14, 1940 and which is now under way. The reasons which you give for not participating are, briefly, first, that the proceeding involves the exercise of visitorial powers not authorized by law, and second, that the publicity already given the proceeding runs counter to law.

As was pointed out in the Comptroller's telegram of January 20, 1940 to Mr. Everard, Secretary of the Board of Directors of the Bank, the purpose of the proceeding was to provide the Bank and its directors with an opportunity to present before a disinterested tribunal any relevant matter before final action is taken by the Comptroller with respect to sanctions authorized by law. It seems obvious that a proceeding of this character does not involve in any way the exercise of unauthorized visitorial powers. The responsibility for declining to take advantage of the opportunity thus offered them is one which must be borne by the Bank and its directors.

I am sure that the Comptroller shares your regret with reference to the publicity that has been given in the press to the proceeding. However, I repeat the assurance which was given you in the Comptroller's office that no one connected with the Treasury Department is responsible in any way for the publicity, and any implication in your letter to the contrary is in fact without any foundation whatsoever.

Very sincerely yours,

Deputy Comptroller of the Currency

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CC Cushing & Cushing,
1 Montgomery St.,
San Francisco, California.

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.

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.