

For IMMEDIATE Release Friday, November 25, 1938

SECURITIES AND EXCHANGE COMMISSION
Washington

Securities Exchange Act of 1934
Release No. 1950

UNITED STATES OF AMERICA
BEFORE THE SECURITIES AND EXCHANGE COMMISSION

At a regular session of the Securities and Exchange Commission, held at its offices in the City of Washington, D. C., on the 22nd day of November, A. D., 1938.

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| In the Matter of | : |
| Proceeding under Section 19(a)(2) of the Securities Exchange Act of 1934, as amended, to determine whether the registration of | : ORDER FOR HEARING AND DESIGNATING OFFICER TO TAKE TESTIMONY |
| TRANSAMERICA CORPORATION | : |
| CAPITAL STOCK, \$2 PAR VALUE | : File No. 1-2964 |
| should be suspended or withdrawn | : |

It appearing to the Commission that Transamerica Corporation is the issuer of Capital Stock, \$2 par value, and that said Transamerica Corporation registered 11,590,784 shares of such stock on the New York Stock Exchange, the Los Angeles Stock Exchange, and, by amendment, on the San Francisco Stock Exchange, all national securities exchanges, by filing on or about August 7, 1937, an application on Form 24 signed for the Corporation by John M. Grant, President, with the said exchanges and with the Commission pursuant to Section 12(b) of the Securities Exchange Act of 1934, as amended, and pursuant to Rule JBl (now Rule X-12B-1) as amended, promulgated by the Commission thereunder, which application became effective September 10, 1937; and

The Commission having reasonable grounds to believe that Transamerica Corporation has failed to comply with the provisions of Section 12(b) of the Securities Exchange Act of 1934, as amended, the rules, regulations, Form 24 and the Instructions thereto, promulgated by the Commission thereunder, in that the application for registration on Form 24 and the amendments thereto, filed by said Corporation contain false and misleading statements of material

facts, including financial statements of said Corporation and its subsidiaries, which do not correctly reflect the true financial condition of the Corporation and its subsidiaries, all as hereinafter more particularly set forth:

The false and misleading statements which the Commission has reasonable grounds to believe exist in the application on Form 24 and the amendments thereto being more particularly as follows:

- I. Item 4(b) and Item 11, Col. G call for certain information with respect to all parents of the registrant. The Instructions to Form 24 define the term "parent" to include a person in control of the registrant and the term "control" is defined to mean "the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise."

The Commission has reasonable grounds to believe that in 1934 general proxies, to remain in full force and effect, unless revoked, for a term of seven years, were delegated to a Committee composed of A. P. Giannini, John M. Grant and L. M. Giannini, that such proxies were voted at the annual meeting of stockholders on March 29, 1934, and were in effect at the date of the application on Form 24, and that at such date these proxies conferred upon A. P. Giannini, John M. Grant and L. M. Giannini the power to direct the management and policies of the registrant. It therefore appears to the Commission that the failure in Item 4(b) and Item 11, Col. G to disclose the committee composed of A. P. Giannini, John M. Grant and L. M. Giannini as a parent of the registrant constitutes an omission of a material fact.

- II. Item 28 and Item 29 call for information with respect to the remuneration paid by the registrant and its subsidiaries to certain of its officers, directors and employees.

The Commission has reasonable grounds to believe that on January 20, 1930, the sum of \$1,400,000 was placed on the books of Bankitaly Company of

America (then a subsidiary of Transamerica Corporation) to the credit of A. P. Giannini; that of this \$1,400,000 all but \$792,000 had been paid to A. P. Giannini, by September, 1931, at which time counsel for the then existing management of Transamerica Corporation advised that further payment would be illegal; that thereafter subsequent to the change in management in 1932, A. P. Giannini withdrew from the balance of \$792,000 the following sums:

| | |
|--------|--------------|
| 1932 - | \$134,826.58 |
| 1933 - | 132,896.92 |
| 1934 - | 100,596.24 |
| 1935 - | 251,952.03 |
| 1936 - | 65,914.28 |

It appears to the Commission that the failure to disclose these facts in Items 28 and 29 renders registrant's response to these items materially misleading.

III. With respect to the "Balance Sheet" of Transamerica Corporation as of December 31, 1936 -

- A. In Schedule VI the figure \$1,171,714.56 is set forth as a charge to "Paid-In Surplus" in 1936 under the caption "Charge resulting from cancellations and redistribution of capital stock."

The Commission has reasonable grounds to believe that of this amount \$1,124,724.73 represents commissions and other monies paid by Transamerica Corporation to Associated American Distributors, Inc. (at that time a wholly-owned subsidiary of Inter-Continental Corporation which was itself a wholly-owned subsidiary of Transamerica Corporation), in connection with the following activities:

From 1934 to April 1937, Associated American Distributors, Inc. engaged in the business of soliciting orders to purchase Transamerica Corporation stock on the various stock exchanges on which such stock was listed. It does not appear that in any case Associated American Distributors, Inc. solicited orders for the

purchase of capital stock held by Transamerica Corporation. The solicitations were effected by means of contracts entered into by Associated American Distributors, Inc. with independent dealers and through a large number of salesmen employed directly by Associated American Distributors, Inc. Associated American Distributors, Inc. paid commissions to the dealers and to its salesmen for the orders obtained and, to encourage retention of the stock so purchased, additional commissions were paid in proportion to the duration of "placements." To support these activities, Transamerica Corporation paid the following amounts to Associated American Distributors, Inc.: In 1934, \$336,857; in 1935, \$891,202.17; in 1936, \$1,124,724.78. These payments were treated by Associated American Distributors, Inc. as current earnings and were set up on its books as income in the years received.

In the light of the facts set forth above, it appears to the Commission that the commissions and other monies paid to Associated American Distributors, Inc., in the amount of \$1,124,724.78 in 1936, represent a current expense properly chargeable to profit and loss and that registrant's treatment of this item as a charge to "Paid-In Surplus" and its failure to reflect this item as a current expense with a consequent reduction in "Earned Surplus" renders the "Balance Sheet" and Schedule VI materially misleading.

IV. With respect to the "Profit and Loss Statement" of Transamerica Corporation -

- A. Schedule VI sets forth as charges to "Paid-In Surplus" under the caption "Charge resulting from cancellations and redistribution of capital stock" the figures \$495,152.72 in 1934, \$891,202.17 in 1935 and \$1,171,714.56 in 1936.

The Commission has reasonable grounds to believe that of these figures \$336,857 in 1934, \$891,202.17 in 1935, and \$1,124,724.78 in 1936 represent commissions and other monies paid by Transamerica Corporation to Associated American Distributors,

Inc. (then a wholly-owned subsidiary of Inter-Continental Corporation which was itself a wholly-owned subsidiary of Transamerica Corporation) in connection with the activities described above in paragraph III-A. In the light of the facts and for the reasons set forth above in paragraph III-A, it appears to the Commission that registrant's treatment of these items renders the profit and loss statements for 1934, 1935, and 1936 materially misleading.

V. With respect to the "Balance Sheet" of Inter-America Corporation as of December 31, 1936 -

A. Under the caption "Reserves - For liability and possible loss under outstanding contract of guaranty", and in Schedule V relating to additions and charges to "Reserves", there is set forth the figure \$9,302,381.82. The accompanying Note states that this amount relates to a contract of guaranty given to Bank of America N.T. and S.A. in connection with certain assets of the Bank.

The Commission has reasonable grounds to believe that certain facts having a material bearing on this matter are as follows:

In 1931, in the course of an examination of Bank of America N.T. & S.A., the national bank examiners classified certain assets of the Bank in the face amount of approximately \$35,214,000 as losses and doubtful accounts of such unsatisfactory character as to require their elimination from the Bank's balance sheet. Under three contracts dated June 26, 1931, December 31, 1931, and February 13, 1932, Bank of America N.T. & S.A. and Corporation of America (both of which were at that time 99.65% owned by Transamerica Bank Holding Company, itself a wholly-owned subsidiary of Transamerica Corporation), entered into agreements which provided that Bank of America N.T. & S.A. "agrees to sell, transfer and set over and does hereby sell, transfer and set over to the Corporation, and the Corporation agrees to purchase and does hereby purchase from the Bank" all such assets. As consideration

for these assets, Corporation of America agreed to pay the face amount of \$35,214,000. To secure performance Corporation of America pledged with the Bank the assets purchased together with additional collateral. Corporation of America failed to give effect on its books to the assets acquired by these contracts of purchase and sale or to reflect any direct liability thereunder, but apparently treated the obligation arising under the contracts as a guaranty by setting up a reserve from capital surplus in an amount approximately equal to the aggregate purchase price under the contracts.

In 1933, the three contracts were transferred to Transamerica Bank Holding Company, and Transamerica Bank Holding Company by a resolution of its Board of Directors, dated August 30, 1933, agreed to "assume all of the obligations of Corporation of America under those three certain contracts between said Corporation of America and Bank of America N.T. & S.A." In connection with this transfer, Corporation of America eliminated the reserve set up to cover its obligation under the contracts, then aggregating approximately \$34,994,378.57, and a reserve in the same amount appeared on the books of Transamerica Bank Holding Company. At a "Special Stockholders Meeting" on April 20, 1935, the name of Transamerica Bank Holding Company was changed to Inter-America Corporation. From time to time Bank of America N.T. & S.A. reduced the item set up on its books to reflect the obligation of Inter-America Corporation under the three contracts by a write-up of unrelated assets and by various other means as set forth below under paragraphs VII to XI, and XV to XVII, both inclusive.

In the light of the facts set forth, it appears to the Commission that the items "Reserves - For liability and possible loss under outstanding contract of guaranty" together with the accompanying Note, Schedule V, and the "Balance Sheet" are materially misleading:

1. In treating the contracts described and the obligation of Inter-America Corporation thereunder as a guaranty rather than as a purchase and sale which should have been recorded by setting up the assets purchased with a corresponding direct liability for the purchase price and, in view of the character of the assets, a reserve for the losses which would be borne by Inter-America Corporation;

2. In that the amount set up as "Reserves" for this obligation does not reflect the true amount of the liability due nor the possible losses under the contracts;
3. In the use of the term "recoveries" in Schedule V as charges to the "Reserve" originally set up to cover Inter-America's obligation under the three contracts, in that the term "recoveries" fails to indicate and falsifies the true nature of the reduction of Inter-America's obligation by conveying the impression of actual cash recoveries on assets written down, whereas in fact the "recoveries" were accomplished by the write-up by Bank of America N.T. & S.A. of unrelated assets as set forth below in paragraphs VII to XI and XV to XVII, both inclusive.

VI. With respect to the "Balance Sheet" of Transamerica General Corporation as of December 31, 1936 -

- A. Under the caption "Investments in Securities of Affiliates" and in Schedule II there is set forth the figure \$8,982,180.20 as the carrying value of the investment in the capital stock of Banca d'America e d'Italia.

The Commission has reasonable grounds to believe that certain restrictions imposed by the Italian Government upon the transfer of any profits or other funds from Italy to any other country materially affects this investment. It therefore appears to the Commission that it is materially misleading to set forth the figure \$8,982,180.20 as the carrying value of the investment in the capital stock of Banca d'America e d'Italia without indicating the effect that the restrictions referred to above may have upon the investment.

VII. With respect to the "Combined Report of Condition" of Bank of America N.T. & S.A., First National Bank in Reno, Bank of America (California) as of December 31, 1936 -

- A. The item "Loans and discounts" under "Assets" and in Schedule E is stated to be \$539,899,100.65. This figure includes, among other things, loans in the amount of \$304,674,551.73 on "farm lands" and "other real estate." The Commission has

reasonable grounds to believe that the item of \$539,899,100.65 includes estimated losses and doubtful accounts aggregating in excess of \$8,000,000 and slow accounts in excess of \$125,000,000 held by Bank of America N.T. & S.A. Registrant has failed to disclose these losses, doubtful items and slow accounts in the "Report of Condition", either in Schedule E or elsewhere in the registration statement, has failed to provide any reserve for such losses and doubtful accounts, and, in the supplementary data furnished in accordance with paragraph I(5) of the Instructions as to Financial Statements in the Instruction Book for Form 24, has affirmatively stated that there are no losses on loans and discounts not provided for.

- B. "United States Government obligations, direct and/or fully guaranteed" and "Other bonds, stocks and securities" are set forth under "Assets" and in Schedule F and Schedule G at \$478,019,771.38 and \$175,078,108.60, respectively. The Commission has reasonable grounds to believe that these items include United States Government and Municipal securities held by Bank of America N.T. & S.A. which were written up in 1935 and 1936 to the extent of approximately \$14,000,000 and which at the date of the "Report of Condition" included an unrealized appreciation of approximately \$9,000,000. The registrant has failed to disclose this fact in either Schedule F, Schedule G, the supplementary data furnished in accordance with paragraph I(5) of the Instruction Book for Form 24, or elsewhere in the registration statement.
- C. The only provision for a reserve, captioned "Reserve for contingencies", is set at \$2,049,928.01. The Commission has reason to believe that \$1,971,058.48 of this figure is applicable to Bank of America N.T. & S.A., and that of this \$1,971,058.48, approximately \$1,460,000 is a reserve for self-insurance. The Commission further has reason to believe that this reserve is misleading because of its inadequacy -

1. In failing to provide for losses and doubtful accounts of Bank of America N.T. & S.A. other than loans on "farm lands" and "other real estate" included in the "Assets" to the extent of approximately \$8,000,000;
 2. In failing to provide sufficient reserves for the \$304,674,551.73 of loans on "farm lands" and "other real estate";
 3. In failing to provide for losses on real estate other than bank premises held by Bank of America N.T. & S.A. to the extent of approximately \$1,600,000;
 4. In failing to provide sufficient depreciation for bank premises, furniture, and fixtures of Bank of America N.T. & S.A.;
 5. In failing to provide for losses on bonds and other securities held by Bank of America N.T. & S.A. to the extent of approximately \$400,000 and for losses on other asset items to the extent of approximately \$300,000.
- D. "Undivided profits - net" is set forth at \$22,503,612.05. The Commission has reasonable grounds to believe that this figure is false and misleading. -
1. In that it includes approximately \$9,000,000 of unrealized appreciation resulting from the \$14,000,000 write-up in 1935 and 1936 of United States and Municipal securities held by Bank of America N.T. & S.A.;
 2. In failing to include a reserve for losses and doubtful accounts, losses on real estate, depreciation of bank premises, furniture and fixtures of Bank of America N.T. & S.A. and losses on securities and other assets in excess of \$13,000,000;
 3. In that the total of (1) and (2) would wipe out that portion of the "Undivided profits - net" which may be attributed to Bank of America N.T. & S.A. and would require a reduction of the "surplus" account of Bank of America N.T. & S.A.

VIII. With respect to the "Combined Report of Earnings and Dividends" for Bank of America N.T. & S.A., First National Bank In Reno and Bank of America (California) -

A. For the year ended December 31, 1935 -

1. The items "Recoveries on bonds, stocks and other securities" and "Profits on securities sold" are stated to total \$14,942,992.67. The Commission has reason to believe that this figure includes unrealized appreciation of approximately \$7,000,000 resulting from an approximately \$8,000,000 write-up in 1935 of United States Government and Municipal securities held by Bank of America N.T. & S.A., and, in addition, includes a substantial amount of unrealized appreciation resulting from the write-up of certain Transamerica Corporation stock held by Bank of America N.T. & S.A. as collateral for written off loans, and that the inclusion of this unrealized appreciation as income is false and misleading;
2. The provision for loss and depreciation on "banking house, furniture and fixtures" is set at \$1,055,223.40. The Commission has reason to believe that this figure is inadequate;
3. The deficiencies set forth in (1) and (2) are reflected in the statement of net profits and undivided profits and render these items false and misleading to an amount in excess of \$7,000,000. It appears that the dividends paid in 1935 by Bank of America N.T. & S.A. were more than \$3,500,000 in excess of its actual current earnings.

B. For the year ended December 31, 1936 -

1. The item "Recoveries on bonds, stocks and other securities" is stated to be \$8,309,400.26. The Commission has reasonable grounds to believe that this figure includes unrealized appreciation of approximately \$2,000,000 resulting from a \$6,000,000 write-up in 1936 of United States Government and Municipal securities held by Bank of America, N.T. & S.A., and, in addition, includes a substantial amount of unrealized appreciation resulting from the write-up of certain Transamerica Corporation stock held by Bank of

America N.T. & S.A. as collateral for written off loans, and that the inclusion of this unrealized appreciation as income is false and misleading;

2. The report of Earnings and Dividends further appears misleading in that no provision from earnings has been made for doubtful accounts and uncollectible foreign credits held by Bank of America N.T. & S.A. which the Commission has reasonable grounds to believe aggregated approximately \$3,700,000;
3. The provision for losses and depreciation on "banking house, furniture and fixtures" is set at \$1,082,748.86. The Commission has reasonable grounds to believe that this figure is inadequate.
4. The deficiencies set forth in (1), (2) and (3) are reflected in the statement of net profits and undivided profits and render these items false and misleading to an amount in excess of \$6,000,000. It appears that the dividends paid in 1936 by Bank of America N.T. & S.A. were more than \$1,500,000 in excess of its actual current earnings.

IX. With respect to the "Balance Sheet" of California Lands, Inc., as of December 31, 1936 -

- A. Schedule VII relating to "Surplus" sets forth as an addition to "Earned Surplus" under the caption "Profit on sale of assets purchased from affiliate" the sum of \$297,918.26. The accompanying Note states that this amount represents the excess of realization over the cost to California Lands, Inc. of an undivided one-half interest in certain notes, parts of notes, deficiency judgments, etc., theretofore written off on the books of Bank of America N.T. & S.A. and purchased from the Bank by Inter-America Corporation and from Inter-America Corporation by California Lands, Inc.

The Commission has reason to believe that certain facts having a material bearing on this matter are as follows:

on February 1, 1933, Bank of America N.T. & S.A. sold to Corporation of America (both of which were at this time 99.65% owned by Transamerica Bank Holding Company, itself a wholly-owned subsidiary of Transamerica Corporation), for a consideration of \$250,000, all of the Bank's charged off assets, including those to be charged off up to July 1, 1933. This agreement was transferred for the same consideration to Transamerica General Corporation and then to Transamerica Bank Holding Company (both wholly-owned subsidiaries of Transamerica Corporation). On January 2, 1934, Bank of America N.T. & S.A. sold to Transamerica Bank Holding Company for a consideration of \$50,000 all of the assets of the Bank charged off from July 1, 1933, to July 1, 1937. At a Special Stockholders Meeting on April 20, 1935, the name of Transamerica Bank Holding Company was changed to Inter-America Corporation.

On October 1, 1936, Inter-America Corporation transferred the charged off assets covered by the two aforementioned agreements to California Lands, Inc. and Capital Company (both wholly-owned subsidiaries of Transamerica General Corporation which corporation was 100% owned by Transamerica Corporation) for an aggregate consideration of \$500,000.

On July 14, 1937, California Lands, Inc. and Capital Company transferred these same assets less \$1,486,185.67 collected by Inter-America Corporation (for the account of California Lands, Inc. and Capital Company) to Bank of America N.T. & S.A. for a consideration of \$6,500,000. Thus, in 1937, Bank of America N.T. & S.A. paid \$6,500,000 for a portion of the same assets which the Bank had originally sold in 1933 and 1934 for \$300,000.

As part of this same transaction, Transamerica Corporation entered into an agreement guaranteeing the Bank against loss to the extent of \$6,500,000 on the charged off assets repurchased.

In the light of the facts set forth above, it appears to the Commission that the figure \$297,918.26 set forth in Schedule VII as "Earned Surplus" under

the caption "Profit on sale of assets purchased from affiliate", together with the accompanying Note, and the inclusion of this amount in the "Earned surplus - deficit" in the "Balance Sheet" are materially misleading.

X. With respect to the "Balance Sheet" of Capital Company as of December 31, 1936 -

A; Schedule VII relating to "Surplus" sets forth as an addition to "Earned Surplus" as "Profit on sale of assets purchased from affiliate" the sum of \$297,919.23. The accompanying Note states that this amount represents the excess of realization over the cost to Capital Company of an undivided one-half interest in certain notes, parts of notes, deficiency judgments, etc., theretofore written off on the books of Bank of America N.T. & S.A. and purchased from the Bank by Inter-America Corporation and from Inter-America Corporation by Capital Company.

In the light of the facts set forth above under paragraph IX-A, it appears to the Commission that the figure \$297,919.23 set forth in Schedule VII as "Profit on sale of assets purchased from affiliate" together with the accompanying Note, and the inclusion of this amount as "Earned Surplus" in the "Balance Sheet" are materially misleading.

It appearing to the Commission that pursuant to Section 13(a) and (b) of the Securities Exchange Act of 1934, as amended, and Rules KA1 and KA2 (now Rules X-13A-1 and X-13A-2) promulgated by the Commission thereunder, Transamerica Corporation filed on or about June 27, 1938, its annual report on Form 24-K for the fiscal year ended December 31, 1937, signed for the Corporation by John M. Grant, President; and

The Commission having reasonable grounds to believe that said Transamerica Corporation has failed to comply with the provisions of Section 13(a) and (b) of the Securities Exchange Act of 1934, as amended, the rules, regulations, Form 24-K and the Instructions thereto, promulgated by the Commission thereunder, in that the annual report on Form 24-K filed by said Transamerica Corporation contains false and misleading statements of material facts including financial statements of said Transamerica Corporation and its subsidiaries, which do not correctly reflect the true financial condition of the Corporation and its subsidiaries, all as hereinafter more particularly set forth;

The false and misleading statements which the Commission has reasonable grounds to believe exist in the annual report referred to above being more particularly as follows:

XI. With respect to the "Balance Sheet" of Transamerica Corporation as of December 31, 1937 -

A. Note B referring to the items captioned "Marketable Securities" and "Investments in Securities of Affiliates" states that securities having a market value of \$1,338,835 and investments in securities of affiliates having a carrying value of \$5,636,576.32 were pledged as security "(1) in connection with a contract of guarantee and (2) on an option to purchase certain securities." Note I referring to "Contingent Liabilities" states that "At December 31, 1937, the Corporation was reported as being contingently liable [sic] under certain conditions of contract in the amount of \$5,838,123.74."

1. The Commission has reasonable grounds to believe that certain additional facts having a material bearing on the "contract of guarantee" referred to in Note B are as follows:

In connection with the transactions described above under paragraph IX-A, in which a portion of the charged off assets of Bank of America N.T. & S.A., originally sold by the Bank in 1933 and 1934 for an aggregate consideration of \$300,000, were repurchased by the Bank on July 14, 1937, from California Lands, Inc. and Capital Company for a consideration of \$6,500,000, Transamerica Corporation entered into an agreement guaranteeing the Bank against loss to the extent of \$6,500,000 on the assets repurchased. The reference in Notes B and I to a "contract of guarantee" apparently refers to this agreement.

In the light of the facts set forth above in this paragraph and in paragraph IX-A, and in the light of the apparent disparity between the actual value of the assets repurchased by the Bank and the amount of recovery guaranteed by Transamerica Corporation, it appears to the Commission that Notes B and I and the "Balance Sheet" are grossly inadequate to reflect the nature of Transamerica's obligation under the contract of guarantee.

2. The Commission has reasonable grounds to believe that certain additional facts having a material bearing on the "option to purchase certain securities" referred to in Note B are as follows:

In July, 1937, Bank of America N.T. & S.A. purchased from Transamerica Corporation 56,600 shares of stock of National City Bank at the then market price of \$48 per share. It appears that the stock purchased was set up on the books of Bank of America N.T. & S.A. at \$2,716,800, the purchase price, and that payment was made by crediting \$2,716,800 to Inter-America Corporation to reduce by that amount the balance of the \$35,214,000 obligation originally undertaken by Inter-America Corporation under the circumstances set forth in paragraph V-A. As part of the contract of purchase and sale of National City Bank stock, Transamerica Corporation agreed to repurchase the stock at \$48 per share over a period of 5 years at the rate of 11,320 shares each year, and pledged an additional block of 18,400 shares to secure this agreement. It further appears that on December 31, 1937, the market value of National City Bank stock was approximately \$27 per share. The reference in Note B to "an option to purchase certain securities" apparently relates to this transaction.

It appears to the Commission that the foregoing transaction was a device employed in an attempt to reduce or eliminate the balance of the obligation originally undertaken by Inter-America Corporation, and that the designation and treatment of this transaction as an "option" and the failure to disclose the additional information set forth above and the circumstances surrounding this transaction render Notes B and I and the "Balance Sheet" materially misleading.

- B. In Schedule VIII the figure \$444,000 is set forth as a charge to "Paid-In Surplus" in 1937 under the caption "Contribution to Associated American Distributors (Incorporated) in connection with redistribution of capital stock."

The Commission has reasonable grounds to believe that this amount represents commissions and other monies

paid by Transamerica Corporation to Associated American Distributors, Inc., (then a wholly-owned subsidiary of Inter-Continental Corporation which was a wholly-owned subsidiary of Transamerica General Corporation, itself a wholly-owned subsidiary of Transamerica Corporation) in connection with the activities described above in paragraph III-A.

In the light of the facts and for the reasons set forth above in paragraph III-A, it appears to the Commission that registrant's treatment of this item renders the "Balance Sheet" and Schedule VIII materially misleading.

XII. With respect to the "Profit and Loss Statement" of Transamerica Corporation -

- A. In Schedule VIII the figure \$444,000 is set forth as a charge to "Paid-In Surplus" in 1937 under the caption "Contribution to Associated American Distributors (Incorporated) in connection with re-distribution of capital stock."

The Commission has reasonable grounds to believe that this amount represents commissions and other monies paid by Transamerica Corporation to Associated American Distributors, Inc., (then a wholly-owned subsidiary of Inter-Continental Corporation which was a wholly-owned subsidiary of Transamerica General Corporation, itself a wholly-owned subsidiary of Transamerica Corporation) in connection with the activities described above in paragraph III-A.

In the light of the facts and for the reasons set forth in paragraph III-A, it appears to the Commission that registrant's treatment of this item renders the "Profit and Loss Statement" and Schedule VIII materially misleading.

XIII. With respect to the "Balance Sheet" of Inter-America Corporation as of June 30, 1937 -

- A. Under the caption "Reserves - For liability and possible loss under outstanding contract of guaranty", and in Schedule VI relating to additions and charges to "Reserves", there is set forth the figure \$8,561,099.82.

In the light of the facts set forth above under paragraph V-A, it appears to the Commission that the items "Reserves - For liability and possible loss under outstanding contract

of guaranty", Schedule VI, and the "Balance Sheet" are materially misleading:

1. In treating the contracts described in paragraph V-A and the obligation of Inter-America Corporation thereunder as a guaranty rather than as a purchase and sale which should have been recorded by setting up the assets purchased with a corresponding direct liability for the purchase price, and, in view of the character of the assets, a reserve for the losses which would be borne by Inter-America Corporation;
2. In that the amount set up as "Reserves" for this obligation does not reflect the true amount of the liability due nor the possible losses under the contracts;
3. In the use of the term "recoveries" in Schedule VI as charges to the "Reserves" originally set up to cover Inter-America's obligation under the three contracts, in that such term fails to indicate the true nature of the reduction of Inter-America's obligation.

XIV. With respect to the "Balance Sheet" of Transamerica General Corporation as of December 31, 1937 -

- A. Under the caption "Investments in Securities of Affiliates - Banks" there is set forth the figure \$9,374,148.06. In Schedule II it is stated that the investment in the capital stock of Banca d'America e d'Italia is carried on the balance sheet at the amount of \$8,982,321.85.

In the light of the facts set forth above under paragraph VI-A, it appears to the Commission that it is materially misleading to set forth the figure \$8,982,321.85 as the carrying value of the investment in the capital stock of Banca d'America e d'Italia without indicating the effect that the restrictions referred to in paragraph VI-A may have upon this investment.

XV. With respect to the "Balance Sheet" of California Bands, Inc., as of December 31, 1937 -

- A. Schedule IX relating to "Surplus" sets forth as an

addition to "Earned Surplus" under the caption "Profit on sale of assets purchased from affiliate" the sum of \$3,595,120.54. The accompanying Note states that of this amount \$345,120.54 represents the excess of realization over the cost to California Lands, Inc. of an undivided one-half interest in certain notes, parts of notes, deficiency judgments, etc., theretofore written off on the books of Bank of America N.T. & S.A. and purchased from the Bank by Inter-America Corporation and from Inter-America Corporation by California Lands, Inc., and that the remaining \$3,250,000 represents the share of California Lands, Inc. in \$6,500,000, which on July 14, 1937, Bank of America N.T. & S.A. agreed to pay to California Lands, Inc. and Capital Company for the right to future recoveries on these same assets. The Note further states that in connection with this purchase Transamerica Corporation entered into an agreement whereby it guaranteed that the Bank would recover the amount of \$6,500,000 at an annual rate of \$1,300,000.

In the light of the facts set forth above under paragraph IX-A, it appears to the Commission that the figure \$3,595,120.54 set forth in Schedule IX as "Earned Surplus" under the caption "Profit on sale of assets purchased from affiliate" together with the accompanying Note, and the inclusion of this amount as "Earned Surplus" in the "Balance Sheet" are materially misleading.

XVI. With respect to the "Balance Sheet" of Capital Company as of December 31, 1937 -

- A. Schedule IX relating to "Surplus" sets forth as an addition to "Earned Surplus" under the caption "Profit on sale of assets purchased from affiliate" the sum of \$3,595,119.56. The accompanying Note states that of this amount \$345,119.56 represents the excess of realization over the cost to Capital Company of an undivided one-half interest in certain notes, parts of notes, deficiency judgments, etc., theretofore written off on the books of Bank of America N.T. & S.A. and purchased from the Bank by Inter-America Corporation and from Inter-America Corporation by Capital Company, and that the remaining \$3,250,000 represents the share of Capital Company in \$6,500,000 which on July 14, 1937, Bank of America N.T. & S.A. agreed to pay to California Lands, Inc. and Capital Company for the right to future recoveries on these same assets. The Note further states that in connection with this purchase Transamerica

Corporation entered into an agreement whereby it guaranteed that the Bank would recover the amount of \$6,500,000 at an annual rate of \$1,300,000.

In the light of the facts set forth above under paragraph IX-A, it appears to the Commission that the figure \$3,595,119.56 set forth in Schedule IX as "Earned Surplus" under the caption "Profit on sale of assets purchased from affiliate" together with the accompanying Note, and the inclusion of this amount as "Earned Surplus" in the "Balance Sheet" are materially misleading.

The Commission having reasonable grounds to believe that Transamerica Corporation has failed to comply with the provisions of Section 12(b) and Section 13(a) and (b) of the Securities Exchange Act of 1934, as amended, the rules, regulations, Form 24, Form 24-K, and the Instructions thereto, promulgated by the Commission thereunder, in that the application for registration on Form 24, the annual report on Form 24-K and the amendments thereto, filed by said Transamerica Corporation contain financial statements of Transamerica Corporation and its subsidiaries, which do not correctly reflect the true financial condition of Transamerica Corporation and its subsidiaries, as hereinafter more particularly set forth:

XVII. It appears to the Commission that the general policy of Transamerica Corporation and its subsidiaries with respect to the manner of creation and treatment of certain "reserves", and the adequacy thereof, is improper in the following respects:

A. In the elimination of "reserves" on the books of certain companies and the creation of fictitious "reserves" in similar or substantially similar amounts on the books of other companies in the Transamerica group for the purpose of utilizing such "reserves" to absorb losses with consequent distortion of the true financial condition of the separate corporate entities and of the entire group as a whole; in particular, with respect to the "reserves" set up on the "Balance Sheets" of Transamerica General Corporation as of December 31, 1936, and December 31, 1937, "for real estate losses and contingencies of controlled affiliates" in the amounts of \$6,861,314.19 in 1936 and \$1,700,050.22 in 1937, and \$5,034,583.95 in 1936 and \$1,168,002.25 in 1937, for Capital Company and California Lands, Inc., respectively;

B. In that the amount of the reserves provided on the books of the various companies in the Transamerica group is materially inadequate; in particular, the "Combined Report of Condition" of Bank of America N.T. & S.A., First National Bank in Reno, and Bank of America (California) as of December 31, 1936, shows "Loans and discounts" in the amount of \$539,899,100.65 which includes, among other things, loans in the amount of \$204,674,551.73 on "farm lands" and "other real estate". The only reserve in this "Combined Report of Condition" is designated as "Reserve for contingencies" and is set forth at \$2,049,928.01, of which approximately \$1,460,000 is a reserve for self-insurance, leaving a balance of \$589,928.01. In its "Balance Sheet" as of December 31, 1936, Capital Company carried "Real Estate Held for Resale," at \$51,379,652.11, which amount represented "Land, Buildings and Improvements", and as of the same date, California Lands, Inc. carried "Real Estate and Equipment Held for Resale" at \$31,357,098.76, which amount included "Land, Buildings and Improvements" at \$31,335,825.76, with no reserve on the books of either company applicable to such assets. As of the same date, Occidental Life Insurance Company (a wholly owned subsidiary of Transamerica General Corporation, itself a wholly owned subsidiary of Transamerica Corporation) showed on its books "mortgage loans on real estate" and "balance due on property sold under contract" in the amounts of \$8,175,516.57 and \$3,856,986.03, respectively, with no reserves applicable thereto. These various items of loans, discounts, and investments in real estate aggregate \$634,668,354.12, against which there is an aggregate reserve of but \$589,928.01.

In that because of the nature of the "reserves" referred to above under A, it was improper to charge losses and expenses against such "reserves";

D. In the treatment of losses and expenses which were not present at the date of a readjustment of accounts but resulted from events occurring subsequent thereto as charges to certain reserves created at the time of such readjustment.

XVIII. It further appears to the Commission that registrant, in its application for registration on Form 24 and in its annual report for 1937 on Form 24-K, has failed to file financial statements for itself and its subsidiaries certified in accordance with the requirements of paragraph II of the Instructions as to Financial Statements in the Instruction Books for Form 24 and Form 24-K, respectively.

It being the opinion of the Commission that the hearing herein ordered to be made is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Securities Exchange Act of 1934, as amended;

IT IS ORDERED, pursuant to Section 19(a)(2) of said Act, that a public hearing be held to determine whether Transamerica Corporation has failed to comply with Section 12(b) and Section 13(a) and (b) of the Securities Exchange Act of 1934, as amended, the rules, regulations and forms promulgated by the Commission thereunder, in the respects set forth above; and if so, whether it is necessary or appropriate for the protection of investors to suspend for a period not exceeding twelve months or to withdraw the registration of said Corporation's Capital Stock, \$2 par value, on said New York Stock Exchange, Los Angeles Stock Exchange and San Francisco Stock Exchange;

IT IS FURTHER ORDERED, pursuant to the provisions of Section 21(b) of the Securities Exchange Act of 1934, as amended, that for the purposes of such hearing, Henry Fitts, an officer of the Commission, is hereby designated to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records deemed relevant or material to the inquiry, and to perform all other duties in connection therewith authorized by law;

IT IS FURTHER ORDERED, that the taking of testimony in this hearing begin on the 16th day of January, 1939, at 10:00 A.M. in Room 1101, Securities and Exchange Commission Building, 1778 Pennsylvania Avenue, N. W., Washington, D.C. and continue thereafter at such time and place as the officer hereinbefore designated may determine.

By the Commission.

(SEAL)

Francis P. Brassor,
Secretary.

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