7/3/50

AFFIDAVIT OF THOMAS B. MCCABE

District of Columbia --ss:

THOMAS B. MCCABE, being first duly sworn, deposes and says:

I am the Chairman of the Board of Governors of the Federal Reserve System and have occupied said position since April 15, 1948.

There has been called to my attention an order entered on July 1, 1950, by the United States Circuit Court of Appeals for the Ninth Circuit in proceedings entitled Board of Governors of the Federal Reserve System vs. Transamerica Corporation and Bank of America National Trust and Savings Association No. 12587. In particular, there has been called to my attention that portion of the Court's order which reads as follows:

> "It is further ordered that petitioner obtain and present to this court the affidavits of said McCabe and of said Carpenter stating and reciting such knowledge as said witnesses may have with respect to all matters of fact listed and referred to in said affidavit of Samuel B. Stewart, Jr., and the statement appended thereto."

There has also been called to my attention the affidavit of Samuel B. Stewart dated June 30, 1950, referred to in the Court's order and the statement attached thereto.

I have read the affidavit and statement of Mr. Stewart and do hereby inform the Court as follows with respect to each of the matters therein referred to. In setting forth my comments as to such matters I shall first list, by the same number as appears in the statement accompanying Mr. Stewart's affidavit, the point which it is therein stated would be established if the proposed deposition proceeding had been authorized by the Court:

> "1. It is the accepted administrative practice and policy of all of the Federal bank supervisory agencies, including the Comptroller of the Currency and the Federal Reserve Board:
>
> "(a) That the Comptroller of the Currency shall have jurisdiction to determine all questions of public policy, public convenience and advantage, and public interest involved in the acquisition of existing bank assets by a national bank or in the opening of a new branch or change of location or operation of a national bank.
>
> "(b) That the Comptroller's authorization of the opening of a new branch in the location of an existing bank is not ever conditioned or contingent upon acquisition of the assets and business of the existing bank.
>
> "(c) That it is the established practice of the Comptroller to consider all questions bearing upon public convenience and advantage, including any policy of the anti-trust laws which may be involved in an acquisition of assets of an existing bank which may be brought to the Comptroller's attention in connection with an application for a national bank for a branch

permit, and the Comptroller's approval of a branch permit connotes his official determination that the public convenience and advantage will be served and that no public policy will be violated by the proposed asset acquisition.

"(d) That the Comptroller's office and other Federal bank supervisory agencies exchange complete information with respect to matters committed to their respective jurisdictions."

I do not believe that the matters referred to in subparagraph (a) above are matters which are the subject of any such administrative practice or policy of all of the Federal bank supervisory agencies. I am informed by counsel for the Board and, therefore, believe that under the law the Comptroller of the Currency does have jurisdiction to determine whether a national bank may open a new branch in the United States or move the location of such a branch. In that case it may be assumed that in discharging his duties, he has implied authority to determine certain related questions of public interest, convenience and advantage. Section 11 of the Clayton Act, however, vests jurisdiction in the Board of Governors to enforce compliance with certain provisions of that act in the banking field. Consequently, questions of public interest with respect to the Clayton Act in its application to banks are vested in the Board and there is no administrative practice or policy between all or any of the Federal supervisory agencies which either does or could have the legal force of transferring this responsibility to the Comptroller of the Currency or to any other bank supervisory agency.

With respect to subparagraph (b) above, while I do not know of my own knowledge that the authorization of a new branch by the Comptroller

of the Currency is never conditioned or contingent upon acquisition of the assets and business of an existing bank, I am nevertheless informed and believe that such is the fact. Counsel for the Board has advised me that there is no provision in any of the Federal banking statutes which requires a national bank before acquiring the assets and assuming the liabilities of another insured bank to obtain prior approval from any bank supervisory authority.

With respect to paragraph (c) above, I do not have knowledge as to any established practice of the Comptroller concerning his procedure when he is advised of a proposed acquisition of assets and assumption of liabilities by one bank of another. However, I am informed by counsel for the Board that in view of the lack of statutory authority to approve the acquisition of assets and the assumption of liabilities of one bank by another, the Comptroller could have no authority to bind the Board by any determination which he might make in that regard. If, therefore, the Comptroller does follow the practice set forth in subparagraph (c) above, under the circumstances mentioned, such determination would have no binding force upon the Board in a Clayton Act proceeding instituted by the Board pursuant to section 11 of that act.

With respect to subparagraph (d) above, I know of no policy of the three Federal bank supervisory agencies by which each of such agencies "exchange complete information with respect to matters committed to their respective jurisdictions." It is unquestionably true that the three Federal agencies have cooperated and do cooperate from day to day in assisting each of the other agencies in the performance of their

responsibilities under the law. To that end exchange of information is frequently made as a matter of course and at other times upon specific request. However, as will more fully hereinafter appear, there have been phases of the matter directly involved in the present proceedings before the Court as to which the Board has not been kept fully informed and where the lack of specific information deterred the Board from fully considering and from determining upon a course of action in the premises.

> "2. The bank asset acquisitions involved in this proceeding were not handled hastily or precipitately, but were handled with unusual deliberation and care and under the supervision of the Comptroller of the Currency, with the complete and current knowledge of the Board of Governors of the Federal Reserve System at every step of the procedure."

With respect to paragraph 2, I have no information which would shed light on the question of how the bank asset acquisitions involved in these proceedings were handled between the purchasing and selling banks. I have no knowledge whether they were handled under the supervision of the Comptroller of the Currency, but I repeat what has been heretofore said that, having no authority to approve or disapprove acquisition of eligible assets and assumption of liabilities by one bank of another, supervision by the Comptroller of these acquisitions even if such supervision was exercised could not under the law deprive the Board of its jurisdiction under section 11 of the Clayton Act. As will appear more fully hereinafter, neither the Board nor I had complete and current knowledge of any such alleged supervision of these transactions by the

Comptroller of the Currency.

> "3. The Board of Governors and its counsel had complete knowledge of the fixed intention of the Comptroller of the Currency to approve the transactions in question as early as April 11, 1950 and was immediately informed of the Comptroller's definite commitment binding himself to approve the transactions of April 14, 1950. (Exhibit K)"

Exhibit K appears to be a letter which the Comptroller of the Currency addressed to Bank of America on April 14, 1950, with respect to the branch permits in question. Neither I nor the Board had seen this letter prior to its submission as Exhibit K.

With respect to paragraph 3, my answer is as contained in the letter to the Comptroller of the Currency hereto annexed marked Exhibit 1 and which I ask be considered as part of this affidavit. That letter is in reply to a letter dated June 26, 1950, which together with a copy of the telegram referred to therein is annexed hereto marked Exhibit 2. The letter to the Comptroller, as will appear from its contents, among other things, states the true situation with respect to matters passing between the Board and the Comptroller of the Currency on the general subject of the bank expansion program of the Transamerica group. In particular it indicates the extent of the Board's knowledge so far as it relates to the subject of the proposed branching of the 22 banks involved in this proceeding.

> "4. In spite of such knowledge the Board of Governors and its counsel made no effort to invoke the jurisdiction of this court or give any notice to the respondents of any intention ever to invoke the jurisdiction of the court for more than two months during which, to the knowledge of the Board of Governors, and its counsel, steps were being taken daily and procedures were being carried out in an orderly manner, which would result in the change of ownership of the assets and business of the selling banks in question to Bank of America N. T. & S. A. on or about June 24, 1950, and either knew or should have known that if such invocation of this court's jurisdiction were withheld until the time when action was taken by the Board it would be impossible

> for the respondents to stop the transaction and would create great confusion, disturbance, embarrassment, public sensation and consequent serious injury not only to the selling and purchasing banks but to the public interest."

The statements contained in the letter marked Exhibit 1 and annexed hereto fully demonstrate why the Board did not proceed earlier to consider the question of whether to institute an injunction proceeding against respondent. Furthermore, I am advised by counsel for the Board that in view of all the circumstances, the Board was justified in delaying any attempt to obtain an injunction to prevent the acquisition of assets and the assumption of liabilities of the 22 banks in this proceeding until after the permits to establish the branches had been issued by the Comptroller of the Currency. This point is of particular emphasis in the light of the fact that the applications to establish the branches had been on file with the Comptroller of the Currency for over two years. I know that the Board authorized the filing of these proceedings only after the receipt of the letters of June 14 and 20, 1950, and only after careful and deliberate consideration of all aspects of the public interest and concluded to do so only after a determination that a failure to take such steps fully to protect its jurisdiction and that of this Court upon appropriate findings to enter an order in aid of the purposes of the Clayton Act, would constitute an improper rejection of its responsibilities under the statute.

> "5. The complete chronological history of the branch applications involved in the present proceeding, showing the dates of the first and all subsequent applications with respect to each location was the subject of

> thorough and detailed investigation and consideration by the Comptroller, including field investigations covering substantial periods of time and thorough consideration of the effect on the public interest of each aspect of the transaction; such investigations being conducted entirely under the supervision of the Comptroller of the Currency and not under the supervision of the Board of Governors of the Federal Reserve System."

With respect to paragraph 5, I have no knowledge as to what investigations were conducted by the Comptroller of the Currency or of the time consumed in the making of such investigations.

> "6. In the course of investigation by the Comptroller, the anti-trust questions raised by the Board's pending proceeding under section 7 of the Clayton Act were studied by counsel to the Comptroller, based upon advice obtained by the Comptroller from the Attorney General, and the Board's allegation of control of Bank of America by Transamerica Corporation was also carefully investigated.
>
> "7. The Comptroller satisfied himself as a result of these investigations that no violations of the anti-trust laws would be involved in the proposed acquisitions of assets involved in this court's orders, and that even if control of Bank of America by Transamerica had existed at one time in the past, it clearly no longer existed at the time of the Comptroller's decision to take action."

With reference to paragraphs 6 and 7, while the Comptroller of the Currency and the Secretary of the Treasury have indicated to me that consideration was being given to the relationship of the branch permits to the Clayton Act proceeding, I have no knowledge concerning the scope or extent of such consideration. However, I would like

to repeat again that any decisions by the Comptroller on these points could not deprive the Board of Governors of its authority to carry out its responsibilities under the Clayton Act.

> "8. That the uniform practices of the bank supervisory authorities under the law make necessary the simultaneous acquisition of assets of selling banks at the time fixed for assumption of deposit liabilities of the selling bank, and in accordance with this practice the fixing of the close of business June 24, 1950, as the time for assumption of deposit liabilities of the selling banks in question definitely and irrevocably fixed that time as the time of acquisition of the assets by operation of law and regardless of any act performed or which could have been performed by either the purchasing bank or the selling banks after the time of service of this court's original temporary restraining order."

With respect to paragraph 8, I know of no practices of the bank supervisory authorities which can or do have the effect of changing or altering the legal effect of any contract, law, order of the court, or other legal instrument. It is true that if, after a take over, a bank supervisory authority, in the discharge of its examination function, finds that the acquiring bank has acquired assets that are illegal for the bank or unsound, the authority may undertake to require the bank to dispose of them or charge them off.

> "9. The opinions of the responsible bank supervisory authorities to the effect that any attempt by the respondents to reverse the transactions in question after the service of the court's temporary restraining order at 4 o'clock Friday afternoon in time to reopen the selling banks legally for business on the following Monday morning would have necessarily failed and resulted in serious jeopardy to the banks in question and to the public interest."

With respect to paragraph 9, it is my opinion and that of the

Board that it was not impossible between 4 o'clock on Friday afternoon and 9 o'clock on Monday morning for steps to be taken which could have resulted in the selling banks opening for business on Monday morning. I am advised and believe that the selling banks and the acquiring bank could have deferred the effective date of the take over by agreement between themselves and I believe that if any approval for deferring such effective date was needed from any bank supervisory agency, such approval had it been requested could have been obtained within that period of time.

> "10. That the selling banks in question, by reason of the acts which had taken place prior to the original service of the court's temporary restraining order had effectively disabled themselves from opening for business on the following Monday morning, by reason of the disqualification of directors as a result of sale of their qualifying shares, the impossibility at that time of having them reelected as directors so that the bank could operate legally in the absence of a voting permit which would permit such reelection, which voting permit could not have been obtained in the time available."

With respect to paragraph 10, it is my opinion that assuming that the election of directors of each of the 22 banks was a necessary legal prerequisite to the opening of those banks on Monday morning, the election of directors could have been accomplished between 4 o'clock Friday afternoon and Monday morning. Six of the banks involved are nonmember banks and for them no voting permit would have been necessary. The Board of Governors, upon telegraphic application, could, through the instrumentality of the Federal Reserve Bank of San Francisco, have issued a voting permit to Transamerica to vote the stock for the election of each director of the member banks, and, considering the nature of the relief sought by the Board in the present proceedings before the Court, the Board would have granted such

application forthwith. However, no such application was made.

> "11. It was not possible at the time of service of the court's original temporary restraining order to stop the passage of title to the assets of the selling banks because of notices already given to depositors in the case of both national banks and State banks, and additionally because of action already taken by the State Superintendent of Banks as to the State banks."

With respect to paragraph 11, I have no knowledge as to notices to depositors which may have been given by any of the selling banks. However, I am informed by counsel for the Board that there is no requirement under Federal law and he knows of none under California law that a selling bank issue notices to its depositors prior to the date of the take over or that, if issued, any legal consequences necessarily ensue which make it impossible for such a bank to continue to conduct a banking business after the date fixed in such notices. Section 12B(i)(4) of the Federal Reserve Act, which relates to deposit insurance coverage, provides for the issuance of notices to depositors after the take over has been accomplished. Notices to depositors after the take over are also provided for in the regulations of the Federal Deposit Insurance Corporation issued pursuant to that section of the law. This, however, is merely for the purpose of continuing deposit insurance coverage for an additional period beyond the time of such actual take over. I am advised by counsel for the Board that no loss of deposit insurance coverage, in his opinion, would have resulted from the selling banks having opened for business on Monday morning.

I have no information as to what action was taken by the State Superintendent of Banks referred to in this paragraph.

> "12. The suggestion in the court's opinion that the Comptroller was under duress to issue the branch permits in question to obtain increased capitalization which he thought necessary in the public interest is without foundation in fact. Bank of America's capital has been increased at a more rapid rate from earnings than that of any other major bank, and while the Comptroller thought additional capital desirable as in the case of all substantial banks in recent years, he recognized that the only reasonable basis for asking stockholders to invest additional equity capital was his decision to approve the branch permits which would permit the assumption of deposit liabilities of the selling banks."

While I have been advised that the Comptroller of the Currency has been urging Bank of America to increase its capitalization, I am not in a position to state what other considerations led the Comptroller of the Currency to his decision to approve the branch permits in question.

> "13. The Comptroller did not, as suggested by the court's opinion deplore the present state of the law and has never requested any legislation to change it."

I have no knowledge of the Comptroller's position with respect to the question of law mentioned.

> "14. The respondents' actions, which are the subject of these proceedings, have been in accord with the only course possible, consistent with the public interest and convenience, and any present effort to bring about reversal of those actions would be extremely difficult, if not impossible, and, if possible, would be highly detrimental to the public interest."

With respect to paragraph 14 I do not believe that respondent's actions since the entry of the Court's orders of June 23 and June 24, 1950, have been consistent with the public interest nor do I believe that an

effort could not have been successfully made by the parties to these transactions, Bank of America and Transamerica Corporation, to prevent the consummation of the program of take overs herein discussed. Nor do I believe it is legally or practically impossible to bring about a reversal of those actions now.

> "15. The initiation of the Board's proceedings in this matter was not authorized by the United States Attorney General or by any United States attorney, and that these officials did not take the responsibility for the proceedings as required by law."

With respect to paragraph 15, the Board did not obtain the approval of the Attorney General of the United States before initiating these proceedings for the reason that the Board did not regard such action as necessary. However, the Attorney General was fully advised before the institution of the proceedings and has been kept currently informed as to their progress.

(Signed) Thomas B. McCabe

Subscribed and sworn to before me
this 3rd day of July, 1950.

(Signed) Josephine E. Lally
Notary Public, D. C.

(SEAL)

Notary Public, D. C.,
My commission expires
September 30, 1951

EXHIBIT 1

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON 25, D. C.

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

July 3, 1950.

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

Dear Preston:

The Board has asked me to acknowledge receipt of your letter of June 26th with which you enclosed a copy of a telegram of the same date to Mr.Giannini, President, Bank of America National Trust & Savings Association. The wire states that Counsel for Bank of America had requested advice regarding the allegations that (1) although your office granted certain branch permits to Bank of America it did not consider the public interest involved in the related acquisition of assets and the assumption of liabilities of banks being replaced by the branches, and (2) the Board of Governors of the Federal Reserve System first learned of the proposed branching on June 13th.

The statements contained in your wire with respect to these two matters leave certain inferences which are not in accordance with our understanding. With respect to the first allegation, Mr. O'Kane, Assistant General Counsel of the Federal Reserve Bank of San Francisco, who attended the hearing before the United States Court of Appeals on June 24th, was requested by the Board to relate his recollection of what occurred at the hearing on this point. His report is as follows:

> "I can say unequivocally to the Board that at no time during the course of Mr. Townsend's argument, and in no paper which he has filed in that court, did Mr.Townsend say or write any statement to the effect attributed to him. In fact, in his argument Mr. Townsend appeared quite conscientiously to be attempting to protect the record against the notion, urged upon the court by the counsel for respondents, that there was any 'civil war' between the two agencies. On the subject of the Comptroller's authority, Mr.Townsend did point out that the Comptroller had no authority under the statute to approve or disapprove the acquisition of assets of one bank by another. At that point he read to the court a wire which he had received from Howland Chase [Assistant Solicitor for the Board of Governors], purporting to state

> what Mr. J. L. Robertson, the Deputy Comptroller of the Currency, had said to Howland Chase on that very subject. Consequently, he argued that nothing in the Comptroller's decision to grant the branches in question could be construed as a determination of the questions pending before the Board in the Clayton Act proceeding against Transamerica. Incidentally, this position was the decision of the court in its opinion issued today."

The wording of the wire from Mr.Chase, referred to above, was cleared with Deputy Comptroller Robertson over the telephone after it was sent, and he agreed with it. The wire, dated June 24, 1950, read as follows:

> "Deputy Comptroller of the Currency J. L. Robertson advised me this morning that he understood the take over of the banks which Bank of America proposes to convert into branches on June 26 pursuant to Comptroller's permits, is to be accomplished by a sale of assets and assumption of liabilities. He said there was no federal control over such a sale and assumption, and that therefore his office had not approved it and had no power to approve it or disapprove it. He said the proposed take over did not involve a consolidation or merger, and that the liquidation of the banks would follow the sale of their assets."

With respect to the second allegation, in the interest of clarification I am reviewing below the situation as the Board understands it:

Over a period of years prior to 1942 there were numerous conferences and discussions among the various Federal bank supervisory agencies regarding the policy to be followed with respect to the further expansion of the Transamerica group. The discussions culminated in a letter, dated February 14, 1942, which the Board sent to Transamerica Corporation and which was initialed by you as Comptroller of the Currency and Mr. Crowley as Chairman of the Federal Deposit Insurance Corporation. After stating that should the Corporation have any plans for the further expansion of its interests in banks it was requested to advise the Board through the Federal Reserve Bank of San Francisco before any such plans were consummated, the letter continued as follows:

> "The Board's position in this matter is in accord with the policy, upon which there is unanimous agreement by the Board, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation, that the Federal bank supervisory agencies should, under existing circumstances, decline permission for the acquisition directly or indirectly of any additional banking offices or any substantial interest therein by Transamerica Corporation, Bank of America N. T. & S. A., or any other unit of the Transamerica group."

In August 1945 you wrote a confidential memorandum to Secretary of the Treasury Vinson, which he turned over to the then Chairman of the Board and which, after reviewing the expansionary policies and the dominant position of the Transamerica group, stated the principles "which render it inappropriate, except to meet compelling local need, for the Comptroller to authorize Bank of America to establish additional branch offices". The principles were stated in the memorandum as follows:

> "First of these principles is the American government policy against monopoly, unfair competition, and absentee ownership, and in favor of small businesses, free competition, and local ownership and control. The comptroller is not charged with the enforcement of the anti-trust laws, but he should and does exercise his discretionary power in the light of the purposes which the statutes in this field were designed to achieve.
>
> "The opportunity to monopolize the field and prevent the development of new competition is greater in banking than in most industrial and commercial fields. Furthermore, monopoly in banking is singularly dangerous because of the influence banks exercise over the entire economy through control of credit and liquid funds.
>
> "Even apart from the foregoing, the potential disastrous effects of a failure of a branch-bank system of such magnitude render inadvisable the authorization of further expansion of its branch network. Bank of America is in relatively sound condition today and its failure within the foreseeable future is improbable. However, supervisory authorities must always bear in mind the possibility of bank failures due to rapid changes in economic conditions or to unsound and speculative management, and policies should be adopted which will minimize the harm resulting from the collapse of any one institution. The primary obligation of the Comptroller, in exercising his discretion regarding the chartering of new banks, the granting of branch permits, etc., is the maintenance of a safe and sound banking system. Any further growth of Bank of America - and consequent increased dominance in California banking - is undesirable from this point of view.
>
> "The enormous importance of banks to modern industrial life gives rise to another danger implicit in the existence of a banking institution of the unparalleled power and extent of Bank of America. Banking has long been recognized as a

matter requiring governmental supervision and control, and the federal statutes provide general sanctions designed to enable the supervisory authorities to maintain safe and sound banking practices and to prevent violations of the banking laws. Unfortunately, these sanctions - for example, the forfeiture of a bank's charter - are extremely drastic. Where a single bank is badly managed, or resistant to proper supervisory requirements, these sanctions can be brought to bear, and this possibility alone is sufficient to make the vast majority of banks receptive to criticisms, corrections, and recommendations. But any responsible official hesitates to invoke such sanctions where the offending bank furnishes a major part of the banking facilities of a great State; the hazards involved in mere unfavorable rumors regarding a bank make bank supervisors reluctant even to threaten the use of a serious sanction. Being fully aware of this situation, the management of a mammoth, many-branched institution can sometimes defy governmental regulation, and violate almost with impunity the laws enacted by Congress for its control and the protection of the public. The history of Bank of America reveals just such a situation and attitude.

* * *

"In regard to the twenty-six (26) applications for branches with which we are presently confronted, no departure is contemplated from the basic policy of restraining all possible any further expansion of the Giannini banking interests. Some twenty (20) of these applications can and should be rejected. However, in approximately a half dozen cases the communities involved are entitled to more adequate banking accommodation, and careful investigation fails to reveal any practical method of securing such additional accommodation save through granting to the Bank of America permission to establish branches at these points.

* * *

On November 7, 1947, the Board advised you that it had directed an investigation to determine whether a proceeding should be instituted against Transamerica by the Board under the Clayton Act. Under date of November 10, 1947, you replied to the Board, stating that a number of applications by Bank of America for branches were on file in your office and that institution by the Board of a proceeding against Transamerica under the Clayton Act would, of course, "be a factor requiring serious consideration." You added, however, that "These applications have already received considerable study and we hope to give a reasonably prompt answer to the applicants."

On November 24, 1947, the Board replied that it was proceeding in the matter with the utmost dispatch and that "in the meantime we trust that you will find it possible to defer a decision on the pending applications for branches."

On November 28, 1947, you wrote to the Chairman of the Board enclosing a copy of your letter to Bank of America advising the Bank that in view of the consideration which the Board was giving to instituting a Clayton Act proceeding "it will be necessary for this office to defer its decision on the *** applications."

In a letter dated May 27, 1948, the Board advised you of its decision to institute the Clayton Act proceeding and stated that if there were any phase of the matter which you or others in your office might wish to discuss with the Board it would, of course, te pleased to do so. The letter also added that the Board hoped to receive the assistance of your office in assembling and presenting certain parts of the evidence to be introduced at the hearing.

It having appeared that you had authorized Bank of America to establish additional de novo branches, the Board on August 24, 1948, wrote you as follows:

> "In your recent conversations with Governor Szymczak, regarding the establishment of branches by banks in the Transamerica group there appeared to be a difference of view as to the present status of the policy agreed upon in February 1942 by the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Board regarding expansion of that group.
>
> "In the conversations, it appeared that your office had assumed that the understanding had been terminated and that the Board was of the same view. While the Board has been aware of the fact that the establishment of branches by banks in the Transamerica group has been approved in some instances, the Board has considered itself bound by the understanding and will continue to act in accordance with its terms until such time as it may be terminated or modified after consultation among the three agencies.

"We are writing this letter to obviate any possible misunderstanding as to the Board's position in this matter."

You replied under date of August 27, 1948, as follows:

"Permit me to acknowledge your letter of August 24, 1948 with its comment upon the policy of this office in granting branches to the Bank of America National Trust and Savings Association and to banks of the Transamerica group.

"It has been my understanding that our policy with respect to that situation was outlined by Secretary Vinson particularly after the conversations in December 1945 between the Secretary and the Chairman of your Board, and was thoroughly understood by the Board. Subsequent conversations between my office, the Attorney General and members of the Board of Governors would seem to confirm this understanding. We have consistently followed the policy there outlined."

On August 24th, the Board wrote to you regarding a recent conversation between Governor Szymczak and yourself in which it was stated:

"Governor Szymczak has told the Board of his recent conversation with you on the subject of branches of Bank of America N. T. & S. A. and of other national banks in the Transamerica group. In the conversation Governor Szymczak promised that the Board would write you regarding its position and its interest in this matter.

"The Board believes that the approval of the establishment of domestic branches by any of the banks of the Transamerica group, regardless of whether such branches are new offices or result from the conversion of existing banks into branches, may be considered incompatible with the proceeding which the Board has instituted against Transamerica Corporation under section 11 of the Clayton Act. Broadly stated, the issue involved in that proceeding is the legality of the expansion of the Transamerica banking group in the West Coast area. Until that issue is decided, the Board feels that it is inconsistent for any Federal agency to approve further expansion of the group in that area by any method.

"Accordingly the Board, while fully mindful of your discretionary authority, urges that pending the conclusion of the Clayton Act proceeding you withhold approval of the establishment of any de novo branches by National banks in the Transamerica group, as we understand you have been doing with respect to applications for the establishment of branches resulting from the conversion of existing banks."

In subsequent paragraphs the letter commented as follows:

"The Board regrets that there has been any misunderstanding of its position with respect to the establishment of branches by banks in the Transamerica group, and hopes, in the interest of greater effectiveness of Federal authority in the banking field, that agreement can be had in these matters.

"Since the Transamerica group includes insured nonmember banks, the Board is conveying its views in this matter to the Chairman of the Federal Deposit Insurance Corporation."

This letter was answered by you under date of August 30, 1948, as follows:

"Acknowledgment is made of your letter of August 24, 1948 with its reference to conversations between Governor Szymczak and myself concerning the Clayton Act proceeding of the Board against Transamerica Corporation and the influence that branches granted the Bank of America may have upon such proceeding.

"This office has every desire to cooperate with the Board in all matters. However, I find it difficult to follow the reasoning that the granting of de novo branches to the Bank of America embarrasses the Board in its present action against Transamerica Corporation. It is our opinion that branch applications of the Bank of America fall into two classes: (1) those applications which contemplate the branching of Transamerica-controlled banks into the Bank of America system, with the resulting extinction of the stock of such banks, and (2) applications for new branches where no present facilities exist and where there is no interference in the status quo of Transamerica-controlled institutions.

"Since receipt of your advice of the intention of the Board to institute Clayton Act proceedings against Transamerica Corporation we have consistently refused to grant applications which fall into the first class, i.e., applications for branching Transamerica-owned banks into the Bank of America system. We have followed this policy in order that no question might be raised as to possible interference with the Board's action.

"Where local need and convenience and all other factors clearly justify the approval of applications for branches which fall into the second class, it is our opinion that such applications could only be denied on the ground that the Bank of America is already a monopoly or tending toward a monopoly in its field. You are aware, of course, that the Attorney General of the United States has stated both to the Treasury and representatives of the Federal Reserve Board that at the present time there is insufficient evidence to support this view.

From the above correspondence it was the Board's distinct understanding that, in the absence of further advice from you, you would not issue permits authorizing the establishment of branches for the purpose of taking over the banking business of existing banks controlled by Transamerica Corporation.

Following the correspondence referred to above you initiated a number of informal conversations with me and I received the distinct impression during the earlier of these conversations that it was your intention, as a matter of desirable cooperation between our agencies, to adhere to the policy outlined in the above correspondence. I urged you to do so. I also have the recollection that in our later conversations you seemed to be increasingly concerned about the pressure on your office to grant the 20-odd applications of Bank of America for branches and talked with me about the possible effects on our Clayton Act proceeding if they were granted. I persistently pointed out that a decision to do so would be very detrimental to our enforcement of the Clayton Act.

On March 10, 1950, I addressed the following letter to the Secretary of the Treasury:

> "Following our conversation on yesterday, I am enclosing a clipping from a San Francisco newspaper and a brief memorandum which I requested from our Legal Division of the possible effects on the Board's case against Transamerica if these applications were granted. I cannot emphasize too strongly the unfortunate repercussions that might result from such an action. I am confident that the independent bankers on the West Coast, many of the members of Congress from out there, the press, and some of our local people here in Washington would have a heyday in dramatizing this issue.
>
> "I am appreciative of your expressed willingness to discuss this question with me again before any decision is made by the Comptroller's Office. This note is written to you only because of my deep concern about the matter."

His reply of March 15, 1950, was as follows:

> "Permit me to acknowledge receipt of your letter of March 10, 1950 in regard to applications by the Bank of America National Trust and Savings Association to branch into its system certain Transamerica-controlled banks.
>
> "As I explained to you in our conversation of March 9, almost all of these applications which are now pending in the Comptroller's office are very old; over two years in fact. They have been held in abeyance in deference to your view that action on them might in some way prejudice the prosecution of your Clayton Act case against

Transamerica Corporation. However, the conclusion of that proceeding appears remote, and the Comptroller's office has definite supervisory responsibilities in this matter which are daily becoming more acute.

"The Treasury has every desire to cooperate with the Federal Reserve but it cannot ignore the obligations laid on the Comptroller of the Currency and on it by the Congress and must reserve to itself the right of independent judgment when it is confronted with a problem as difficult and complex as this one. For this reason, I do not feel that I can request the Comptroller to delay a decision indefinitely."

This situation continued until on or about April 11, 1950, when I had an informal conversation with the Secretary of the Treasury in which the latter stated that permits would be issued for branches which would take over banks involved in this proceeding. I protested to the Secretary very vigorously against any such action because of its possible effect on the Clayton Act proceeding, stating that action should be deferred pending further discussion.

At about the same time, in a casual conversation with Deputy Comptroller Robertson while we were returning from a visit to the Capitol he stated to me that a letter to Bank of America with respect to the branches had been prepared and probably would go forward shortly. In view of this statement, and when statements appeared in the press that the bank was going to increase its capital and would establish additional branches, the Board's General Counsel called Mr. Robertson on the telephone and asked if the Board might have a copy of the letter sent by you to Bank of America with respect to permission to establish branches, Mr. Robertson sent to the Board's General Counsel a copy of a letter to Bank of America dated April 14, 1950, with reference to an increase in the bank's capital which, however, did not mention branches. Mr. Robertson told the Board's General Counsel that after reviewing the matter he was not at liberty to give to the Board a copy of the letter to Bank of America with reference to the establishment of branches because it was confidential.

In the light of the circumstances the Board considered what steps might be taken, short of a petition to enjoin the acquisition of the assets of the banks in question, to prevent such acquisition and the matter was thoroughly discussed on several occasions with representatives of the Department of Justice.

In view of all the circumstances of which the Board was aware, including my discussions with you and with the Secretary of the Treasury and the circumstances surrounding the discussions in which the Attorney General and I participated, the Board felt justified in believing that the matter had not been so definitely settled in your office that the permits would actually be issued or that you could not be dissuaded from issuing them. This was particularly so since the Board received no

formal advice of the proposed issuance of the permits prior to your letter of June 14, 1950. In that letter you stated that while your office had undertaken to approve "certain applications submitted by the Bank of America National Trust and Savings Association to branch some smaller banks presently owned by the Transamerica Corporation", this approval was contingent upon the bank raising $70 million of new capital, that that operation was then in process, and that you would be glad to advise the Board if and when the operation was concluded and the applications granted.

The Board was not advised until it received your letter of June 20, 1950, that the permits for the establishment of the branches had been granted, and that letter shows on its face that the permits were not actually granted until that date. It was in this letter of June 20, 1950, that the Board for the first time was advised by your office of the names of the banks which were to be converted into the branches covered by your permits. At that point, having this definite information in hand, the Board took immediate steps to petition for injunctive relief.

In view of the fact that your wire stated that the information contained therein was being sent to Bank of America for presentation by its counsel to the Court, and since the Court has ordered that I furnish an affidavit on this matter, a copy of this letter, together with your letter to me of June 26, 1950, is being attached to the affidavit as an exhibit.

With warmest regards,

Sincerely,

(Signed) Tom

Thomas B. McCabe,
Chairman.

EXHIBIT 2

THE COMPTROLLER OF THE CURRENCY
Washington 25

June 26, 1950

Dear Tom:

Attached hereto is a copy of a telegram today sent to Mr. L. M. Giannini, President, Bank of America National Trust and Savings Association, San Francisco, California, the contents of which are self-explanatory.

With personal regards, I am

Sincerely,

(Signed) Preston Delano

Comptroller of the Currency

Enclosure

Honorable Thomas B. McCabe, Chairman
Board of Governors of the
Federal Reserve System
Washington, D. C.

COPY

COMPTROLLER OF THE CURRENCY

COMPTROLLER OF THE CURRENCY

NATIONAL BANK EXAMINERS

June 26, 1950

L.M. GIANNINI PRESIDENT
BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION
SAN FRANCISCO CALIFORNIA

IN CONNECTION WITH THE INJUNCTION ISSUED AGAINST YOUR BANK ON JUNE 24, YOUR COUNSEL HAS REQUESTED ADVICE FOR PRESENTATION TO COURT REGARDING THE ALLEGATION THAT ALTHOUGH THIS OFFICE GRANTED CERTAIN BRANCH PERMITS TO YOUR BANK IT DID NOT CONSIDER THE PUBLIC INTEREST INVOLVED IN THE RELATED ACQUISITION OF ASSETS AND ASSUMPTION OF LIABILITIES OF BANKS BEING REPLACED BY THE BRANCHES STOP YOU ARE ADVISED THAT WHENEVER A NATIONAL BANK APPLIES FOR AUTHORITY TO ESTABLISH A BRANCH THE APPROVAL OR DISAPPROVAL OF THE COMPTROLLER IS BASED ON A STUDY AND INVESTIGATION OF ALL RELEVANT FACTORS, ONE OF THE MOST IMPORTANT OF WHICH IS THE EFFECT ON THE PUBLIC INTEREST OF EACH ASPECT OF THE TRANSACTION STOP THIS CASE IS NO EXCEPTION STOP THE BRANCH APPLICATIONS HERE INVOLVED WERE PREDICATED UPON THE PROPOSED TAKE-OVER BY BANK OF AMERICA OF THE BUSINESS OF OTHER SPECIFIED BANKS AND THAT FACTOR WAS FULLY CONSIDERED IN DETERMINING THAT APPROVAL OF THE APPLICATIONS AND THE GRANTING OF THE PERMITS WERE IN THE PUBLIC INTEREST STOP YOUR COUNSEL FURTHER INQUIRED AS TO ASSERTION THAT THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM FIRST LEARNED OF THE PROPOSED BRANCHING ON JUNE 13 STOP YOU ARE ADVISED THAT THE CHAIRMAN OF THAT BOARD WAS KEPT GENERALLY INFORMED OF THE STATUS OF THE BRANCH APPLICATIONS AND WAS NOTIFIED AT LEAST AS EARLY AS APRIL 11, 1950 OF THE INTENTION TO GRANT THE BRANCH PERMITS IN CONNECTION WITH A CONTEMPLATED INCREASE OF YOUR BANK'S CAPITAL STOP A COPY OF THIS WIRE IS BEING SENT TO THE CHAIRMAN OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM STOP

(Signed) Delano
DELANO
COMPTROLLER OF THE CURRENCY