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Bank of America
NATIONAL TRUST AND SAVINGS ASSOCIATION

SAN FRANCISCO HEADQUARTERS

L. M. GIANNINI
PRESIDENT

SAN FRANCISCO 20, CALIFORNIA

July 11, 1950.

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

Dear Mr. McCabe:

On behalf of myself and the Bank of America, of which I am President, I am addressing this letter to you in your individual capacity and as Chairman of the Board. Will you please make the contents of this letter known to each member of the Board who voted to authorize the recent initiation of proceedings by the Board for an injunction and for civil and criminal contempt in the United States Court of Appeals, Ninth Circuit, against this Bank and against me.

As you know, a proceeding is pending before your Board in which Transamerica Corporation is the sole party defendant, and the sole objective of which, according to your complaint, is to cause Transamerica to divest itself of its bank stock holdings, in whole or in part, provided that your Board, after a full hearing of evidence, decides that such holdings constitute a violation of the Clayton Act. The evidence is not completed and no findings have been made up to the present time. As President of the largest stockholder in the Federal Reserve Bank of San Francisco, I would like to preserve my respect for the Federal Reserve System, and would therefore like to assume the Board still has an open mind on that case and will decide it on the evidence and the law after a proper opportunity to present all the necessary evidence and arguments in this matter.

As you have been aware, at least since April 11, 1950, Transamerica, for a long time, has been planning, and taking definite steps, to divest itself of its holdings in twenty-two banks, whose directors have voted to liquidate. Bank of America has purchased the assets of these banks. Up to a late hour on June 23, after acquisition was complete, no objection was made

by you or your Board to me or this Bank that these transactions interfered with your Board's possible jurisdiction in its proceedings against Transamerica. The Bank, in acquiring these assets, was advised and believed that the Comptroller of the Currency had exclusive jurisdiction to grant permits for the opening of Bank of America branches in the acquired locations. The Comptroller granted such permits and we have opened the branches he authorized. We further assumed that the Federal Reserve Board could have no possible interest or jurisdiction over the decision of the Comptroller of the Currency and our actior pursuant to it and your counsel has admitted on the record that he could not attack the exercise of the Comptroller's discretion.

The divestment by Transamerica of its holdings in twenty-two banks does not and did not interfere with the stated purpose of the proceeding before the Board. Indeed, it facilitated it. In the event that the Board should order divestment of Transamerica's bank holdings, if it possesses that authority, it could still do so, after the transfer of these banks' assets to the Bank of America, by an order requiring Transamerica to divest itself of its stock in the Bank of America.

On June 23, without previous notice, a temporary restraining order was obtained in an ex parte proceeding against this Bank for the stated purpose of preventing the acquisition of assets, an acquisition which was already complete. The order was served at 4 o'clock on Friday, June 23, 1950, after the zero hour and after all Washington offices were closed. The Bank of America was put in an impossible dilemma. There was no time to reconstitute the banks as separate entities, if that had been possible. We construed the order to mean that we should do nothing further to acquire the assets, but not to mean that we should close the banking offices whose assets had been acquired. We were advised and believe that our interpretation was the only reasonable meaning of the order.

Nevertheless, your counsel thereupon cited us for civil and criminal contempt, stating that we were interfering with the jurisdiction and the objectives of the Board in the Transamerica action.

Your jurisdiction under the Clayton Act, if it exists at all, a question which, as you know, is still disputed, is only to hold hearings against parties whom you make respondents in your proceeding. You are required to permit those respondents

to appear. They are entitled to present evidence which you must consider. If new parties are added to the proceedings, they, too, have the same rights and privileges.

You did not pursue this course. We are not parties to the Transamerica proceeding. We are, therefore, writing you this letter, to ask what your purpose is in harassing me and this Bank, without giving us the protection of lawfully required administrative procedure. We think that we have the right to a full explanation so that we may guide ourselves in the future. We have no desire to interfere with the jurisdiction of the Board. We will cooperate with the Board in any matters in which we do not think our legal interests are being jeopardized by illegal demand. Therefore, you should be willing to explain clearly what your demands are and in what respect you think we are frustrating them. On this assumption, we would like answers to the following questions:

1. Precisely how does the acquisition of the assets of these banks, constituting a partial divestment of Transamerica's bank holdings, interfere with the purpose of your Clayton Act proceeding?

2. If divestment is authorized and finally ordered, why can it not be completely accomplished after the transfer of the banks' assets by a cease and desist order against Transamerica requiring also that it divest itself of its Bank of America stock?

3. In the light of the fact that you knew of the pending transfer through information obtained from the Comptroller of the Currency, why did you make no protest, demand or request upon us before taking the drastic and, as we are advised, illegal action which was taken?

4. What was your purpose in obtaining a temporary restraining order, without notice to us, at the conclusion of the week, and thus confronting the Bank of America with the dilemma of either closing twenty-seven banking offices or conducting their banking operations illegally or of opening its branches as it did under a cloud of public doubt and misunderstanding created by your precipitate action?

5. In the event that you were advised that the transfer could have been rescinded in the forty-eight hours between Friday night and Sunday night, why was it that you

delayed in such a manner as to increase the difficulties?

6. If it was your purpose to require a rescission and reconveyance and a stopping of the opening of the Bank of America branches, why did you not instruct your counsel to obtain an order specifically directing those acts?

7. At the hearing for contempt your counsel represented that the Board had a just case of violation of the anti-trust laws against Transamerica and even that the court had already appropriately so found. Did you authorize him to make such a statement, in violation of the requirement of the statute giving you your supposed jurisdiction, which states that your report should be in writing and after a hearing?

8. Have you, as one of the prospective officers charged with the duty of determining the issues in your pending Clayton Act proceeding against Transamerica Corporation, been accepting your advice in that regard from the prosecutor in that proceeding, contrary to the requirements of the Administrative Procedure Act?

We ask these questions because the record clearly shows that your counsel, Mr. Townsend, was not speaking as counsel in an adversary proceeding. He purported to represent the views and the opinion of the Board. It is important, therefore, for you to tell us whether he was so authorized.

9. In the event you felt that you had at least a prima facie case against the Bank of America, contrary to the advice you have had from the United States Attorney General, why did you not notify us and allow us to appear, and why did your Board not make a report in writing on that subject in the proceeding, in the event that you could not be persuaded to the contrary?

10. What part, if any, did Governor Evans, the Hearing Officer in your pending Clayton Act proceeding against Transamerica Corporation, take in authorizing the initiation of court proceedings against this Bank and against me?

11. Remembering the fundamental principle, which should characterize the public relations of all financial institutions and responsible supervisory authorities, that representations made to shareholders and to the public, with supervisory approval, should be scrupulously carried out, how can

you justify requiring me or this Bank to take action now that would necessarily involve a breach of faith with the numerous shareholders who have recently invested over $70 million in the capital stock of this Bank? In this instance you and your Board knew that Bank of America was engaged in consultations with the Comptroller's office with respect to the branches in question, and that as a result of those consultations there was a definite agreement with respect to the increase in the capital and the branch permits in question, and that the essence of those understandings was stated in my communications on the subject to the shareholders, of which the Comptroller was definitely advised, and which received wide publicity in the press.

May I suggest that in answering the above questions, it would be appropriate for you also to furnish us with certified copies of all minutes of your Board at which the matters referred to in the above questions were discussed or acted upon, indicating the names of the members of the Board who were present and who participated in each authorization.

You have put us in the anomalous position of an adversary party, whose conduct has been represented by your counsel to be in violation of the Clayton Act, without making us a party to the administrative proceeding or giving us an opportunity to be heard on that issue. Since we have no standing as parties in the proceeding in which we are condemned, we are entitled to know the reason for your action, the criminal aspect of which has already been dismissed, and what you now expect us to do and the advantages which you expect to gain by the other aspects of your action, which we are advised and believe are equally unwarranted, so that we may weigh your ideas and suggestions and determine what legal or other action we should take to protect the interests of the writer, this Bank, its 160,000 shareholders, and its four and a quarter million depositors.

Your prompt attention to this matter is requested.

Sincerely yours,

L. M. Giannini.