

Plan acquired 51,116 shares of Fleet Stock and cash in the amount of \$4,412,384 as a result of the Merger.<sup>12</sup> The Plan also acquired 35,295 Warrants. The applicant represents that the Warrants were automatically issued to each shareholder of NBB Stock in connection with the Merger on January 27, 1995. Thus, the Plan did not make any affirmative decision to accept the Warrants. Pursuant to the terms of the Plan as amended, the Warrants were sold by the Trustee in a blind transaction on the open market on April 7, 1995, for a price equal to \$4.428 per Warrant or \$156,301.50 in the aggregate. This amount was allocated among the Plan participants' accounts in the same proportion as the NBB Stock held in a participant's account immediately prior to the Effective Date bore to the total NBB Stock held by the Plan at such time.

7. In summary, the applicant represents that the subject transaction satisfied the criteria contained in section 408(a) of the Act because: (a) The Plan's acquisition and holding of the Warrants resulted from an independent action of NBB as a corporate entity; (b) all holders of NBB Stock, including the Plan, were treated in the same manner in connection with the Merger; and (c) the Warrants were automatically issued to the Plan, which made no affirmative election to acquire the Warrants.

**FOR FURTHER INFORMATION CONTACT:** Gary H. Lefkowitz of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

#### General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary

non-Plan holders of "no election" shares, these participants received Fleet Stock in connection with the Merger pursuant to provisions in the Agreement requiring that a minimum amount of Fleet Stock be issued in connection with the Merger and establishing a procedure for allocating such Stock among the holders of NBB Stock.

<sup>12</sup> The applicant represents that the Fleet Stock constitutes "qualifying employer securities" within the meaning of section 407(d)(5) of the Act and, therefore, the Plan's ownership of Fleet Stock satisfies the requirements of section 407(a) of the Act. In this proposed exemption, the Department expresses no opinion as to whether the requirements of section 407(a) of the Act are satisfied.

responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 4th day of August, 1995.

**Ivan Strasfeld,**

*Director of Exemption Determinations,  
Pension and Welfare Benefits Administration,  
U.S. Department of Labor.*

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**[Prohibited Transaction Exemption 95-67;  
Exemption Application No. D-09869, et al.]**

#### Grant of Individual Exemptions; Bankers Trust Company

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Grant of Individual Exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

#### Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

#### Bankers Trust Company (Bankers Trust) Located in New York, NY; Exemption

**[Prohibited Transaction Exemption 95-67;  
Exemption Application No. D-09869]**

The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply as of October 28, 1994, to the cash sale of certain structured notes (the Notes) for \$432,131,250 by three collective investment funds for which Bankers Trust acts as trustee (the Funds) to