

declines to receive the survey/profile will not receive it.

12. Arthur Andersen will make Option elections for (1) Any Plan with respect to which the Bank or its Affiliates is an employer; (2) Plans that have authorized Arthur Andersen to make an Option election on their behalf; or (3) Any Plan which does not reserve the right to make an Option election and fails to make an Option election prior to the Option Election Date.

If the Plan reserves the right to make its own Option election and subsequently fails to make an Option election by the Option Election Date, the Plan will be deemed to have elected Option 3. If the Plan does not reserve the right to make its own Option election and the Plan fails to make: a sufficiently broad authorization; any authorization at all; or fails to complete the profile survey, Arthur Andersen will elect only between Options 1 and 3 for the Plan. However, Arthur Andersen will choose among all four Options if the independent Plan fiduciary completes and returns timely all required parts of the profile/survey and the related authorization form expressly authorizing Arthur Andersen to choose among all four Options. The Bank represents that it will authorize Arthur Andersen to choose among all four Options for Plans with respect to which the Bank or any of its Affiliates is an employer.

Arthur Andersen will review all surveys returned by the Plans for completeness and contact Plan fiduciaries regarding any unclear or incomplete information. In the event that the Plan fiduciaries do not respond to the surveys, Arthur Andersen will make the Option election based on the information available, and will notify each Plan of the Option election which it has selected for the Plan and the basis for such election in writing.

With respect to those independent Plan fiduciaries who notify Arthur Andersen that they will be making their own Option elections, Arthur Andersen is prepared to counsel any Plan fiduciary regarding the election process.

Finally, as the Independent Fiduciary, Arthur Andersen's duties will also include monitoring property sales and disposition activities during the liquidation of the Fund.

13. The Bank represents that it will provide securities disclosure forms and option elections forms, reviewed and approved by Arthur Andersen, to the Plan within ten days after the date on which final approval for the Sale will be granted by the Office of the Comptroller of the Currency which will be subsequent to a final grant of this

proposed exemption and approval of the transactions covered by this proposed exemption by the Federal Reserve Board (the Initiation Date).

The Bank represents that the Settlement Valuation Date will be the last business day of the calendar month following the calendar month in which the Initiation Date occurs.

The Bank states that the Independent Fiduciary will mail a notice of right to make election, forms, supplemental disclosures and profile/surveys within thirty (30) days subsequent to the Settlement Valuation Date. The Plans will have at least thirty (30) days subsequent to the mailing of the Option Election Information to return the profile/survey to the Independent Fiduciary. The Plans will have at least sixty (60) days after the date on which the Option Election Information is mailed by the Independent Fiduciary in order to make their own Option elections.

The Bank states that the date on which the Plans will receive in cash the Unit Purchase Price plus the Interest Amount for their units in the Fund will be no more than 120 days after the Settlement Valuation Date.

14. The Standby Trustee will be obligated to acquire the Units in accordance with the Option Election Forms, and sales will be effected only pursuant to the Option Election Forms filed with the Bank on or prior to the Option Election Date. A Plan may rescind an Option election at any time prior to the Option Election Date.

15. The Bank agrees to be bound by the decisions and determinations made by Arthur Andersen, as the Independent Fiduciary. In the event that any action or inaction by the Bank or by the Holding Company with respect to the liquidation of the Fund or the Stand-by Trust is determined by the Independent Fiduciary to impede or conflict with any action or inaction required of the Independent Fiduciary in order to carry out and comply with the terms and provisions of this proposed transaction, the Independent Fiduciary shall so notify the Bank and demand that the Bank cease and desist from such action or take such action as is requested by the Independent Fiduciary.

16. In summary, it is represented that the proposed transaction will meet the statutory criteria for an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code because: (a) The Properties will be appraised by an independent and qualified appraiser; (b) The Plans selling Units pursuant to the Options will receive a price at least equal to the Unit Purchase Price plus the Interest Amount; (c) Prior to the

Sale, the Plans will receive written information regarding the terms of the Sale; (d) An Independent Fiduciary has been retained to represent the Plans' interests with respect to the Sale and ongoing disposition of the Properties in the Fund; (e) The duties of the Independent Fiduciary shall include: reviewing and approving the appraisals of the Properties; monitoring the sales of, and disposition activities with respect to, the Properties during the Fund's liquidation; making Option elections on behalf of any Plan if the Bank or its affiliates have sole investment discretion with respect to that Plan, the independent plan Fiduciary authorizes the Independent Fiduciary to make an Option election on behalf of that Plan, the independent Plan fiduciary does not indicate whether the Independent Fiduciary is authorized to make an Option election on behalf of the Plan, or the Bank or any Affiliate is an employer with respect to the Plan; (f) The Bank and the Holding Company will be bound by the decisions and determinations made by the Independent Fiduciary; and (g) The Bank will continue its efforts to liquidate the Fund.

**FURTHER INFORMATION CONTACT:** Eric Berger of the Department, telephone (202) 219-8971. (This is not a toll-free number.)

**The First National Bank of Boston and Its Affiliates (Collectively, the Bank)**

Located in Boston, Massachusetts  
[App. No. D-09682]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

**Section I—Exemption for Receipt of Fees**

If the exemption is granted, the restrictions of sections 406(a) and 406(b) 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 (F) of the Code, shall not apply as of April 1, 1994 to: (1) the receipt by the Bank of fees from the 1784 Funds (the Funds), investment companies registered under the Investment Company Act of 1940 (the 1940 Act), for acting as an investment adviser to the Funds in connection with the investment by plans for which the Bank serves as a fiduciary (the Client Plans) in shares of the Funds; and (2) the receipt and retention of fees by the