

Code by reason of section 4975(c)(1) (D) and (E) of the Code, shall not apply to the acquisition, holding or disposition of the common stock of the Bank's parent corporation, The Bank of New York Company, Inc. (BNY Stock), by Index or Model-Driven Funds, if the following conditions and the General Conditions of Section II are met:

(a) The Index or Model-Driven Fund is based on an index which represents the investment performance of a specific segment of the public market for equity securities in the United States and/or foreign countries. The organization creating and maintaining the index must be (1) engaged in the business of providing financial information, evaluation, advice or securities brokerage services to institutional clients, (2) a publisher of financial news or information, or (3) a public stock exchange or association of securities dealers. The index must be created and maintained by an organization independent of the Bank and its affiliates. The index must be a generally accepted standardized index of securities which is not specifically tailored for the use of the Bank or its affiliates.

(b) The acquisition or disposition of the BNY Stock is for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Index or Model-Driven Fund is based.

(c) All acquisitions comply with Rule 10b-18 of the Securities and Exchange Commission, including the limitations regarding the price paid or received for such stock.

(d) Aggregate daily purchases of BNY Stock constitute no more than the greater of: (1) 10 percent of the stock's average daily trading volume for the previous five days; or (2) 10 percent of the stock's trading volume on the date of the transaction.

(e) If the necessary number of shares of BNY Stock cannot be acquired within 10 business days from the date of the event which causes the particular Index or Model-Driven Funds to require BNY Stock, the Bank appoints a fiduciary which is independent of the Bank and its affiliates to design acquisition procedures and monitor the Bank's compliance with such procedures.

(f) All purchases and sales of BNY Stock are executed on the national exchange on which BNY Stock is primarily traded.

(g) No transactions involve purchases from, or sales to, the Bank or any affiliate (including officers, directors and employees of the Bank, as defined in Section III(c) below), or any party in interest with respect to a plan which has

invested in an Index or Model-Driven Fund.

(h) No more than five (5) percent of the total amount of BNY Stock issued and outstanding at any time is held in the aggregate by the Index and Model-Driven Funds.

(i) BNY Stock constitutes no more than two (2) percent of the value of any independent third-party index on which the investments of an Index or Model-Driven Fund are based.

(j) A plan fiduciary independent of the Bank and its affiliates authorizes the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds BNY Stock.

(k) A fiduciary independent of the Bank and its affiliates directs the voting of the BNY Stock held by an Index or Model-Driven Fund on any matter in which shareholders of BNY Stock are required or permitted to vote.

Section II—General Conditions

(a) The Bank maintains or causes to be maintained for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (b) of this Section to determine whether the conditions of the exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Bank, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than the Bank shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975 (a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided in paragraph (b)(2) and notwithstanding any provisions of section 504 (a)(2) and (b) of the Act, the records referred to in paragraph (a) of this Section are available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service,

(B) Any fiduciary of a plan participating in an Index or Model-Driven Fund who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer with respect to any plan participating in an Index or Model-Driven Fund or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in an Index or Model-Driven Fund, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in paragraph (b)(1) (B) through (D) shall be authorized to examine trade secrets of the Bank, any of its affiliates, or commercial or financial information which is privileged or confidential.

Section III—Definitions

(a) **Index Fund**—Any investment fund, account or portfolio sponsored, maintained and/or trusted by the Bank, or an affiliate of the Bank, in which one or more investors invest which is designed to replicate the capitalization-weighted composition of a stock index which satisfies the conditions of Section I (a) and (i).

(b) **Model-Driven Fund**—Any investment fund, account or portfolio sponsored, maintained and/or trusted by the Bank, or an affiliate of the Bank, in which one or more investors invest which is based on computer models using prescribed objective criteria to transform an independent third-party stock index which satisfies the conditions of Section I(a) and (i).

(c) **Affiliate**—Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such person; any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or a sister of such person; and any corporation or partnership of which such person is an officer, director, or partner.

Summary of Facts and Representations

1. The Bank is the principal subsidiary of The Bank of New York Company, Inc., the 16th largest bank holding company in the United States, with total assets of approximately \$49 billion at the end of 1994. The Bank is one of the largest commercial banks in the country, and with its sister bank and trust company subsidiaries is one of the largest providers of securities processing, money management and other administrative and management services to institutional investors, including employee benefit plans subject to the Act.

2. In furnishing investment management services, the Bank acts as a fiduciary to its employee benefit plan customers. A principal vehicle employed by the Bank in furnishing investment management services is its Collective Trust. The Collective Trust accepts investment from employee benefit plans subject to the Act as well