

as governmental plans and governmental units not subject to the Act. The Collective Trust is exempt from federal income taxation pursuant to IRS Rev. Rul. 81-100.

The Collective Trust consists of a series of separate investment funds, each with a separate investment objective and portfolio of assets. It is possible for a plan to invest solely in one, or in several but less than all, of the investment funds, as selected and in such amounts as determined by the plan's named fiduciary. The value of a plan's investment in any given fund depends solely on the investment performance of that fund, unrelated to the investment performance of the other funds within the Collective Trust.

3. Among the new funds established within the Collective Trust early in 1994 is the Bank's Mid Cap Index Fund, whose objective is to replicate as closely as may be practicable the performance of the Standard & Poor's (S&P) MidCap 400 Index. The Bank initially requested an exemption to permit the acquisition, holding and disposition of BNY Stock by the Bank's Mid Cap Index Fund because the BNY Stock was included in the S&P MidCap 400 Index. However, effective March 30, 1995, the BNY Stock was added to the S&P 500 Index. Since the Bank also maintains within the Collective Trust a large S&P 500 Index Fund, the Bank now requests an exemption to permit the acquisition, holding and disposition of BNY Stock by the Bank's S&P 500 Index Fund.

4. The S&P 500 Index is an index of 500 stocks that are traded on the New York Stock Exchange (NYSE), the American Stock Exchange, and the NASDAQ National Market System. It is a market value-weighted index, multiplying shares outstanding times stock price, in which each company's influence on index performance is directly proportional to its market value. The 500 companies chosen by the S&P Index Committee for the index are not the 500 largest companies but, instead, are the companies that tend to be leaders in key industries within the U.S. economy, as determined by the Committee.

The Bank's S&P 500 Index Fund was established in 1989. Its objective is to track as closely as possible the total return of the S&P 500 Index. The Fund currently has total assets of approximately \$554 million as of May 9, 1995 and approximately 16 employee benefit plan investors.

5. The Bank requests that the exemption cover the acquisition, holding and disposition of BNY Stock by any Index or Model-Driven Fund sponsored, maintained and/or trustee

by the Bank or an affiliate. The Bank represents that such Index Funds will include any investment fund, account or portfolio in which one or more investors invest which is designed to replicate the capitalization-weighted composition of an independent third-party stock index. In addition, the Bank represents that such Model-Driven Funds will include any investment fund, account or portfolio 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. All independent third-party stock indexes used by the Bank for an Index or Model-Driven Fund will represent 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 will be: (a) engaged in the business of providing financial information, evaluation, advice or securities brokerage services to institutional clients; (b) a publisher of financial news or information; or (c) a public stock exchange or association of securities dealers. The index will be created and maintained by an organization independent of the Bank and its affiliates. The index will be a generally accepted standardized index of securities which is not specifically tailored for the use of the Bank or its affiliates.

6. With respect to Model-Driven Funds, the Bank represents that the portfolio of such a Fund would be determined by the details of a computer model, which would examine structural aspects of the stock market, rather than the underlying stock values. An example of a Model-Driven would include a fund which "transforms" the S&P 500 Index, making investments according to a computer model which uses such data as the following: (a) earnings, dividends and price-earnings ratios for common stocks in the S&P 500 Index; (b) current yields on corporate bonds and money market instruments; and (c) historical standard deviations and correlations of and between asset classes. However, like Index Funds, the Model-Driven Funds would be passively managed, in that decisions of which stocks to buy or sell would not be the result of active evaluation of the investments by an investment manager, but would be determined in accordance with a predetermined computer model.

The Bank states that it does not currently maintain any Model-Driven Funds of the type described above, but is considering establishing such funds in the future. Prior to May 1, 1995, the Bank maintained a South Africa

Constrained Index Fund, whose objective was to track the S&P 500 Index by excluding certain stocks of companies that had direct equity investment in the Republic of South Africa and were not signatories to a Statement of Principles for South Africa as of April 28, 1994. However, the South Africa Constrained Index Fund was discontinued by the Bank as of April 28, 1995.

7. With respect to the proposed purchase of BNY Stock by the Funds, the Bank states that all such acquisitions will comply with Rule 10b-18 of the Securities and Exchange Commission (SEC), including the limitations regarding the price paid or received for such stock. SEC Rule 10b-18 provides a "safe harbor" for issuers of securities from section 9(a)(2) of the Securities Exchange Act of 1934 and SEC Rule 10b-5 (which generally prohibits persons from manipulating the price of a security and engaging in fraud in connection with the purchase or sale of a security).

The Bank states that the conditions imposed by Rule 10b-18 for purchases of BNY Stock would be as follows: (a) all purchases would be made from or through only one broker on any single day; (b) no purchases would constitute the opening transaction in BNY Stock; (c) purchases would not occur within one-half hour before the scheduled close of trading on the NYSE; (d) the price would not be higher than the current independent bid quotation or the last independent sale price on the exchange, whichever is higher; and (e) if the purchases of BNY Stock are not block purchases as defined by Rule 10b-18(b)(4), the total amount of purchases on any one day would not exceed the higher of one round lot or the number of round lots closest to 25 percent of the trading volume for BNY Stock on that day.

However, notwithstanding the restrictions of Rule 10b-18, the Bank states that aggregate daily purchases of BNY Stock will constitute no more than the greater of: (a) 10 percent of the stock's average daily trading volume for the previous five days; or (b) 10 percent of the stock's trading volume on the date of the transaction.

8. The Bank states that all purchases and sales of BNY Stock will be executed on the national exchange on which BNY Stock is primarily traded. In addition, no transactions will 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) above), or any party in interest with respect to a plan which has invested in an Index or Model-Driven