

Fund. The Bank states further that no more than five (5) percent of the total amount of BNY Stock issued and outstanding at any time will be held in the aggregate by the Index and Model-Driven Funds. Finally, the Bank represents that it will ensure that BNY Stock does not constitute 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. In this regard, the weight currently assigned to BNY Stock in the S&P 500 Index is approximately 0.169 percent. Prior to the addition of the BNY Stock to the S&P 500 Index, the Bank states that the BNY Stock comprised approximately 1.27 percent of the S&P MidCap 400 Index.

9. The Bank states that 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 will appoint a fiduciary which is independent of the Bank and its affiliates to design acquisition procedures and monitor the Bank's compliance with such procedures. In addition, the Bank states a fiduciary independent of the Bank and its affiliates will direct 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. Finally, the Bank represents that a plan fiduciary independent of the Bank and its affiliates will authorize the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds BNY Stock.

10. With respect to acquisitions of BNY Stock by the Funds, the independent fiduciary and its principals will be completely independent from the Bank and its affiliates and will be experienced in developing and operating investment strategies, including index funds. The independent fiduciary will be responsible for accurately representing that during the operation of any trading program based upon acquisition procedures developed by the fiduciary, no principal employee of the fiduciary nor the fiduciary itself will engage in any trading of any kind in BNY Stock. Furthermore, the independent fiduciary will not act as the broker for any purchases or sales of BNY Stock and will not receive any commissions as a result of the trading program.

In connection with the initial acquisition of BNY Stock by the Bank's S&P 500 Index Fund, the Bank calculates that the number of shares that

would have to be bought by such Fund would not exceed 28,000. This estimate is based on the figures for the size of the Bank's S&P 500 Index Fund and the weight assigned to BNY Stock in the S&P 500 Index.

The Bank states that based on recent figures for the high, low and average daily trading volume for the BNY Stock on the NYSE, the initial requirements of the Bank's S&P 500 Index Fund could be met by the Bank placing a market-on-close order on the NYSE on a single business day—or at the most two successive business days. Under the established rules of the NYSE, the price on such an order would be set automatically, permitting no discretion on the part of the order placing party. The Bank represents that the impact of such purchases on the market for BNY Stock would be minimal, and that under such circumstances the full and proper protection of the interests of plan investors would not require or warrant the retention of an independent fiduciary to develop a trading program for the initial acquisitions of BNY Stock.

11. With respect to the voting of BNY Stock, the independent fiduciary chosen by the Bank will be a firm knowledgeable and experienced in corporate governance issues and proxy voting on behalf of public and private pension funds, banks, trust companies, money managers, insurance companies and other institutional investors with large equity portfolios. The independent fiduciary will develop, and supply to the Bank, written material dealing with corporate ownership, which will act as a guideline to the voting of proxies by institutional fiduciaries, and their current voting guidelines. The Bank will provide the independent fiduciary with all necessary information regarding the Funds that hold BNY Stock, the amount of BNY Stock held by such funds on the record date for shareholder meetings of The Bank of New York Company, Inc., and all proxy and consent materials for BNY Stock. The independent fiduciary will maintain records of its activities as an independent fiduciary on behalf of the Funds, including the number of shares of BNY Stock voted, the manner in which they were voted, and the rationale for the vote if it was not consistent with the independent fiduciary's corporate ownership material and current voting guidelines in effect at the time of the vote. The independent fiduciary will supply the Bank with the information after each shareholder meeting and will acknowledge that it will be acting as a fiduciary with respect to the plans that invest in the Funds which own BNY Stock, when voting such stock.

12. In summary, the applicant represents that the proposed transactions will satisfy the criteria of section 408(a) of the Act for the following reasons: (a) the acquisition, holding and disposition of BNY Stock will occur solely to maintain strict quantitative conformance by an Index or Model-Driven Fund to its underlying index or model; (b) all acquisitions and dispositions of BNY Stock will occur in the open market and will comply with SEC Rule 10b-18; (c) aggregate daily purchases of BNY Stock will constitute no more than the greater of either 10 percent of the stock's average daily trading volume for the previous five days, or 10 percent of the stock's trading volume on the date of the transaction; (d) no more than 5 percent of the total outstanding shares of BNY Stock will be held in the aggregate by the Funds; (e) BNY Stock will constitute no more than 2 percent of the value of any independent third-party index on which the investments of an Index or Model-Driven Fund are based; (f) 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 will appoint a fiduciary which is independent of the Bank and its affiliates to design acquisition procedures and monitor the Bank's compliance with such procedures; (g) a fiduciary independent of the Bank and its affiliates will direct the voting of any BNY Stock held by the Funds; and (h) a plan fiduciary independent of the Bank and its affiliates will authorize the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds BNY Stock.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 219-8194. (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 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