## Employee Benefit Capital Preservation Fund of Central Fidelity National Bank (the Fund) Located in Richmond, Virginia

[Application No. D-09905]

Proposed Exemption

The Department of Labor 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 C.F.R. Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (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 to the past sale by the Fund of three Guaranteed Income Contracts (the GICs) of Confederation Life Insurance Company (CL) to Central Fidelity Bank, Inc. (CFB), a party in interest with respect to the Fund, provided the following conditions are satisfied: (1) The sale was a one-time transaction for cash: (2) the Fund received no less than the fair market value of the GICs at the time of the transaction; (3) the purchase price was not less than the GICs' accumulated book values (defined as total deposits plus interest accrued but unpaid at the GICs' stated rates of interest through the date of sale, less withdrawals) as of the date of the sale.

Effective Date: If this proposed exemption is granted, it will be effective on December 29, 1994.

## Summary of Facts and Representations

- 1. The Fund is a group trust created on August 1, 1988, established and maintained exclusively by Central Fidelity National Bank (the Bank) for the collective investment of various participating trusts for the assets of retirement, pension, profit sharing, stock bonus or other plans exempt from taxation under the Code. Each participating trust is deemed to have a proportionate undivided interest in the Fund, and each shares ratably with the others in the income, profits, or losses thereof. As of September 30, 1994, there were 266 participating trusts in the Fund, and the Fund had assets with a total value of approximately \$48 million. All of the assets of the Fund are held by the Bank as fiduciary. The Bank is a wholly-owned subsidiary of CFB, which is a bank holding company located in Richmond, Virginia.
- 2. Among the Fund's investments are the three GICs, which can be described as follows:

- (a) GIC Contract Number 62340 is a single deposit contract acquired from CL on November 16, 1990. Its maturity date is November 15, 1995. The guaranteed rate of interest payable on the GIC is 8.9%, and the deposit amount was \$1 million.
- (b) GIC Contract Number 62379 is also a single deposit contract acquired from CL on January 11, 1991. Its maturity date is January 10, 1996. The guaranteed rate of interest payable on this GIC is 8.55%, and the deposit amount was also \$1 million.
- (c) GIC Contract Number 62424 is also a single deposit contract acquired from CL on March 8, 1991. Its maturity date is March 7, 1996. The guaranteed rate of interest payable on this GIC is 8.6%, and the deposit amount was also \$1 million.
- 3. On August 11, 1994, Canadian regulatory authorities seized CL due to serious liquidity problems facing CL, caused by failed real estate investments. As a result, the assets of CL were frozen, including the subject GICs. The Bank determined that, as a consequence of CL's current financial condition, the likelihood that CL will timely satisfy its obligations under the GICs is seriously compromised.
- 4. Due to the uncertainty of payments under the GICs, the Bank sought to eliminate the financial risk to the Fund's participating trusts and to protect the benefits of the participants and beneficiaries in the participating trusts. The applicant represents that this was accomplished by the cash sale of the GICs to CFB, the Bank's parent company. The purchase price for each of the GICs was its accumulated book value (defined as deposits plus accrued interest at the guaranteed rate, less withdrawals). The total purchase price for the three GICs amounted to \$3,253,109.59. The Fund had received scheduled interest payments from CL prior to August 12, 1994. Thus, the purchase price for the GICs included interest at the guaranteed rates for the periods from the last interest payments made by CL for the respective contracts through the date of sale.
- 5. In summary, the applicant represents that the subject transaction satisfied the criteria contained in section 408(a) of the Act because: (a) The sale was a one time transaction for cash; (b) the Fund received the accumulated book value (defined as deposits plus unpaid interest to the date of the sale at the guaranteed rate, minus withdrawals) of the GICs, which the applicant represents to be equal to or in excess of the fair market value of the GICs; (c) the transaction has enabled the Fund to avoid any risk associated with

continued holding of the GICs and to redirect assets to safer investments; and (d) the Plan did not incur any expenses related to the transaction.

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 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.