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4 (a)

February 9, 1976

Dear :

This is in response to your letter in which you inquired about the application of the fiduciary provisions of the Employee Retirement Income Security Act of 1974 (ERISA). I regret that we have not been able to respond more promptly, due to the large volume of inquiries received.

Specifically, you ask whether the plan discussed in your letter is a pension or welfare plan as those terms are defined in ERISA. You describe the plan as "a specimen non-qualified employee stock purchase plan" offered by National Bank to various companies. Under the plan described, an employee may voluntarily authorize regular payroll deductions up to ten percent of his salary. An employer may contribute an amount equal to a percentage of the employee's contributions. The money is invested in stock of the employing company at the current market price. An employee may terminate membership in the plan at any time by giving written notice to the employer. Upon withdrawal, the participant will receive certificates for stock purchases, or he will receive the proceeds of the sale of his stock, whichever he requests.

Based on the facts as they have been presented, it appears that the terms of the plan in question do not provide any of the benefits described in section 3(1) of ERISA or in section 302(c) of the Labor-Management Relations Act of 1947, and therefore the plan is not an employee welfare benefit plan.

An employee pension benefit plan is defined in section 3(2) of ERISA as "...any plan, fund, or program...established or maintained by an employer...that by its express terms or as a result of surrounding circumstances such plan, fund or program -

- (A) provides retirement income to employees, or
- (B) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond..."

Where the employee may terminate his participation in the plan at any time, section 2510.3-1 of the regulations governing plan coverage, published in the Federal Register on August 15, 1975, indicates that "if each employee has the right to withdraw the balance in his or her account at any time, such a payroll savings plan does not meet the requirements for a pension plan set forth in section 3(2) of the Act and, therefore, is not an employee benefit plan within the meaning of section 3(3) of the Act." The terms of the subject stock purchase plan, which permit withdrawal of a participant's balance at any time, appear to be governed by the language of that regulation.

Section 4(a) of the Act states that only employee benefit plans within the meaning of section 3(3) are subject to Title I of the Act. Therefore, the fiduciary responsibility provisions of ERISA are not applicable to the plan described in your letter.

Sincerely,