

of Executive Order (E.O.) 11246, and was subject to the contractual obligations imposed on Government Contractors by E.O. 11246, and the implementing regulations, including the regulations found at 41 CFR Part 60-4 (affirmative action requirements for construction contractors and subcontractors).

3. A compliance review under E.O. 11246 was conducted. On June 21, 1987, plaintiff notified defendant of the problem areas which were identified in the compliance review. * * *

4. On July 17, 1987, defendant entered into a Conciliation Agreement with OFCCP, committing defendant to submit Monthly Manpower Utilization Reports (Standard Form CC-257) to OFCCP. * * *

5. Defendant failed to submit the required Monthly Manpower Utilization Reports (Standard Form CC-257), as provided for in the Conciliation Agreement.

6. OFCCP unsuccessfully attempted to secure the reports and defendant's compliance through means of conciliation and persuasion.

7. On January 28, 1989, OFCCP sent defendant a notice to show cause pursuant to 41 CFR 60-4.8 to which defendant failed to respond with (sic) 15 days. * * *

8. Defendant continues to refuse to submit the reports which were due and is in violation of E.O. 11246, the implementing regulations and its Conciliation Agreement. R.D. and O. at 1-2.

Although the Defendant's failure to file an answer constituted an admission of OFCCP's complaint allegations, 41 CFR 60-30.6(b), a waiver of hearing and a lawful basis for the ALJ's subsequent adoption of OFCCP's material facts as alleged in its complaint, 412 CFR 60-30.6(c), the Defendant was further provided "an opportunity to file exceptions to (the R.D. and O.) and to file briefs in support of the exceptions." 41 CFR 60-30.6(c). The Defendant made no such filings with the Secretary.

The Office of Administrative Appeals (OAA) subsequently issued an Order to Ensure Service and Establish Briefing Schedule in response to Plaintiff's Motion for Entry of Default Judgment and Entry of Sanctions. Defendant did not reply to OAA's order and the document was returned with a notation (without attribution) that the Defendant had moved.²

² Review of the various documents in the record reveals that the name of Rampart Electric's President, Jeff Dwyer, has been spelled three different ways. The Conciliation Agreement is signed by "Joni Dwyer for" the typed name "Jeff Dwyer." The certificates of service in the Administrative Complaint, the Notice of Docketing and the Order to Show Cause refer to him as "Jeff Dwyer." The certificates of service in the Motion for Judgment on the Pleadings and the R.D. and O. list him as "Jeff Dwyer." The certificate of service in Plaintiff's Motion for Entry of Default Judgment and Entry of Sanctions and OAA's Order to Ensure Service and Establish Briefing Schedule refer to "Jeff Dwyer." All documents refer to him as President of Rampart Electric at 6605 Alberta Drive, Colorado Springs, Colorado. Subsequent inquiries,

I agree with the R.D. and O. and OFCCP's motion for entry of a default judgment and sanctions. Accordingly, I enter this default judgment and order sanctions, including debarment, for the Defendant's breach of its Conciliation Agreement to submit Monthly Manpower Utilization Reports necessary to measure compliance thereunder; its failure to respond to OFCCP's attempts to secure these reports through conciliation and persuasion and to respond to OFCCP's notice of violations; and its repeated failures to participate in the ALJ proceeding. Debarment and other procurement-related sanctions are authorized for both substantive and procedural violations of the Executive Order and implementing regulations. *Uniroyal, Inc. v. Marshall*, 482 F. Supp. 364, 371-75 (D.D.C. 1979); *OFCCP v. Milwaukee Fence Co.*, Case No. 91-OFC-3, Sec. Dec. and Fin. Admin. Ord., Oct. 6, 1992, slip op. at 1-4; *OFCCP v. Disposable Safety Wear Inc.*, Case No. 92-OFC-11, Sec. Dec. and Fin. Admin. Ord., Sept. 29, 1992, slip op. at 1-6, 13. Accordingly, I make the following ORDER:

1. All federal contracts and subcontracts and federally assisted construction contracts and subcontracts of Defendant, Rampart Electric, Inc., its successors, officers, agents, servants, employees, direct or beneficial owners, divisions or subsidiaries and those persons acting in concern with them shall be canceled, terminated and suspended; and

2. Defendant, Rampart Electric, Inc., its successors, officers, agents, servants, employees, direct or beneficial owners, divisions or subsidiaries and those persons in active concert or participation with them shall be ineligible for the award of new federal contracts and subcontracts or federally assisted construction contracts or subcontracts or the extension or modification of any such existing contracts or subcontracts.

These sanctions shall be implemented and shall remain in effect until such time as Defendant, Rampart Electric, Inc., its officers, agents,³ servants, employees, direct or beneficial owners, divisions or subsidiaries, successors or assigns, and those persons in active concert or participation with them have satisfied the OFCCP Director, pursuant to 41 CFR 60-1.31, that Defendant is in compliance with the provisions of

including communications with the Colorado Secretary of State, have been unable to locate Mr. Dwyer and/or Rampart Electric.

³ "Officers" and "agents" in this Order include Jeff Dwyer, a/k/a Jeff Dwyer and Jeff Dwyer in various portions of the record.

Executive Order No. 11,246, as amended, and the rules and regulations issued thereunder.

So Ordered.

Washington, DC.
Robert B. Reich,
Secretary of Labor.

Certificate of Service

Case Name: *OFCCP, USDOL v. Rampart Electric, Inc.*

Case No: 89-OFC-14.

Document: Final Decision and Order of Debarment and Related Sanctions.

A copy of the above-referenced document was sent to the following persons on September 11, 1995.

Kathleen Gorham,

Certified Mail

Jeff Dwyer, President, (a/k/a/ Jeff Dwyer, Jeff Dryer), Rampart Electric, Inc., 6605 Alberta Drive, Colorado Springs, CO 80910

Corporation Section, Colorado Secretary of State, 1560 Broadway, Suite, 200, Denver, CO 80202

Business Regulation Unit, Colorado Attorney General, 1525 Sherman Street, 5th Fl., Denver, CO 80203

Legal Services Unit (Public Contracts), Colorado Attorney General, 1525 Sherman Street, 5th Fl., Denver, CO 80203

Tedrick A. Housh, Jr., Regional Solicitor/USDOL, 1585 Federal Bldg., 1961 Stout Street, Denver, CO 80294, Attn: Henry C. Mahlman, S. Lorrie Ray

Hand Delivered

James Henry, Associate Solicitor, Civil Rights Division/SOL, U.S. Department of Labor, Room N-2464, 200 Constitution Avenue, NW., Washington, DC 20210

Heidi Finger, Esq., Willie Alexander, Esq., Civil Rights Division/SOL, U.S. Department of Labor, Room N-2464, 200 Constitution Avenue, NW., Washington, DC 20210

Diane A. Heim, Esq., Heather A. Joys, Esq., Civil Rights Division/SOL, U.S. Department of Labor, Room N-2464, Washington, DC 20210

Regular Mail

Hon. John M. Vittone, Acting Chief Administrative Law Judge, Office of Administrative Law Judge, 800 K Street, Suite 400, Washington, DC 20001-8002

[FR Doc. 96-5048 Filed 3-4-96; 8:45 am]

BILLING CODE 4510-27-M

Occupational Safety and Health Administration

Washington State Standards; Notice of Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for

Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with Section 18(c) of the Act and 29 CFR Part 1902. On January 26, 1973, notice was published in the Federal Register (38 FR 2421) of the approval of the Washington plan and the adoption of Subpart F to Part 1952 containing the decision.

The Washington plan provides for the adoption of State standards that are at least as effective as comparable Federal standards promulgated under Section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective as status of the State program, a program change supplement to a State plan shall be required.

In response to Federal standard changes and on its own initiative the State submitted by letter dated August 19, 1994, from Mark O. Brown, Director, to James W. Lake, Regional Administrator, a State standard corrective housekeeping amendment comparable to 29 CFR 1910.1017, Vinyl Chloride, as published in the Federal Register (58 FR 35310) on June 30, 1993. The State's original Vinyl Chloride standard was approved in the Federal Register on August 17, 1976 (FR 35896). The change was adopted in Washington Administrative Order 94-07 on July 20, 1994, effective September 20, 1994. In addition, on its own initiative, the State submitted by letter dated February 8, 1991, from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a State standard amendment. The amendment added clarifying language on end-of-service-life indicators on respirator canisters or cartridges for vinyl chloride. The State standard is comparable to 29 CFR 1910.1017, Vinyl Chloride. The change was adopted in Administrative Order 90-18 on January 10, 1991 and effective February 12, 1991. Also, on its own initiative, the State submitted by letter dated September 26, 1986, from G. David Hutchins, Assistant Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a State standard amendment. The amendment eliminated obsolete language and updated types of respirators to be used by employees exposed to vinyl chloride. The State standard is comparable to 29

CFR 1910.1017, Vinyl Chloride. The change was adopted in Administrative Order 86-28 on July 25, 1986 and effective August 25, 1986.

In response to Federal standard changes the State submitted by letter dated October 14, 1994, from Mark O. Brown, Director, to James W. Lake, Regional Administrator, and incorporated as part of the state plan, a State standard amendment. The amendment added clarifying language and made minor housekeeping changes comparable to 29 CFR 1910.132, Personal Protective Equipment, General Provisions, 29 CFR 1910.133, Eye and Face Protection, 29 CFR 1910.136, Foot Protection, 29 CFR 1910.138, Hand Protection, Appendix A to Subpart I, References for further Information (Non-mandatory) and Appendix B to Subpart I, Non-mandatory Compliance Guidelines for Hazard Assessment and Personal Protective Equipment Selection, as published in the Federal Register (59 FR 16360) on April 6, 1994 and corrections as published in the Federal Register (59 FR 33910) on July 1, 1994. The changes were adopted in Administrative Order 94-16 on September 30, 1994, effective November 20, 1994.

In response to Federal standard changes and on its own initiative the State submitted letters from the Director of Washington Department of Labor and Industries to James W. Lake, Regional Administrator, State standard amendments comparable to 29 CFR 1910.120 and 1926.65, Hazardous Waste Operations and Emergency Response. The Federal-initiated amendments and corrections were published in the Federal Register on March 6, 1989, final rule (54 FR 429317); April 13, 1990, corrections (55 FR 14072); April 18, 1991, corrections (56 FR 16832); and August 22, 1994, amended, (59 FR 40964). The only significant difference is that the State requires eighty hours of training for workers in certain site zones. The changes and amendments were adopted in: Administrative Order 89-10, October 10, 1989, effective November 24, 1989; Administrative Order 90-01, April 10, 1990, effective May 25, 1990; Administrative Order 90-14, October 1, 1990, effective November 15, 1990; Administrative Order 91-01, May 20, 1991, effective June 20, 1991; Administrative Order 91-07, November 22, 1991, effective December 24, 1991; Administrative Order 93-04, September 22, 1993, effective November 1, 1993; Administrative Order 94-07, July 20, 1994, effective September 20, 1994; Administrative Order 94-08, August 3, 1994, effective September 12, 1994 and

Administrative Order 94-22, January 18, 1995, effective March 10, 1995.

In response to Federal standard changes, the State submitted by letters from Richard A. Davis and Joseph A. Dear, Directors, to James W. Lake, Regional Administrator, a State standard amendment comparable to the Federal standard amendment, 29 CFR 1910.401(a)(2)(iv), and the definition for Scientific Diving in 1910.402, Commercial Diving Operations, as published in the Federal Register (47 FR 53365) on November 26, 1982. In addition, in the same letters, the State, on its own initiative, submitted amendments to WAC 296-37-510 through 590, Safety Standards for Commercial Diving Operations. The code was originally approved in the Federal Register (46 FR 50445) on October 13, 1981. The State's first submission was adopted December 26, 1986, effective January 25, 1987, under Administrative Order 86-44. National Office review revealed discrepancies and the submission was returned to the State for correction. On November 18, 1992, the State submitted a corrective amendment which incorporated all of the Federal amendments and State-initiated changes to date. The minor differences in the standard are: The State included requirements for air compressors and alarms; the State included a requirement for a safety line; the State uses the word recompression rather than decompression; and the State added a reference to its recordkeeping standards. The State has also submitted by letter dated August 19, 1994, from Mark O. Brown, Director, to James W. Lake, Regional Administrator, a State corrective amendment identical to the Federal amendment at 29 CFR 1910.401(a)(2)(iii), Commercial Diving, published in the Federal Register (58 FR 35310) on June 30, 1993. The State amendment was adopted on July 20, 1994, effective September 20, 1994, under Administrative Order 94-07.

In response to Federal standards changes, the State submitted by letter dated April 24, 1990, from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, a State standard amendment comparable to 29 CFR 1910.66, Powered Platforms for Building Maintenance, as published in the Federal Register (54 FR 31408) on July 28, 1989. On February 8, 1991, the State submitted additional changes to its standard to make it identical to the OSHA standard in four places. On December 20, 1991, the State made a minor change to a reference to another part of its standard. Upon review of the State standard, it was determined to be

less effective than the OSHA standard, and on November 18, 1993, the State was asked to make corrections. On August 19, 1994, the State submitted the necessary minor corrections. The State's standard replaces, in its entirety, the original State standard, WAC 296-24-87, Powered Platforms for Exterior Building Maintenance, which received Federal approval (41 FR 34836) on August 17, 1976. The State standard, which is substantially identical to the Federal standard, is contained in WAC 296-24-870. It was adopted on April 10, 1990, effective April 25, 1990 under Administrative Order 84-18. The minor changes asked for by OSHA in its November 18, 1993 letter were adopted in Administrative Order 94-07 on July 20, 1994, effective September 20, 1994. The change made in the February 8, 1991 letter was adopted in Administrative Order 90-18, on January 10, 1991, effective February 12, 1991, and the change made in the December 20, 1991 letter was adopted in Administrative Order 91-07 on November 22, 1991, effective December 24, 1991.

On its own initiative, the State of Washington has submitted by letter dated September 5, 1990, from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, a repeal of WAC 296-155-580 and adoption of WAC 296-155-48531, comparable to 29 CFR 1926.556, Aerial Lifts. The repeal and adoption occurred in Administrative Order 86-14, on January 21, 1986, effective February 20, 1986. Under Administrative Order 90-10, which was adopted on August 13, 1990, effective September 24, 1990, minor housekeeping changes were made. National Office review revealed discrepancies and the submission was returned to the State for correction. On September 8, 1992, the State submitted a corrective amendment that made the necessary changes. This submission was adopted on August 10, 1992, effective September 10, 1992, under Administrative Order 92-06. The significant differences are: The State uses the more recent ANSI 92.2-1979 as the reference; adds requirements for specification and data display and placarding; adds requirements for elevation and reach determination and insulated aerial devices; and adds requirements for inspections. The State code was originally approved in the Federal Register (47 FR 5956) on February 9, 1982.

On its own initiative, the State of Washington has submitted by letter dated June 15, 1989, from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, a State standard

for forklift elevated work platforms in construction. The State's submission, which is contained in WAC 296-155-48536, was adopted on May 15, 1989, effective June 30, 1989, under Administrative Order 89-03. National Office review revealed discrepancies and the submission was returned to the State for correction. On November 25, 1992, the State submitted a corrective amendment that made the changes requested by the National Office. This submission was adopted on October 30, 1992, effective December 8, 1992, under Washington Administrative Order 92-06.

On its own initiative, the State has submitted by letter dated February 9, 1990, from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, a change to its previously approved Grain Elevator standards at WAC 296-99-015 and 050. The change to WAC 296-99-015 incorporated an OSHA determination contained in a March 27, 1989 memorandum from the Directorate of Compliance Programs that the standard does not apply to alfalfa processing plants that are not involved with grain handling. The change to WAC 296-99-050 incorporated a court decision to stay the 1/8 inch action level contained in 29 CFR 1910.272(i)(2). These changes were adopted on January 11, 1990, effective February 26, 1990, under Administrative Order 89-20. On June 20, 1991, a letter from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, made another State-initiated change to WAC 296-99-050. This change made the State standard identical to the Federal standard 29 CFR 1910.272(i)(2). This change was necessary to incorporate the lifting of the stay by the courts to the 1/8 inch action level. This change was adopted on May 20, 1991, effective June 20, 1991, under Washington Administrative Order 91-01. The State standard was originally approved in the Federal Register (54 FR 7304) on February 17, 1989.

On its own initiative, the State submitted by letter dated October 29, 1993, from Mark O. Brown, Director, to James W. Lake, Regional Administrator, a State standard amendment comparable to 29 CFR 1910.1000, Table Z-3, Mineral Dusts. The significant difference is: the State lowered the permissible exposure limit for nuisance dust to 10 milligrams per cubic meter. The change was adopted under Administrative Order 92-15 on December 11, 1992 and became effective on January 15, 1993.

On its own initiative, the State of Washington has submitted by letters dated February 8, 1991, from Joseph A. Dear, Director, to James W. Lake,

Regional Administrator, amendments to its standards for Mechanical Power Presses, WAC 296-24-195; Powered Industrial Trucks, WAC 296-24-23023 and 296-24-23027; Cylinders and Containers, WAC 296-24-68203; Stairway Railings and Guards, WAC 296-24-75009; Railings, Toeboards, and Cover Specifications, WAC 296-24-75011; and Xenon Bulb Safety Procedures, WAC 296-24-95611. The amendments were made to incorporate previously approved Washington Regional Directives (WRDs). For Mechanical Power Presses, WRDs 78-38 and 79-25 were adopted in response to OSHA Directives STD 1-12.20 and 1-12.24 respectively. For Powered Industrial Trucks, WRDs 77-37 and 81-22 were adopted in response to OSHA Directives STD 1-11.3 and 1-11.7 respectively. For Railings, Toeboards, and Cover Specifications, WRD 81-18 was adopted in response to OSHA Directive STD 1-1.10. The WRDs for Cylinders and Containers, Stairway Railings and Guards and Xenon Bulbs were 79-43, 77-11 and 85-1, respectively, and were State-initiated. The State amendments were adopted on January 10, 1991, effective February 12, 1991, under Washington Administrative Order 90-18.

All of these State standards changes have been incorporated as part of the Washington State plan. All of the Washington Administrative Orders were adopted pursuant to RCW 34.04.040(2), 49.17.040, 49.17.050, Public Meetings Act RCW 42.30, Administrative Procedures Act RCW 34.04, and the State Register Act RCW 34.08.

2. *Decision.* OSHA has determined that the State standards and amendments for Hazardous Waste Operations and Emergency Response, Aerial Lifts, and Mineral Dusts are at least as effective as the comparable Federal standards, as required by Section 18(c)(2) of the Act. The Hazardous Waste amendments have been in effect since November 15, 1990, the Aerial Lifts standard has been in effect since September 10, 1992, and the Mineral Dusts amendment has been in effect since January 15, 1993. During this time OSHA has received no indication of significant objection to these different State standards either as to their effectiveness in comparison to the Federal standards or as to their conformance with product clause requirements of section 18(c)(2) of the Act. (A different State standard applicable to a product which is distributed or used in interstate commerce must be required by compelling local conditions and not unduly burden interstate commerce.)

OSHA has also determined that the differences between the State and Federal amendments for all the remaining standards in this notice are minimal and that these State standards amendments are thus substantially identical. OSHA therefore approves these standards; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

3. Location of Supplement for Inspection and Copying. A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 1111 Third Avenue, Suite 715, Seattle, Washington 98101-3212; State of Washington Department of Labor and Industries, 7273 Linderson Way, S.W., Tumwater, Washington 98501; and the Office of State Programs, Occupational Safety and Health Administration, Room N-3700, 200 Constitution Avenue, NW, Washington, D.C. 20210.

4. Public Participation. Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Washington State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason:

The standard amendments were adopted in accordance with the procedural requirements of State law and further public participation would be repetitious.

This decision is effective (Sec. 18, Pub. L. 91-596, 84 STAT. 6108 [29 U.S.C. 667]).

Signed at Seattle, Washington, this 28th day of April 1995.

Richard S. Terrill,

Acting Regional Administrator.

[FR Doc. 96-5010 Filed 3-4-96; 8:45 am]

BILLING CODE 4510-26-P

Pension and Welfare Benefits Administration

[Application No. D-09986, et al.]

Proposed Exemptions NBD Bancorp

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the

Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice To Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section

4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

NBD Bancorp; Located in Detroit, Michigan; Proposed Exemption

[Application No. D-09986]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(b)(2) of the Act shall not apply to the merger of the INB Principal Stability Fund (the PS Fund) into the NBD Stable Asset Income Fund (the SAI Fund).¹

The proposed exemption is conditioned upon satisfaction of the following requirements:

(1) On the date the merger is executed, the assets in the PS Fund and the assets in the SAI Fund will be valued in the same manner, under identical guidelines, by the same individuals;

(2) Upon completion of the merger of the PS Fund into the SAI Fund, the aggregate fair market value of the interests of the employee benefit plans (the Plans) participating in the SAI Fund immediately following the merger, together with any cash received in lieu of fractional units, equals the aggregate fair market value of each participating Plans' interest in such Funds immediately before the merger;

(3) The assets of each of the participating Plans are invested in the same type of investments both before and after the proposed merger;

(4) Neither NBD Bancorp nor any of its affiliates receives fees or commissions in connection with the merger;

¹ For purposes of this proposed exemption, the PS Fund and the SAI Fund described herein are collectively referred to as the Funds.