

**FEDERAL MARITIME COMMISSION****[Docket No. 98-04]****Best Freight International Ltd., et al.; Possible Violations of Sections 10(a)(1) and 10(b)(1) of the Shipping Act of 1984****Order of Investigation and Hearing**

Best Freight International Ltd. ("Best Freight") is a tariffed and bonded non-vessel-operating common carrier ("NVOCC") located at 5th Floor, Kam Sang Building, 255-257 Des Voeux Road Central, Sheung Wan in Hong Kong. Best Freight holds itself out as an NVOCC pursuant to its ATFI tariff FMC No. 014801-001, effective June 24, 1997.

Best Freight currently maintains an NVOCC bond, No. 8941464, in the amount of \$50,000 with the Washington International Insurance Company, located in Schaumburg, Illinois. Pursuant to Rule 24 of Best Freight's tariff, Washington, International Insurance Company also serves as the U.S. resident agent for purposes of receiving service of process on behalf of Best Freight International Ltd.

Best Freight was established by former employees of Ever Freight International Ltd. ("Ever Freight"), a NVOCC which is the subject of a formal investigation of commodity misdescription activities in FMC Docket No. 97-04, *Ever Freight International Ltd., et al., Possible Violations of Sections 10(a)(1) and 10(b)(1) of the Shipping Act of 1984*. Best Freight is currently operated by Chia Yao ("Gary") Chen and Yu Fung ("Raymond") Hau, both of whom actively managed Ever Freight's NVOCC activities which are at issue in the above docket. Best Freight's original anti-rebate certification bears the signature and title of Raymond Hau as "Manager" of Best Freight.

Shortly after the inception of formal proceedings as to Ever Freight, Best Freight is believed to have been separately incorporated and to have begun operations as a NVOCC in its own right.<sup>1</sup> During that period and at times subsequent to the filing of its tariff and bond, Best Freight participated in numerous apparent acts of misdescription of cargo on shipments from Hong Kong to the U.S.

The shipments at issue each originated in Hong Kong and were

destined for the Los Angeles area. Best Freight was listed as shipper on the ocean carrier's bill of lading, and United Cargo Management ("UCM") acted as the consignee or notify party. It appears that UCM's role was to serve as the initial destination agent on behalf of Best Freight, primarily to provide Best Freight with access to those rates available under UCM's existing service contract with Hyundai Merchant Marine Co. Ltd. ("Hyundai") SC No. 95489.

It further appears that Hyundai rated the commodities in accordance with the inaccurate description furnished by Best Freight, while Best Freight's U.S. destination agents accepted delivery of the cargo and made payment to Hyundai on the basis of the lower rate attributable to such inaccurate commodity description. Other contemporaneous documentation, such as the arrival notice issued by Best Freight's agent to the U.S. consignee, reflects that Best Freight and its principals were fully cognizant that the shipments actually consisted of commodities different from those listed on Hyundai's bills of lading.

Subsequent to the filing of Best Freight's NVOCC tariff and bond in June, 1997, it appears that Best Freight provided services as a carrier issuing its own (Best Freight) NVOCC bill of lading with respect to the commodity being shipped. The rates assessed and collected by Best Freight and its U.S. agents for these shipments, however, appear to bear no relation to the rates set forth in Best Freight's ATFI tariff on file with the Commission.<sup>2</sup>

Section 10(a)(1) of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. § 1709 (a)(1), prohibits any person knowingly and willfully, directly or indirectly, by means of false billings, false classification, false weighing, false report of weight, false measurement, or by any other unjust or unfair device or means, to obtain or attempt to obtain ocean transportation for property at less than the rates or charges that would otherwise be applicable. Section 10(b)(1), 46 U.S.C. app. § 1709(b)(1), prohibits a common carrier from charging, collecting or receiving greater, less or different compensation for the transportation of property than the rates and charges set forth in its tariff. Under section 13 of the 1984 Act, 46 U.S.C. app. § 1712, a person is subject to a civil

penalty of not more than \$25,000 for each violation knowingly and willfully committed, and not more than \$5,000 for other violations.<sup>3</sup> Section 13 further provides that a common carrier's tariff may be suspended for violations of section 10(b)(1) for a period not to exceed one year, while section 23 of the 1984 Act, 46 U.S.C. app. § 1721 provides for a similar suspension in the case of violations of section 10(a)(1) of the 1984 Act.

*Now therefore, it is ordered*, That pursuant to sections 10, 11, 13 and 23 of the 1984 Act, 46 U.S.C. app. §§ 1709, 1710, 1712, and 1721, an investigation is instituted to determine:

(1) whether Best Freight International Ltd., Gary Chen, and Raymond Hau violated section 10(a)(1) of the 1984 Act by directly or indirectly obtaining transportation at less than the rates and charges otherwise applicable through the means of misdescription of the commodities actually shipped.

(2) whether Best Freight International Ltd. violated section 10(b)(1) of the 1984 Act by charging, demanding, collecting or receiving less or different compensation for the transportation of property than the rates and charges shown in its NVOCC tariff;

(3) whether, in the event violations of sections 10(a)(1) and 10(b)(1) of the 1984 Act are found, civil penalties should be assessed against Best Freight International Ltd., Gary/Chen, and Raymond Hau and, if so, the amount of penalties to be assessed;

(4) whether, in the event violations of sections 10(a)(1) and 10(b)(1) of the 1984 Act are found, the tariff of Best Freight International Ltd. should be suspended; and

(5) whether, in the event violations are found, an appropriate cease and desist order should be issued.

*It is further ordered*, That a public hearing be held in this proceeding and that this matter be assigned for hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Administrative Law Judge in compliance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion to the Presiding Administrative Law Judge only after consideration has been given by the parties and the Presiding Administrative Law Judge to the use of

<sup>1</sup> Ever Freight's NVOCC bond was canceled by Washington International Insurance effective July 23, 1997. At this time, Ever Freight principals Gary Chen and Raymond Hau transferred their offices from the 18th Floor to the 5th Floor of the Kam Sang Building. It appears that their offices on the 18th Floor continue to be occupied by others formerly employed by Ever Freight, also operating as Best Freight.

<sup>2</sup> Since filing its tariff in the ATFI system in June, 1997, Best Freight has maintained only a "shell" tariff consisting of three classes of Cargo N.O.S. rates. Best Freight does not publish "per container" rates because its tariffed rates are set forth solely on a weight/measurement (W/M) ton basis. Nor does it appear to charge those N.O.S. rates which the NVOCC does publish.

<sup>3</sup> The maximum penalties are raised by 10 percent for violations occurring after November 7, 1996 See Inflation Adjustment of Civil Monetary Penalties, 27 S.R.R. 809 (1996).

alternative forms of dispute resolution, and upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

*It is further ordered*, That Best Freight International Ltd., Gary Chen, and Raymond Hau are designated as Respondents in this proceeding;

*It is further ordered*, That the Commission's Bureau of Enforcement is designated a party to this proceeding;

*It is further ordered*, That notice of this Order be published in the **Federal Register**, and copy be served on parties of record;

*It is further ordered*, That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72;

*It is further ordered*, That all further notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on parties of record;

*It is further ordered*, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, and shall be served on parties of record; and

*It is further ordered*, That in accordance with Rule 61 of the Commission's Rules of Practice and Procedure, the initial decision of the Administrative Law Judge shall be issued by March 25, 1999 and the final decision on the Commission shall be issued by July 26, 1999.

By the Commission.

**Joseph C. Polking,**  
Secretary.

[FR Doc. 98-9142 Filed 4-7-98; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*)

(BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 4, 1998.

**A. Federal Reserve Bank of Atlanta**  
(Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. *Valley National Corporation*, Lanett, Alabama; to merge with First National Sylacauga Corporation, Sylacauga, Alabama, and thereby indirectly acquire First National-America's Bank, Sylacauga, Alabama.

**B. Federal Reserve Bank of St. Louis**  
(Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. *Buena Vista Bancorp, Inc.*, Chester, Illinois; to acquire 100 percent of the voting shares of Bank of Evansville, Evansville, Illinois.

2. *Security State Bancshares, Inc.*, Charleston, Missouri; to acquire 100 percent of the voting shares of Bank of Atkins, Atkins, Arkansas.

Board of Governors of the Federal Reserve System, April 3, 1998.

**William W. Wiles,**

Secretary of the Board.

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## FEDERAL RESERVE SYSTEM

### Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 23, 1998.

**A. Federal Reserve Bank of Cleveland**  
(Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. *Fifth Third Bancorp*, Cincinnati, Ohio; to acquire The Ohio Company, Columbus, Ohio, and thereby engage in underwriting and dealing in all types of debt and equity securities and to provide such services as are a necessary incident thereto, *see J.P. Morgan & Co., Inc.*, 75 Fed. Res. Bull. 192, 197 (1989); in providing discount and full-service brokerage services, pursuant to § 225.28(b)(7) of the Board's Regulation Y; in financial and investment advisory services, pursuant to § 225.28(b)(6) of the Board's Regulation Y; in performing functions or activities that may be performed by a trust company, pursuant to § 225.28(b)(5) of the Board's Regulation Y; in underwriting and dealing in bank eligible securities, pursuant to § 225.28(b)(8) of the Board's Regulation Y; in acting as agent in the private placement of securities, pursuant to § 225.28(b)(7) of the Board's Regulation Y; in riskless principal transactions, pursuant to § 225.28(b)(7) of the Board's Regulation Y; in