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SECTION 3(a)
RULE _____
PUBLIC _____
AVAILABILITY 5/28/96

May 28, 1996

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF CORPORATION FINANCE

Re: World Financial Network National Bank ("WFNNB")
Incoming Letter dated May 2, 1996

Based on the facts presented, the Division will not recommend enforcement action to the Commission if WFNNB, in reliance on your opinion as counsel that registration is not required, implements the WFNNB Stock Purchase Plan and the WFNNB Savings and Retirement Plan as described without compliance with the registration requirements of the Securities Act of 1933.

The Division of Investment Management has asked us to inform you that, on the basis of the facts and representations in your letter, it would not recommend enforcement action to the Commission if WFNNB offers the WFNNB Stock Purchase Plan without registering the plan under the Investment Company Act of 1940.

The Office of Chief Counsel of the Division of Market Regulation has asked us to inform you of the following. You state that WFNNB is a "bank" as defined in Section 3(a)(6) of the Securities Exchange Act of 1934 ("Exchange Act"). Banks that come within that definition are excluded from the definitions of "broker" and "dealer" in Sections 3(a)(4) and 3(a)(5) of the Exchange Act, respectively. Accordingly, the Division of Market Regulation takes no position on the application of the broker-dealer registration requirements of Section 15(a) of the Exchange Act to WFNNB.

Because these positions are based upon the representations made to the Divisions in your letter, it should be noted that any different facts or conditions might require different conclusions. Further, to the extent this response expresses the Divisions' positions on enforcement action, it does not purport to express any legal conclusions on the questions presented.

Sincerely,

Mark W. Green
Mark W. Green
Special Counsel



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
CORPORATION FINANCE

May 28, 1996

Howard J. Levine, Esq.
Seyfarth, Shaw, Fairweather & Geraldson
55 East Monroe Street, Suite 4200
Chicago, Illinois 60603-5803

RE: World Financial Network National Bank

Dear Mr. Levine:

In regard to your letter of May 2, 1996 our response thereto is attached to the enclosed photocopy of your correspondence. By doing this, we avoid having to recite or summarize the facts set forth in your letter.

Sincerely,

Martin P. Dunn
Chief Counsel

SEYFARTH, SHAW, FAIRWEATHER & GERALDSON
ATTORNEYS AT LAW

815 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20006-4004
(202) 463-2400
FAX (202) 828-5393

ONE CENTURY PLAZA - SUITE 3300
2029 CENTURY PARK EAST
LOS ANGELES, CA 90067-3063
(310) 277-7200
FAX (310) 201-5219

900 THIRD AVENUE
NEW YORK, NY 10022-4728
(212) 715-0000
FAX (212) 752-3116

101 CALIFORNIA STREET - SUITE 2900
SAN FRANCISCO, CA 94111-5858
(415) 397-2823
FAX (415) 397-8549

55 EAST MONROE STREET - SUITE 4200
CHICAGO, ILLINOIS 60603-5803
(312) 346-8000
FAX (312) 269-8869

WRITER'S DIRECT DIAL
269-8909
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May 2, 1996

400 CAPITOL MALL - SUITE 2350
SACRAMENTO, CA 95814-4420
(916) 558-4828
FAX (916) 558-4839

700 LOUISIANA STREET - SUITE 3900
HOUSTON, TX 77002-2731
(713) 225-2300
FAX (713) 225-2340

INTERNATIONAL

AVENUE LOUISE 500, BOÎTE 8
1050 BRUSSELS, BELGIUM
TELEPHONE (32) (2) 647.60.25
FAX (32) (2) 640.70.71

AFFILIATE FIRM

MATRAY, MATRAY & HALLET
BRUSSELS AND LIEGE, BELGIUM

COLOGNE, GERMANY
1933 Act/2(3)
1933 Act/3(a)(2)
1934 Act/15(a)
1940 Act/3(a)

VIA FEDERAL EXPRESS

Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Chief Counsel
Division of Investment Management
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Chief Counsel
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: *The Limited, Inc.*
World Financial Network National Bank
WFNNB Stock Purchase Plan
WFNNB Savings and Retirement Plan

Dear Sir or Madam:

On behalf of The Limited, Inc. ("The Limited") and World Financial Network National Bank ("WFNNB"), we respectfully request the staff of the Division of Corporation Finance to advise that it will not recommend any enforcement action to the Securities and Exchange Commission (the "Commission") against either The Limited or WFNNB in the following circumstances:

- (i) If WFNNB offers its employees participation in the proposed World Financial Network National Bank Stock Purchase Plan (the "WFNNB Stock Purchase Plan"), as described below, without registration of the interests in the WFNNB Stock Purchase Plan, or the shares of The Limited ("Limited Stock") acquired thereunder, under the Securities Act of 1933, as amended (the "Securities Act"); and

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- (ii) If WFNNB offers its employees participation in the proposed World Financial Network National Bank Savings and Retirement Plan ("WFNNB Savings Plan"), as described below, without registration of the interests in the WFNNB Savings Plan, or the shares of Limited Stock acquired thereunder, under the Securities Act.

We also request the staff of the Division of Investment Management to advise that it will not recommend any enforcement action to the Commission if WFNNB operates the WFNNB Stock Purchase Plan as described herein without registration of the plan under the Investment Company Act of 1940, as amended (the "1940 Act").

We further request the staff of the Division of Market Regulation to advise that it will not recommend any enforcement action to the Commission if WFNNB operates the WFNNB Stock Purchase Plan as described herein without registration of WFNNB as a "broker" or "dealer" under Section 15(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act").

WFNNB has delayed those aspects of the WFNNB Stock Purchase Plan and the WFNNB Savings Plan that are the subject of this request until WFNNB receives confirmation of its positions by the Commission. As such, we respectfully request an expedited review of our application by the staffs of the respective Divisions, and appreciate in advance each staff's cooperation in this application.

1. The Companies

The Limited, a Delaware corporation, is a holding company with subsidiaries principally engaged in the purchase, distribution and sale of women's and men's apparel through retail and catalog sales. In fiscal 1994, The Limited had combined sales of over \$7 billion. The Limited employs approximately 110,000 employees across the United States. The Limited is subject to the reporting requirements of the Exchange Act, and the Limited Stock, par value \$.50 per share, is registered with the Commission and traded on the New York Stock Exchange. As of January 28, 1994, The Limited had 357 million shares of Limited Stock issued and outstanding with consolidated shareholder equity in excess of \$2.7 billion. One share of Limited Stock entitles its holder to one vote on matters The Limited brings before its shareholders.

WFNNB is a national banking association domiciled in and subject to the banking laws of the State of Ohio. Prior to February 1, 1996, WFNNB was a wholly-owned subsidiary of The Limited. WFNNB issues proprietary credit cards used in a variety of The Limited's businesses, extends credit to the individual customers of The Limited and processes credit card transactions for The Limited for a fee. As of January 28, 1995, WFNNB employed approximately 1800 employees principally located in Columbus, Ohio.

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Effective February 1, 1996, The Limited sold 60 percent of the common shares of WFNNB to Welsh, Carson, Anderson & Stowe ("Welsh Carson"), an unrelated entity. It is planned that WFNNB will soon be reorganized into separately incorporated entities. That portion of WFNNB that is a national banking association shall retain its charter and remain a national banking association (which hereinafter shall remain called "WFNNB"). The remaining entities shall consist of a transaction processing company, a database marketing company, and a master trust company (the "Operational Affiliates"). The stock of WFNNB and the Operational Affiliates shall be 100% held by a parent holding company (the "Parent Company"). Welsh Carson will hold 60 percent of the shares of the Parent Company, and The Limited will hold 40 percent of the shares of the Parent Company.

2. *The Plans*

A. *The Limited Stock Purchase Plan*

The Limited, through its wholly-owned subsidiary Limited Service Corporation, maintains the Stock Purchase Plan for Associates of The Limited, Inc. (the "Limited Stock Purchase Plan"). Eligible employees of The Limited and its subsidiaries (including WFNNB, before the sale) may purchase Limited Stock under the Limited Stock Purchase Plan through voluntary payroll deduction. Purchases are made by Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") in the open market at market prices pursuant to a servicing agreement between Merrill Lynch and Limited Service Corporation. Merrill Lynch establishes an account in the name of each participant to which is credited all Limited Stock purchased on behalf of that participant. The Limited Stock Purchase Plan is not subject to the provisions of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and is not a tax-qualified retirement plan under Section 401(a) of the Internal Revenue Code of 1986, as amended (the "Code"). The Limited has filed a registration statement with the Commission on Form S-8 with respect to shares offered under the Limited Stock Purchase Plan.

B. *The WFNNB Stock Purchase Plan*

As of February 1, 1996, the employees of WFNNB ceased participation in the Limited Stock Purchase Plan. WFNNB, however, proposes to establish the WFNNB Stock Purchase Plan to allow its employees and the employees of its Operational Affiliates and Parent Company the opportunity to continue purchasing Limited Stock through payroll deduction through Merrill Lynch. No securities of WFNNB, the Operational Affiliates or the Parent Company, nor those of any parent or affiliate thereof, will be offered or sold under the WFNNB Stock Purchase Plan.

WFNNB intends for the WFNNB Stock Purchase Plan to be effective as of February 1, 1996; however, WFNNB has delayed the WFNNB Stock Purchase Plan until the Commission

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confirms the positions taken in this request. As is the case with the Limited Stock Purchase Plan, the WFNNB Stock Purchase Plan is not subject to ERISA or tax-qualified under Section 401(a) of the Code. The terms of the WFNNB Stock Purchase Plan are substantially the same as the terms of the Limited Stock Purchase Plan, with appropriate modifications, as set forth below.

Participation in the WFNNB Stock Purchase Plan will be voluntary. An eligible employee of WFNNB may participate in the WFNNB Stock Purchase Plan by delivering a completed enrollment form to WFNNB and specifying the amount to be withheld from his or her pay each payroll period. Payroll deductions may be increased, decreased or terminated by a participant at any time by written request to WFNNB. If a participant ceases to be an eligible employee, payroll deductions and WFNNB Stock Purchase Plan contributions will automatically cease. Upon the reorganization of WFNNB, the WFNNB Stock Purchase Plan will continue to be offered to employees of WFNNB and its Operational Affiliates and Parent Company.

Each pay period WFNNB will withhold from each participant's pay the amount specified by the participant. Once each month all participant contributions will be combined and forwarded to Merrill Lynch for investment in Limited Stock. Within 35 days of the date of payroll deduction Merrill Lynch will purchase shares of Limited Stock for the account of each participant for whom payroll deduction is made. All dividends paid by The Limited on Limited Stock held in each account will be automatically reinvested by Merrill Lynch within 30 days of the dividend payment date in additional shares of Limited Stock. There is no limit to the number of shares a participant may accumulate in his or her account.

Merrill Lynch will purchase Limited Stock in the open market at such times and on such terms as to price, delivery and other matters as Merrill Lynch determines. WFNNB will exercise no control over the timing or quantity of Merrill Lynch's purchases. Merrill Lynch is prohibited under the terms of the WFNNB Stock Purchase Plan from purchasing Limited Stock in private transactions from The Limited or from any subsidiary or affiliate of The Limited.

A participant will at all times be the sole beneficial owner of the Limited Stock in his or her account. The participant may withdraw or sell shares of Limited Stock in his or her account at any time through an automated toll-free telephone number and Personal Identification Number ("PIN") system established by Merrill Lynch. Participants may also direct withdrawals and sales by written request to Merrill Lynch. Each participant may obtain a certificate representing any shares of Limited Stock in his or her account upon request to Merrill Lynch. When a participant ceases payroll deductions, the participant may but is not required to terminate his or her account. A participant may terminate his or her account at any time, including immediately following the establishment of an account, through the automated telephone PIN system or by written notice to Merrill Lynch; provided, that cancellation shall be effective for Limited Stock purchases next following the cancellation only if the cancellation order is received within a reasonable time

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prior to the scheduled purchases. A participant may also invest money other than payroll deductions through his or her account, which may be used at the participant's direction for any securities transactions permitted by Merrill, Lynch; however, transactions other than purchases of Limited Stock are considered transactions solely between the participant and Merrill Lynch, and do not obligate WFNNB in any manner.

Merrill Lynch will forward each participant in the WFNNB Stock Purchase Plan copies of each proxy statement, annual report and other communication sent by The Limited to its shareholders. Each participant will have the right to vote all shares of Limited Stock held in his or her account. Participants will receive monthly, quarterly and annual statements summarizing all transactions in his or her account and written confirmations for each purchase or sale of shares held in his or her account.

WFNNB may terminate the WFNNB Stock Purchase Plan at any time. A participant's account in the WFNNB Stock Purchase Plan will terminate upon the participant's termination of employment with WFNNB, or upon the termination of the WFNNB Stock Purchase Plan. On termination of the participant's account, the participant may request that Merrill Lynch (i) convert the account to a regular brokerage account with Merrill Lynch, (ii) issue the participant stock certificates representing the shares of Limited Stock held in the account, or (iii) sell the shares of Limited Stock and issue the participant a check in the amount of the sale proceeds.

WFNNB will pay Merrill Lynch all fees, expenses and commissions relating to the establishment of each participant's account and to purchases of Limited Stock under the WFNNB Stock Purchase Plan. The participant will pay Merrill Lynch all fees, expenses and commissions relating to (i) the conversion of an account to a regular brokerage account, (ii) the withdrawal of any investment from the account, (iii) the sale of Limited Stock in the account, (iv) the purchase of Limited Stock other than with dividends or Limited Stock Purchase Plan payroll deductions, and (v) the purchase or sale of any security other than Limited Stock.

C. The Limited Savings Plan

The Limited also maintains The Limited, Inc. Savings and Retirement Plan (the "Limited Savings Plan"), a defined contribution plan subject to ERISA and qualified under Section 401(a) of the Code, which contains a cash or deferred arrangement that meets the requirements of Section 401(k) of the Code. All eligible employees of The Limited and its subsidiaries (including WFNNB, prior to the sale) are eligible to participate in the Limited Savings Plan.

The Limited Savings Plan maintains a number of investment alternatives for its participants, including a fund consisting solely of Limited Stock (the "Limited Stock Fund"). Participants are entitled to direct that salary deferral contributions be invested in the Limited Stock Fund. By the terms of the Limited Savings Plan, all cash dividends paid on Limited Stock

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in the Limited Stock Fund are automatically reinvested in shares of Limited Stock. The Limited has filed with the Commission a registration statement on Form S-8 with respect to purchases of Limited Stock and participation interests in the Limited Savings Plan.

D. The WFNNB Savings Plan

In advance of the sale of the WFNNB shares to Welsh Carson, WFNNB established the WFNNB Savings Plan, effective January 1, 1996. Participation of WFNNB employees in the Limited Savings Plan ceased as of December 31, 1995, and participation in the WFNNB Savings Plan automatically began for those employees on January 1, 1996. The investment funds offered participants under the WFNNB Savings Plan will be the same funds as those offered participants of the Limited Savings Plan, except that, as explained below, no new employee or employer contributions will be invested in the Limited Stock Fund established under the WFNNB Savings Plan, and no amount may be transferred to the Limited Stock Fund from other investment funds.

Accounts of WFNNB employees in the Limited Savings Plan will be transferred to the WFNNB Savings Plan following the March 31, 1996 valuation of Limited Savings Plan accounts. WFNNB employees may not elect to receive a distribution of any portion of their Limited Savings Plan account. That portion of the accounts of WFNNB employees invested in the Limited Stock Fund under the Limited Savings Plan will be transferred to a Limited Stock Fund maintained by the WFNNB Savings Plan. The transferred portion of the Limited Stock Fund will be transferred in kind in shares of Limited Stock.

Upon transfer, participants in the WFNNB Savings Plan will be offered the same investment options as are offered under the Limited Savings Plan, with the following exceptions:

- (i) During the transfer process, participants may not allocate any transferred amount into the Limited Stock Fund in the WFNNB Savings Plan that was not invested in the Limited Stock Fund in the Limited Savings Plan immediately before the transfer;
- (ii) After the transfer and for the duration of the WFNNB Savings Plan, participants may not transfer any amounts into the Limited Stock Fund from any other investment fund; and
- (iii) Participants may not allocate any future salary deferral or matching contributions for investment in the Limited Stock Fund.

WFNNB participants may, however, elect to transfer amounts from the Limited Stock Fund to other funds from time to time to the extent permitted under the terms of the WFNNB Savings Plan.

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The terms of the WFNNB Savings Plan provide for mandatory reinvestment in Limited Stock of dividends earned on Limited Stock held in the Limited Stock Fund, though the increase in holdings in Limited Stock through dividend reinvestment will be insignificant. No securities of WFNNB or any parent or affiliate will be offered or sold at this time under the WFNNB Savings Plan.

3. *Registration Under the Securities Act*

A. *The WFNNB Stock Purchase Plan*

It is our opinion that neither shares of Limited Stock nor participation interests in the WFNNB Stock Purchase Plan need to be registered under the Securities Act with respect to the WFNNB Stock Purchase Plan. We believe that the operation of the WFNNB Stock Purchase Plan will not involve an "offer to sell," an "offer for sale" or a "solicitation of an offer to buy" Limited Stock within the meaning of Section 2(3) of the Securities Act, and that interests under the WFNNB Stock Purchase Plan will not constitute a separate "security" as defined in Section 2(1) of the 1933 Act. Even if the operation of the WFNNB Stock Purchase Plan were deemed to constitute such an "offer," we believe the transactions in Limited Stock effected through the WFNNB Stock Purchase Plan as described herein are exempt from registration under Section 4(1) of the Securities Act in that they would be transactions by a person other than an issuer, underwriter or dealer. Consequently, registration under the Securities Act should not be required in respect of the WFNNB Stock Purchase Plan.

The WFNNB Stock Purchase Plan will operate within the parameters and criteria for open market stock purchase plans set forth in Securities Act Release No. 4790 (July 13, 1965) and Securities Act Release No. 6188 (February 1, 1980), as well as the "no action" positions taken in *Capitol American Financial Corporation*, 1995 WL 527729 (S.E.C.) (September 7, 1995), *American Brands, Inc.*, 1992 WL 386667 (S.E.C.) (December 23, 1992) and *Ageon USA, Incorporated*, 1992 WL 36910 (S.E.C.) (February 21, 1992). The Commission issued Release No. 4790 to answer questions with respect to the need to register employer securities purchased in the open market through employee stock purchase plans. We recognize that because of The Limited's minority interest in WFNNB that employees of WFNNB may not be deemed employees of The Limited.¹ However, the Commission recognized in issuing Release No. 4790

¹ We believe WFNNB is a subsidiary and an affiliate of Welsh Carson under the Securities Act, and not a subsidiary or affiliate of The Limited. Rule 405 of the Securities Act defines a "parent" of a person as an affiliate controlling such person directly or indirectly through one or more intermediaries. "Affiliate" is defined in Rule 405 as a person that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, such person specified. Finally, "control" is defined in Rule 405 as the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through
(continued...)

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that certain stock purchase plans should not need to register even though the plans involve purchases of securities "by persons who are not technically employees of the issuer or an affiliate." 17 CFR 231.4790.²

WFNNB's involvement in the WFNNB Stock Purchase Plan will be limited to the following functions: (i) announcing the existence of the WFNNB Stock Purchase Plan in its orientation programs for newly hired employees only (in conjunction with explanations on all WFNNB benefit programs), and providing appropriate enrollment and payroll deduction forms, (ii) making the names and addresses of its employees available to Merrill Lynch for direct communication by Merrill Lynch to WFNNB employees, and/or mailing to its employees literature concerning the WFNNB Stock Purchase Plan (not more than twice each calendar year); (iii) making payroll deductions at the request of the participants and remitting the funds to Merrill Lynch; and (iv) paying brokerage commissions on purchases of Limited Stock and monthly expenses of Merrill Lynch for bookkeeping and custodial services.

Participation in the WFNNB Stock Purchase Plan will involve minimal differences from acquisitions of securities in ordinary brokerage transactions, and the rights and obligations of participants and Merrill Lynch will be consistent with the ordinary broker-client relationship. Payroll deductions will be invested in Limited Stock and participants in the WFNNB Stock Purchase Plan will acquire all rights of ownership in such shares, including the normal rights of voting, possession and sale. WFNNB will not make recommendations as to whether any employees should participate in the WFNNB Stock Purchase Plan or purchase shares of Limited Stock. WFNNB will not advance funds to any participant for purchases nor make contributions to the WFNNB Stock Purchase Plan for such purchases. All these functions are traditional to

¹(...continued)

the ownership of voting securities, by contract, or otherwise. In applying these definitions, it is clear that Welsh Carson is the parent of WFNNB under Rule 405. As a 60 percent majority shareholder, Welsh Carson can nominate the majority of the Board of Directors and can directly exercise control over the management and policies of WFNNB. The Limited, as a minority shareholder of WFNNB, has no direct or indirect control over the management or policy of WFNNB.

² Although not stated in Release No. 4790, one reason for this may have been that such non-employees were nonetheless familiar with the issuer and were in a position to regularly receive information about the issuer. The staff of the Commission has provided this reasoning in no-action letters with respect to extending Form S-8 registration protection to employees of companies that did not have a clear parent-subsidiary relationship under Rule 405. *Valero Energy Corporation*, 1989 WL 245539 (S.E.C.) (January 31, 1989); *HealthVest/Healthcare International*, 1987 WL 108486 (S.E.C.) (October 14, 1987); *Colonial BancGroup, Incorporated*, 1987 WL 107442 (S.E.C.) (January 12, 1987). In the case of employees of WFNNB (including those of the planned Operational Affiliates), they are largely former employees of The Limited and regularly provide commercial services for The Limited. The Limited is also a 40 percent shareholder of WFNNB and has Board representation consistent with this share ownership. To the extent employee familiarity with an issuer is a criterion for utilizing Release No. 4790, we believe that such familiarity exists with respect to WFNNB employees.

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dividend reinvestment and employee stock purchase plans that operate in accordance with Release No. 4790.

The Limited will have no role in the administration of the WFNNB Stock Purchase Plan or the processing of transactions, and WFNNB's involvement will be limited to that described above to permit payroll deductions for participants and to forward deducted funds together with a list of contributing employees to Merrill Lynch to enable Merrill Lynch to effect the transactions. In addition, neither The Limited, WFNNB nor any of their respective affiliates will supply Limited Stock to Merrill for purchase by participants under the WFNNB Stock Purchase Plan., and neither The Limited, WFNNB nor their respective affiliates will be eligible to sell (or purchase) such securities through the WFNNB Stock Purchase Plan.

Merrill Lynch will be the primary source of contact for individuals seeking information about the WFNNB Stock Purchase Plan and will establish and maintain all aspects of the account and processing relationship with participants. Other than for basic enrollment information, inquiries received by WFNNB will be referred to Merrill Lynch for response. In receipt of a request from such an inquirer, WFNNB will provide the inquirer the appropriate enrollment and payroll deduction forms. Thereafter, WFNNB will refer the individual to Merrill Lynch for further information. The administration of the WFNNB Stock Purchase Plan will not involve generalized mailings by anyone other than Merrill Lynch to anyone other than a current employee of WFNNB (and the Operational Affiliates and Parent Company), though WFNNB may make isolated mailings of requested enrollment materials to any employee who makes a specific unsolicited request. Similarly, no orders will be processed on behalf of any employee under the WFNNB Stock Purchase Plan that is not a current employee of WFNNB (or the Operational Affiliates or Parent Company). All resulting orders will be processed only in normal and ordinary trading transactions over the open market.

Even if Release No. 4790 is not available under the facts set forth above, we nonetheless believe that transactions under the WFNNB Stock Purchase Plan will not be made by an "issuer, underwriter or dealer" under the Securities Act and therefore would be exempt from registration under Section 4(1) of the Securities Act. As described herein, WFNNB should not be considered an issuer of the Limited Stock, nor a parent, subsidiary or affiliate of the issuer. Nor is WFNNB an "underwriter" or "dealer" within the meaning of Sections 2(11) or 2(12) of the Securities Act. It is our opinion that WFNNB is not offering any securities under the WFNNB Stock Purchase Plan, nor is WFNNB purchasing, directly or indirectly, any securities from The Limited for distribution or otherwise, and it is not engaged in part or all of its time in the business of offering, buying or otherwise trading in securities of another issuer.

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B. *The WFNNB Savings Plan*

In our opinion, the operation of the WFNNB Savings Plan does not require registration of the Limited Stock purchased under, or the participation interests in, the WFNNB Savings Plan. In Securities Act Release No. 6188, 45 F.R. 8960, the Commission stated that interests in an employee benefit plan were securities that must be registered under the Securities Act unless the plan met the exemption requirements of Section 3(a)(2) of the Securities Act. Section 3(a)(2) provides an exemption from registration for interests in a plan that meets the requirements for qualification under Section 401 of the Code and under which employee contributions may not be used to purchase securities of the employer or its affiliate.

Section 3(a)(2) of the Securities Act exempts the WFNNB Savings Plan from registration on several counts. The WFNNB Savings Plan will not offer the purchase or sale of any employer security or that of a parent, subsidiary or affiliate. The Limited is not the "parent" or an "affiliate" of WFNNB within the meaning of Rule 405. Rule 405 defines the "parent" of a person as an affiliate controlling that person directly or indirectly through one or more intermediaries. An "affiliate" of a person is defined in Rule 405 as an entity that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with that person. The Limited holds a minority interest in WFNNB. Welsh Carson is the sole majority shareholder of WFNNB with the ability to direct and control the management and policy WFNNB. Although The Limited is a customer of WFNNB, WFNNB intends to further market its credit and database marketing services to other customers and may acquire other credit service companies unrelated to The Limited and its subsidiaries. As The Limited is not an affiliate of WFNNB within the meaning of Rule 405, we believe the Limited Stock held under the WFNNB Savings Plan will not be the security of a parent, subsidiary or affiliate of WFNNB.

In addition, participants in the WFNNB Savings Plan may not increase their allocation or place future contributions for investment in the Limited Stock Fund. The only voluntary investment decisions the participants may make are whether to transfer any portion of their current account balance invested in the Limited Stock Fund to another investment fund offered under the WFNNB Savings Plan.

The only new purchases of Limited Stock will be due to mandatory dividend reinvestment in Limited Stock. In our view, this dividend reinvestment feature does not require the Limited Stock purchased under the WFNNB Savings Plan, or in the participation interests in the WFNNB Savings Plan, to be registered under the Securities Act. This is consistent with the position the Commission has previously taken in *McDonnell Douglas Corporation*, 1990 WL 287067 (S.E.C.) (September 13, 1990), *Schlumberger, Limited*, 1988 WL 234295 (S.E.C.) (May 4, 1988), *Illinois Power Co.*, 1985 WL 55444 (S.E.C.) (June 17, 1985), and *Emery Air Freight Corp.*, 1982 WL 30478 (S.E.C.) (November 26, 1982) (mandatory dividend reinvestment

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features alone do not require registration). The dividend reinvestment feature is automatic and not made under any investment decision by a participant. Also, the amount of Limited Stock purchased with reinvested dividends will be insignificant. As of October 31, 1995, the Limited Savings Plan held approximately 4,076,100 shares of Limited Stock in the Limited Stock Fund, which is approximately 1.1% of the 357,000,000 shares of outstanding Limited Stock. Only a small portion of the shares held in the Limited Stock Fund were purchased through reinvested dividends.

C. *The Limited*

The Limited is not the parent or an affiliate of WFNNB within the meaning of Rule 405. The Limited will be a minority shareholder without either direct or indirect control over WFNNB. Accordingly, we are of the opinion that The Limited will have no registration obligation with respect to shares of Limited Stock purchased under either the WFNNB Stock Purchase Plan or the WFNNB Savings Plan.

We hereby request that the staff of the Division of Corporation Finance confirm that it will not recommend to the Commission that it take enforcement action against either The Limited or WFNNB if (i) the WFNNB Stock Purchase Plan is operated as proposed herein without registration of participation interests under the WFNNB Stock Purchase Plan, or the purchase of Limited Stock acquired thereunder, under the Securities Act, or (ii) the WFNNB Savings Plan is operated as proposed herein without registration of participation interests in the WFNNB Savings Plan, or the purchase of Limited Stock acquired thereunder, under the Securities Act. Should the staff believe it cannot take the requested "no action" position, we respectfully request the opportunity to discuss the matter by telephone or in a conference prior to issuance of the staff's letter.

4. *Registration under the 1940 Act.*

We are of the opinion that the WFNNB Stock Purchase Plan will not constitute an "investment company" within the meaning of Section 3 of the 1940 Act, that interests in the WFNNB Stock Purchase Plan will not constitute separate "securities" within the meaning of Section 2(a)(36) of the 1940 Act, and therefore registration of the WFNNB Stock Purchase Plan is not required under the 1940 Act. The staff of the Division of Investment Management has stated that interests in a dividend reinvestment plan will not be considered separate securities and the plan will not be deemed an investment company required to be registered under the 1940 Act if the plan is operated in a manner consistent with the guidelines set forth in *Lucky Stores, Inc.*, 1974 WL 10236 (S.E.C.) (July 6, 1974). The Commission applied these guidelines to stock purchase plans in *First Arkansas Bankstock Corp.*, 1977 WL 11189 (S.E.C.) (September 8, 1977).

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We believe the terms of the WFNNB Stock Purchase Plan meet the conditions of *Lucky Stores* with respect to both shares purchased with payroll deductions and dividend reinvestment, as follows:

- (i) Except where necessary to comply with federal securities laws, payroll deductions, participant contributions and dividends are invested promptly by Merrill Lynch for the plan and, in any event:
 - (a) With respect to payroll deductions and participant contributions, within 35 days of the date of payroll deduction or contribution, as applicable; and
 - (b) With respect to dividends, within 30 days of the dividend payment date.
- (ii) No special fees or charges are imposed other than reasonable transaction fees charged by Merrill Lynch, which are paid by WFNNB on behalf of participants;
- (iii) The benefit of any reduced brokerage commission charges, if any, would be passed on, pro rata, to participating shareholders;
- (iv) Merrill Lynch passes any proxy solicitation materials on to participating shareholders and votes proxies of shares held in its custody only in accordance with instructions of participating shareholders;
- (v) Each participating shareholder has the right to receive certificates for his whole shares held in his or her account at Merrill Lynch. In this connection, each participant is able to make a blanket request that certificates be issued to him after every purchase, unless Merrill Lynch demonstrates that such blanket requests would lead to a proliferation of certificates and would be unduly burdensome administratively; and
- (vi) Participant shareholders are able to terminate participation in the WFNNB Stock Purchase Plan at any time, subject to giving notice some reasonable time prior to the dividend payment date.

In *Ameribanc, Inc.*, 1982 WL 30469 (S.E.C.) (September 18, 1982), the Commission indicated that because of limited resources it would no longer respond to requests for no-action or interpretative advice under the 1940 Act regarding dividend reinvestment or stock purchase plans that meet the conditions of *Lucky Stores*, unless the request specifically points out how a particular plan deviates from the standards previously announced by the Commission or raises unique or novel issues under the federal securities laws. We believe the WFNNB Stock Purchase Plan meets the criteria of *Lucky Stores* and does not raise unique or novel questions,

Chief Counsel

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with the following exception. Under the WFNNB Stock Purchase Plan, employees of WFNNB may purchase common shares of The Limited. Under *Lucky Stores*, *First Arkansas Bankstock Corp.*, *Ameribanc, Inc.* and similar letters, the employer and sponsor of the stock purchase plan was also the issuer of the securities purchased by employees under the plan.

Consequently, we request interpretive advice from the staff of the Division of Investment Management that purchases of Limited Stock under the WFNNB Stock Purchase Plan will not cause the WFNNB Stock Purchase Plan to be an "investment company" under Section 3(a) of the 1940 Act, and request that the staff confirm that it will not recommend that the Commission take enforcement action if the proposed WFNNB Stock Purchase Plan is operated as proposed herein without registration under the 1940 Act. Should the staff believe it cannot take the requested "no action" position, we respectfully request the opportunity to discuss the matter by telephone or in a conference prior to issuance of the staff's letter.

5. *Section 15(b) of the Exchange Act*

In our view, WFNNB's involvement in the proposed WFNNB Stock Purchase Plan will not cause WFNNB to be a "broker" or "dealer" as defined in Sections 3(a)(4) or 3(a)(5) of the Exchange Act. WFNNB is a banking institution organized under the laws of the United States within the meaning of Section 3(a)(6)(A) of the Exchange Act. As such, WFNNB is excluded from the definitions of "broker" and "dealer" in Sections 3(a)(4) and 3(a)(5) of the Exchange Act. In addition, neither The Limited nor WFNNB receives any compensation from purchases or sales of Limited Stock under the WFNNB Stock Purchase Plan, nor does either hold or maintain the funds, securities or accounts of the plan participants. Merrill Lynch maintains the accounts for all plan participants, and participants may sell or withdraw their shares of Limited Stock from their accounts without restriction. Therefore, WFNNB should not be required by Section 15(a) of the Exchange Act to register as such under Section 15(b) of the Exchange Act.

We hereby request the staff of the Division of Market Regulation to confirm that it will not recommend that the Commission take any enforcement action against WFNNB or any of WFNNB's officers, directors or employees under Section 15(a) of the Exchange Act for the failure to register as a "broker" or "dealer" under Section 15(b) of the Exchange Act.

We have enclosed for your files copies of the proposed WFNNB Stock Purchase Plan (attached as Exhibit A) and the proposed WFNNB Savings Plan (attached as Exhibit B), which are incorporated by reference and made part of this request.

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Should you have any questions regarding the matters discussed herein or desire further information, please telephone me at (312) 269-8909.

Very truly yours,

SEYFARTH, SHAW, FAIRWEATHER & GERALDSON

By:



Howard J. Levine

HJL:PCM:jr

cc: Mark Green, Esq.
Division of Corporation Finance

Paula Jensen, Esq.
Barbara Endres, Esq.
Division of Market Regulation

Natalie Bej, Esq.
Division of Investment Management