



**THE CITY OF NEW YORK  
DEPARTMENT OF INVESTIGATION**

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**REPORT TO THE CONFLICTS OF INTEREST BOARD**

**FLEET BANK'S LOAN TO THE  
LIZ HOLTZMAN FOR SENATE COMMITTEE  
AND THE SELECTION OF FLEET SECURITIES  
AS A MEMBER OF THE CITY'S UNDERWRITING TEAM**

**SEPTEMBER 1993**



**THE CITY OF NEW YORK  
DEPARTMENT OF INVESTIGATION**

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**I. INTRODUCTION**

**A. Background**

On August 28, 1992, Fleet Bank loaned \$450,000 to the Liz Holtzman for Senate Committee (the "Committee"), a campaign committee formed in connection with New York City Comptroller Elizabeth Holtzman's unsuccessful race for the United States Senate. Holtzman personally guarantied the loan, which her campaign needed to pay for television commercials preceding the primary on September 15, 1992. The Committee and Holtzman have failed to repay more than \$200,000 of the loan.

In guarantying the loan, Holtzman incurred a substantial contractual financial obligation to Fleet Bank, a subsidiary of Fleet Financial Group ("FFG"), which has done business with the Comptroller's Office since early in Holtzman's tenure in office. In mid-1990, FFG subsidiaries were selected to participate in two loan programs administered by the Comptroller's Office. In addition, FFG has actively sought to obtain other business from the Comptroller's Office. In particular, FFG wanted to secure a role in managing some part of the City's \$50-billion in pension funds and the City's annual several billion dollar municipal bond offerings.

Towards that end, James Murphy, FFG's executive vice president for governmental relations, and other company executives, met with senior officials of the

Comptroller's Office on several occasions beginning in June 1990. Holtzman and Sheila Levin, the finance director of her Senate campaign, attended one meeting in June 1992, which was arranged by executives of FFG's subsidiary Fleet Securities, Inc. ("Fleet Securities"), to advance their efforts to be selected a co-manager for the City's municipal bond offerings. At the close of the meeting, the executives gave Levin \$3,000 in checks as contributions to Ms. Holtzman's Senate campaign.

FFG, through its Political Action Committee ("Fleet PAC"), also contributed to Holtzman campaigns: \$4,000 in 1990 and \$2,000 in 1991. Two months before FFG's PAC made its \$2,000 contribution in 1991, FFG executive James Murphy, who is listed as a member of the Holtzman Senate campaign's finance committee, arranged, at Holtzman's request, for Holtzman and Levin to meet with Terrence Murray, FFG's president and chief executive officer. In addition, Murphy co-hosted a fundraising dinner in 1992 for Holtzman's Senate campaign.

Murphy was instrumental in obtaining the \$450,000 loan for the Holtzman Senate campaign. Levin contacted Murphy directly to request the loan. Murphy then arranged for senior Fleet Bank loan officers to review the loan application and advised them that Fleet Bank was permitted to make campaign loans even though such loans, according to Bank policy, were deemed "undesirable."

According to an internal Fleet Bank document, Murphy recommended that the loan be approved

to meet the needs of Ms. Holtzman's campaign in order to support the bank's relationship with her . . . and New York City, via her position as City Comptroller.

The Committee failed to repay the loan as required by September 30, 1992. Fleet Bank then pressed Holtzman to honor her guaranty. On December 15, 1992, Holtzman attended a meeting, which she called "dismaying," with a Fleet Bank loan officer who insisted on repayment. After the meeting, Fleet Bank extended the due date of the loan to February 1, 1993.

On December 22, 1992, the Comptroller's Office issued a Request for Proposals ("RFP") for the selection of senior managers and co-managers for the City's offerings of general obligation bonds and Water Authority bonds. In January 1993, Deputy Comptroller Edward O'Malley advised Levin and others that they could not communicate with Fleet Bank about the loan because Fleet Securities had responded to the RFP.<sup>1</sup> Thereafter, Fleet

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<sup>1</sup> O'Malley was a close aide to Holtzman and a key advisor on political matters. O'Malley testified that he did not tell Holtzman that Fleet Securities, which was related through FFG to Fleet Bank, had applied to be a co-manager. He testified that he knew that Holtzman was "unhappy" in the way the Bank was treating her in seeking repayment of the loan. Holtzman testified that O'Malley did not tell her that Fleet Securities had responded to the RFP. Her contention is credible only if one concludes that O'Malley was in this instance guilty of extraordinarily poor judgment and incompetence.

Bank's loan officer, who was continuing to press for repayment, was informed by a representative of Holtzman and the campaign committee that they could not discuss the loan because Holtzman could not have dealings with financial institutions during the RFP process to avoid an appearance of impropriety.

In March 1993, at the recommendation of the Comptroller's Office, the Mayor's Office and the Comptroller's Office jointly selected Fleet Securities as one of 23 co-managers. On April 23, 1993, The New York Times reported that the Comptroller's Office had recommended Fleet Securities as a co-manager seven months after Holtzman's Senate campaign obtained a \$450,000 loan from Fleet Bank. On May 13, 1993, Mayor David N. Dinkins directed that Fleet Securities be removed as co-manager.

In response to the Times story, Holtzman recused herself from any dealings between the Comptroller's Office and Fleet Securities. In a letter to Mayor Dinkins, dated May 6, 1993, and in public statements, Holtzman stated that she was unaware that Fleet Securities had applied to become a co-manager. She stated that she would have formally recused herself from the selection process if she had known that Fleet Securities was under consideration. In effect, she acknowledged that it would have been improper for her to have knowingly participated in the selection of Fleet

Securities as a co-manager because of the loan she guaranteed from Fleet Bank to her Senate campaign. Her letter to the Mayor and her public statements did not address the propriety of entering into a financial relationship with Fleet Bank, while FFG, the Bank's parent, was doing and seeking business with the Comptroller's Office.

**B. Ethical Issues**

On April 26, in response to the Times article, the Conflicts of Interest Board ("COIB") directed the Department of Investigation ("DOI") to conduct an investigation.<sup>2</sup> DOI's investigation focused on gathering evidence to aid the COIB in determining:<sup>3</sup>

- ▶ Whether the \$450,000 loan from Fleet Bank to Holtzman's campaign Committee was permissible because it was obtained upon terms and

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<sup>2</sup> The New York City Charter (the "Charter") § 2603(f) states: "The [COIB] shall have the power to direct [DOI] to conduct an investigation of any matter related to the [COIB's] responsibilities . . ."

<sup>3</sup> [Text of footnote deleted at the direction of the Conflicts of Interest Board.]

conditions available to members of the public.<sup>4</sup>

- ▶ Whether Holtzman, by authorizing the Committee to seek and by guarantying the \$450,000 campaign loan obtained from Fleet Bank, knowingly, or through negligence, engaged in a business or financial transaction in conflict with the proper discharge of her official duties.<sup>5</sup>
- ▶ Whether Holtzman, by reason of the Comptroller's Office's recommendation and selection of Fleet Securities as a co-manager, knowingly, or through negligence, improperly took an official action that benefited a firm (FFG) with which she had a financial

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<sup>4</sup> Charter § 2604(c)(3) states: "This section shall not prohibit . . . a public servant from obtaining a loan from any financial institution upon terms and conditions available to members of the public."

<sup>5</sup> Charter § 2604(b)(2) states: "No public servant shall engage in any business, transaction or private employment, or have any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties." No penalties may be applied to violations of this section unless the COIB has promulgated a rule identifying particular prohibited conduct. Charter § 2606(d). The COIB has not issued any such rules.

relationship (due to the loan with FFG's subsidiary, Fleet Bank).<sup>6</sup>

C. Summary of Findings

- ▶ Fleet Bank's \$450,000 loan to the Holtzman Senate campaign Committee is not excepted from the Charter's ethics proscriptions because it was not made to Holtzman and was, by the Bank's definition, an "undesirable" loan, which could be made only by certain designated bank officers for a "justifiable business reason."
- ▶ In guarantying the \$450,000 loan from Fleet Bank to her Senate Committee, Holtzman entered into a financial relationship with a subsidiary of FFG, which was doing and actively seeking business with the Comptroller's Office.
- ▶ Holtzman participated in the process leading to her Office's recommendation and selection of Fleet Securities to be a co-manager. Fleet Securities was related through a common

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<sup>6</sup> Charter § 2604(b)(3) states: "No public servant shall use or attempt to use his or her position as a public servant to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for the public servant or any person or firm associated with the public servant."

corporate parent (FFG) to the Fleet Bank, to which she owed a substantial financial obligation.

- ▶ The evidence strongly suggests that Holtzman knew that FFG and its subsidiaries were doing and seeking business with the Comptroller's Office.
- ▶ Holtzman was grossly negligent in failing to ascertain whether FFG, or any company related to FFG, was doing or seeking business with her Office before her campaign Committee sought the \$450,000 loan from Fleet Bank and before she participated in the process in which Fleet Securities was selected a co-manager.

**D. The DOI Investigation**

In May 1993, the Department of Investigation commenced an investigation into the matters raised by the COIB. As the investigation developed, it was expanded to include questions concerning presentations made to the Bank in connection with the loan and certain fundraising issues.<sup>7</sup>

During the course of this investigation, DOI reviewed more than 15,000 documents, including Requests

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<sup>7</sup> This matter will be addressed in a separate report to the COIB when the investigation is completed.

for Proposals ("RFP's") and proposals, loan records, Federal Election Commission ("FEC") filings, fundraising records, correspondence, memoranda, calendars and diaries, telephone logs and other records from, among others, the Office of the Comptroller, Fleet Securities, Inc., Fleet Bank and two Holtzman campaign committees.<sup>8</sup>

In addition, more than 40 witnesses were interviewed, including government, bank and campaign officials, as well as individuals identified by the campaign Committee as pledgers to a September 9, 1992 fundraiser.

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<sup>8</sup> Document demands were made to the Comptroller's Office and two Holtzman campaign committees on May 6 and 7, 1993. Because the Comptroller and the committees did not obtain private counsel until mid-May and then counsel sought to limit the scope and manner of production, no documents were produced before May 20. On June 21, the Office of the Comptroller requested this Department's "indulgence" with respect to the speed of compliance based upon staff changes, vacation schedules and the need to determine the manner in which certain critical documents were maintained by different Bureaus within the Comptroller's Office. As a result of these delays, neither the Comptroller nor the committees substantially complied with DOI's document demands until mid-July.

## II. STATEMENT OF FACTS

### A. Fleet's Efforts to Obtain a Greater Role in the City's Debt and Asset Management Business

Beginning in mid-1990, Fleet Financial Group and its affiliates, Fleet Securities and Fleet Bank, actively sought to secure a greater role in the lucrative New York City debt and asset management business.<sup>9</sup>

In August 1990, Fleet Securities, which had been a long-time member of the City's selling group for municipal bonds, expanded its public finance division by hiring two public finance specialists, Joseph Bosch and Gregory LiCalzi, from W. R. Lazard, Laidlaw & Mead, Inc. In May 1989, James Murphy joined Fleet Financial Group as executive vice president with responsibilities for government lobbying and inter-governmental relations.<sup>10</sup> According to John O'Brien, president of Fleet Securities,

Our business was changing and it was going from one when it was all competitive to one that had a lot of negotiating factors to it, and Jim [Murphy] had extensive . . . contacts . . . throughout governmental organizations. . . . He had a lot of contacts in government. We realized it became important for us to

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<sup>9</sup> In 1988, as a result of its merger with Norstar, FFG acquired the securities firm of Adams McEntee, which ultimately became known as Fleet Securities.

<sup>10</sup> Murphy at 7. References to a witness' sworn testimony will be made by noting the witness' last name, followed by the relevant transcript page(s).

make our case to various entities as to who Fleet Securities was.<sup>11</sup>

Beginning in June 1990, Murphy sought meetings with senior members of Comptroller Holtzman's staff in order to promote Fleet's abilities and obtain City business. Fleet's PAC then made a series of political contributions to Holtzman's campaigns.

As Comptroller, Holtzman is a member of the board of four municipal pension systems, including the New York City Employees' Retirement System ("NYCERS"), the Teachers' Retirement Board, and the Police and Fire Department Pension Funds. In her capacity as Comptroller, she serves as custodian of the funds' assets and oversees investments valued at approximately \$50-billion. The Bureau of Asset Management ("BAM"), within the Comptroller's Office, is responsible for managing pension fund assets through a series of investment programs.

The Comptroller's Bureau of Debt Management ("BDM") manages the City's debt financing program, issuing municipal bonds and notes to support the City's capital expenditures. Jointly with the Mayor, the Comptroller selects the management team, consisting of senior

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<sup>11</sup> O'Brien at 7.

managers and co-managers, that underwrites the City's bonds and notes.<sup>12</sup>

Through a friend who worked in the Comptroller's Office, Murphy obtained a meeting with Edward O'Malley, then Holtzman's senior assistant comptroller and chief of staff, on June 7, 1990. At the meeting, Murphy told O'Malley that FFG was expanding its public finance division. According to Murphy, he told O'Malley that Fleet planned

. . . to beef up the organization that was then known as Adams McEntee Fleet Norstar Securities, which became Fleet Securities, by putting a public finance team in that would concentrate on New York State, New York City, and at the appropriate time wanted to talk to the people in

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<sup>12</sup> Senior managers are chosen based on their ability to assist the City in structuring bond issues and advise the City on market conditions, including the optimal time for an issue to be offered. Co-managers are selected primarily for their selling capabilities. Both senior and co-managers are contractually bound to the City to purchase a portion of the bonds issued by the City.

The management team receives fees from the City, with senior managers receiving the largest shares. Underwriters aggressively compete for positions on the management team because of the profits to be earned from bond sales, the fees paid by the City, and the prestige of underwriting the debt of the largest issuer of municipal bonds in the nation.

Although not part of the City's management team, various financial institutions constitute the City's "selling group," which also participates in underwriting the City's debt. Members of the selling group, however, are not required to purchase a portion of each issue.

the Comptroller's office that would be handling that business.<sup>13</sup>

During the same meeting, Murphy also promoted Fleet Bank's qualifications to manage the City's pension funds. He told O'Malley that he wanted to meet with representatives of the Comptroller's Office who were responsible for asset management

[t]o have an opportunity to talk about the new effort in Fleet with respect to its pension business and outreach.<sup>14</sup>

According to Murphy, O'Malley contacted William Paolino, BAM bureau chief and told Paolino to expect a call from Murphy. Murphy called Paolino and scheduled a meeting. On September 18, 1990, Murphy and Marshall Raucci, a senior vice president of Fleet Bank, met with several members of BAM, including Bureau Chief Paolino. Murphy told the group that FFG had recently been selected by the Comptroller, the New York City Department of Finance and NYCERS as one of two lending institutions to participate in "Project Home," a \$100-million program in which Fleet originates home mortgages which are exchanged for Federal National Mortgage Association Securities and

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<sup>13</sup> Murphy at 21.

<sup>14</sup> Murphy at 20.

sold to NYCERS.<sup>15</sup> An internal memorandum, prepared by Raucchi, described Murphy's presentation:

Due to the work of James Murphy, we were able to have a high level and meaningful meeting with the City of New York . . . .

\* \* \*

Mr. Murphy began the meeting with an overview of Norstar's deep commitment to New York City and our strong desire to continue to grow our relationship. At the end of this introduction, he introduced the investment management services of Fleet/Norstar as a way in which we can grow this relationship.<sup>16</sup>

Raucchi concluded,

In summary, I believe this meeting represented a real beginning to piercing the very difficult New York City Pension Fund complex.<sup>17</sup>

In September 1990, Norstar Bank, which had merged with FFG in 1988, decided to participate in the Small Business Loan Program, a \$50-million program administered

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<sup>15</sup> "Project Home" is a targeted investment program, administered by BAM's Division of Targeted Investments, which uses pension funds to enable low- to moderate-income families to obtain home mortgages with low down payments. Murphy recalled being present with Holtzman at a press conference in City Hall at which Norstar Bank's selection was announced. Holtzman recalled the press conference but had no recollection if Murphy was there. Further, although she is quoted in a press release issued by NYCERS praising the program, Holtzman testified she never was advised of the names of the participating financial institutions (Murphy at 33; Holtzman at 14).

<sup>16</sup> Murphy, Exhibit 2.

<sup>17</sup> Ibid.

by BAM and sponsored by the Police Pension Fund.<sup>18</sup> Norstar's participation was announced in a press release issued by Holtzman's Office on September 26, 1990.

In November 1990, Murphy attended a fundraising dinner for Holtzman at which he was introduced to the Comptroller for the first time. According to records filed with the Federal Election Commission by the Friends of Liz Holtzman, a Holtzman campaign committee, the Fleet PAC made a \$4,000 contribution to the Committee in November 1990.

On February 11, 1991, at the request of Fleet Securities Senior Executive Vice President Joseph Bosch, he and Murphy met with Darcy Bradbury, deputy comptroller for Finance and supervisor of BDM. At the meeting, Murphy told Bradbury that Fleet Securities, which was a member of the City's selling group, was interested in promotion to co-manager status.<sup>19</sup> Murphy and Bosch

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<sup>18</sup> Similar to Project Home, banks participating in the program make loans to small businesses, which are pooled and packaged into federally guaranteed securities which are subsequently purchased by, in this case, the Police Pension Fund. The participating banks profit from interest earned and the fees charged for servicing the loans. Because FFG was not an active participant, in August 1992, the Comptroller's Office released them from the program.

<sup>19</sup> Murphy at 51. On April 24, 1990, the Office of the Mayor and the Office of the Comptroller issued a Request For Proposals ("RFP") to select the City's general obligation bond underwriting team. Fleet Securities (then known as Adams McEntee, Fleet Norstar Securities, Inc. ("ADMAC/FLEET")) responded to the RFP, seeking the position of co-manager. ADMAC/FLEET was not

told Bradbury that Fleet had expanded its public finance division and described Fleet's trading capabilities.

Bradbury recalled Fleet's presentation:

. . . They talked about their firm. I remember that they talked about how their firm had been growing a lot in the last several years, because it had acquired several banks . . . , and so they were stressing that they had a very broad distribution throughout these many branches now, and that they were making a big commitment now to public finance . . . .<sup>20</sup>

According to documents reviewed by DOI, after the February 11 meeting Bosch wrote seven letters to Bradbury, describing Fleet's record of selling the City's bonds and indicating Fleet's desire to play an "enhanced role in the City's negotiated sales."<sup>21</sup>

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selected for the 1990 team and continued to be a member of the City's selling group at the time of this meeting.

<sup>20</sup> Bradbury at 79-80.

<sup>21</sup> Bosch, Exhibit #10. In most cases, Bosch forwarded an identical letter to Michael Geffrard, director of the Mayor's Office of Public Finance. Geffrard, along with Bradbury and Mark Page, executive director of the New York City Municipal Water Finance Authority, played a central role in evaluating and rating the applicants for the City's management teams. Geffrard recalled three additional contacts with Bosch: a telephone call from Bosch advising Geffrard that he had recently joined Fleet Securities; a meeting in the early part of 1991 in which he indicated Fleet's desire to play a more substantial role in selling the City's bonds; and a second meeting in the spring of 1991 in which Bosch discussed Fleet's chances of becoming a co-manager on the HHC management team. Geffrard stated he had no other contacts with staff of Fleet Securities, Fleet Bank or FFG.

On May 10, 1991, Murphy met with William Cobbs, chairman of the Public Resources Advisory Group, financial advisors to the City. In a May 13, 1991 memorandum to John O'Brien, and other executives at Fleet Securities, Murphy stated:

Please keep this in mind -- he [Cobbs] mentioned in passing as I walked him to the front door at the 60 East Club that he was going to talk to Darcy Bradbury, Deputy Comptroller for Finance and suggest that they might include FNS [Fleet Norstar Securities] in any immediate upcoming offerings because of our distribution capabilities.<sup>22</sup>

On August 29, 1991, Fleet Securities responded to an RFP issued by the Health and Hospitals Corporation ("HHC") to select its bond underwriting management team. As required by the RFP, Fleet Securities submitted its response to the HHC as well as to Bradbury and the Mayor's Office for consideration. According to Bradbury, the Board of Directors for the HHC was ultimately responsible for selecting the management team.<sup>23</sup> Bradbury testified that although she participated in the selection process and interviewed many of the applicants, she did not recall that Fleet Securities had applied for a position on the HHC underwriting team, nor did she recall advising Holtzman of the names of the firms which

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<sup>22</sup> Murphy, Exhibit 5.

<sup>23</sup> Bradbury at 67.

were selected.<sup>24</sup> On December 23, 1991, the HHC announced its selection of Fleet Securities as co-manager for its bond underwriting team. Holtzman testified that until the commencement of the current investigation, she was not aware that Fleet Securities had been selected as a co-manager.<sup>25</sup>

After Fleet Securities' successful pursuit of a position on the HHC underwriting team, Murphy continued to seek asset management business from high level officials in Holtzman's office. Murphy testified that he attended meetings with, among others, Michael Nairne, the Comptroller's delegate to the pension boards; John Gilliam, deputy comptroller for Asset Management; and Thomas Bettridge, Director of BAM's Division of Targeted Investments. In each of these meetings, Murphy expressed FFG's interest in managing pension assets and continued to lobby for additional business.<sup>26</sup>

At a meeting on June 11, 1992, with Gilliam and Bettridge, Murphy proposed creating a guaranty program which would permit the pension systems to safely invest funds in additional targeted investments. In a memorandum dated June 18, 1992, to various executives of Fleet Financial Group, Murphy wrote that they discussed

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<sup>24</sup> Bradbury at 63, 68 and 70.

<sup>25</sup> Holtzman at 28.

<sup>26</sup> Murphy at 297-301.

"possibly working this in Liz Holtzman's [Senate] election campaign." Murphy then advised the Fleet executives about the success of their efforts:

We now have excellent access on the investment side of City Comptroller [sic] which will hopefully eventually pay off with management business.<sup>27</sup>

Neither Gilliam nor Bettridge recalled the June 11 meeting specifically. Bettridge and Nairne testified that they had meetings with Murphy. They had no recollection of ever advising Holtzman about the meetings. Bettridge recalled, however, transmitting to Holtzman via electronic mail, on November 10, 1992, a memorandum that identified Fleet Bank as the participating financial institution for the financing of a \$4.5-million dollar housing project administered by the Comptroller's Office. The memorandum, which Holtzman testified she never read, identified the participating financial institution as "Fleet Bank (formerly Norstar)".<sup>28</sup>

**B. The Senate Campaign**

On July 29, 1991, Elizabeth Holtzman filed a Statement of Candidacy with the Secretary of the Senate in Washington, D. C., indicating that she would be a

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<sup>27</sup> Murphy, Exhibit 8A.

<sup>28</sup> Holtzman, Exhibit 2 and Holtzman at 17.

Democratic candidate for the United States Senate from New York State in 1992. At that time, the Liz Holtzman for Senate Committee (the "Committee"), was designated as the Principal Campaign Committee. Sheila Levin was named financial consultant to the campaign in April or May, 1991.<sup>29</sup> Later, Levin was given the title finance director.<sup>30</sup>

In the year following Holtzman's filing, Holtzman and Levin met with Murphy at least three times and Levin spoke to Murphy by telephone on a number of other occasions. According to FEC records filed by the Committee, officials of FFG and the Fleet PAC contributed \$6,600 to Holtzman's Senate campaign during this period.

Murphy testified that in October 1991, he was called by Levin who asked him, on Holtzman's behalf, to arrange a meeting between Holtzman and Terrence Murray, the president and chief executive officer of FFG. Murphy contacted Murray at FFG headquarters in Providence, Rhode Island, and arranged the meeting, advising Murray that Holtzman wanted to meet with him to "talk about her plans to run for the Senate."<sup>31</sup>

On October 21, 1991, Holtzman and Levin met with Murphy and Murray at the Mayfair Regent Hotel in New York

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<sup>29</sup> Levin at 7.

<sup>30</sup> Levin at 10.

<sup>31</sup> Murphy at 128.

City. According to Murphy, the conversation focused on Holtzman's Senate platform, particularly the policy issues involved in reforming federal law to permit banking institutions to sell securities. Murphy testified that FFG was interested in seeing such reforms passed by Congress.<sup>32</sup> According to Murphy, fundraising for the Holtzman campaign was not discussed nor was FFG's interest in acquiring additional New York City asset management or public finance business.<sup>33</sup>

Holtzman testified that she had no recollection of how, or at whose request, this meeting came about. She said that it was not unusual for her to meet with heads of financial institutions to discuss the economy.<sup>34</sup> Holtzman had no recollection of what was discussed during the meeting, but testified that, despite the presence of her finance director whose "sole responsibility" was to raise money for her campaign, the subject of fundraising was not discussed.<sup>35</sup> Holtzman also testified that, to the best of her recollection, she did not discuss Fleet/Norstar's business relationships with New York City.<sup>36</sup>

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<sup>32</sup> Murphy at 129.

<sup>33</sup> Murphy at 130-132.

<sup>34</sup> Holtzman at 44.

<sup>35</sup> Holtzman at 37-38 and 45.

<sup>36</sup> Holtzman at 46.

In November 1991, the Senate campaign hosted a fundraising dinner at the New York Sheraton Centre Hotel which Murphy attended. FEC records show that contributions were made to Holtzman's Senate campaign in December 1991 by the Fleet PAC (\$2,000) and Fleet Securities executives Joseph Bosch (\$200) and John O'Brien (\$400).

Following the November fundraiser, Murphy invited Holtzman to a Fleet holiday party scheduled for December 9, 1991. The event appears on Holtzman's official calendar, indicating that the party was hosted by "FLEET/NORSTAR FINANCIAL GROUP" (Emphasis in original).<sup>37</sup> The calendar bears the notation, "Sheila to speak with EH and decision made if EH to attend" (emphasis in original).<sup>38</sup> Holtzman testified that she had no recollection of being invited to the event and believes that she did not attend.

In February or March 1992, Levin contacted Murphy on several occasions at his office to obtain his personal assistance in raising funds for the Senate campaign.<sup>39</sup> Murphy agreed to co-host a fundraising event with Peter

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<sup>37</sup> Holtzman, Exhibit 7.

<sup>38</sup> Ibid.

<sup>39</sup> Murphy at 89 and 92.

and Mary Kornman at their Manhattan home on May 18, 1992.<sup>40</sup> Murphy testified that he invited five employees of FFG to the fundraiser, including three Fleet Securities executives to whom he gave complimentary invitations: Bosch, O'Brien, and LiCalzi. He testified that he invited the Fleet Securities employees because he

. . . thought it would be useful if they were to be present at a fundraiser in which funds were being raised for Holtzman for [her] Senate Campaign<sup>41</sup>.

Murphy explained, "I picked the people who would be likely to come because they had an interest and so forth."<sup>42</sup> He specifically recalled that Bosch was the only employee of Fleet Securities who attended the fundraiser. Bosch testified, however, that he declined the invitation.

Holtzman had no recollection of who, other than Peter and Mary Kornman and Murphy, attended the May 18 fundraiser and could not recall, in particular, if Bosch

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<sup>40</sup> After Murphy testified, his attorney advised this Department that:

Mr. Murphy now also recalls that, prior to asking him to host a fundraiser, Ms. Levin called him to ask if Terry Murray would host a fundraiser. Mr. Murray declined to do so, and Mr. Murphy subsequently communicated this to Ms. Levin.

<sup>41</sup> Murphy at 100.

<sup>42</sup> Ibid.

was there.<sup>43</sup> Holtzman further testified that at the time that the fundraiser took place, she was not even aware that Murphy was a co-host.<sup>44</sup> An entry on Holtzman's calendar for May 18 notes, "EH FUNDRAISER HOSTED BY PETER AND MARY KORNMAN, JIM MURPHY" (Emphasis in original).<sup>45</sup> Holtzman said that she may not have reviewed the calendar in anticipation of this event.<sup>46</sup> Moreover, when she reviewed the calendar during her testimony before DOI, Holtzman said that it was not apparent to her that the document reflected the fact that Murphy was the co-host for the fundraiser.<sup>47</sup>

Murphy testified that he received a letter from Holtzman, dated May 27, 1992, addressed to him at Fleet/Norstar Bank, thanking him for hosting the fundraiser.<sup>48</sup> Holtzman had no recollection of preparing or transmitting this letter, although she stated that it was her practice to write thank you letters to individuals who had hosted fundraisers on her behalf.<sup>49</sup> Holtzman said that she is presented with a large number of letters

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<sup>43</sup> Holtzman at 70-72.

<sup>44</sup> Holtzman at 67.

<sup>45</sup> Holtzman, Exhibit 8.

<sup>46</sup> Holtzman at 74.

<sup>47</sup> Holtzman at 75.

<sup>48</sup> Holtzman, Exhibit 9.

<sup>49</sup> Holtzman at 78.

to sign and does not recall signing this particular letter.<sup>50</sup> According to FEC records, a \$1,000 contribution from the Fleet PAC was received by the Senate campaign on May 29, 1992.

In early June 1992, Joseph Bosch called Levin and, according to Bosch, told her that Fleet Securities wanted to host a small fundraiser for Holtzman. He asked for an "audience" with the Comptroller. According to Bosch, he told Levin that Fleet Securities would make a \$2,000 contribution.<sup>51</sup>

At approximately 8 a.m. on June 12, 1992, Holtzman and Levin met with Fleet Securities President John O'Brien, Senior Vice President Gregory LiCalzi, and Vice President Bridget Jandreau-Smith at the Greenhouse Restaurant in the Vista Hotel. Bosch arrived approximately fifteen minutes later. From Bosch's point of view, the purpose of the meeting was to familiarize Holtzman with Fleet Securities, to express support for her candidacy, and to make a contribution to her campaign.<sup>52</sup> At the time of the June 12 meeting, both LiCalzi and Bosch believed that the Comptroller would be

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<sup>50</sup> Holtzman at 77-78.

<sup>51</sup> Bosch at 85.

<sup>52</sup> Bosch at 78 and 85.

issuing an RFP to select the City's new underwriting team in the next several months.<sup>53</sup>

While Levin recalls that Bosch told her before the meeting that Fleet Securities "would like to be supportive of Liz," she does not recall that he said Fleet would make a contribution at the meeting.<sup>54</sup>

Bosch was asked why Fleet Securities wanted to contribute to the Holtzman campaign:

I think it's clear that there are probably four individuals that if you are going to do business in the state, . . . everything else being equal, it's probably not a bad thing to make political contributions to . . . the elected Governor, the elected State Comptroller, the elected Mayor, and the elected City comptroller.<sup>55</sup>

Bosch testified that such contributions are a

requisite element for being a member of the negotiated public finance community in the State of New York.<sup>56</sup>

The basis for his statement, Bosch said, was his perception that every firm that wanted to do business in New York State engaged in this practice.<sup>57</sup>

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<sup>53</sup> LiCalzi at 19-20; Bosch at 91.

<sup>54</sup> Levin at 52.

<sup>55</sup> Bosch at 104-105.

<sup>56</sup> Bosch at 106.

<sup>57</sup> Bosch at 107.

The Vista meeting lasted between 45 minutes and one hour. O'Brien specifically recalls that he told Holtzman that Fleet Securities had begun as Adams McEntee, which was acquired by Norstar, and, finally, that Norstar had merged with Fleet Bank. He also advised Holtzman of the reasons why he believed Fleet Securities was a "good candidate to be a co-manager on the New York City issues," including Fleet's distribution network and its commitment to New York City.<sup>58</sup> O'Brien testified that the purpose for informing Holtzman of these issues was so that

When an RFP process began, that when Fleet Securities' RFP was looked at, it would be against some kind of background so the people would know who Fleet Securities was; why they really had a strong case to be made to be a co-manager.<sup>59</sup>

Bosch testified that he also informed Holtzman of Fleet Securities' appointment as a co-manager on the HHC bond issue.<sup>60</sup>

At the conclusion of the meeting, Bosch handed Levin an envelope containing several checks totaling, according to Bosch, \$2,000.<sup>61</sup> Bosch testified that Holtzman was

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<sup>58</sup> O'Brien at 46.

<sup>59</sup> O'Brien at 48-49.

<sup>60</sup> Bosch at 91.

<sup>61</sup> Bosch at 98. FEC records reveal that contributions were received by the Senate campaign on that date, from four employees of Fleet Securities, in

the only candidate in the Senate Democratic primary to receive a contribution from the Fleet Securities list.<sup>62</sup>

Holtzman testified that she had no recollection of who attended the Vista meeting or what was discussed.<sup>63</sup> She said that, until the current investigation began, she had forgotten that the meeting had occurred.<sup>64</sup> When Holtzman was asked whether Levin was present at the meeting, she responded, "As I sit here today, I can't tell you I was there."<sup>65</sup>

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the amount of \$3,000.

Prior to the meeting, according to Bosch, because Fleet Securities had no PAC, O'Brien prepared a list of senior employees and the amount each would be asked to contribute to political campaigns. The list, a copy of which was provided to DOI, reflects the names of ten employees, with expected contributions totaling \$9,500. According to Bosch, he, in consultation with LiCalzi and O'Brien, would decide to which political campaigns Fleet Securities would contribute (Bosch at 102). Jandreau-Smith, who was supporting the candidacy of Geraldine Ferraro in the primary, made the contribution reluctantly, but did not press her objections because she

really felt that if I say no, if I made a huge fuss about it, that my job would be on the line (Jandreau-Smith at 18 and 27).

<sup>62</sup> Bosch at 111.

<sup>63</sup> Holtzman at 83.

<sup>64</sup> Holtzman at 82-83.

<sup>65</sup> Holtzman at 88. Holtzman's calendar contains an entry for June 12 documenting the breakfast, its time and location, and the names of attendees. The entry bears the heading "BREAKFAST WITH JOE BOSCH, et al. (Fleet Securities)" (Emphasis in original). (Holtzman, Exhibit 10.)

C. FLEET BANK'S LOAN TO THE LIZ HOLTZMAN FOR SENATE COMMITTEE

In early August 1992, Holtzman's Senate campaign was in trouble. Primary election polls showed that Holtzman was running third, behind Robert Abrams and Geraldine Ferraro, in a field of four candidates. The Liz Holtzman for Senate Committee had only approximately \$85,000 available in primary eligible funds.<sup>66</sup> The next major fundraiser was not scheduled until September 9, 1992, six days before the primary.

As Holtzman remembered:

I don't recall who first advised me, but I believe I had a conversation with Ed O'Malley about this subject, and that if we wanted to put a media campaign on, if we had any chance of winning this race, we would have to buy television commercials, and we would need to take a loan out to do that.<sup>67</sup>

On August 11, 1992, the media consulting firm retained by the Committee, Squier, Eskew, Knapp and Ochs, submitted a media plan to the Committee. The media campaign would begin on August 27, 1992, and the projected cost was \$450,000. Holtzman testified that the media plan ". . . was an essential part of [the] strategy to win . . ." and that the media consultants had to be

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<sup>66</sup> Levin, Exhibit 3.

<sup>67</sup> Holtzman at 108.

paid before the campaign could begin.<sup>68</sup> O'Malley and Holtzman discussed where the Committee could "go for the loan." O'Malley said

. . . Why not your own bank . . .  
She [Holtzman] had personal funds in  
the Fleet Bank . . . and I said if  
you would like I will call Jim  
Murphy.<sup>69</sup>

Holtzman further testified that ". . . the idea [of a loan] was presented to me, and I approved it."<sup>70</sup>

On August 17, 1991, ten days before the media campaign was scheduled to begin, Levin called Murphy. Levin told Murphy that Holtzman wanted to have a breakfast meeting with him on Friday, August 21, 1992.<sup>71</sup> Levin did not say what the subject of the meeting would be, but Murphy agreed to the meeting. On Tuesday, August 18, 1992, Levin again called Murphy and informed him that the Committee was seeking a loan from Fleet Bank (the "Bank") to finance a media campaign for the last phases

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<sup>68</sup> Holtzman at 108.

<sup>69</sup> O'Malley at 111. At that time, O'Malley was aware that Murphy was seeking business from the Comptroller's Office on behalf of FFG; however, there is no evidence indicating that O'Malley advised Holtzman of this fact. O'Malley's failure to bring this to Holtzman's attention, must be construed as an exercise of extremely poor judgment. (See pp. 12-13, infra.)

<sup>70</sup> Holtzman at 110.

<sup>71</sup> Murphy at 140.

of the primary campaign.<sup>72</sup> Levin also told Murphy that the Committee had its accounts at the Bank.

Murphy testified that after speaking to Levin, he telephoned John Robinson, an executive vice president of FFG who was in charge of Fleet Bank in New York State, and recommended to Robinson that the Bank consider the request for the loan.<sup>73</sup> Murphy then telephoned Edward Fanning, executive vice president and senior lending officer at the Bank, and told Fanning to evaluate the loan. According to Murphy he advised both Robinson and Fanning to evaluate the loan based only upon its credit-worthiness.<sup>74</sup> Fanning advised Murphy that he would assign Nancy O'Connor, senior vice president team leader, as the loan officer. Fanning then telephoned O'Connor, informed her that he had received a telephone call from Murphy and asked O'Connor to analyze the loan.

Murphy then contacted Levin and arranged a meeting between representatives of the Bank and the Committee for Thursday, August 20, 1992.

The Fleet Bank Commercial Credit Policy Manual characterizes loans for political purposes as "undesirable". Murphy testified that he was not aware that loans to political campaigns were exceptions to the Bank's

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<sup>72</sup> Murphy at 138.

<sup>73</sup> Murphy at 143.

<sup>74</sup> Murphy at 143-144.

policy and were deemed "undesirable".<sup>75</sup> Both Fanning and O'Connor testified, however, that they broached this issue with Murphy when they first discussed the loan with him. Fanning recalled that during the course of Murphy's first telephone call to him regarding the loan, he advised Murphy, ". . . that this was an undesirable loan and that I was reluctant to get involved in it."<sup>76</sup>

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<sup>75</sup> The manual, Section 3.050, characterizes loans for "political purposes" as "undesirable". The manual states, "Although discouraged, such loans may be approved if there is a justifiable business reason to extend the facility. Approval or renewal of these loans require the approval of an individual with Special Approval Authority at the individual Fleet bank." Fanning possessed such authority and ultimately exercised it in approving the loan.

The Bank's attorneys, at DOI's request, "surveyed" recent loans made by the Bank in New York State for "political purposes" and advised DOI of four such loans, two to State legislators (unidentified), a third to the "Campaign Committee of [a] State Legislative Body," and the fourth to a "State Party Campaign Committee." The loan to the first State legislator is due on demand. The loan, in the amount of \$20,000, originated on May 8, 1992 with an initial interest rate of prime plus 1. The current remaining balance is \$16,000. The loan to the second legislator for \$31,000 originated on August 26, 1992 and matured on November 14, 1992. The initial interest rate was fixed at 8.5%. The loan was unsecured and was referred to their managed assets division. The current balance is \$28,459. Repayment is currently being negotiated. The loan to the campaign committee of a State legislative body was a \$50,000 secured line of credit with an initial interest rate of prime plus 1. The loan originated on October 30, 1992 and matured on April 30, 1993. The loan has been fully repaid. The loan to the State party campaign committee was in the amount of \$500,000. It originated on November 29, 1990 with a maturity date of June 30, 1993. The interest rate was prime plus one half. The loan has been fully repaid.

<sup>76</sup> Fanning at 7.

Fanning further stated that in a second call he received from Murphy regarding the loan application, Murphy advised Fanning that John Robinson had informed him (Murphy) that the Bank did in fact make political loans.<sup>77</sup> As a result, because of his concerns about making such a loan, Fanning attempted, unsuccessfully, to telephone Robinson to confirm what Murphy had told him.<sup>78</sup> Inasmuch as Robinson was unavailable, Fanning relied on Murphy's representations.

While Murphy testified that he asked that the loan only be considered based upon its credit-worthiness, O'Connor testified that she understood that Murphy was recommending that the Bank approve the loan.<sup>79</sup> Further, in O'Connor's draft of the loan proposal, she wrote

James Murphy, EVP, FFG, has recommended this loan to meet the needs of Ms. Holtzman's campaign in order to support the bank's relationship with her [accounts maintained at the Church Street branch] and New York City, via her position as City Comptroller.<sup>80</sup>

O'Connor testified that she deleted this language from the final version of the memorandum at Fanning's direc-

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<sup>77</sup> Fanning at 11.

<sup>78</sup> Fanning at 14.

<sup>79</sup> O'Connor at 15-16.

<sup>80</sup> O'Connor, Exhibit 1.

tion.<sup>81</sup> Murphy testified that he never had a discussion with O'Connor concerning any benefit to the Bank arising from the approval of the loan to the Committee.<sup>82</sup>

A meeting between representatives of the Committee and the Bank took place on Thursday, August 20, 1992, at the Bank's offices at 56 East 42nd Street in Manhattan. Levin and Joseph McDonald, an attorney, represented the Committee; Murphy, O'Connor, and William Mutterperl, general counsel for FFG, represented the Bank. O'Connor and Murphy testified that Mutterperl, whose office is located in Providence, Rhode Island, was in New York City on other FFG business and attended the meeting at Murphy's request.<sup>83</sup> Both O'Connor and Murphy testified that Mutterperl was familiar with the federal regulations which apply to the fundraising and financing of campaigns for the United States Senate.<sup>84</sup>

According to O'Connor's testimony, Murphy opened the meeting by introducing the parties and the subject matter of the meeting. O'Connor said that Levin and McDonald had requested a loan to be used for a media campaign

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<sup>81</sup> O'Connor at 211.

<sup>82</sup> Murphy at 247.

<sup>83</sup> Murphy at 160; O'Connor at 22.

<sup>84</sup> Murphy at 162; O'Connor at 22. Article 2, United States Code, Section 431(8)(B)(vii) and Title 11 of the Code of Federal Regulations, Chapter I, Subchapter A, Part 100, Section 100.7 (b)(11) regulate the extension of bank loans to federal election campaigns.

which was to commence during the week of August 24, 1992. Levin and McDonald told the Bank that the Committee would repay the loan from the proceeds of a fundraising dinner scheduled for September 9, 1992.<sup>85</sup> Levin gave O'Connor a document showing that the Committee expected to raise approximately \$375,000 at the dinner. O'Connor testified that, while a specific term for the loan and a specific interest rate were not discussed during the meeting, the parties did discuss the FEC regulations requiring bank loans to political campaigns to be made only in the "ordinary course of business," on a basis that "assures repayment" with a definite repayment program, and with a definite term for the loan.<sup>86</sup> O'Connor also testified that McDonald and Levin were told that the Bank would probably require Elizabeth Holtzman to sign a personal guaranty for the loan.<sup>87</sup>

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<sup>85</sup> O'Connor at 23.

<sup>86</sup> O'Connor at 31-33. Title 11 of the Code of Federal Regulations, Chapter I, Subchapter A, Part 100, Section 100.7(b)(11) and (11)(i).

<sup>87</sup> Holtzman testified that when she was informed that the Bank would require her personal guaranty,

I expressed my displeasure at this provision, that I did not want to continue dealing with Fleet Bank  
. . . .

Shortly thereafter, according to Holtzman,

. . . Ed O'Malley informed me that that was not a practical option in terms of the time factor . . . .

On August 21, after O'Connor concluded her analysis of the Committee's request for a loan, she told Fanning that she refused to sign off on the loan because she was concerned about the repercussions if a loan deemed undesirable by the Bank and approved by her was not repaid. To a lesser degree, she said, her refusal was based on her opposition to Holtzman's political positions.<sup>88</sup>

Later that day, O'Connor testified that she and Murphy participated in a telephone conference call with Fanning to discuss the loan. O'Connor testified that she agreed to approve a loan for \$400,000 in reliance on Murphy's expertise in the area of public fundraising.<sup>89</sup> According to O'Connor, Murphy at that point raised the issue of lending the campaign an additional \$50,000 if the Committee could demonstrate it would raise another \$100,000 at the fundraising dinner.<sup>90</sup> O'Connor testified that, in addition to making a decision concerning the amount of the loan, she, Murphy, and Fanning agreed that the interest rate would be prime plus one, that the loan would come due on September 30, 1992, and that a personal guaranty would be required from Elizabeth

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(Holtzman at 142-143.)

<sup>88</sup> O'Connor at 110 and 114.

<sup>89</sup> O'Connor at 50-51.

<sup>90</sup> O'Connor at 59.

Holtzman, although such a guaranty would not be viewed as a primary source of repayment for the loan.<sup>91</sup> O'Connor testified that at the conclusion of this conference call, Fanning indicated to her that she and Murphy could go forward with the loan to the Committee.<sup>92</sup>

O'Connor testified that Murphy notified the Committee about the approval of the loan during a telephone conference call on August 21, 1992, and that she was present during the discussion.<sup>93</sup> O'Connor stated that Murphy told Levin that a \$400,000 loan had been approved and that an additional \$50,000 would be approved only if the Committee submitted "additional verifiable pledges."<sup>94</sup> O'Connor stated that, although the loan was not formally approved by Fanning in writing until August 25, 1992, the Bank had made a commitment as a result of the August 21 telephone call from Murphy.<sup>95</sup>

On August 28, 1992, the Committee and the Bank entered into a letter agreement by which the Bank granted the Committee a loan in the amount of \$450,000, repayable on September 30, 1992, at an interest rate of prime plus one, with the proceeds of the September 9 fundraising

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<sup>91</sup> O'Connor at 75.

<sup>92</sup> O'Connor at 96.

<sup>93</sup> O'Connor at 94.

<sup>94</sup> O'Connor at 94.

<sup>95</sup> O'Connor at 98.

dinner to be deposited directly by the Committee into a special account established by the Bank. The letter agreement was signed by Holtzman both as the personal guarantor and on behalf of the Committee, because the Committee treasurer was not available. The Bank then wire transferred \$450,000 to the media consultant's bank account in Washington, D.C.<sup>96</sup>

On August 31, 1992, the "Liz Holtzman for Senate - Pledge Account," No. 9367487207, was opened at Fleet Bank. The Committee was to deposit all funds, less expenses, received from the September 9 dinner into this account. The Committee would not be able to withdraw or otherwise utilize the funds once they were deposited into this account. On September 1, 1992, a letter was sent to Levin by O'Connor concerning the special pledge account which stated, in part, "All proceeds from the September 9, 1992 dinner are to be deposited into that account effective immediately."

On September 9, 1992, the Committee fundraising dinner took place at Tavern on the Green. Holtzman

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<sup>96</sup> [Text of footnote deleted at the direction of the Conflicts of Interest Board.]

testified that the results of the dinner were "disappointing."<sup>97</sup> The event generated significantly less revenue, approximately \$200,000, than the \$600,000 that had been represented to the Bank in order to obtain the loan. The Bank, however, received only approximately \$95,000 of the dinner proceeds. O'Connor testified that bookkeeping problems developed between the Committee and the Bank immediately following the September 9 fundraising dinner. According to O'Connor, the Committee did not deposit all of the proceeds into the special pledge account and it was eventually determined that the Committee had spent approximately \$48,000 that was supposed to go towards repaying the loan on other campaign-related expenses.<sup>98</sup>

The primary was held on September 15, 1992, and Holtzman ran fourth in a field of four. Because of the poor turnout at the September 9 dinner, it was apparent that the Committee would not be able to meet the September 30, 1992 due date for the loan repayment. O'Connor and Murphy met with Levin on September 24, 1992, to determine the Committee's plans to repay the loan. During the meeting, Levin attributed the low revenue generated by the fundraiser to the negative reaction to the media campaign run by the Committee in the closing

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<sup>97</sup> Holtzman at 229.

<sup>98</sup> O'Connor at 150.

days of the campaign. According to Levin, the media advertisements were ". . . very aggressive and very forceful which questioned Gerry Ferrara's [sic] integrity . . ." As a result, Levin testified, ". . . people were furious, furious . . ."99

O'Connor testified that she and Murphy made it clear to Levin that the Bank expected the Committee "to concentrate on doing some significant debt fundraisers" so that the outstanding balance of the loan would be reduced.<sup>100</sup> O'Connor said that they also discussed the provision in the original loan letter agreement that, in case of a shortfall, the Committee would hold a subsequent fundraiser. Levin indicated, however, that no debt fundraising could be done until after the general election on November 3, 1992, because ". . . Liz as a Democrat needed to provide her support to Bob Abrams."<sup>101</sup> O'Connor testified that, based upon this meeting, the Bank decided to roll the loan over until November 2, 1992. On October 13, 1992, O'Connor sent Levin a letter to that effect, with carbon copies to Murphy, Holtzman and McDonald.

The next meeting between the Bank and the Committee took place on December 15, 1992. The meeting was

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<sup>99</sup> Levin at 172.

<sup>100</sup> O'Connor at 157.

<sup>101</sup> O'Connor at 159.

attended by Holtzman, McDonald, and Levin for the Committee and O'Connor for the Bank. At the time of that meeting, the Committee had not repaid the note that fell due on November 2, 1992, and had not provided the Bank with an accounting of the funds raised or the expenses incurred for the September 9 dinner. O'Connor indicated that the Bank intended to leave the note in a past due status until that information was supplied.<sup>102</sup> O'Connor testified that at the meeting, Holtzman indicated that she was anxious to have the loan repaid and that the Committee was holding a fundraiser that same evening. O'Connor informed Holtzman that the Bank was considering requiring collateral for the loan or transferring the loan to Holtzman personally.<sup>103</sup>

O'Connor testified that Holtzman inquired as to whether the Bank could extend the loan for a longer period of time "because it was a nuisance to have to sign the loan every thirty days."<sup>104</sup> According to O'Connor, Holtzman and the other representatives of the Committee indicated to her that they would be emphasizing the raising of funds for Holtzman's impending Comptroller campaign rather than for repaying the loan. O'Connor testified that she "took a little bit of umbrage" at this

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<sup>102</sup> O'Connor at 175.

<sup>103</sup> O'Connor at 183.

<sup>104</sup> O'Connor at 184.

statement, since it was always her assumption "that any and all of our debt would be repaid before they did any future fundraising campaigns."<sup>105</sup> Levin told O'Connor that it was important

to get the comptroller race in place and that nomination and that election in place to be able to continue to have these fund raisers down the road.<sup>06</sup>

Holtzman testified that the December 15, 1992 meeting with O'Connor was "dismaying," "troubling," and "unpleasant" in that O'Connor was "hardnosed" and the Bank was insisting upon repayment. Holtzman said that she remembered very few details of the meeting, but did remember assuring the Bank that the loan would be repaid. She did not remember requesting that the due date of the loan be extended.<sup>107</sup> Based upon the December 15, 1992 meeting, a decision was made by Fanning, Murphy and O'Connor to renew the loan until February 1, 1993

. . . to keep the pressure on the campaign, to keep conversations open with them, and to provide the regular repayments that we would need.<sup>108</sup>

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<sup>105</sup> O'Connor at 185.

<sup>106</sup> O'Connor at 185.

<sup>107</sup> Holtzman at 236 and 238.

<sup>108</sup> O'Connor at 186.

O'Malley testified that in January or February 1993, he had a telephone conference call with Levin, McDonald, and Mary Kornman in which they indicated to him that

. . . they were preparing a memo for Fleet Bank with regard to . . . the repayment of the loan, and they were planning . . . to have a meeting . . . .<sup>109</sup>

O'Malley testified that, during the call

. . . something hit me and, . . . I put them on hold, I called down to whoever answers the phone at Finance, and asked would you do me a favor, would you just check to see whether or not Fleet submitted an RFP, and he got back to me and said yes.<sup>110</sup>

O'Malley said he then instructed Levin, McDonald and Kornman that because Fleet had responded to the RFP

. . . you are not able to meet with them during this RFP process, and would somebody take care of conveying it to the bank.<sup>111</sup>

O'Malley testified that he based his instructions to Levin, McDonald and Kornman not to communicate with the Bank upon a policy in the Comptroller's Office

. . . whereby members of the office should not have communication with underwriting firms that submitted RFP's regarding the substance of the RFP, and the Comptroller further extended that to the campaign office, that there should be no

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<sup>109</sup> O'Malley at 80.

<sup>110</sup> O'Malley at 80.

<sup>111</sup> O'Malley at 80.

communication during this process in anything that would involve the soliciting of funds, fund raising.<sup>112</sup>

O'Malley said that he had known of this policy since 1990, but did not know how he became aware of it.<sup>113</sup>

O'Malley testified that he did not advise Holtzman of his conversation with Levin, McDonald and Kornman, nor did he advise her of his direction to them not to meet with the Bank.<sup>114</sup> O'Malley claims he refrained from disclosing these events to Holtzman despite his awareness that Holtzman previously expressed her reservations to him regarding the personal guaranty, the fact that the bank was "pressing" Holtzman "in a very hard way" for repayment, and that she was "unhappy" at the way the bank was treating her.<sup>115</sup>

While O'Malley instructed the Committee not to communicate with the Bank, neither O'Malley, Levin, McDonald nor Kornman ever advised Holtzman, who had personally guaranteed the campaign loan, that an

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<sup>112</sup> O'Malley at 84.

<sup>113</sup> O'Malley at 85-86.

<sup>114</sup> O'Malley at 158.

<sup>115</sup> Holtzman at 142; O'Malley at 153-154. O'Malley testified that, upon reflection, he was not sure that this "quiet period" applied to Fleet Bank, since it was Fleet Securities that had submitted the RFP, no one from the campaign was going to discuss the specifics of the RFP with representatives of the Bank, and the Committee was not seeking to raise campaign funds from the Bank (O'Malley at 99-100).

affiliate of the Bank was actively being considered by her staff for a position on the underwriting management team.

Holtzman recalled that the policy, which was never committed to writing, was in effect by May 1990.<sup>116</sup> Holtzman did not recall how the policy was communicated to her campaign staff or her staff in the Comptroller's Office.<sup>117</sup>

Holtzman testified that the purpose of the policy was to avoid the appearance of any bias or preferential treatment during the selection process.<sup>118</sup> She testified that neither O'Malley, Kornman, Levin, nor McDonald ever advised her that they were breaking off all communications with the bank because Fleet Securities had responded to the RFP.<sup>119</sup> Moreover, Holtzman testified that she wished that she had been told about the decision concerning the Bank and the silent period, because the issues involved in the current investigation might not have arisen.<sup>120</sup> Holtzman also indicated that her

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<sup>116</sup> Holtzman at 273.

<sup>117</sup> Holtzman at 275-276.

<sup>118</sup> Holtzman at 274.

<sup>119</sup> Holtzman at 322-323.

<sup>120</sup> Holtzman at 321-322.

campaign staff had acted appropriately when they extended the policy to cover the loan with the Bank.<sup>121</sup>

On or about January 25, 1993, O'Connor telephoned McDonald to discuss the impending February due date of the loan. O'Connor testified that she called McDonald because she was unable to reach anyone else connected with the loan.<sup>122</sup> According to O'Connor, McDonald told her that

. . . because the comptroller's office had the bids out to investment banks for the bond underwriting that to avoid any sense of impropriety that Ms. Holtzman couldn't have dealings with financial institutions.<sup>123</sup>

O'Connor testified that none of the Committee representatives present at the December 15 meeting, including Holtzman, had indicated to her that there was an impending time period during which the Committee could not communicate with the Bank.<sup>124</sup> O'Connor testified that she did not believe that the Comptroller's Office policy was relevant to discussions with the Bank concerning the loan, but that she had no choice because no one would speak with her.<sup>125</sup>

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<sup>121</sup> Holtzman at 330.

<sup>122</sup> O'Connor at 196.

<sup>123</sup> O'Connor at 195.

<sup>124</sup> O'Connor at 200.

<sup>125</sup> O'Connor at 198.

On February 12, 1993, O'Connor wrote to McDonald and advised him that the Bank intended to transfer the loan to the Bank's Managed Assets Department, the department of the Bank which monitored non-performing loans. In the letter, O'Connor referred to the Bank's inability to negotiate with the Committee, ". . . because of Ms. Holtzman's position as comptroller and her involvement in choosing banks for city underwriting."<sup>126</sup>

A copy of the letter was sent to Holtzman. Holtzman claimed, however, that she did not see the letter prior to March 17, 1993, when the selection of the underwriting team was completed. Holtzman testified, with respect to correspondence on which she was copied, that

. . . my general practice was not to read mail where I was cc'd. If it wasn't important enough to send to me directly, then I would rely on my staff to advise me if I needed to know about it.<sup>127</sup>

Based upon the failure of the Committee to make progress toward repaying the loan and the inability of the Bank to communicate with the Committee, the loan was "downgraded" and transferred to the Bank's Managed Assets Department in March 1993. The downgrading and the

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<sup>126</sup> Holtzman, Exhibit 30.

<sup>127</sup> Holtzman at 228.

transfer indicated that the Bank considered repayment of the loan to be doubtful.<sup>128</sup>

On March 17, 1993, the Offices of the Mayor and Comptroller announced the names of the financial institutions that would comprise the City's underwriting management team. Fleet Securities was selected, for the first time, as a co-manager.

On April 14, 1993, Murphy, O'Connor, an attorney representing the Bank, and Adele Ruggiero, of the Bank's Managed Assets Department, met with Holtzman, Levin and McDonald to discuss the status of the loan. In a Memorandum to File, dated April 14, 1993, describing the meeting, Ruggiero wrote that when asked for a full accounting of the September 9 dinner

Sheila [Levin] indicated that a substantial portion of the pledged funds never materialized and the balance was inadvertently utilized to pay expenses which were incurred during the frenetic 2 weeks prior to the election.

According to the memo, Levin also advised the group that

As a result of the ongoing campaign (for Comptroller), all of their efforts were to be concentrated toward obtaining the financial support for it, therefore, they would be unable to schedule a fundraiser for the purpose of repaying the subject debt until after the November election.<sup>129</sup>

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<sup>128</sup> Ruggiero at 11.

<sup>129</sup> Ruggiero, Exhibit 2.

In July 1993, another meeting was held between representatives of the Bank and the Committee. McDonald testified that the meeting concerned proposals put forward by the Bank to ensure that the loan would be repaid by the Committee. On August 2, 1993, the Bank notified the Committee that the loan was in default and issued a demand for immediate repayment of the outstanding principal, \$240,400. On the same date, the Bank issued a demand to Holtzman, as guarantor, for payment of the outstanding principal. On August 13, 1993, the Bank, the Committee and Holtzman agreed to extend the term of the loan conditioned upon a significant reduction of the outstanding principal by September 30, 1993 and the provision of collateral to secure the debt.

**D. The Promotion of Fleet Securities to Co-Manager**

On December 22, 1992, the Office of the Mayor and the Office of the Comptroller issued an RFP to select a new management team to underwrite the City's general obligation bonds ("G.O.") and New York City Water Authority revenue bonds.

Sixty financial institutions responded to the RFP. Twenty-two firms applied for senior manager positions on the G.O. bonds, with the remaining 38 firms, including Fleet Securities, seeking co-manager status.

On March 17, 1993, the Mayor and the Comptroller announced that seven firms had been awarded senior manager positions and that Fleet Securities and 22 other firms had been selected as co-managers. On April 1, 1992, the public notice of the bond offering, known as the "tombstone," was signed by both Holtzman and the Mayor and listed Fleet Securities as one of the underwriters.

According to Holtzman, at the time of Fleet Securities' selection she was not aware that Fleet had responded to the RFP or that it had been awarded co-manager status. In a letter to Mayor Dinkins, dated May 6, 1993, Holtzman stated

My Deputy Comptroller for Finance recommended that Fleet be promoted to this position (along with four other firms) based on evaluations by her professional staff, Fleet's #1 ranking among all applicants as sellers of City bonds, and other indicia of Fleet's strong past performance.

The deputy comptroller for Finance, Darcy Bradbury, testified that the major part of her job "was overseeing on behalf of the Comptroller the debt management and debt issuance of the City of New York."<sup>130</sup> She and her staff reviewed and evaluated each of the proposals, interviewed applicants who had applied for senior status, ranked the

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<sup>130</sup> Bradbury at 7.

proposals, and selected a team of senior managers and co-managers to propose to the Mayor's Office.

Holtzman testified that she participated in the selection process in two areas. First, after Bradbury prepared a short list of senior manager candidates, Holtzman discussed the merits of the applicants with Bradbury. According to Bradbury, she and Holtzman "discussed the senior managers in several meetings, you know, at great length."<sup>131</sup>

Holtzman also consulted with Bradbury relative to the appointment of minority- and women-owned firms to co-manager positions because the issue was of "interest" to her and something that "should be done."<sup>132</sup> These discussions, she said, never involved Fleet Securities.<sup>133</sup>

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<sup>131</sup> Bradbury at 156.

<sup>132</sup> Holtzman at 339.

<sup>133</sup> On January 25, 1993, an article appeared in Crain's New York Business, entitled "Minorities Push For Bond Role." The article quoted Holtzman, who described the City's efforts to include minority- and women-owned businesses. The article also included a quote from Fleet Securities Senior Vice President Gregory LiCalzi, and noted that Fleet Securities had applied for co-manager status. Holtzman testified that she had not read the article during the period of the selection process. She said that she generally does not read articles in which she is quoted because ". . . reading what I have already said is not particularly interesting to me" (Holtzman at 338).

Bradbury corroborated Holtzman's characterization. She said that she recalled two discussions with Holtzman about co-managers:

In general, she asked me about women owned firms, and what was -- how they were going to fare in a sense . . .<sup>134</sup>

Bradbury was asked whether she and Holtzman had discussed Fleet Securities:

I do not believe that I ever discussed any other co-manager candidates with the Comptroller, other than the ones I have discussed with you previously. . . . I do not recall discussing any other co-managers with her, and I think it is extremely unlikely. It is not the level of detail that I would bring to her attention. It is not very important in the scheme of things.<sup>135</sup>

Bradbury stated that she attended only one meeting during which the selection of Fleet Securities was discussed and that Holtzman was not present at the meeting. The meeting occurred on March 16, 1992 and was attended by Roger Anderson, who was then serving as the bureau chief for the Bureau of Debt Management; Michael Geffrard, the director of the Mayor's Office of Public Finance; Mark Page, director of the New York City Water Authority; and Alan Anders, treasurer of the New York City Water Authority, and a member of Page's staff. The

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<sup>134</sup> Bradbury at 159.

<sup>135</sup> Bradbury at 172.

purpose of the meeting was to select co-managers. Inasmuch as representatives of the Comptroller's and Mayor's Offices had agreed that substantially all of the firms which had applied for senior manager positions but were not appointed would receive co-manager status, there remained approximately eight co-manager positions to be filled.

According to Anderson, during the March 16 meeting, Bradbury proposed the names of several firms for co-manager status, including Fleet Securities. Prior to the meeting, Anderson said he had never heard Fleet's name mentioned in connection with the selection process.<sup>136</sup> Anderson recalled that during the meeting, Bradbury cited Fleet's strong selling record as a member of the 1990 selling group and had no recollection of any opposition to the nomination.

According to Bradbury, she submitted Fleet Securities for appointment because there was a need for the 1993 team to have strong regional retail distribution capabilities. Because Fleet Securities had sold more bonds than any other investment house in the 1990 selling

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<sup>136</sup> Other BDM staff who were interviewed on the subject of the selection of co-managers and, specifically, Fleet Securities, testified that they had no participation in ranking or evaluating proposals. Further, they were not privy to any discussions relative to identifying which firms were being considered for co-manager status, including any discussion of Fleet's inclusion on the 1993 team.

group, with two exceptions, Bradbury believed that Fleet Securities would be a strong addition to the 1993 team.<sup>137</sup> Bradbury stated:

. . . Fleet was the best performing of the regular old selling group, so they seemed to me to be an obvious candidate for promotion.<sup>138</sup>

Geffrard informed DOJ that he and Bradbury substantially agreed which firms should be appointed to the vacant co-manager positions. Geffrard recalled objecting to only one firm which the Comptroller's Office had recommended. This disagreement did not involve Fleet Securities, whose nomination was not objected to by Geffrard or other members of the Mayor's Office.

Bradbury testified that she never advised Holtzman that Fleet Securities had responded to the RFP or that she was proposing them for appointment to the 1993 team.

On April 23, 1993, Holtzman issued a memorandum to her executive staff recusing herself

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<sup>137</sup> Bradbury's staff had calculated and charted the selling history of each of the thirty-one 1990 selling group members who had applied for promotion to the 1993 management team. Her staff's analysis included ranking these firms according to the number of bonds ordered and the number of bonds actually allotted as a result of these orders. Anderson testified that since the City had awarded two firms a significant number of bonds to sell, because of innovative financing techniques which they had submitted, these two firms ranked above Fleet in bonds sold. Anderson testified that these two firms' superior ranking to Fleet was a result of these extraordinary allotments awarded to them outside of the normal order flow (Anderson at 116).

<sup>138</sup> Bradbury at 191.

. . . from any involvement in decisions of the Office regarding Fleet Bank and/or its affiliates.<sup>139</sup>

## FINDINGS

### Applicable Charter Provisions

Chapter 68 of the Charter sets out prohibitions on the conduct of City officers and employees "to preserve the trust placed in the public servants of the city, to promote public confidence in government, to protect the integrity of government decision-making and to enhance government efficiency."<sup>140</sup>

Two prohibitions in Chapter 68 are applicable to the facts developed in this investigation. Charter § 2604(b)(2) states:

No public servant shall engage in any business, transaction or private employment, or have any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties.

Charter § 2604 (b) (3) states:

No public servant shall use or attempt to use his or her position as a public servant to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for the public servant or any person or firm associated with the public servant.

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<sup>139</sup> Office of the Comptroller Document #013746.

<sup>140</sup> Charter § 2600 [Preamble].

The Charter, § 2601(5), defines an "associated" person or firm as one with whom the public servant has "a business or other financial relationship."

City officials have an affirmative obligation to stay informed about business matters in their agencies so as to avoid violating the Charter due to ignorance and negligence. For the purposes of determining whether a violation has occurred, Charter § 2604(a)(6) states that City officials "shall be deemed to know of a business dealing with the city if such public servant should have known of such business dealing with the City."

The Charter specifically excludes certain transactions that would otherwise fall within the scope of its prohibitions. One of these exclusions pertains to standard types of loans from financial institutions that do business with the City. A City official may obtain such a loan "upon terms and conditions available to members of the public." Charter § 2604(c)(3).

### Findings

> Fleet Bank's \$450,000 loan to the Holtzman Senate campaign Committee is not excepted from the Charter's ethics proscriptions because it was not made to Holtzman and was, by the Bank's definition, an "undesirable" loan, which could be made only by certain designated bank officers for a "justifiable business reason."

The Charter permits public officials to receive loans from banks doing business with the City only if the loan was obtained on terms and conditions available to

the public. Although Holtzman guaranteed the \$450,000 loan to her campaign Committee, she was not the recipient of the loan. For this reason alone, the loan is not one excluded from the reach of the Charter's ethics proscriptions.

In addition, Fleet Bank's Commercial Credit Policy Manual characterizes campaign loans as "undesirable." Such loans are generally not available to candidates for public office and, by definition, are not available to members of the general public.

The evidence, in particular the memorandum Fleet Bank Loan Officer Nancy O'Connor prepared when reviewing the loan application (see p. 33), indicates that the loan was made to generate goodwill for Fleet Financial Group ("FFG") in continuation of FFG executive James Murphy's campaign to obtain business from the Comptroller's Office through contacts with senior level officials in the Comptroller's Office and financial assistance to Holtzman's political campaigns. According to O'Connor's memorandum, the loan was not made because it was by itself a sound business transaction but, rather, because it would "support the bank's relationship with [Holtzman]."

► In guarantying the \$450,000 loan from Fleet Bank to her Senate campaign Committee, Holtzman entered into a financial relationship with a subsidiary of FFG, which was doing and actively seeking business with the Comptroller's Office.

In June 1990, the Comptroller's Office entered into an agreement with the Norstar Mortgage Company, a division of Fleet Real Estate Funding Corp., in connection with "Project Home," a \$100-million program to help low- and moderate-income families obtain home mortgages. Holtzman attended a press conference at City Hall in August 1990 announcing the initiation of the program.

In September 1990, the Comptroller's Office issued a press release announced that Norstar Bank, a subsidiary of FFG, was participating in a \$50-million program to provide low interest loans to small businesses.

From 1990 through 1992, executives from FFG and Fleet Securities met and corresponded with senior officials of the Comptroller's Office in an effort to obtain a role in managing City pension funds and City municipal bond offerings. These officials included, in addition to Holtzman: Edward O'Malley, deputy comptroller and chief of staff; Michael Nairne, the Comptroller's delegate to the City's four pension boards on which the Comptroller sits; Darcy Bradbury, deputy comptroller for Finance; William Paolino, bureau chief for Asset Management; John Gilliam, deputy comptroller

for Asset Management; and Thomas Bettridge, director of Targeted Investments.

For these reasons, FFG clearly had business dealings with the Comptroller's Office, and the Comptroller's Office necessarily, therefore, has taken actions affecting FFG, either in the administration of business FFG was already performing or in assessing whether to consider the company for new business.

► Holtzman participated in the process leading to her Office's recommendation and selection of Fleet Securities to be a co-manager.

Holtzman delegated the work of screening and evaluating candidates for senior and co-managers to Darcy Bradbury and her staff. However, she did not recuse herself from the selection process. The selections were made pursuant to her personal authority as Comptroller, and she, with Mayor Dinkins, personally announced the selections in a joint press release on March 17, 1993, which listed Fleet Securities as one of 23 co-managers. In addition, she participated in two aspects of the selection process: the evaluation of candidates for senior manager and the appointment of minority- and women-owned firms to co-manager positions. Finally, on April 1, 1993, she personally approved a "tombstone," which also listed Fleet Securities as a co-manager, that provided public notice of the initial bond offering.

► The evidence strongly suggests that Holtzman knew that FFG, Fleet Securities, or other FFG subsidiaries were doing and seeking business with the Comptroller's Office.

The following facts strongly suggest that Holtzman knew that FFG, Fleet Securities, and other FFG subsidiaries were doing or seeking business with her Office. First and most strikingly, Holtzman attended a meeting in June 1992 at the Vista Hotel with executives of Fleet Securities, who pitched the firm's qualifications for forty-five minutes to an hour and specifically asked that the firm be considered for co-manager status.

Second, senior aides on her staff and campaign Committee, including Deputy Comptroller Edward O'Malley, her closest political aide and the director of two of her campaigns for Comptroller and the Senate, and Campaign Finance Director Sheila Levin, and a senior advisor, Joseph McDonald, were aware as of January 1993 that Fleet Securities had applied for co-manager status. Ostensibly, to avoid an appearance of impropriety, they therefore refused to discuss repayment of the Fleet Bank loan. Each knew that Holtzman was distressed that the Bank was pressing for repayment. Yet Holtzman contended that they did not inform her that they had put the Bank off or that she faced a conflict of interest based on Fleet Securities' application to be a co-manager. Given the importance of both issues to Holtzman, and the close

professional relationship of O'Malley, Levin and McDonald to her, it is unlikely, in DOI's opinion, that she was not informed that Fleet Securities was seeking to be selected as a co-manager.

Third, Fleet Securities was identified as one of the firms selected for co-manager in documents it would be expected she would review, including the press release announcing the selection of senior managers and co-managers, and the "tombstone" announcing the initial bond offering.

Fourth, two FFG subsidiaries participated in loan programs administered by the Comptroller's Office and executives of FFG and its subsidiaries had numerous contacts with senior officials of the Comptroller's Office in an effort to get business.

► Holtzman was grossly negligent in failing to ascertain whether FFG, or any company related to FFG, was doing or seeking business with her Office before her campaign Committee sought the \$450,000 loan from Fleet Bank and before she participated in the process in which Fleet Securities was selected as a co-manager.

Under the Charter, Holtzman had an affirmative obligation to learn whether FFG, Fleet Securities or other FFG subsidiaries had business dealings with her Office before and after she guaranteed the \$450,000 loan from Fleet Bank to her campaign Committee.

Holtzman testified that she was unaware that Fleet Bank or any company related to it had business dealings

with her Office. While her assertions of ignorance are contradicted by substantial evidence, the record is devoid of evidence indicating that she took affirmative steps to ascertain whether Fleet Bank or any company related to it had business dealings with her Office before authorizing her campaign Committee to seek the loan and before she personally guaranteed the loan. Given that Fleet Bank was a major financial institution doing business in New York (which Holtzman knew since it was her Bank), reasonable care should have led her to inquire whether the Bank had done or was seeking business with her Office in order to avoid a conflict of interest.

After the loan was obtained, the potential for a conflict of interest to arise continued. Having guaranteed the loan, and assumed a contractual financial obligation to the Bank of approximately \$200,000, Holtzman could not involve herself in any matters in which the Bank had a direct or indirect interest. Nevertheless, while there is evidence that Holtzman knew that Fleet Securities was a candidate for co-manager, the record is devoid of evidence that she took any affirmative action to learn whether the Bank, or any company related to the Bank had business dealings with her Office.

Holtzman's failure to inquire whether Fleet Bank or companies related to it were doing or seeking business

with her Office constitutes, in this Department's opinion, gross negligence.

