

Applicant anticipates that Employer Stock contributed by the Employer will appreciate in value and, therefore, will provide security to current and former employees of the Employer with respect to their receipt of welfare benefits through an affected Plan.

9. In summary, the Applicant represents that with respect to the transactions described herein, the requirements of section 408(a) of the Act have been met since, among other things:

(a) Each Contribution will be authorized pursuant to, and made in conformity with, all relevant provisions of each affected Plan;

(b) The Plans and/or Trusts will not pay any amount or type of consideration whether in cash or other property (including the diminution of any Plan funding obligation of the Employer) for Employer Stock contributed in-kind by the Employer;

(c) Each Contribution will be voluntary and unrelated to any current or future Employer obligation to fund a Plan;

(d) The Plans will not cede any right to receive a cash contribution from the Employer in connection with any Contribution made to any Plan;

(e) The Plans and/or Trusts do not pay any fees or commissions in connection with any Contribution;

(f) Only Employer Stock that constitutes QES will be transferred by the Employer to a Trust pursuant to a Contribution;

(g) The appropriate fair market value of any Employer Stock contributed by the Employer to a Trust will be established by an Independent Fiduciary;

(h) An Independent Fiduciary will represent the interests of the Plans for all purposes related to each Contribution for the duration of the Trust's holding of such Employer Stock and will authorize the trustee of each Trust to accept Employer Stock pursuant to a Contribution only after such Independent Fiduciary determines, at the time of the transaction, that such transaction is feasible, in the interest of the affected Plans, and protective of the participants and beneficiaries of such Plans;

(i) The Independent Fiduciary will: (1) Monitor the Employer Stock and have sole responsibility for the ongoing management of the Accounts; and (2) take whatever action is necessary to protect the rights of the Plans funded by the Trusts, including, but not limited to, the making of all decisions regarding the acceptance and acquisition of Employer Stock contributed by the Employer, the retention and any disposition of such

Stock, and the exercise of any voting rights associated with such Stock;

(j) With certain exceptions, the total amount of the Limited Assets held by each Plan shall not comprise more than 25% of the fair market value of the assets held by such Plan; and

(k) At no time will any of the assets of the Trusts revert to the use or benefit of the Employer.

**Notice to Interested Persons:** The applicant represents that notice will be provided within sixty (60) calendar days from the date of publication of this Notice in the **Federal Register** to all active employees of the Employer by means of a posting at those locations within the principal places of employment of the Employer which are customarily used for notices regarding labor-management matters for review and by an electronic mailing (*i.e.*, e-mail) to all active employees. Such posting will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, and a copy of the supplemental statement (the Supplemental Statement), as required, pursuant to 29 CFR 2570.43(b)(2), which will advise such interest persons of their right to comment and to request a hearing. All retirees of the Employer (including both those retirees who participate in a Plan and those terminated participants in a Plan who are not yet receiving retirement benefits) will be notified in a separate first class mailing by Silverstone Group, Inc., within sixty (60) calendar days of the date of publication of the notice of the proposed exemption in the **Federal Register**. Such newsletter will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, and a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(b)(2), which will advise such interested persons of their right to comment and to request a hearing.

**FOR FURTHER INFORMATION CONTACT:** Christopher Motta of the Department, telephone (202) 693-8544. (This is not a toll-free number.)

#### **Fifth Third Bank, Located in Grand Rapids, Michigan**

[Application No. D-11101]

#### **Proposed Exemption**

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986 (the Code) and in accordance with the procedures set

forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Old Kent Bank and Trust Company and its affiliates previously received the approval of the Department to engage in similar transactions (October 15, 1999) (FAN 99-25E) pursuant to PTE 96-62 (61 FR 39988, July 31, 1996) (EXPRO).

#### **Section I—Proposed Exemption for Receipt of Fees**

If the proposed exemption is granted, the restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply effective on or after April 2, 2001, to: the receipt of fees by Fifth Third Bank, a Michigan banking corporation, and its affiliates (Fifth Third), from the Kent Funds prior to October 26, 2001 or from the Fifth Third Funds on or after October 26, 2001 (the Funds), open-end investment companies registered under the Investment Company Act of 1940 (the 1940 Act), for acting as an investment adviser for the Funds, as well as for acting as administrator, custodian, accountant, transfer agent, and provider of other services to the Funds (including brokerage services in the future) which are not advisory services (collectively referred to as "Secondary Services" as defined in Section III(h) below), in connection with the purchase and sale of shares of the Funds by certain employee benefit plans and individual retirement accounts (the Plans) for which Fifth Third serves as fiduciary with investment discretion; provided that the conditions set forth in Section II are met.

#### **Section II—Conditions**

(a) No sales commissions, redemption fees, or other fees are paid by the Plans in connection with the purchase or sale of shares of the Funds.

(b) The price paid or received by a Plan for shares in the Funds is the net asset value per share, as defined in Section III(e), at the time of the transaction, and is the same price that would have been paid or received for the shares by any other investor at that time.

(c) Fifth Third, including any officer or director of Fifth Third, does not purchase or sell shares of the Funds from or to any Plan.

(d) Each Plan receives a credit, through a cash rebate that will be accrued daily and, if the Plan so elects, will be automatically invested in shares of the money market funds selected by the Plan, of such Plan's proportionate share of all fees charged to the Funds by