

2001. Its principal offices are in Cincinnati, Ohio. Fifth Third Asset Management Inc. (FTAM), a registered investment advisor and wholly owned subsidiary of FTB (Ohio), serves as investment advisor to the Funds, with the exception of the Fifth Third Pinnacle Funds. FTAM's principal offices are in Cincinnati, Ohio. Heartland Capital Management, Inc. (Heartland), a registered investment advisor and wholly owned subsidiary of FTFC, serves as investment advisor to the Fifth Third Pinnacle Funds, an investment portfolio of the Funds. Heartland's principal offices are in Indianapolis, Indiana. BISYS Fund Services, Inc. (BISYS) is a Delaware corporation, which provides certain Secondary Services to the Funds on behalf of Fifth Third. Its principal offices are in Columbus, Ohio. The parties involved in the transactions described in this proposed exemption include Fifth Third (the Applicant), FTB (Ohio), FTAM, Heartland, BISYS, the Funds, and the Plans. The proposed exemption would also cover other Fifth Third affiliates which serve or may in the future serve as fiduciaries with investment discretion to employee benefit plans.

2. The Funds include the Kent Funds and the Fifth Third Funds (the Funds).¹¹ The Kent Funds, (established on May 9, 1986) merged into the Fifth Third Funds (established on September 15, 1988) effective October 26, 2001. The Funds are Massachusetts business trusts organized as open-end, diversified investment management companies registered under the Investment Company Act of 1940, as amended, consisting of a number of separate investment portfolios (Portfolios), each with a different investment objective.

The Fifth Third Funds had combined assets as of December 31, 2002 of \$11,714,062,533.77. This proposed exemption relates to all of the Portfolios of the Funds in existence on or after April 2, 2001, including future Portfolios, and to any other investment company for which Fifth Third may provide investment advisory services and/or Secondary Services and which may be made available for investment to the Plans. The Plans involved in the proposed transactions are employee benefit plans (as defined in section 3(3)

of ERISA) for which Fifth Third serves as fiduciary with discretionary authority over the investment of their assets, as well as individual retirement accounts with respect to which Fifth Third exercises investment discretion. The Plans include pension, profit sharing, and stock bonus plans of various sizes, as well as thrift and section 401(k) plans. However, Fifth Third's records are kept in terms of retirement accounts rather than plans. (There are typically multiple retirement accounts set up for a single plan.)

As of December 31, 2002, Fifth Third served as fiduciary for 17,336 retirement accounts, with assets ranging from approximately \$30,000 to \$1 billion. Of these, 1,271 were defined benefit and 16,065 were defined contribution retirement accounts. Of the defined contribution retirement accounts, 12,850 were related to cash or deferred arrangements (*i.e.*, section 401(k) plans). Fifth Third had full investment discretion with respect to 10,054 retirement accounts and was the directed trustee of 7,282 retirement accounts.

3. Fifth Third seeks retroactive and prospective relief to permit the Applicant and its affiliates, as fiduciaries exercising investment discretion over the assets of the Plans, to cause the Plans to purchase and sell shares of the Kent Funds (prior to October 26, 2001) or the Fifth Third Funds (on and after October 26, 2001), open-end, registered investment companies from which Fifth Third receives fees for the provision of investment advisory services and certain Secondary Services. Fifth Third, formerly known as Old Kent Bank and Trust Co. (Old Kent Bank), sought and received PTE 92-67, 57 FR 38859 (Aug. 27, 1992) on behalf of itself, affiliates, and subsidiaries. PTE 92-67 related to the cash rebate to the Plans of investment advisory fees paid to Old Kent Bank by the Funds. PTE 77-4 provides a class exemption from section 406 of the Act and section 4975 of the Code for a plan's purchases or sales of mutual fund shares, subject to certain conditions, where the fund's investment advisor is a plan fiduciary or affiliated with a plan fiduciary and not an employer of employees covered by the plan. Prior to April 2, 2001, Lyon Street Asset Management ("LSAM"), a subsidiary of the Applicant, served as investment advisor to the Kent Funds. Old Kent Bank subsequently obtained relief under EXPRO for transactions substantially similar to those which are the subject of this application, the receipt of fees by Old Kent Bank and its affiliates from the Funds for investment

advisory services and for Secondary Services (provided to the Kent Funds by Old Kent Bank and its affiliates, as well as by BISYS, an unrelated party to such Funds). This relief under FAN 99-25E replaced the exemptive relief under PTE 92-67.

4. The Applicant states that effective April 2, 2001, Old Kent Financial Corporation (OKFC), the holding company of the Applicant, merged with and into FTFC, a newly formed wholly-owned subsidiary of FT Bancorp, the holding company of FTB (Ohio), and other entities. OKFC was acquired by FT Bancorp in a stock transaction and as a result of the merger, Old Kent Bank became and remains a wholly owned subsidiary of FTFC.¹² Old Kent Bank was renamed Fifth Third Bank and continues to be a Michigan banking corporation. Its Board of Directors remains substantially unchanged, and it is the legal entity that operates all of the ongoing former Old Kent Bank banking and trust business locations. There was no transfer of ownership of the banking and trust operations of Old Kent Bank to any unrelated entity, except that some duplicate branch locations were divested and certain nonbanking lines of business were sold.

5. In FAN 99-25E, LSAM, a subsidiary of Old Kent Bank (now Fifth Third Bank), was described as the investment advisor to the Kent Funds, an open-end, registered investment company. Following the merger, the Applicant states that FTB(Ohio) created a new asset management subsidiary, FTAM. FTAM began advising the Kent Funds as of April 30, 2001.¹³ FTAM

¹² The Applicant states that FT Bancorp and OKFC had initially entered into an Agreement and Plan of Merger dated as of November 20, 2000 (the Original Merger Agreement). The Original Merger Agreement was amended and restated as of January 16, 2001 (the Restated Merger Agreement). FTFC was also a party to the Restated Merger Agreement. Old Kent Bank was a wholly owned subsidiary of OKFC with business locations throughout Michigan and in Illinois. Upon consummation of the merger pursuant to the Restated Merger Agreement, OKFC merged with and into FTFC, so that FTFC was the surviving corporation. The merger was intended and consummated as a reorganization under the provisions of section 368 of the Code, as well as a plan of reorganization for purposes of sections 354, 361, and 368 of the Code. The merger was consummated in accordance with the Michigan Business Corporation Act and the Ohio General Corporation Law. The surviving corporation, FTFC, continues its corporate existence under the laws of the state of Ohio. Subject to normal exclusions and adjustments, at the effective time of the merger, each outstanding share of common stock of OKFC was exchanged for a fractional share of the common stock of FT Bancorp. The exchange ratio was 0.74, so that each share of common stock of OKFC became a 0.74 fractional share of common stock of FT Bancorp. The merger was effective at 12:01 a.m. on April 2, 2001.

¹³ See below, during the period from April 2, 2001 (the date of the merger) through April 30,

¹¹ Where applicable, the term "Funds" as used herein also refers to any other diversified open-end investment company registered under the 1940 Act for which Fifth Third may in the future serve as investment advisor. Where required by the context, the term "Fund" when used herein in the singular refers both to the Kent Funds prior to October 26, 2001, and to the Fifth Third Funds on and after October 26, 2001.