

employed many of the same individuals who staffed LSAM, and those individuals continued to advise the Kent Funds after the merger. Thus, the Applicant represents that the change to FTAM did not involve a change in actual control or management of the Kent Funds. Further, the investment advisory fees paid by the Kent Funds to FTB(Ohio) for April 2001 and to FTAM thereafter were identical to the fees that the Kent Funds previously paid to LSAM. Also in FAN 99-25E, Old Kent Bank, Old Kent Securities Corporation, and other affiliates of Old Kent Bank were described as performing secondary services for the Kent Funds. Old Kent Securities Corporation merged with and into Fifth Third Securities Corporation, a subsidiary of FTFC. Fifth Third Securities Corporation employed many of the same individuals who staffed Old Kent Securities Corporation. However, after the merger, secondary services were provided to the Kent Funds by FTB(Ohio) under substantially identical fee arrangements. Additionally, FAN 99-25E mentioned BISYS, an unrelated entity, as a provider of secondary services to the Kent Funds. After the merger, BISYS continued to provide secondary services to the Kent Funds as FTB(Ohio)'s agent.

LSAM ceased to serve as investment advisor to the Kent Funds effective April 2, 2001. From April 2, 2001, through April 30, 2001, the Kent Funds were advised directly by FTB (Ohio) pursuant to an Interim Advisory Agreement. Effective April 30, 2001, the Interim Advisory Agreement was assumed by FTAM, a subsidiary of FTB (Ohio), which provided investment advisory services to the Kent Funds from April 30, 2001, through October 26, 2001. Secondary Services were provided to the Kent Funds between April 2, 2001, and October 26, 2001, by affiliates of the Applicant, including FTB (Ohio), and by BISYS. Effective October 26, 2001, the Kent Funds were merged with and into the Fifth Third Funds. All of the assets in each of the portfolios of the Kent Funds were transferred to newly created shell portfolios under the Fifth Third Funds, and shareholders of the Kent Funds became shareholders of the Fifth Third Funds. FTAM serves as investment advisor to the Fifth Third Funds, with the exception of the Fifth Third Pinnacle Funds, which is advised by Heartland. Secondary Services are provided to the Fifth Third Funds by

FTB (Ohio) and by BISYS. Other Fifth Third affiliates may in the future also provide investment advisory services and Secondary Services to the Fifth Third Funds.

The Kent Funds themselves continued until October 26, 2001. On that date, all of the assets in each of the portfolios of the Kent Funds were transferred to newly created shell portfolios under the Fifth Third Funds, an open-end, registered investment company. The Applicant represents that (1) the roles of all service providers, including FTAM, FTB(Ohio), and BISYS, are the same with respect to the Fifth Third Funds as they had been with respect to the Kent Funds prior to October 26, 2001; (2) the fees paid by the new portfolios of the Fifth Third Funds to FTAM and to FTB(Ohio), BISYS, and any other secondary service providers are identical to the fees previously paid by the Kent Funds; (3) FTB(Ohio) has formally committed itself to maintaining total fund operating expenses (as a percentage of total assets), until at least April 2, 2003, at a level less than or equal to the level of such expenses for each corresponding Kent Fund as of April 2, 2001 (the date of the merger, as described above); and (4) the operation of the cash rebates to plan accounts, as described in FAN 99-25E, remains unchanged.

6. Fifth Third requests that FAN 99-25E be replaced by this proposed exemption effective as of April 2, 2001 and requests that the proposed exemption contain one prospective modification to the described transactions.

Fifth Third requests relief for the following transactions:

(a) The payment of investment advisory fees by the Plans to Fifth Third with respect to assets of the Plans invested in the Funds. Each Plan will receive a rebate of its proportionate share of investment advisory fees charged to the Funds by Fifth Third. The Plans will receive such rebate in the form of cash or, if an election has been made by a Plan, in the form of a cash rebate applied to the purchase of additional money market funds shares, in either case within two business days of the receipt of the fees by Fifth Third. If a Plan elects to have its cash rebate applied toward the purchase of additional shares, the fair market value of such shares on the date of purchase equals the amount of the cash rebate.

(b) The receipt and the retention of fees paid by the Funds to Fifth Third for certain Secondary Services provided to the Funds. Fifth Third currently acts as administrator, transfer agent, and fund accountant for the Funds, and may in

the future provide additional Secondary Services to the Funds. The fees for such services are based on a percentage of the Funds' average daily net assets. Such fees are accrued daily and paid monthly.

In addition to the changes to the parties, there is one difference in the above transactions from those described in FAN 99-25E. The Applicant requests that, with respect to the transactions occurring on and after the date of publication in the **Federal Register** of the notice granting this exemption, Fifth Third be allowed to credit a Plan, 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 Fifth Third for investment advisory services, including any investment advisory fee paid to third-party subadvisors, not later than two business days after receipt of such fees by Fifth Third. The crediting of all investment advisory fees to the Plans by Fifth Third will continue to be audited by an independent accounting firm on at least an annual basis to verify the proper crediting of the fees to each Plan.

Fifth Third asserts that the request for up to two business days to effect the rebate is primarily because of the potentially larger number of accounts that may require rebating due to the merger of the OKFC group of companies and the FT Bancorp group of companies. Specifically, the Applicant represents that the number of accounts that currently receive rebates is 662; the number that potentially could participate in the rebating program is 6,355. Although Fifth Third expects to be able to effect the rebate in one business day after receipt of the fees in most cases, the Applicant believes the two business days would give Fifth Third more time to deal with any unexpected glitch in the processing of a large number of rebates without having to be concerned about violating the terms of the exemption and thus possibly engaging in a prohibited transaction.

7. The Applicant represents that the procedures set forth in FAN 99-25E have been followed to date, even though the relevant parties have changed due to the merger of OKFC, the holding company of Old Kent Bank (the prior name of Fifth Third Michigan), with and into FTFC, a newly formed wholly-owned subsidiary of FT Bancorp, effective April 2, 2001. The appropriate officers of Fifth Third Bank acknowledge that the procedures set forth in FAN 99-25E have been

2001, the Kent Funds were advised by FTB(Ohio) pursuant to an Interim Advisory Agreement. This Interim Advisory Agreement was assumed by FTAM as of April 30, 2001.