

Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 26, 1995, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, Mitchell Hutchins Asset Management Inc., 14th Floor, 1285 Avenue of the Americas, New York, New York 10019; all other applicants, c/o Arthur J. Brown, Esq., Kirkpatrick & Lockhart, South Lobby—9th Floor, 1800 M Street, NW., Washington, D.C. 20036-5891.

**FOR FURTHER INFORMATION CONTACT:** Marc Duffy, Senior Attorney, at (202) 942-0565, or C. David Messman, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

### Applicants' Representations

1. The Funds are registered open-end management investment companies. The Advisers are registered as investment advisers under the Investment Advisers Act of 1940 (the "Advisers Act"). The Funds each have entered into an investment advisory agreement with KPAM under which KPAM provides advisory and management services to the Funds (the "Advisory Agreements"). Certain of the Funds also have entered into subadvisory agreements with the Subadvisers and KPAM (the "Subadvisory Agreements," and together with the Advisory Agreements, the "Prior Agreements").<sup>1</sup>

2. KPAM is a wholly-owned indirect subsidiary of Kidder, Peabody Group Inc. ("Kidder"). Kidder is a wholly-owned indirect subsidiary of General Electric Company ("General Electric").

<sup>1</sup> The Subadvisory Agreements relate to the following Subadvisers and Funds: EMM, with respect to the Kidder, Peabody Emerging Markets Equity Fund series of KPIT II; GEIM, with respect to Kidder, Peabody Global Equity Fund, the Kidder, Peabody Municipal Bond Fund series of KPIT II, and the Kidder, Peabody Intermediate Fixed Income Fund series of KPIT; GDB&A, with respect to the Kidder, Peabody Small Cap Equity Fund series of KPIT III; AND SFL, with respect to the Kidder, Peabody Global Fixed Income series of KPIT.

3. MHAM and MHII serve as investment advisers to investment companies and non-investment company clients. MHAM and MHII are wholly-owned subsidiaries of PWI. PWI is a registered investment adviser under the Advisers Act. PWI is wholly owned subsidiary of PaineWebber, a publicly held financial services holding company.

4. On October 17, 1994, PaineWebber entered into an asset purchase agreement with General Electric and Kidder (the "Asset Purchase Agreement"). PaineWebber agreed to purchase certain assets of Kidder (the "Kidder Assets") for cash and other consideration (the "Transaction"). PaineWebber has arranged for Mitchell Hutchins to undertake the investment advisory services now provided to the Funds by KPAM. Applicants intend to transfer the investment advisory business concurrently with the transfer of the retail operations and brokerage staff on January 29, 1995.

5. At special meetings held on November 1, 1994, November 2, 1994, and December 16, 1994, the respective Boards of Trustees/Directors of the Funds (the "Boards") met to discuss the Transaction. During those meetings, the Boards, including a majority of the Board members who are not "interested persons," as that term is defined in the Act (the "Independent Directors"), of the respective Funds, with the advice and assistance of counsel to the Independent Directors, made a full evaluation of the interim investment advisory agreements between the Funds and Mitchell Hutchins and the interim subadvisory agreements among Mitchell Hutchins, the Subadvisers, and certain of the Funds (the "Interim Agreements"). In accordance with section 15(c) of the Act, the Boards voted to approve the Interim Agreements. The Boards of each Fund also voted to recommend that shareholders of the Fund approve the Interim Advisory and Subadvisory Agreements, as well as a new advisory agreement with PWI or Mitchell Hutchins and, where applicable, new subadvisory agreements with the Subadvisers.

6. Applicants seek an exemption from section 15(a) of the Act to permit the implementation, without shareholder approval, of the Interim Agreements. The exemption would cover the period commencing on the date of the transfer of the existing investment advisory and subadvisory agreements and continuing through the date new advisory and subadvisory agreements are approved or disapproved by shareholders of the respective Funds, which period shall be

no longer than 120 days (the "Interim Period").

7. In approving the Interim Agreements, the Boards, including a majority of the Independent Directors, concluded that payment of the advisory and subadvisory fees during the Interim Period would be appropriate and fair because the fees to be paid are unchanged from the fees paid under the Prior Agreements, the fees would be maintained in an interest-bearing escrow account until payment is approved or disapproved by shareholders, and the nonpayment of fees would be inequitable to PaineWebber, Mitchell Hutchins, and the Subadvisers in view of the substantial services to be provided by such companies to the Funds, and the expenses incurred by such companies.

8. Applicants believe that delaying the closing of the Transaction until shareholders of all of the Funds could vote on new advisory agreements would result in substantial defections by portfolio managers, advisory employees, and supervisory personnel. These defections could significantly impair the value of the Kidder Assets and significantly damage the Funds and their shareholders. Thus, applicants believe that the requested relief, which will permit the Transaction to close sooner than otherwise would be possible, is in the best interests of the Funds and their shareholders.

### Applicants' Legal Conclusions

1. Section 15(a) prohibits an investment adviser from providing investment advisory services to an investment company except under a written contract that has been approved by a majority of the voting securities of such investment company. Section 15(a) further requires that such written contract provide for its automatic termination in the event of an assignment. Under section 2(a)(4) of the Act, an assignment includes any direct or indirect transfer of a contract by the assignor.

2. The transfer of Kidder's investment advisory business, as contemplated by the Asset Purchase Agreement, will result in an "assignment" within the meaning of section 2(a)(4) of the Act, of the Prior Agreements. Consistent with section 15(a), therefore, each such agreement will terminate by its terms.

3. Rule 15a-4 provides, among other things, that if an investment adviser's investment advisory contract is terminated by assignment, the investment adviser may continue to act as such for 120 days at the previous compensation rate if a new contract is approved by the board of directors of