The Commission also notes that before the NYSE's pilot program can be extended or approved on a permanent basis, the Exchange must provide the Commission with a report on the operation of its pilot program since its inception by January 31, 1995. Specifically, the Exchange must provide the Commission details on (1) the frequency with which the exemptions have been used; (2) the types of investors using the exemptions; (3) the size of the positions established pursuant to the pilot program; (4) what types of convertible securities are being used to hedge positions and how frequently the convertible securities have been used to hedge; (5) whether the Exchange has received any compliants on the operation of the pilot program; (6) whether the Exchange has taken any disciplinary action against, or commenced any violation of any term or condition of the pilot program; (7) the market impact, if any of the pilot program; and (8) how the Exchange has implemented surveillance procedures to ensure compliance with the terms and conditions of the pilot program. In addition, the Commission expects the Exchange to inform the Commission of the results of any surveillance investigations undertaken for apparent violations of the provisions of its position limit hedge exemption rules.

The Commission finds good cause for approving the extension of the pilot programs prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** in order to permit the continuation of the pilot program. The Commission notes that the Exchange has not experienced any significant problems with the pilot program since its inception and that the Exchange will continue to monitor the pilot program to ensure that no problems arise. Finally, no adverse comments have been received by the Exchange or the Commission concerning the pilot program. Based on the above, the Commission believes good cause exists to approve the extension of the pilot program through May 17, 1995, on an accelerated basis. Therefore, the Commission believes that granting accelerated approval of the proposal is appropriate and consistent with Sections 6 and 19(b)(2) of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 522, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 1, 1995.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–NYSE–94–47) relating to an extension of the hedge exemption pilot program until May 17, 1995, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–658 Filed 1–10–95; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–9453]

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Ark Restaurants Corp., Common Stock, $.01 Par Value)

January 5, 1995.

Ark Restaurants Corp. (''company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the American Stock Exchange, Inc. (''Amex'').

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, the Security commenced trading on the National Association of Securities Dealers Automated Quotations/National Market Systems (''NASDAQ/NMS'') at the opening of business on December 1, 1994 and concurrently therewith such stock was suspended from trading on the Amex.

The Company believes that the NASDAQ/NMS multiple market maker approach will provide the Company with higher visability within the financial community, thereby enhancing investor awareness of the Company's activities;

In addition, the Company believes NASDAQ/NMS will provide brokers and others with immediate access to the bid and ask prices, plus other information about the Security throughout the trading day, will result in increased visibility and sponsorship of the Security, and will offer shareholders greater liquidity than presently offered on the Amex.

Any interested person may, on or before January 27, 1995 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–659 Filed 1–10–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC—20817; 812–9016]

AVESTA Trust, et al.; Notice of Application

January 4, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for Exemption Under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: AVESTA Trust (''AVESTA''), including all existing and future series thereof, and any future management investment companies and series thereof that are advised by Texas Commerce Bank, N.A. (''TCB'') or any entity controlling, controlled by, or under common control (as defined in section 2(a)(9) of the Act) with TCB (the ''Portfolios''); and TCB and any entity controlling, controlled by, or under common control (as defined in section

[7] 15 U.S.C. 78s(b)(2) (1982).

[8] 17 CFR 200.30–3(a)(12) (1993).

2(a)(9) with TCB that serves as investment adviser to any of the Portfolios (the ''Advisers'').

RELEVANT ACT SECTION: Order requested under section 17(d) of the Act and rule 17d–1 thereunder.

SUMMARY OF APPLICATION: Applicants request a conditional order permitting the Portfolios to pool uninvested cash balances and deposit the balances into one or more joint accounts (the ''Accounts''). Cash balances in the Accounts would be invested in short-term repurchase agreements.

FILING DATES: The application was filed on May 25, 1994, and amended on September 19, 1994, and December 23, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's 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 30, 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 may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW, Washington, DC 20549. Applicants, 712 Main Street, Houston, Texas 77002.

FOR FURTHER INFORMATION CONTACT: Bradley W. Paulson, Staff Attorney, at (202) 942–0147 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 is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is a registered open-end management investment company and is organized as a business trust under the laws of Texas. TCB provides or arranges for investment advisory, administrative, custodial, and accounting services for all fifteen series of the Trust.

2. Each Portfolio may be expected to have uninvested cash balances held by its custodian or sub-custodian bank (the ''Custodian'') at the end of the trading day. To provide liquidity and earn additional income, the Adviser ordinarily would invest this cash in short-term investments authorized under the Portfolio's investment policies.

3. Applicants propose to establish one or more Accounts that would be used exclusively to pool excess cash of the Portfolios to purchase one or more repurchase agreements. Under the proposed arrangement, the Adviser would enter into repurchase agreements by calling a previously approved counterparty, indicating the size and duration of the transaction, and negotiating the rate of interest. Master repurchase agreements establish minimum collateral levels, securities eligible to be held as collateral, and the maximum term of a transaction. The Custodian would be able to enter into third-party arrangements with qualified banks for custody of assets and collateral securities to facilitate repurchase transactions and obtain more attractive rates.

4. After the Adviser and a counterparty reach agreement on the size of a repurchase transaction, the Custodian would be notified and would be required to verify, before releasing the funds, that eligible collateral securities of sufficient value have been received. These securities would be either wired to the account of the Custodian (or a third-party custodian) at the appropriate Federal Reserve Bank or physically transferred to a segregated account of the Custodian (or third-party custodian).

5. Transactions in the Account would be reported to the Portfolios' Custodian through a trade authorization that would authorize the Custodian to settle the transaction on a joint basis. The trade authorization would state each Portfolio's portion of the investment. The Custodian would reconcile the Account with the trade authorizations on a daily basis. At least monthly, assets held in the Account would be reconciled with the Custodian's securities movement and control records, and the Custodian would reconcile each Portfolio's securities movement and control records with each Portfolio's security ownership records.

6. The Portfolios will not enter into repurchase agreements with their custodian, except where cash is received very late in the business day and otherwise would be unavailable for investment at all.

7. Applicants believe the proposed Account would have the following benefits for the Portfolios: (a) The Portfolios would save significant fees and expenses by reducing the number of transactions in which they engage; (b) the Portfolios would enjoy a higher rate of return on uninvested cash balances because higher rates of return are usually available for larger repurchase agreements; (c) the number of trade tickets written by each party to a repurchase transaction would be reduced, which would simplify the transaction and decrease the opportunity for errors.

Applicants' Legal Analysis

1. Section 17(d) of the Act makes it unlawful for an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, to effect any transaction in which the registered investment company is a joint or a joint and several participant with such person in contravention of rules and regulations prescribed by the SEC. Rule 17d–1(a) under the Act provides that an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, shall not participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement in which the registered investment company is a participant unless the SEC has issued an order approving the arrangement.

2. Each Portfolio, by participating in the proposed Account, and the Adviser by managing the proposed Account, could be deemed to be joint participants in a transaction within the meaning of section 17(d), and the proposed Account could be deemed to constitute a joint enterprise or other type of joint arrangement within the meaning of rule 17d-1. Furthermore, under the definition of ''affiliated person'' set forth in section 2(a)(3) of the Act, each applicant could be deemed an affiliated person of each other applicant.

3. Applicants believe that the proposed method of operating the Account would not result in conflicts of interest among any of the Portfolios or between a Portfolio and its Adviser. Although the Adviser would gain some benefit through administrative convenience and possible reduction in clerical costs, the primary beneficiaries would be the Portfolios and their shareholders. The Account would provide the Portfolios and their shareholders with a more efficient and productive way of administering daily investment transactions.

4. Applicants believe that it would be desirable to permit future Portfolios to participate in the Account without the necessity of applying for an amendment to the requested order. Future Portfolios would be required to participate on the

same terms and conditions as the existing Portfolios.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Account will be established as one or more separate cash accounts on behalf of the Portfolios with the Custodian. The Portfolios may deposit daily all or a portion of their uninvested net cash balances into the Account. The Account will not be distinguishable from any other accounts maintained by a Portfolio with the Custodian except that monies from the various Portfolios will be deposited in the Account on a commingled basis. The Account will not have any separate existence with indicia of a separate legal entity. The sole function of the account will be to provide a convenient way of aggregating individual transactions that would otherwise require management by each Portfolio of its cash balances.

2. Cash in the Account will be invested solely in repurchase agreements, ''collateralized fully'' as defined in rule 2a–7 under the Act and satisfying the uniform standards set by the Portfolios for such investments.

3. All repurchase agreements entered into by the Portfolios through the Account will be valued on an amortized cost basis. Each Portfolio relying upon rule 2a–7 for valuation of its net assets on the basis of amortized cost will use the average maturity of the repurchase agreements purchased by the Portfolios participating in the account for the purpose of computing the Portfolio's average portfolio maturity with respect to the portion of its assets held in the account on that day.

4. In order to assure that there will be no opportunity for one Portfolio to use any part of the balance of the Account credited to another Portfolio, no Portfolio will be allowed to create a negative balance in the Account for any reason, although each Portfolio will be permitted to draw down its pro rata share of the entire balance at any time. Each Portfolio's decision to invest through the Account will be solely at the Portfolio's option, and no Portfolio will be obligated to invest through, or to maintain a minimum balance in, the Account. In addition, each Portfolio will retain the sole rights of ownership of any of its assets invested in the Account, including interest payable on the assets. Each Portfolio's investment in the account will be documented daily on the books of the Portfolio as well as on the Custodian's books.

5. Each Portfolio will participate in the income earned or accrued in the Account, including all investments held by the Account, on the basis of the percentage of the total amount in the Account on any day represented by its share of the Account.

6. The Adviser will administer, manage, and invest the cash balance in the Account in accordance with and as part of its duties under the existing or any future investment advisory contracts with each Portfolio. The Adviser will not collect any additional or separate fee for the administration of the Account.

7. The Portfolios and the Adviser will enter into an agreement to govern the arrangements in accordance with the foregoing representations.

8. The administration of the Account will be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g–1 thereunder.

9. The Board of Directors of each Portfolio participating in the Account will evaluate the Account arrangements annually and will authorize the continued participation in the Account only if it determines that there is a reasonable likelihood that such continued participation would benefit the Portfolio and its shareholders.

10. Substantially all repurchase transactions will have an overnight, over-the-weekend or over-a-holiday maturity, and in no event would a transaction have a maturity of more than seven days.

11. All joint repurchase transactions will be effected in accordance with Investment Company Act Release No. 13005 (Feb. 2, 1983) and with other existing and future positions taken by the SEC or its staff by rule, interpretive release, no-action letter, any release adopting any new rule, or any release adopting any amendments to any existing rule.

12. Any investment made through the Account will satisfy the investment policies or criteria of all Portfolios participating in that investment.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–605 Filed 1–10–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 20818; 812–9412]

Kidder, Peabody Investment Trust, et al.; Notice of Application

January 4, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Kidder, Peabody Investment Trust (''KPIT''); Kidder, Peabody Investment Trust II (''KPIT II''); Kidder, Peabody Investment Trust III (''KPIT III''); Kidder, Peabody Municipal Money Market Series; Kidder, Peabody California Tax Exempt Money Fund; Kidder, Peabody Premium Account Fund; Kidder, Peabody Equity Income Fund, Inc.; Kidder, Peabody Government Income Fund, Inc.; Kidder, Peabody Government Money Fund, Inc.; Kidder, Peabody Cash Reserve Fund, Inc.; Kidder, Peabody Tax Exempt Money Fund, Inc.; Institutional Series Trust; and Liquid Institutional Reserves (the ''Funds''); Kidder, Peabody Asset Management, Inc. (''KPAM''); Emerging Markets Management (''EMM''); GE Investment Management Incorporated (''GEIM''); George D. Bjurman & Associates (''GDB&A''); and Strategic Fixed Income, L.P. (''SFI'') (EMM, GEIM, GDB&A, and SFI together, the ''Subadvisers''); PaineWebber Incorporated (''PWI''); Mitchell Hutchins Asset Management Inc. (''MHAM''); and Mitchell Hutchins Institutional Investors Inc. (''MHII,'' and together with MHAM, ''Mitchell Hutchins'') (Mitchell Hutchins, together with PWI, KPAM and the Subadvisers are collectively referred to herein as the ''Advisers'').

RELEVANT ACT SECTIONS: Order requested under section 6(c) for an exemption from section 15(a).

SUMMARY OF APPLICATION: Paine Webber Group Inc. (''PaineWebber'') has agreed to purchase the investment advisory business of Kidder, Peabody Group Inc. The transaction will result in the assignment, and thus the termination, of existing investment advisory and subadvisory contracts of the applicant investment companies. Applicants seek an order to permit the implementation, without shareholder approval, of interim investment advisory and subadvisory contracts, during a period of up to 120 days following the closing of the transaction. The order also will permit the applicant investment advisers to receive from the applicant investment companies fees earned under the interim investment advisory contracts following approval by the investment companies' shareholders.

FILING DATE: The application was filed on January 4, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's