

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23612; 812-11148]

IEI Capital Corp; Notice of Application

December 18, 1998.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") granting an exemption from all provisions of the Act.

SUMMARY OF APPLICATION: Applicant requests an order exempting it from all provisions of the Act.

FILING DATES: The application was filed on September 24, 1998, and amended on December 18, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 12, 1999, 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 notification by writing to the Commission's Secretary.

ADDRESSES: Secretaries and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 1630 North Meridian Street, Indianapolis, IN 46202-1496.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Knisely, Staff Attorney, at (202) 942-0517, or George J. Zornada, 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 at the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549. (tel. 202-942-8090).

Applicant's Representations

1. Applicant is an Indiana corporation and a wholly-owned finance subsidiary for Indiana Energy, Inc. ("IEI"). IEI, incorporated in Indiana, is a public utility holding company exempt from

the Public Utility Holding Company Act of 1940. In addition to applicant, IEI's wholly-owned subsidiaries are IEI Investments, Inc. ("Investments"), Indiana Gas Company ("Indiana Gas"), Indiana Energy Foundation ("Energy"), and IEI Services, LLC ("IEI Services"). Investments has three wholly-owned subsidiaries, IGC Energy, Inc. ("IGC Energy"), Energy Realty, Inc. ("Energy Realty"), and Energy Financial Group, Inc. ("EFGI"). IGC Energy has four subsidiaries, ProLiance Energy LLC ("ProLiance"), CIGMA, LLC ("CIGMA"), Energy Systems Group, LLC ("ESG"), and Reliant Services LLC ("Reliant"). EFGI has two subsidiaries, IEI Synfuels, Inc. and IEI Financial Services, LLC (together with Investments, Energy, IEI Services, IGC Energy, Energy Realty, EFGI, ProLiance, CIGMA, ESG, and Reliant, the "Subsidiaries"). Indiana Gas has two wholly-owned subsidiaries, Terre Haute Gas Corporation and Richmond Gas Corporation (collectively, the "Indiana Gas Subsidiaries").

2. Indiana Gas is a natural gas public utility operating company, subject to regulation by the Indiana Utility Regulatory Commission ("IURC") in respect to, among other things, rates, charges, services accounts, and the issuance of securities. Indiana Gas is also subject to limited regulation by the Federal Energy Regulatory Commission ("FERC"). Neither IEI nor any of the Subsidiaries is subject to regulation by the IURC or the FERC.

3. Applicant was formed as a financing conduit for IEI and the Subsidiaries. Applicant's primary function will be to raise funds through the offer and sale of debt securities, and to lend at least 85% of the proceeds of such offering to IEI or its Subsidiaries. Applicant will comply with all of the provisions of rule 3a-5 under the Act except that, due to the regulated nature of Indiana Gas, IEI cannot directly guarantee the debt securities. Instead of an unconditional guarantee, IEI will use a support agreement ("Support Agreement") which will be the functional equivalent of an unconditional guarantee except that it will provide that the holders of debt will have no recourse against the stock or assets of Indiana Gas, the Indiana Gas Subsidiaries, or any interest of applicant or IEI therein.

4. Because applicant's securities are not beneficially owned by more than 100 persons and applicant is not making and does not propose to make a public offering of its securities, applicant is not an "investment company" by virtue of the exemption contained in section 3(c)(1) of the Act. Applicant is applying

for an exemption because it may in the future engage in a public offering or an offering exempt from the registration requirements of the Securities Act of 1933 ("Securities Act") which may result in applicant's securities being beneficiary held by more than 100 persons. Applicant, therefore, requests an order under section 6(c) of the Act exempting it from all provisions of the Act.

Applicant's Legal Analysis

1. Section 6(c) of the Act permits the Commission to grant an exemption from the provisions of the Act if, and to the extent that, such exemption is necessary and appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act.

2. Rule 3a-5 under the Act provides an exemption from the definition of an investment company for certain companies organized primarily to finance the business operations of their parent companies or companies controlled by their parent companies. Applicant states that it meets all of the requirements of rule 3a-5 except that IEI cannot directly guarantee the debt securities.

3. Applicant believes that the Support Agreement provides a functional equivalent of an unconditional guarantee of applicant's securities because it grants holders of applicant's securities the right to proceed directly against IEI in the event applicant fails to pay when due principal, interest, and premium, if any, owed by it on such securities. IEI states that it determined to enter into the Support Agreement in lieu of an unconditional guarantee because it wished to separate entirely the financing of its unregulated activities from the regulated business of Indiana Gas. Applicant states that for business and regulatory reasons the right to proceed directly against IEI is limited only so as to exclude the stock and assets of Indiana Gas, the Indiana Gas subsidiaries, and any interest of IEI and applicant therein. Applicant also states that funds available to IEI to satisfy any obligation under the Support Agreement will include dividends paid by Indiana Gas to IEI, as well as revenues and other assets of IEI, which include its interest in subsidiaries other than Indiana Gas.

Applicant's Condition

Applicant agrees that the order granting the requested relief will be subject to the following conditions:

1. Applicant will meet all of the requirements of rule 3a-5 except for the

unconditional guarantee requirement. In lieu of the unconditional guarantee requirement, applicant has entered into, and will keep in force (except as contemplated below), the Support Agreement, which is and shall be the functional equivalent of an unconditional guarantee. The Support Agreement provides, and will continue to provide, as follows:

a. IEI owns and shall continue to own all of the outstanding voting stock of applicant.

b. IEI will provide to applicant funds (as capital, or if IEI and applicant agree, as a subordinated loan) as required if applicant is unable to make timely payment of interest, principal or premium, if any, on any debt issued by applicant.

c. IEI will cause applicant to have at all times a positive net worth (net assets less intangible assets, if any), as determined in accordance with generally accepted accounting principles.

d. If applicant fails or refuses to take timely action to enforce its rights under the Support Agreement or if applicant defaults in the timely payment of interest, principal or premium, any lender may proceed directly against IEI to enforce applicant's rights under the Support Agreement or to obtain payment of such defaulted interest, principal or premium.

2. The Support Agreement may be modified or amended in a manner that adversely affects the rights of creditors of applicant only if such modification or amendment occurs after all debt securities theretofore issued by the applicant are paid in full, unless all affected creditors consent in advance and in writing to such modification or amendment. No modification of or amendment to the Support Agreement relating to the four provisions set forth in paragraph 1, above, shall be made unless (1) all creditors consent in advance and in writing to such modification or amendment and (2) applicant applies to the Commission for an amended order relating to such modification or amendment, and the Commission grants such amended order. The Support Agreement may be terminated only after (1) all debt securities issued by applicant are paid in full and (2) applicant applies to the Commission for an amended order relating to such termination, and the Commission grants such amended order.

3. Although applicant does not presently intend to initiate a non-public offering of its securities which may result in its securities (other than short-term paper, as that term is defined in

section 2(a)(38) of the Act) being beneficially held by more than 100 persons, or to make a public offering of its securities, if such offerings are made, they will consist of short-term, intermediate-term, and long-term debt securities to be offered and sold either in transactions exempt from the registration requirements of the Securities Act or in public offerings of securities registered under the Securities Act. No future public offerings will involve voting securities of applicant.

4. If applicant offers or sells securities not requiring registration under the Securities Act, applicant will provide each offeree with disclosure materials which will include a description of the business of IEI and its subsidiaries and other data of the character customarily supplied in such offerings, or will otherwise comply with the disclosure requirements of Regulation D under the Securities Act. In the event of a subsequent offering, these materials will be appropriately updated at the time thereof (by supplementing the disclosure materials or by incorporating by reference filings under the Securities Exchange Act of 1934) to reflect material changes in the financial condition of IEI and its subsidiaries, taken as a whole.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland

Deputy Secretary.

[FR Doc. 98-34204 Filed 12-24-98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-23614; 812-11246]

Mitchell Hutchins Institutional Series, et al.; Notice of Application

December 21, 1998

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

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act and rule 18f-2 under the Act.

SUMMARY OF APPLICATION: The order would permit applicants to enter into and materially amend subadvisory agreements without obtaining shareholder approval.

APPLICANTS: Mitchell Hutchins Institutional Series; Mitchell Hutchins Portfolios; Mitchell Hutchins Series Trust; PaineWebber America Fund;

PaineWebber Financial Services Growth Fund Inc.; PaineWebber Index Trust; PaineWebber Investment Series; PaineWebber Investment Trust; PaineWebber Investment Trust II; PaineWebber Managed Assets Trust; PaineWebber Managed Investments Trust; PaineWebber Master Series, Inc.; PaineWebber Municipal Series; PaineWebber Mutual Fund Trust; PaineWebber Olympus Fund; PaineWebber Securities Trust (the "Companies")¹ and Mitchell Hutchins Asset Management Inc. ("Adviser").

FILING DATES: The application was filed August 5, 1998, and amended October 27, 1998. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

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 15, 1999, and should be accompanied by proof of service on the 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 notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549; Applicants, 1285 Avenue of the Americas, New York, NY 10019.

FOR FURTHER INFORMATION CONTACT: Timothy R. Kane, Staff Attorney, at (202) 942-0615, or Edward P. MacDonald, 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 at the SEC's Public Reference Branch, 450 Fifth

¹ Applicants also request relief with respect to any other open-end management investment company, or series of such company, organized in the future and advised by the Adviser, or a person controlling, controlled by or under common control with the Adviser (a "Future Fund"), provided that such Future Fund operates in substantially the same manner as the Companies with respect to the Adviser's responsibility to select, evaluate, and supervise subadvisors and complies with the terms and conditions of the application. Each existing registered open-end management investment company that currently intends to rely on the order is named as an applicant.