duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 24th day of April, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

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[Prohibited Transaction Exemption 95–33; Exemption Application No. D–09626, et al.]

Grant of Individual Exemptions; Bank South, N.A. et al.

AGENCY: Pension and Welfare Benefits Administration, Labor. **ACTION:** Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the

Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are

administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Bank South, N.A. (the Bank) Located in Atlanta, GA

[Prohibited Transaction Exemption 95–33; Application No. D–09626]

Section I—Exemption for In-kind Transfer of Assets

The restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (F) of the Code, shall not apply as of February 11, 1994, to the in-kind transfer of assets of plans for which the Bank serves as a fiduciary (the Client Plans), other than plans established and maintained by the Bank, that are held in certain collective investment funds maintained by the Bank (the CIFs), in exchange for shares of the Peachtree Funds (the Funds), an open-end investment company registered under the Investment Company Act of 1940 (the 1940 Act) for which the Bank acts as investment adviser, in connection with the termination of such CIFs, provided that the following conditions and the general conditions of Section III below are met:

(a) No sales commissions or other fees are paid by the Client Plans in connection with the purchase of Fund shares through the in-kind transfer of CIF assets and no redemption fees are paid in connection with the sale of such shares by the Client Plans to the Funds.

(b) Each Client Plan receives shares of a Fund which have a total net asset value that is equal to the value of the Client Plan's pro rata share of the assets of the CIF on the date of the transfer, based on the current market value of the CIF's assets, as determined in a single valuation performed in the same manner at the close of the same business day using independent sources in accordance with Rule 17a-7(b) of the Securities and Exchange Commission under the 1940 Act and the procedures established by the Funds pursuant to Rule 17a–7 for the valuation of such assets. Such procedures must require that all securities for which a current market price cannot be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the Friday preceding the weekend of the CIF transfers, determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of the Bank.

(c) A second fiduciary who is independent of and unrelated to the Bank (the Independent Fiduciary) receives advance written notice of the in-kind transfer of assets of the CIFs and full written disclosure of information concerning the Funds (including a current prospectus for each of the Funds and a statement describing the fee structure) and, on the basis of such information, authorizes in writing the in-kind transfer of the Client Plan's CIF assets to a corresponding Fund in exchange for shares of the Fund.

(d) For all transfers of CIF assets to a Fund following the publication of the proposed exemption in the **Federal Register** (i.e. January 30, 1995), the Bank sends by regular mail to each affected Client Plan the following information: