to occur, and (iii) an explanation of the procedures that would be followed for valuing the securities for purposes of the Exchange, including the identity of the independent pricing service or services that would be used to value the securities. In addition, within 30 days after the Exchange, the Second Fiduciary would receive written confirmation that reflects the price of each security involved in the Exchange and, for securities which are valued in accordance with Rule 17a-7(b)(4), a written disclosure of the identity of the pricing services or broker-dealers consulted in determining the value of the securities.

- 12. In summary, the subject transactions satisfy the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code for the following reasons:
- (a) The Funds provide many of the Client Plans with a more effective investment vehicle than the CIFs currently maintained by Mellon, without any increase in fees paid by the Client Plans to Mellon;
- (b) Mellon requires annual audits by an independent accounting firm to verify that the Client Plans receive proper credits for the fees paid to Mellon by the Funds;
- (c) Client Plan fiduciaries and participants have access to more frequent reports of Fund performance than are available for plan assets invested in the CIFs, which enables such fiduciaries or participants to make more informed decisions regarding their investments;
- (d) Client Plan investments in the Funds and the payment of any fees by the Funds to Mellon in connection with such investments require an advance authorization in writing by an independent fiduciary (i.e. the Second Fiduciary) after full written disclosure, including current prospectuses for the Funds and a statement describing the Alternative Credit Method;
- (e) Any authorization made by the Second Fiduciary is terminable at will by that fiduciary, without penalty, upon receipt by Mellon of written notice of termination from the Second Fiduciary on a form expressly providing an election to terminate the authorization (i.e. the Termination Form), which is supplied to the Second Fiduciary no less than annually;
- (f) No sales commissions or other fees are paid by the Client Plans in connection with any acquisition of Fund shares (either by an in-kind transfer of CIF assets, a cash purchase, or an in-kind transfer of securities from a Client Plan's individual investment portfolio) and no redemption fees are

paid in connection with the sale of Fund shares;

- (g) All dealings among the Client Plans, the Funds, and Mellon are on a basis no less favorable to the Client Plans than such dealings with the other shareholders of the Funds;
- (h) The in-kind transfers of CIF assets into the Funds are done with the prior written approval of independent fiduciaries (i.e. the Second Fiduciary) following full and detailed written disclosure concerning the Funds;
- (i) 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 in-kind 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 in accordance with independent sources and the procedures established by the Funds for the valuation of such assets; and
- (j) With respect to any transfer of securities from an individual portfolio of a Client Plan in exchange for Fund shares (i.e. an Exchange), the Second Fiduciary receives written disclosures regarding the relevant Funds and their fees (including the Fund prospectus, additional information regarding the fee structure to be used to avoid duplicative advisory fees, and the valuation procedures to be used for the securities involved in the Exchange) as well as written confirmations that reflect the price of each security involved in the Exchange and, for securities valued in accordance with Rule 17a-7(b)(4), the identity of the pricing service or brokerdealers consulted in the valuation of such securities.

Notice to Interested Persons

Notice of the proposed exemption shall be given to all Second Fiduciaries of Client Plans described herein that had investments in a terminating CIF and from whom approval was sought, or will be sought prior to the granting of this proposed exemption, for a transfer of a Client Plan's CIF assets to a Fund. In addition, interested persons shall include the Second Fiduciaries of all Client Plans that are currently invested in the Funds, as of the date the notice of the proposed exemption is published in the Federal Register, where Mellon provides services to the Funds and receives fees which would be covered by the exemption, if granted. Notice to interested persons shall be provided by first class mail within fifteen (15) days following the publication of the proposed exemption in the Federal Register. Such notice shall include a

copy of the notice of proposed exemption as published in the **Federal Register** and a supplemental statement (see 29 CFR 2570.43(b)(2)) which informs all interested persons of their right to comment on and/or request a hearing with respect to the proposed exemption. Comments and requests for a public hearing are due within forty-five (45) days following the publication of the proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

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

[Application No. D-09626]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Exemption for In-Kind Transfer of Assets

If the exemption is granted, 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)(Å) 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