

(2) upon the request of such Independent Fiduciary, a report or statement (which may take the form of the most recent financial report, the current Statement of Additional Information for the Fund, or some other written statement) that contains a description of all fees paid by the Fund to the Bank.

(m) All dealings between the Client Plans and the Funds are on a basis no less favorable to the Client Plans than dealings with other shareholders of the Funds.

Section III—General Conditions

(a) The Bank maintains for a period of six years the records necessary to enable the persons described below in paragraph (b) of Section III to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Bank, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than the Bank shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b) (1) Except as provided in paragraph (b)(2) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (a) of Section III are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(ii) Any fiduciary of the Client Plans who has authority to acquire or dispose of shares of the Funds owned by the Client Plans, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of the Client Plans or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraph (b)(1)(ii) and (iii) shall be authorized to examine trade secrets of the Bank, or commercial or financial information which is privileged or confidential.

Section IV—Definitions

For purposes of this exemption:

(a) The term “Bank” means the Bank South, N.A. and any affiliate thereof as

defined below in paragraph (b) of this Section IV.

(b) An “affiliate” of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term “control” means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term “Fund” or “Funds” shall include the Peachtree Funds, Inc., or any other diversified open-end investment company registered under the 1940 Act for which the Bank serves as an investment adviser.

(e) The term “net asset value” means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in the Fund’s prospectus and statement of additional information, and other assets belonging to the Fund or portfolio of the Fund, less the liabilities charged to each such portfolio or Fund, by the number of outstanding shares.

(f) The term “relative” means a “relative” as that term is defined in section 3(15) of the Act (or a “member of the family” as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(g) The term “Independent Fiduciary” means a fiduciary of a Client Plan who is independent of and unrelated to the Bank. For purposes of this exemption, the Independent Fiduciary will not be deemed to be independent of and unrelated to the Bank if:

(1) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with the Bank;

(2) Such fiduciary, or any officer, director, partner, employee, or relative of the fiduciary is an officer, director, partner, employee or affiliate of the Bank (or is a relative of such persons);

(3) Such fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this exemption.

If an officer, director, partner, affiliate or employee of the Bank (or relative of such persons), is a director of such Independent Fiduciary, and if he or she abstains from participation in (i) the choice of the Client Plan’s investment

adviser, (ii) the approval of any such purchase or sale between the Client Plan and the Funds, and (iii) the approval of any change in fees charged to or paid by the Client Plan in connection with any of the transactions described in Sections I and II above, then paragraph (g)(2) of this Section IV shall not apply.

(h) The term “Termination Form” means the form supplied to the Independent Fiduciary which expressly provides an election to the Independent Fiduciary to terminate on behalf of a Client Plan the authorization described in paragraph (j) of Section II. The Termination Form shall be used at will by the Independent Fiduciary to terminate an authorization without penalty to the Client Plan and to notify the Bank in writing to effect a termination by selling the shares of the Funds held by the Client Plan requesting such termination within one business day following receipt by the Bank of the form; provided that if, due to circumstances beyond the control of the Bank, the sale cannot be executed within one business day, the Bank shall have one additional business day to complete such sale.

EFFECTIVE DATE: The exemption is effective as of February 11, 1994.

For a more complete statement of the facts and representations supporting the Department’s decision to grant this exemption, refer to the notice of proposed exemption published on January 30, 1995, at 60 FR 5713.

WRITTEN COMMENTS: The applicant submitted the following comments regarding the notice of proposed exemption (the Proposal).

With respect to the description of the fee structure, the applicant states that the Bank is using the fee offset mechanism described in Section II(d) of the Proposal for Client Plans that first invested in the Funds after the conversion date (i.e. February 14, 1994). As described in the Summary of Facts and Representations in the Proposal (the Summary), Client Plans invested in the CIFs prior to the conversion transaction (described in Section I of the Proposal) currently utilize the credit mechanism under which Plan-level trustee fees are reduced by the investment advisory fees charged at the Fund-level pursuant to Section II(c) of Prohibited Transaction Exemption (PTE) 77-4, 42 FR 18732, April 8, 1977.¹ The Bank anticipates

¹ PTE 77-4, in pertinent part, permits the purchase and sale by an employee benefit plan of shares of a registered, open-end investment company when a fiduciary with respect to the plan is also the investment adviser for the investment company, provided that, among other things, the plan does not pay an investment management,