

U.S. Department of Labor

Pension and Welfare Benefits Administration
Washington, D.C. 20210



SEP 9 1993

93-26A
PTE 77-4

Donald S. Kohla, Esq.
King & Spalding
191 Peachtree Street
Atlanta, Georgia 30303-1763

Re: SunTrust Banks, Inc. (SunTrust)
Exemption Application No. D-9423

Dear Mr. Kohla:

This is in response to the above referenced application requesting an exemption from the prohibitions of section 406 of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code).

Your application sets forth the following facts and representations. SunTrust proposes to offer shares of the STI Classic Funds (the Funds), a series of open-end investment companies registered under the Investment Company Act of 1940, to individual retirement accounts (IRAs) for which SunTrust acts as a trustee with investment management responsibility. Sun Bank Capital Management and Trusco Capital Management, affiliates of SunTrust, serve as investment advisers for the Funds and receive fees for their services from the Funds. You represent that SunTrust will not charge the IRAs any investment management fees for assets that are invested in the Funds.

At the conference regarding your exemption request on August 19, 1993, you stated that, as an alternative to obtaining an individual exemption for the proposed transactions, SunTrust would be willing to structure the arrangement to comply with Prohibited Transaction Exemption (PTE) 77-4 (42 FR 18732, April 8, 1977) if that exemption is available for IRAs.

Under Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) the authority to issue rulings under section 4975 of the Code has been transferred, with certain exceptions, to the Secretary of Labor. Therefore, the references in this letter to specific sections of ERISA refer also to corresponding sections of the Code.

PTE 77-4 provides that the restrictions of section 406 of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, shall not apply to the purchase and sale by an employee benefit plan of shares of an open-end investment company registered under the Investment Company Act of 1940, the investment adviser for which is also a fiduciary with respect to the plan (or an affiliate of such fiduciary), and is not an employer of employees covered by the plan, provided certain conditions are met.

Although PTE 77-4 does not define the term "employee benefit plan", the Department of Labor (the Department) is of the view that the exemption is applicable not only to transactions involving employee benefit plans covered under Title I of ERISA, but also to transactions involving IRAs and H.R. 10 plans which are not covered by Title I of ERISA but which are subject to the provisions of section 4975 of the Code. We have conferred with representatives of the Internal Revenue Service and they concur in the view that plans described in Code section 4975(e)(1) are included within the scope of PTE 77-4.

This letter constitutes an advisory opinion under ERISA Procedure 76-1 and is issued subject to the provisions of that procedure, including section 10, relating to the effect of advisory opinions. This opinion relates only to the specific issue addressed herein. For example, the Department is not providing an opinion as to whether the particular arrangement described in your exemption application would satisfy the conditions imposed by PTE 77-4. Nor is the Department providing an opinion as to the definition of the term "employee benefit plan" in any exemption other than PTE 77-4.

If you have any further questions, please contact Mr. E. F. Williams, Department of Labor, (202) 219-8883.

Sincerely,

Ivan L. Strasfeld
Director
Office of Exemption Determinations