

(e) The term, "Hancock," means John Hancock Financial Services (Financial Services); John Hancock Life Insurance Company (JHLIC); John Hancock Variable Life Insurance Company (Variable Life); Hancock Natural Resource Group (Resource Group); John Hancock Timber Resource Group (Timber Resource); or other affiliates of JHLIC, as defined in section III(a), above, as well as the employees of Resource Group and Timber Resource.

(f) The term, "Timber Asset(s)," means a fee simple in timberland (and appurtenant rights),² or a timber lease, or a timber deed, provided that, with respect to any timber lease, or timber deed:

(1) The underlying fee simple is owned by a person other than International Paper, Hancock, or any other account managed by Hancock at the time of the sale; and

(2) The entire deed or lease held by International Paper is purchased by ForesTree IP.

(g) The term, "Timber Product(s)," means standing timber or timber in the form of logs.

(h) The term, "independent, qualified appraiser," means an individual or firm which is qualified to serve in the capacity as an appraiser; is independent of the parties in interest engaging in the transaction and their affiliates; and satisfies the following conditions:

(1) Other than serving as the independent, qualified appraiser for a transaction which is subject to this exemption, the individual or firm has no current employment relationship with Hancock or with International Paper;

(2) No individual or firm may serve as an independent, qualified appraiser during any year in which the gross receipts such individual or firm received from business with Hancock exceeds 5 percent (5%) of such individual's or firm's gross receipts from all sources for the prior year, and from business with International Paper for that year exceeds 5 percent (5%) of such individual's or firm's gross receipts from all sources for the prior year;

(3) If an individual is selected to serve as the independent, qualified appraiser, then such individual must:

(A) Have a forestry degree; and
(B) Have a minimum of five (5) years of experience as a timberland appraiser; or

(C) Otherwise demonstrate proficiency in timberland appraisal

work which is equivalent to the level of expertise demonstrated by the requirements, as set forth in section III(h)(3)(A) and (B), above;

(4) If a firm is selected to serve as the independent, qualified appraiser, then such firm must have:

(A) A minimum of five (5) years of experience as a timberland appraiser; or

(B) Otherwise demonstrate proficiency in timberland appraisal work; and

(5) The individual or the firm that serves as the independent, qualified appraiser for transactions covered by this exemption must have the ability to access appropriate timberland sales comparison data.

(i) The term, "*bona fide* bidder," means a bidder on a Timber Product offered for sale by ForesTree IP, only if

(1) The bidder has made an offer to purchase the Timber Product, in accordance with the terms of the bid solicitation;

(2) The bidder's name appears on the Buyer's List at the time of bid solicitation and at the time of the bid;

(3) Hancock neither knows or should know of any impediment to the bidder's consummation of the purchase of the Timber Product offered for sale upon which the bidder has bid; and

(4) Hancock has no reason to believe that the bid was not made in good faith by the bidder with the present intent of procuring the Timber Product offered for sale by ForesTree IP.

Written Comments

In the notice of proposed exemption (the notice), the Department of Labor (the Department) invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within 45 days of the date of the publication of the notice in the **Federal Register** on January 22, 2003. All comments and requests for a hearing were due by March 14, 2003.

During the comment period, the Department received no requests for a hearing. However, the Department did receive comment letters from four (4) commentators. At the close of the comment period, the Department forwarded a copy of each of these comment letters to the applicant and requested that the applicant respond in writing to the issues raised by the commentators. The concerns expressed by the commentators and the applicant's response thereto are summarized in the numbered paragraphs below.

1. One commentator objected to the proposed exemption because he views the proposed transactions as Enron-like deceptive transactions between two International Paper entities. The

commentator suggested that the Timber Assets should remain with International Paper as a long term investment, and that International Paper would suffer if it does not.

In response, the applicant notes that the commentator appears to believe that the proposed transactions would constitute a "repurchase" by International Paper of assets it already owns—a "scheme" for transferring assets among International Paper entities. In this regard, the IP Plan and ForesTree IP are independent of International Paper and a transfer to the IP Plan from International Paper is in no way a "repurchase" of the assets by International Paper.

Further, the applicant maintains that there is no "scheme" here. The filing of this exemption was initiated by Hancock to obtain relief from the prohibited transaction provisions of the Act. Hancock is a professional timber manager unaffiliated with International Paper. Hancock, and not International Paper, sought the exemption so that if the investment attributes of the Timber Assets International Paper offered for sale were consistent with the investment objectives of ForesTree, the account would have an opportunity to acquire those Timber Assets.

In addition, the applicant points out that the commentator seems more concerned with the fact that International Paper is selling the Timber Assets than with the fact that Hancock will be permitted to bid on those assets that International Paper offers for sale. In this regard, it is the applicants' understanding that the sale of International Paper timberlands is part of its strategic plan to monetize non-strategic timberland following its merger with Champion International.

Hancock, and not International Paper, will decide whether ForesTree IP will engage in a transaction with International Paper, and Hancock is subject to the fiduciary duties of the Act. It is represented that Hancock will cause ForesTree IP to engage in a transaction only if the transaction is in the interest of ForesTree IP (that is, the IP Plan). It is further represented that Hancock's acquisition sourcing will in no way take the interests of International Paper into account in considering the merits of each such transaction.

The commentator also indicated a lack of confidence in the third party appraisal that Hancock is required to obtain, pursuant to a condition of this exemption, citing the "sample intensity." In this context, the applicant understands "sample intensity" to refer to the extent of the samples of timber

² It is represented that certain property rights, including mineral rights, easements, and recreational leases, are appurtenant to a fee simple and are brought and sold, and appraised along with the fee simple.