

inventory used by an appraiser (or prospective buyer) to assess the value of that inventory. The commentator's concern regarding sample intensity is addressed by Hancock's due diligence process, including the timber inventory verification described below, and the appraisal methodology that uses multiple valuation approaches to independently establish market value.

In this regard, the applicant notes that the purchase price of Timber Assets is established through Hancock's intensive due diligence process, that includes, among other things, timber inventory verification through an actual on-the-ground survey of the timber, using a statistically sound sampling methodology. Hancock uses the timber inventory analysis together with information regarding timber markets, timber price forecast, forest management expenses, timber growth models, and harvesting plans among other things to develop a discount cash flow analysis, projected total return and purchase price given the relative riskiness of the market area. The purchase price established through this process is the starting basis for prices offered by Hancock in competitive bids or negotiated sale transactions. A third-party appraisal verifies that the purchase price, established through the process noted above, is not more than fair market value.

In doing so, the third-party appraiser will typically use multiple valuation methodologies to estimate the market value of Timber Assets. These include the cost approach, the sales comparison approach, and the income approach (discount cash flow analysis). The different approaches help to establish the most probable value range based on the differences between buyers and sellers in the marketplace. The appraiser then, based on the data presented, determines a value in the range that represents the most probable price assuming the property were offered for sale.

2. One commentator noted his opposition to the proposed exemption on the grounds that International Paper's domination of the relevant timber markets could make the fair market value, and thus the price, obtained by Hancock for Timber Products artificially low.

In response the applicant notes that this comment does not appear to be a criticism of the sale by the IP Plan of Timber Products to International Paper, so much as a criticism of the IP Plan's allocation to timber in the first place. In this regard, the applicant maintains that whether or not the IP Plan invests in timber is not the subject of this

exemption. Rather, this exemption is designed to ensure that ForesTree IP has access to all market outlets in a competitive manner.

In the opinion of the applicant, participation by International Paper in the bid process increases, not decreases, the chances of ForesTree IP of obtaining a favorable price, because it expands the universe of potential timber purchasers. One of Hancock's objectives in seeking this exemption is to increase the potential buyers, and thus the price, of ForesTree IP's Timber Products. It is the applicant's view that the mergers to which the commentator refers would make it even more important to include International Paper in the Timber Products bidding process so as to have as many potential bidders as possible.

The commentator also asserts that the proposed exemption would permit "incestuous dealings" between the IP Plan and International Paper. The applicant maintains that there is no conflict of interest in this case, because the IP Plan is represented by an independent investment manager. In this regard, Hancock manages the entire ForesTree IP account in its sole discretion and will determine if, and when, it is in the interest of ForesTree IP to enter into a transaction with International Paper, pursuant to the procedures established as part of this exemption. Furthermore, Hancock will be fully responsible and liable for that decision.

3. One commentator objected to the proposed exemption because, in his view, International Paper does not provide sufficient pension benefits to IP Plan participants and beneficiaries.

In response the applicant, points out that the IP Plan is a defined benefit plan, and Hancock has no control over the plan of benefits provided to plan participants under the IP Plan. Rather, Hancock is charged with investing the assets of the IP Plan allocated to timber as effectively as it can. In the view of the applicant, the commentator's complaint is with the design of the IP Plan and not the manner in which it is invested.

4. One commentator believes that the fact that Hancock must seek an exemption for the proposed transactions indicates that the transactions are "ill-advised."

In response the applicant points out that the drafters of the Act recognized that exemptions to prohibited transaction provisions would certainly be required and, in fact, incorporated more than ten such statutory exemptions into the Act. More importantly, Congress authorized the Department to issue individual exemptions where an individual plan's

interest could be adequately protected. In the applicant's view, the fact that Hancock has applied for this exemption indicates only that it seeks to obtain the best return possible for ForesTree IP by expanding the account's potential pool of counterparties.

The commentator also objected to the proposal on the grounds that recent corporate scandals have cast doubt upon the "investment schemes" of "corporate financial officers."

In this regard, the applicant points out that Hancock, and not the financial officers of International Paper, is responsible for deciding whether or not ForesTree IP enters into transactions with International Paper. In addition, the applicant maintains that the subject transactions will be effected, if at all, in a straightforward and transparent manner. In this regard, the exemption requires that specified conditions be met and that records of the transactions and conditions be maintained.

Lastly, the applicant notes that the commentator provided no support for his assertion that the subject transactions (routine types of transactions under a professionally managed timber program) constitute a "speculation venture of unknown risk." The commentator objected to the fact the IP Plan invests in timber at all, which, as the applicant noted above, is the result of a reasonable asset allocation decision on the part of the plan fiduciaries. Moreover, there is nothing to suggest that timber is a speculative investment. The applicant maintains that Hancock and its affiliates are in the business of prudently managing the risks associated with timber investments. As discussed above, Hancock's due diligence process is thorough and is designed to assess risk.

5. During the comment period, the Department also received a comment from the applicant. In this regard, in a letter dated March 14, 2003, the applicant requested certain amendments to the operant language of the exemption and changes to the representations which were set forth in the Summary of Facts and Representations (the SFR) published in the notice. A discussion of the applicant's comments and the Department's responses, thereto are also set forth in the subparagraphs, below.

A. For the sake of consistency with the language in section I(a)(1) and (2) of the exemption, the applicant proposes a revision of section I(a)(3), as set forth in the notice, on page 3040, column 3, line 26-27, to replace the phrase, "at the time of purchase," with the phrase, "as of the date of the transaction."