

The Department concurs and in the final exemption has amended the language of section I(a)(3), accordingly.

B. Section I(a)(1) requires that the price paid by ForesTree IP for the Timber Asset be determined by an independent, qualified appraiser, as defined in section III(h), below, as of the date of the transaction. Section I(a)(2) provides that the fair market value of the Timber Assets sold to ForesTree IP must be documented in a written appraisal report by an independent, qualified appraiser, as of the date of the transaction. Section I(a)(3) provides that the price paid by ForesTree IP for the Timber Asset may not exceed the fair market value of such asset at the time of the purchase.

It is the applicant's view that, given the conditions in sections I(a)(2) and (3) of the exemption, it is not necessary to require that the Timber Asset price be determined by the independent, qualified appraiser. In this regard, the applicant maintains that the other conditions make it impossible for ForesTree IP to purchase a Timber Asset for more than fair market value and that the condition in section I(a)(1) does not provide any additional protection to the IP Plans and their participants and beneficiaries. Moreover, the applicant believes that section I(a)(1) would interfere with Hancock's duty to negotiate the best price for ForesTree IP, including a price that is less than the appraised value of the Timber Asset. Accordingly, the applicant requests that section I(a)(1), as set forth in the notice, on page 3040, column 3, lines 13–17, be deleted and that the remaining three (3) subparagraphs in section I(a) be renumbered.

In the view of the Department, a determination by an independent, qualified appraiser of the fair market value of a Timber Asset at the time of the transaction provides a safeguard which insures that the IP Plan through ForesTree IP does not pay too much for such asset. Accordingly, the Department has decided not to delete section I(a)(1) of the exemption and has decided not to renumber section I(a)(2), section I(a)(3), or section I(a)(4).

However, the Department does not intend that compliance with the language of section I(a)(1) would preclude Hancock from negotiating on behalf of ForesTree IP a price for a Timber Asset which is less than the fair market value of such asset at the time of the transaction. Accordingly, the Department has determined in the final exemption to amend the language of section I(a)(1), as set forth in the notice, on page 3040, column 3, lines 13–17, to

delete the bracketed words and add the italicized words as follows:

The [price paid by ForesTree IP for] *fair market value of the Timber Asset sold to ForesTree IP* is determined by an independent, qualified appraiser, as defined in section III(h), below, as of the date of the transaction.

Further the Department has determined in the final exemption to amend the language of section I(a)(3), as set forth in the notice, on page 3040, column 3, lines 24–27, to delete the bracketed phrase and add the italicized phrases as follows:

The price paid by ForesTree IP for the Timber Asset does not exceed the fair market value of such asset, [at the time of the purchase] *as determined by an independent, qualified appraiser as of the date of the transaction, but can be at a price that is less than the fair market value of such asset, as of the date of the transaction.*

C. Because Hancock utilizes affiliated and unaffiliated timber managers in managing ForesTree IP, the applicant believes that it would be more accurate to reference Hancock's "designees," as is currently reflected in section I(b)(2). Accordingly, the applicant requests that the phrase, "(or its designee)," be inserted after the word, "Hancock," in the following sections of the final exemption, section I(b)(1), section I(b)(3), section I(b)(4), section II(c), and section III(c).

The Department concurs and has amended the language, as set forth in the notice, to insert the parenthetical phrase, "(or its designee)," after the word, "Hancock," in the following locations:

- (1) In section I(b)(1) on page 3040, column 3, line 36;
- (2) In section I(b)(3) on page 3040, column 3, line 51;
- (3) In section I(b)(4) on page 3040, column 3, line 59;
- (4) In section II(c) on page 3041, column 1, line 9; and
- (5) In section III(c) on page 3041, column 2, line 68.

D. The applicant has suggested that the Department delete section II(h), as set forth in the notice, on page 3041, column 1, lines 42–46. Section II(h) precludes ForesTree IP from purchasing Timber Assets from or selling Timber Products to Hancock's general account or any other account managed by Hancock. In this regard, the applicant expressed concern that section II(h) suggests that ForesTree IP could not use Prohibited Transaction Exemption 98–61 (PTE 98–61), in an appropriate case, for transactions between ForesTree IP and other Hancock separate accounts. In this regard, PTE 98–61 provides relief

from section 406(b)(2) of the Act, for purchases and sales of Timber Assets between certain separate accounts, as defined in PTE 98–61, that are managed by Resource Group and Timber Resource or other affiliates of JHLIC. In support of the request that section II(h) be deleted, the applicant notes that: (1) The exemption provides relief only for transactions between ForesTree IP and International Paper; (2) Hancock is not seeking relief for transactions between ForesTree IP and the general account or other Hancock separate accounts; and (3) section I(b)(4) of the exemption already provides that neither Hancock's general account nor any other account managed by Hancock may be counted as one of the two *bona fide* bidders required where International Paper is the highest price bidder for the Timber Products offered for sale by ForesTree IP.

The Department concurs with the applicant's request, and accordingly, has deleted section II(h) from the final exemption. As a result of the deletion of section II(h) from the final exemption, subsections (i), (j), (k), and (l) of section II have, accordingly, been reordered as subsections (h), (i), (j), and (k) of section II. Conforming changes have also been made to cross references within these subsections.

Further, the Department wishes to note that for transactions between ForesTree IP and other Hancock separate accounts, ForesTree IP may rely on PTE 98–61 only for transactions, as described therein, and only if the conditions, as set forth in PTE 98–61 are satisfied.

E. The applicant notes that section II(k), as set forth in the notice, makes reference on page 3041, column 1, line 64, to paragraph (1)(1) (the numeral "one" followed by the numeral "one"). The applicant requests that the reference be changed so as to refer to paragraph (l)(1) (the letter "l" and then the numeral "one"). The applicant also notes that, if the Department accepts the proposed deletion of section II(h), as discussed above, this reference will actually become paragraph (k)(1).

The Department concurs with the applicant's request. As the Department did decide to delete section II(h) from the final exemption, the reference to paragraph (1)(1), as set forth in the notice, on page 3041, column 1, line 64, had been changed to paragraph (k)(1) in the final exemption.

F. The applicant requests a revision to the language of section III(e), as set forth in the notice, on page 3041, column 3, lines 38–48. Section II(e), states:

The term, "Hancock," means John Hancock Financial Services (Financial Services); John