

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 11th day of April, 2003.

**Ivan Strasfeld,**

*Director of Exemption Determinations,  
Employee Benefits Security Administration,  
U.S. Department of Labor.*

[FR Doc. 03-9352 Filed 4-15-03; 8:45 am]

**BILLING CODE 4510-29-P**

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

[Prohibited Transaction Exemption 2003-05; Exemption Application No. D-11061]

#### Grant of Individual Exemptions; John Hancock Life Insurance Company

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Grant of individual exemption.

**SUMMARY:** This document contains an exemption issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

#### Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

**John Hancock Life Insurance Company,  
Located in Boston, MA (Prohibited  
Transaction Exemption 2003-05,  
Application No. D-11061)**

#### Exemption

##### *Section I: Transactions*

The restrictions of sections 406(a)(1)(A) and 406(a)(1)(D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(A) and 4975(c)(1)(D) of the Code shall not apply to:<sup>1</sup>

(a) The purchase of a timber asset (Timber Asset(s)), as defined in section III(f), below, from International Paper Company or any affiliate, as defined in section III(a), below, (collectively, International Paper) by a certain insurance company separate account (ForesTree IP), as defined in section III(d), below, maintained and managed by Hancock, as defined in section III(e), below, for the investment of the assets of one or more employee pension benefit plans sponsored by International Paper (the IP Plan or IP Plans); provided that the following conditions are satisfied:

(1) The 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,

(2) The fair market value of the Timber Asset sold to ForesTree IP must be documented by an appraisal report in writing issued, as of the date of the transaction, by the independent, qualified appraiser;

(3) The price paid by ForesTree IP for the Timber Asset does not exceed the fair market value of such asset, 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; and

(4) The general conditions set forth in section II, below, are satisfied.

(b) The sale of a timber product (Timber Product(s)), as defined in section III(g), below, to International Paper by ForesTree IP; provided that the following conditions are satisfied:

<sup>1</sup> For purposes of this exemption, references to specific provisions of title I of the Act, unless otherwise specified, refer to the corresponding provisions of the Code.

(1) Prior to soliciting bids for the sale of a Timber Product, Hancock (or its designee) establishes a minimum bid (the Minimum Bid) based on its assessment of the fair market value of the Timber Product offered for sale;

(2) Hancock (or its designee) solicits from each party on the buyers list (the Buyer's List), as defined in section III(c), below, for the relevant geographic area in which the Timber Product is located, a written bid for the purchase of the Timber Product offered for sale;

(3) The highest price bid for the Timber Product offered for sale must meet or exceed the Minimum Bid established by Hancock (or its designee) and must not be less than the fair market value of such Timber Product at the time the contract for sale is legally binding on the parties involved;

(4) Where International Paper is the highest price bidder for the Timber Product offered for sale, the transaction may not go forward, unless Hancock (or its designee) has received bids on such Timber Product from at least two (2) other bidders, in addition to International Paper, provided that each such bidder satisfies the definition of a *bona fide* bidder, as set forth in section III(i), below; and provided further that neither Hancock's general account nor any other account managed by Hancock is either of the two other bidders; and

(5) The general conditions set forth in section II, below, are satisfied.

#### Section II: General Conditions

(a) Any IP Plan that invests in ForesTree IP has total assets in excess of \$100 million;

(b) Hancock acts as a discretionary investment manager for ForesTree IP;

(c) Hancock (or its designee) negotiates on behalf of ForesTree IP the terms and conditions of any purchase of a Timber Asset by ForesTree IP from International Paper and the terms and conditions of any sale of a Timber Product by ForesTree IP to International Paper;

(d) Prior to ForesTree IP entering into any purchase of a Timber Asset or any sale of a Timber Product, Hancock determines on behalf of such account that each such transaction is feasible, in the interest of the account based on the investment policy and objectives of the account, and protective of the participants in the account;

(e) The terms and conditions of each transaction involving the sale of a Timber Asset by International Paper to ForesTree IP or the purchase of a Timber Product by International Paper from ForesTree IP are at least as favorable to ForesTree IP as the terms obtainable by ForesTree IP in a similar

transaction negotiated at arm's length with an unrelated third party;

(f) The transactions subject to this exemption are not part of an agreement, arrangement, or understanding designed to benefit a party in interest;

(g) Each transaction subject to this exemption is exclusively a cash transaction;

(h) The investment of plan assets by any IP Plan in ForesTree IP does not exceed 20 percent (20%) of the total assets of such plan;

(i) The total amount of contributions received by Hancock from International Paper on behalf of the IP Plans and allocated to ForesTree IP must not in the aggregate exceed \$100 million; and

(j) Hancock maintains, or causes to be maintained, within the United States for a period of six (6) years from the date of each transaction which is subject to this exemption, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described, below in paragraph (k)(1), to determine whether the conditions of the 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 Hancock, the records are lost or destroyed prior to the end of the six (6) year period; and

(2) No party in interest other than Hancock 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 below by paragraph (k)(1).

(k)(1) Except as provided in subparagraph (2) of this paragraph (k) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (j), above, 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 an IP Plan or any duly authorized representative of such fiduciary;

(iii) Any contributing employer to an IP Plan or any duly authorized employee representative of such employer; and

(iv) Any participant or beneficiary of an IP Plan, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described above in subparagraphs (k)(1)(i)–(iv) are

authorized to examine the trade secrets of Hancock or its affiliates or commercial or financial information which is privileged or confidential.

#### Section III: Definitions

(a) The term, "affiliate" or "affiliates," of a person means:

(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 of, or partner in any such person; and

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

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

(c) The term, "Buyer's List," means a comprehensive and current list of the names of the active forest products companies and prospective buyers of Timber Products in the geographic area in which such Timber Products are located, which is compiled and maintained by Hancock (or its designee) for each such geographic area for the purpose of selling Timber Products in such area on behalf of any of the timber accounts managed by Hancock, provided that, with respect to the Buyer's List utilized by ForesTree IP:

(1) International Paper's name may not be added to the Buyer's List for a geographic area solely for the purpose of a sale by ForesTree IP of Timber Products in such area; and

(2) The name of a prospective buyer of Timber Products in a geographic area may not be removed by Hancock from the Buyer's List for such geographic area, unless such buyer:

(A) Has failed to perform satisfactorily in a previous transaction;

(B) Is no longer in business;

(C) Requests, orally or in writing, to be removed from such list; or

(D) Has failed to respond for a period of two (2) years to previous solicitations by ForesTree IP to bid on Timber Products offered for sale in the geographic area;

(d) The term, "ForesTree IP," refers to the non-pooled insurance company separate account maintained and managed by Hancock for the investment of assets of one or more of the IP Plans, as well as to any partnership, limited liability company, or corporation in which ForesTree IP invests. The term, "ForesTree IP," does not include the other ForesTree Separate Accounts managed by Hancock.

(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),<sup>2</sup> 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

<sup>2</sup> 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.

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."

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 (1)(1) (the letter "1" 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

Hancock Life Insurance Company (JHLIC); John Hancock Variable Life Insurance Company (Variable Life); Hancock Natural Resources Group (Resources Group); John Hancock Timber Resource Corporation (Timber Resource); or other affiliates of JHLIC, as defined in section III(a), above.

Pursuant to section III(a), the term, "affiliate" or "affiliates," of a person includes "any officer, director, employee, relative of, or partner in any such person." The applicant is concerned that the combination of these two definitions omits from the term, "Hancock," (and perhaps from relief) employees of Hancock affiliated entities, other than JHLIC. In this regard, the applicant seeks to ensure that the exemption provides relief for the individual employees of those entities making decisions with respect to ForesTree IP. Accordingly, the applicant suggested a revision to section III(e) to add the phrase, "as well as the employees of such entities," to the language of section III(e) in the final exemption. Subsequently, in an e-mail to the Department, dated April 2, 2003, the applicant clarified that in addition to employees of JHLIC, incorporated into the definition of affiliate, as set forth in section III(a)(2), the term, "Hancock" should include employees of Resource Group, and Timber Resource.

The Department concurs with the applicant's request. Accordingly, the language of section III(e), as set forth in the Notice, on page 3041, column 3, line 48, has been amended to add the phrase, "as well as the employees of Resource Group and Timber Resource," after the word, "above."

The applicant also suggested a few corrections to the names of the entities listed in the definition of the term, "Hancock," as set forth in section III(e) in the Notice, on page 3041, column 3, lines 43-46. In this regard, "Hancock Natural Resources Group" should be "Hancock Natural Resource Group," and "(Resources Group)" should become "(Resource Group)." In the same paragraph, "John Hancock Timber Resource Corporation" should be changed to "John Hancock Timber Resource Group."

The Department concurs and in the final exemption has amended the language of section III(e), accordingly.

G. Section III(h)(2), as set forth in the Notice, on page 3042, column 1, lines 18-27, requires that:

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 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.

The applicant seeks confirmation that the "5 percent gross receipt test" in section III(h)(2) applies separately with respect to Hancock and to International Paper. In this regard, it is the applicant's understanding that an individual appraiser may not have gross receipts from Hancock in excess of 5 percent (5%) or from International Paper in excess of 5 percent (5%).

The Department confirms the applicant's understanding of section III(h)(2). In addition, the Department has decided to amend the language of section III(h)(2), as set forth in the notice, on page 3042, column 1, line 22, to insert the phrase, "exceeds 5 percent (5%) of such individual's or firm's gross receipts from all sources for the prior year," after the word, "Hancock."

H. The applicant has requested and the Department concurs with the following modifications, corrections, or updates to the information that appeared in the SFR of the notice:

(1) References to "Resources Group" that appeared in the SFR throughout representations 2, 4, 5 and 6 should have been references to "Resource Group;"

(2) A reference to ".5 million" that appeared in the second paragraph of representation 2 in the SFR should have been a reference to "0.5 million;"

(3) The reference to Olympic Resource Management that appeared in the fifth paragraph of representations 4 in the SFR should be revised. In this regard, the applicant has informed the Department that Resource Group recently chose not to renew its contract with Olympic Resource Management. It is represented that Hancock Forest Management, Inc., a recently formed affiliate of Resource Group, has taken over the duties of Olympic Resource Management with respect to the western United States and Canada;

(4) The eighth sentence in the first paragraph of representation 5 of the SFR, should be revised to delete the bracketed words and add the italicized words as follows:

John Hancock [expects that] *allocated* the remaining \$15 million [will be allocated before] *for investment near* the end of the year 2002;

(5) The reference to "\$1 million to \$2 million" that appeared in the second sentence of representation 6 in the SFR should have been a reference to "\$1 billion to \$2 billion;"

(6) The second sentence in representation 6 of the SFR should be further revised to delete the bracketed

words and add the italicized words as follows:

In this regard, John Hancock, *at the time of its application, originally anticipated* [anticipates] that \$1 billion to \$2 billion worth of Timber Assets [will] *would be* marketed by International Paper for sale over the next two (2) years, as a result of the May 2000 merger of International Paper and Champion International;

(7) After the second sentence in representation 6 of the SFR, the applicant has requested the addition of the following sentence:

Since the filing of the exemption application, John Hancock has learned that International Paper's business strategy with respect to these assets may have changed, but John Hancock does not yet know what the new divestment strategy will be; and

(8) The reference to "section III (i) below" that appeared in representation 10(f) should have been a reference to "section III (i)" as that section actually comes before representation 10(f) in the SFR.

After giving full consideration to the entire record, including the written comments from the commentators and the applicant's response to such comments and the comment from the applicant, the Department has decided to grant the exemption, as described and amended, above. In this regard, the comment letters, the applicant's response thereto, and the applicant's comment letter submitted to the Department have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, Room N-1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice published on January 22, 2003, at 68 FR 3040.

**FOR FURTHER INFORMATION CONTACT:** Angelena C. Le Blanc of the Department, telephone (202) 693-8540. (This is not a toll-free number.)

#### General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary

responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed in Washington, DC, this 11th day of April, 2003.

**Ivan Strasfeld,**

*Director of Exemption Determinations,  
Employee Benefits Security Administration,  
U.S. Department of Labor.*

[FR Doc. 03-9353 Filed 4-15-03; 8:45 am]

BILLING CODE 4510-29-P

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

[Prohibited Transaction Exemption 2003-06; Exemption Application No. D-11059]

#### Grant of Individual Exemption To Replace Prohibited Transaction Exemptions (PTEs) 81-56, 85-19 and 89-5, Involving the Truman Arnold Companies Retirement Plan and Trust (the Plan) Located in Texarkana, TX

**AGENCY:** Employee Benefits Security Administration, Department of Labor.

**ACTION:** Grant of individual exemption to replace PTEs 81-56, 85-19 and 89-5.

**SUMMARY:** This document contains a final exemption before the Department of Labor (the Department) which will replace PTEs 81-56 (46 FR 36273, July 17, 1981), 85-19 (50 FR 3045, January 23, 1985) and 89-5 (54 FR 4348, January 30, 1989). These are individual exemptions (the Prior Exemptions) that were previously issued by the

Department to the Truman Arnold Companies, a party in interest with respect to the Plan. Each of the Prior Exemptions permitted the Employer to contribute and/or lease from the Plan certain improved real property under the provisions of three distinct written leases.

The final exemption incorporates many of the facts and representations contained in the Prior Exemptions and updates information to the extent there have been changes. Because it appears that PTE 81-56 expired on September 30, 1999 and the parties have not been covered by an administrative exemption since that time, the final exemption provides retroactive exemptive relief from October 1, 1999 until September 30, 2002. In addition, to resolve uncertainty regarding the expiration dates of the leases described in PTE 81-56 and PTE 85-19, the exemption merges the leases, along with the lease described in PTE 89-5, under a new master lease (the Master Lease) and provides retroactive exemptive relief, effective October 1, 2002, with respect to such past and continued lease arrangements.

Further, the final exemption permits the replacement of AmSouth Bank, the Plan's former independent fiduciary, with Regions Bank, the Plan's current trustee. Thus, the exemption affects participants and beneficiaries of the Plan, as well as Plan fiduciaries.

**EFFECTIVE DATE:** This exemption is effective from October 1, 1999 until September 30, 2002 with respect to the leasing arrangement described in PTE 81-56. In addition, this exemption applies retroactively from October 1, 2002 with respect to the consolidation of the properties described in the Prior Exemptions under the Master Lease.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jan D. Broady, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693-8556. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** On February 6, 2003, the Department published a notice of proposed exemption in the **Federal Register** at 68 FR 6205. The proposed exemption would replace PTEs 81-56, 85-19 and 89-5. The Prior Exemptions provided exemptive relief from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code).

The proposed exemption was requested in an application filed on behalf of the Plan pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this exemption is being issued solely by the Department.

The proposed exemption gave interested persons an opportunity to comment and to request a hearing. In this regard, all interested persons were invited to submit written comments or requests for a hearing on the pending exemption on or before March 24, 2003. All comments were to be made a part of the record. During the comment period, the Department received no written comments or requests for a public hearing.

For further information regarding the exemption application or other matters discussed therein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D-11059) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department are made available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, after giving full consideration to the entire record, the Department has decided to grant the exemption.

#### General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of