## Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

## Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, 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. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Timberland Investment Group, Inc. (Timberland) and Wachovia Bank of Georgia, N.A. (the Investment Manager) Located in Atlanta, GA; Proposed Exemption

[Application Nos. D-09969 and D-09970]

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of 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, 32847, August 10, 1990).

## Section I. Covered Transaction

If the exemption is granted, the restrictions of section 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to the payment of an incentive fee (the Incentive Fee) by Timberland, a special purpose corporation which holds plan assets from the American Telephone and Telegraph Master Trust (the AT&T Trust) and the BellSouth Master Pension Trust (the BellSouth Trust; collectively, the Trusts), to the Investment Manager of Timberland, a party in interest with respect to the Trusts.

This proposed exemption is conditioned upon the requirements set forth below in Section II.

## Section II. General Conditions

(a) The investment of the assets of each Trust in Timberland, including the terms and payment of the Incentive Fee, is approved in writing by a Trust fiduciary who is independent of the Investment Manager and its affiliates (the Independent Fiduciary).

(b) Each Trust participating in Timberland has total assets that are in excess of \$50 million and no Trust has

- invested more than one percent of its assets in Timberland.
- (c) The terms of the Trusts' investment management agreements for Timberland, including the Incentive Fee, are at least as favorable to the Trusts as those obtainable in an arm's length transaction with an unrelated party.
- (d) Prior to investing in Timberland, each Independent Fiduciary entered into an agreement with the Investment Manager disclosing all material facts concerning the purpose, structure and operation of Timberland including the fee arrangements.
- (e) With respect to its ongoing participation in Timberland, each Trust receives the following written documentation from the Investment Manager:
- (1) Audited financial statements of Timberland prepared by independent, qualified public accountants on an annual basis, which disclose the fees that are paid to the Investment Manager and its affiliates.
- (2) Quarterly valuations, transmitted routinely to the Trusts, which indicate the fair market value of Timberland's assets as established by appraisers who are independent of the Investment Manager and its affiliates.
- (3) Upon request, valuations performed by independent appraisers at three year intervals which determine the underlying land value of Timberland.
- (4) Upon request, a timber inventory valuation of Timberland performed every five years by independent, registered consulting foresters in order to determine timber volume and growth rates
- (f) The total fees paid to the Investment Manager constitute no more than reasonable compensation.
- (g) The Incentive Fee is payable to the Investment Manager upon the complete liquidation of the Trusts' account in Timberland (the Timberland Account) and only if the Trusts recover distributions equal to their initial investments in Timberland.
- (h) In the event that the Investment Manager resigns or is removed prior to the complete liquidation of the Timberland Account,
- (1) The Trusts will appoint a successor Investment Manager to effect the liquidation of such account.
- (2) The Incentive Fee will not be paid to the former Investment Manager until the complete liquidation of the Timberland Account takes place.
- (3) The Incentive Fee will only be paid to the former Investment Manager if it represents the lowest of three fee amounts.

<sup>&</sup>lt;sup>1</sup> For purposes of this exemption, reference to provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.