

(i) The Investment Manager maintains, for a period of six years, the records necessary to enable the persons described in paragraph (i) of this Section to determine whether the conditions of this 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 the Investment Manager and/or its affiliates, the records are lost or destroyed prior to the end of the six year period, and (2) no party in interest other than the Investment Manager 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 by paragraph (i) below.

(i)(1) Except as provided in section (2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (i) of this Section shall be unconditionally available at their customary location during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service (the Service);

(B) Any fiduciary of a plan (the Plan) participating in the Trusts or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any Plan participating in the Trusts or any duly authorized employee representative of such employer; and

(D) Any participant or beneficiary of any Plan participating in the Trusts, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described above in subparagraphs (B)–(D) of this paragraph (i) shall be authorized to examine the trade secrets of the Investment Manager or commercial or financial information which is privileged or confidential.

Section IV. Definitions

For purposes of this exemption:

(a) An "affiliate" of the Investment Manager includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the Investment Manager. (For purposes of this subsection, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(2) Any officer, director, employee, relative of, or partner of 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) An "Independent Fiduciary" is a Trust fiduciary which is independent of the Investment Manager and its affiliates.

Summary of Facts and Representations

1. Wachovia Corporation (Wachovia) is a Southeastern interstate bank holding company maintaining dual headquarters in Winston-Salem, North Carolina and Atlanta, Georgia. The Investment Manager is one of Wachovia's principal banking subsidiaries. As of December 31, 1994, the Investment Manager had 493 branches in 206 cities and 3 states.

2. The American Telephone & Telegraph Company (AT&T), a New York corporation, and BellSouth Corporation (BellSouth), a Georgia corporation, provide telecommunication services. AT&T, whose headquarters are in New York, New York, primarily provides long distance telephone communication services. BellSouth, one of the seven regional telephone companies that was divested from AT&T in 1984 as part of the Department of Justice's antitrust settlement with AT&T, is located in Atlanta, Georgia and provides a wide array of telecommunication services, including mobile communications and advertising services.

3. The AT&T Trust covers active management and nonmanagement employees of AT&T as well as retirees throughout the United States. The AT&T Trust is comprised of the AT&T Management Pension Plan (the AT&T Management Plan) and the AT&T Nonmanagement Pension Plan (the AT&T Nonmanagement Plan). As of December 31, 1993, the participant and asset breakdown of these Plans were as follows:

| AT&T Trust | Partici- pants | Net ssset value |
|----------------------------------|-------------------|------------------|
| Manage- ment Plan | 180,491 | \$20,024,695,000 |
| Nonmanag- ement Plan | 262,237 | 18,210,547,000 |
| Totals | 442,728 | \$38,235,242,000 |

The AT&T Trust has six trustees. They are Citibank, N.A.; Chase Manhattan Bank, N.A.; Northern Trust Company; Bankers Trust Company; Mellon Bank, N.A.; and State Street Bank & Trust Company.

4. The BellSouth Trust covers active employees and retirees of BellSouth. The BellSouth Trust is comprised of the BellSouth Personal Retirement Account Pension Plan (the BellSouth PRA Plan), which covers management employees, the BellSouth Corporation Pension Plan (the BellSouth Pension Plan), which covers union employees, and the Retirement Pension Plan of Stephens Graphics, Inc. (the Stephens Plan), which covers management employees. In addition to covering active employees of BellSouth, all three plans include retirees. The retirees reside in all states comprising the United States. The active employees reside in Florida, Georgia, Alabama, Mississippi, Louisiana, Tennessee, Kentucky, North Carolina and South Carolina.

As of December 31, 1993, the participant and asset breakdown of the BellSouth Trust were as follows:

| BellSouth Trust | Partici- pants | Net asset value |
|------------------------|-------------------|------------------|
| PRA Plan .. | 43,669 | \$6,064,663,690 |
| Pension Plan | 91,797 | 7,065,931,097 |
| Stephens Plan | 248 | 24,011,213 |
| Totals | 135,714 | \$13,154,606,000 |

The Investment Manager serves as the trustee of the BellSouth Trust.

5. On January 1, 1985, AT&T and the First National Bank of Atlanta, predecessor in interest to the Investment Manager, entered into an investment management agreement (the AT&T Agreement) whereby the Investment Manager agreed to serve as investment manager with respect to a portion of the assets held in the AT&T Trust. Similarly, on September 20, 1990, BellSouth Corporation entered into an investment management agreement (the BellSouth Agreement) whereby the Investment Manager agreed to serve as investment manager with respect to a portion of the assets held in the BellSouth Trust. The decision by AT&T and BellSouth to enter into the Agreements with the Investment Manager was made by fiduciaries of the Trusts who are independent of the Investment Manager following written disclosure of all of the relevant facts and information concerning the purpose, structure and operation of Timberland including the proposed fee arrangements described herein and their