

probable effect on the management of the assets of the Trusts.<sup>2</sup>

6. As contemplated by both the AT&T Agreement and the BellSouth Agreement, Timberland is a special purpose corporation with a projected duration of 7 years.<sup>3</sup> Timberland was formed in 1990 for the purpose of holding title to timberland investments made on behalf of the AT&T Trust and the BellSouth Trust. The stock of Timberland is owned in equal shares by the Trusts. The assets of the Trusts that are invested in Timberland have been placed in an account which is referred to herein as the "Timberland Account."<sup>4</sup> As of June 21, 1994, the Timberland Account had total assets of \$100,000,000.

7. Timberland holds title to the underlying land and timber on properties located in the States of Arkansas, Mississippi, Florida, Georgia, North Carolina, South Carolina, Michigan, Alabama and Louisiana. Such forest properties are primarily "mature" in that they predominately consist of sawtimber-sized trees that can be converted into lumber. Timberland also holds a fewer number of acres on which smaller trees are grown. Some of these smaller trees are merchantable as pulpwood while the remainder are

premerchantable in that they have not yet attained sufficient size to have any marketable value.

8. Effective October 15, 1990, Timberland entered into an investment management agreement with the Investment Manager (the Timberland Agreement). The Timberland Agreement was contemplated by both the BellSouth Agreement and the AT&T Agreement and is intended to ensure that the Timberland would bear directly on the investment management fees for the Investment Manager's services to the corporation. The Timberland Agreement is designed to reflect the operative provisions of the BellSouth and AT&T Agreements as they pertain to timberland investments.

9. Pursuant to the Timberland Agreement, the Investment Manager has full discretion and authority to purchase, sell convey or transfer timberland properties. To date, the Investment Manager has not incurred any debt in connection with the timberland properties. According to the applicants, it is not contemplated that such debt will ever be incurred.

The Investment Manager is also empowered to establish an overall plan for the management of timberland properties. In this regard, day-to-day management of the timber is performed by independent consulting foresters or their subcontractors who are retained on a per diem basis by the Investment Manager. Some of the duties performed by the consulting foresters include the construction and maintenance of firelines, timber stand improvement, inspection for and control of forest insects and disease, site preparation and planting, boundary line marking and maintenance and estimation of forest inventory.

10. Prior to the purchase of a property, the Investment Manager has the underlying bare land value and timber value independently appraised, along with an inventory of the volume of timber on the property, including estimates of the growth rates of the various species and timber products present on the property. At the end of each calendar quarter, the Investment Manager determines the closing market valuation of the timberland assets (excluding any then pending trades, accruals and cash) as of the end of that period. The Investment Manager derives the current volume of timber, net of growth and removals (sales and harvests), based on the independently arrived at growth rates. The Investment Manager retains the services of the independent consulting foresters licensed to do business in states in which the timber in question is located

to provide estimates of the per unit value of the various timber species and products on each tract of timberland in which Timberland has an interest.

As an additional method of valuation, the Investment Manager utilizes the services of Timber Mart South, a price reporting service which regularly quotes per unit market prices for timber products in conjunction with the information provided by the consulting foresters to establish a range of unit values of those areas. The Investment Manager may also use its own judgment to determine the appropriate unit values applicable to current volumes, employing the independently established ranges of values and thus arriving at closing market values for each timberland property in which Timberland has an interest.

In addition to quarterly valuations, the Investment Manager will have the underlying land value (bare land value) reappraised every three years by independent, state-certified appraisers. The purpose of these appraisals is to assist the Investment Manager in deciding whether to liquidate a tract of timberland. Further, the Investment Manager will have the timber inventory of Timberland appraised every five years by independent, registered consulting foresters to determine timber volume and growth rates.

The Investment Manager will select the independent, registered foresters referred to above based upon their prior satisfactory performance or their professional reputations as ascertained from knowledgeable sources within the industry. The consultants on timber value will be chosen on the basis of their reputations for reliability within the timber industry.

11. As compensation for its services under the Timberland Agreement, the Investment Manager is entitled to receive an investment management fee (the Management Fee). Initially, the Management Fee was paid quarterly in arrears at the annual rate of \$600,000. The first payment was made at the conclusion of the calendar quarter which included October 2, 1990. Over the next 11 quarters, Management Fee payments continued to be calculated at this rate until September 30, 1993 when a final payment was made to the Investment Manager.

Commencing in December 1993, the twelfth full quarter, the Management Fee is being paid quarterly in arrears in accordance with the following Annual Fee Schedule:

Annual fee schedule	
First \$100 Million .....	0.60%

<sup>2</sup> With respect to the proposed Incentive Fee, section 404 of the Act requires, among other things, that a plan fiduciary act prudently and solely in the interest of the plan's participants and beneficiaries. Thus, the Department expects a plan fiduciary, prior to entering into any performance-based compensation arrangement with an investment manager, to fully understand the risks and benefits associated with the compensation formula following disclosure by the investment manager of all relevant information pertaining to the proposed arrangement. In addition, a plan fiduciary must be capable of periodically monitoring the actions taken by the investment manager in the performance of its duties and must consider, prior to entering into the arrangement, whether such plan fiduciary is able to provide adequate oversight of the investment manager during the course of the arrangement.

<sup>3</sup> Although Timberland is currently structured as a corporation, the parties may, for tax reasons, decide to change that form to, or make additional timberland investments through, a partnership. The ownership interest in the partnership would be unchanged, i.e., BellSouth and AT&T would each retain a 50 percent ownership interest in the new entity. Furthermore, any change in the form of ownership would only occur if agreed to by BellSouth, AT&T and the Investment Manager.

<sup>4</sup> The applicants are assuming, for purposes of this exemption, that the assets of the Trusts that have been invested in Timberland are "plan assets" within the meaning of 29 CFR 2510.3-101. Although the applicants represent that they have considered whether Timberland qualifies as a "real estate operating company" within the meaning of 29 CFR 2510.3-101(e), they are unable to conclude that Timberland can qualify primarily due to the absence of direct authority on whether the activities associated with timberland management are real estate management activities as contemplated by the regulatory definition of "real estate operating company."