

the GAC in order to give the Plan more investment flexibility to direct the investment of participant account balances to safer and more prudent investments. The Applicant also represents that the Plan will not incur any expenses with respect to the sale of the GAC.

3. The Applicant proposes to protect the interests of the affected participants by purchasing the GAC from the Plan. The purchase price for the GAC will be the contract balance of the GAC as of September 30, 1994, as determined by Mutual Benefit using the following interest rates: (1) Interest is credited at the rate of 10.35% for the period from July 1, 1986 through June 30, 1990; (2) interest is credited at the rate of 8.7% for the period from July 1, 1990 through June 30, 1991; (3) interest is credited at the rate of 8.35% for the period from July 1, 1991 through December 31, 1991. These are the rates of interest actually earned under the GAC until December 31, 1991. After December 31, 1991, pursuant to the terms of the proposed plan of rehabilitation set forth by the Superior Court of New Jersey, interest is credited at a rate equal to 5.75% for 1992, 5.25% for 1993, and at a rate equal to 5.10% for 1994. The purchase price will be adjusted to reflect any contract distributions and additional interest earned from September 30, 1994 to the date the actual purchase takes place.⁵ From January 1, 1995 through December 31, 1999, the GAC will earn interest based on Mutual Benefit's actual investment performance, with a minimum annual rate of 3.5%.

4. The Trustee has reviewed the proposed transaction on behalf of the Plan. The Trustee represents that it has determined that the proposed purchase price for the GAC is at least equal to the fair market value of the GAC. In addition, the Trustee represents that it has determined that the proposed transaction is appropriate for the Plan and in the best interests of its participants and beneficiaries.

5. In summary, the Applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because: (1) The Plan will receive cash for the GAC in the amount of the contract balance of the GAC, as determined by Mutual Benefit as of the date of the sale; (2) the transaction will enable the Plan and its participants and beneficiaries to avoid any risk associated with the continued holding of the GAC, and to exercise all of their

⁵ The Applicant represents that, following the sale of the GAC to the Applicant, the Plan will repay any amounts due Shippers Paper Products Company in connection with the periodic advances discussed above.

rights under the Plan to request distributions and withdrawals from the Plan; and (3) the Plan's trustee, acting as the Plan's independent fiduciary, has determined that the sale at the proposed price is in the best interests of the participants and beneficiaries of the Plan, and that the proposed price is not less than the fair market value of the GAC.

FOR FURTHER INFORMATION CONTACT: Virginia J. Miller of the Department, telephone (202) 219-8971. (This is not a toll-free number.)

Manke Lumber Company, Inc. Profit Sharing Plan (the Plan) Located in Tacoma, Washington

[Exemption Application No. D-09897]

Proposed Exemption

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, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 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)(A) through (E) of the Code, shall not apply to the proposed cash sale (the Sale) by the Plan of certain real property (the Property) to Manke Family Resources, Limited Partnership (MFR).

This proposed exemption is conditioned upon the following requirements: (1) All terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party; (2) the Sale is a one-time cash transaction; and (3) the Plan is not required to pay any commissions, costs or other expenses in connection with the Sale; and (4) the Plan receives a sales price equal to the greater of: (a) The fair market value of the Property on the date of the Sale; or (b) the Plan's aggregate costs of acquiring and holding the Property.

Summary of Facts and Representations

1. Manke Lumber Company, Inc. (Manke) sponsors the Plan, a profit sharing plan which was established on May 1, 1971. The Plan was amended, effective May 1, 1988, to include 401(k) features which allow participants to direct the investments of their accounts. As of April 30, 1993, approximately eighty-eight percent of Plan assets were held as general assets while the remaining twelve percent were subject to participant direction. As of the same date, the Plan had assets totalling

\$9,360,468 and approximately 520 participants.

West One Trust Company (the Trustee) serves as the trustee of the Plan and has the sole investment discretion with respect to the Property and certain other non-liquid assets. Piper Capital Management, a registered investment adviser, has investment management discretion over the marketable securities and other liquid assets of the Plan. Under the terms of the Plan, Manke appoints an Advisory Committee (the Advisory Committee) which is responsible for setting the funding policy for the Plan. The Advisory Committee does not have any investment discretion. As of January 9, 1995, the Advisory Committee consisted of two Manke employees—J. Randal Jordan and Milton Farvour.

2. Manke is a Washington corporation engaged in the manufacturing and sale of lumber and other wood products. In addition, Manke also owns and manages timberland. The principal shareholders of Manke include Charles Manke, Virgil Manke and James Manke, who also comprise the Board of Directors (the Directors) and are the officers of Manke.

MFR is a Washington limited partnership engaged in the business of owning, utilizing and developing timberland and personal property related to the timber business. Tacoma Timber Co. (Tacoma Timber), a Washington corporation, serves as the general partner of MFR. Both MFR and Tacoma Timber are wholly owned by sons and daughters of the Directors, who are parties in interest with respect to the Plan. In addition, the owners of MFR and Tacoma Timber also own small amounts of Manke stock.

3. Among the general assets of the Plan is the Property, which consists of approximately 275 acres of land and timber located in Clallam County, Washington. The Property lies contiguous to a forty acre parcel of property owned by Manke. The Plan acquired the Property on September 25, 1975 for \$200,709 from Raymond B. Fife, an unrelated party. Since its acquisition, the Plan has held the Property as timberland, and it has not been utilized by, or leased to, any related or unrelated party. As of December 9, 1994, the Plan had expended a total of \$14,384 in connection with the Property for taxes and other expenses such as surveying and insurance.

4. Steven D. Lodge of Shorett & Riely, a real estate appraising and consulting firm located in Seattle, Washington, appraised the Property. Mr. Lodge is a Washington State-certified General Real Estate Appraiser and has fifteen years of