remaining collateral equals at least 100% of the market value of the borrowed securities.

With the respect to the proposed languages concerning the return of a portion of the collateral under certain circumstances, the Department has no objection to the proposed additional language, and accordingly, has inserted this language at the end of condition (G).

(c) Condition (H) of the proposed exemption contains an explanation of the procedure involved in terminating the loan of securities. The Applicant requests that the first 3 sentences of condition (H) be replaced with the following:

The loan may be terminated by the lending plan at any time, whereupon the Borrower shall deliver Replacement Securities to the lending plan within 5 business days of notice of termination of the loan.

Although the Department does not object to the deletion of the reference to the trustee of the fund, the Department wants to make clear that the value of the securities that the Borrower is obligated to deliver upon termination of a loan of Agency Securities must be no less than the value of the loaned Agency Securities at the termination of the loan, as represented by the Applicants in correspondence dated September 26, 1994. The Department believes that this condition is integral to the proposed exemption and in the best interests of the participants and beneficiaries of the Plans. Consequently, in response to the Applicants' comments, the Department has modified the first 2 sentences of condition (H), and replaced the third sentence with the following:

The value of the securities that the Borrower is obligated to deliver upon termination of a loan of Agency Securities will be no less than the value of the loaned Agency Securities at the termination of the loan.

(d) The Applicants also request that the first sentence of the second paragraph of condition (H) be replaced with the following sentence:

If the Borrower fails to return Replacement Securities, the Collateral may be applied to purchase other Replacement Securities, to cover any other obligations of the Borrower under the agreement, or to pay other expenses associated with the sale and/or purchase.

The Department has no objection to the proposed modification, and accordingly, has made this substitution.

(e) In addition, the Applicants have requested that the following language be added immediately preceding the last paragraph of condition (H):

Notwithstanding the foregoing, the Borrower may, in the event the Borrower fails

to return borrowed securities as described above, replace non-cash collateral with an amount of cash not less than the then current market value of the collateral, provided such replacement is approved by the lending fiduciary.

If the Borrower fails to comply with any condition of this exemption in the course of engaging in a securities lending transaction, the plan fiduciary who caused the plan to engage in such transaction shall not be deemed to have caused the plan to engage in a transaction prohibited by section 406(a)(1) (A) through (D) of the Act solely by reason of the Borrower's failure to comply with the conditions of the exemption.

The Department has no objection to the proposed additional language, and accordingly, has made the requested modification.

- 2. The Applicants have requested that the phrase "issued and/or guaranteed" replace the term "issued" wherever that term is used, in order to clarify that the Agency Securities may be either issued and/or guaranteed by an agency. In accordance with the Applicants' request, the Department has made the appropriate modifications to the exemption.
- 3. The Applicants wish to clarify that their assertion that over 95% of the Agency Securities traded in the market are effected using a generic trading method is merely an estimate and is not intended as a representation of fact.
- 4. The Applicants also wish to clarify that the Applicants' obligation to monitor the market value of the loaned securities on a daily basis extends to business days only.
- 5. The Department notes that the parenthetical "plus interest" in condition (e) of paragraph number 5 in the proposed exemption was included in the notice inadvertently.

The changes described above are hereby incorporated into the exemption as granted. Accordingly, after giving full consideration to the record, the Department has determined to grant the exemption, as described herein. In this regard, the Applicants' comments have been included as part of the public record for the exemption application. The complete application file is made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, room N-5638, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 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 November 1, 1994 at 59 FR 54635.

FOR FURTHER INFORMATION CONTACT: Virginia J. Miller of the Department,

telephone (202) 219–8971. (This is not a toll-free number.)

Vaquero Farms, Inc. Profit Sharing Plan and Agri-Bis, Inc. Profit Sharing Plan (the Plans)

Located in Stockton, California [Prohibited Transaction Exemption 94–89; Application Nos. D–9711 and D–9712]

Exemption

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 past cash sale (the Sale) by the plans of certain promissory notes (the Notes) to Vaquero Farms, Inc. (the Applicant) and Agri-Bis, Inc., a related company, provided that the following conditions were met at the time of the sale: (1) The sales price of the Notes was not less than their aggregate fair market value on the date of the Sale; (2) the Sale was a onetime transaction for cash; (3) the Plans did not pay any fees or commissions in connection with the Sale; and (4) the Plans' independent fiduciary determined that the transaction was appropriate for and in the best interests of the Plans and their participants and beneficiaries.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 30, 1994 at 59 FR 50013. **EFFECTIVE DATE:** This exemption is effective as of May 31, 1994, the date of the Sale.

FOR FURTHER INFORMATION CONTACT: Virginia J. Miller of the Department, telephone (202) 219–8971. (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