III. Limited Section 406(b) and Section 407(a) Relief for Sales

Dillon represents that in some cases a trust sponsor, trustee, servicer, insurer, and obligor with respect to assets contained in a trust, or an underwriter of certificates may be a pre-existing party in interest with respect to an investing plan.³⁶ In these cases, a direct or indirect sale or certificates by that party in interest to the plan would be a prohibited sale or exchange of property under section 406(a)(1)(A) of the Act.37 Likewise, issues are raised under section 406(a)(1)(D) of the Act where a plan fiduciary causes a plan to purchase certificates where trust funds will be used to benefit a party in interest.

Additionally, Dillon represents that a trust sponsor, servicer, trustee, insurer, and obligor with respect to assets contained in a trust, or an underwriter of certificates representing an interest in a trust may be a fiduciary with respect to an investing plan. Dillon represents that the exercise of fiduciary authority by any of these parties to cause the plan to invest in certificates representing an interest in the trust would violate section 406(b)(1), and in some cases section 406(b)(2), of the Act.

Moreover, Dillon represents that to the extent there is a plan asset "look through" to the underlying assets of a trust, the investment in certificates by a plan covering employees of an obligor under receivables contained in a trust may be prohibited by sections 406(a) and 407(a) of the Act.

For Further Information Contact: Virginia J. Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

S&P's, D&P, Fitch or Moody's) and purchased by investors other than plans for at least one year prior to the plan's investment pursuant to the proposed exemption. In this regard, the Department does not intend to require that the particular assets contained in a trust must have been "seasoned" (e.g., originated at least one year prior to the plan's investment in the trust).

³⁶ In this regard, we note that the exemptive relief proposed herein is limited to certificates with respect to which Dillon or any of its affiliates is either (a) the sole underwriter or manager or comanager of the underwriting syndicate, or (b) a selling or placement agent.

Treasure Valley Transplants, Inc. Money Purchase Pension Plan (the Plan) Located in Boise, Idaho

[Application No. D-09874]

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, 32847, August 10, 1990). If the exemption is granted, 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) of certain real property (the Property) by the Plan to Dr. George Holzer, D.V.M. (Dr. Holzer), a disqualified person with respect to the Plan; provided that (1) the Sale is a onetime transaction for cash; (2) the Plan does not incur any expenses in connection with the proposed transaction; and (3) the consideration paid for the Property is no less than the fair market value of the Property as determined by an independent appraiser.

Summary of Facts and Representations

1. The Plan is a money purchase pension plan whose sole participant is Dr. Holzer. The Plan, which was adopted by Treasure Valley Transplants, Inc (the Employer) effective as of September 1, 1992, is a successor plan to the George L. Holzer Rollover IRA (the IRA). As of October 1, 1994, the Plan had assets of approximately \$780.000.00.

The Employer is an Idaho corporation which specializes in bovine embryo transfers. Dr. Holzer is the sole shareholder of the Employer.³⁸ Dr. Holzer and Kathleen J. Holzer serve as the Plan's co-trustees.

2. The Property is designated as Lot 16, Block 2, Warm Springs Village 2nd Addition in Ketchum, Idaho, together with the improvements thereon. The Property was appraised in September, 1994 by Monge Appraisal & Investments (Monge), an independent appraisal firm located in Sun Valley, Idaho. The appraisal was performed by Kyle T. Kunz and Thomas R. Monge, MAI. The Property is described as a contemporary-style dwelling completed in 1993, having 4,144 square feet of living space, with 4 baths and a total of

10 rooms, including 4 bedrooms. The Property is also described as being within walking distance of Warm Spring Village and Sun Valley ski lift operations. The size of the lot is 64 acres and is described as having good mountain views. Monge determined, as of September 26, 1994, that the Property had a fair market value of \$775,000.00. The applicant represents that the Property has never been used or occupied.

3. On September 3, 1991, the IRA loaned \$230,000.00 to David and Paula Barovetto to enable them to build a dwelling on the property. The applicant represents that the Barovettos are not related to the Plan or the IRA. The Barovettos defaulted on the loan on August 29, 1992, prior to completion of the dwelling. The IRA subsequently commenced foreclosure proceedings to acquire title to the Property. As a result of those proceedings, on November 13, 1992, the IRA purchased the deed on the Property for \$265,756.00. The applicant represents that the assets from the IRA were rolled into the Plan during the month of November, 1992.39 In addition, the applicant represents that, in order to protect its investment, the IRA and the Plan authorized work on the partially completed dwelling and borrowed over \$300,000 to continue that work. It is represented that the Plan's total investment in the Property as of October 26, 1994, including interest costs and property taxes, was \$830,717.30.

4. The Plan proposes to sell the Property to Dr. Holzer for the fair market value of the Property as determined by a qualified, independent appraiser. The applicant represents that the Plan will receive cash and will not incur any expenses in connection with the proposed transaction. In addition, the applicant represents that the Sale will provide the Plan with the opportunity to divest itself of a non-income producing asset which has substantial carrying costs and to replace it with liquid assets that can be placed in more diversified investments. The applicant further represents that attempts to sell the Property have been unsuccessful.

5. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because (1) the proposed Sale will be a one-time transaction for cash; (2) the Plan will receive not less than the fair market value of the Property as

³⁷The applicant represents that where a trust sponsor is an affiliate of Dillon, sales to plans by the sponsor may be exempt under PTE 75–1, Part II (relating to purchases and sales of securities by broker-dealers and their affiliates), if Dillon is not a fiduciary with respect to plan assets to be invested in certificates.

³⁸ Since Dr. Holzer is the sole shareholder of the Employer, and the only participant in the Plan, there is no jurisdiction under Title I of the Act, pursuant to 29 CFR 2510.3–3(c)(1). There is, however, jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

³⁹ The applicant represents that one of the reasons the Plan was created was to allow the Property to be rolled into a vehicle to which Dr. Holzer could make sufficient contributions to pay for the costs of carrying the Property.