DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–11696]

Notice of Proposed Exemption Involving Deutsche Bank AG (Deutsche Bank or the Applicant); Located in Frankfurt, Germany

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed temporary exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed temporary individual exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and the Internal Revenue Code of 1986, as amended (the Code). The proposed exemption, if granted, would affect the ability of certain entities with specified relationships to Deutsche Bank to continue to rely upon the relief provided by Prohibited Transaction Class Exemption 84–14.

DATES: *Effective Date:* If granted, this proposed exemption will be effective for a period of nine months, beginning on the date (the Conviction Date) that a judgment of conviction against Deutsche Securities Korea Co. (Deutsche Securities Korea Co. or DSK) is entered in Seoul Central District Court, relating to charges filed against DSK under Articles 176, 443, and 448 of South Korea's Financial Investment Services and Capital Markets Act for spot/futures-linked market price manipulation.

DATES: Written comments and requests for a public hearing on the proposed exemption should be submitted to the Department within seven days from the date of publication of this **Federal Register** Notice.

ADDRESSES: Comments should state the nature of the person's interest in the proposed exemption and the manner in which the person would be adversely affected by the exemption, if granted. A request for a hearing can be requested by any interested person who may be adversely affected by an exemption. A request for a hearing must state: (1) The name, address, telephone number, and email address of the person making the request; (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption; and (3) a statement of the issues to be addressed and a general description of the evidence to be presented at the hearing. The Department will grant a request for a hearing made in accordance with the requirements above where a hearing is necessary to fully explore material factual issues identified by the person requesting the hearing. A notice of such hearing shall be published by the Department in the **Federal Register**. The Department may decline to hold a hearing where: (1) The request for the hearing does not meet the requirements above; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the factual issues identified can be fully explored through the submission of evidence in written (including electronic) form.

All written comments and requests for a public hearing concerning the proposed exemption should be directed to the following addresses: Office of Exemption Determinations, Employee Benefits Security Administration, Suite 400, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, Attention: Application No. D–11696. Interested persons may also submit comments and/or hearing requests to EBSA via email to *moffitt.betty@dol.gov,* by FAX to (202) 219–0204, or online through *http://www.regulations.gov.* Any such comments or requests should be sent by the end of the scheduled comment period. The application for exemption and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1515, 200 Constitution Avenue NW., Washington, DC 20210.

Warning: All comments received will be included in the public record without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential or other information whose disclosure is restricted by statute. If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. However, if EBSA cannot read your comment due to technical difficulties and cannot contact you for clarification, EBSA might not be able to consider your comment. Additionally, the *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EBSA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EBSA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the Internet.

FOR FURTHER INFORMATION CONTACT: Scott Ness, telephone (202) 693–8561, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: If this proposed exemption is granted, the Department will require certain asset managers with specified relationships to Deutsche Bank to satisfy additional conditions designed to protect affected ERISA-covered plans and IRAs in order to rely on the relief provided by Prohibited Transaction Class Exemption 84–14 (49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010)), in light of a judgment of conviction, in Seoul Central District Court, against Deutsche Securities Korea Co. on September 3, 2015, for spot/futures-linked market price manipulation. The proposed exemption has been requested by Deutsche Bank pursuant to section 408(a) of the ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011). Effective December 31, 1978, section 102 of the Reorganization Plan No. 4 of 1978, 5 U.S.C. App. at 672 (2006), transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor. Accordingly, this notice of proposed exemption is being issued solely by the Department.

The Department is proposing this temporary exemption to protect plans that are managed by asset managers affiliated with DSK (the DB QPAMs), from incurring the costs and expenses that would likely arise if such managers are unable to rely on the relief provided by PTE 84–14 as of the Conviction Date, which is expected to be September 3, 2015. In this regard, Section I(g) of PTE 84–14 precludes a person who may otherwise meet the definition of a QPAM from relying on the relief provided by that class exemption if that person or its ''affiliate'' has, within 10 years immediately preceding the transaction, been either convicted or released from imprisonment, whichever is later, as a result of certain specified criminal activity described therein. This exemption, if granted, preserves the ability of DB QPAMs to continue to rely on the relief provided by PTE 84–14, notwithstanding a criminal conviction of DSK for market manipulation, for a period of nine months beginning on the Conviction Date, as long as the conditions herein are met.

Following Deutsche Bank's submission of Exemption Application D–11696, which is the subject of this proposed exemption (the First Request), Deutsche Bank made a separate exemption request, in Exemption Application D–11856 (the Second Request). The Second Request seeks exemptive relief for DB QPAMs to continue to rely on PTE 84–14 for a period of ten years, notwithstanding both: The criminal conviction of DSK for market manipulation; and the criminal conviction of a Deutsche Bank affiliate, DB Group Services UK Limited, for one count of wire fraud in connection with its alleged role in manipulating LIBOR.

The Department has tentatively denied the Second Request, upon initially determining that the exemption sought is not in the interest of affected plans and IRAs, and not protective of those plans and IRAs. Fiduciaries of plans and IRAs with assets managed by a DB QPAM should be aware that if the Department makes a final decision not to propose the Second Request, the DB QPAMs will be unable to rely on the relief set forth in PTE 84–14 upon the earlier of the day that follows the nine month term of this exemption, if granted, or the date any of the conditions herein are not met. The Department notes that Deutsche Bank has requested a conference to afford Deutsche Bank the opportunity to provide additional information in connection with its request. The Department notes further that the Department may change its position based on this additional information, or upon additional analysis. This temporary exemption, if granted, requires, among other things, that each DB QPAM agree not to restrict the ability of each ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the DB QPAM, with certain limited exceptions.

Summary of Facts and Representations

Background

1. Deutsche Bank AG (together with its current and future affiliates, Deutsche Bank or the Applicant) is a German banking corporation and a commercial bank. Deutsche Bank, with and through its affiliates, subsidiaries, and branches, provides globally a wide range of banking, fiduciary, recordkeeping, custodial, brokerage and investment services to, among others, corporations, institutions, governments, employee benefit plans, government retirement plans and private investors. Deutsche Bank had €68.4 billion in total shareholders' equity and €1,709 billion in total assets as of December 31, 2014.[1]

2. Deutsche Securities Korea Co. (DSK), an indirect wholly-owned subsidiary of Deutsche Bank, is a broker-dealer organized in Korea and supervised by the Financial Supervisory Service in Korea. The Absolute Strategy Group (ASG) of Deutsche Bank's Hong Kong Branch (DB HK) conducts index arbitrage trading for proprietary accounts in Asian markets, including Korea.

The Applicant represents that index arbitrage trading is a trading strategy through which an investor such as Deutsche Bank seeks to earn a return by identifying and exploiting a difference between the value of futures contracts in respect of a relevant equity index and the spot value of the index, as determined by the current market price of the constituent stocks. For instance, where the futures contracts are deemed to be overpriced by reference to the spot value of the index (*i.e.,* if the premium is sufficiently large), then the trader may take a long position in the physical stock and a corresponding short position in the futures or options. The combined position is described as hedged. Since the trader has a long position in one market and a short position in the other market, the profit from one (stocks) will be offset by the loss in the other (futures). The trader is largely indifferent to market direction.

The Applicant represents that ASG pursued an index arbitrage trading strategy in various Asian markets, including Korea. In Korea, the index arbitrage position involved the Korean Composite Stock Price Index (KOSPI 200 Index), which reflects stocks commonly traded on the Korea Exchange (KRX).

3. On November 11, 2010, ASG unwound an arbitrage position on the KOSPI 200 Index through DSK. The ''unwind'' included a sale of $2.1 billion worth of stocks in the KRX during the final 10 minutes of trading (*i.e.,* the closing auction period) and comprised 88% of the volume of stock traded during this period. This large volume sale contributed to a drop of the KOSPI 200 Index by 2.7%.

Prior to the unwinding, but after the decision to unwind was made, ASG had taken certain derivative positions, including put options on the KOSPI 200 Index. Thus, ASG earned a profit when the KOSPI 200 Index declined as a result of the unwind trades (the derivative positions and unwind trades cumulatively referred to as the Trades). DSK had also purchased put options on that day that resulted in it earning a profit as a result of the drop of the KOSPI 200 Index. The aggregate amount of profit earned from such Trades was approximately $40 million, which, as discussed below, Deutsche Bank subsequently disgorged.

4. The Seoul Central District Prosecutor's Office (the Korean Prosecutors) alleges that the Trades constitute spot/futures-linked market manipulation, a criminal violation under Korean securities law. In this regard, the Korean Prosecutors allege that ASG unwound its cash position of certain securities listed on the KRX(spot) through DSK, and caused a fluctuation in the market price of securities related to exchange-traded derivatives (the put options) for the purpose of gaining unfair profit from such exchange-traded derivatives. On August 19, 2011, the Korean Prosecutors indicted DSK and four individuals on charges of stock market manipulation to gain unfair profits.[2] Two of the individuals, Derek Ong and Bertrand Dattas, worked for ASG at DB HK. Mr. Ong was a Managing Director and head of ASG, with power and authority with respect to the KOSPI 200 Index arbitrage trading conducted by Deutsche Bank. Mr. Dattas served as a Director of ASG and was responsible for the direct operations of the KOSPI 200 Index arbitrage trading. Philip Lonergan, the third individual, was employed by Deutsche Bank Services (Jersey) Limited. At the time of the transaction, Mr. Lonergan was seconded to DB HK and served as Head of Global Market Equity, Trading and Risk. Mr. Lonergan served as Mr. Ong's regional superior and was in charge of risk management

[1] The Applicant represents that its audited financial statements are expressed in Euros and are not converted to dollars.

[2] Specifically, the charges allege that DSK violated certain provisions of Articles 176, 443, and 448 of the Financial Investment Services and Capital Markets Act (FSCMA) and the individuals violated certain provisions of Articles 176, 443, and 447 of the FSCMA.

for his team. The fourth individual charged, Do-Joon Park, was employed by DSK, serving as a Managing Director of Global Equity Derivatives (GED) at DSK and was in charge of the index arbitrage trading using DSK's book that had been integrated into and managed by ASG. Mr. Park was also a de facto chief officer of equity and derivative product operations of DSK.

The Korean Prosecutors' case against DSK is based on Korea's criminal vicarious liability provision, under which DSK may be held vicariously liable for an act of its employee (*i.e.,* Mr. Park) if it failed to exercise due care in the appointment and supervision of its employees.[3] The trial commenced proceedings in January 2012 in Seoul Central District Court (the Court), and a guilty verdict is expected to occur on September 3, 2015.[4] In this regard, it is expected that, on that date, the Court will enter its judgment against the defendants, thereby convicting DSK of such crimes (the Conviction).

Failure To Comply With Section I(g) of PTE 84–14 and Proposed Relief

5. PTE 84–14 is a class exemption that permits certain transactions between a party in interest with respect to an employee benefit plan and an investment fund in which the plan has an interest and which is managed by a ''qualified professional asset manager'' (QPAM), if the conditions of the exemption are satisfied. These conditions include Section I(g), which precludes a person who may otherwise meet the definition of a QPAM from relying on the relief provided by PTE 84–14 if that person or its ''affiliate'' [5] has, within 10 years immediately preceding the transaction, been either convicted or released from imprisonment, whichever is later, as a result of certain specified criminal activity described therein.[6] As noted in the preamble to the proposed class exemption, a QPAM, and those who may be in a position to influence its policies, are expected to maintain a high standard of integrity.[7]

6. The Applicant represents that certain current and future ''affiliates'' of DSK, as that term is defined in section VI(d) of PTE 84–14, may act as QPAMs in reliance on the relief provided in PTE 84–14 (these entities are collectively referred to as the ''DB QPAMs''). The DB QPAMs are currently comprised of several wholly-owned direct and indirect subsidiaries of Deutsche Bank including: (1) Deutsche Investment Management Americas, Inc.; (2) Deutsche Bank Securities Inc., which is a dual-registrant with the SEC under the Advisers Act as an investment adviser and broker-dealer; (3) RREEF America L.L.C., a Delaware limited liability company and investment adviser registered with the SEC under the Advisers Act; (4) Deutsche Bank Trust Company Americas, a corporation organized under the laws of the State of New York and supervised by the New York State Department of Financial Services, a member of the Federal Reserve and an FDIC-insured bank; (5) Deutsche Bank National Trust Company, a national banking association, organized under the laws of the United States and supervised by the Office of the Comptroller of the Currency, and a member of the Federal Reserve; (6) Deutsche Bank Trust Company, NA, a national banking association, organized under the laws of the United States and supervised by the OCC; (7) Deutsche Alternative Asset Management (Global) Limited, a London-based investment adviser registered with the SEC under the Advisers Act; (8) Deutsche Investments Australia Limited, a Sydney, Australia-based investment adviser registered with the SEC under the Advisers Act; (9) DeAWM Trust Company (DTC), a limited purpose trust company organized under the laws of New Hampshire and subject to supervision of the New Hampshire Banking Department; and the four following entities which currently do not rely on PTE 84–14 for the management of any ERISA plan or IRA assets, but may in the future: (10) Deutsche Asset Management (Hong Kong) Ltd.; (11) Deutsche Asset Management International GmbH; (12) DB Investment Managers, Inc.; and (13) Deutsche Bank AG, New York Branch.

Deutsche Bank notes that discretionary asset management services are provided to ERISA plans, IRAs and others under the following Asset & Wealth Management business lines, each of which may be served by one or more of the DB QPAMs: (1) Wealth Management—Private Client Services ($104.7 million in ERISA assets, and $469.7 million in IRA assets); (2) Wealth Management—Private Bank ($67.6 million in ERISA assets, $153.1 million in IRA assets and $2 million in ERISA-like assets); (3) Active Management ($271.4 million in ERISA assets); (4) Alternative and Real Assets ($757.9 million in ERISA assets); (5) Alternatives & Fund Solutions (no current ERISA or IRA assets); and (6) Passive Management (no current ERISA or IRA assets). In addition, according to Deutsche Bank, the Alternatives and Real Assets business manages, on a discretionary basis, $6.2 billion in governmental plan assets, most of which are contractually subject to ERISA standards. Finally, DTC manages the DWS Stock Index Fund, a collective investment trust with $192 million in assets as of March 31, 2015. The Applicant represents that none of the DB QPAMs are subsidiaries of DSK, and that, with the exception of Deutsche Bank AG (the corporate parent to all the aforementioned entities), DSK is not a subsidiary of any of the DB QPAMs.

7. Pursuant to Section I(g) of PTE 84–14, to the extent the Conviction occurs on September 3, 2015, as expected, the DB QPAMs will no longer be able to rely on PTE 84–14 as of that date. Therefore, the Applicant has requested an exemption to enable the DB QPAMs to continue to rely on the exemptive relief provided by PTE 84–14, notwithstanding the Conviction and its resultant failure to satisfy Section I(g) of PTE 84–14.[8]

Remedial Measures To Address Criminal Conduct of DSK

8. The Applicant represents that it has voluntarily disgorged its profits generated from exercising derivative positions and put options in connection with the activity associated with the impending Conviction. DSK also suspended its proprietary trading from April 2011 to 2012, and thereafter DSK could only engage in some proprietary trading (but not index arbitrage

[3] Article 448 of the FSCMA allows for charges against an employer stemming from vicarious liability for the actions of its employees.

[4] The Applicant notes that the hearing during which the guilty verdict is expected to occur is scheduled for September 4, 2015 in Korea, but because of time zone differences, the hearing will be on September 3, 2015 in United States time zones.

[5] Section VI(d) of PTE 84–14 defines the term ''affiliate'' for purposes of Section I(g) as ''(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person, (2) Any director of, relative of, or partner in, any such person, (3) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, or a 5 percent or more partner or owner, and (4) Any employee or officer of the person who- (A) Is a highly compensated employee (as defined in Section 4975(e)(2)(H) of the Code) or officer (earning 10 percent or more of the yearly wages of such person), or (B) Has direct or indirect authority, responsibility or control regarding the custody, management or disposition of plan assets.''

[6] For purposes of Section I(g) of PTE 84–14, a person shall be deemed to have been ''convicted'' from the date of the judgment of the trial court, regardless of whether that judgment stands on appeal.

[7] See 47 FR 56945 at 56946.

[8] The Applicant represents that there is an ongoing regulatory investigation into the matter in Hong Kong, but the Applicant is not aware of any indication that this investigation is leading to potential criminal indictments in Hong Kong.

trading).[9] Further, in response to the actions of the Korean Prosecutors, Deutsche Bank enhanced its compliance measures and implemented additional measures in order to ensure compliance with applicable laws in Korea and Hong Kong, as well as within other jurisdictions where the Applicant conducts business.

The Applicant states further that Mr. Ong and Mr. Dattas were terminated for cause by DB HK on December 6, 2011, and Mr. Lonergan was terminated on January 31, 2012. John Ripley, a New York-based employee of Deutsche Bank Securities Inc. who was not indicted, was also terminated in October 2011.[10] In addition, Mr. Park was suspended for six months due to Korean administrative sanctions, and remains on indefinite administrative leave. As discussed below, this proposed exemption, if granted, is only available to the extent that no individual involved with the spot/futures-linked market manipulation activities that led to the Conviction is employed by a DB QPAM.

Statutory Findings—In the Interests of Affected Plans and IRAs

9. Deutsche Bank states that, in the absence of exemptive relief, affected ERISA-covered Plans and IRAs may incur substantial harm, because such Plans and IRAs will immediately lose their ability to use their chosen investment managers for transactions otherwise covered by PTE 84–14. In this regard, according to Deutsche Bank, Plans and IRAs would incur costs in searching for new managers, issuing requests for proposals (for which consultants could charge between $15,000 and $40,000 for the strategies offered by the DB QPAMs), conducting due diligence (including meetings with potential managers and credit analysts), seeking investment committee approvals and negotiating and/or drafting new investment management agreements, investment guidelines and related trading documentation with broker-dealers and other counterparties. Deutsche Bank suggests that the selection of new managers could potentially take several months or longer, resulting in a number of collateral costs including the opportunity costs of missed investments, lower returns from investing in cash pending long term reinvestment, fewer trading counterparties and more limited or costly temporary investment alternatives.

Deutsche Bank represents that ERISA plans and IRAs would also incur direct transaction costs in liquidating and reinvesting their portfolios, ranging from 2.5 to 25 basis points (excluding core real estate), resulting in approximately $5 to $7 million in expenses. Further, the Applicant states that an unplanned liquidation of the Alternatives and Real Assets business' direct real estate portfolios may result in portfolio discounts of 10–20% of gross asset value, along with 30 to 100 basis points in direct transaction costs, resulting in an estimated total cost to plan investors of between $281 million and $723 million, depending on the liquidation period.

Upon considering Deutsche Bank's representations, the Department has tentatively determined that the proposed exemption is in the interest of affected plans and IRAs.

Statutory Findings—Protective of the Rights of Participants of Affected Plans and IRAs

10. The Department has also tentatively determined that the proposed exemption contains safeguards that are sufficient to protect affected plans and IRAs. Many of these conditions are directed at the DB QPAMs; however, additional conditions are imposed on Deutsche Bank, and others are directed at DSK. Regarding the conditions in this exemption aimed at the DB QPAMs, each DB QPAM must immediately develop, implement, maintain, and follow robust written policies (the Policies) and training requirements (the Training). The Policies, which are described in more detail in the operative language of the proposed exemption below, are generally designed to, among other things: ensure the independence of the DB QPAMs from Deutsche Bank and its other affiliates such as DSK; require the strict legal compliance of the DB QPAMs with ERISA, the Code and the prohibited transaction rules; ensure truthfulness and transparency with respect to statements made by DB QPAMs to regulators; and ensure compliance with the terms of this exemption, if granted. The Training, which is also described in more detail in the operative language of the proposed exemption below, is designed to cover the Policies, ERISA and Code compliance, ethical conduct, the consequences for not complying with the conditions of this exemption, and prompt reporting of wrongdoing.

In order to verify the DB QPAMs' compliance with the Policies and Training requirements of the proposed exemption, and the conditions for relief, each DB QPAM will be subject to an audit conducted by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA to evaluate the adequacy of, and compliance with, the Policies and Training, and the conditions for relief described herein. Furthermore, to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, each DB QPAM and, if applicable, Deutsche Bank, will grant the auditor unconditional access to its business, including, but not limited to: its computer systems, business records, transactional data, workplace locations, training materials, and personnel. The auditor's engagement shall specifically require the auditor to determine whether each DB QPAM has developed, implemented, maintained, and followed Policies in accordance with the conditions of this exemption and developed and implemented the Training, as required herein, and it shall specifically require the auditor to test each DB QPAM's operational compliance with the Policies and Training.

Furthermore, for each audit, the auditor shall issue a written report (the Audit Report) to Deutsche Bank and the DB QPAM to which the audit applies that describes the procedures performed by the auditor during the course of its examination. The Audit Report shall include the auditor's specific determinations regarding: The adequacy of, and compliance with, the Policies and Training; the auditor's recommendations (if any) with respect to strengthening such Policies and Training; and any instances of the respective DB QPAM's noncompliance with the written Policies and Training described above. Furthermore, any determinations made by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective DB QPAM shall be promptly addressed by such DB QPAM, and any actions taken by such DB QPAM to address such recommendations shall be included in an addendum to the Audit Report. The auditor is required to notify the

[9] The Applicant notes that DSK was never permitted to trade on behalf of Deutsche Bank.

[10] According to the Korean prosecutors, Mr. Ripley served as a Head of Global ASG of Deutsche Bank, AG, and was a functional superior to Mr. Ong. Mr. Ripley was suspected of having advised to unwind all the KOSPI 200 index arbitrage trading for the purpose of management of the ending profits and losses of Global ASK and approved Mr. Ong's request to establish the speculative positions in the course of the unwinding. Though the Korean prosecutors named Mr. Ripley as a suspect, he was not named in the August 19, 2011, Writ of Indictment.

respective DB QPAM of any instances of noncompliance identified by the auditor. The General Counsel or one of the three most senior executive officers of the DB QPAM to which the Audit Report applies must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption; addressed, corrected, or remedied any inadequacies identified in the Audit Report; and determined that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code. Moreover, an executive officer of Deutsche Bank must review the Audit Report for each DB QPAM and certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report.

The DB QPAMs are required to give the Department copies of the Audit Report, any engagement agreement(s) entered into pursuant to the engagement of the auditor under this exemption, if granted, and any engagement agreement entered into with any other entities retained in connection with such QPAM's compliance with the Training or Policies conditions of this exemption, no later than three (3) months after the date of the Conviction (and one month after the execution of any agreement thereafter). Furthermore, the DB QPAMs are required to give the Department copies of the auditor's workpapers upon request. In addition, Deutsche Bank must notify the Department at least 30 days prior to any substitution of the auditor, and must demonstrate to the Department's satisfaction that the replacement auditor is independent of Deutsche Bank, experienced in the matters that are the subject of the exemption, and capable of making the determinations required of this exemption.

Under the terms of the exemption, if granted, the DB QPAMs must also agree to certain terms and undertakings with each ERISA-covered plan or IRA for which a DB QPAM provides asset management or other discretionary fiduciary services, including, generally: (1) Compliance with ERISA and the Code and avoidance of non-exempt prohibited transactions; (2) not to waive, limit, or qualify certain liabilities of the DB QPAM; (3) not to require indemnification of the DB QPAM for violating ERISA or engaging in prohibited transactions; and (4) with minor exceptions, not to restrict the ability of ERISA-covered plan or IRA clients to terminate or withdraw from their arrangement with the DB QPAM or, to impose any fees, penalties, or charges for such termination or withdrawal. Each DB QPAM will provide a notice describing the above-described terms and undertakings to each such ERISA-covered plan or IRA within two (2) months of the date of publication of a notice of exemption in the **Federal Register**, if granted.

Under the terms of this proposed exemption, each DB QPAM must: Maintain records necessary to demonstrate that the conditions herein have been met, for six (6) years following the date of any transaction for which such DB QPAM relies upon the relief in the exemption, if granted; comply with each condition of PTE 84–14, as amended, with the sole exception of the violation of Section I(g) that is attributable to the Conviction; ensure that none of the individuals that engaged in the conduct that led to the Conviction are employed by the DB QPAM; and provide a notice of the proposed exemption, and if granted, a notice of final exemption, along with a separate summary (which has been submitted to the Department) describing the facts that led to the Conviction, and a prominently displayed statement that the Conviction results in a failure to meet a condition in PTE 84–14 to each sponsor of an ERISA-covered plan and each beneficial owner of an IRA invested in an investment fund managed by a DB QPAM, or the sponsor of an investment fund in any case where a DB QPAM acts only as a sub-advisor to the investment fund.

Lastly, regarding the DB QPAMs, relief under this exemption, if granted, is only available to the extent: Such QPAMs, including their officers, directors, agents other than Deutsche Bank, and employees, did not know of, have reason to know of, or participate in the criminal conduct of DSK that is the subject of the Conviction; any failure of those QPAMs to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction; such QPAMs did not directly receive compensation in connection with, the criminal conduct that is the subject of the Conviction; and none of those QPAMs used its authority or influence to direct an ''investment fund'' (as defined in Section VI(b) of PTE 84–14) that is subject to ERISA and managed by such DB QPAM to enter into any transaction with DSK, or engage DSK to provide additional services to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transactions or services may otherwise be within the scope of relief provided by an administrative or statutory exemption. However, a DB QPAM will not fail to meet the terms of this exemption solely because a different DB QPAM fails to satisfy the conditions for relief under this exemption described in Sections I(d), (e), (f), (g), (h), and (k).

Regarding conditions herein directed at Deutsche Bank, prior to engaging in a transaction covered by this exemption, if granted, Deutsche Bank must have previously disgorged all of its profits generated from exercising derivative positions and put options in connection with the activity associated with the impending Conviction. Deutsche Bank must also impose internal procedures, controls, and protocols on DSK designed to reduce the likelihood of any recurrence of the conduct that is the subject of the Conviction, to the extent permitted by local law.

Regarding conditions herein aimed at DSK, DSK may not provide fiduciary services to ERISA-covered Plans or IRAs, or otherwise exercise discretionary control over plan assets. Further, none of the DB QPAMs may be subsidiaries of DSK, and DSK may not be a subsidiary of any of the DB QPAMs. Finally, the criminal conduct of DSK that is the subject of the Conviction must not have directly or indirectly involved the assets of any plan subject to Part 4 of Title I of ERISA or section 4975 of the Code.

Statutory Findings—Administratively Feasible

11. The Applicant represents that the proposed exemption is administratively feasible. The Applicant represents that the requested exemption does not require the Department's oversight of the Conviction described herein because DSK does not provide any fiduciary or QPAM services to ERISA-covered plans and IRAs and that no ERISA or IRA assets were involved in the Conviction.

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons within two days of the publication of the notice of proposed exemption in the **Federal Register**. The notice will be provided to all interested persons in the manner agreed upon by the Applicant and the Department. Such notice will contain a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on and to request a hearing with respect to the pending exemption. Written comments and hearing requests are due within seven days of the publication of the notice of proposed exemption in the **Federal Register**.

All comments will be made available to the public. *Warning:* If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

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 ERISA 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 of the ERISA and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the ERISA, 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 ERISA; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the ERISA and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the ERISA and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction which is the subject of the exemption.

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code) and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).[11]

Section I: Covered Transactions

If the proposed exemption is granted, the DB QPAMs (as defined in Section (II(b)) shall not be precluded from relying on the exemptive relief provided by Prohibited Transaction Exemption (PTE) 84–14,[12] notwithstanding the Conviction (as defined in Section II(a)),[13] provided that the following conditions are satisfied:

(a) The DB QPAMs (including their officers, directors, agents other than Deutsche Bank, and employees of such DB QPAMs) did not know of, have reason to know of, or participate in the criminal conduct of DSK that is the subject of the Conviction;

(b) Any failure of the DB QPAMs to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction;

(c) The DB QPAMs did not directly receive compensation in connection with, the criminal conduct that is the subject of the Conviction;

(d) A DB QPAM will not use its authority or influence to direct an ''investment fund'' (as defined in Section VI(b) of PTE 84–14) that is subject to ERISA and managed by such DB QPAM to enter into any transaction with DSK or engage DSK to provide additional services to such investment fund, for a direct or indirect fee borne by such investment fund regardless of whether such transactions or services may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e)(1) Each DB QPAM immediately develops, implements, maintains, and follows written policies (the Policies) requiring and reasonably designed to ensure that: (i) The asset management decisions of the DB QPAM are conducted independently of Deutsche Bank's management and business activities; (ii) the DB QPAM fully complies with ERISA's fiduciary duties and ERISA and the Code's prohibited transaction provisions and does not knowingly participate in any violations of these duties and provisions with respect to ERISA-covered plans and IRAs; (iii) the DB QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs; (iv) any filings or statements made by the DB QPAM to regulators, including but not limited to, the Department of Labor, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA-covered plans or IRAs are materially accurate and complete, to the best of such QPAM's knowledge at that time; (v) the DB QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plan and IRA clients; (vi) the DB QPAM complies with the terms of this exemption, if granted; and (vii) any violations of or failure to comply with items (ii) through (vi) are corrected promptly upon discovery and any such violations or compliance failures not promptly corrected are reported, upon discovering the failure to promptly correct, in writing to appropriate corporate officers, the head of Compliance and the General Counsel of the relevant DB QPAM (or their functional equivalent), the independent auditor responsible for reviewing compliance with the Policies, and a fiduciary of any affected ERISA-covered plan or IRA where such fiduciary is independent of Deutsche Bank; however, with respect to any ERISA-covered plan or IRA sponsored by an ''affiliate'' (as defined in Section VI(d) of PTE 84–14) of Deutsche Bank or beneficially owned by an employee of Deutsche Bank or its affiliates, such fiduciary does not need to be independent of Deutsche Bank; DB QPAMs will not be treated as having

[11] For purposes of this proposed exemption, references to the provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[12] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

[13] Section I(g) of PTE 84–14 generally provides that ''[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of'' certain felonies including income tax evasion and conspiracy or attempt to commit income tax evasion.

failed to develop, implement, maintain, or follow the Policies, provided that they correct any instances of noncompliance promptly when discovered or when they reasonably should have known of the noncompliance (whichever is earlier), and provided that they adhere to the reporting requirements set forth in this item (vii);

(2) Each DB QPAM immediately develops and implements a program of training (the Training), conducted at least annually for relevant DB QPAM asset management, legal, compliance, and internal audit personnel; the Training shall be set forth in the Policies and, at a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions) and ethical conduct, the consequences for not complying with the conditions of this exemption, (including the loss of the exemptive relief provided herein), and prompt reporting of wrongdoing;

(f)(1) Each DB QPAM submits to an audit conducted by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA to evaluate the adequacy of, and compliance with, the Policies and Training described herein; the audit requirement must be incorporated in the Policies. The audit must cover the 9 month period during which this proposed exemption, if granted, is effective, and must be completed no later than three (3) months after the period to which the audit applies;

(2) To the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, and as permitted by law, each DB QPAM and, if applicable, Deutsche Bank, will grant the auditor unconditional access to its business, including, but not limited to: its computer systems, business records, transactional data, workplace locations, training materials, and personnel;

(3) The auditor's engagement shall specifically require the auditor to determine whether each DB QPAM has developed, implemented, maintained, and followed Policies in accordance with the conditions of this exemption and developed and implemented the Training, as required herein;

(4) The auditor's engagement shall specifically require the auditor to test each DB QPAM's operational compliance with the Policies and Training;

(5) For each audit, the auditor shall issue a written report (the Audit Report) to Deutsche Bank and the DB QPAM to which the audit applies that describes the procedures performed by the auditor during the course of its examination. The Audit Report shall include the auditor's specific determinations regarding the adequacy of, and compliance with, the Policies and Training; the auditor's recommendations (if any) with respect to strengthening such Policies and Training; and any instances of the respective DB QPAM's noncompliance with the written Policies and Training described in paragraph (e) above. Any determinations made by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective DB QPAM shall be promptly addressed by such DB QPAM, and any actions taken by such DB QPAM to address such recommendations shall be included in an addendum to the Audit Report. Any determinations by the auditor that the respective DB QPAM has implemented, maintained, and followed sufficient Policies and Training shall not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that the DB QPAM has complied with the requirements under this subsection must be based on evidence that demonstrates the DB QPAM has actually implemented, maintained, and followed the Policies and Training required by this exemption, and not solely on evidence that demonstrates that the DB QPAM has not violated ERISA;

(6) The auditor shall notify the respective DB QPAM of any instances of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) With respect to each Audit Report, the General Counsel or one of the three most senior executive officers of the DB QPAM to which the Audit Report applies certifies in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption; addressed, corrected, or remedied any inadequacies identified in the Audit Report; and determined that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code;

(8) An executive officer of Deutsche Bank reviews the Audit Report for each DB QPAM and certifies in writing, under penalty of perjury, that such officer has reviewed each Audit Report;

(9) Each DB QPAM provides its certified Audit Report to the Department's Office of Exemption Determinations (OED), 200 Constitution Avenue NW., Suite 400, Washington DC 20210, no later than 30 days following its completion, and each DB QPAM makes its Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of an ERISA-covered plan or IRA, the assets of which are managed by such DB QPAM;

(10) Each DB QPAM and the auditor will submit to OED (A) any engagement agreement(s) entered into pursuant to the engagement of the auditor under this exemption, and (B) any engagement agreement entered into with any other entities retained in connection with such QPAM's compliance with the Training or Policies conditions of this exemption, no later than three (3) months after the date of the Conviction (and one month after the execution of any agreement thereafter);

(11) The auditor shall provide OED, upon request, all of the workpapers created and utilized in the course of the audit, including, but not limited to: The audit plan, audit testing, identification of any instances of noncompliance by the relevant DB QPAM, and an explanation of any corrective or remedial actions taken by the applicable DB QPAM; and

(12) Deutsche Bank must notify the Department at least 30 days prior to any substitution of an auditor, except that no such replacement will meet the requirements of this paragraph unless and until Deutsche Bank demonstrates to the Department's satisfaction that such new auditor is independent of Deutsche Bank, experienced in the matters that are the subject of the exemption, and capable of making the determinations required of this exemption;

(g) With respect to each ERISA-covered plan or IRA for which a DB QPAM provides asset management or other discretionary fiduciary services, each DB QPAM agrees: (1) To comply with ERISA and the Code, as applicable with respect to such ERISA-covered plan or IRA, and refrain from engaging in prohibited transactions that are not otherwise exempt; (2) not to waive, limit, or qualify the liability of the DB QPAM for violating ERISA or the Code or engaging in prohibited transactions; (3) not to require the ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the DB QPAM for violating ERISA or engaging in prohibited transactions, except for violations or prohibited transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of Deutsche Bank; (4) not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the DB QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such restrictions are applied consistently and in like manner to all such investors; and (5) not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors. Within two (2) months of the date of publication of a notice of exemption in the **Federal Register**, if granted, each DB QPAM will provide a notice to such effect to each ERISA-covered plan or IRA for which a DB QPAM provides asset management or other discretionary fiduciary services;

(h) Each DB QPAM will maintain records necessary to demonstrate that the conditions of this exemption, if granted, have been met, for six (6) years following the date of any transaction for which such DB QPAM relies upon the relief in the exemption; and

(i) The DB QPAMs comply with each condition of PTE 84–14, as amended, with the sole exception of the violation of Section I(g) that is attributable to the Conviction;

(j) The DB QPAMs will not employ any of the individuals that engaged in the spot/futures-linked market manipulation activities that led to the Conviction;

(k) The DB QPAMs will provide a notice of the proposed exemption, and if granted, a notice of final exemption, along with a separate summary describing the facts that led to the Conviction as well as a statement that Deutsche Bank has made a separate exemption request, in application D–11856, in connection with the potential conviction of DB Group Services UK Limited for one count of wire fraud in connection with DB Group Services UK Limited's role in manipulating LIBOR, which has been submitted to the Department, and a prominently displayed statement that the Conviction results in a failure to meet a condition in PTE 84–14 to each sponsor of an ERISA-covered plan and each beneficial owner of an IRA invested in an investment fund managed by a DB QPAM, or the sponsor of an investment fund in any case where a DB QPAM acts only as a sub-advisor to the investment fund;

(l) Deutsche Bank disgorged all of its profits generated by the spot/futures-linked market manipulation activities of DSK personnel that led to the Conviction;

(m) Deutsche Bank imposes internal procedures, controls, and protocols on DSK designed to reduce the likelihood of any recurrence of the conduct that is the subject of the Conviction, to the extent permitted by local law;

(n) DSK has not, and will not, provide fiduciary or QPAM services to ERISA-covered Plans or IRAs, and will not otherwise exercise discretionary control over plan assets;

(o) No DB QPAM is a subsidiary of DSK, and DSK is not a subsidiary of any DB QPAM;

(p) The criminal conduct of DSK that is the subject of the Conviction did not directly or indirectly involve the assets of any plan subject to Part 4 of Title I of ERISA or section 4975 of the Code; and

(q) A DB QPAM will not fail to meet the terms of this exemption solely because a different DB QPAM fails to satisfy the conditions for relief under this exemption described in Sections I(d), (e), (f), (g), (h), (i), and (k).

Section II: Definitions

(a) The term ''Conviction'' means the judgment of conviction against DSK to be entered on or about September 3, 2015, in Seoul Central District Court, relating to charges filed against DSK under Articles 176, 443, and 448 of South Korea's Financial Investment Services and Capital Markets Act for spot/futures-linked market price manipulation;

(b) The term ''DB QPAM'' means a ''qualified professional asset manager'' (as defined in section VI(a) [14] of PTE 84–14) that relies on the relief provided by PTE 84–14 and with respect to which DSK is a current or future ''affiliate'' (as defined in section VI(d) of PTE 84–14); and

(c) The term ''DSK'' means Deutsche Securities Korea Co., a South Korean ''affiliate'' of Deutsche Bank (as defined in section VI(c) of PTE 84–14).

Signed at Washington, DC, this 19th day of August, 2015.

Lyssa Hall,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

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[14] In general terms, a QPAM is an independent fiduciary that is a bank, savings and loan association, insurance company, or investment adviser that meets certain equity or net worth requirements and other licensure requirements and that has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Labor Exchange Reporting System

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, ''Labor Exchange Reporting System,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before September 23, 2015.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201508-1205-008* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters