

DEPARTMENT OF LABOR**Employee Benefits Security Administration****Exemptions From Certain Prohibited Transaction Restrictions**

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following: 2016–13, Deutsche Investment Management Americas Inc. and Certain Current and Future Asset Management Affiliates of Deutsche Bank AG, D–11856; 2016–14, Citigroup, Inc., D–11859; 2016–15, JPMorgan Chase & Co., D–11861; 2016–16, Barclays Capital Inc., D–11862; and 2016–17, UBS Assets Management; UBS Realty Investors LLC; UBS Hedge Fund Solutions LLC; UBS O’Conner LLC; and Certain Future Affiliates in UBS’s Asset Management and Wealth Management Americas Divisions, D–11863.

SUPPLEMENTARY INFORMATION: A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of

the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011)¹ and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Deutsche Investment Management Americas Inc. (DIMA) and Certain Current and Future Asset Management Affiliates of Deutsche Bank AG (Collectively, the Applicant or the DB QPAMs) Located in New York, New York

[Prohibited Transaction Exemption 2016–13; Exemption Application No. D–11856]

Temporary Exemption

On November 21, 2016, the Department of Labor (the Department) published a notice of proposed temporary exemption in the **Federal Register** at 81 FR 83336, proposing that certain entities with specified relationships to DSK or DB Group Services could continue to rely upon the relief provided by PTE 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)), notwithstanding the Convictions.

No relief from a violation of any other law is provided by this temporary exemption, including any criminal conviction described in the notice of proposed temporary exemption. Furthermore, the Department cautions that the relief in this temporary exemption will terminate immediately if, among other things, an entity within the Deutsche Bank corporate family is convicted of a crime described in Section I(g) of PTE 84–14 during the effective period of the temporary exemption. While such an entity could apply for a new exemption in that circumstance, the Department would not be obligated to grant that exemption. The terms of this temporary exemption

¹ The Department has considered exemption applications received prior to December 27, 2011 under the exemption procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

have been specifically designed to permit plans to terminate their relationships in an orderly and cost effective fashion in the event of an additional conviction or a determination that it is otherwise prudent for a plan to terminate its relationship with an entity covered by the temporary exemption.

Written Comments

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed temporary exemption, published in the **Federal Register** at 81 FR 83336 on November 21, 2016. All comments and requests for a hearing were due by November 26, 2016. The Applicant submitted a comment to the Department during the comment period in connection with the proposed temporary exemption. The comment letter contained the Applicant’s request for a number of revisions to the proposed exemption, and was further supplemented through additional correspondence, as requested by the Department. After considering the comment letter, the Department determined that some, but not all, of the requested revisions have merit, and has revised the exemption in the manner described below. All requested revisions and comments, accepted or omitted, will be reconsidered for purposes of the longer term relief proposed in the **Federal Register** at 81 FR 83400 on November 21, 2016, in connection with Exemption Application Number D–11908.

Revision 1. Definition of the Convictions

Section II(a) of the proposed temporary exemption reads, in relevant part, that “[f]or all purposes under this exemption, ‘conduct’ of any person or entity that is the ‘subject of [a] Conviction’ encompasses any conduct of Deutsche Bank and/or their personnel, that is described in the Plea Agreement (including the Factual Statement thereto), Court judgments (including the judgment of the Seoul Central District Court), criminal complaint documents from the Financial Services Commission in Korea, and other official regulatory or judicial factual findings that are a part of this record.”

The Applicant requests that the Department modify Section II(a) of the proposed temporary exemption, to narrow the scope of activity that is considered to be the “conduct” of a person or entity that is the subject of a Conviction. According to the Applicant, the definition as proposed may create

undue uncertainty for the Applicant and for plan fiduciaries and counterparties transacting with plans. Deutsche Bank states that the language in Section II(a) expands the “conduct” that is considered the subject of the Conviction beyond that which is described as criminal in the Plea Agreement. Moreover, Deutsche Bank suggests that the reference to “other official regulatory or judicial factual findings that are a part of this record” is vague and could potentially refer to findings by regulators or in civil proceedings involving the Applicant and disclosed to the Department.

The Department concurs with this comment, and has revised Section II(a) as follows: “For all purposes under this exemption, ‘conduct’ of any person or entity that is the ‘subject of [a] Conviction’ encompasses the factual allegations described in Paragraph 13 of the Plea Agreement filed in the District Court in Case Number 3:15-cr-00062-RNC, and in the ‘Criminal Acts’ section pertaining to ‘Defendant DSK’ in the Decision of the Seoul Central District Court.” The Department also deleted the parenthetical in paragraph I(a) regarding the term “participate in” and reworded the “participate in” parenthetical in paragraph I(c) to read: “(for purposes of this paragraph (c), “participated in” includes approving or condoning the misconduct underlying the Conviction).”

Revision 2. Indemnification and Notice Provisions in Section I(j).

Section I(j) of the proposed temporary exemption provides that, “[e]ffective as of the effective date of this temporary exemption, with respect to any arrangement, agreement, or contract between a DB QPAM and an ERISA-covered plan or IRA for which a DB QPAM provides asset management or other discretionary fiduciary services, each DB QPAM agrees” to comply with certain obligations described in Sections I(j)(1) through (7). Specifically, Section I(j)(7) requires such DB QPAMs “[t]o indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a violation of applicable laws, a breach of contract, or any claim arising out of the failure of such DB QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Convictions.”

The Applicant requested that the Department modify the language of Section I(j), including Section I(j)(7), in order to narrow the scope of the contractual obligations in two respects. First, the Applicant requested that the

contractual obligations described in Section I(j)(1) through (7) apply only with respect to any arrangement, agreement, or contract between a DB QPAM and an ERISA-covered plan or IRA under which the DB QPAM provides asset management or other discretionary fiduciary services *in reliance on PTE 84–14*. The Department declines to make this revision. Often, parties enter into arrangements with financial institutions in reliance on their QPAM status, irrespective of whether PTE 84–14 is strictly needed or in circumstances where more than one exemption may be available. The broad applicability of the conditions of Section I(j) ensures that the parties’ reliance is not misplaced; avoids needless disputes over the particular exemption relied upon by the QPAMs; and encourages a broad culture of compliance and accountability at the QPAMs, consistent with the rightful expectations of plans and IRAs that engage in transactions with QPAMs. A broad application of Section I(j) is in the interest of ERISA-covered plans and IRAs and protective of their rights. The DB QPAMs should be held to a high standard of integrity with respect to all ERISA-covered plans and IRAs, and not just those with respect to which it relies on PTE 84–14.

Secondly, the Applicant claims that the indemnification and hold harmless requirement in subparagraph (7) is overly broad and does not impose any limit on damages to be paid. Therefore, the Applicant requests that scope of the indemnification obligation in Section I(j)(7) be narrowed by removing the phrase “any damages resulting from a violation of applicable laws, a breach of contract, or any claim arising out of” and replacing it with “*the reasonable costs of terminating the investment management agreement with the DB QPAM and the retention of a replacement manager arising from.*” The Department declines to make the requested revision, as it would not be in the interest of or protective of the rights of ERISA-covered plans and IRAs to limit such plans’ contractual indemnification rights in the event that they have a reasonable basis to seek redress. However, the Department agrees to modify Section I(j)(7) to clarify that “applicable laws” refer to the fiduciary duties of ERISA and the prohibited transaction provisions of ERISA and the Code, which are likewise required to be included in the Policies described in Section I(h) of this exemption.

Therefore, Section I(j)(7) of the temporary exemption, as granted, requires a DB QPAM “[t]o indemnify

and hold harmless the ERISA-covered plan or IRA for any damages resulting from a violation of ERISA’s fiduciary duties and of ERISA and the Code’s prohibited transaction provisions, a breach of contract, or any claim arising out of the failure of such DB QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Convictions.”

The Department is also revising the notice requirement in paragraph (j) to require that each DB QPAM will provide a notice of its agreement under Section I(j) to each ERISA-covered plan and IRA for which a DB QPAM provides asset management or other discretionary fiduciary services, and to provide that it must be completed within six (6) months of the effective date of this temporary exemption.

Revision 3. Restrictions on Withdrawals in Section I(j)

Section I(j)(4) of the proposed temporary exemption requires that the DB QPAMs must agree “(n)ot to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the DB QPAM (including any investment in a separately managed account or pooled fund subject to ERISA and managed by such 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 as a result of an actual lack of liquidity of the underlying assets, provided that such restrictions are applied consistently and in like manner to all such investors.”

The Applicant requests that the Department modify Section I(j)(4) to include additional exceptions under which reasonable withdrawal restrictions on ERISA-covered plans and IRAs may be imposed. Furthermore, the Applicant requests that the withdrawal restrictions apply on a prospective basis only, due to the difficulty of modifying the terms of withdrawal in connection with prior investments in pooled funds that may become subject to ERISA.

The Department does not believe that an open-ended exception under which additional withdrawal restrictions may be imposed on ERISA-covered plans and IRAs invested in pooled funds is protective of the rights of participants and beneficiaries of those plans. However, the Department has modified Section I(j)(4) to make it clear that a “lack of liquidity” may include a range

of circumstances where reasonable restrictions are necessary to protect remaining investors in a pooled fund. Furthermore, the Department has modified Section I(j)(4) in order to clarify that the limitation of adverse consequences to those resulting from a lack of liquidity, valuation issues, or regulatory reasons, is only required with respect to investments in a pooled fund subject to ERISA entered into after the Conviction Date. In any such event, the restrictions must be reasonable and last no longer than reasonably necessary to avoid the adverse consequences to investors in the fund.

Therefore, Section I(j)(4) of this temporary exemption, as modified, requires DB QPAMs: “Not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the DB QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such 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. In connection with any such arrangements involving investments in pooled funds subject to ERISA entered into after the U.S. Conviction Date, the adverse consequences must relate to a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from immediately redeeming an ERISA-covered plan’s or IRA’s investment, and such restrictions must be applicable to all such investors and effective no longer than reasonably necessary to avoid the adverse consequences.”

Revision 4. Modification of Section I(g)

Section I(g) of the proposed temporary exemption provides that, “DSK and DB Group Services will not provide discretionary asset management services to ERISA-covered plans or IRAs, nor will otherwise act as a fiduciary with respect to ERISA-covered plan and IRA assets.” The Applicant requests that this condition be modified in order to allow DSK to act as a fiduciary by virtue of providing investment advice. The Applicant states that personnel of DSK may inadvertently become investment advice fiduciaries under Department Regulation section 2510.3–21 in the event such personnel give advice in connection with the execution of a trade that involves an ERISA-covered plan or IRA. According to the Applicant, this situation may arise in connection with

the execution of block trades or settlement of trades submitted by third parties that, unbeknownst to DSK, involve ERISA-covered plans and IRAs. Furthermore, the Applicant requests that Section I(g) be modified so that, in the event DSK or DB Group Services establish their own retirement plan, they will not be deemed to have violated this condition.

Based on these and similar concerns, the Department has revised Section I(g) to provide that “Other than with respect to employee benefit plans maintained or sponsored for their own employees or the employees of an affiliate, DSK and DB Group Services will not act as fiduciaries within the meaning of ERISA Section 3(21)(A)(i) or (iii), or Code Section 4975(e)(3)(A) or (C), with respect to ERISA-covered plan and IRA assets; in accordance with this provision, DSK and DB Group Services will not be treated as violating the conditions of this exemption solely because they acted as investment advice fiduciaries within the meaning of ERISA Section 3(21)(A)(ii), or Section 4975(e)(3)(B) of the Code, or because DB Group Services employees may be doublehatted, seconded, supervised or otherwise subject to the control of a DB QPAM, including in a discretionary fiduciary capacity with respect to the DB QPAM clients.”

Revision 6. Technical Corrections and Clarifications

The Department made several technical corrections and a clarification to the proposed temporary exemption requested by the Applicant, that are described below:

The date of the Korean Conviction correctly provides that January 25, 2016 is the date of the Korean Conviction in the prefatory language of this final temporary exemption.

Section I(i)(8) of the final temporary exemption is revised to require that “[t]he Audit Committee of Deutsche Bank’s Supervisory Board is provided a copy of each Audit Report; and a senior executive officer with a direct reporting line to the highest ranking compliance officer of Deutsche Bank must review the Audit Report for each DB QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report.”

The Department is revising Section I(j)(1) of the proposed temporary exemption in order to clarify the obligations of DB QPAMs applicable with respect to ERISA-covered plans and IRAs. In this regard, Section I(j)(1) of the final temporary exemption provides that each DB QPAM agrees “[t]o comply with ERISA and the Code,

as applicable with respect to such ERISA-covered plan or IRA; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions); and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA, as applicable, with respect to each such ERISA-covered plan and IRA.”

Section II(b) of the final temporary exemption corrects the typo in “DB Group Services” in the proposed temporary exemption. Section II(b) of the final temporary exemption correctly refers to section VI(d)(1) of PTE 84–14 in the definition of “affiliate.” The prefatory language and Section II(e) of the final temporary exemption correctly provides that “DB Group Services (UK) Limited” is the full name of DB Group Services. Section II(g) of the final temporary exemption correctly refers to the “Agreed Statement of Fact” and “the charge brought” in connection with the definition of “Plea Agreement,” and the phrase “related to the manipulation of the London Interbank Offered Rate (LIBOR)” has been struck from technical description of the charge.

Finally, the Department clarifies that, to the extent that the Training requirements in Section I(h)(2) of the temporary exemption and PTE 2016–12 are consistent, such provisions should be harmonized so that the sequential exemptions do not inadvertently require multiple trainings per year covering the same material.

After giving full consideration to the entire record, the Department has decided to grant the temporary exemption. The complete application file for the temporary exemption (Exemption Application No. D–11856), including all supplemental submissions received by the Department, is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department’s decision to grant this Extension, refer to the notice of proposed extension, published on November 21, 2016, at 81 FR 8336.

Temporary Exemption Operative Language

Section I: Covered Transactions

Certain entities with specified relationships to Deutsche Bank AG (hereinafter, the DB QPAMs, as further defined in Section II(b)) will not be precluded from relying on the

exemptive relief provided by Prohibited Transaction Exemption (PTE) 84-14,² notwithstanding (1) the “Korean Conviction” against Deutsche Securities Korea Co., a South Korean affiliate of Deutsche Bank AG (hereinafter, DSK, as further defined in Section II(f)), entered on January 25, 2016; and (2) the “US Conviction” against DB Group Services (UK) Limited, an affiliate of Deutsche Bank based in the United Kingdom (hereinafter, DB Group Services, as further defined in Section II(e)), scheduled to be entered on April 3, 2017 (collectively, the Convictions, as further defined in Section II(a)),³ for a period of up to 12 months beginning on the U.S. Conviction Date (as further defined in Section II(d)), 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 and DB Group Services that is the subject of the Convictions;

(b) The DB QPAMs (including their officers, directors, agents other than Deutsche Bank, and employees of such DB QPAMs) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the Convictions;

(c) The DB QPAMs will not employ or knowingly engage any of the individuals that participated in the criminal conduct that is the subject of the Convictions (for purposes of this paragraph (c), “participated in” includes approving or condoning the misconduct underlying the Convictions);

(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 or the Code and managed by such DB QPAM to enter into any transaction with DSK or DB Group Services, or engage DSK or DB Group Services to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be

within the scope of relief provided by an administrative or statutory exemption;

(e) Any failure of the DB QPAMs to satisfy Section I(g) of PTE 84-14 arose solely from the Convictions;

(f) A DB QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA) in a manner that it knew or should have known would: Further the criminal conduct that is the subject of the Convictions; or cause the QPAM, affiliates, or related parties to directly or indirectly profit from the criminal conduct that is the subject of the Convictions;

(g) Other than with respect to employee benefit plans maintained or sponsored for their own employees or the employees of an affiliate, DSK and DB Group Services will not act as fiduciaries within the meaning of ERISA Section 3(21)(A)(i) or (iii), or Code Section 4975(e)(3)(A) or (C), with respect to ERISA-covered plan and IRA assets; in accordance with this provision, DSK and DB Group Services will not be treated as violating the conditions of this exemption solely because they acted as investment advice fiduciaries within the meaning of ERISA Section 3(21)(A)(ii), or Section 4975(e)(3)(B) of the Code, or because DB Group Services employees may be doublehatted, seconded, supervised or otherwise subject to the control of a DB QPAM, including in a discretionary fiduciary capacity with respect to the DB QPAM clients;

(h)(1) Each DB QPAM must immediately develop, implement, maintain, and follow written policies and procedures (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 corporate management and business activities, including the corporate management and business activities of DB Group Services and DSK;

(ii) The DB QPAM fully complies with ERISA’s fiduciary duties and with 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 temporary exemption; and

(vii) Any violation of, or failure to comply with, an item in subparagraph (ii) through (vi), is corrected promptly upon discovery, and any such violation or compliance failure not promptly corrected is reported, upon the discovery of such failure to promptly correct, in writing, to appropriate corporate officers, the head of compliance and the General Counsel (or their functional equivalent) of the relevant DB QPAM, the independent auditor responsible for reviewing compliance with the Policies, and an appropriate 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. A DB QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance promptly when discovered or when it reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (vii);

(2) Each DB QPAM must immediately develop and implement a program of training (the Training), conducted at least annually, for all relevant DB QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must 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), ethical conduct, the consequences for not complying with the conditions of this temporary exemption (including any loss of exemptive relief provided

² 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).

³ 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 criminal activity therein described.

herein), and prompt reporting of wrongdoing;

(i)(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 and the Code, to evaluate the adequacy of, and the DB QPAM's compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. The audit period under this temporary exemption begins on October 24, 2016, and continues through the entire effective period of this temporary exemption (the Audit Period). The Audit Period will cover the contiguous periods of time during which PTE 2016-12, the Extension of PTE 2015-15 (81 FR 75153, October 28, 2016) (the Extension) and this temporary exemption are effective. The audit terms contained in this paragraph (i) supersede the terms of paragraph (f) of the Extension. However, in determining compliance with the conditions for the Extension and this temporary exemption, including the Policies and Training requirements, for purposes of conducting the audit, the auditor will rely on the conditions for exemptive relief as then applicable to the respective portions of the Audit Period. The audit must be completed no later than six (6) 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 must specifically require the auditor to determine whether each DB QPAM has developed, implemented, maintained, and followed the Policies in accordance with the conditions of this temporary exemption, and has developed and implemented the Training, as required herein;

(4) The auditor's engagement must specifically require the auditor to test each DB QPAM's operational compliance with the Policies and Training. In this regard, the auditor must test a sample of each QPAM's transactions involving ERISA-covered plans and IRAs sufficient in size and nature to afford the auditor a reasonable basis to determine the operational

compliance with the Policies and Training;

(5) For each audit, on or before the end of the relevant period described in Section I(i)(1) for completing the audit, the auditor must 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 must include the auditor's specific determinations regarding: The adequacy of the DB QPAM's Policies and Training; the DB QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective DB QPAM's noncompliance with the written Policies and Training described in Section I(h) above. Any determination 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 must be promptly addressed by such DB QPAM, and any action taken by such DB QPAM to address such recommendations must be included in an addendum to the Audit Report (which addendum is completed prior to the certification described in Section I(i)(7) below). Any determination by the auditor that the respective DB QPAM has implemented, maintained, and followed sufficient Policies and Training must 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 temporary exemption;

(6) The auditor must notify the respective DB QPAM of any instance 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, must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this temporary exemption; addressed, corrected, or remedied any inadequacy 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 temporary exemption, and with the applicable provisions of ERISA and the Code;

(8) The Audit Committee of Deutsche Bank's Supervisory Board is provided a copy of each Audit Report; and a senior executive officer with a direct reporting line to the highest ranking compliance officer of Deutsche Bank must review the Audit Report for each DB QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report;

(9) Each DB QPAM provides its certified Audit Report, by regular mail to: The Department's Office of Exemption Determinations (OED), 200 Constitution Avenue NW., Suite 400, Washington, DC 20210, or by private carrier to: 122 C Street NW., Suite 400, Washington, DC 20001-2109, no later than 45 days following its completion. The Audit Report will be part of the public record regarding this temporary exemption. Furthermore, each DB QPAM must make 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 must 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 entity retained in connection with such QPAM's compliance with the Training or Policies conditions of this temporary exemption, no later than six (6) months after the effective date of this temporary exemption (and one month after the execution of any agreement thereafter);

(11) The auditor must 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 instance of noncompliance by the relevant DB QPAM; and an explanation of any corrective or remedial action 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;

(j) As of the effective date of this temporary exemption, with respect to any arrangement, agreement, or contract between a DB QPAM and an 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; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions); and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA, as applicable, with respect to each such ERISA-covered plan and IRA;

(2) Not to require (or otherwise cause) the ERISA-covered plan or IRA 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 respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such 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. In connection with any such arrangements involving investments in pooled funds subject to ERISA entered into after the U.S. Conviction Date, the adverse consequences must relate to a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from immediately redeeming an ERISA-covered plan's or IRA's investment, and such restrictions must be applicable to all such investors and effective no longer than reasonably necessary to avoid the adverse consequences;

(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;

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the DB QPAM for a violation of such agreement's terms, except for liability 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 and its affiliates; and

(7) To indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a violation of ERISA's fiduciary duties and of ERISA and the Code's prohibited transaction provisions, a breach of contract, or any claim arising out of the failure of such DB QPAM to qualify for the exemptive relief provided by PTE 84-14 as a result of a violation of Section I(g) of PTE 84-14 other than the Convictions;

Within six (6) months of the effective date of this temporary exemption, each DB QPAM will provide a notice of its agreement and obligations under this Section I(j) to each ERISA-covered plan and IRA for which the DB QPAM provides asset management or other discretionary fiduciary services;

(k) The DB QPAMs comply with each condition of PTE 84-14, as amended, with the sole exceptions of the violations of Section I(g) of PTE 84-14 that are attributable to the Convictions;

(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 against DSK entered on January 25, 2016, in Seoul Central District Court;

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

(n) During the effective period of this temporary exemption, Deutsche Bank: (1) Immediately discloses to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) that Deutsche Bank or any of its affiliates enter into with the U.S. Department of Justice, to the extent such DPA or NPA involves conduct described in Section I(g) of PTE 84-14 or section 411 of ERISA; and (2)

immediately provides the Department any information requested by the Department, as permitted by law, regarding the agreement and/or the conduct and allegations that led to the agreements; and

(o) A DB QPAM will not fail to meet the terms of this temporary exemption, solely because a different DB QPAM fails to satisfy a condition for relief under this temporary exemption described in Sections I(c), (d), (h), (i), (j), (k), and (m).

Section II: Definitions

(a) The term "Convictions" means (1) the judgment of conviction against DB Group Services, in Case 3:15-cr-00062-RNC to be entered in the United States District Court for the District of Connecticut to a single count of wire fraud, in violation of 18 U.S.C. § 1343, and (2) the judgment of conviction against DSK entered on January 25, 2016, 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. For all purposes under this exemption, "conduct" of any person or entity that is the "subject of [a] Conviction" encompasses the factual allegations described in Paragraph 13 of the Plea Agreement filed in the District Court in Case Number 3:15-cr-00062-RNC, and in the "Criminal Acts" section pertaining to "Defendant DSK" in the Decision of the Seoul Central District Court;

(b) The term "DB QPAM" means a "qualified professional asset manager" (as defined in section VI(a)⁴ of PTE 84-14) that relies on the relief provided by PTE 84-14 and with respect to which DSK or DB Group Services is a current or future "affiliate" (as defined in section VI(d)(1) of PTE 84-14). For purposes of this temporary exemption, Deutsche Bank Securities, Inc. (DBSI), including all entities over which it exercises control; and Deutsche Bank AG, including all of its branches, are excluded from the definition of a DB QPAM;

(c) The term "Deutsche Bank" means Deutsche Bank AG but, unless indicated otherwise, does not include its subsidiaries or affiliates;

⁴ 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.

(d) The term “U.S. Conviction Date” means the date that a judgment of conviction against DB Group Services, in Case 3:15-cr-00062-RNC, is entered in the United States District Court for the District of Connecticut, currently scheduled for April 3, 2017;

(e) The term “DB Group Services” means DB Group Services (UK) Limited, an “affiliate” of Deutsche Bank (as defined in Section VI(c) of PTE 84–14) based in the United Kingdom;

(f) 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);

(g) The term “Plea Agreement” means the Plea Agreement (including the Agreed Statement of Fact), dated April 23, 2015, between the Antitrust Division and Fraud Section of the Criminal Division of the U.S. Department of Justice (the DOJ) and DB Group Services resolving the charge brought by the DOJ in Case 3:15-cr-00062-RNC against DB Group Services for wire fraud in violation of Title 18, United States Code, Section 1343; and

(h) The terms “ERISA-covered plan” and “IRA” mean, respectively, a plan subject to Part 4 of Title I of ERISA and a plan subject to section 4975 of the Code.

Effective Date: This temporary exemption will be effective for the period beginning on the U.S. Conviction Date, and ending on the earlier of the date that is twelve months following the U.S. Conviction Date; or the effective date of a final agency action made by the Department in connection with Exemption Application No. D–11908, an application for long-term exemptive relief for the covered transactions described herein.

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

Citigroup, Inc. (Citigroup or the Applicant) Located in New York, New York

[Prohibited Transaction Exemption 2016–14; Exemption Application No. D–11859]

Temporary Exemption

On November 21, 2016, the Department of Labor (the Department) published a notice of proposed temporary exemption in the **Federal Register** at 81 FR 83350, proposing that certain entities with specified relationships to Citigroup could continue to rely upon the relief provided by PTE 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)), notwithstanding the Conviction for a period of up to twelve months beginning on the Conviction Date.

No relief from a violation of any other law is provided by this temporary exemption, including any criminal conviction described in the proposed temporary exemption. Furthermore, the Department cautions that the relief in this temporary exemption will terminate immediately if, among other things, an entity within the Citigroup corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Conviction) during the effective period of the temporary exemption. While such an entity could apply for a new exemption in that circumstance, the Department would not be obligated to grant the exemption. The terms of this temporary exemption have been specifically designed to permit plans to terminate their relationships in an orderly and cost effective fashion in the event of an additional conviction or a determination that it is otherwise prudent for a plan to terminate its relationship with an entity covered by the temporary exemption.

Written Comments

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed temporary exemption, published in the **Federal Register** at 81 FR 83350 on November 21, 2016. All comments and requests for a hearing were due by November 28, 2016. The Department received written comments from the Applicant, the substance of which is discussed below.

During the comment period, the Applicant submitted a request for the Department to make a number of revisions to the proposed exemption. Thereafter, the Applicant submitted additional information in support of its request. After considering these submissions, the Department has determined to make certain of the revisions sought by the Applicant. The revisions declined by the Department, as well as the revisions described below, will be reconsidered as part of the review process for the proposed five year exemption published in the **Federal Register** at 81 FR 83416 on November 21, 2016, in connection with Exemption Application Number D–11909.

Revision 1. Deletion of Reference to the Markets and Securities Services Business of Citigroup in Section I(d) of the Proposed Exemption

Section I(d) of the proposed temporary exemption provides that “[a] Citigroup Affiliated 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 or the Code and managed by such Citigroup Affiliated QPAM, to enter into any transaction with Citicorp or the Markets and Securities Services Business of Citigroup, or to engage Citicorp or the Markets and Securities Services Business of Citigroup, to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption[.]”

The Applicant represents that a sudden cessation of services on December 15, 2016, by the Markets and Securities Services Business of Citigroup to affected plans, such as agency securities lending services, would be disruptive to those plans. The Applicant seeks deletion of the condition’s reference to “the Markets and Securities Services Business of Citigroup.” The Department concurs with this comment, as has revised the condition accordingly. However, the Department may reconsider making such modification in connection with its determination whether or not to grant relief in Exemption Application Number D–11909, the proposed five year exemption published in the **Federal Register** at 81 FR 83416 on November 21, 2016.

Revision 2. Deletion of Reference to the Markets and Securities Services Business of Citigroup in Section I(g) of the Proposed Exemption

Section I(g) of the proposed temporary exemption provides that “Citicorp and the Markets and Securities Services Business of Citigroup have not provided nor will provide discretionary asset management services to ERISA-covered plans or IRAs, or otherwise act as a fiduciary with respect to ERISA-covered plan or IRA assets[.]”

The Applicant represents that the Markets and Securities Services Business of Citigroup may be deemed to involve fiduciary conduct. The Applicant states that requiring those services to be terminated suddenly would be disruptive to affected plans. The Applicant therefore seeks deletion

of the condition's reference to "the Markets and Securities Services Business of Citigroup."

The Department concurs with this comment, and has revised the condition in this final temporary exemption, in order to avoid a significant disruption and damages to affected ERISA-covered plans and IRAs. Section I(g) of the final exemption now provides that "Other than with respect to employee benefit plans maintained or sponsored for their own employees or the employees of an affiliate, Citicorp will not act as a fiduciary within the meaning of ERISA Section 3(21)(A)(i) or (iii), or Code Section 4975(e)(3)(A) or (C), with respect to ERISA-covered plan and IRA assets; in accordance with this provision, Citicorp will not be treated as violating the conditions of this exemption solely because they acted as investment advice fiduciaries within the meaning of ERISA Section 3(21)(A)(ii) or Section 4975(e)(3)(B) of the Code."

Revision 3. Deletion of Reference to the Markets and Securities Services Business of Citigroup in Section I(h) of the Proposed Exemption.

Section I(h)(1)(i) provides that "each Citigroup Affiliated QPAM must develop, implement, maintain, and follow written policies (the Policies) requiring and reasonably designed to ensure that:" . . . "(i) The asset management decisions of the Citigroup Affiliated QPAM are conducted independently of the corporate management and business activities of Citigroup, including the Markets and Securities Services Business of Citigroup[.]"

The Applicant seeks deletion of the condition's reference to the Markets and Securities Services Business of Citigroup, in order to avoid disruption to affected plans and IRAs. The Department concurs with this comment, and has revised the condition accordingly.

Revision 4. References to the Conviction

The prefatory language of Section I of the proposed temporary exemption provides that "the Citigroup Affiliated QPAMs and the Citigroup Related QPAMs, as defined in Sections II(a) and II(b), respectively, will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84-14 (PTE 84-14 or the QPAM Exemption), notwithstanding the judgment of conviction against Citicorp (the Conviction, as defined in Section II(c)), for engaging in a conspiracy to: (1) Fix the price of, or (2) eliminate competition in the purchase or sale of the euro/U.S. dollar currency

pair exchanged in the Foreign Exchange (FX) Spot Market."

Furthermore, Section II(e) of the proposed temporary exemption provides that, in relevant part, "[t]he term 'Conviction' means the judgment of conviction against Citigroup for violation of the Sherman Antitrust Act, 15 U.S.C. 1, which is scheduled to be entered in the District Court for the District of Connecticut (the District Court) (Case Number 3:15-cr-78-SRU), in connection with Citigroup, through one of its euro/U.S. dollar (EUR/USD) traders, entering into and engaging in a combination and conspiracy to fix, stabilize, maintain, increase or decrease the price of, and rig bids and offers for, the EUR/USD currency pair exchanged in the FX spot market by agreeing to eliminate competition in the purchase and sale of the EUR/USD currency pair in the United States and elsewhere. For all purposes under this temporary exemption, if granted, "conduct" of any person or entity that is the "subject of [a] Conviction" encompasses any conduct of Citigroup and/or their personnel, that is described in the Plea Agreement, (including the Factual Statement), and other official regulatory or judicial factual findings that are a part of this record[.]"

The Applicant requests that the Department modify the prefatory language in Section I and the language of Section II(e) of the proposed temporary exemption, to more precisely define the term "Conviction" and narrow the scope of activity that is considered to be the "conduct" of a person or entity that is the subject of a Conviction. According to the Applicant, the reference to Conviction in the prefatory language of Section I may be confusing for plans and their counterparties. Furthermore, the Applicant states that the proposed definition of Conviction in Section II(e) expands the "conduct" that is considered the subject of the Conviction beyond that which is described as criminal in the Plea Agreement, and the reference to "other official regulatory or judicial factual findings that are a part of this record" is vague and could potentially refer to findings by regulators or in civil proceedings involving the Applicant and disclosed to the Department.

The Department concurs with the Applicant's comment and has modified the language in the final temporary exemption to provide that "[t]he term "Conviction" means the judgment of conviction against Citicorp for violation of the Sherman Antitrust Act, 15 U.S.C. 1, which is scheduled to be entered in the District Court for the District of

Connecticut (the District Court) (Case Number 3:15-cr-78-SRU). For all purposes under this exemption, "conduct" of any person or entity that is the "subject of [a] Conviction" encompasses the conduct described in Paragraph 4(g)-(i) of the Plea Agreement filed in the District Court in Case Number 3:15-cr-78-SRU."

Furthermore, the Department deleted the parenthetical in paragraph (a) regarding the term "participate in" and reworded the "participate in" parenthetical in paragraph (c) to read: "(for purposes of this paragraph (c), "participated in" includes approving or condoning the misconduct underlying the Conviction)."

Revision 5. The Policies and Training in Section I(h)

Section I(h)(1) of the proposed temporary exemption requires each Citigroup Affiliated QPAM to "develop, implement, maintain and follow" the written policies and procedures (the Policies) described in Section I(h)(1)(i) through (vii). Furthermore, Section I(h)(2) requires each Citigroup Affiliated QPAM to "develop and implement a program of training (the Training)" described therein. In its comment and in subsequent conversations with the Department, the Applicant requested that Sections I(h)(1) and (2) be modified to allow the Citigroup Affiliated QPAMs a period of up to six (6) months following the date of the Conviction to meet these requirements. The Department concurs with the Applicant's request. Therefore, in the final temporary exemption, the Department has modified Section I(h)(1) and (2) to provide that, respectively, "Within six (6) months of the Conviction Date, each Citigroup Affiliated QPAM must develop, implement, maintain, and follow written policies and procedures (the Policies) . . ." and "Within six (6) months of the Conviction Date, each Citigroup Affiliated QPAM must develop and implement a program of training (the Training) . . ."

Revision 6. Indemnification Provision in Section I(i)

Section I(i) of the proposed temporary exemption provides that, "(1) Effective as of the effective date of this temporary exemption, with respect to any arrangement, agreement, or contract between a Citigroup Affiliated QPAM and an ERISA-covered plan or IRA for which such Citigroup Affiliated QPAM provides asset management or other discretionary fiduciary services, each Citigroup Affiliated QPAM agrees: ". . . "(vii) To indemnify and hold harmless

the ERISA-covered plan or IRA for any damages resulting from a violation of applicable laws, a breach of contract, or any claim arising out of the failure of such Citigroup Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Conviction.”

The Applicant requested that the Department modify the language of Sections I(i)(1) and I(i)(1)(vii) in order to narrow the scope of the contractual obligations in two respects. First, the Applicant requested that the contractual obligations described in Section I(i) apply only with respect to any arrangement, agreement, or contract between a Citigroup Affiliated QPAM and an ERISA-covered plan or IRA under which the Citigroup Affiliated QPAM provides asset management or other discretionary fiduciary services *in reliance on PTE 84–14*. The Department declines to make this revision. Often, parties enter into arrangements with financial institutions in reliance on their QPAM status, irrespective of whether PTE 84–14 is strictly needed or in circumstances where more than one exemption may be available. The broad applicability of the conditions of Section I(i) ensures that the parties’ reliance is not misplaced; avoids needless disputes over the particular exemption relied upon by the QPAMs; and encourages a broad culture of compliance and accountability at the QPAMs, consistent with the rightful expectations of plans and IRAs that engage in transactions with QPAMs. A broad application of Section I(i) is in the interest of ERISA-covered plans and IRAs and protective of their rights. The Citigroup Affiliated QPAMs should be held to a high standard of integrity with respect to all ERISA-covered plans and IRAs, and not just those with respect to which it relies on PTE 84–14.

Secondly, the Applicant requested that Section I(i)(1)(vii) be deleted, or alternatively, that the provision should be modified by adding the phrase “To the extent required by applicable law,” at the beginning of the paragraph. The Applicant claims that the indemnification and hold harmless requirement in subparagraph (vii) would unnecessarily create confusion and likely extensive litigation in the event of a claim by a plan or IRA for indemnity. The Department declines to make the requested revision, but agrees to modify the section to make it clear that the “applicable laws” referred to in Section I(i)(1)(vii) refer to the fiduciary duties of ERISA and the prohibited transaction provisions of ERISA and the Code. The requirement to comply with

ERISA’s fiduciary duties and with ERISA and the Code’s prohibited transaction provisions, is included in the Policies required under the exemption. Therefore, Section I(i)(1)(vii) of the temporary exemption, as granted, requires a Citigroup Affiliated QPAM “[t]o indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a violation of ERISA’s fiduciary duties and of ERISA and the Code’s prohibited transaction provisions, a breach of contract, or any claim arising out of the failure of such Citigroup Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Conviction.”

Revision 7. Restrictions on Withdrawals in Section I(i)

Section I(i)(1)(iv) of the proposed temporary exemption requires that the Citigroup Affiliated QPAMs must agree “[n]ot to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the Citigroup Affiliated QPAM (including any investment in a separately managed account or pooled fund subject to ERISA and managed by such 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 as a result of an actual lack of liquidity of the underlying assets, provided that such restrictions are applied consistently and in like manner to all such investors.”

The Department has modified Section I(i)(1)(iv) to make it clear that a lack of liquidity may include similar circumstances where reasonable restrictions are necessary to protect remaining investors in a pooled fund. Furthermore, the Department has modified Section I(i)(4) in order to clarify that the limitation of adverse consequences to those resulting from a lack of liquidity, valuation issues, or regulatory reasons, is only required with respect to investments in a pooled fund subject to ERISA entered into after the Conviction Date. In any such event, the restrictions must be reasonable and last no longer than reasonably necessary to avoid the adverse consequences to investors in the fund.

Therefore, Section I(i)(1)(iv) of the final temporary exemption requires Citigroup Affiliated QPAMs “Not to restrict the ability of such ERISA-covered plan or IRA to terminate or

withdraw from its arrangement with the Citigroup Affiliated QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such 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. In connection with any such arrangements involving investments in pooled funds subject to ERISA entered into after the Conviction Date, the adverse consequences must relate to a lack of liquidity of the pooled fund’s underlying assets, valuation issues, or regulatory reasons that prevent the fund from immediately redeeming an ERISA-covered plan’s or IRA’s investment, and such restrictions are applicable to all such investors and effective no longer than reasonably necessary to avoid the adverse consequences.”

Revision 8. Definition of Citigroup Affiliated QPAM in Section II(a)

Section II(a) of the proposed temporary exemption precludes Citicorp and “Citigroup’s Markets and Securities Services Business” from acting as QPAMs. The Department is removing this reference to “Citigroup’s Markets and Securities Services Business” for purposes of this one year exemption.

Revision 9. New Definition of Citicorp

The Applicant requested in its comment that the Department add a definition for the term “Citicorp.” The Department concurs and has modified the temporary exemption by adding Section II(g), a definition for the term “Citicorp,” which is defined as “a financial services holding company organized and existing under the laws of Delaware and does not include any subsidiaries or other affiliates.”

Revision 10. Technical Corrections

The Department has made certain technical corrections to the proposed temporary exemption requested by the Applicant that are described below:

The references to the definition of “Conviction” and “Conviction Date” in the prefatory language of Section I are changed to correctly read “the Conviction, as defined in Section II(e)” and “the Conviction Date, as defined in Section II(f).”

After giving full consideration to the record, the Department has decided to grant the temporary exemption, as described above. The complete application file (Application No. D–11859) is available for public inspection

in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1515, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this temporary exemption, refer to the notice of proposed temporary exemption published on November 21, 2016 at 81 FR 83350.

Temporary Exemption Operative Language

Section I: Covered Transactions

Certain entities with specified relationships to Citigroup (hereinafter, the Citigroup Affiliated QPAMs and the Citigroup Related QPAMs, as defined in Sections II(a) and II(b), respectively) will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84-14 (PTE 84-14 or the QPAM Exemption),⁵ notwithstanding the judgment of conviction against Citicorp (the Conviction, as defined in Section II(e)),⁶ for a period of up to twelve months beginning on the date of the Conviction (the Conviction Date, as defined in Section II(f)), provided that the following conditions are satisfied:

(a) Other than a single individual who worked for a non-fiduciary business within Citigroup's Markets and Securities Services Business, and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, the Citigroup Affiliated QPAMs and the Citigroup Related QPAMs (including their officers, directors, agents other than Citicorp, and employees of such Citigroup QPAMs) did not know of, have reason to know of, or participate in the criminal conduct of Citicorp that is the subject of the Conviction;

(b) Other than a single individual who worked for a non-fiduciary business within Citigroup's Markets and Securities Services Business, and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, the Citigroup Affiliated QPAMs and the

Citigroup Related QPAMs (including their officers, directors, agents other than Citicorp, and employees of such Citigroup Affiliated QPAMs), did not receive direct compensation, or knowingly receive indirect compensation in connection with the criminal conduct that is the subject of the Conviction;

(c) The Citigroup Affiliated QPAMs will not employ or knowingly engage any of the individuals that participated in the criminal conduct that is the subject of the Conviction (for purposes of this paragraph (c), "participated in" includes approving or condoning the misconduct underlying the Conviction);

(d) A Citigroup Affiliated 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 or the Code and managed by such Citigroup Affiliated QPAM, to enter into any transaction with Citicorp, or to engage Citicorp to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e) Any failure of a Citigroup Affiliated QPAM or a Citigroup Related QPAM to satisfy Section I(g) of PTE 84-14 arose solely from the Conviction;

(f) A Citigroup Affiliated QPAM or a Citigroup Related QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA) in a manner that it knew or should have known would: further the criminal conduct that is the subject of the Conviction; or cause the Citigroup Affiliated QPAM or the Citigroup Related QPAM or its affiliates or related parties to directly or indirectly profit from the criminal conduct that is the subject of the Conviction;

(g) Other than with respect to employee benefit plans maintained or sponsored for their own employees or the employees of an affiliate, Citicorp will not act as a fiduciary within the meaning of ERISA Section 3(21)(A)(i) or (iii), or Code Section 4975(e)(3)(A) or (C), with respect to ERISA-covered plan and IRA assets; in accordance with this provision, Citicorp will not be treated as violating the conditions of this exemption solely because they acted as investment advice fiduciaries within the meaning of ERISA Section 3(21)(A)(ii) or Section 4975(e)(3)(B) of the Code;

(h)(1) Within six (6) months of the Conviction Date, each Citigroup Affiliated QPAM must develop,

implement, maintain, and follow written policies and procedures (the Policies) requiring and reasonably designed to ensure that:

(i) The asset management decisions of the Citigroup Affiliated QPAM are conducted independently of the corporate management and business activities of Citigroup;

(ii) The Citigroup Affiliated QPAM fully complies with ERISA's fiduciary duties, and with 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 Citigroup Affiliated 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 Citigroup Affiliated QPAM to regulators, including but not limited to, the Department, 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 Citigroup Affiliated 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 plans and IRA clients;

(vi) The Citigroup Affiliated QPAM complies with the terms of this temporary exemption; and

(vii) Any violation of, or failure to comply with an item in subparagraphs (ii) through (vi), is corrected promptly upon discovery, and any such violation or compliance failure not promptly corrected is reported, upon discovering the failure to promptly correct, in writing, to appropriate corporate officers, the head of compliance, and the General Counsel (or their functional equivalent) of the relevant Citigroup Affiliated QPAM, and an appropriate fiduciary of any affected ERISA-covered plan or IRA, where such fiduciary is independent of Citigroup; 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 Citigroup or beneficially owned by an employee of Citigroup or its affiliates, such fiduciary does not need to be independent of Citigroup. A Citigroup Affiliated QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies,

⁵ 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).

⁶ 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 violation of the Sherman Antitrust Act, Title 15 United States Code, Section 1.

provided that it corrects any instance of noncompliance promptly when discovered, or when it reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (vii);

(2) Within six (6) months of the Conviction Date, each Citigroup Affiliated QPAM must develop and implement a program of training (the Training), conducted at least annually, for all relevant Citigroup Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must 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), ethical conduct, the consequences for not complying with the conditions of this temporary exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing;

(i)(1) As of the effective date of this temporary exemption, with respect to any arrangement, agreement, or contract between a Citigroup Affiliated QPAM and an ERISA-covered plan or IRA for which a Citigroup Affiliated QPAM provides asset management or other discretionary fiduciary services, each Citigroup Affiliated QPAM agrees:

(i) To comply with ERISA and the Code with respect to each such ERISA-covered plan and IRA, as applicable; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions); and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA, as applicable, with respect to each such ERISA-covered plan and IRA;

(ii) Not to require (or otherwise cause) the ERISA covered plan or IRA to waive, limit, or qualify the liability of the Citigroup Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(iii) 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 Citigroup Affiliated QPAM for violating ERISA or the Code, 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, which is independent of Citigroup, and its affiliates;

(iv) Not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the Citigroup Affiliated QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such 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. In connection with any such arrangements involving investments in pooled funds subject to ERISA entered into after the Conviction Date, the adverse consequences must relate to a lack of liquidity of the pooled fund's underlying assets, valuation issues, or regulatory reasons that prevent the fund from immediately redeeming an ERISA-covered plan's or IRA's investment, and such restrictions are applicable to all such investors and effective no longer than reasonably necessary to avoid the adverse consequences;

(v) Not to impose any fee, penalty, or charge 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 each such fee is applied consistently and in like manner to all such investors;

(vi) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the Citigroup Affiliated QPAM for a violation of such agreement's terms, except for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary which is independent of Citigroup, and its affiliates; and

(vii) To indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a violation of ERISA's fiduciary duties and of ERISA and the Code's prohibited transaction provisions, a breach of contract, or any claim arising out of the failure of such Citigroup Affiliated QPAM to qualify for the exemptive relief provided by PTE 84-14 as a result of a violation of Section I(g) of PTE 84-14 other than the Conviction;

(2) Within six (6) months of the date of the Conviction, each Citigroup Affiliated QPAM will provide a notice

of its agreement and obligations under this Section I(i) to each ERISA-covered plan and IRA for which a Citigroup Affiliated QPAM provides asset management or other discretionary fiduciary services;

(j) The Citigroup Affiliated QPAMs must comply with each condition of PTE 84-14, as amended, with the sole exception of the violation of Section I(g) of PTE 84-14 that is attributable to the Conviction;

(k) Each Citigroup Affiliated QPAM will maintain records necessary to demonstrate that the conditions of this temporary exemption have been met, for six (6) years following the date of any transaction for which such Citigroup Affiliated QPAM relies upon the relief in the temporary exemption;

(l) During the effective period of this temporary exemption, Citigroup: (1) Immediately discloses to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) that Citigroup or an affiliate enters into with the U.S. Department of Justice to the extent such DPA or NPA involves conduct described in Section I(g) of PTE 84-14 or section 411 of ERISA; and

(2) Immediately provides the Department any information requested by the Department, as permitted by law, regarding the agreement and/or the conduct and allegations that led to the agreement; and

(m) A Citigroup Affiliated QPAM or a Citigroup Related QPAM will not fail to meet the terms of this temporary exemption solely because a different Citigroup Affiliated QPAM or Citigroup Related QPAM fails to satisfy a condition for relief under this temporary exemption, described in Sections I(c), (d), (h), (i), (j), and (k).

Section II: Definitions

(a) The term "Citigroup Affiliated QPAM" means a "qualified professional asset manager" (as defined in section VI(a)⁷ of PTE 84-14) that relies on the relief provided by PTE 84-14 and with respect to which Citigroup is a current or future "affiliate" (as defined in section VI(d)(1) of PTE 84-14). The term "Citigroup Affiliated QPAM" excludes Citicorp;

(b) The term "Citigroup Related QPAM" means any current or future "qualified professional asset manager"

⁷ 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 has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

(as defined in section VI(a) of PTE 84–14) that relies on the relief provided by PTE 84–14, and with respect to which Citigroup owns a direct or indirect five percent or more interest, but with respect to which Citigroup is not an “affiliate” (as defined in Section VI(d)(1) of PTE 84–14);

(c) The terms “ERISA-covered plan” and “IRA” mean, respectively, a plan subject to Part 4 of Title I of ERISA and a plan subject to section 4975 of the Code;

(d) The term “Citigroup” means Citigroup, Inc., the parent entity, and does not include any subsidiaries or other affiliates;

(e) The term “Conviction” means the judgment of conviction against Citicorp for violation of the Sherman Antitrust Act, 15 U.S.C. 1, which is scheduled to be entered in the District Court for the District of Connecticut (the District Court) (Case Number 3:15-cr-78-SRU). For all purposes under this exemption, “conduct” of any person or entity that is the “subject of [a] Conviction” encompasses the conduct described in Paragraph 4(g)–(i) of the Plea Agreement filed in the District Court in Case Number 3:15-cr-78-SRU;

(f) The term “Conviction Date” means the date that a judgment of Conviction against Citicorp is entered by the District Court in connection with the Conviction; and

(g) The term “Citicorp” means Citicorp, a financial services holding company organized and existing under the laws of Delaware and does not include any subsidiaries or other affiliates.

Effective Date: This temporary exemption is effective for the period beginning on the Conviction Date until the earlier of: (1) The date that is twelve (12) months following the Conviction Date; or (2) the effective date of final agency action made by the Department in connection with an application for long-term exemptive relief for the covered transactions described herein.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Brennan of the Department, telephone (202) 693–8456. (This is not a toll-free number.)

JPMorgan Chase & Co. (JPMC or the Applicant) Located in New York, New York

[Prohibited Transaction Exemption 2016–15; Exemption Application No. D–11861]

Temporary Exemption

On November 21, 2016, the Department of Labor (the Department) published a notice of proposed temporary exemption in the **Federal Register** at 81 FR 83357, proposing that

certain entities with specified relationships to JPMC could continue to rely upon the relief provided by PTE 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), notwithstanding the Conviction for a period of up to twelve (12) months beginning on the Conviction Date.

The Department is today granting this temporary exemption in order to protect ERISA-covered plans and IRAs from certain costs and/or investment losses that may arise to the extent entities with a corporate relationship to JPMC lose their ability to rely on PTE 84–14 as of the Conviction Date, as described in the proposed temporary exemption. The Department has proposed longer-term relief for the JPMC Affiliated QPAMs and the JPMC Related QPAMs to rely on PTE 84–14 notwithstanding the Conviction. The relief in this temporary exemption provides the Department more time to consider whether longer-term relief is warranted.

No relief from a violation of any other law is provided by this temporary exemption, including any criminal conviction described in the proposed temporary exemption. Furthermore, the Department cautions that the relief in this temporary exemption will terminate immediately if, among other things, an entity within the JPMC corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Conviction) during the effective period of the temporary exemption. While such an entity could apply for a new exemption in that circumstance, the Department would not be obligated to grant the exemption. The terms of this temporary exemption have been specifically designed to permit plans to terminate their relationships in an orderly and cost effective fashion in the event of an additional conviction or a determination that it is otherwise prudent for a plan to terminate its relationship with an entity covered by the temporary exemption.

Written Comments

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed temporary exemption, published in the **Federal Register** at 81 FR 83357 on November 21, 2016. All comments and requests for a hearing were due by November 28, 2016. The Department received written comments from the Applicant, the substance of which is discussed below.

During the comment period, the Applicant submitted a request for the Department to make a number of revisions to the proposed exemption. Thereafter, the Applicant submitted additional information in support of its request. After considering these submissions, the Department has determined to make certain of the revisions sought by the Applicant. The revisions declined by the Department, as well as the revisions described below, will be reconsidered for purposes of the longer term relief published in the **Federal Register** on November 21, 2016 (81 FR 83372), in connection with Exemption Application Number D–11906.

Revision 1. Deletion of Reference to Investment Banking Division of JPMorgan Chase Bank in Section I(d) of the Proposed Exemption

Section I(d) of the proposed temporary exemption provides that “[a] JPMC Affiliated 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 or the Code and managed by such JPMC Affiliated QPAM, to enter into any transaction with JPMC or the Investment Banking Division of JPMorgan Chase Bank, or engage JPMC or the Investment Banking Division of JPMorgan Chase Bank to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption[.]”

The Applicant requests that the Department modify this condition. The Applicant represents that, as of the date of the exemption application, JPMC Affiliated QPAMs managed approximately \$100 billion in plan assets through collective investment trusts that use the custody and administration services of JPMC’s Corporate and Investment Banking line of business (CIB), operating through JPMorgan Chase Bank. Similarly, the Applicant explains that certain plans managed by JPMC Affiliated QPAMs through separate accounts have independently selected CIB (operating through JPMorgan Chase Bank) as their trustee and/or custodian, and transactions directed by JPMC Affiliated QPAMs on behalf of such plans would necessarily require the trustee/custodian to provide services for a direct or indirect fee.

According to the Applicant, the wording of this proposed condition is tantamount to a denial, because of all of

the services CIB provides to client accounts. The Applicant states that the custody and administration services provided are fundamental to the operation of the investment funds it manages. The proposed condition would make it impossible for JPMorgan Chase Bank's collective investment trusts to function, or for plans managed by a JPMC Affiliated QPAM to select JPMorgan Chase Bank as their trustee or custodian. The Department concurs with this comment, and has revised this condition, accordingly.

Revision 2. Deletion of Reference to the Investment Banking Division of JPMorgan Chase Bank in Section I(g) of the Proposed Exemption

Section I(g) of the proposed temporary exemption provides that "JPMC and the Investment Banking Division of JPMorgan Chase Bank will not provide discretionary asset management services to ERISA-covered plans or IRAs, and will not otherwise act as a fiduciary with respect to ERISA-covered plan and IRA assets[.]"

The Applicant represents that the CIB, operating through JPMorgan Chase Bank, manages over \$7 billion of cash collateral for plans within its securities lending agent business in reliance on PTE 84-14. If JPMorgan Chase Bank cannot continue to provide these fiduciary services, the Applicant explains that the exemption would provide no relief for plans that use the Bank as a securities lending agent.

The Department concurs with this comment, and has revised the condition in this final temporary exemption. Therefore, Section I(g) of the final exemption provides that "JPMC will not act as a fiduciary within the meaning of ERISA Section 3(21)(A)(i) or (iii), or Code Section 4975(e)(3)(A) or (C), with respect to ERISA-covered plan and IRA assets; in accordance with this provision, JPMC will not be treated as violating the conditions of this exemption solely because it acted an investment advice fiduciary within the meaning of ERISA Section 3(21)(A)(ii) or Section 4975(e)(3)(B) of the Code." The condition is also being revised to allow JPMC to act as a fiduciary with respect to employee benefit plans maintained or sponsored for their own employees or the employees of an affiliate.

Revision 3. Deletion of Reference to the Investment Banking Division of JPMorgan Chase Bank in Section I(h) of the Proposed Exemption

Section I(h)(1)(i) provides that "[w]ithin four (4) months of the Conviction, each JPMC Affiliated QPAM

must develop, implement, maintain, and follow written policies and procedures (the Policies) requiring and reasonably designed to ensure that: (i) [T]he asset management decisions of the JPMC Affiliated QPAM are conducted independently of the corporate management and business activities of JPMC, including the Investment Banking Division of JPMorgan Chase Bank[.]"

In its comment and in subsequent communications with the Department, the Applicant requests that Sections I(h)(1) and (2) be modified to allow the JPMC Affiliated QPAMs a period of up to six months following the Conviction to meet these requirements. The Department concurs with the Applicant's request. Therefore, in the final temporary exemption, the Department has modified Section I(h)(1) and (2) to provide that, respectively, "Within six (6) months of the Conviction, each JPMC Affiliated QPAM must develop, implement, maintain, and follow written policies and procedures (the Policies) . . ." and "Within six (6) months of the Conviction, each JPMC Affiliated QPAM must develop and implement a program of training (the Training) . . ."

The Applicant also seeks deletion of the condition's reference to the Investment Banking Division of JPMorgan Chase Bank for the reasons stated above. The Department concurs with this comment, and has revised the condition, accordingly.

Revision 4. References to the Conviction

The prefatory language of Section I of the proposed temporary exemption provides that "the JPMC Affiliated QPAMs and the JPMC Related QPAMs, as defined in Sections II(a) and II(b), respectively, will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84-14 (PTE 84-14 or the QPAM Exemption), notwithstanding the judgment of conviction against JPMC (the Conviction), as defined in Section II(c), for engaging in a conspiracy to: (1) Fix the price of, or (2) eliminate competition in the purchase or sale of the euro/U.S. dollar currency pair exchanged in the Foreign Exchange (FX) Spot Market."

Furthermore, Section II(e) of the proposed temporary exemption provides that, in relevant part, "[t]he term 'Conviction' means the judgment of conviction against JPMC for violation of the Sherman Antitrust Act, 15 U.S.C. 1, which is scheduled to be entered in the District Court for the District of Connecticut (the District Court)(Case Number 3:15-cr-79-SRU), in

connection with JPMC, through one of its euro/U.S. dollar (EUR/USD) traders, entering into and engaging in a combination and conspiracy to fix, stabilize, maintain, increase or decrease the price of, and rig bids and offers for, the EUR/USD currency pair exchanged in the FX spot market by agreeing to eliminate competition in the purchase and sale of the EUR/USD currency pair in the United States and elsewhere. For all purposes under this temporary exemption, if granted, "conduct" of any person or entity that is the "subject of [a] Conviction" encompasses any conduct of JPMC and/or their personnel, that is described in the Plea Agreement, (including the Factual Statement), and other official regulatory or judicial factual findings that are a part of this record[.]"

The Applicant requests that the Department modify the prefatory language in Section I and Section II(e) of the proposed temporary exemption, to more precisely define the term "Conviction" and narrow the scope of activity that is considered to be the "conduct" of a person or entity that is the subject of a Conviction. According to the Applicant, the reference to Conviction in the prefatory language of Section I of the proposed temporary exemption contains inaccurate and editorial language and may be confusing for plans and their counterparties. Furthermore, the Applicant states that the proposed definition of Conviction in Section II(e) is also inaccurate and contains an overly broad definition of the "conduct" that is subject to the Conviction. In this regard, the Applicant states that the language in Section II(e) expands the "conduct" that is considered the subject of the Conviction beyond that which is described as criminal in the Plea Agreement, and the reference to "other official regulatory or judicial factual findings that are a part of this record" is vague and could potentially refer to findings by regulators or in civil proceedings involving the Applicant and disclosed to the Department.

The Department concurs with the Applicant's comment and has modified the language in the final temporary exemption to provide that "[t]he term 'Conviction' means the judgment of conviction against JPMC for violation of the Sherman Antitrust Act, 15 U.S.C. 1, which is scheduled to be entered in the District Court for the District of Connecticut (the District Court)(Case Number 3:15-cr-79-SRU). For all purposes under this exemption, "conduct" of any person or entity that is the "subject of [a] Conviction" encompasses the conduct described in

Paragraph 4(g)–(i) of the Plea Agreement filed in the District Court in Case Number 3:15-cr-79-SRU.”

Furthermore, the Department deleted the parenthetical in paragraph (a) regarding the term “participate in” and reworded the “participate in” parenthetical in paragraph (c) to read: “(For purposes of this paragraph (c), “participated in” includes approving or condoning the misconduct underlying the Conviction).”

Revision 5. The Policies and Training in Section I(h)

Section I(h)(1) of the proposed temporary exemption requires each JPMC Affiliated QPAM to “develop, implement, maintain and follow” the written policies and procedures (the Policies) described in Section I(h)(1)(i) through (vii). Furthermore, Section I(h)(2) requires each JPMC Affiliated QPAM to develop and implement a program of training (the Training)” described therein. In its comment and in subsequent conversations with the Department, the Applicant requested that Sections I(h)(1) and (2) be modified to allow the JPMC Affiliated QPAMs a period of up to six (6) months following the date of the Conviction to meet these requirements. The Department concurs with the Applicant’s request. Therefore, in the final temporary exemption, the Department has modified Section I(h)(1) and (2) to provide that, respectively, “Within six (6) months of the Conviction Date, each JPMC Affiliated QPAM must develop, implement, maintain, and follow written policies and procedures (the Policies) . . .” and “Within six (6) months of the Conviction Date, each JPMC Affiliated QPAM must develop and implement a program of training (the Training). . . .”

Revision 6. Indemnification Provision in Section I(i)

Section I(i)(1) of the proposed temporary exemption provides that “[e]ffective as of the effective date of this temporary exemption, with respect to any arrangement, agreement, or contract between a JPMC Affiliated QPAM and an ERISA-covered plan or IRA for which a JPMC Affiliated QPAM provides asset management or other discretionary fiduciary services, each JPMC Affiliated QPAM agrees: . . . “(vii) [t]o indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a violation of applicable laws, a breach of contract, or any claim arising out of the failure of such JPMC Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of

Section I(g) of PTE 84–14 other than the Conviction[.]”

The Applicant requested that the Department modify the language of Sections I(i)(1) and I(i)(1)(vii) in order to narrow the scope of the contractual obligations in two respects. First, the Applicant requested that the contractual obligations described in Section I(i) apply only with respect to any arrangement, agreement, or contract between a JPMC Affiliated QPAM and an ERISA-covered plan or IRA under which the JPMC Affiliated QPAM provides asset management or other discretionary fiduciary services *in reliance on PTE 84–14*.

The Department declines to make this revision. Often, parties enter into arrangements with financial institutions in reliance on their QPAM status, irrespective of whether PTE 84–14 is strictly needed or in circumstances where more than one exemption may be available. The broad applicability of the conditions of Section I(i) ensures that the parties’ reliance is not misplaced; avoids needless disputes over the particular exemption relied upon by the QPAMs; and encourages a broad culture of compliance and accountability at the QPAMs, consistent with the rightful expectations of plans and IRAs that engage in transactions with QPAMs. A broad application of Section I(i) is in the interest of ERISA-covered plans and IRAs and protective of their rights. The JPMC Affiliated QPAMs should be held to a high standard of integrity with respect to all ERISA-covered plans and IRAs, and not just those with respect to which it relies on PTE 84–14.

Secondly, the Applicant requested that Section I(i)(1)(vii) be deleted, or alternatively, that the Department tie the provision to damages with a proximate causal connection to relevant conduct of the asset manager. The Applicant represents that the indemnification and hold harmless requirement in subparagraph (vii) would operate in an unfair manner because it is not limited to clients who are harmed through a direct, causal link to the loss of exemptive relief provided by PTE 84–14. According to the Applicant, the provision appears to allow ERISA-covered plans and IRAs to seek to recover damages: (a) That arise from violations and breaches by third parties, (b) that arise only tenuously from the manager’s conduct, (c) that may be grossly unreasonable in amount, (d) for claims without merit, and (e) for claims in connection with accounts that do not rely on PTE 84–14.

The Department declines to make the requested revision, but agrees to modify the section to make it clear that the

“applicable laws” referred to in Section I(i)(1)(vii) pertain to the fiduciary duties of ERISA and the prohibited transaction provisions of ERISA and the Code. The requirement to comply with ERISA’s fiduciary duties and with ERISA and the Code’s prohibited transaction provisions is included in the Policies required under the exemption. Therefore, Section I(i)(1)(vii) of the temporary exemption, as granted, requires a JPMC Affiliated QPAM “[t]o indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a violation of ERISA’s fiduciary duties and of ERISA and the Code’s prohibited transaction provisions, a breach of contract, or any claim arising out of the failure of such JPMC Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Conviction.”

Revision 7. Restrictions on Withdrawals in Section I(i)

Section I(i)(1)(4) of the proposed temporary exemption requires that the JPMC Affiliated QPAMs must agree “[n]ot to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the JPMC Affiliated QPAM (including any investment in a separately managed account or pooled fund subject to ERISA and managed by such 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 as a result of the actual lack of liquidity of the underlying assets, provided that such restrictions are applied consistently and in like manner to all such investors.” The Department has modified Section I(i)(4) to make it clear that a lack of liquidity may include a range of similar circumstances where reasonable restrictions are necessary to protect remaining investors in a pooled fund. Furthermore, the Department has modified Section I(i)(4) in order to clarify that the limitation of adverse consequences to those resulting from a lack of liquidity, valuation issues, or regulatory reasons, is only required with respect to investments in a pooled fund subject to ERISA entered into after the Conviction Date. In any such event, the restrictions must be reasonable and last no longer than reasonably necessary to avoid the adverse consequences to investors in the fund.

Revision 8. Scope of Contractual Obligations in Section I(i)

The Department is revising the notice requirement in Section I(i)(2) to require that each JPMC Affiliated QPAM will provide a notice of its agreement to each ERISA-covered plan and IRA for which a JPMC Affiliated QPAM provides asset management or other discretionary fiduciary services, and to provide that such notice must be completed within six (6) months of the effective date of this temporary exemption.

Revision 9. Definition of “JPMC Affiliated QPAM” in Section II(a)

Section II(a) of the proposed temporary exemption precludes JPMC, the parent entity, from acting as a QPAM. The last sentence of this condition also erroneously states that JPMC is the “division” [that was] directly implicated by the conduct that is the subject of the Conviction.” The Applicant represents that JPMC is not a “division,” but the parent company of an affiliated group. In response to this comment, the Department is removing this reference.

Revision 10. Revision of Section I(b) of the Proposed Exemption

The applicant represents that Section I(b) of the proposed exemption is not workable, as an individual can only receive compensation if the entity he works for receives compensation. The Department has revised this condition to read, “The JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, agents other than JPMC, and employees of such JPMC QPAMs) did not receive direct compensation, or knowingly receive indirect compensation in connection with the criminal conduct that is the subject of the Conviction, other than a non-fiduciary line of business within JPMorgan Chase Bank.”.

After giving full consideration to the record, the Department has decided to grant the temporary exemption, as described above. The complete application file (Application No. D-11861) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1515, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department’s decision to grant this temporary exemption, refer to the notice of proposed temporary exemption published on November 21, 2016 at 81 FR 83357.

Temporary Exemption Operative Language

Section I: Covered Transactions

Certain entities with specified relationships to JPMC (hereinafter, the JPMC Affiliated QPAMs and the JPMC Related QPAMs, as defined in Sections II(a) and II(b), respectively) will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84-14 (PTE 84-14 or the QPAM Exemption),⁸ notwithstanding the judgment of conviction against JPMC (the Conviction, as defined in Section II(e)),⁹ for a period of up to twelve (12) months beginning on the date of the Conviction (the Conviction Date, as defined in Section II(f)), provided that the following conditions are satisfied:

(a) Other than a single individual who worked for a non-fiduciary business within JPMorgan Chase Bank and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, agents other than JPMC, and employees of such JPMC QPAMs) did not know of, have reason to know of, or participate in the criminal conduct of JPMC that is the subject of the Conviction;

(b) The JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, agents other than JPMC, and employees of such JPMC QPAMs) did not receive direct compensation, or knowingly receive indirect compensation in connection with the criminal conduct that is the subject of the Conviction, other than a non-fiduciary line of business within JPMorgan Chase Bank;

(c) The JPMC Affiliated QPAMs will not employ or knowingly engage any of the individuals that participated in the criminal conduct that is the subject of the Conviction (for purposes of this paragraph (c), “participated in” includes approving or condoning the misconduct underlying the Conviction);

(d) A JPMC Affiliated QPAM will not use its authority or influence to direct

⁸ 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).

⁹ 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 violation of the Sherman Antitrust Act, Title 15 United States Code, Section 1.

an “investment fund” (as defined in Section VI(b) of PTE 84-14), that is subject to ERISA or the Code and managed by such JPMC Affiliated QPAM, to enter into any transaction with JPMC, or to engage JPMC to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e) Any failure of a JPMC Affiliated QPAM or a JPMC Related QPAM to satisfy Section I(g) of PTE 84-14 arose solely from the Conviction;

(f) A JPMC Affiliated QPAM or a JPMC Related QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA) in a manner that it knew or should have known would: Further the criminal conduct that is the subject of the Conviction; or cause the JPMC Affiliated QPAM the JPMC Related QPAM or its affiliates or related parties to directly or indirectly profit from the criminal conduct that is the subject of the Conviction;

(g) Other than with respect to employee benefit plans maintained or sponsored for their own employees or the employees of an affiliate, JPMC will not act as a fiduciary within the meaning of section 3(21)(A)(i) or (iii) of ERISA, or section 4975(e)(3)(A) and (C) of the Code, with respect to ERISA-covered plan and IRA assets; in accordance with this provision, JPMC will not be treated as violating the conditions of this exemption solely because it acted as an investment advice fiduciary within the meaning of section 3(21)(A)(ii) or section 4975(e)(3)(B) of the Code;

(h)(1) Within six (6) months of the Conviction Date, each JPMC Affiliated QPAM must develop, implement, maintain, and follow written policies and procedures (the Policies) requiring and reasonably designed to ensure that:

(i) The asset management decisions of the JPMC Affiliated QPAM are conducted independently of the corporate management and business activities of JPMC;

(ii) The JPMC Affiliated QPAM fully complies with ERISA’s fiduciary duties, and with 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 JPMC Affiliated 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 JPMC Affiliated QPAM to regulators, including but not limited to, the Department, 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 JPMC Affiliated 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 plans and IRA clients;

(vi) The JPMC Affiliated QPAM complies with the terms of this temporary exemption; and

(vii) Any violation of, or failure to comply with an item in subparagraphs (ii) through (vi), is corrected promptly upon discovery, and any such violation or compliance failure not promptly corrected is reported, upon discovering the failure to promptly correct, in writing, to appropriate corporate officers, the head of compliance, and the General Counsel (or their functional equivalent) of the relevant JPMC Affiliated QPAM, and an appropriate fiduciary of any affected ERISA-covered plan or IRA, where such fiduciary is independent of JPMC; 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 JPMC or beneficially owned by an employee of JPMC or its affiliates, such fiduciary does not need to be independent of JPMC. A JPMC Affiliated QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance promptly when discovered, or when it reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (vii);

(2) Within six (6) months of the Conviction Date, each JPMC Affiliated QPAM must develop and implement a program of training (the Training), conducted at least annually, for all relevant JPMC Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must 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), ethical conduct, the consequences for not complying with the conditions of this temporary exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing;

(i)(1) As of the effective date of this temporary exemption, with respect to any arrangement, agreement, or contract between a JPMC Affiliated QPAM and an ERISA-covered plan or IRA for which a JPMC Affiliated QPAM provides asset management or other discretionary fiduciary services, each JPMC Affiliated QPAM agrees:

(i) To comply with ERISA and the Code with respect to each such ERISA-covered plan and IRA, as applicable; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions); and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA, as applicable, with respect to each such ERISA-covered plan and IRA;

(ii) Not to require (or otherwise cause) the ERISA covered plan or IRA to waive, limit, or qualify the liability of the JPMC Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(iii) 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 JPMC Affiliated QPAM for violating ERISA or the Code, 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, which is independent of JPMC and its affiliates;

(iv) Not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the JPMC Affiliated QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such 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. In connection with any such arrangements involving investments in pooled funds subject to ERISA entered into after the Conviction Date, the adverse consequences must relate to a lack of liquidity of the pooled fund's underlying assets, valuation issues, or regulatory reasons that prevent the fund from immediately redeeming an ERISA-covered plan's or IRA's investment, and

such restrictions are applicable to all such investors and effective no longer than reasonably necessary to avoid the adverse consequences;

(v) Not to impose any fee, penalty, or charge 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 each such fee is applied consistently and in like manner to all such investors;

(vi) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the JPMC Affiliated QPAM for a violation of such agreement's terms, except for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary which is independent of JPMC, and its affiliates; and

(vii) To indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a violation of ERISA's fiduciary duties and of ERISA and the Code's prohibited transaction provisions, a breach of contract, or any claim arising out of the failure of such JPMC Affiliated QPAM to qualify for the exemptive relief provided by PTE 84-14 as a result of a violation of Section I(g) of PTE 84-14 other than the Conviction;

(2) Within six (6) months of the date of the Conviction, each JPMC Affiliated QPAM will provide a notice of its agreement and obligations under this Section I(i) to each ERISA-covered plan and IRA for which a JPMC Affiliated QPAM provides asset management or other discretionary fiduciary services;

(j) The JPMC Affiliated QPAMs must comply with each condition of PTE 84-14, as amended, with the sole exception of the violation of Section I(g) of PTE 84-14 that is attributable to the Conviction;

(k) Each JPMC Affiliated QPAM will maintain records necessary to demonstrate that the conditions of this temporary exemption have been met, for six (6) years following the date of any transaction for which such JPMC Affiliated QPAM relies upon the relief in the temporary exemption;

(l) During the effective period of this temporary exemption, JPMC: (1) Immediately discloses to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) that JPMC or an affiliate enters into with the U.S.

Department of Justice to the extent such DPA or NPA involves conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA; and

(2) Immediately provides the Department any information requested by the Department, as permitted by law, regarding the agreement and/or the conduct and allegations that led to the agreement; and

(m) A JPMC Affiliated QPAM or a JPMC Related QPAM will not fail to meet the terms of this temporary exemption solely because a different JPMC Affiliated QPAM or JPMC Related QPAM fails to satisfy a condition for relief under this temporary exemption, described in Sections I(c), (d), (h), (i), (j), and (k).

Section II: Definitions

(a) The term “JPMC Affiliated QPAM” means a “qualified professional asset manager” (as defined in Section VI(a) ¹⁰ of PTE 84–14) that relies on the relief provided by PTE 84–14 and with respect to which JPMC is a current or future “affiliate” (as defined in Section VI(d)(1) of PTE 84–14). The term “JPMC Affiliated QPAM” excludes JPMC;

(b) The term “JPMC Related QPAM” means any current or future “qualified professional asset manager” (as defined in section VI(a) of PTE 84–14) that relies on the relief provided by PTE 84–14, and with respect to which JPMC owns a direct or indirect five percent or more interest, but with respect to which JPMC is not an “affiliate” (as defined in Section VI(d)(1) of PTE 84–14).

(c) The terms “ERISA-covered plan” and “IRA” mean, respectively, a plan subject to Part 4 of Title I of ERISA and a plan subject to section 4975 of the Code;

(d) The term “JPMC” means JPMorgan Chase and Co., the parent entity, and does not include any subsidiaries or other affiliates;

(e) The term “Conviction” means the judgment of conviction against JPMC for violation of the Sherman Antitrust Act, 15 U.S.C. 1, which is scheduled to be entered in the District Court for the District of Connecticut (the District Court) (Case Number 3:15–cr–79–SRU). For all purposes under this exemption, “conduct” of any person or entity that is the “subject of [a] Conviction” encompasses the conduct described in Paragraph 4(g)–(i) of the Plea Agreement

¹⁰ 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 has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

filed in the District Court in Case Number 3:15–cr–79–SRU; and

(f) The term “Conviction Date” means the date that a judgment of Conviction against JPMC is entered by the District Court in connection with the Conviction.

Effective Date: This temporary exemption is effective for the period beginning on the Conviction Date until the earlier of: (1) The date that is twelve (12) months following the Conviction Date; or (2) the effective date of final agency action made by the Department in connection with an application for long-term exemptive relief for the covered transactions described herein.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Brennan of the Department, telephone (202) 693–8456. (This is not a toll-free number.)

Barclays Capital Inc. (BCI or the Applicant) Located in New York, New York

[Prohibited Transaction Exemption 2016–16; Exemption Application No. D–11862]

Temporary Exemption

On November 21, 2016, the Department of Labor (the Department) published a notice of proposed temporary exemption in the **Federal Register** at 81 FR 83365, proposing that certain entities with specified relationships to BCI could continue to rely upon the relief provided by PTE 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), notwithstanding the Conviction for a period of up to twelve months beginning on the date of the Conviction.

No relief from a violation of any other law is provided by this temporary exemption, including any criminal conviction described in the proposed temporary exemption. Furthermore, the Department cautions that the relief in this temporary exemption will terminate immediately if, among other things, an entity within the BPLC corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Conviction) during the effective period of the temporary exemption. While such an entity could apply for a new exemption in that circumstance, the Department would not be obligated to grant the exemption. The terms of this temporary exemption have been specifically designed to permit plans to terminate their relationships in an orderly and cost effective fashion in the event of an additional conviction or a determination that it is otherwise prudent for a plan to

terminate its relationship with an entity covered by the temporary exemption.

Written Comments

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed temporary exemption, published in the **Federal Register** on November 21, 2016. All comments and requests for a hearing were due by November 28, 2016. The Department received written comments from the Applicant, the substance of which is discussed below.

During the comment period, the Applicant submitted a request for the Department to make a number of revisions to the proposed exemption. Thereafter, the Applicant submitted additional information in support of its request. After considering these submissions, the Department has determined to make certain of the revisions sought by the Applicant. The revisions declined by the Department, as well as the revisions described below, will be reconsidered for purposes of the longer term relief published in the **Federal Register** on November 21, 2016 (81 FR 83427) in connection with Exemption Application Number D–11910.

Revision 1. Replacement of Reference to BCI With BPLC in Section I of the Proposed Exemption

The Applicant states that BCI is identified in certain conditions in Section I, notwithstanding that BPLC is the entity that pled guilty to the felony. Accordingly, the Applicant requests removal of the reference to “BCI” in those conditions. The Department concurs with this comment, and has substituted BPLC, the entity convicted of the conduct underlying the Conviction, for BCI, where applicable in Section I of the exemption. The Department has also revised Section I(a) to include “Barclays Related QPAMs,” thus requiring that these QPAMs did not know of, have reason to know of, or participate in the criminal conduct of BPLC that is the subject of the Conviction.

Revision 2. Correction to Section I(f) of the Proposed Exemption

Section I(f) contains an unintended error and is revised to read as follows: “A Barclays Affiliated QPAM or a Barclays Related QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA) in a manner that it knew or should have known would:

Further the criminal conduct that is the subject of the Conviction. . . .”

Revision 3. Clarification to Section I(g) of the Proposed Exemption

The Department is clarifying Section I(g) to provide that BPLC may not act as a fiduciary within the meaning of ERISA Section 3(21)(A)(i) or (iii), or Code Section 4975(e)(3)(A) and (C), with respect to ERISA-covered plan and IRA assets; however, in accordance with that provision, BPLC will not be treated as violating the conditions of this exemption solely because they acted as investment advice fiduciaries within the meaning of ERISA Section 3(21)(A)(ii) or Section 4975(e)(3)(b) of the Code. The condition is also being revised to allow BPLC to act as a fiduciary with respect to employee benefit plans maintained or sponsored for their own employees or the employees of an affiliate.

Revision 4. Modification to the Timeframe for BCI To Provide Notice of Its Obligations Under Section I(i)

The last paragraph of Section (I) of the proposed exemption provides that “[w]ithin four (4) months of the date of the Conviction, each Barclays Affiliated QPAM will provide a notice of its obligations under this Section I(i) to each ERISA-covered plan and IRA for which a Barclays Affiliated QPAM provides asset management or other discretionary fiduciary services.”

The Applicant states that BCI and its affiliates do not currently provide asset management or other discretionary fiduciary services to ERISA-covered plans or IRAs, and the four-month notice period has no purpose. Therefore the Applicant requests that this provision be modified to reflect that Barclays Affiliated QPAMs would in the future be required to provide notice prior to an engagement with an ERISA-covered plan or IRA subject to this temporary exemption, consistent with Sections I(h)(1) and I(h)(2). The Department concurs with this comment and has revised the condition accordingly.

Revision 5. References to the Conviction

The prefatory language of Section I of proposed temporary exemption provides that “[i]f the proposed temporary exemption is granted, the Barclays Affiliated QPAMs and the Barclays Related QPAMs, as defined in Sections II(a) and II(b), respectively, will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84-14 (PTE 84-14 or the QPAM Exemption), notwithstanding a judgment of conviction against Barclays PLC (BPLC)

(the Conviction, as defined in Section II(c)), for engaging in a conspiracy to: (1) Fix the price of, or (2) eliminate competition in the purchase or sale of the euro/U.S. dollar currency pair exchanged in the Foreign Exchange (FX) Spot Market. This temporary exemption will be effective for a period of up to twelve (12) months beginning on the Conviction Date (as defined in Section II(e)). . . .”

Furthermore, Section II(e) of the proposed exemption provides, in relevant part, that “[t]he term “Conviction” means the judgment of conviction against BPLC for violation of the Sherman Antitrust Act, 15 U.S.C. § 1, which is scheduled to be entered in the District Court for the District of Connecticut (the District Court)(Case Number 3:15-cr-00077-SRU-1), in connection with BPLC, through certain of its euro/U.S. dollar (EUR/USD) traders, entering into and engaging in a combination and conspiracy to fix, stabilize, maintain, increase or decrease the price of, and rig bids and offers for, the EUR/USD currency pair exchanged in the FX spot market by agreeing to eliminate competition in the purchase and sale of the EUR/USD currency pair in the United States and elsewhere. For all purposes under this temporary exemption, “conduct” of any person or entity that is the “subject of [a] Conviction” encompasses any conduct of BPLC and/or their personnel, that is described in the Plea Agreement, (including the Factual Statement), and other official regulatory or judicial factual findings that are a part of this record[.]”

The Applicant requests that the Department modify the prefatory language in Section I and Section II(e) of the proposed temporary exemption, to more precisely define the term “Conviction.” According to the Applicant, the reference to Conviction in the prefatory language of Section I of the proposed temporary exemption is incomplete and inexact and may create confusion on whether the exemption condition is met, leading to possible disputes with counterparties to the detriment of plans.

The Department concurs with the Applicant’s comment and has modified the relevant language in the final temporary exemption to provide that the term “Conviction” means the judgment of conviction against BPLC for violation of the Sherman Antitrust Act, 15 U.S.C. 1, which is scheduled to be entered in the District Court for the District of Connecticut (the District Court)(Case Number 3:15-cr-00077-SRU-1). For purposes of this exemption, “conduct” of any person or entity that is the

subject of a “Conviction” encompasses the conduct described in Paragraph 4(g)-(j) of the Plea Agreement filed in the District Court in Case Number 3:15-cr-00077-SRU-1. The Department also deleted the parenthetical in paragraph I(a) regarding the term “participate in” and reworded the “participate in” parenthetical in paragraph I(c) to read: “(for purposes of this paragraph (c), “participated in” includes approving or condoning the misconduct underlying the Conviction).”

Further, the Applicant notes that the term “Conviction” and “Conviction Date” are defined in Sections II(e) and II(f), respectively, rather than II(c) and II(e). The Department has corrected this inadvertent error.

Revision 6. Indemnification Provision in Section I(i)

Section I(i) of the proposed temporary exemption provides that “[e]ffective as of the effective date of this temporary exemption, with respect to any arrangement, agreement, or contract between a Barclays Affiliated QPAM and an ERISA-covered plan or IRA for which such Barclays Affiliated QPAM provides asset management or other discretionary fiduciary services, each Barclays Affiliated QPAM agrees:” “(7) To indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a violation of applicable laws, a breach of contract, or any claim arising out of the failure of such Barclays Affiliated QPAM to qualify for the exemptive relief provided by PTE 84-14 as a result of a violation of Section I(g) of PTE 84-14 other than the Conviction.”

The Applicant believes that this provision may operate in a manner that is fundamentally unfair as it is not limited to clients who are harmed through a direct, causal link to the loss of the exemptive relief provided by PTE 84-14. The Applicant states that the condition appears to allow plans and IRAs to seek to recover damages (i) that arise from violations and breaches by third parties, (ii) that arise only tenuously from the manager’s conduct, (iii) that may be grossly unreasonable in amount, (iv) for claims without merit and (v) for claims in connection with accounts that do not rely on the relief provided by PTE 84-14.

Accordingly, the Applicant requests that that the Department delete this condition or, in the alternative, expressly tie the requirement to damages with a proximate causal connection to relevant conduct of the manager by rewording the condition as follows:

“(I)(i) [e]ffective as of the effective date of this temporary exemption, with respect to any arrangement, agreement, or contract between a Barclays Affiliated QPAM and an ERISA-covered plan or IRA under which such Barclays Affiliated QPAM provides asset management or other discretionary fiduciary services in reliance on PTE 84–14, each Barclays Affiliated QPAM agrees: . . . (7) To indemnify and hold harmless the ERISA-covered plan or IRA for any reasonable damages involving such arrangement, agreement or contract and resulting directly from a violation of ERISA by such Barclays Affiliated QPAM, or, to the extent the Barclays Affiliated QPAM relies on the exemptive relief provided by PTE 84–14 under the arrangement, agreement or contract, the failure of such Barclays Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than as a result of the Conviction. This condition does not require indemnification of indirect, special, consequential or punitive damages.”

The Department declines to make the requested revisions, but is modifying Section I(i)(7) to clarify that “applicable laws” refer to the fiduciary duties of ERISA and the prohibited transaction provisions of ERISA and the Code, which are likewise required to be included in the Policies described in Section I(h) of this exemption. Therefore, Section I(i)(7) of the temporary exemption, as granted, requires a Barclays Affiliated QPAM “[t]o indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a violation of ERISA’s fiduciary duties and of ERISA and the Code’s prohibited transaction provisions, a breach of contract, or any claim arising out of the failure of such Barclays Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Conviction.”

Revision 7. Restrictions on Withdrawals in Section I(i)

Section I(i)(4) of the proposed temporary exemption requires that Barclays Affiliated QPAMs must agree “[n]ot to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the Barclays Affiliated QPAM (including any investment in a separately managed account or pooled fund subject to ERISA and managed by such 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 as a result of an actual lack of liquidity of the underlying assets, provided that such restrictions are applied consistently and in like manner to all such investors.”

The Department has modified Section I(i)(4) to make it clear that a lack of liquidity may include a range of similar circumstances where reasonable restrictions are necessary to protect remaining investors in a pooled fund. Furthermore, the Department has modified Section I(i)(4) in order to clarify that the limitation of adverse consequences to those resulting from a lack of liquidity, valuation issues, or regulatory reasons, is only required with respect to investments in a pooled fund subject to ERISA entered into after the Conviction Date. In any such event, the restrictions must be reasonable and last no longer than reasonably necessary to avoid the adverse consequences to investors in the fund.

Therefore, the language of Section I(i)(4) in the final temporary exemption requires a Barclays Affiliated QPAM “[n]ot to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the Barclays Affiliated QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such 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. In connection with any such arrangements involving investments in pooled funds subject to ERISA entered into after the U.S. Conviction Date, the adverse consequences must relate to a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from immediately redeeming an ERISA-covered plan’s or IRA’s investment, and such restrictions must be applicable to all such investors and effective no longer than reasonably necessary to avoid the adverse consequences.”

Revision 8. Scope of Contractual Obligations in Section I(i)

The Department, own its on motion, is making a correction to Section I(i)(1) to revise the phrase at the end of Section I(i)(1)(i) that reads “with respect to each such ERISA-covered plan and IRA” to

read in the final temporary exemption as follows: “as applicable, with respect to each such ERISA-covered plan and IRA.” The Department is also revising the notice requirement in Section I(i) to require that each Barclays Affiliated QPAM will provide a notice of its agreement under Section I(i) to each ERISA-covered plan and IRA for which a Barclays Affiliated QPAM provides asset management or other discretionary fiduciary services.

Revision 9. Correction of the Term “Barclays Affiliated QPAM”

Section II(a) of the proposed temporary exemption precludes both BPLC and BCI from acting as a QPAM. The Applicant represents that, as noted above, BCI was not the subject of the Conviction and should not be excluded from the temporary exemption. The Department concurs and has revised Section II(a) of the final temporary exemption accordingly.

After giving full consideration to the record, the Department has decided to grant the temporary exemption, as described above. The complete application file (Application No. D–11862) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department’s decision to grant this temporary exemption, refer to the notice of proposed temporary exemption published on November 21, 2016 at 81 FR 83365.

Temporary Exemption Operative Language

Section I: Covered Transactions

Certain entities with specified relationships to BCI (hereinafter, the Barclays Affiliated QPAMs and the Barclays Related QPAMs, as defined in Sections II(a) and II(b), respectively) will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14 or the QPAM Exemption),¹¹ notwithstanding the judgment of conviction against Barclays PLC (BPLC) (the Conviction, as defined in Section II(e)),¹² for a period of up to

¹¹ 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).

¹² 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

twelve (12) months beginning on the date of the Conviction (the Conviction Date, as defined in Section II(f)), provided that the following conditions are satisfied:

(a) Other than certain individuals who worked for a non-fiduciary business under BPLC, who had no responsibility for, and exercised no authority in connection with, the management of plan assets and who are no longer employed by BPLC the Barclays Affiliated QPAMs and the Barclays Related QPAMs (including their officers, directors, agents other than BPLC, and employees of such QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not know of, have reason to know of, or participate in the criminal conduct of BPLC that is the subject of the Conviction;

(b) The Barclays Affiliated QPAMs and the Barclays Related QPAMs (including their officers, directors, agents other than BPLC, and employees of such QPAMs) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the Conviction;

(c) The Barclays Affiliated QPAMs will not employ or knowingly engage any of the individuals that participated in the criminal conduct that is the subject of the Conviction (for purposes of this paragraph (c), “participated in” includes approving or condoning the misconduct underlying the Conviction);

(d) A Barclays Affiliated 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 or the Code and managed by such Barclays Affiliated QPAM, to enter into any transaction with BPLC, or to engage BPLC, to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e) Any failure of a Barclays Affiliated QPAM or a Barclays Related QPAM to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction;

(f) A Barclays Affiliated QPAM or a Barclays Related QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of

the Code (an IRA) in a manner that it knew or should have known would: Further the criminal conduct that is the subject of the Conviction; or cause the Barclays Affiliate QPAM or the Barclays Related QPAM or its affiliates or related parties to directly or indirectly profit from the criminal conduct that is the subject of the Conviction;

(g) Other than with respect to employee benefit plans maintained or sponsored for their own employees or the employees of an affiliate, BPLC will not act as a fiduciary within the meaning of ERISA Section 3(21)(A)(i) or (iii), or Code Section 4975(e)(3)(A) or (C), with respect to ERISA-covered plan and IRA assets; in accordance with this provision, BPLC will not be treated as violating the conditions of this exemption solely because they acted as investment advice fiduciaries within the meaning of ERISA Section 3(21)(A)(ii) or Section 4975(e)(3)(b) of the Code;

(h)(1) Prior to a Barclays Affiliated QPAM’s engagement by any ERISA-covered plan or IRA for discretionary asset management services, the Barclays Affiliated QPAM must develop, implement, maintain, and follow written policies and procedures (the Policies) requiring and reasonably designed to ensure that:

(i) The asset management decisions of the Barclays Affiliated QPAM are conducted independently of the corporate management and business activities of BPLC;

(ii) The Barclays Affiliated QPAM fully complies with ERISA’s fiduciary duties and with 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 Barclays Affiliated 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 Barclays Affiliated QPAM to regulators, including but not limited to, the Department, 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 Barclays Affiliated 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 plans and IRA clients;

(vi) The Barclays Affiliated QPAM complies with the terms of this temporary exemption; and

(vii) Any violation of, or failure to comply with, an item in subparagraphs (ii) through (vi), is corrected promptly upon discovery, and any such violation or compliance failure not promptly corrected is reported, upon discovering the failure to promptly correct, in writing, to appropriate corporate officers, the head of compliance, and the General Counsel (or their functional equivalent) of the relevant Barclays Affiliated QPAM, and an appropriate fiduciary of any affected ERISA-covered plan or IRA, where such fiduciary is independent of BPLC; 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 BPLC or beneficially owned by an employee of BPLC or its affiliates, such fiduciary does not need to be independent of BPLC. A Barclays Affiliated QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance promptly when discovered or when it reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (vii);

(2) Prior to a Barclays Affiliated QPAM’s engagement by any ERISA covered plan or IRA for discretionary asset management services, the Barclays Affiliated QPAM must develop and implement a program of training (the Training), conducted at least annually, for all relevant Barclays Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must 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), ethical conduct, the consequences for not complying with the conditions of this temporary exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing;

(i) Effective as of date of this temporary exemption with respect to any arrangement, agreement, or contract between a Barclays Affiliated QPAM and an ERISA-covered plan or IRA for which such Barclays Affiliated QPAM provides asset management or other discretionary fiduciary services, each Barclays Affiliated QPAM agrees:

been either convicted or released from imprisonment, whichever is later, as a result of certain felonies including violation of the Sherman Antitrust Act, Title 15 United States Code, Section 1.

(1) To comply with ERISA and the Code with respect to each such ERISA-covered plan and IRA, as applicable; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions); and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA, as applicable, with respect to each such ERISA-covered plan and IRA;

(2) Not to require (or otherwise cause) the ERISA-covered plan or IRA to waive, limit, or qualify the liability of the Barclays Affiliated 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 Barclays Affiliated QPAM for violating ERISA or the Code 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 BPLC, and its affiliates;

(4) Not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the Barclays Affiliated QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such 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. In connection with any such arrangements involving investments in pooled funds subject to ERISA entered into after the U.S. Conviction Date, the adverse consequences must relate to a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from immediately redeeming an ERISA-covered plan's or IRA's investment, and such restrictions must be applicable to all such investors and effective no longer than reasonably necessary to avoid the adverse consequences;

(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;

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the Barclays Affiliated QPAM for a violation of such agreement's terms, except for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of BPLC, and its affiliates; and

(7) To indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a violation of ERISA's fiduciary duties and of ERISA and the Code's prohibited transaction provisions, a breach of contract, or any claim arising out of the failure of such Barclays Affiliated QPAM to qualify for the exemptive relief provided by PTE 84-14 as a result of a violation of Section I(g) of PTE 84-14 other than the Conviction.

Prior to a Barclays Affiliated QPAM's engagement with an ERISA-covered plan or IRA, the Barclays Affiliated QPAM will provide a notice of its agreement and obligations under this Section I(i) to each ERISA-covered plan and IRA for which a Barclays Affiliated QPAM provides asset management or other discretionary fiduciary services;

(j) The Barclays Affiliated QPAMs comply with each condition of PTE 84-14, as amended, with the sole exceptions of the violations of Section I(g) of PTE 84-14 that are attributable to the Conviction;

(k) Each Barclays Affiliated QPAM will maintain records necessary to demonstrate that the conditions of this temporary exemption have been met, for six (6) years following the date of any transaction for which such Barclays Affiliated QPAM relies upon the relief in the temporary exemption;

(l) During the effective period of this temporary exemption, BPLC: (1) Immediately discloses to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) that BPLC or an affiliate enters into with the U.S. Department of Justice, to the extent such DPA or NPA involves conduct described in Section I(g) of PTE 84-14 or section 411 of ERISA; and

(2) Immediately provides the Department any information requested by the Department, as permitted by law, regarding the agreement and/or the conduct and allegations that led to the agreements; and

(m) A Barclays Affiliated QPAM or a Barclays Related QPAM will not fail to

meet the terms of this temporary exemption solely because a different Barclays Affiliated QPAM or Barclays Related QPAM fails to satisfy a condition for relief under this temporary exemption, described in Sections I(c), (d), (h), (i), (j) and (k).

Section II: Definitions

(a) The term "Barclays Affiliated QPAM" means a "qualified professional asset manager" (as defined in Section VI(a)¹³ of PTE 84-14) that relies on the relief provided by PTE 84-14 and with respect to which BPLC is a current or future "affiliate" (as defined in Section VI(d)(1) of PTE 84-14). The term "Barclays Affiliated QPAM" excludes BPLC.

(b) The term "Barclays Related QPAM" means any current or future "qualified professional asset manager" (as defined in Section VI(a) of PTE 84-14) that relies on the relief provided by PTE 84-14, and with respect to which BPLC owns a direct or indirect five percent or more interest, but with respect to which BPLC is not an "affiliate" (as defined in Section VI(d)(1) of PTE 84-14).

(c) The terms "ERISA-covered plan" and "IRA" mean, respectively, a plan subject to Part 4 of Title I of ERISA and a plan subject to section 4975 of the Code;

(d) The term "BPLC" means Barclays PLC, the parent entity, and does not include any subsidiaries or other affiliates;

(e) The term "Conviction" means the judgment of conviction against BPLC for violation of the Sherman Antitrust Act, 15 U.S.C. 1, which is scheduled to be entered in the District Court for the District of Connecticut (the District Court), Case Number 3:15-cr-00077-SRU-1. For all purposes under this temporary exemption, "conduct" of any person or entity that is the "subject of [a] Conviction" encompasses the conduct described in Paragraph 4(g)-(j) of the Plea Agreement filed in the District Court in Case Number 3:15-cr-00077-SRU-1; and

(f) The term "Conviction Date" means the date that a judgment of Conviction against BPLC is entered by the District Court in connection with the Conviction.

Effective Date: This temporary exemption is effective for the period

¹³ 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.

beginning on the Conviction Date until the earlier of: (1) The date that is twelve months following the Conviction Date; or (2) the effective date of a final agency action made by the Department in connection with an application for long-term exemptive relief for the covered transactions described herein.

FOR FURTHER INFORMATION CONTACT: Ms. Anna Mpras Vaughan of the Department, telephone (202) 693-8565. (This is not a toll-free number.)

UBS Assets Management (Americas) Inc.; UBS Realty Investors LLC; UBS Hedge Fund Solutions LLC; UBS O'Connor LLC; and Certain Future Affiliates in UBS's Asset Management and Wealth Management Americas Divisions (Collectively, the Applicants or the UBS QPAMs); Located in Chicago, Illinois; Hartford, Connecticut; New York, New York; and Chicago, Illinois, Respectively

[Prohibited Transaction Exemption 2016-17; Exemption Application No. D-11863]

Temporary Exemption

On November 17, 2016, the Department of Labor (the Department) published a notice of proposed temporary exemption in the **Federal Register** at 81 FR 81158, proposing that certain entities with specified relationships to UBS, AG (hereinafter, the UBS QPAMs) could continue to rely on the exemptive relief provided by PTE 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)), notwithstanding the "2013 Conviction" against UBS Securities Japan Co., Ltd. entered on September 18, 2013 and the "2016 Conviction" against UBS AG (the 2013 Conviction and the 2016 Conviction are described in more detail in the proposed temporary exemption and further defined in Section II(a) of this final temporary exemption), for a period of up to twelve months beginning on the date that a judgment of conviction is entered against UBS in the 2016 Conviction.

No relief from a violation of any other law is provided by this temporary exemption, including any criminal conviction described in the proposed temporary exemption. Furthermore, the Department cautions that the relief in this temporary exemption will terminate immediately if, among other things, an entity within the UBS corporate structure is convicted of a crime described in Section I(g) of PTE 84-14 (other than the 2013 or the 2016 Conviction) during the effective period of the temporary exemption. While such

an entity could apply for a new exemption in that circumstance, the Department would not be obligated to grant the exemption. The terms of this temporary exemption have been specifically designed to permit plans to terminate their relationships in an orderly and cost effective fashion in the event of an additional conviction or a determination that it is otherwise prudent for a plan to terminate its relationship with an entity covered by the temporary exemption.

Written Comments

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed temporary exemption, published in the **Federal Register** at 81 FR 81158 on November 17, 2016. All comments and requests for hearing were due by November 22, 2016. The Applicant submitted a written comment letter requesting certain revisions to the proposed temporary exemption, which was further supplemented through additional correspondence, as requested by the Department. After considering the comment letter, the Department determined that some, but not all, of the requested revisions have merit, and has revised the exemption in the manner described below. All requested revisions and comments, accepted or omitted, will be reconsidered for purposes of the longer term relief proposed in the **Federal Register** at 81 FR 83385 on November 21, 2016, in connection with Exemption Application Number D-11907. The requested revisions and clarifications, and the Department's responses thereto, are described below.

Revision 1. The Policies and Training

Section I(h)(1) of the proposed temporary exemption requires each UBS QPAM to "immediately develop, implement, maintain and follow" the written policies and procedures (the Policies) described in Section I(h)(1)(i) through (vii). Furthermore, Section I(h)(2) requires each UBS QPAM to "immediately develop and implement a program of training (the Training)" described therein. In its comment and in subsequent conversations with the Department, the Applicants requested that Sections I(h)(1) and (2) be modified to allow the UBS QPAMs a period of up to six months following the date of the 2016 Conviction to meet these requirements. The Department concurs with the Applicants' request. Therefore, in the final temporary exemption, the Department has modified Section I(h)(1) and (2) to provide that, respectively, "Within six (6) months of the

Conviction Date, each UBS QPAM must develop, implement, maintain, and follow written policies and procedures (the Policies) . . ." and "Within six (6) months of the Conviction Date, each UBS QPAM must develop and implement a program of training (the Training)"

Revision 2. Timing of Audit Under PTE 2013-09

Section I(i)(1) of the proposed temporary exemption requires that each UBS QPAM submit to an independent audit to evaluate the adequacy of, and the UBS QPAM's compliance with, the Policies and Training requirements of the exemption. The audit must cover the twelve month period beginning on the Conviction Date, and be completed no later than six months thereafter. Section I(i)(1) of this temporary exemption provides further that, "[f]or time periods prior to the Conviction Date and covered under PTE 2013-09, the audit requirements in Section (g) of PTE 2013-09 will remain in effect."¹⁴

In its comment, the Applicants state that the UBS QPAMs are currently subject to a short audit period beginning on September 18, 2016, the end of the most recent audit period under PTE 2013-09, and ending on the Conviction Date, currently scheduled for January 5, 2017. The Applicants state that it is unclear when the audit under this short period must be completed and when the written report would be due, because the twelve-month audit period under this temporary exemption begins on the Conviction Date. UBS requests that this short audit period under PTE 2013-09 be combined with the twelve month audit period required by this temporary exemption. In the alternative, the Applicants request that the Department clarify when the final audit and written report required under PTE 2013-09 is due to be completed and submitted to the Department.

The Department concurs with the Applicants' request that the short audit period may be combined with the twelve-month audit period under this temporary exemption, at the election of the independent auditor, and has modified the language of Section I(i)(1) as such. Section I(i)(1) has also been modified to clarify when the final audit under PTE 2013-09 must be completed,

¹⁴ Prior to the Conviction Date, the effective date of this temporary exemption, the UBS QPAMs were required to rely on the relief provided by PTE 2013-09 in order to engage in prohibited transactions covered under PTE 84-14. In complying with PTE 2013-09, the QPAMs were subject to an annual independent audit covering the twelve month period beginning on the September 18th of each year. According to the Applicants, the last full annual audit period ended on September 18, 2016.

in the event that the short audit period is not so combined with the twelve-month audit period under this temporary exemption.

Revision 3. Restrictions on Withdrawals in Section I(j)

The UBS QPAMs request a revision to Section I(j) of the proposed temporary exemption, which imposes certain contractual obligations that UBS QPAMs must agree to enter into in connection with any arrangement, agreement, or contract between such UBS QPAMs and ERISA-covered plans and IRAs for which such QPAMs provide asset management or other discretionary fiduciary services. Section I(j)(4) of the proposed temporary exemption requires that the UBS QPAMs must agree “[n]ot to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the UBS QPAM (including any investment in a separately managed account or pooled fund subject to ERISA and managed by such 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 as a result of an actual lack of liquidity of the underlying assets, provided that such restrictions are applied consistently and in like manner to all such investors.”

The Applicants request that the Department revise Section I(j)(4) in order to allow reasonable restrictions on a plan’s ability to terminate or withdraw from its arrangement with a UBS QPAM involving an investment in a pooled fund, for reasons other than an “actual lack of liquidity.” According to the Applicants, these circumstances include (but are not limited to) situations where (i) it would be impracticable to establish an accurate fair market value for some of the underlying assets in a commingled fund; and (ii) there are “holdbacks” pending the receipt of audited financial statements for the fund, so that final asset values have not yet been determined. The Applicants have proposed that Section I(j)(4) be revised to provide that “in the event such withdrawal or termination may have adverse consequences for all other investors as the result of a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from immediately redeeming an ERISA-covered plan’s or IRA’s investment, provided that such

restrictions are applicable to all such investors.”

The Department has modified Section I(j)(4) to make it clear that a “lack of liquidity” may include a range of circumstances where reasonable restrictions are necessary to protect remaining investors in a pooled fund. Further, the Department has added language to clarify that, in any such event the restrictions must be reasonable and last no longer than reasonably necessary to remedy the adverse consequences.

Therefore, the Department has modified Section I(j)(4) of this temporary exemption to require UBS QPAMs: “Not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the UBS QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such 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. In connection with any such arrangements involving investments in pooled funds subject to ERISA entered into after the Conviction Date, the adverse consequences must relate to a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from immediately redeeming an ERISA-covered plan’s or IRA’s investment, and such restrictions must be applicable to all such investors and effective no longer than reasonably necessary to avoid the adverse consequences.”

Revision 4. Indemnification Provisions in Section I(j)

Section I(j) of the proposed temporary exemption provides that, “[e]ffective as of the effective date of this temporary exemption, with respect to any arrangement, agreement, or contract between a UBS QPAM and an ERISA-covered plan or IRA for which a UBS QPAM provides asset management or other discretionary fiduciary services, each UBS QPAM agrees” to comply with certain obligations described in Sections I(j)(1) through (7). Specifically, Section I(j)(7) requires such UBS QPAM “[t]o indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a violation of applicable laws, a breach of contract, or any claim arising out of the failure of such UBS QPAM to qualify for the exemptive relief provided by PTE 84–14

as a result of a violation of Section I(g) of PTE 84–14 other than the Convictions.”

The Department, is modifying Section I(i)(7) to clarify that the “applicable laws” referred to in Section I(i)(7) refer to the fiduciary duties of ERISA and the prohibited transaction provisions of ERISA and the Code. The requirement to comply with ERISA’s fiduciary duties and with ERISA and the Code’s prohibited transaction provisions is also included in the Policies required under the exemption. Therefore, Section I(i)(7) of the temporary exemption, as granted, requires a UBS QPAM “[t]o indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a violation of ERISA’s fiduciary duties and of ERISA and the Code’s prohibited transaction provisions, a breach of contract, or any claim arising out of the failure of such UBS QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Convictions.”

The Department is also revising the notice requirement in Section I(j)(8) to require that each UBS QPAM will provide a notice of its agreement under Section I(j) to each ERISA-covered plan and IRA for which a UBS QPAM provides asset management or other discretionary fiduciary services within six (6) months of the effective date of this temporary exemption.

Revision 5. Modification of Section I(g)

Section I(g) of the proposed temporary exemption provides that “UBS and UBS Securities Japan will not provide discretionary asset management services to ERISA-covered plans or IRAs, nor will otherwise act as a fiduciary with respect to ERISA-covered plan or IRA assets.” The Department has modified Section I(g) in order to clarify that UBS and UBS Securities Japan will not violate the condition in the event that they inadvertently become investment advice fiduciaries and that UBS can act as a fiduciary for plans that it sponsors for its own employees or employees of an affiliate.

Therefore, Section I(g) of the temporary exemption, as granted, provides that “Other than with respect to plans sponsored or maintained by UBS for its own employees or employees of an affiliate, UBS and UBS Securities Japan will not act as fiduciaries within the meaning of ERISA Section 3(21)(A)(i) or (iii), or Code Section 4975(e)(3)(A) or (C) with respect to ERISA-covered plan or IRA assets; in accordance with this provision, UBS and UBS Securities Japan will not be treated as violating the conditions of

this exemption solely because they acted as investment advice fiduciaries within the meaning of ERISA Section 3(21)(A)(ii), or Code Section 4975(e)(3)(B).”

Revision 6. Definition of Convictions and FX Misconduct

The Applicants also request that the Department modify the language in Section II(a) regarding the definition of “Convictions.” Section II(a) of the proposed temporary exemption provides that “for all purposes under this temporary exemption, “conduct” of any person or entity that is the “subject of [a] Conviction” encompasses any conduct of UBS and/or their personnel, that is described in the Plea Agreement, (including Exhibits 1 and 3 attached thereto), and other official regulatory or judicial factual findings that are a part of this record.” Specifically, the UBS QPAMs request that the Department strike the reference to “official regulatory or judicial factual findings that are a part of this record,” because, according to the Applicants, it is unclear what documents are being referred to. Furthermore, the Applicants state that they are unaware of any other documents having been made a part of the record besides the Plea Agreement, (including Exhibits 1 and 3 attached thereto). The Applicants suggest that the Department modify the language of Section II(a) to provide that the “conduct” of any person or entity that is “subject of [a] Conviction” encompasses any conduct of UBS and/or their personnel, that is described in Exhibit 3 to the Plea Agreement entered into between UBS AG and the Department of Justice Criminal Division, on May 20, 2015, in connection with Case Number 3:15-cr-00076-RNC, and Exhibits 3 and 4 to the Plea Agreement entered into between UBS Securities Japan and the Department of Justice Criminal Division, on December 19, 2012, in connection with Case Number 3:12-cr-00268-RNC.

The Department concurs with the applicant and has removed the reference to “official regulatory or judicial factual findings that are a part of this record,” from the definition of “Convictions” in Section II(a). Furthermore, the Department has modified the language in Section II(a) to provide that the “‘conduct’ of any person or entity that is the ‘subject of [a] Conviction’ encompasses any conduct of UBS and/or their personnel, that is described (i) in Exhibit 3 to the Plea Agreement entered into between UBS AG and the Department of Justice Criminal Division, on May 20, 2015, in connection with Case Number 3:15-cr-00076-RNC, and

(ii) Exhibits 3 and 4 to the Plea Agreement entered into between UBS Securities Japan and the Department of Justice Criminal Division, on December 19, 2012, in connection with Case Number 3:12-cr-00268-RNC.”

In addition to modifying to the definition of “Convictions” in Section II(a), the Department also deleted the parenthetical in Section I(a) regarding the term “participate in” and reworded the “participate in” parenthetical in Section I(c) to read: “(for purposes of this paragraph (c), “participated in” includes approving or condoning the misconduct underlying the Conviction).”

The applicant has also requested the Department revise the definition of “FX Misconduct” in Section II(e) of the temporary exemption to limit the term to the conduct described in “Paragraph 15 of Exhibit 1 of the Plea Agreement (Factual Basis for Breach).” The Department declines to make the requested change to the definition of “FX Misconduct” in Section II(e). The Department understands that, based on the record, the Department of Justice terminated UBS AG’s 2012 Non-Prosecution Agreement (the NPA) related to UBS’s fraudulent submission of LIBOR rates as a result of a determination that UBS engaged in deceptive currency trading and sales practices, as well as collusive conduct in certain FX markets. Thus, narrowing the definition of the FX Misconduct to include only paragraph 15 of Exhibit 1 of the Plea Agreement would not appropriately reflect the misconduct of UBS employees in regard to the FX markets that was taken into consideration in the breach of the NPA.

Revision 7. Technical Corrections and Clarifications

The Department is making a technical correction to the Section I(j) to clarify the language in that Section. In this regard, the Department is revising the phrase at the end of Section I(j)(1) that reads “as applicable” to read in the final temporary exemption as follows: “as applicable, with respect to each such ERISA-covered plan and IRA.” The Department intended for each UBS QPAM to contractually obligate itself to apply the standards of prudence and loyalty set forth in section 404 of ERISA, as applicable, to all ERISA-covered plans and IRAs for which such QPAM provides asset management or other discretionary fiduciary services. Therefore, the revised Section I(j)(1) in the final temporary exemption will require that each UBS QPAM agrees “[t]o comply with ERISA and the Code, as applicable with respect to such

ERISA-covered plan or IRA; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions); and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA, as applicable, with respect to each such ERISA-covered plan and IRA.”

The Applicants’ comment makes certain clarifications to the Summary of Facts and Representations in the proposed temporary exemption. The proposed temporary exemption provides at 81 FR 81163 that UBS adopted and began to implement an automated system to monitor transactions covering the all asset classes in 2013. However, the Applicants note in their comment that such implementation began in early 2014. In addition, the proposed temporary exemption at 81 FR 81163 states that UBS has prohibited the use of mobile phones on trading floors. However, the Applicants note in their comment that UBS has prohibited the use of personal mobile phones on trading floors for all investment bank sales and trading staff. The Department takes note of the Applicants’ clarifications.

After giving full consideration to the entire record, the Department has decided to grant the temporary exemption. The complete application file for the temporary exemption (Exemption Application No. D-11863), including all supplemental submissions received by the Department, is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1515, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department’s decision to grant this exemption, refer to the proposed exemption published in the **Federal Register** on November 17, 2016 at 81 FR 81158.

Temporary Exemption Operative Language

Section I: Covered Transactions

Certain entities with specified relationships to UBS, AG (hereinafter, the UBS QPAMs as further defined in Section II(b)) shall not be precluded from relying on the exemptive relief provided by Prohibited Transaction Exemption 84-14 (PTE 84-14),¹⁵

¹⁵ 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70

notwithstanding the “2013 Conviction” against UBS Securities Japan Co., Ltd. entered on September 18, 2013 and the “2016 Conviction” against UBS (collectively the Convictions, as further defined in Section II(a)),¹⁶ for a period of up to twelve months beginning on the Conviction Date (as defined in Section II(d)), provided that the following conditions are satisfied:

(a) The UBS QPAMs (including their officers, directors, agents other than UBS, and employees of such UBS QPAMs) did not know of, have reason to know of, or participate in: (1) The FX Misconduct; or (2) the criminal conduct that is the subject of the Convictions;

(b) The UBS QPAMs (including their officers, directors, agents other than UBS, and employees of such UBS QPAMs) did not receive direct compensation, or knowingly receive indirect compensation, in connection with: (1) The FX Misconduct; or (2) the criminal conduct that is the subject of the Convictions;

(c) The UBS QPAMs will not employ or knowingly engage any of the individuals that participated in: (1) The FX Misconduct or (2) the criminal conduct that is the subject of the Convictions (for purposes of this Section I(c), “participated in” includes approving or condoning the FX Misconduct or the misconduct that is the subject of the Convictions);

(d) A UBS 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 or the Code and managed by such UBS QPAM, to enter into any transaction with UBS or UBS Securities Japan or engage UBS or UBS Securities Japan to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e) Any failure of the UBS QPAMs to satisfy Section I(g) of PTE 84–14 arose solely from the Convictions;

(f) A UBS QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of

the Code (an IRA) in a manner that it knew or should have known would: Further the FX Misconduct or the criminal conduct that is the subject of the Convictions; or cause the UBS QPAM, its affiliates or related parties to directly or indirectly profit from the FX Misconduct or the criminal conduct that is the subject of the Convictions;

(g) Other than with respect to plans sponsored or maintained by UBS for its own employees or employees of an affiliate, UBS and UBS Securities Japan will not act as fiduciaries within the meaning of ERISA Section 3(21)(A)(i) or (iii), or Code Section 4975(e)(3)(A) or (C) with respect to ERISA-covered plan or IRA assets; in accordance with this provision, UBS and UBS Securities Japan will not be treated as violating the conditions of this exemption solely because they acted as investment advice fiduciaries within the meaning of ERISA Section 3(21)(A)(ii), or Code Section 4975(e)(3)(B);

(h)(1) Within six (6) months of the Conviction Date, each UBS QPAM must develop, implement, maintain, and follow written policies and procedures (the Policies) requiring and reasonably designed to ensure that:

(i) The asset management decisions of the UBS QPAM are conducted independently of UBS’s corporate management and business activities, including the corporate management and business activities of the Investment Bank division and UBS Securities Japan;

(ii) The UBS QPAM fully complies with ERISA’s fiduciary duties and with ERISA and the Code’s prohibited transaction provisions, and does not knowingly participate in any violation of these duties and provisions with respect to ERISA-covered plans and IRAs;

(iii) The UBS 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 UBS 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 UBS 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 UBS QPAM complies with the terms of this temporary exemption; and

(vii) Any violation of, or failure to comply with, an item in subparagraph (ii) through (vi), is corrected promptly upon discovery, and any such violation or compliance failure not promptly corrected is reported, upon the discovery of such failure to promptly correct, in writing, to appropriate corporate officers, the head of compliance and the General Counsel (or their functional equivalent) of the relevant UBS QPAM, the independent auditor responsible for reviewing compliance with the Policies, and an appropriate fiduciary of any affected ERISA-covered plan or IRA that is independent of UBS; 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 UBS or beneficially owned by an employee of UBS or its affiliates, such fiduciary does not need to be independent of UBS. A UBS QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance promptly when discovered or when it reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (vii);

(2) Within six (6) months of the Conviction Date, each UBS QPAM must develop and implement a program of training (the Training), conducted at least annually, for all relevant UBS QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must:

(i) 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), ethical conduct, the consequences for not complying with the conditions of this temporary exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing; and

(ii) Be conducted by an independent professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code;

(i)(1) Each UBS 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 and the Code, to evaluate the

FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

¹⁶ 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 criminal activity therein described.

adequacy of, and the UBS QPAM's compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. The audit must cover the twelve month period that begins on the Conviction Date, and must be completed no later than six (6) months after the twelve month period. For time periods prior to the Conviction Date and covered by the audit required pursuant to PTE 2013–09, the audit requirements in Section (g) of PTE 2013–09 will remain in effect. The auditor may, at its own discretion, elect to combine the twelve-month audit period required under this temporary exemption with the period of time from September 18, 2016 until the effective date of this temporary exemption, such that each period, though audited under the standards applicable to that period, will be covered in a single audit report issued no later than six (6) months after the twelve-month period that begins on the Conviction Date. If the final audit period under PTE 2013–09 is not combined with the twelve-month audit required under this temporary exemption, the final audit period under PTE 2013–09 must be completed and submitted within six (6) months of the effective date of this temporary exemption;

(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 UBS QPAM and, if applicable, UBS, 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 must specifically require the auditor to determine whether each UBS QPAM has developed, implemented, maintained, and followed the Policies in accordance with the conditions of this temporary exemption and has developed and implemented the Training, as required herein;

(4) The auditor's engagement must specifically require the auditor to test each UBS QPAM's operational compliance with the Policies and Training. In this regard, the auditor must test a sample of each QPAM's transactions involving ERISA-covered plans and IRAs sufficient in size and nature to afford the auditor a reasonable basis to determine the operational compliance with the Policies and Training;

(5) On or before the end of the relevant period described in Section

I(i)(1) for completing the audit, the auditor must issue a written report (the Audit Report) to UBS and the UBS QPAM to which the audit applies that describes the procedures performed by the auditor during the course of its examination. The Audit Report must include the auditor's specific determinations regarding: The adequacy of the UBS QPAM's Policies and Training; the UBS QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective UBS QPAM's noncompliance with the written Policies and Training described in Section I(h) above. Any determination 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 UBS QPAM must be promptly addressed by such UBS QPAM, and any action taken by such UBS QPAM to address such recommendations must be included in an addendum to the Audit Report (which addendum is completed prior to the certification described in Section I(i)(7) below). Any determination by the auditor that the respective UBS QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that the UBS QPAM has complied with the requirements under this subsection must be based on evidence that demonstrates the UBS QPAM has actually implemented, maintained, and followed the Policies and Training required by this temporary exemption;

(6) The auditor must notify the respective UBS QPAM of any instance 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 UBS 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 temporary exemption; addressed, corrected, or remedied any inadequacy 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 temporary exemption and with the applicable provisions of ERISA and the Code;

(8) The Risk Committee, the Audit Committee, and the Corporate Culture and Responsibility Committee of UBS's Board of Directors are provided a copy of each Audit Report; and a senior executive officer of UBS's Compliance and Operational Risk Control function must review the Audit Report for each UBS QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report;

(9) Each UBS QPAM must provide its certified Audit Report, by regular mail to: The Department's Office of Exemption Determinations (OED), 200 Constitution Avenue NW., Suite 400, Washington, DC 20210, or by private carrier to: 122 C Street NW., Suite 400, Washington, DC 20001–2109, no later than 45 days following its completion. The Audit Report will be part of the public record regarding this temporary exemption. Furthermore, each UBS QPAM must make 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 UBS QPAM;

(10) Each UBS QPAM and the auditor must submit to OED: (A) Any engagement agreement entered into pursuant to the engagement of the auditor under this temporary exemption; and (B) any engagement agreement entered into with any other entity retained in connection with such QPAM's compliance with the Training or Policies conditions of this temporary exemption no later than six (6) months after the Conviction Date (and one month after the execution of any agreement thereafter);

(11) The auditor must 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 instance of noncompliance by the relevant UBS QPAM; and an explanation of any corrective or remedial action taken by the applicable UBS QPAM; and

(12) UBS 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 UBS demonstrates to the Department's satisfaction that such new auditor is independent of UBS, experienced in the matters that are the subject of the temporary exemption and capable of making the determinations required of this temporary exemption;

(j) As of the Conviction Date, with respect to any arrangement, agreement,

or contract between a UBS QPAM and an ERISA-covered plan or IRA for which such UBS QPAM provides asset management or other discretionary fiduciary services, each UBS QPAM agrees:

(1) To comply with ERISA and the Code, as applicable with respect to such ERISA-covered plan or IRA; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions); and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA, as applicable, with respect to each such ERISA-covered plan and IRA;

(2) Not to require (or otherwise cause) the ERISA-covered plan or IRA to waive, limit, or qualify the liability of the UBS 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 UBS 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 UBS;

(4) Not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the UBS QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such 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. In connection with any such arrangements involving investments in pooled funds subject to ERISA entered into after the Conviction Date, the adverse consequences must relate to of a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from immediately redeeming an ERISA-covered plan's or IRA's investment, and such restrictions must be applicable to all such investors and effective no longer than reasonably necessary to avoid the adverse consequences;

(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;

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the UBS QPAM for a violation of such agreement's terms, except for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of UBS and its affiliates; and

(7) To indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a violation of ERISA's fiduciary duties and of ERISA and the Code's prohibited transaction provisions, a breach of contract, or any claim arising out of the failure of such UBS QPAM to qualify for the exemptive relief provided by PTE 84-14 as a result of a violation of Section I(g) of PTE 84-14 other than the Convictions;

(8) Within six (6) months of the effective date of this temporary exemption each UBS QPAM will provide a notice of its agreement and obligations under this Section I(j) to each ERISA-covered plan and IRA for which a UBS QPAM provides asset management or other discretionary fiduciary services;

(k) The UBS QPAMs comply with each condition of PTE 84-14, as amended, with the sole exceptions of the violations of Section I(g) of PTE 84-14 that are attributable to the Convictions;

(l) UBS imposes its internal procedures, controls, and protocols on UBS Securities Japan to: (1) Reduce the likelihood of any recurrence of conduct that is the subject of the 2013 Conviction, and (2) comply in all material respects with the Business Improvement Order, dated December 16, 2011, issued by the Japanese Financial Services Authority;

(m) UBS complies in all material respects with the audit and monitoring procedures imposed on UBS by the United States Commodity Futures Trading Commission Order, dated December 19, 2012;

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

(o) During the effective period of this temporary exemption UBS: (1)

Immediately discloses to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) that UBS or any of its affiliates enters into with the U.S. Department of Justice, to the extent such DPA or NPA involves conduct described in Section I(g) of PTE 84-14 or section 411 of ERISA; and (2) immediately provides the Department any information requested by the Department, as permitted by law, regarding the agreement and/or the conduct and allegations that led to the agreement; and

(p) A UBS QPAM will not fail to meet the terms of this temporary exemption solely because a different UBS QPAM fails to satisfy a condition for relief under this temporary exemption described in Sections I(c), (d), (h), (i), (j), (k), and (n).

Section II: Definitions

(a) The term "Convictions" means the 2013 Conviction and the 2016 Conviction. The term "2013 Conviction" means the judgment of conviction against UBS Securities Japan Co. Ltd. in Case Number 3:12-cr-00268-RNC in the U.S. District Court for the District of Connecticut for one count of wire fraud in violation of Title 18, United States Code, sections 1343 and 2 in connection with submission of YEN London Interbank Offered Rates and other benchmark interest rates. The term "2016 Conviction" means the anticipated judgment of conviction against UBS AG in Case Number 3:15-cr-00076-RNC in the U.S. District Court for the District of Connecticut for one count of wire fraud in violation of Title 18, United States Code, Sections 1343 and 2 in connection with UBS's submission of Yen London Interbank Offered Rates and other benchmark interest rates between 2001 and 2010. For all purposes under this proposed temporary exemption, "conduct" of any person or entity that is the "subject of [a] Conviction" encompasses any conduct of UBS and/or their personnel, that is described (i) in Exhibit 3 to the Plea Agreement entered into between UBS AG and the Department of Justice Criminal Division, on May 20, 2015, in connection with Case Number 3:15-cr-00076-RNC, and (ii) Exhibits 3 and 4 to the Plea Agreement entered into between UBS Securities Japan and the Department of Justice Criminal Division, on December 19, 2012, in connection with Case Number 3:12-cr-00268-RNC;

(b) The term "UBS QPAM" means UBS Asset Management (Americas) Inc., UBS Realty Investors LLC, UBS Hedge Fund Solutions LLC, UBS O'Connor LLC, and any future entity within the

Asset Management or the Wealth Management Americas divisions of UBS AG that qualifies as a “qualified professional asset manager” (as defined in Section VI(a) ¹⁷ of PTE 84–14) and that relies on the relief provided by PTE 84–14 and with respect to which UBS AG is an “affiliate” (as defined in Part VI(d)(1) of PTE 84–14). The term “UBS QPAM” excludes the parent entity, UBS AG and UBS Securities Japan.

(c) The term “UBS” means UBS AG.

(d) The term “Conviction Date” means the date that a judgment of conviction against UBS is entered in the 2016 Conviction.

(e) The term “FX Misconduct” means the conduct engaged in by UBS personnel described in Exhibit 1 of the Plea Agreement (Factual Basis for Breach) entered into between UBS AG and the Department of Justice Criminal Division, on May 20, 2015 in connection with Case Number 3:15-cr-00076-RNC filed in the U.S. District Court for the District of Connecticut.

(f) The term “UBS Securities Japan” means UBS Securities Japan Co. Ltd, a wholly-owned subsidiary of UBS incorporated under the laws of Japan.

(g) The term “Plea Agreement” means the Plea Agreement (including Exhibits 1 and 3 attached thereto) entered into between UBS AG and the Department of

Justice Criminal Division, on May 20, 2015 in connection with Case Number 3:15-cr-00076-RNC filed in the U.S. District Court for the District of Connecticut.

Effective Date: This temporary exemption is effective for the period beginning on the date that a judgment of conviction against UBS is entered in Case Number 3:15-cr-00076-RNC in the U.S. District Court for the District of Connecticut for one count of wire fraud in violation of Title 18, United States Code, Sections 1343 and 2 (the Conviction Date), and ending on the earlier of: The date that is twelve months following the Conviction Date; or the effective date of a final agency action made by the Department in connection with Exemption Application No. D-11907, an application for long-term exemptive relief for the covered transactions described herein.

FOR FURTHER INFORMATION CONTACT:

Brian Mica, telephone (202) 693-8402, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor (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 operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional 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

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 14th day of December, 2016.

Lyssa E. Hall,

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

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¹⁷ 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.