

To submit comments:	Send them to:
By mail .....	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for \$9.00 (25 cents per page reproduction cost) payable to the United States Treasury.

**Lori Jonas,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

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## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Air Act

On January 28, 2020, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Southern District of Ohio in *United States v. Dynegy Zimmer LLC*, Civil Action No. 1:20–cv–00071.

The Consent Decree settles claims brought by the United States for violations of the Clean Air Act, 42 U.S.C. 7401 *et seq.* in connection with a coal fired power plant owned and operated by Defendant in Moscow, Ohio. The Consent Decree requires the Defendant to undertake measures to address CAA violations and prevent future CAA violations. Defendant will also implement a mitigation project and a supplemental environmental project. Under the Consent Decree, Defendant will pay a civil penalty of \$600,000.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States v. Dynegy Zimmer LLC*, D.J. Ref. No. 90–5–2–1–11425. All comments must be submitted no later than thirty (30) days after the publication date of this notice.

Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email .....	<a href="mailto:pubcomment-ees.enrd@usdoj.gov">pubcomment-ees.enrd@usdoj.gov</a> .
By mail .....	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>.

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Please enclose a check or money order for \$21.25 (25 cents per page reproduction cost) payable to the United States Treasury.

**Jeffrey Sands,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

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## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

[Prohibited Transaction Exemption 2020–01; Exemption Application No. D–11998]

### Exemption From Certain Prohibited Transaction Restrictions Involving UBS Asset 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 Global Wealth Management U.S. Divisions (collectively, the Applicants or the UBS QPAMs) Located in Chicago, Illinois; Hartford, Connecticut; New York, New York; and Chicago, Illinois, Respectively

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Notice of exemption.

**SUMMARY:** This document contains a notice of exemption 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). The exemption affects the ability of certain entities with specified relationships to UBS AG (UBS), UBS Securities Japan Co., Ltd. (UBS Securities Japan), and UBS (France) S.A. (UBS France) to continue to rely upon relief provided by Prohibited Transaction Exemption 84–14.

**DATES:** This exemption will be in effect for five years beginning on February 20, 2020 and ending on February 20, 2025.

**FOR FURTHER INFORMATION CONTACT:** Mr. Brian Mica of the Department at (202) 693–8402. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** On September 30, 2019, the Department published a notice of proposed exemption in the *Federal Register* at 84 FR 51621, permitting certain entities with specified relationships to UBS to continue to rely upon the relief provided by PTE 84–14<sup>1</sup> for a period of five years, notwithstanding certain criminal convictions, as described herein (the Convictions) and the 2019 French Conviction.

The Department is granting this exemption to ensure that Covered Plans<sup>2</sup> with assets managed by an asset manager within the corporate family of UBS may continue to benefit from the relief provided by PTE 84–14. This exemption will be in effect for five years from February 20, 2020 (the date the relief in PTE 2019–01<sup>3</sup> expires) through February 20, 2025. The grant of this five-year exemption does not imply, and is not intended to imply, that the Department will grant additional relief for UBS QPAMs to continue to rely on the relief in PTE 84–14 following the end of the five-year period.

This exemption provides only the relief specified in the text of the exemption, and only with respect to the criminal convictions or criminal conduct described herein. It provides no relief from violations of any law other

<sup>1</sup> 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), hereinafter referred to as PTE 84–14 or the QPAM exemption.

<sup>2</sup> “Covered Plan” is a plan subject to Part 4 of Title 1 of ERISA (“ERISA-covered plan”) or a plan subject to section 4975 of the Code (“IRA”) with respect to which a UBS QPAM relies on PTE 84–14, or with respect to which a UBS QPAM (or any UBS affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84–14). A Covered Plan does not include an ERISA-covered plan or IRA to the extent the UBS QPAM has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into its contract, arrangement, or agreement with the ERISA-covered plan or IRA.

<sup>3</sup> See PTE 2019–01; 84 FR 6163, February 26, 2019.

the prohibited transaction provisions of ERISA and the Code. Furthermore, the Department cautions that the relief in this 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 Convictions or the 2019 French Conviction) during the Exemption Period. The Department intends for the terms of this exemption to promote adherence to basic fiduciary standards under ERISA and the Code. This exemption also aims to ensure that Covered Plans can terminate relationships in an orderly and cost-effective fashion in the event the fiduciary of a Covered Plan determines it is prudent to terminate the relationship with a UBS QPAM. The Department makes the requisite findings under ERISA section 408(a) based on adherence to all of the conditions of the exemption. Accordingly, affected parties should be aware that the conditions incorporated in this exemption are, taken as a whole, necessary for the Department to grant the relief requested by the Applicant. Absent these or similar conditions, the Department would not have granted this exemption.

The Applicants requested an individual exemption pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011). Effective December 31, 1978, section 102 of the Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor. Accordingly, the Department grants this exemption under its sole authority.

#### Department's Comment

The Department cautions that the relief in this exemption will terminate immediately if an entity within the UBS corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Convictions and the 2019 French Conviction) during the Exemption Period. Although the UBS QPAMs could apply for a new exemption in that circumstance, the Department would not be obligated to grant the exemption. The Department specifically designed the terms of this exemption to permit plans to terminate their relationships in an orderly and cost effective fashion in the event of an additional conviction, or the expiration of this exemption without additional relief, or a determination that it is

otherwise prudent for a plan to terminate its relationship with an entity covered by the 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 exemption. All comments and requests for a hearing were due by November 14, 2019. The Department received written comments from the Applicants and a member of the public. After considering the entire record developed in connection with the Applicant's exemption request, the Department has determined to grant the exemption, as described below.

#### UBS QPAMs' Comments

##### I. The Term of the Exemption

The Applicants request that the Department grant exemptive relief for the full term of the PTE 84–14 Section I(g) disqualification period by extending the term of the exemption from five years to either nine years or, if UBS is successful in its appeal of the 2019 French Conviction, to 10 years, beginning on January 10, 2017 (the 2017 Conviction Date).

The UBS QPAMs state the “reasons articulated in the notice of the Proposed Exemption do not support the Department's determination that an additional exemption for a 5-year period—but not through the end of the 9-year disqualification period—would be protective [of] and in the best interest of participants and beneficiaries.” The UBS QPAMs argue that the conditions of the exemption, such as the independent audit and the Audit Report, are designed to provide the Department with sufficient opportunities to review the UBS QPAMs compliance with the exemption. The UBS QPAMs state that the “basis for the Department's determination that the Proposed Exemption is administratively feasible is that these same conditions ‘will provide an incentive for, and a measure of,’ the UBS QPAMs' ongoing compliance with the exemption without any ‘immediate need for review and oversight by the Department.’”<sup>4</sup> The

<sup>4</sup> The Department notes that UBS QPAMs incorrectly restated the relevant language in the proposed exemption. The actual language of the proposed exemption states “The Department has tentatively determined that the proposal is administratively feasible since, among other things, a qualified independent auditor will be required to perform an in-depth audit covering, among other things, each UBS QPAM's compliance with the exemption, and a corresponding written audit report will be provided to the Department and available to the public. The independent audit will provide an incentive for, and a measure of,

UBS QPAMs argue that limiting the term of the exemption to five years provides no additional protections given the exemption's comprehensive internal and external monitoring requirements and the protections provided by the Department's exemption regulations.

The UBS QPAMs argue that the Department justifies the five-year term in the proposed exemption by referring to a finding by the independent auditors that a UBS QPAM failed to follow the conditions of class exemption PTE 86–128 when using affiliated brokers for securities transactions,<sup>5</sup> but that the Department failed to explain the relevance of the auditor's findings to the five-year term. The UBS QPAMs represent that they fully corrected the audit finding, including reimbursement of approximately \$11,000 of commissions plus interest for the relevant period. The UBS QPAMs also state that the following year's audit report submitted on October 3, 2019, noted the correction and stated that the relevant UBS QPAM adopted a policy prohibiting ERISA accounts from trading with affiliates.

Furthermore, the UBS QPAMs state that the Department did not explain how or why the detailing of UBS's prior convictions and conduct in the proposed exemption was relevant and how the prior convictions and conduct persuaded the Department to conclude that a only a five-year exemption would be appropriate even though the UBS QPAMs have represented that no UBS QPAM personnel participated in or had knowledge of the underlying conduct in those matters. Lastly, the UBS QPAMs, repeating their previous comments on the proposal for PTE 2017–07,<sup>6</sup> claim that granting a limited-term exemption would create uncertainty among covered plans regarding the duration of relief and therefore cause potential harm to the covered plans from having to

compliance, while reducing the immediate need for review and oversight by the Department.” See 84 FR 51621 at 51627 (September 30, 2019).

<sup>5</sup> In that audit report dated August 7, 2018, Fiduciary Counselors, Inc. states, on page 26: “Asset Management [QPAM] informed us that during the Audit Period it utilized PTE 86–128 with respect to effecting securities transactions using affiliated brokers for one ERISA Plan client. However, it does not appear that Asset Management correctly followed all of the requirement of PTE 86–128. Specifically, it does not appear that Asset Management provided its client with the required annual termination notice. Additionally, it does not appear that Asset Management timely provided its client with the required annual disclosure summary.”

<sup>6</sup> 82 FR 61903 (December 29, 2017). PTE 2017–07 is an exemption that permits UBS QPAMs to rely on the exemptive relief provided by PTE 84–14, notwithstanding the 2013 and 2017 Convictions. See also the notice of proposed exemption at 81 FR 83385 (November 21, 2016).

expend the time and resources to be sure that they can replace the UBS QPAMs in the event that the Department does not grant permanent relief.

*Department's Response:*

The Department is not persuaded that a nine-year exemption period would be protective and in the interest of Covered Plans. UBS entities were criminally convicted three times, including twice in U.S. courts, for illegal behavior that, collectively, involved billions of dollars and spanned numerous years, across different UBS entities. Given the duration and magnitude of the UBS entities' criminal behavior, the Department cannot determine that the conditions in this exemption anticipate all of the protections that may be necessary to protect Covered Plans over the entire nine-year disqualification period. The Department remains convinced that the prospect of the Department's prospective in-depth review of any future exemption request by the UBS QPAMs provides a strong incentive for the UBS QPAMs to diligently monitor compliance with the conditions of this exemption, to the benefit of Covered Plans.

The audits required by this exemption will provide the Department with valuable insight into the UBS QPAMs' compliance history and operations. If those audits identify deficiencies, the audits' findings may well provide a basis for imposing different or additional conditions, or for the denial of a new exemption application after expiration of this exemption's five-year term.

However, the Department would not view a cycle of several positive audits alone as dispositive proof that this exemption meets, and will continue to meet, the requirements of Section 408(a) of ERISA over the entire remaining UBS QPAM disqualification period. An exemption request submitted by the UBS QPAMs containing all current, accurate, relevant material will be another necessary and important basis for any such determination.

A failure to comply with the Department's prohibited transaction class exemption 86-128 is a failure to comply with ERISA. The Department considers any instance of an exemption applicant's noncompliance with ERISA when contemplating whether the requested exemption is appropriate. Information regarding an applicant's non-compliance with ERISA, even if corrected, heightens the Department's scrutiny of the exemption request. The Department's ability to review the Audit Reports annually and for any noncompliance reported therein,

whether isolated, continuing or corrected, along with the limited term of the exemption, provides the Department the opportunity to add, modify, and enhance any conditions, as necessary, in a potential future exemption and assists in determining if a future exemption is appropriate.

The Department considers the entire record before it when determining the appropriate term of the exemption. The record in this instance contains an abundance of factual information detailing the severity of the misconduct, repeated criminal violations, supervisory failures, and the breach of two previous exemptions, which themselves were necessitated by criminal conduct. Such a detailed record of criminal behavior reflects on the offending organization's compliance culture, which is a factor at the core of the Department's determinations and certainly is a large factor in the Department's consideration of the length of any exemptive relief provided.

The Department additionally notes that, if the UBS QPAMs' appeal of the 2019 French Conviction is successful, the UBS QPAMs may rely on PTE 2017-07 or this exemption during their respective effective periods, as long as the applicable conditions therein are met.<sup>7</sup>

## II. Advisory Opinion Request

Along with their comments to the proposed exemption the UBS QPAMs reiterated their request that the Department issue an advisory opinion as to whether foreign convictions are disqualifying convictions under section I(g) of PTE 84-14. The UBS QPAMs state the request presents questions of law and policy that are critically important regardless of the Department's determinations on the term and condition of this exemption. The Department acknowledges the request, and is separately considering it pursuant to ERISA Procedure 76-1.

## III. Requested Revisions to the Exemption's Conditions

The UBS QPAMs requested certain specific revisions based on their request that the Department increase the exemption's term from five years to nine years. As discussed above, the Department has decided not to modify the term of the exemption to nine years. Accordingly, it is not making these requested revisions.

The UBS QPAMs also requested other revisions to the proposed exemption's

operative language in certain conditions, as discussed below.

### Section I(a)

The UBS QPAMs requested that the Department modify text in Section I(a) of the proposed exemption, which in part conditions relief on the premise that third parties engaged "on behalf of" the UBS QPAMs did not "know of, have reason to know of, or participate in" the criminal conduct that is the subject of the 2019 French Conviction. Specifically, the UBS QPAMs request deletion of the sentence in Section I(a) stating "[f]urther, any other party engaged on behalf of such UBS QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not know of, did not have reason to know of, or participate in the criminal conduct of UBS and UBS France that is the subject of the 2019 French Conviction." Furthermore, the UBS QPAMs requested modification of the last sentence of Section I(a), which provides that a person "participated in" the criminal misconduct not only if the person actively engaged in the misconduct, but also if he or she knowingly approved of the criminal conduct or, with knowledge of the misconduct, failed to take active steps to prohibit it, such as reporting the conduct to supervisors. The UBS QPAMs request that the phrase "or knowledge of such conduct without taking active steps to prohibit such conduct, including reporting the conduct to such individual's supervisors, and to the Board of Directors" be deleted from Section I(a).

The Department declines to make the requested modifications to Section I(a). The Department expects the QPAMs, their employees, and agents to adhere to high standards of integrity. These standards are not satisfied merely by avoiding actively engaging in misconduct, but also extends to taking measures to stop misconduct that is known or should be known. Silent acquiescence to criminal conduct falls far short of the standards expected of parties relying on the exemption. Accordingly, the condition treats as knowing participation a party's failure to take active steps to prevent the criminal conduct that is the subject of the Convictions and the 2019 French Conviction. Moreover, it is the Department's view that the UBS QPAMs are appropriately held accountable in this manner for the conduct of the third parties they engaged on their behalf to manage or exercise authority over plan assets. If such parties knowingly participated in the criminal conduct

<sup>7</sup> In this circumstance, the Department would consider good faith compliance with the conditions of this exemption as compliance with the conditions of PTE 2017-07.

that is the subject of the 2019 French Conviction, the QPAMs' culpability is potentially greater than the Department assumed in drafting the exemption conditions, and there may be need for greater protections or reduced relief. The condition was specifically designed to give assurance that the UBS QPAMs and third parties engaged on the UBS QPAMs' behalf did not participate in, approve, or facilitate criminal misconduct.

#### *Section I(b)*

The UBS QPAMs have also requested that the Department modify text in Section I(b) of the proposed exemption, which in part provides that the parties engaged to act on behalf of the UBS QPAMs must not have received compensation in connection with the criminal conduct that is the subject of the 2019 French Conviction. The UBS QPAMs have requested deletion of the last sentence of Section I(b), which provides: “[f]urther, any other party engaged on behalf of such UBS QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct of UBS and UBS France that is the subject of the 2019 French Conviction.”

Section I(b) also reflects the Department's view that the QPAMs and the parties engaged on their behalf to manage or exercise authority over plan assets must adhere to high standards of integrity. Accordingly, these parties engaged by the UBS QPAMs should neither have participated in nor profited from the criminal conduct that is the subject of the 2019 French Conviction. If such parties, in fact, received direct or indirect compensation in connection with the criminal conduct, their culpability, and the culpability of the UBS QPAMs, is potentially greater than the Department assumed in formulating this exemption's conditions, and there may be need for greater protections or reduced relief. Therefore, Section I(b) of the exemption will continue to extend the prohibition against the receipt of compensation in connection with the conduct that is the subject of the 2019 French Conviction to third parties with responsibility or authority over plan assets.

#### *Section I(k)—Written Notice*

Section I(k) of the exemption requires the UBS QPAMs to provide each sponsor and beneficial owner of a Covered Plan that has entered into a written asset or investment management

agreement with a UBS QPAM, or the sponsor of an investment fund in any case where a UBS QPAM acts as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests, with a copy of the notice of exemption, a summary describing the facts that led to the Convictions and the 2019 French Conviction (the Summary), and a statement (the Statement) that the Convictions, and in the Department's view, the 2019 French Conviction, each separately result in a failure to meet a condition in PTE 84–14 and PTE 2017–07. The UBS QPAMs request the condition's language be revised to reflect that this disclosure is to be provided within 60 days of the effective date of the five-year exemption to Covered Plans that currently have a written investment or asset management agreement and that covered plans that enter a written investment or asset management agreement with a UBS QPAM after such 60-day time period must receive a copy of the exemption, the Summary, and the Notice prior to or contemporaneously with the Covered Plan's receipt of a written asset management agreement from the UBS QPAM.

The Department agrees with the request and has revised Section I(k) accordingly.

#### *Section I(m)(1)(ii)—Compliance Officer*

Section I(m)(1)(ii) states that “[t]he Compliance Officer must have a reporting line within UBS's Compliance and Operational Risk Control (C&ORC) function to the Head of Compliance and Operational Risk Control, Asset Management. The C&ORC function is organizationally independent of UBS's business divisions—including Asset Management, the Investment Bank, and Global Wealth Management—and is led by the head of Group Compliance, Regulatory and Governance, or another appropriate member of the Group Executive Board.” The UBS QPAMs requested that the phrase “to the Head of Compliance and Operational Risk Control, Asset Management” in the first sentence of Section I(m)(1)(ii) be deleted.

The Department declines to make the requested change. The UBS QPAMs did not provide any substantive reason for the removal of the language from this condition and therefore have not demonstrated why the deletion of the language would be in the interest of and protective of affected plans and their participants and beneficiaries. The Department formulated this condition to ensure that the Compliance Officer designated by UBS is an individual who is directly accountable to senior

management. The Department considers the Compliance Officer, the Exemption Reviews, and the Exemption Reports integral parts of this five-year exemption, without which the Department could not have made its findings that the exemption is in the interest of and protective of affected plans and their participants and beneficiaries. The exemption's conditions ensure that senior management is aware of and knowledgeable about compliance with this five-year exemption and the Policies and Training mandate. The reporting and accountability of the Compliance Officer to senior management is a part of that process.

#### *References to “2017 Conviction”*

The term “2018 Conviction” was used in the proposed exemption to describe the judgment of conviction against UBS 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. The UBS QPAMs request the term be changed from “2018 Conviction” to the term “2017 Conviction” which was used in PTE 2017–07 and because the date of this conviction is January 10, 2017. The UBS QPAMs also request the Department add a definitional Section to the exemption stating the term “2017 Conviction Date” means “January 10, 2017.”

The Department accepts the UBS QPAMs' request, and for clarity has added a definitional section to the five-year exemption stating that “[a]ll references to ‘the 2017 Conviction Date’ means January 10, 2017.” In addition, the Department has replaced the references to the “2018 Conviction” with the term “2017 Conviction.”

#### *Section II(b)—“2019 French Conviction”*

On its own motion and for clarity, the Department is modifying Section II(b) defining the term “2019 French Conviction” to include the sentence “The term ‘2019 French Conviction’ also includes a decision upholding the February 20, 2019 judgment of the French First Instance Court.”

#### **Comment From the Public**

The Department received one anonymous comment from the public that did not raise any substantive issue.

After full consideration and review of the entire record, the Department has decided to grant the exemption, with

the modifications discussed above. The complete application file (D-11998) 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 notice of proposed exemption published on September 30, 2019, at 84 FR 51621.

### 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 or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the 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) In accordance with section 408(a) of ERISA and section 4975(c)(2) of the Code, the Department makes the following determinations: The exemption is administratively feasible, the exemption is in the interests of affected plans and of their participants and beneficiaries, and the exemption is protective of the rights of participants and beneficiaries of such plans;

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

(4) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describe all material terms of the transaction which is the subject of the exemption.

Accordingly, the following exemption is granted under the authority of section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011):

### Exemption

#### Section I. Covered Transactions

Certain entities with specified relationships to UBS (hereinafter, the UBS QPAMs, as defined in Section II(e)) 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)<sup>8</sup> during the Exemption Period, notwithstanding the 2013 Conviction of UBS Securities Japan Co., Ltd., the 2017 Conviction of UBS (collectively the Convictions, as defined in Section II(a)), and the 2019 French Conviction of UBS and UBS France (as defined in Section II(b)), provided that the following conditions are satisfied:

(a) The UBS QPAMs (including their officers, directors, agents other than UBS and UBS Securities Japan and UBS France, and the employees of such UBS QPAMs) did not know of, did not have reason to know of, or did not participate in: (1) The FX Misconduct; or (2) the criminal conduct of UBS Securities Japan and UBS that is the subject of the Convictions; or (3) the criminal conduct of UBS and UBS France that is the subject of the 2019 French Conviction. Further, any other party engaged on behalf of such UBS QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not know of, did not have reason to know of, or participate in the criminal conduct of UBS and UBS France that is the subject of the 2019 French Conviction. For purposes of this exemption, "participate in" refers not only to active participation in the FX Misconduct, the criminal conduct that is the subject of the Convictions, and the criminal conduct that is the subject of the 2019 French Conviction, but also to knowing approval of the criminal conduct, or knowledge of such conduct without taking active steps to prohibit such conduct, including reporting the conduct to such individual's supervisors, and to the Board of Directors;

(b) The UBS QPAMs (including their officers, directors, agents other than UBS, UBS Securities Japan, and UBS France, and employees of such UBS

QPAMs) did not receive direct compensation, or knowingly receive indirect compensation, in connection with: (1) The FX Misconduct; (2) the criminal conduct of UBS Securities Japan and UBS that is the subject of the Convictions; or (3) the criminal conduct of UBS and UBS France that is the subject of the 2019 French Conviction. Further, any other party engaged on behalf of such UBS QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct of UBS and UBS France that is the subject of the 2019 French Conviction;

(c) The UBS QPAMs will not employ or knowingly engage any of the individuals who participated in: (1) The FX Misconduct; (2) the criminal conduct of UBS Securities Japan and UBS that is the subject of the Convictions; or (3) the criminal conduct of UBS and UBS France that is the subject of the 2019 French Conviction;

(d) At all times during the Exemption Period, no UBS QPAM will 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 with respect to one or more Covered Plans (as defined in Section II(c)) to enter into any transaction with UBS, UBS Securities Japan, or UBS France or to engage UBS, UBS Securities Japan, or UBS France 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 and the 2019 French Conviction;

(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, the criminal conduct that is the subject of the Convictions, or the criminal conduct that is the subject of the 2019 French Conviction; or cause the UBS QPAM or its affiliates to directly or indirectly profit from the FX Misconduct, the criminal conduct that is the subject of the Convictions, or the criminal conduct that is the subject of the 2019 French Conviction;

<sup>8</sup> 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).

(g) Other than with respect to employee benefit plans maintained or sponsored for its own employees or the employees of an affiliate, UBS, UBS Securities Japan, and UBS France will not act as fiduciaries 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; provided, however, that UBS, UBS Securities Japan, and UBS France will not be treated as violating the conditions of this exemption solely because they acted as an investment advice fiduciary within the meaning of section 3(21)(A)(ii) of ERISA or section 4975(e)(3)(B) of the Code;

(h)(1) Each UBS QPAM must continue to maintain, adjust (to the extent necessary), implement, and follow written policies and procedures (the Policies). The Policies must require, and must be 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, UBS Securities Japan, and UBS France. This condition does not preclude a UBS QPAM from receiving publicly available research and other widely available information from a UBS affiliate;

(ii) The UBS QPAM fully complies with ERISA's fiduciary duties, and with ERISA and the Code's prohibited transaction provisions, in each case as applicable with respect to each Covered Plan, and does not knowingly participate in any violation of these duties and provisions with respect to Covered Plans;

(iii) The UBS QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans;

(iv) Any filings or statements made by the UBS 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 or in relation to Covered Plans, are materially accurate and complete, to the best of such QPAM's knowledge at that time;

(v) To the best of the UBS QPAM's knowledge at that time, the UBS QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to Covered Plans, or make material misrepresentations or omit material

information in its communications with Covered Plans; and

(vi) The UBS QPAM complies with the terms of this five-year exemption;

(2) Any violation of, or failure to comply with an item in subparagraphs (h)(1)(ii) through (vi), is corrected as soon as reasonably possible upon discovery, or as soon after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and any such violation or compliance failure not so corrected is reported, upon the discovery of such failure to so correct, in writing. Such report shall be made to the head of compliance and the General Counsel (or their functional equivalent) of the relevant UBS QPAM that engaged in the violation or failure, and the independent auditor responsible for reviewing compliance with the Policies. 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 as soon as reasonably possible upon discovery, or as soon as reasonably possible after the UBS QPAM reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (2);

(3) Each UBS QPAM will maintain, adjust (to the extent necessary) and implement a program of training during the Exemption Period, to be conducted at least annually, for all relevant UBS QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must:

(i) 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 exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing; and

(ii) Be conducted by a 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 adequacy of, and each UBS QPAM's compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. The initial audit must cover the 13-month period that begins on February 20, 2020 and ends on March 19, 2021, and must be completed by

September 19, 2021. The second audit must cover the period March 20, 2021 through March 19, 2022 and must be completed by September 19, 2022. The third audit must cover the period March 20, 2022 through March 19, 2023 and must be completed by September 19, 2023. The fourth audit must cover the period March 20, 2023 through March 19, 2024 and must be completed by September 19, 2024. The fifth audit must cover the period March 20, 2024 through February 20, 2025 and must be completed by August 20, 2025. The corresponding certified Audit Reports must be submitted to the Department no later than 45 days following the completion of the audit.<sup>9</sup> For time periods ending prior to February 20, 2020, and covered by the audit required pursuant to PTE 2019-01,<sup>10</sup> the audit requirements in Section I(i) PTE 2019-01 will remain in effect.<sup>11</sup>

(2) Within the scope of the audit and 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 only to the extent such disclosure is not prevented by state or federal statute, or involves communications subject to attorney-client privilege, 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. Such access is limited to information relevant to the auditor's objectives as specified by the terms of this exemption;

(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 five-year exemption, and has developed and implemented the Training, as required herein;

(4) The auditor's engagement must specifically require the auditor to test

<sup>9</sup> The initial Audit Report must be submitted to the Department by November 3, 2021. The second Audit Report must be submitted to the Department by November 3, 2022. The third Audit Report must be submitted to the Department by November 3, 2023. The fourth Audit Report must be submitted to the Department by November 3, 2024. The fifth Audit Report must be submitted to the Department by October 4, 2025.

<sup>10</sup> 84 FR 6163 (February 26, 2019). PTE 2019-01 is an exemption that permits the UBS QPAMs to rely on the exemptive relief provided by PTE 84-14 notwithstanding the 2013 and 2017 Convictions and the 2019 French Conviction.

<sup>11</sup> Accordingly, pursuant to PTE 2019-01, the required audit must cover the period beginning February 20, 2019 and ending on February 19, 2020. The corresponding Audit Report must be completed by August 19, 2020 and submitted to the Department by October 3, 2020.

each UBS QPAM's operational compliance with the Policies and Training. In this regard, the auditor must test, for each UBS QPAM, a sample of such UBS QPAM's transactions involving Covered Plans, sufficient in size and nature to afford the auditor a reasonable basis to determine such UBS QPAM's operational compliance with the Policies and Training;

(5) For the 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 UBS and the UBS QPAM to which the audit applies that describes the procedures performed by the auditor in connection with its examination. The auditor, at its discretion, may issue a single consolidated Audit Report that covers all the UBS QPAMs. The Audit Report must include the auditor's specific determinations regarding:

(i) The adequacy of each UBS QPAM's Policies and Training; each 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. The UBS QPAM must promptly address any noncompliance. The UBS QPAM must promptly address or prepare a written plan of action to address any determination as to 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. Any action taken or the plan of action to be taken by the respective UBS QPAM must be included in an addendum to the Audit Report (such addendum must be completed prior to the certification described in Section I(i)(7) below). In the event such a plan of action to address the auditor's recommendation regarding the adequacy of the Policies and Training is not completed by the time of submission of the Audit Report, the following period's Audit Report must state whether the plan was satisfactorily completed. Any determination by the auditor that a 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 a UBS QPAM has complied with the requirements under this subparagraph must be based on evidence that the particular UBS QPAM has actually implemented, maintained,

and followed the Policies and Training required by this exemption. Furthermore, the auditor must not solely rely on the Exemption Report created by the Compliance Officer, as described in Section I(m) below, as the basis for the auditor's conclusions in lieu of independent determinations and testing performed by the auditor as required by Section I(i)(3) and (4) above; and

(ii) The adequacy of the Exemption Review described in Section I(m);

(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 the 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 exemption; that, to the best of such officer's knowledge at the time, such UBS QPAM has addressed, corrected, and remedied any noncompliance and inadequacy or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. Such certification must also include the signatory's determination that, to the best of such officer's knowledge at the time, the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code;

(8) The Risk Committee of UBS's Board of Directors is provided a copy of the 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 the Audit Report;

(9) Each UBS QPAM provides its certified Audit Report, by regular mail to: 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. This delivery must take place no later than 45 days following completion of the Audit Report. The Audit Reports will be made part of the public record regarding this five-year exemption. Furthermore, each UBS QPAM must make its Audit Reports unconditionally available, electronically or otherwise,

for examination upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan;

(10) Any engagement agreement with an auditor to perform the audit required by this exemption that is entered into subsequent to the effective date of this exemption must be submitted to OED no later than two months after the execution of such agreement;

(11) The auditor must provide the Department, upon request, for inspection and review, access to all the workpapers created and used in connection with the audit, provided such access and inspection is otherwise permitted by law; and

(12) UBS must notify the Department of a change in the independent auditor no later than two months after the engagement of a substitute or subsequent auditor and must provide an explanation for the substitution or change including a description of any material disputes between the terminated auditor and UBS;

(j) As of the effective date of this five-year exemption, with respect to any arrangement, agreement, or contract between a UBS QPAM and a Covered Plan, the UBS QPAM agrees and warrants to Covered Plans:

(1) To comply with ERISA and the Code, as applicable with respect to such Covered Plan; 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 with respect to each such ERISA-covered plan and IRA to the extent that section 404 is applicable;

(2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from: A UBS QPAM's violation of ERISA's fiduciary duties, as applicable, and of the prohibited transaction provisions of ERISA and the Code, as applicable; a breach of contract by the QPAM; 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 and the 2019 French Conviction. This condition applies only to actual losses caused by the UBS QPAM's violations.

(3) Not to require (or otherwise cause) the Covered Plan to waive, limit, or qualify the liability of the UBS QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(4) Not to restrict the ability of such Covered Plan 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 effective date of PTE 2017–07,<sup>12</sup> the adverse consequences must relate to a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming an ERISA-covered plan's or IRA's investment, and such restrictions must be applicable to all such investors and be 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 a like manner to all such investors; and

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the UBS QPAM for a violation of such agreement's terms. To the extent consistent with Section 410 of ERISA, however, this provision does not prohibit disclaimers 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, or damages arising from acts outside the control of the UBS QPAM;

(7) For Covered Plans that enter into a written asset or investment management agreement with a UBS QPAM on or after the effective date of this exemption, the UBS QPAM will agree to its obligations under this Section I(j) in an updated investment management agreement between the UBS QPAM and such clients or other

written contractual agreement. This condition will be deemed met for each Covered Plan that received a notice pursuant to PTE 2016–17, PTE 2017–07, and/or PTE 2019–01 that meets the terms of this condition.

Notwithstanding the above, a UBS QPAM will not violate the condition solely because a Plan or IRA refuses to sign an updated investment management agreement.

(k) Within 60 days of the effective date of this five-year exemption, each UBS QPAM will provide a **Federal Register** copy of the notice of the exemption, along with a separate summary describing the facts that led to the Convictions and the 2019 French Conviction (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that the Convictions and, in the Department's view, the 2019 French Conviction, each separately result in a failure to meet a condition in PTE 84–14 and PTE 2017–07, to each sponsor and beneficial owner of a Covered Plan that has entered into a written asset or investment management agreement with a UBS QPAM, or the sponsor of an investment fund in any case where a UBS QPAM acts as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests. All Covered Plan clients that enter into a written asset or investment management agreement with a UBS QPAM after that date must receive a copy of the exemption, the Summary, and the Statement prior to, or contemporaneously with, the Covered Plan's receipt of a written asset or investment management agreement from the UBS QPAM. The notices may be delivered electronically (including by an email that has a link to the five-year exemption);

(l) The UBS QPAMs must comply with each condition of PTE 84–14, as amended, with the sole exception of the violations of Section I(g) of PTE 84–14 that are attributable to the Convictions and the 2019 French Conviction. If, during the Exemption Period, 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 Conviction, 2017 Conviction, and the 2019 French Conviction), relief in this exemption would terminate immediately;

(m)(1) UBS continues to designate a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. The Compliance Officer must conduct an annual review during the Exemption Period (the

Exemption Review), to determine the adequacy and effectiveness of the implementation of the Policies and Training. With respect to the Compliance Officer, the following conditions must be met:

(i) The Compliance Officer must be a professional who has extensive experience with, and knowledge of, the regulation of financial services and products, including under ERISA and the Code; and

(ii) The Compliance Officer must have a reporting line within UBS's Compliance and Operational Risk Control (C&ORC) function to the Head of Compliance and Operational Risk Control, Asset Management. The C&ORC function is organizationally independent of UBS's business divisions—including Asset Management, the Investment Bank, and Global Wealth Management—and is led by the head of Group Compliance, Regulatory and Governance, or another appropriate member of the Group Executive Board;

(2) With respect to the Exemption Review, the following conditions must be met:

(i) The Exemption Review includes a review of the UBS QPAMs' compliance with and effectiveness of the Policies and Training and of the following: Any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the C&ORC function during the previous year; the most recent Audit Report issued pursuant to this exemption or PTE 2019–01; any material change in the relevant business activities of the UBS QPAMs; and any change to ERISA, the Code, or regulations related to fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of the UBS QPAMs;

(ii) The Compliance Officer prepares a written report for the Exemption Review (an Exemption Report) that (A) summarizes his or her material activities during the Exemption Period; (B) sets forth any instance of noncompliance discovered during the Exemption Period, and any related corrective action; (C) details any change to the Policies or Training to guard against any similar instance of noncompliance occurring again; and (D) makes recommendations, as necessary, for additional training, procedures, monitoring, or additional and/or changed processes or systems, and management's actions on such recommendations;

(iii) In the Exemption Report, the Compliance Officer must certify in writing that to the best of his or her

<sup>12</sup> 82 FR 61903 (December 29, 2017). PTE 2017–07 is an exemption that permits UBS QPAMs to rely on the exemptive relief provided by PTE 84–14, notwithstanding the 2013 and 2017 Convictions.



knowledge at the time: (A) The report is accurate; (B) the Policies and Training are working in a manner which is reasonably designed to ensure that the Policies and Training requirements described herein are met; (C) any known instance of noncompliance during the Exemption Period and any related correction taken to date have been identified in the Exemption Report; and (D) the UBS QPAMs have complied with the Policies and Training, and/or corrected (or are correcting) any known instances of noncompliance in accordance with Section I(h) above;

(iv) The Exemption Report must be provided to appropriate corporate officers of UBS and each UBS QPAM to which such report relates, and to the head of compliance and the General Counsel (or their functional equivalent) of the relevant UBS QPAM; and the report must be made unconditionally available to the independent auditor described in Section I(i) above;

(v) The first Exemption Review, including the Compliance Officer's written Exemption Report, must cover the thirteen-month period beginning on February 20, 2020 and ending on March 19, 2021, and must be completed by June 19, 2021. The second Exemption Review and Exemption Report must cover the period beginning on March 20, 2021 and ending on March 19, 2022, and must be completed by June 19, 2022. The third Exemption Review and Exemption Report must cover the period beginning on March 20, 2022 and ending on March 19, 2023, and must be completed by June 19, 2023. The fourth Exemption Review and Exemption Report must cover the period beginning on March 20, 2023 and ending on March 19, 2024, and must be completed by June 19, 2024. The fifth Exemption Review and Exemption Report must cover the period beginning on March 20, 2024 and ending on February 20, 2025, and must be completed by May 20, 2025. The Exemption review undertaken pursuant to PTE 2019–01 must cover the period February 20, 2019 through February 19, 2020 and be completed by May 19, 2020;<sup>13</sup>

(n) 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;

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

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

(q) During the Exemption Period, UBS must: (1) Immediately disclose to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) with the U.S. Department of Justice, entered into by UBS or any of its affiliates (as defined in Section VI(d) of PTE 84–14) in connection with conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA; and (2) immediately provide the Department any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement;

(r) Each UBS QPAM, in its agreements with, or in other written disclosures provided to Covered Plans, will clearly and prominently inform Covered Plan clients of their right to obtain a copy of the Policies or a description (Summary Policies) which accurately summarizes key components of the UBS QPAM's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within six months following the end of the calendar year during which the Policies were changed.<sup>14</sup> With respect to this requirement, the description may be continuously maintained on a website, provided that such website link to the Policies or Summary Policies is clearly and prominently disclosed to each Covered Plan; and

(s) A UBS QPAM will not fail to meet the terms of this exemption solely because a different UBS QPAM fails to satisfy a condition for relief described in Sections I(c), (d), (h), (i), (j), (k), (l), (p), or (r); or if the independent auditor described in Section I(i) fails a provision of the exemption other than the requirement described in Section I(i)(11), provided that such failure did

not result from any actions or inactions of UBS or its affiliates.

## Section II. Definitions

(a) The term “Convictions” means the 2013 Conviction and the 2017 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 “2017 Conviction” means the judgment of conviction against UBS 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 exemption, “conduct” of any person or entity that is the “subject of the Convictions” encompasses any conduct of UBS and/or their personnel that is described in (i) Exhibit 3 to the Plea Agreement entered into between UBS 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 “2019 French Conviction” means the adverse judgment on February 20, 2019 against UBS and UBS France in case Number 1105592033 in the French First Instance Court. For all purposes under this exemption, “conduct” of any person or entity that is the “criminal conduct that is the subject of the 2019 French Conviction”, includes any conduct of UBS, its affiliates, or UBS France and/or their personnel that is described in any such judgment. The term “2019 French Conviction” also includes a decision upholding the February 20, 2019 judgment of the French First Instance Court;

(c) The term “Covered Plan” means a plan subject to Part IV of Title I of ERISA (an “ERISA-covered plan”) or a plan subject to section 4975 of the Code (an “IRA”), in each case, with respect to which a UBS QPAM relies on PTE 84–14, or with respect to which a UBS QPAM (or any UBS affiliate) has

<sup>13</sup> The Exemption Reviews for the period February 20, 2019 through February 19, 2020 must be conducted and completed pursuant to the requirements of PTE 2019–01.

<sup>14</sup> In the event the Applicant meets this disclosure requirement through Summary Policies, changes to the Policies shall not result in the requirement for a new disclosure unless, as a result of changes to the Policies, the Summary Policies are no longer accurate.

expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84–14). A Covered Plan does not include an ERISA-covered plan or IRA to the extent the UBS QPAM has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA.

(d) 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 and the U.S. 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.

(e) 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 Global Wealth Management Americas U.S. divisions of UBS that qualifies as a “qualified professional asset manager” (as defined in Section VI(a) of PTE 84–14)<sup>15</sup> and that relies on the relief provided by PTE 84–14, and with respect to which UBS is an “affiliate” (as defined in Part VI(d) of PTE 84–14). The term “UBS QPAM” excludes UBS Securities Japan, the entity implicated in the criminal conduct that is the subject of the 2013 Conviction; UBS, the entity implicated in the criminal conduct that is the subject of the 2017 Conviction and implicated in the criminal conduct of UBS and UBS France that is the subject of the 2019 French Conviction; and UBS France, the entity implicated in the criminal conduct of UBS and UBS France that is the subject of the 2019 French Conviction.

(f) The term “UBS” means UBS AG.

(g) The term “UBS France” means “UBS (France) S.A.,” a wholly-owned subsidiary of UBS incorporated under the laws of France.

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

(i) All references to “the 2019 French Conviction Date” means February 20, 2019;

(j) All references to “the 2017 Conviction Date” means January 10, 2017.

(k) The term “Exemption Period” means the five-year period beginning on February 20, 2020 and ending on February 20, 2025;

(l) The term “Plea Agreement” means the Plea Agreement (including Exhibits 1 and 3 attached thereto) entered into between UBS and the U.S. 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 exemption will be in effect for a period of five years beginning on February 20, 2020.

Signed at Washington, DC, this 7th day of February, 2020.

**Lyssa Hall,**

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

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**BILLING CODE 4510–29–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

#### **Agency Information Collection Activities; Submission for OMB Review; Comment Request; Authorization Request Forms/ Certification/Letter of Medical Necessity**

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Department of Labor (DOL) is submitting the Office of Worker’s Compensation Programs (OWCP) sponsored information collection request (ICR) titled, “Authorization Request Forms/ Certification/Letter of Medical Necessity” to the Office of Management and Budget (OMB) for review and reinstatement, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that agency receives on or before March 13, 2020.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at [http://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=201906-1240-001](http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201906-1240-001) (this link will only become active on the

day following publication of this notice) or by contacting Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OWCP, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov). Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor–OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

#### **FOR FURTHER INFORMATION CONTACT:**

Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

**SUPPLEMENTARY INFORMATION:** This ICR seeks to reinstate PRA authority for the Authorization Request Forms/ Certification/Letter of Medical Necessity information collection. The FECA statute grants OWCP discretion to provide an injured employee the “services, appliances, and supplies prescribed or recommended by a qualified physician” which OWCP considers “likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation.” 5 U.S.C. 8103. In other words, OWCP is mandated to provide medical supplies and services—including prescription drugs such as opioids and compounded drugs—that it considers medically necessary. The FECA statute and implementing regulations are not primarily focused on managing doctor/patient decisions relating to medication therapy and, with the exception of few limitations on fentanyl (an opioid) and other controlled substances, the FECA program policy on pharmacy benefits has generally been a policy of payment for prescribed medications in accordance with a fee schedule based on a percentage of the average wholesale price (AWP) for drugs identified by a National Drug Code (NDC). See 20 CFR 10.809. To this end, the FECA program has a prior authorization policy (based on medical necessity) for opioid and compounded drugs utilizing the pre-authorization authority already

<sup>15</sup> 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.