DEPARTMENT OF JUSTICE

[OMB Number 1121–0364]

Agency Information Collection Activities; Proposed Collection Comments Requested; Revision of Currently Approved Collection: Annual Survey of Jails in Indian Country

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** Volume 88, Number 29, pages 9306 and 9307, on February 13, 2023, allowing a 60-day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until May 30, 2023.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Todd D. Minton, Bureau of Justice Statistics, 810 Seventh Street NW, Washington, DC 20531 (email: *Todd.Minton@usdoj.gov;* telephone: 202–598–7226).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and/or

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

DOJ seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a currently approved collection.

2. *Title of the Form/Collection:* Annual Survey of Jails in Indian Country (SJIC).

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* The form number is CJ–5B: *Annual Survey of Jails in Indian Country (SJIC).* The applicable component within the Department of Justice is the Bureau of Justice Statistics (BJS), in the Office of Justice Programs.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Affected Public: State, Local and Tribal Governments.

Abstract: BJS has conducted the SJIC since 1998 (excluding 2005 and 2006). The survey asks about the number of adults and juveniles held, sex of inmates, conviction status, seriousness of inmates' offenses, number of admissions and releases, number of inmate deaths, average daily population, peak population, capacity of facility, and jail staffing. This collection is the only national effort devoted to describing and understanding annual changes in the Indian country jail population. The collection enables BJS, tribal correctional authorities and administrators, legislators, researchers, and jail planners to track growth in the number of jails and their capacities nationally, as well as to track changes in the demographics and supervision status of the Indian country jail population and the prevalence of crowding.

5. *Total Estimated Number of Respondents:* 80.

6. *Total Estimated Number of Responses:* 80.

7. *Time per Response:* 75 minutes.

8. *Total Estimated Annual Time Burden:* 100 hours.

9. *Total Estimated Annual Other Costs Burden:* $0.

If additional information is required, contact: John R. Carlson, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC 20530.

Dated: April 24, 2023.

John R. Carlson,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–08988 Filed 4–27–23; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2023–13; Exemption Application No. D–12080]

Exemption From Certain Prohibited Transaction Restrictions Involving TT International Asset Management Ltd (TTI or the Applicant) Located in London, United Kingdom

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). This exemption allows TTI to continue to rely 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 SMBC Nikko Securities, Inc. (Nikko Tokyo), as described below.

DATES: The exemption will be effective for a period of one year, beginning on February 13, 2023, and ending on February 12, 2024.

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

SUPPLEMENTARY INFORMATION: On January 10, 2023, the Department published a notice of proposed exemption in the **Federal Register** [1] permitting TTI to continue to rely on the exemptive relief provided by the QPAM Exemption [2] for a period of one year, notwithstanding the judgment of

[1] 88 FR 1408 (January 10, 2023).

[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).

conviction against TTI's affiliate, SMBC Nikko Securities, Inc. (Nikko Tokyo) for attempting to peg, fix or stabilize the prices of certain Japanese equity securities that Nikko Tokyo was attempting to place in a block offering (the Conviction).[3] The Department is granting this exemption to ensure that the participants and beneficiaries of ERISA-covered Plans and IRAs managed by TTI (together, Covered Plans) are protected.

This exemption provides only the relief specified in the text of the exemption and does not provide relief from violations of any law other than the prohibited transaction provisions of Title I of ERISA and the Code expressly stated herein.

The Department intends for the terms of this exemption to promote adherence by TTI to basic fiduciary standards under Title I of ERISA and the Code. An important objective in granting this exemption is to ensure that Covered Plans can terminate their relationships with TTI in an orderly and cost-effective fashion in the event the fiduciary of a Covered Plan determines that it is prudent to do so.

Based on the Applicant's adherence to all the conditions of the exemption, the Department makes the requisite findings under ERISA Section 408(a) that the exemption is: (1) administratively feasible, (2) in the interest of Covered Plans and their participants and beneficiaries, and (3) protective of the rights of the participants and beneficiaries of Covered Plans. Accordingly, affected parties should be aware that the conditions incorporated in this exemption are, individually and 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 Applicant requested an individual exemption pursuant to ERISA Section 408(a) in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).

Background

TTI is a global investment firm headquartered in London, UK. TTI is wholly owned by Sumitomo Mitsui Financial Group, Inc. (SMFG) and is currently a member of the Sumitomo Mitsui Banking Corporation group (the SMBC Group). The SMBC group provides asset management services through two subsidiaries. The first is TTI, which is managed independently of the broader SMBC Group. The second is Sumitomo Mitsui DS Asset Management Company, Limited, an investment manager headquartered in Tokyo. The SMBC Group also conducts securities market activities through the SMBC Nikko Securities franchise. As relevant to this exemption, that includes Nikko Tokyo, a Japanese broker-dealer.

In offering investment management services, TTI operates as a QPAM in reliance on the QPAM Exemption.[4] In this regard, TTI advises four segregated ERISA accounts on behalf of the ERISA-covered plans of two major U.S. employers [5] and operates three segregated accounts for public pension plans, which currently hold approximately $1.1 billion in assets. TTI also manages three funds as ERISA ''plan asset'' [6] funds.[7]

The QPAM Exemption exempts certain prohibited transactions between a party in interest and an ''investment fund'' (as defined in Section VI(b) of the QPAM Exemption) in which a plan has an interest if the investment manager with discretion over the investment of plan assets satisfies the definition of ''qualified professional asset manager'' and satisfies additional conditions of the exemption. The QPAM Exemption was developed and granted based on the essential premise that broad relief could be afforded for all types of transactions in which a plan engages only if the commitments and the investments of plan assets and the negotiations leading thereto are the sole responsibility of an independent, discretionary manager.[8]

Section I(g) of the QPAM Exemption prevents an entity that may otherwise meet the definition of QPAM from utilizing the exemptive relief provided, for itself and its client plans, if that entity, an ''affiliate'' thereof,[9] or any direct or indirect five percent or more owner in the QPAM has been either convicted or released from imprisonment, whichever is later, as a result of criminal activity described in section I(g) within the 10 years immediately preceding the transaction. Section I(g) was included in the QPAM Exemption, in part, based on the Department's expectation that a QPAM, and those who may be in a position to influence the QPAM's policies, must maintain a high standard of integrity.

On March 24, 2022, the Tokyo District Public Prosecutors Office charged Nikko Tokyo and four of its officers and employees in Tokyo District Court with violations of Japan's Financial Instruments and Exchange Act (the Misconduct).[10] In connection with the charges, the Tokyo Public Prosecutor alleged that between December 2019 and November 2020, Nikko Tokyo, through the actions of relevant officers, purchased shares of five issuers for its own account in an attempt to peg, fix, or stabilize the prices of those securities in anticipation of a block offer. This activity was intended to ensure that the price of the securities being sold through the block offering did not decline significantly, which would have potentially harmed Nikko Tokyo's interests.[11]

On April 13, 2022, the Tokyo Public Prosecutor filed additional charges against Nikko Tokyo and two officers and employees of Nikko Tokyo for

[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 crimes.

[4] Currently, TTI is the only member of the SMBC group that is relying upon the QPAM Exemption. TTI states that it is possible that certain affiliates may seek ERISA business in the future that would require reliance on the QPAM Exemption. The exemption granted herein is limited to TTI.

[5] Together, these two ERISA-covered plans currently hold approximately $218 million in assets.

[6] The Department's Plan Asset Regulations provide as a general rule that, when an employee benefit plan governed by ERISA or Section 4975 of the Code invests in an entity, the Plan's assets include the Plan's investment but do not, solely by reason of such investment in the entity, include any of the underlying assets of the entity. However, where, as in the case of the three funds, the Plan's investment is an equity interest that is not a publicly offered security or a security issued by a company that is registered under the 1940 Act, the Plan's assets include both the equity interest and an undivided interest in each of the underlying assets of the entity unless one of the exceptions in the Plan Asset Regulations is satisfied. See 29 CFR 2510.3–101.

[7] The TT Emerging Markets Opportunities Fund II Limited, the TT Environmental Solutions Equity Master Fund II Limited, and the TT Non-U.S. Equity Master Fund Limited.

[8] See 75 FR 38837, 38839 (July 6, 2010).

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

[10] In these block offerings, the dealer typically makes money from the spread between the price at which it purchased the shares and the price at which it sells them.

[11] The Tokyo Public Prosecutor alleged that these ''stabilization transactions'' violated Article 197 Paragraph 1, Item 5, Article 159, Paragraph 3, and Article 207, Paragraph 1, Item 1 of the FIEA and Article 60 of the Penal Code.

engaging in similar conduct in connection with five additional block offerings between October 2020 and April 2021.[12] The March 24, 2022, and April 13, 2022 charges against Nikko Tokyo were consolidated for purposes of the Tokyo District Court proceeding.

Both TTI and Nikko Tokyo are direct subsidiaries of SMFG and thus are affiliates for the purposes of Section I(g) of the QPAM Exemption. Once the Tokyo District Court issued its final decision and sentenced Nikko Tokyo in connection with the Conviction, Section I(g) was triggered and TTI, as well as TTI's Covered Plan clients, lost the ability to rely on the QPAM Exemption.

On October 19, 2022, TTI submitted an exemption request to the Department that would permit TTI and its Covered Plan clients to continue to utilize the relief in the QPAM Exemption. In support of its exemption request, TTI asserts that Nikko Tokyo is a foreign affiliate with respect to TTI and has wholly separate businesses, operations, management, systems, premises, and legal and compliance personnel; that TTI was not involved in any way in the Misconduct; and that the Misconduct did not involve any ERISA assets. TTI further states that, since its acquisition by SMFG on February 28, 2020, TTI has remained a stand-alone business with distinct reporting lines, governance structures, and control frameworks.

In its exemption application, TTI submits that Covered Plans would be harmed because of the resulting severe limitations on the investment transactions that would be available to them. Further, TTI states that Covered Plans could incur significant costs, including transaction costs, costs associated with finding and evaluating other managers, and costs associated with reinvesting assets with those new managers. These and other assertions regarding projected hardships to Covered Plans are presented in greater detail in the proposed exemption and the Department encourages readers to consult the proposed exemption for additional context.

In its exemption application, TTI requested: (1) a longer five-year term of relief and (2) an exemption that would cover TTI and TTI's current and future affiliates and related entities. The Department, however, declined TTI's requests and instead proposed a limited one-year term that applies exclusively to TTI. In this way, the Department would retain the ability to review TTI's adherence to the conditions set out in this exemption before considering a longer term of relief.

The Department notes that this exemption includes protective conditions that allow Covered Plans to continue to utilize the services of TTI if they determine that it is prudent to do so. In this regard, this exemption allows Covered Plans to avoid cost and disruption to investment strategies that may arise if such Covered Plans are forced, on short notice, to hire a different QPAM or asset manager because TTI no longer is able to rely on the relief provided by PTE 84–14 due to the Conviction.

Written Comments

In the proposed exemption, 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 by February 13, 2023. The Department received one written comment from the Applicant and no requests for a public hearing.

I. Comments From the Applicant

Comment 1: Certification of Audit Report

Section III(i)(7) of the proposed exemption states the following: *With respect to the Audit Report, the joint general manager of the Corporate Planning who has a direct reporting line to the highest-ranking compliance officer of TTI must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption . . . Notwithstanding the above, no person, including any person identified by Japanese authorities, who knew of, or should have known of, or participated in, any misconduct underlying the Conviction, by any party, may provide the certification required by this exemption, unless the person took active documented steps to stop the misconduct underlying the Conviction;*

Section III(i)(8) of the Proposed exemption provides: *TTI's Board of Directors must be provided a copy of the Audit Report and the joint general manager of the Corporate Planning who has a direct reporting line to the highest-ranking compliance officer of TTI must review the Audit Report for TTI and certify in writing, under penalty of perjury, that such officer has reviewed the Audit Report;*

The Applicant agrees that TTI's Board of Directors and the joint general manager of the Corporate Planning Department are the appropriate recipients of the Audit Report and the appropriate persons to provide the certifications described in Section III(i)(8). However, the Applicant believes the Department should clarify the exemption to make clear that the Corporate Planning Department is a group-level function of SMFG. As a result, the joint general manager does not have a direct reporting line to the highest-ranking compliance officer of TTI; instead, the joint general manager will provide parent-level oversight of the Audit Report and TTI's compliance with the terms of the final Exemption.

Additionally, given the Corporate Planning Department's distance from TTI's day-to-day operations, the Applicant believes that it would be appropriate for TTI's general counsel or one of its three most senior executive officers to provide the certification described in Section III(i)(7) as those individuals will be directly involved in ensuring that TTI complies with the exemption and will have the personal knowledge necessary to provide the required certifications. While the joint general manager's review will provide important parent-level oversight to the process, they will not be directly involved in the audit or addressing any potential deficiencies.

The Applicant requests that Section III(j)(7) be modified to read: *With respect to the Audit Report, the general counsel, or one of the three most senior executive officers of the TTI affiliate 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 . . .*

The Applicant also requests that Section III(i)(8) be modified to read: *TTI's Board of Directors must be provided a copy of the Audit Report and the joint general manager of SMFG's Corporate Planning Department must review the Audit Report for TTI and certify in writing, under penalty of perjury, that such officer has reviewed the Audit Report;*

Department's Response: The Department agrees with the Applicant's requests and has modified Section (III)(i)(7). With respect to Section (III)(i)(8), the Department agrees with the Applicant's requested change, provided that the joint general manager of SMFG's Corporate Planning Department did not know of, have reason to known of, or participate in, any misconduct underlying the Conviction, unless such person took active documented steps to stop the misconduct underlying the Conviction. With respect to this last sentence, the Department emphasizes that this is an essential requirement of this exemption.

[12] Charges were filed under Article 197 Paragraph 1, Item 5, Article 159, Paragraph 3, and Article 207, Paragraph 1, Item 1 of the FIEA and Article 60 of the Penal Code.

Comment 2: Entities in Corporate Structure

Section III(l) of the proposed exemption provides: *TTI 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. If an entity within TTI's corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Conviction) during the Exemption Period,*[13] *relief in this exemption would terminate immediately;*

The Applicant believes that the language used here—''an entity within TTI's corporate structure''—is imprecise. The Applicant requests that the Department replace ''an entity within TTI's corporate structure'' with ''an affiliate of TTI within the meaning of Section VI(d) of the QPAM Exemption.''

Accordingly, the Applicant requests that Section III(l) be modified to read: *TTI 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. If an affiliate of TTI's (as defined in Section VI(d) of PTE 84–14) is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Conviction) during the Exemption Period, relief in this exemption would terminate immediately;*

Department's Response: The Department agrees with the Applicant's requests and has modified Section (III)(l) accordingly.

Comment 3: Exemption Period

Section I(c) of the proposed exemption provides for a one-year Exemption Period (February 13, 2023 through February 12, 2024). The Applicant requests that the Department grant a permanent or multi-year exemption based on the remoteness of TTI's involvement in the conduct related to the Conviction. In support of this request, the Applicant states that Nikko Tokyo is a remote foreign affiliate of TTI and is not in the same vertical chain of ownership; that TTI had no role in, and received no benefit from, the misconduct underlying the Conviction; and that granting a permanent exemption is the appropriate solution to sufficiently protect both the public interest and the interests of plan participants.

Department's Response: The Department declines to make the Applicant's requested change. In the Department's view, an immediate exemption is justifiable based on the existing record, as a means of protecting Covered Plans from possible losses that they might otherwise incur. The Department is not confident, however, that a longer period is appropriate based on the existing record and the limited time available for review. Under this approach, the Department retains the ability to review TTI's adherence to the conditions set out in this exemption and to further develop the record before granting a longer term.

Comment 4: Spelling of Nikko Tokyo

In the introductory paragraph to the proposed exemption, the Department defines ''Nikko Tokyo'' as ''Sumitomo Mitsui Banking Corporation Nikko Securities, Inc.'' The Applicant states that Nikko Tokyo's legal name is ''SMBC Nikko Securities, Inc.''

Department's Response: The Department acknowledges and accepts the Applicant's correction regarding the correct spelling of Nikko Tokyo.

II. Clarifications From the Department

Implementation of the Policies and Training

Section III(h)(1) of the proposed exemption requires TTI to develop, implement, maintain, adjust (to the extent necessary), and follow the written policies and procedures (the Policies). Section III(h)(2) of the proposed exemption requires TTI to implement a training program (the Training) during the Exemption Period for all relevant TTI asset/portfolio management, trading, legal, compliance, and internal audit personnel.

The Department is clarifying that TTI must develop and implement the Policies by a date that is six months after the effective date of this exemption. The Department is also clarifying that TTI must implement the Training by a date that is six months after the effective date of this exemption. The Department notes that a six-month development and implementation period for the Policies and Training is consistent with other recently granted QPAM exemptions.

Completion of the Audit Report

Section (III)(i)(1) of the proposed exemption requires TTI to submit to an audit that covers the entire Exemption Period (February 13, 2023 through February 12, 2024). The Department is clarifying that the associated audit report must be completed by August 12, 2024. The Department notes that a six-month period for completing the audit report is consistent with other recently granted QPAM exemptions.

The complete application file (D–12080) 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, please refer to the notice of proposed exemption published on January 10, 2023, at 88 FR 1408.

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 ERISA Section 408(a) does not relieve a fiduciary or other party in interest from certain requirements of other ERISA provisions, including but not limited to any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA Section 404, which, among other things, require a fiduciary to discharge their duties respecting the plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion in accordance with ERISA Section 404(a)(1)(B).

(2) As required by ERISA Section 408(a), the Department hereby finds that the exemption is: (a) administratively feasible; (b) in the interests of Covered Plans and their participants and beneficiaries; and (c) protective of the rights of the Covered Plan's participants and beneficiaries.

(3) This exemption is supplemental to, and not in derogation of, any other ERISA provisions, 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 for determining whether the transaction is in fact a prohibited transaction.

(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 transactions that are the subject of the exemption and are true at all times.

Accordingly, after considering the entire record developed in connection with the Applicant's exemption application, the Department has determined to grant the following exemption under the authority of ERISA Section 408(a) in accordance with the

[13] The Exemption Period is February 13, 2023, through February 12, 2024.

Department's exemption procedures set forth in 29 CFR part 2570, subpart B: [14]

Exemption

Section I. Definitions

(a) The term ''Conviction'' means the judgment of conviction against SMBC Nikko Securities, Inc. (Nikko Tokyo) in Tokyo District Court for attempting to peg, fix or stabilize the prices of certain Japanese equity securities that Nikko Tokyo was attempting to place in a block offering that occurred on February 13, 2023.

(b) 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 Code section 4975 (an ''IRA''), in each case, with respect to which TTI relies on PTE 84–14, or with respect to which TTI has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84–14 or the QPAM Exemption). A Covered Plan does not include an ERISA-covered plan or IRA to the extent that TTI 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.

(c) The term ''Exemption Period'' means the one-year period beginning on the date of the Conviction.

(d) The term ''TTI'' means TT International Asset Management Ltd, and does not include SMBC Nikko Securities, Inc. (Nikko Tokyo) or any other affiliates of TT International Asset Management Ltd.

Section II. Covered Transactions

Under this exemption, TTI 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 Conviction, as defined in Section I(a), during the Exemption Period, as defined in Section I(c) provided that the conditions set forth in Section III below are satisfied.

Section III. Conditions

(a) TTI (including its officers, directors, agents other than Nikko Tokyo, and employees) did not know of, did not have reason to know of, and did not participate in the criminal conduct that is the subject of the Conviction. Further, any other party engaged on behalf of TTI who had responsibility for or exercised authority in connection with the management of plan assets did not know or have reason to know of and did not participate in the criminal conduct that is the subject of the Conviction. For purposes of this exemption, ''participate in'' refers not only to active participation in the criminal conduct of Nikko Tokyo that is the subject of the Conviction, but also to knowing approval of the criminal conduct or knowledge of such conduct without taking active steps to prohibit it, including reporting the conduct to such individual's supervisors, and Board of Directors;

(b) TTI (including its officers, directors, employees, and agents, other than Nikko Tokyo) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the Conviction. Further, any other party engaged on behalf of TTI 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 that is the subject of the Conviction;

(c) TTI does not currently and will not in the future employ or knowingly engage any of the individuals that participated in the criminal conduct that is the subject of the Conviction.

(d) At all times during the Exemption Period, TTI 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 TTI in reliance on PTE 84–14, or with respect to which TTI has expressly represented to a Covered Plan that it qualifies as a QPAM or relies on the QPAM Exemption, to enter into any transaction with Nikko Tokyo, or to engage Nikko Tokyo 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 TTI to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction;

(f) TTI did not exercise authority over the assets of any Covered Plan in a manner that it knew or should have known would further the criminal conduct that is the subject of the Conviction or cause TTI or its affiliates 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 its own employees or the employees of an affiliate, Nikko Tokyo 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) and (C), with respect to Covered Plan assets.

(h)(1) By a date that is six (6) months after the effective date of this exemption, TTI must develop, implement, maintain, adjust (to the extent necessary), and follow the written policies and procedures (the Policies). The Policies must require and be reasonably designed to ensure that:

(i) The asset management decisions of TTI are conducted independently of the corporate management and business activities of Nikko Tokyo;

(ii) TTI fully complies with ERISA's fiduciary duties and with ERISA and the Code's prohibited transaction provisions, 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) TTI 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 TTI to regulators, including, but not limited to, the Department of Labor (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 TTI's knowledge at the time, TTI 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;

(vi) TTI complies with the terms of this exemption; and

(vii) Any violation of or failure to comply with an item in subparagraphs (ii) through (vi) is corrected as soon as reasonably possible upon discovery or as soon after the TTI 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, to the head of compliance and the general counsel (or their functional equivalent) of TTI, and the independent auditor responsible for reviewing compliance with the Policies. TTI will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided it corrects any instance of noncompliance as soon as reasonably possible upon discovery, or as soon as reasonably possible after TTI reasonably should have known of

[14] 76 FR 66637, 66644 (October 27, 2011).

the noncompliance (whichever is earlier), and provided it adheres to the reporting requirements set forth in this subparagraph (vii);

(2) By a date that is six (6) months after the effective date of this exemption, TTI must implement a training program (the Training) during the Exemption Period for all relevant TTI asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training required under this exemption may be conducted electronically and must: (a) 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 (b) be conducted by a professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code to perform the tasks required by this exemption;

(i)(1) TTI must submit to an audit 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 TTI's compliance with the Policies and Training conditions described herein. The audit requirement must be incorporated in the Policies. The audit must cover the entire Exemption Period and must be completed by August 12, 2024.

(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, TTI will grant the auditor unconditional access to its businesses, including, but not limited to: its computer systems; business records; transactional data; workplace locations; training materials; and personnel. Such access will be provided only to the extent that it is not prevented by state or federal statute, or involves communications subject to attorney client privilege and may be 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 TTI has developed, implemented, maintained, and followed the Policies in accordance with the conditions of this exemption, and has developed and implemented the Training, as required herein;

(4) The auditor's engagement must specifically require the auditor to test TTI's operational compliance with the Policies and Training conditions. In this regard, the auditor must test, for TTI, transactions involving Covered Plans sufficient in size, number, and nature to afford the auditor a reasonable basis to determine TTI's operational compliance with the Policies and Training;

(5) Before the end of the relevant period for completing the audit, the auditor must issue a written report (the Audit Report) to TTI 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:

(i) the adequacy of TTI's Policies and Training; TTI's compliance with the Policies and Training conditions; the need, if any, to strengthen such Policies and Training; and any instance of TTI's noncompliance with the written Policies and Training described in Section III(h) above. TTI must promptly address any noncompliance and promptly address or prepare a written plan of action to address 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. Any action taken, or the plan of action to be taken by TTI must be included in an addendum to the Audit Report (and such addendum must be completed before the certification described in Section III(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 the Audit Report is submitted, the following period's Audit Report must state whether the plan was satisfactorily completed. Any determination by the auditor that TTI 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 TTI has complied with the requirements under this subparagraph must be based on evidence that TTI has actually implemented, maintained, and followed the Policies and Training required by this exemption. Furthermore, the auditor must not solely rely on the Report created by the compliance officer (the Compliance Officer), as described in Section III(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 III(i)(3) and (4) above; and

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

(6) The auditor must notify TTI 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 TTI affiliate 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 and that to the best of such officer's knowledge at the time, TTI has addressed, corrected or 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. The certification must also include the signatory's determination that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code. Notwithstanding the above, no person, including any person identified by Japanese authorities, who knew of, or should have known of, or participated in, any misconduct underlying the Conviction, by any party, may provide the certification required by this exemption, unless the person took active documented steps to stop the misconduct underlying the Conviction;

(8) TTI's Board of Directors must be provided a copy of the Audit Report and the joint general manager of SMFG's Corporate Planning Department must review the Audit Report for TTI and certify in writing, under penalty of perjury, that such officer has reviewed the Audit Report. With respect to this subsection (8), such certifying joint general manager must not have known of, had reason to known of, or participated in, any misconduct underlying the Conviction, unless such person took active documented steps to stop the misconduct underlying the Conviction.

(9) TTI must provide its certified Audit Report, by electronic mail to *e-oed@dol.gov.* This delivery must take place no later than thirty (30) days following completion of the Audit Report. The Audit Report will be made part of the public record regarding this exemption. Furthermore, TTI must make its Audit Report 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) TTI and the auditor must submit to *e-OED@dol.gov,* any engagement agreement(s) entered into pursuant to the engagement of the auditor under this exemption no later than two (2) months after the execution of any such engagement agreement;

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

(12) TTI must notify the Department of a change in the independent auditor no later than 60 days 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 TTI;

(j) Throughout the Exemption Period, with respect to any arrangement, agreement, or contract between TTI and a Covered Plan, TTI agrees and warrants:

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

(2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from TTI'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 TTI; or any claim arising out of the failure of TTI 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. This condition applies only to actual losses caused by TTI's violations. Actual losses include losses and related costs arising from unwinding transactions with third parties and from transitioning Plan assets to an alternative asset manager as well as costs associated with any exposure to excise taxes under Code Section 4975 because of TTI's inability to rely upon the relief in the QPAM Exemption.

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

(4) Not to restrict the ability of the Covered Plan to terminate or withdraw from its arrangement with TTI with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by TTI, 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 of these arrangements involving investments in pooled funds subject to ERISA entered into after the effective date of this exemption, 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 a Covered Plan's investment, and the 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 the 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 the liability of TTI for a violation of such agreement's terms. To the extent consistent with ERISA Section 410, 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 TTI and its affiliates, or damages arising from acts outside the control of TTI; and

(7) TTI must provide a notice of its obligations under this Section III(j) to each Covered Plan. For all other prospective Covered Plans, TTI must agree to its obligations under this Section III(j) in an updated investment management agreement between TTI and such clients or other written contractual agreement. Notwithstanding the above, TTI will not violate this condition solely because a Covered Plan refuses to sign an updated investment management agreement;

(k) Within 60 days after the effective date of this exemption, TTI provides notice of the exemption as published in the **Federal Register**, along with a separate summary describing the facts that led to the Conviction (the Summary), which has been submitted to the Department, and a prominently displayed statement (the Statement) that the Conviction results in a failure to meet a condition in PTE 84–14 to each sponsor and beneficial owner of a Covered Plan that has entered into a written asset or investment management agreement with TTI. All prospective Covered Plan clients that enter into a written asset or investment management agreement with TTI after a date that is 60 days after the effective date of this exemption must receive a copy of the notice of the exemption, the Summary, and the Statement before, or contemporaneously with, the Covered Plan's receipt of a written asset or investment management agreement from TTI. The notices may be delivered electronically (including by an email that has a link to the exemption). Notwithstanding the above, TTI will not violate the condition solely because a Covered Plan refuses to sign an updated investment management agreement.

(l) TTI 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. If an affiliate of TTI's (as defined in Section VI(d) of PTE 84–14) is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Conviction) during the Exemption Period, relief in this exemption would terminate immediately;

(m)(1) Within 60 days after the effective date of this exemption, TTI must designate a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. Notwithstanding the above, no person, including any person referenced in the indictment that gave rise to the Conviction, who knew of, or should have known of, or participated in, any misconduct described in the indictment, by any party, may be involved with the designation or responsibilities required by this condition unless the person took active documented steps to stop the misconduct. The Compliance Officer must conduct a review of 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 direct reporting line to the highest-ranking corporate officer in charge of legal compliance for asset management.

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

(i) The Exemption Review includes a review of TTI's 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 compliance and risk control function (or its equivalent) during the previous year; any material change in the relevant business activities of TTI; 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 TTI;

(ii) The Compliance Officer prepares a written report for the Exemption Review (an Exemption Report) that (A) summarizes their 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 their 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 prior year and any related correction taken to date have been identified in the Exemption Report; and (D) TTI complied with the Policies and Training, and/or corrected (or are correcting) any known instances of noncompliance in accordance with Section III(h) above;

(iv) The Exemption Report must be provided to appropriate corporate officers of TTI; the head of compliance and the general counsel (or their functional equivalent) of TTI; and must be made unconditionally available to the independent auditor described in Section III(i) above;

(v) The Exemption Review, including the Compliance Officer's written Report, must be completed within 90 days following the end of the period to which it relates.

(n) TTI imposes internal procedures, controls, and protocols to reduce the likelihood of any recurrence of conduct that is the subject of the Conviction;

(o) Nikko Tokyo complies in all material respects with any requirements imposed by a U.S. regulatory authority in connection with the Conviction;

(p) TTI maintains records necessary to demonstrate that the conditions of this exemption have been met for six (6) years following the date of any transaction for which TTI relies upon the relief in this exemption;

(q) During the Exemption Period, TTI 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 TTI 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 ERISA Section 411; and (2) immediately provide the Department with any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement;

(r) Within 60 days after the effective date of this exemption, TTI, 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 TTI'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 180 days following the end of the calendar year during which the Policies were changed. If TTI 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. 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) All the material facts and representations set forth in the Summary of Facts and Representations are true and accurate.

Exemption Date: This exemption is in effect for a period of one year, beginning on February 13, 2023, and ending on February 12, 2024.

Signed at Washington, DC.

George Christopher Cosby,

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

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DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Complaint Involving Employment Discrimination by a Federal Contractor or Subcontractor

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Office of Federal Contract Compliance Programs (OFCCP)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval 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 the agency receives on or before May 30, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and