

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (hours)	Total annual burden (hours)
September 11th Victim Compensation Fund Claim Form.	21,000	1/annually	21,000	8	168,000

If additional information is required, contact: Darwin Arceo, 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.

Darwin Arceo,

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

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EMPLOYEE BENEFITS SECURITY ADMINISTRATION

[Exemption Application No. D-12098]

Proposed Exemption for Certain Prohibited Transaction Restrictions Involving UBS AG (UBS) Located in Zurich, Switzerland

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document provides notice of the pendency before the Department of Labor (the Department) of a proposed individual exemption 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 Department previously issued an individual prohibited transaction exemption (PTE) 2023-14 that allowed certain asset managers related to UBS (the Applicant) and Credit Suisse Group AG (CSAG) to continue to rely on the exemptive relief provided by Prohibited Transaction Exemption 84-14 for one year following UBS' acquisition of CSAG. This proposed exemption would allow current and future asset managers under the UBS corporate umbrella to continue to rely on PTE 84-14 from June 12, 2024, to June 11, 2029 if certain conditions were met, notwithstanding the five judgments of conviction involving entities within the UBS and CSAG corporate umbrellas that are described below.

DATES: If granted, this proposed exemption will be in effect for the period beginning on June 12, 2024, and

ending on June 11, 2029, and may also provide retrospective relief for part or all of the period covered by the preceding exemption, PTE 2023-14, which permitted the UBS QPAMs to rely on PTE 84-14 and extended from June 12, 2023, through June 11, 2024.

Comments due: Written comments and requests for a public hearing on the proposed exemption should be submitted to the Department by July 15, 2024.

ADDRESSES: All written comments and requests for a hearing should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Attention: Application No. D-12098, via email to *e-OED@dol.gov* or online through *http://www.regulations.gov*. Any such comments or requests should be sent by the end of the scheduled comment period. The application for exemption and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1515, 200 Constitution Avenue NW, Washington, DC 20210 ((202) 693-8673). See **SUPPLEMENTARY INFORMATION** below for additional information regarding comments.

FOR FURTHER INFORMATION CONTACT: Nicholas Schroth of the Department at (202) 693-8571. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Comments

1. Persons are encouraged to submit all comments electronically and not to follow with paper copies. Comments should state the nature of the person's interest in the proposed exemption and the manner in which the person would be adversely affected by the exemption, if granted. Any person who may be adversely affected by an exemption can request that the Department holds a hearing on the exemption. A request for a hearing must state: (1) the name, address, telephone number, and email address of the person making the request; (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption; and (3) a statement of the issues to be

addressed and a general description of the evidence to be presented at the hearing. The Department will grant a request for a hearing made in accordance with the requirements above where a hearing is necessary to fully explore material factual issues identified by the person requesting the hearing. A notice of such hearing shall be published by the Department in the **Federal Register**. The Department may decline to hold a hearing if: (1) the request for the hearing does not meet the requirements above; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the factual issues identified can be fully explored through the submission of evidence in written (including electronic) form.

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

Background

3. Upon the expiration of the one-year period set forth in PTE 2023–14 (June 12, 2024), the exemption no longer will provide the Applicant with relief from ERISA’s prohibited transaction provisions. This proposed exemption would allow current and future asset managers under the UBS corporate umbrella to continue to rely on PTE 84–14 from June 12, 2024, to June 11, 2029, if the conditions specified herein are satisfied. As described below, the Department is proposing the exemption to protect affected plans from the harms that the Applicant has represented would occur if the UBS QPAMs are no longer allowed to engage in the transactions permitted by PTE 84–14. The Department also seeks comments on whether the requested exemption, if granted, should include retrospective relief covering transactions that would have been permitted under the QPAMs’ previous exemption, (PTE 2023–14), but for their failure to comply timely with the audit requirements of that exemption.

4. The current UBS-affiliated asset managers that rely on PTE 84–14 are UBS Asset Management (Americas) LLC, and UBS Hedge Fund Solutions LLC (together with 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, (hereafter referred to as the Affiliated QPAMs)). In addition, UBS holds or may in the future hold a greater than five (5) percent interest in a number of smaller asset managers that are not considered to be “affiliates” of UBS and also may qualify as a “qualified professional asset manager” as defined in Section VI(a) of PTE 84–14 (the Related QPAMs). The Affiliated QPAMs and Related QPAMs are collectively referred to herein as the “UBS QPAMs.” This proposed exemption, if granted, would enable UBS QPAMs to continue to rely on PTE 84–14 for a five-year period ending on June 11, 2029, if the conditions of this exemption are met, notwithstanding four criminal convictions of entities within the UBS corporate family that occurred within the last 10 years.¹ The proposed exemption would provide the Applicant with continued relief under PTE 84–14 which, in turn, would provide relief from restrictions set forth

¹ Relief in this exemption is not provided for one of the criminal convictions covered by PTE 2023–14, because that conviction occurred outside the 10-year ineligibility period under PTE 84–14 Section I(g).

in ERISA sections 406 and 407.² In addition, the Applicant is requesting that the Department structure the exemption in such a way that it avoids the loss of relief under the terms of PTE 2023–14 as a result of its failure to timely comply with the audit requirements set forth in that exemption. No relief from a violation of any other law would be provided by this exemption, including any criminal conviction described herein.

Benefits of the Proposed Exemption

5. The Department is proposing relief based on the Applicant’s representation that significant harm to the Applicant’s Covered Plan clients would be prevented if the Department grants an exemption. The Department’s objective in proposing this exemption is to protect Covered Plans from the harms and costs that could be imposed on them if the UBS QPAMs no longer could rely on the relief provided in PTE 84–14. Furthermore, the terms of this exemption are intended to promote the UBS QPAMs’ adherence to basic fiduciary standards under Title I of ERISA and the Code and reinforce their obligation to act with a high degree of integrity on behalf of their Covered Plan clients.

6. The Department notes that this individual exemption would solely provide relief from the limitations of PTE 84–14 Section I(g) with respect to the four criminal convictions of entities within the UBS corporate family that are described below. The conditions of this exemption explicitly require the UBS QPAMs to adhere to every other condition for relief specified in PTE 84–14, as amended, including the robust disqualification provisions found in Section I(g). If any condition of PTE 84–14, as amended, is violated by a UBS Affiliated QPAM, that QPAM would fail to comply with the requirements of the exemption.

Summary of Facts and Representations³

7. UBS is a Swiss-based global financial services company organized

² Unless otherwise specified, references to specific provisions of Title I of ERISA also refers to the corresponding provisions of Code section 4975.

³ The Summary of Facts and Representations is based on UBS representations and does not reflect factual findings or opinions of the Department unless indicated otherwise. The Department notes that availability of this exemption is subject to the express condition that the material facts and representations made by UBS are true, complete, and accurately describe all material terms of the transaction(s) covered by the exemption. If there is any material change in a transaction covered by the exemption, or in a material fact or representation that is part of the record attributable to D–12098,

under the laws of Switzerland. UBS Asset Management (Americas) LLC and UBS Hedge Fund Solutions LLC are entities under the UBS corporate umbrella that currently operate as QPAMs and manage the assets of Covered Plans⁴ on a discretionary basis in reliance on PTE 84–14.⁵ On June 12, 2023, UBS acquired CSAG, another Swiss-based global financial services firm. This acquisition brought Credit Suisse Asset Management, LLC, a subsidiary of CSAG, under the UBS corporate umbrella. The Applicant represents that, on May 1, 2024, Credit Suisse Asset Management, LLC (an entity that previously constituted an Affiliated QPAM) was merged into UBS Asset Management (Americas) LLC, with UBS Asset Management (Americas) LLC being the surviving entity. The only current Affiliated QPAMs are UBS Asset Management (Americas) LLC and UBS Hedge Fund Solutions LLC.

Relevant ERISA Provisions and PTE 84–14

8. The rules set forth in ERISA section 406 and Code section 4975(c)(1) proscribe certain “prohibited transactions” between plans and related parties with respect to those plans. Under ERISA section 3(14), such parties are known as “parties in interest” with respect to a plan, and include, among others, the plan fiduciary, a sponsoring employer of the plan, a union whose members are covered by the plan, service providers with respect to the plan, and certain of their affiliates.⁶

the exemption will cease to apply as of the date of the change.

⁴ 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 an Affiliated QPAM relies on PTE 84–14 or with respect to which an Affiliated QPAM (or any UBS affiliate) has expressly represented that the manager qualifies as a QPAM or relies on PTE 84–14. A Covered Plan does not include an ERISA-covered plan or IRA to the extent the Affiliated 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. Notwithstanding the above, an Affiliated QPAM may disclaim reliance on QPAM status or PTE 84–14 in a written modification of a contract, arrangement, or agreement with an ERISA-covered plan or IRA, where: the modification is made in a bilateral document signed by the client; the client’s attention is specifically directed toward the disclaimer; and the client is advised in writing that, with respect to any transaction involving the client’s assets, the Affiliated QPAM will not represent that it is a QPAM, and will not rely on the relief described in PTE 84–14.

⁵ UBS represents that UBS O’Connor LLC and UBS Realty Investors LLC are entities under the UBS corporate umbrella that currently offer investment products which are assessable by ERISA-covered plans, but do not currently rely on Class PTE 84–14 when managing those products.

⁶ Under the Code, such parties, or similar parties, are referred to as “disqualified persons.”

9. The prohibited transaction provisions under ERISA section 406(a) and Code section 4975(c)(1) prohibit, in relevant part, sales, leases, loans or the provision of services between a party in interest and a plan (or an entity whose assets are deemed to constitute the assets of a plan), as well as the use of plan assets by or for the benefit of a party in interest or a transfer of plan assets to a party in interest.⁷ Under ERISA section 408(a) and Code section 4975(c)(2), the Department has the authority to grant exemptions from such “prohibited transactions” in accordance with its exemption procedures if the Department finds that an exemption is (1) administratively feasible for the Department; (2) in the interests of the plan and of its participants and beneficiaries; and (3) protective of the rights of participants and beneficiaries.⁸ PTE 84–14 reflects the Department’s conclusion that it could provide broad relief from the prohibited transaction provisions of ERISA section 406(a) and Code section 4975(c)(1) only if the commitments and the investments of plan assets and the negotiations leading thereto are the sole responsibility of an independent discretionary manager that meets the exemption’s conditions.

10. PTE 84–14 Section I(g) prevents an entity that may otherwise meet the QPAM definition from utilizing the exemptive relief provided by PTE 84–14 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 within 10 years immediately preceding the transaction, been: (1) either convicted or released from imprisonment, whichever is later, as a result of criminal activity described in Section I(g); or (2) engaged in prohibited misconduct as described in

that section (in both cases subject to the Ineligibility Date described in Section I(h)).¹⁰

11. The Department’s inclusion of Section I(g) in PTE 84–14 is, in part, based on an expectation that QPAMs will maintain a high standard of integrity. This expectation extends not only to the QPAM itself but also to those who may be in a position to influence the policies of the QPAM.

Five Relevant Convictions

The 2017 UBS Conviction

12. In 2013, UBS Securities Japan Co. Ltd. (UBS Securities Japan) pled guilty to a crime arising out of its fraudulent submission of Yen London Interbank Offer Rate (Yen LIBOR) rates between 2006 and 2009, and its participation in a scheme to defraud counterparties to interest rate derivatives trades executed on its behalf, by secretly manipulating certain benchmark interest rates to which the profitability of those trades was tied (the 2013 UBS Conviction).¹¹

13. In connection with misconduct related to the 2013 UBS Conviction, UBS and the DOJ entered into a Non-Prosecution Agreement (the LIBOR NPA) wherein the DOJ agreed not to criminally prosecute UBS for any crimes related to UBS’s misconduct involving its submission of Yen LIBOR rates and other benchmark rates between 2001 and 2010 (LIBOR Manipulation). As a condition for the DOJ’s agreement not to prosecute UBS for the LIBOR Manipulation, UBS was required, among other things, to avoid engaging in additional criminal activity for two years from the date of the NPA.

14. Separately from the LIBOR Manipulation and after entering into the NPA, UBS was also revealed to have participated in certain deceptive currency trading and sales practices with respect to certain foreign exchange (FX) market transactions and collusive conduct in certain FX markets (FX Misconduct). The DOJ determined that by engaging in the FX Misconduct, UBS had breached the terms of the LIBOR NPA. As a result, UBS entered a guilty plea and was convicted on January 10, 2017 of engaging in the LIBOR Manipulation that was the subject of the LIBOR NPA—specifically, UBS pled

guilty to a scheme to defraud counterparties to interest rate derivatives transactions by secretly manipulating benchmark interest rates to which the profitability of those transactions was tied. This is referred to as the “2017 UBS Conviction”.¹² PTE 84–14, Section I(g), disqualifies UBS-related QPAMs from relying on the relief set forth in PTE 84–14 for ten years, from January 10, 2017, to January 9, 2027.

The 2014 CSAG Conviction

15. On May 19, 2014, the Tax Division of the United States Department of Justice (DOJ) and the U.S. Attorney’s Office for the Eastern District of Virginia filed a one-count criminal information in the District Court for the Eastern District of Virginia charging CSAG with a conspiracy to violate Code section 7206(2) in violation of Title 18, United States Code, Section 371. According to the Statement of Facts, for decades before and through approximately 2009 CSAG operated an illegal cross-border banking business that knowingly and willfully aided and assisted thousands of U.S. clients in opening and maintaining undeclared accounts that concealed offshore assets and income from the IRS. On May 19, 2014, pursuant to a plea agreement (the Plea Agreement), CSAG entered a plea of guilty for assisting U.S. citizens in federal income tax evasion. The District Court entered a judgment of conviction against CSAG on November 21, 2014. PTE 84–14, Section I(g), disqualifies CSAG-related (and, thus, UBS-related QPAMs) from the relief set forth in PTE 84–14 for ten years, from November 21, 2014 to November 20, 2024.

The 2019 UBS France Conviction

16. In 2013, France opened an investigation into UBS, UBS France, and certain former employees of UBS France S.A. The investigation centered on the maintenance of foreign (“cross-border”) UBS bank accounts held for private citizens. Following a trial in the French First Instance Court, the French court convicted UBS and UBS France on February 20, 2019, of illegally soliciting clients from 2004 to 2012 and laundering the proceeds of tax fraud from 2004 to 2012. PTE 84–14, Section I(g), disqualifies UBS-related QPAMs from relying on the relief in PTE 84–14 for ten years, from February 20, 2019 to February 19, 2029.

¹² In PTE 2023–14, the Department erroneously referred to this conviction as the 2018 Conviction. The actual conviction occurred on January 10, 2017 (as described in the prior UBS PTE 2020–01).

⁷ The prohibited transaction provisions also include certain fiduciary prohibited transactions under ERISA section 406(b) and Code section 4975(c)(1)(E) and (F). These include transactions involving fiduciary self-dealing, fiduciary conflicts of interest, and kickbacks to fiduciaries. PTE 84–14 provides only very narrow conditional relief for transactions described in ERISA section 406(b).

⁸ 29 CFR part 2570, subpart B at 76 FR 66637, 66644, October 27, 2011, amended at 89 FR 4662, January 24, 2024.

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 five 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 Code section 4975(e)(2)(H) or officer (earning ten (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 The prohibited misconduct provision is effective on June 17, 2024.

¹¹ In connection with the 2013 Conviction, the UBS QPAMs received exemptive relief to continue to rely on PTE 84–14 notwithstanding such conviction. However, the disqualification period under Section I(g) of PTE 84–14 with respect to the 2013 Conviction expired on or about February 19, 2023 and therefore the UBS QPAMs no longer require an exemption to continue to rely on PTE 84–14 with respect to that conviction.

The 2022 Credit Suisse Securities (Europe) Limited (CSSEL) Conviction

17. On October 19, 2021, the DOJ, Criminal Division, Money Laundering and Asset Recovery Section and Fraud Section, and the United States Attorney's Office for the Eastern District of New York, filed a criminal information in the District Court for the Eastern District of New York charging CSSEL with one count of conspiracy to commit wire fraud in violation of 18 U.S.C. 1349. CSSEL agreed to resolve the action through a plea agreement presented to the New York District Court on October 19, 2021 (the CSSEL Plea Agreement). Under the CSSEL Plea Agreement, CSSEL agreed to enter a plea of guilty to the charge set out in the CSSEL information (the CSSEL Plea). The District Court entered a judgment of conviction against CSSEL on July 22, 2022. PTE 84–14, Section I(g), disqualifies CSAG-related QPAMs (and, thus, UBS-related QPAMs) from relying on the relief set forth in PTE 84–14 for ten years, from July 22, 2022 to July 21, 2032.

Prior Exemptions

18. The UBS entities of UBS Asset Management (Americas) Inc., UBS Realty Investors LLC, UBS Hedge Fund Solutions LLC, and UBS O'Connor LLC (the Prior UBS Applicants) and two CSAG asset management affiliates, Credit Suisse Asset Management, LLC and Credit Suisse Asset Management Limited, as well as other entities in which CSAG owned a five percent or more interest (cumulatively, the Prior Applicants), historically relied on the exemptive relief provided in PTE 84–14. To protect Covered Plans from the costs and harms that could arise if the Prior Applicants lost their ability to engage in beneficial transactions on behalf of the Covered Plans due to the convictions described above, the Department issued a number of individual exemptions. The Department's practice was to issue temporary short-term exemptions that generally lasted for a one-year period to enable the Department to conduct an in-depth evaluation of the Prior Applicants' criminal activity and compliance regimes. These short-term temporary exemptions afforded the Department time to: (i) ascertain whether exemptive relief was warranted based on a robust demonstration from Applicants of the harms that could be sustained by Covered Plan clients if the Department chose not to provide longer-term relief; (ii) develop stringent conditions designed to safeguard the interests of Covered Plan clients; and (iii) more fully develop the factual

record to determine if it supports relief. Generally, the temporary exemptions were followed by longer-term exemptions that were limited to four or five-year time periods. These longer term (but still temporary) exemptions provided the Department with a further opportunity to ascertain whether the exemptions continued to be in the interest of the Applicant's Covered Plan clients and the conditions continued to be protective of their rights and interests. In connection with Credit Suisse-related convictions, the Department issued the following exemptions: PTE 2022–01 (87 FR 1186 (Jan. 10, 2022)); PTE 2019–07 (84 FR 61928 (Nov. 14, 2019)); PTE 2015–14 (80 FR 59817 (Oct. 2, 2015)); PTE 2014–11 (79 FR 68716 (Nov. 18, 2014)). In connection with the UBS-related convictions, the Department issued: PTE 2020–01 (85 FR 8020 (Feb. 12, 2020)); PTE 2019–01 (84 FR 6163 (Feb. 26, 2019)); PTE 2017–07 (82 FR 61903 (Dec. 29, 2017)); PTE 2016–17 (81 FR 94049 (Dec. 22, 2016)); PTE 2013–09 (78 FR 56740 (Sep. 13, 2013)).

Merger of UBS and CSAG

19. PTE 2020–01 permitted the UBS asset managers to continue to rely on PTE 84–14 only if, among other things, UBS and its affiliates had not been convicted of a crime described in Section I(g) of PTE 84–14 over the prior 10 years, other than the UBS-related convictions described above. Similarly, PTE 2022–01 permitted Credit Suisse QPAMs to continue to rely on PTE 84–14 only if, among other things, such entities and their affiliates had not been convicted of a crime described in Section I(g) of PTE 84–14 other than the CSAG-related convictions described above. Following the Merger, UBS was affiliated with CSAG and CSSEL; therefore, the convictions attributable to CSAG and CSSEL resulted in a violation of PTE 2020–01. In addition, CSAG was affiliated with UBS, UBS Securities Japan, and UBS France, and was accountable for the convictions attributable to those entities in violation of PTE 2022–01.

20. In order to protect Covered Plans that could be harmed by the sudden loss of PTE 2020–01 and PTE 2022–01 due to the Merger, the Department granted PTE 2023–14 which was effective on the Merger date (June 12, 2023). PTE 2023–14 granted relief only for the one-year period following the closing of the Merger in order to afford Department sufficient time to build a record upon which it could make its findings under ERISA section 408(a) that longer-term exemptive relief was warranted and for UBS and Credit Suisse's covered plan

clients to exercise their discretion to find a different investment manager in the event they deemed it was prudent to do so in light of the numerous convictions of these entities and their affiliates.

Application for Five-Year Extension

21. On February 22, 2024, UBS applied to the Department for a five-year extension of the relief granted in PTE 2023–14 that would allow the UBS QPAMs to rely on PTE 84–14 notwithstanding the 2014 CSAG Conviction, the 2022 CSSEL Conviction, the 2017 UBS Conviction, and the 2019 UBS France Conviction. These four criminal convictions are hereinafter referred to as the "Covered Convictions."¹³ The Applicant represents that the conduct underlying the Covered Convictions occurred within business divisions that are separate from UBS QPAMs and that the UBS QPAMs are insulated from the business divisions where the wrongdoing incurred by policies, procedures, and dedicated personnel.

22. *Department's Note:* Although only the Covered Convictions would cause the UBS QPAMs to become ineligible under PTE 84–14 Section I(g), the Department also is concerned about the conduct underlying the 2013 UBS Conviction and the FX Misconduct. Therefore, the Department has conditioned relief in the proposed exemption on the Applicant's insulation of the UBS QPAMs from the conduct underlying the Covered Convictions, the FX Misconduct, and the 2013 UBS Conviction (referred to in the aggregate as the Criminal Activity). Accordingly, the Department uses the term "Misconduct Entity" in the proposed exemption to refer to any of the following: an entity subject to one of the Covered Convictions, *i.e.*, UBS, UBS France (recently merged into UBS Europe), CSAG and CSSEL; an entity that is the subject of the 2013 Conviction, *i.e.*, UBS Securities Japan; and the entity that is the subject of the FX Misconduct, *i.e.*, also UBS. Similarly, the Department uses the term "Criminal Activity" in the proposed exemption to refer to the facts underlying the Covered Convictions, the 2013 UBS Conviction, and the FX Misconduct in order to ensure the insulation of the UBS QPAMs from the past criminal behavior of entities in the UBS and Credit Suisse corporate families.

¹³ As noted above, the UBS QPAMs represent that they no longer need exemptive relief from the prohibitions of PTE 84–14 Section I(g) with respect to the 2013 UBS Conviction.

23. In its exemption application, UBS represents that every independent audit that has been performed has determined that the UBS QPAMs met the terms and conditions of each exemption. Finally, as described below, UBS represents that an exemption would prevent significant harms and costs from being imposed on the UBS QPAMs' Covered Plan clients if the UBS QPAMs no longer could rely on the relief provided in PTE 84–14.

Retroactive Relief Periods

24. Based on its review of the record, the UBS QPAMs appear to have lost their exemptive relief for the period from June 12, 2023, through June 11, 2024 (the PTE 2023–14 Period) because of their failure, during the pendency of the exemption, to comply with the audit conditions set forth in Section III(j) of PTE 2023–14, as described below.

25. In addition, UBS will not have relief for the period subsequent to the original term of PTE 2023–14, which expires on June 12, 2024, until the date the Department grants an exemption (if it determines the record supports the grant of a final exemption). These two periods are discussed more fully below.

Retroactive Relief Relating to the PTE 2023–14 Period

26. Section I(i) of PTE 2020–01 provides that each UBS QPAM must submit 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. As UBS stated in its exemption application, “[t]he purpose of the independent audit is to give [Covered Plans] clients and the Department the confidence that the asset manager is complying with ERISA, and that continued exemptive relief is warranted.” Under this provision, the UBS QPAMs were required to complete an audit for the period from March 20, 2023 through March 19, 2024. However, PTE 2023–14 truncated this period due to the Merger, which was effective on June 12, 2023.

27. Section III(j)(1) of PTE 2023–14 requires the UBS QPAMs to complete an audit for the period from March 20, 2023 through June 12, 2023 (the beginning date of the one-year exemption provided in PTE 2023–14), which is referred to herein as the “stub period audit” within 180 days of June 12, 2023 (by December 9, 2023).¹⁴

¹⁴ The stub audit was required because UBS' audit cycle under its prior QPAM section I(g) five-year exemption that was in effect before the merger

Section III(j)(7) required the General Counsel or one of the three most senior executive officers of the UBS QPAM to which the audit report applies to certify the audit; Section III(j)(8), required the Risk Committee of UBS's Board of Directors to be provided with a copy of the Audit Report, and for a senior executive officer of UBS's Compliance and Operational Risk Control function to review the Audit Report for each UBS QPAM and certify in writing, under penalty of perjury, that such officer has reviewed the Audit Report; and III(j)(9) required each UBS QPAM to provide its certified Audit Report to the Department no later than 45 days following completion of the Audit Report (January 23, 2024). The Department required these audits in order to specifically and closely assess whether the UBS QPAMs remain insulated from the convicted UBS and Credit Suisse entities and could be trusted to safeguard plan assets, notwithstanding the convictions. On May 3, 2024, UBS' counsel notified the Department that UBS failed to complete the stub period audit report. UBS did not submit the certified audit report to the Department until May 10, 2024.

28. The record currently before the Department indicates that UBS did not engage the Independent Auditor, Fiduciary Counselors Inc, to complete the stub period audit until March 18, 2024, notwithstanding the fact that PTE 2023–14 required the audit to be completed by December 9, 2023, and for the audit report to be certified and submitted to the Department by January 23, 2024.¹⁵ UBS should have engaged an independent auditor well in advance of the dates set forth in Section III(j) of the exemption for the audit to be timely completed and for the audit report to be timely certified and submitted to the Department. Because it failed to meet this exemption condition, UBS did not comply with the requirements for relief

(PTE 2020–01) required an audit to be performed covering the period of March 20, 2023 through March 19, 2024. However, due to the timing of the merger (June 2024) the audit period shifted from a March-to-March cycle to a June-to-June cycle. Due to this shift, an audit was required for a “stub” period from the beginning of the March audit period on March 20, 2024, through the date of the merger on June 12, 2024. The audit requirement for this “stub” period was included in both the Department's proposed relief, and following a comment period, retained in the final exemption.

¹⁵ In a supplemental letter to the Department dated May 29, 2024, UBS' counsel informed the Department that the auditor notified UBS about the failure to complete the stub audit in January 2024, and the auditor sent a draft of the engagement letter to perform the audit to UBS on February 12, 2024. These events occurred before the Department received UBS' exemption application on February 23, 2024, and UBS should have disclosed them in its exemption application.

in PTE 2023–14 and engaged in non-exempt prohibited transactions for which it now requests relief.

29. In its exemption application, UBS stated that “. . . through independent audits required by the Department, the UBS QPAMs have proven, on an annual basis for many years, that they are in compliance with ERISA and protective of plan assets. In every category, and in every audit, the independent auditor has deemed that the UBS QPAMs met the terms of the exemption.” As stated above, however, based on the record, it appears that UBS became aware that the UBS QPAMs failed to complete the stub period audit report in January 2024, and did not notify the Department of this failure until May 3, 2024. The Department's exemption procedure regulation provides that “[w]hile an exemption application is pending final action with the Department, an applicant must promptly notify the Department in writing if he or she discovers that any material fact or representation contained in the application . . . is inaccurate, [or] if any such fact or representation changes during this period. . . .” Under the exemption procedure, UBS had an affirmative obligation to notify the Department of its failure to complete the stub period audit, and therefore to comply with a core condition of the exemption, well before it notified the Department on May 3, 2024.

30. Because the UBS QPAMs failed to comply with the audit conditions of the exemption, they lost the benefit of the relief provided by PTE 2023–14, and the Department is considering whether it should grant retroactive relief extending back to June 12, 2023 as part of this exemption, which would otherwise provide relief only from June 12, 2024 through June 11, 2029.¹⁶ The Department requests comments from UBS, the public, and interested parties on whether retroactive relief is appropriately including in this exemption, which would extend exemptive coverage to include the period from June 12, 2023 to June 11, 2024, as well as June 12, 2024 to June 11, 2029. In this connection, UBS should provide a detailed statement as to how a grant of retroactive relief would be consistent with the requirements for such relief as set forth in 29 CFR 2570.35(d).

31. The Department, however, will consider granting retroactive relief in connection with this proposal to the extent that UBS demonstrates to the Department that such relief is

¹⁶ The Department's requirements for retroactive relief are set forth in 29 CFR 2570.35(d).

appropriate in this exemption. In this connection, UBS should provide a detailed statement as to how it has satisfied the requirements for retroactive relief as set forth in 29 CFR 2570.35(d).

32. Specifically, for the Department to grant retroactive relief, UBS must explain how the Covered Plans were adequately safeguarded, notwithstanding UBS's failure to (1) contract with an auditor for the stub period audit and (2) timely certify, under penalty of perjury, that UBS reviewed this audit. The UBS QPAMs must also demonstrate that at a minimum that the UBS QPAMs: (i) ensured and will ensure that appropriate safeguards were established during the PTE 2023–14 Period to protect the interests of Covered Plan clients;¹⁷ (ii) Covered Plan clients were not harmed by non-exempt transactions during the PTE 2023–14 Period;¹⁸ (iii) a responsible plan fiduciary acted (and is acting) in good faith and took (and will take) appropriate steps that are necessary to protect the Covered Plans from abuse, loss, and risk during the PTE 2023–23 Period; and (iv) the UBS QPAMs have adjusted their policies and procedures in light of past failures to comply with PTE 2023–14 to ensure that such failures will not reoccur.¹⁹

33. The Department also invites comment from the UBS QPAMs, the independent auditor, UBS, and Covered Plans regarding whether UBS acted in good faith in engaging in the transactions permitted by PTE 2023–14, notwithstanding the fact that the UBS QPAMs, the independent auditor, and UBS failed to timely comply with an essential condition of the exemption.

34. The Department further requests UBS to provide detailed information to the Department regarding the costs and harms Covered Plans would occur if the Department does not grant retroactive relief for the period from June 12, 2023, to June 11, 2024. This detailed information should include, but not be limited to, a quantified estimate of the size of the losses Covered Plans would suffer if retroactive relief is not granted, and an explanation of the methodology UBS used to calculate these amounts and the underlying assumptions UBS used in its calculation. The Department notes that receipt of this explanation and detailed estimate of specific dollar amounts of the costs and harms is critical to its decision regarding whether it will grant retroactive relief to UBS.

Retroactive Period Relating to Filing Date of UBS' Exemption Application

35. As previously stated, PTE 2023–14 allowed the UBS QPAMs to continue to rely on the QPAM exemption for a one-year period following the Merger date notwithstanding the Convictions. This relief was necessary, because the relief granted to QPAMs before the Merger was no longer available on the effective date of the Merger. To receive further relief after the end of the one-period in PTE 2023–14, the UBS QPAMs would have to submit another exemption application to the Department to receive relief after the Merger.

36. The Department issued a clear statement to Covered Plan fiduciaries in the preamble to PTE 2023–14's proposal that clearly indicated that in order for the UBS QPAMs to receive relief beyond the one-year period in PTE 2023–14, they must submit sufficient written information to the Department substantially in advance of the expiration of the exemption's one-year term to permit the Department to make its requisite findings under ERISA section 408(a).²⁰ The Department also stated in that preamble that, it "is requesting detailed information from UBS and CSAG regarding the costs and harms to Covered Plans, if any, that could arise if the UBS QPAMs and the [CSAG QPAMs] can no longer rely on PTE 2020–01 and PTE 2022–01 following the Merger." Finally, the Department stated that, "if UBS and CSAG do not submit detailed and reliable information in this regard, the Department will not extend the relief [proposed] in this exemption beyond one year."²¹

37. The Department made these statements in the preamble to the notice of proposal for PTE 2023–14 to ensure that the UBS QPAMs were aware that they needed to submit their exemption application for extended relief sufficiently in advance of the expiration of the relief provided in PTE 2023–14 for the Department to be afforded with sufficient information and time to develop a complete required record upon which it could determine whether the Department could make its requisite findings under ERISA section 408(a) that UBS' requested exemptive relief is (1) administratively feasible, (2) in the interest of its Covered Plan clients, (3) and protective of the rights of its Covered Plan client's participants and beneficiaries.²²

38. Nevertheless, UBS did not submit its application until February 22, 2024, and the application failed to convincingly establish the specific "costs and harms to Covered Plans," as requested by the Department in the preamble to proposed PTE 2023–14.²³ Further, as noted above, UBS and the UBS QPAMs failed to perform and certify the stub period audit in accordance with Section III(j) of PTE 2023–14, and did not disclose this failure in the February 22, 2024, exemption application which further complicated and delayed the Department's ability to review and resolve UBS' exemption application. For all these reasons, the Department has not been given sufficient information and time to develop a complete record, publish a proposed exemption with adequate public notice and comment, and issue a final exemption before the June 11, 2024 that grants all the requested exemptive relief prior to the expiration date provided in PTE 2023–14. In particular, the Department cannot make the required findings under ERISA section 408(a) that UBS' requested exemptive relief is (1) administratively feasible, (2) in the interest of its Covered Plan clients, (3) and protective of the rights of its Covered Plan clients' participants and beneficiaries, without additional submissions, public comments, and review.

39. Nonetheless, to protect Covered Plans, the Department is proposing to grant UBS retroactive relief from the date the Department publishes a final exemption (if granted) back to June 12, 2024, provided that UBS demonstrates, as part of the public notice and comment process, that the Department can make the required findings under ERISA Section 408(a) and that UBS will properly safeguard Covered Plans from harm. Since this retroactive relief period has not yet occurred, the Department also is requesting UBS to represent in a statement made in its comment response to this proposed exemption that it will continuously adhere to the conditions of PTE 2023–14 through the effective date of a final exemption (if granted). Moreover, to ensure that Covered Plans are adequately protected, the Department seeks comments from UBS and the public on whether it should grant retroactive relief for the period that would have been covered by PTE 2023–14, but for the failure to comply with the audit condition. As

notice to interested persons, and afford interested persons with an opportunity to comment on the proposed exemption.

²³ UBS did not provide this detailed information until May 2, 2024, a little more than a month from the expiration of PTE 2023–14.

¹⁷ 29 CFR 2570.35(d)(1)(i).

¹⁸ 29 CFR 3570.35(d)(1)(ii).

¹⁹ *Id.*

²⁰ 88 FR 30785, 30786 (May 12, 2023).

²¹ *Id.* at 30788.

²² ERISA section 408(a) also requires the Secretary to publish a notice in the **Federal Register** of the pendency of an exemption, provide adequate

discussed below, the Department also proposes to add an additional condition designed to minimize the risk of future harm to Covered Plans.

Harm to Covered Plans in the Absence of QPAM Relief

40. Before it grants relief from ineligibility under PTE 84–14 Section I(g) due to a conviction or misconduct, the Department requires ineligible QPAMs to provide detailed statements that demonstrate and quantify the harms that Covered Plan clients would experience if the QPAMs were unable to rely on PTE 84–14 due to ineligibility. In its exemption application and in a response to a request for supplemental information from the Department, UBS provided the Department with the following estimates of the costs that each type of portfolio managed by the UBS QPAMs would incur if denied relief. The application assumed that Covered Plan assets would have to be liquidated because of the unavailability of PTE 84–14 with the following consequences for Covered Plans.²⁴

41. UBS Hedge Fund Solutions provides customized portfolios of hedge funds that are run as plan asset funds. UBS Hedge Fund Solutions manages approximately \$6.8 billion as part of this business. UBS estimated that these customized hedge fund portfolios would lose \$46.8 million if the covered plans liquidated their assets because the UBS QPAMs could not rely upon PTE 84–14. In calculating the estimates of losses in the event these portfolios were liquidated, UBS assumed that its clients would immediately request full redemptions and any current illiquid/side pocket investment would need to be sold in the secondary market at a 30 percent discount.

42. UBS Hedge Fund Solutions also provides investment advice to a private pension client that is invested in a customized portfolio of credit funds, including private credit funds. UBS Hedge Fund Solutions currently manages \$1.3 billion for this client. Due to the less liquid nature of these holdings, UBS estimates that it would take from two to six years to liquidate these holdings, or sometimes longer under the investments terms. UBS estimates that the costs of liquidation would be \$14.5 million. This estimate

²⁴ The Department notes that UBS provided information not mentioned in this proposal regarding the potential losses to ERISA clients, but without clearly identifying the dollar amount of losses to plans in concrete terms. In such cases, the Department does not have enough information to include such representations in its findings. However, the information the Applicant provided that the Department can rely on is described below.

assumes that any investment that would take five years or longer to be redeemed would be sold in the secondary market at a 30 percent discount.

43. UBS Hedge Fund Solutions is also a platform manager for select managed accounts with third party trading advisers. In this role, UBS Hedge Fund Solutions provides investment advice to pension clients as well as non-ERISA clients to invest in commingled managed accounts, which are run as plan asset funds. UBS Hedge Fund Solutions manages approximately \$406.6 million as part of this business. If UBS QPAMs are no longer allowed to rely on PTE 84–14, UBS estimated that the economic loss for these investors would be \$29.1 million. This estimate assumes the entire portfolio would be liquidated and the Covered Plan clients would pay the related transaction costs.

44. UBS also estimated the loss to active equity portfolios if UBS QPAMs were no longer able to rely on PTE 84–14. These equity portfolios cover large, small and mid-cap equity securities, and pursue a variety of strategies. Within these portfolios, UBS QPAMs managed approximately \$727 million in assets for ERISA plan clients. UBS estimates that liquidation costs for these portfolios would amount to approximately \$6.2 million based on a transaction cost model.

45. UBS offers a range of strategies across the global fixed income asset class spectrum. These strategies trade a variety of products, such as investment grade and non-investment grade debt securities, US treasuries, agency and non-agency mortgage-backed securities, and related derivatives. UBS QPAMs manage approximately \$1.1 billion in fixed income strategies for ERISA plan clients. If the Department does not grant an exemption, UBS estimates that the liquidation costs to these plans will be approximately \$3.84 million. To calculate these estimates, UBS constructed a bid/offer spread model based on the individual securities held in each client portfolio. The model assumes that liquidation will not occur during a time of market stress, and UBS suggests that the estimates may therefore be low.

46. UBS Investment Solutions²⁵ manages portfolios primarily based on a long-term, fundamental analysis, but may also employ different strategies as dictated by client investment guidelines and/or market conditions and may allow long and/or short positions in

²⁵ It is the Department's understanding that UBS Investment Solutions is a team within UBS that manages portfolios based on an asset allocation investment process.

markets, currencies, or other portfolio factors through the use of derivatives. UBS Investment Solutions may also employ long/short investment strategies that purchase securities on margin and/or sell securities short were permitted by client guidelines. UBS QPAMs manage approximately \$934 million in Investment Solutions strategies for ERISA plan clients.

47. If the Department does not grant an exemption, UBS estimates that liquidation costs for those portfolios will amount to \$358,907.

48. Credit Investments Group (CIG) is a business unit within UBS Asset Management Americas LLC. As part of its business, CIG manages an ERISA client account with a net asset value of \$109 million. In the event of a portfolio liquidation scenario, CIG would typically initiate what is effectively an auction process for every unique line item in the portfolio and invite various loan trading desks to bid on each asset. In this auction process, positions marked below 80 percent reasonably would be estimated to trade at least 10 percent below the current mark. Based on this, and other, assumptions, UBS estimates economic loss of \$2 million to the ERISA client's account in the event of liquidation.

49. In addition to the liquidation costs described above, UBS also represents that its Covered Plan clients would incur other costs associated with losing relief under PTE 84–14, such as costs of performing due diligence on a replacement manager, liquidating the legal entity, setting up a new legal entity with a replacement manager, building back a portfolio, losing capacity in closed or customized hedge funds, transferring positions, being out of the market, losing time invested for purposes of lock up periods, and costs associated with the paying commissions when a new manager sells the Covered Plans' current securities and buys new securities that it prefers. Hereinafter, these costs, and any other cost that may be incurred by a Covered Plan due to a UBS QPAM's loss of relief under PTE 84–14, other than a Liquidation Cost, is referred to as an additional cost.

Department's Request for Additional Information Regarding the Liquidation Costs and Additional Costs

50. The Applicant's representations imply that if the exemption is not granted, all affected Covered Plans will need to liquidate their investments. If that was not the Applicant's intent, the Department requests the Applicant to revise its Liquidation Costs estimates to reflect the view that not all Covered Plans would need to liquidate their

investments if the exemption is not granted, along with the methodology the Applicant used to provide the estimates, and the factors that may affect those estimates.

51. Section III(k)(2) of PTE 2023–14 requires that any arrangement, agreement, or contract between the UBS QPAMs and Covered Plans, include an obligation for the QPAM to indemnify and hold harmless Covered Plans from actual losses. This includes the losses and related costs arising from unwinding transactions with third parties and from transitioning Covered Plan assets to an alternative asset manager as well as costs associated with any exposure to excise taxes under Code section 4975 as a result of a QPAM's inability to rely upon the relief in PTE 84–14.²⁶

52. Accordingly, it is unclear why the Covered Plans would incur the Liquidation Costs and Additional Costs identified by the Applicant, in the event relief were not granted. To the extent the Applicant does not believe Covered Plans are contractually protected from these costs, the Department requests comment from the Applicant identifying and describing the extent to which the Liquidation Costs and/or Additional Costs are outside the scope of Section III(k)(2), and the Applicant's explanation of why such costs are outside the scope of Section III(k)(2).

53. The Department also requests comments on whether there are other potential costs or benefits associated with the failure to grant retroactive relief that are not addressed by the questions above. For example, what impact would the denial of retroactive relief have on the willingness of parties to rely on the QPAM exemption in the future? To what extent is the denial of retroactive relief proportionate or disproportionate with the failure of the

²⁶ PTE 2023–14, Section III, Condition (k) states, in part, “. . . with respect to any arrangement, agreement, or contract between an Affiliated QPAM and a Covered Plan, the QPAM agrees and warrants to Covered Plans . . . (2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from the 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 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 a Conviction covered under this exemption. This condition applies only to actual losses caused by the QPAM's violations. The term Actual Losses includes, but is not limited to, 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 as a result of a QPAM's inability to rely upon the relief in the QPAM Exemption;”

exemptions of PTE 2023–14? Are there other issues or considerations that the Department should address before making a determination on retroactive relief?

Audits of Credit Suisse

54. Newport Trust Company (Newport) conducted the audits of Credit Suisse Asset Management, LLC (CSAM LLC) before the merger between UBS and Credit Suisse AG. The most recent PTE 2022–01 required UBS to submit to an audit by an independent auditor for the period of November 21, 2022, to June 11, 2023. In its audit report Newport determined that CSAM was in compliance with the terms and conditions of PTE 2022–01. Moreover, Newport had no recommendations to strengthen the Exemption Review by the Compliance Officer or any new recommendations to strengthen CSAM LLC's exemption compliance program, or any recommendation specific to the Policies or Training.

55. Newport represents in its latest audit report that it conducted a thorough due diligence process to conduct the audit and issue the report for the covered period. Its examination involved ongoing contact with representatives of CSAM, reviews of the Policies and Training, testing of data related to Plan accounts, review of collected data, testing of CSAM's operational compliance with the Policies and Training, and preparation of the Audit Report.

In making its determinations, Newport:

(1) reviewed the following Policies and evaluated their adequacy during the Covered Period—CSAM's ERISA Compliance Manual, including appendices on PTE 2022–01, Parties in Interest, and QPAM Compliance Guidance; “Handling of ERISA Related MyIncidents Procedure;” and CSAM's best execution policy. Numerous CSAG risk policy publications, including policies on data management, policies governing interactions with and exchange of information with regulators, government agencies, and legislative bodies; global regulatory reporting accountability policy; records management global policy; policy prohibiting certain persons serving as employee, officers or directors of Credit Suisse affiliates.

(2) gathered and reviewed extensive documentation and information from CSAM to determine compliance with the terms of the exemption—including marketing materials, numerous internal and external written correspondence, correspondence with regulators (including Forms ADV for CSAM), financial documents, balance sheets, records of best execution, internal announcements, compliance records from CSAG compliance systems, trading records and spreadsheets detailing corrections of

trading errors; copies of notices required under PTE 2022–01 and prior exemptions, personnel files, sample internal documents, etc.

(3) reviewed updates to the Training program content and anticipated content for upcoming online training;

(4) reviewed the Annual Exemption Review and report completed by the Compliance Officer (“Annual Exemption Report”) and evaluated its adequacy; and

(5) developed tests to evaluate CSAM's operational compliance with the Policies, including manager independence, ERISA compliance, communications with regulators and Plan/IRA clients, and Exemption compliance and corrections during the Covered Period, with particular focus on class actions and complying with limits on employer securities.

Newport also validated that certain follow-up actions from its preceding audit were completed.

Audits of UBS

56. Fiduciary Counselors Inc. (FCI) conducted the audits of UBS QPAMs pursuant to PTE 2020–01. FCI confirmed that the UBS QPAMs fulfilled the terms and conditions of the exemption during the audit periods of February 20, 2020 through March 19, 2021; March 20, 2021 to March 19, 2022; March 20, 2022 to March 19, 2023; and March 20, 2023 to June 11, 2023. FCI also concluded that the QPAMs' policies and procedures are reasonably designed to ensure that each QPAM continues to operate in a manner compliant with ERISA and the requirements of the exemption.

57. During the course of the audits performed since the effective date of PTE 2020–01, Fiduciary Counselors Inc. reviewed the following:

(1) marketing materials directed to Covered Plans, investment committee minutes, client complaints, compliant policies, broker dealer reports, billing records, and consent forms for PTE 77–4, Compliance Office Exemption Reports, ADV Forms, gifts and entertainment policies, performance reports and disclosures;

(2) trading system, guideline breaches and ERISA breach hardcoding process in trading system, any guideline breaches and correspondence files associated with the breaches.

(3) client adoption process.

(4) compliance with the following PTE 84–14 requirements: power to appoint rule, the 20% rule, that the counterparty is not a UBS QPAM or a person related to the UBS QPAM, the transaction is not an excluded transaction, shareholders' or partners' equity of the QPAM is at least \$1 million, and total client assets under management and control of the QPAM/investment adviser is at least \$85 million.

(5) whether required notices under PTE 2020–01 were sent timely and appropriately, whether additional communications are sent

in a timely manner, and whether training was held in a timely manner.

(6) proof of training, content of training; proof of ethics training, training of new hires, conduct interviews with portfolio managers regarding effectiveness of training and suggested improvements, online training modules, training system and process of assigning courses to employees and process for employees completing assigned training.

(7) the written Exemption Report prepared by the Compliance Officer for compliance with the requirements of PTE 2020–01.

58. FCI also validated that certain follow-up actions from its preceding audit were completed. Namely, in its prior audit report, FCI recommended that the UBS QPAMs develop processes to identify affiliates of the party in interest with the authority to appoint or terminate the QPAM or negotiate the terms of the QPAM's management agreement with the plan.

New Conditions in the Proposed Exemption

59. By failing to comply with the audit requirement in PTE 2023–14, the Applicant breached a core protective condition of the exemption. In order to address this failure and to prevent its reoccurrence or the occurrence of any additional failures, the Department is proposing to add additional conditions to those it included in PTE 2023–14. The first new proposed condition in Section III(v)(4) of the proposed exemption would require each UBS QPAM to develop written processes that clearly describe: (1) how the QPAM identifies and quantifies “actual losses” for purposes of Section III(j)(2); and (2) how Covered Plans may recover or avoid incurring the losses that the UBS QPAM must indemnify or hold Covered Plans harmless from incurring pursuant to Section III(j)(2). Each UBS QPAM must develop these processes within 30 days after the date the Department publishes a final exemption in the **Federal Register**. Furthermore, the Department is adding clarifying language to Section III(j)(2) to better articulate its longstanding position regarding the scope of QPAMs’ “hold harmless” obligations. In this regard, the Department is adding text to clarify that a “violation of any conditions of this exemption” triggers the “hold harmless” obligations of a QPAM under that section. That language also appears in certain other places throughout the proposal where relevant.

60. The second new proposed condition in Section III(t) provides that if the independent auditor or UBS or its affiliates learns of any material noncompliance with a condition of this exemption, UBS must send a notice (a Violation Notice) to all affected Covered

Plans and the Department that prominently and conspicuously states or describes: (1) UBS, or the UBS QPAM, as applicable, failed to meet the terms of this exemption (and describe the failure); (2) the extent to which UBS QPAMs have potentially been operating without an exemption due to the failure; (3) whether UBS plans to apply for retroactive relief from the Department for this failed condition; (4) any further transactions engaged in by the UBS QPAMs on behalf of Covered Plans that may be non-exempt prohibited transactions unless the Department grants retroactive relief for the period in which the transactions occurred; and (5) UBS must indemnify and hold harmless the Covered Plan for: any actual losses resulting directly from the QPAM's failure to comply with any conditions of this exemption, ERISA's fiduciary duties and of the prohibited transaction provisions of ERISA and the Code, a breach of contract by the QPAM, or any claim arising out of the failure of such QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of PTE 84–14 Section I(g), other than a Conviction covered under the exemption. The Violation Notice must be sent to all affected Covered Plans and the Department within 14 days of discovering the violation. The Department's objective in proposing a requirement that UBS send the Violation Notice to its Covered Plan clients is to provide the Covered Plan clients with the opportunity to make informed and prudent decisions regarding the protection of plan assets. The Department requests comment on whether the Violation Notice is sufficiently protective of the interests of the Client Plans and their participants and beneficiaries. In that context, the Department is interested in receiving comments discussing whether additional disclosure or a requirement for additional oversight by an independent fiduciary may be necessary to ensure that the exemption is sufficiently protective of the Client Plans and their participants and beneficiaries.

The Proposed Exemption

61. As stated above, the Department is proposing this exemption to protect Covered Plans from the costs and harms that would arise if the UBS QPAMs no longer were able to rely on the relief provided in PTE 84–14. If the proposed exemption is granted, the UBS QPAMs would not be precluded from relying on the exemptive relief provided by PTE 84–14, notwithstanding the Covered

Convictions.²⁷ This proposed exemption would be effective for a five-year period beginning on June 12, 2024, and ending on June 11, 2029, if the Applicant satisfies the requirements of the Proposed Exemption at all times.

Expiration of Exemption

62. If UBS satisfies all the conditions of this exemption, its relief under this exemption as proposed will expire on June 11, 2029. UBS and its underlying entities, as well as Covered Plan fiduciaries, are cautioned that the Department may not extend this five-year exemption following its expiration due to the significant number of convictions and the seriousness of the underlying conduct of the tainted entities within the UBS corporate umbrella following the five year term unless, among other things, UBS submits a complete and accurate application with detailed written information to the Department by December 14, 2027. This will ensure that the Department has sufficient time to analyze the exemption application to ensure it provides sufficient information for the Department to make its findings under ERISA Section 408(a), publish a notice of proposed exemption with a sufficient notice and comment period, consider comments received on the proposed exemption, and publish a notice of final exemption (if appropriate based on the entire record).

Summary of the Exemption's Protective Conditions

63. In developing administrative exemptions under ERISA section 408(a), the Department implements its statutory directive to grant only exemptions that are appropriately protective and in the interest of, affected plans and IRAs. The Department is proposing this exemption with conditions that would protect Covered Plans (and their participants and beneficiaries) and allow them to continue to benefit from the transactions described in PTE 84–14.²⁸ The Department notes that this exemption includes most of the conditions it imposed upon CSAG and UBS in their most recent individual exemption, PTE 2023–14, but the Department has made

²⁷ Section I(g) of PTE 84–14 generally provides that a QPAM is ineligible to rely on PTE 84–14 for 10 years following a Criminal Conviction, or participation in Prohibited Misconduct (as both are defined in PTE 84–14), of the QPAM, any affiliate thereof, or any direct or indirect owner of a five percent or more interest in the QPAM, subject to the Ineligibility Date in Section I(h).

²⁸ The Department notes that this is a summary of the conditions intended for the convenience of a reader; however, the governing conditions for the exemptive relief are those reflected in the operative text in Section III of the proposed exemption.

minor changes and added additional conditions that are described below.

64. *Misconduct Entity*.

Notwithstanding that the 2013 UBS Conviction is no longer within the 10-year period of disqualification period under Section I(g), the proposal requires that the UBS QPAMs continue to be completely insulated from any aspect of the business activities of UBS Securities Japan. Because the same criminal activity (which relates to the fraudulent submission of Yen LIBOR rates during roughly the same time period) underpins both the 2013 UBS Conviction, and the 2017 UBS Conviction, there is not a valid reason for the Department to require the UBS QPAMs to be insulated from UBS while it permits the UBS QPAMs to engage in transactions with UBS Securities Japan. Therefore, the Department has broadened the definition of "Misconduct Entity" in PTE 2023–14 to include UBS Securities Japan. Furthermore, although the FX Misconduct itself did not violate Section I(g), the misconduct led to the DOJ's determination that UBS had breached the LIBOR NPA. The FX Misconduct was itself egregious enough to raise concerns that the UBS QPAMs should be completely insulated from any entity involved in that misconduct. However, because UBS is already a Misconduct Entity by virtue of the 2017 UBS Conviction, no updates to the definition is required.

65. *Criminal Activity*. For reasons similar to those articulated in the prior paragraph, the Department has determined that each instance of the Criminal Activity is equally concerning notwithstanding that the 2013 UBS Conviction and the FX Misconduct do not in themselves trigger a disqualification of the UBS QPAMs from relying on PTE 84–14. As such, the Department has drafted certain exemption conditions to ensure that the UBS QPAMs continue to be fully insulated from the personnel that were involved in the misconduct related to the Criminal Activity. Therefore, the Department maintains in the proposal the approach it took in the PTE 2023–14 conditions where it refers to the Covered Convictions and the FX Misconduct. However, the Department uses the defined term Criminal Activity in this proposal, because the 2013 UBS Conviction is technically no longer included in the definition of "Covered Convictions" due to the expiration of the ten-year ineligibility period.

66. *UBS Seconded Employees*. In prior exemptions, UBS and Credit Suisse had requested a carve-out from the exemption conditions for services

provided by individuals that are considered to be employed by a Misconduct Entity for payroll and certain administrative purposes. Applicants in those exemptions referred to these employees as being "seconded" or "double-hatted." The Department has proposed a new definition of "UBS Seconded Employee" in Section I(j) of the proposal to avoid using ambiguous terms such as "double-hatted" and to ensure that no employees of Misconduct Entities are involved in the UBS QPAMs' business activities, except to the extent that such employees are subject to the control and supervision of the UBS QPAMs. The new definition of UBS Seconded Employee is included in the conditions where references to "double-hatted" and "seconded" employees previously appeared in PTE 2023–14. New Section I(j) provides that a "UBS Seconded Employee" means "an individual nominally employed by UBS who performs work on behalf of a UBS QPAM; provided that such UBS QPAM is solely responsible for the management and control of the employee's job activities performed on behalf of such QPAM. Notwithstanding the preceding sentence, the UBS QPAM must be solely responsible for the establishment of the employee's job duties and terms of employment (including compensation, promotions, and benefits) and must have supervisory responsibility with respect to, among other things, the employee's performance, training, and disciplinary actions." The Department is requesting that the Applicant's comment includes a representation that demonstrates how this arrangement remains protective of Covered Plans following the merger.

67. The UBS QPAMs (including their officers, directors, agents (with very narrow exceptions), employees of such QPAMs, and UBS Seconded Employees) must not have known, have reason to know of, nor participated in the criminal conduct that is the subject of any of the Criminal Activity. Each UBS QPAM (and its officers, directors, etc.) must meet this condition with respect to each element of Criminal Activity regardless of whether the misconduct occurred within the QPAM's corporate umbrella at the time it occurred. Further, any other party engaged on behalf of the UBS QPAMs who had responsibility for or exercised authority in connection with the management of plan assets must not have known, had reason to know of, nor participated in the Criminal Activity. Again, each Affiliated and Related QPAM (and their officers, directors, etc.) must comply with this prohibition, regardless of

whether the criminal misconduct occurred within the QPAM's corporate umbrella at the time the Criminal Activity occurred.

68. The proposed exemption continues the requirement from PTE 2023–14 that no UBS QPAM (including their officers, directors, agents other than one of the entities subject to a Covered Conviction, employees of such QPAMs, and UBS Seconded Employees) received direct compensation, or knowingly received indirect compensation, in connection with the criminal conduct that is the subject of the Criminal Activity. Further, no other party engaged on behalf of the UBS QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets received direct compensation, or knowingly received indirect compensation, in connection with the criminal conduct of that is the subject of the subject of the Criminal Activity.

69. The protective conditions contained in this proposed exemption include a requirement that precludes each Affiliated QPAM from employing or knowingly engaging any of the individuals who participated in the criminal conduct underlying the Criminal Activity. This means that no individual who participated in criminal misconduct at either UBS, UBS Securities Japan, UBS France, CSAG, or CSEL (each, a Misconduct Entity) may be employed by any Affiliated QPAM, regardless of whether the Misconduct Entity was outside the QPAM's corporate umbrella at the time of the misconduct. A UBS QPAM also must not have exercised authority over the assets of any Covered Plan client in a manner that it knew or should have known would further the criminal conduct underlying the Criminal Activity; or cause the UBS QPAM or its affiliates to directly or indirectly profit from the criminal conduct underlying the Criminal Activity.

70. Under this exemption, no Affiliated 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 Affiliated QPAM with respect to one or more Covered Plans, to enter into any transaction with a Misconduct Entity or to engage a Misconduct Entity 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. This condition provides exceptions for the provision of:

(1) certain sub-custodial services by an affiliate of UBS that is selected by an unaffiliated global custodian that, in turn, is selected by someone other than a UBS QPAM; and (2) services provided by UBS Seconded Employees. Further, other than with respect to employee benefit plans maintained or sponsored for its own employees or the employees of an affiliate, a Misconduct Entity may not act as a fiduciary within the meaning of ERISA section 3(21)(A)(i) or (iii), or Code section 4975(e)(3)(A) and (C), with respect to Covered Plan assets.

71. Each Affiliated QPAM must continue to maintain, adjust to the extent necessary, implement, and follow written policies and procedures (the Policies) that are reasonably designed to ensure that: (a) the asset management decisions of the Affiliated QPAM are conducted independently of each Misconduct Entity's corporate management and business activities; (b) the Affiliated QPAMs fully comply with ERISA's fiduciary duties and with ERISA's and the Code's prohibited transaction provisions; (c) the Affiliated QPAMs do not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans; (d) any filings or statements made by the Affiliated QPAMs to regulators on behalf of, or in relation to, Covered Plans are materially accurate and complete; (e) the Affiliated QPAMs do not make material misrepresentations or omit material information in their communications with such regulators, or in their communications with Covered Plans; and (f) the Affiliated QPAMs comply with the terms of the exemption.

72. This proposed exemption requires each Affiliated QPAM to maintain, adjust to the extent necessary, and implement a training program (the Training) that will be conducted at least annually for all relevant asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must cover, at a minimum, the Policies, ERISA and Code compliance, ethical conduct, the consequences that would result from not complying with the proposed exemption conditions, and the requirement to promptly report wrongdoing.

73. This proposed exemption requires each Affiliated QPAM to continue to engage an independent auditor annually to evaluate the adequacy of, and the QPAM's compliance with, the Policies and Training required by the exemption. The independent auditor must be prudently selected by the Affiliated QPAMs and have appropriate technical training and proficiency with ERISA and the Code to perform the tasks

required by the exemption. The Affiliated QPAMs must grant the auditor unconditional access to their business, and the auditor's engagement must specifically require the auditor to test each Affiliated QPAM's operational compliance with the Policies and Training.

74. The independent auditor must issue a written audit report (the Audit Report) annually to UBS and the Affiliated QPAM to which the audit applies, that describes the procedures performed by the auditor in connection with its examination. Further, the Affiliated QPAMs must promptly address any instance of noncompliance identified by the auditor and 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 Affiliated QPAM. The Audit Report must be provided to the Department annually by the Affiliated QPAM, and the Department will make the Audit Report part of the public record each year regarding this five-year exemption.

75. This proposed exemption further requires the General Counsel, or one of the three most senior executive officers of the Affiliated QPAM to which the Audit Report applies, to certify in writing and under penalty of perjury that the officer has reviewed the Audit Report and the exemption, and the Affiliated QPAM has addressed, corrected, and remedied (or has an appropriate written plan to address) any identified instance of noncompliance or inadequacy regarding the Policies and Training identified in the Audit Report.

76. With respect to any arrangement, agreement, or contract between an Affiliated QPAM and a Covered Plan, this proposal requires each Affiliated QPAM to agree and warrant: (a) to comply with ERISA and the Code, including the standards of prudence and loyalty set forth in ERISA section 404; (b) to refrain from engaging in prohibited transactions that are not otherwise exempt; (c) to indemnify and hold harmless the Covered Plan for any actual losses resulting directly from, among other things, the Affiliated QPAM's violation of the conditions for this exemption, prohibited transactions, and ERISA's fiduciary duties; (d) with narrow exceptions, to not restrict the ability of such Covered Plan to terminate or withdraw from its arrangement with the Affiliated QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by

such QPAM; (e) with narrow exceptions, to not impose any fees, penalties, or charges for such termination or withdrawal; and (f) to not include exculpatory provisions disclaiming or otherwise limiting the liability of the Affiliated QPAM for a violation of such agreement's terms.

77. Each Affiliated QPAM must provide a notice of its obligations under this exemption to each applicable Covered Plan, by the dates specified in the exemption. Each Affiliated QPAM also must provide to each applicable sponsor and beneficial owner of a Covered Plan a copy of the proposal and final notice of the exemption as published in the **Federal Register**, a separate summary describing the facts that led to each Conviction, and a prominently displayed statement that each Conviction results in a failure to meet a condition in PTE 84-14 and an individual exemption, which must be identified, by the dates specified in the exemption.

78. This proposed exemption requires each Affiliated QPAM to maintain a designated senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described in this proposed exemption. The Compliance Officer must conduct a review, for the twelve-month period specified below (the Exemption Review), to determine the adequacy and effectiveness of the implementation of the Policies and Training and issue a written report (the Exemption Report) on the findings.

79. This proposed exemption requires UBS to impose internal procedures, controls, and protocols on each Misconduct Entity to reduce the likelihood of any recurrence of conduct that is the subject of the Criminal Activity.

Statutory Findings

80. ERISA section 408(a) provides, in part, that the Department may not grant an exemption unless the Department finds that the exemption is administratively feasible, in the interest of affected plans and of their participants and beneficiaries, and protective of the rights of such participants and beneficiaries. These criteria are discussed below.

81. "*Administratively Feasible.*" The Department has tentatively determined that the proposal is administratively feasible for the Department, because among other things, a qualified independent auditor will be engaged by the Affiliated QPAM to perform an in-depth annual audit covering each Affiliated QPAM's compliance with the

terms of the exemption, and a corresponding written audit report will be provided to the Department and be made available to the public. Further, detailed periodic reports will be made to the Department and to Covered Plan fiduciaries.

82. *“In the interest of.”* The Department has tentatively determined that the proposed exemption is in the interests of the participants and beneficiaries of affected Covered Plans. The Department understands based on representations from the Applicant, that if the requested exemption is denied, Covered Plans may be forced to find other managers and may be deprived of the investment management services that these plans expected to receive when they appointed these managers. Loss of the exemption could result in the termination of relationships that the fiduciaries of the Covered Plans have determined to be in the best interests of those plans, even after the disclosures of the earlier Covered Convictions, the 2013 UBS Conviction, and the FX Misconduct pursuant to the individual exemptions the managers previously received. Additionally, the independent audit, while untimely performed, found no other violation by the UBS QPAMs of the terms of PTE 2023–14.

83. *“Protective of.”* The Department has tentatively determined that the proposed exemption is protective of the interests of the participants and beneficiaries of affected Covered Plans. As described above, the proposed exemption imposes a suite of affirmative requirements and obligations upon the Affiliated QPAMs that include but are not limited to: (a) the maintenance of the Policies; (b) the maintenance of the Training; (c) a robust audit conducted by a qualified independent auditor; (d) the provision of certain agreements and warranties on the part of the Affiliated QPAMs; (e) specific notices and disclosures concerning the circumstances necessitating the need for exemptive relief and the Affiliated QPAMs’ obligations under this proposed exemption; and (f) the designation of a Compliance Officer with responsibility to ensure compliance with the Policies and Training requirements under this proposed exemption, and the Compliance Officer’s completion of an Exemption Review and corresponding Exemption Report. The Department notes that this exemption includes all conditions imposed upon UBS in PTE 2023–14 as well as certain modifications described above designed to enhance the protections required for Covered Plans.

Summary

84. This proposed five-year exemption would provide prospective relief from certain restrictions set forth in ERISA section 406 and Code Section 4975(c)(1). No relief or waiver of a violation of any other law is provided by the exemption. The relief in this proposed five-year exemption would terminate in the event that an entity within the UBS corporate structure is convicted of any crime covered by PTE 84–14 Section I(g) (other than a Covered Conviction), or any term of PTE 84–14, as amended, is violated. In such event, and as described above, the UBS QPAMs would have to comply with the requirements of amended PTE 84–14 for additional relief.

85. When interpreting and implementing this exemption, the Applicant and the relevant QPAM should resolve any ambiguities considering the exemption’s protective purposes. To the extent additional clarification is necessary, these persons or entities should contact EBSA’s Office of Exemption Determinations by email (e-oed@dol.gov) or phone (202–693–8540).

86. Based on the conditions that are included in this proposed exemption, the Department has tentatively determined that the prospective relief sought by the Applicant would satisfy the statutory requirements for an individual exemption under ERISA section 408(a) and Code section 4975(c)(2) if the Applicant submits sufficient additional information the Department is requiring the Applicant to provide in its comment response to this proposed exemption.

87. This exemption proposes conditions that would apply during the five-year period from June 12, 2024, to June 11, 2029. In addition, and as explained in detail above, the Department seeks comments on whether to include retroactive relief for the period between June 12, 2023 to June 12, 2024 (the PTE 2023–14 Period). In order for the Department to determine whether UBS should receive retroactive relief during the PTE 2023–14 Period, UBS must provide a detailed statement in a comment to this proposed exemption that demonstrates a grant of retroactive relief would be consistent with the Department’s requirements for such relief as set forth in 29 CFR 2570.35(d) during the PTE 2023–14 Period.

Notice to Interested Persons

UBS will provide notice of this proposed exemption to its Covered Plan clients by first class mail or email

within two days after the publication of the notice of proposed exemption in the **Federal Register**. The notice of this proposed exemption will contain a supplemental statement, as required pursuant to 29 CFR 2570.43(a)(2) and a Summary the Proposed Exemption which includes information regarding the non-compliance in the PTE 2023–14 Period. The supplemental statement will inform interested persons of their right to comment on and to request a hearing with respect to the pending exemption. Written comments and hearing requests are due within 32 days after publication of this notice of proposed exemption in the **Federal Register**. The Department will make all comments available to the public.

Warning:

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

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under ERISA section 408(a) and/or Code section 4975(c)(2) does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and/or the Code, including 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 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 ERISA section 404(a)(1)(B); nor does it affect the requirement of Code section 401(a) that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

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

protective of the rights of participants and beneficiaries of the plan;

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

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

Proposed Five-Year Exemption

The Department is considering granting this five-year exemption under the authority of ERISA section 408(a) and Internal Revenue Code (or Code) section 4975(c)(2), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (89 FR 4662, January 24, 2024).²⁹ Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of proposed exemption is issued solely by the Department.

Section I. Definitions

(a) Names of Certain Corporate Entities:

(1) The term “CSAG” means Credit Suisse AG, which was 100% owned by Credit Suisse Group AG, before UBS AG acquired Credit Suisse Group AG.

(2) The term “CSAM LLC” means Credit Suisse Asset Management, LLC. On May 1, 2024, CSAM LLC was merged into UBS Americas, with UBS Americas as the surviving entity.

(3) The term “CSSEL” means Credit Suisse Securities (Europe) Limited an indirectly a wholly owned subsidiary of UBS Group AG.

(4) The term “UBS” means UBS AG which is a wholly owned subsidiary of UBS Group AG.

(5) The term “UBS Americas” means UBS Asset Management (Americas) LLC and is wholly owned by UBS Americas, Inc., a wholly owned subsidiary of UBS AG.

(6) The term “UBS Europe” means UBS Europe SE. UBS Europe is the successor to UBS (France) S.A. UBS (France) S.A. was a wholly owned subsidiary of UBS under the laws of France until 2023. In July of 2023, UBS France S.A. merged into UBS Europe and set up a branch in France called UBS Europe SE France Branch.

(7) The term “UBS Hedge Fund Solutions LLC” was formerly known as UBS Alternative and Quantitative Investments, LLC and is wholly owned by UBS Americas Holding LLC, a wholly owned subsidiary of UBS.

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

(b) The term “Affiliated QPAM” means: UBS Americas and UBS Hedge Fund Solutions 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) 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).³⁰ The term Affiliated QPAM excludes a Misconduct Entity.

(c) The term “Criminal Activity” means the Covered Convictions, the 2013 UBS Conviction, and the FX Misconduct.

(d) The term “Covered Convictions” means (1) the judgment of conviction against CSAG for one count of conspiracy to violate section 7206(2) of the Internal Revenue Code in violation of Title 18, United States Code, Section 371, that was entered in the District Court for the Eastern District of Virginia in Case Number 1:14-cr-188-RBS, on November 21, 2014 (the “2014 CSAG Conviction”); (2) the judgment of conviction against CSSEL in Case Number 1:21-cr-00520-WFK (the “2022 CSSEL Conviction”); (3) 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; and (4) the judgment of conviction on February 20, 2019, against UBS and UBS France in

case Number 110592033 in the French First Instance Court (the “2019 UBS France Conviction”).

(e) The term “2013 UBS 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 of 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.

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

(g) 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 an Affiliated QPAM relies on PTE 84–14, or with respect to which an Affiliated QPAM (or any UBS affiliate) has expressly represented that the manager qualifies as a QPAM or relies on PTE 84–14. A Covered Plan does not include an ERISA-covered plan or IRA to the extent the Affiliated 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. Notwithstanding the above, an Affiliated QPAM may disclaim reliance on QPAM status or PTE 84–14 in a written modification of a contract, arrangement, or agreement with an ERISA-covered plan or IRA, where: the modification is made in a bilateral document signed by the client; the client’s attention is specifically directed toward the disclaimer; and the client is advised in writing that, with respect to any transaction involving the client’s assets, the Affiliated QPAM will not represent that it is a QPAM, and will not rely on the relief described in PTE 84–14.

(h) The term “Exemption Period” means the period beginning on June 12, 2024, and ending on June 11, 2029;

(i) The term “Misconduct Entity” means any one of the following: an entity subject to one of the Covered Convictions, *i.e.*, UBS, UBS France (recently merged into UBS Europe), CSAG and CSSEL; the entity subject to the 2013 UBS Conviction, *i.e.*, UBS Securities Japan; or an entity that was

²⁹ For purposes of the five-year exemption, references to ERISA section 406, unless otherwise specified, should be read to refer as well to the corresponding provisions of Code section 4975.

³⁰ UBS represents that UBS O’Connor LLC and UBS Realty Investors LLC are entities under the UBS corporate umbrella that currently offer investment products which are accessible by ERISA-covered plans, but do not currently rely on Class PTE 84–14 when managing those products.

the subject of the FX Misconduct, *i.e.*, UBS.

(j) The term “Related QPAM” means any current or future “qualified professional asset manager” (as defined in Section VI(a) of PTE 84–14) that relies on the relief provided by PTE 84–14, and with respect to which UBS owns a direct or indirect five (5) percent or more interest, but with respect to which a Misconduct Entity is not an “affiliate” (as defined in section VI(d)(1) of PTE 84–14). The term “Related QPAM” excludes a Misconduct Entity.

(k) The term “best knowledge,” “to the best of one’s knowledge,” “best knowledge at that time,” and other similar “best knowledge” terms shall include matters that are known to the applicable individual or should be known to such individual upon the exercise of such individual’s due diligence required under the circumstances, and, with respect to an entity other than a natural person, such term includes matters that are known to the directors and officers of the entity or should be known to such individuals upon the exercise of such individuals’ due diligence required under the circumstances.

(l) The term “UBS Seconded Employee” means, an individual nominally employed by a Misconduct Entity who performs work on behalf of a UBS QPAM; provided that such UBS QPAM is solely responsible for the management and control of the employee’s job activities performed on behalf of such QPAM. Notwithstanding the preceding sentence, the UBS QPAM must be solely responsible for the establishment of the employee’s job duties and terms of employment (including compensation, promotions, and benefits); and must have supervisory responsibility with respect to, among other things, the employee’s performance, training, and disciplinary actions.

(m) The term “UBS QPAMs” means, individually or collectively, the Affiliated QPAMs and/or the Related QPAMs.

(n) The “conduct” of any person or entity that is the “subject of” the Criminal Activity encompasses any misconduct of CSAG, CSSEL, UBS, UBS France (later merged with UBS Europe), UBS Securities Japan, and/or their personnel: (i) that is described in 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; (ii) that is described in 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; (iii) that is described in Exhibit 1 of the Plea Agreement (Factual Basis for Breach) 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 filed in the US District Court for the District of Connecticut; (iv) that is the basis of the 2019 UBS France Conviction; and (v) that is the subject of the 2014 CSAG Conviction and the 2022 CSSEL Conviction described in Section I(c)(1) and (c)(2).

(o) The term “participate in” when used to describe an individual or entity’s participation in the Criminal Activity refers not only to active participation in the Criminal Activity but also includes an individual or entity’s knowledge or approval of the Criminal Activity, without taking active steps to prohibit such conduct, such as reporting the conduct to the individual’s supervisors, and to the Board of Directors.

Section II. Covered Transactions

If this proposed exemption is granted, the UBS QPAMs would not be precluded from relying on the exemptive relief provided by Prohibited Transaction Exemption 84–14 (PTE 84–14)³¹ during the Exemption Period, notwithstanding the “Covered Convictions,” provided that the definitions in Section I and the conditions in Section III are satisfied.

Section III. Conditions

(a) The UBS QPAMs (including their officers, directors, agents other than the Misconduct Entities, employees of such QPAMs, and UBS Seconded Employees) did not know or did not have reason to know of and did not participate in the conduct underlying the Criminal Activity. Further, any other party engaged on behalf of the UBS QPAMs 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 underlying the Criminal Activity.

(b) The UBS QPAMs (including their officers, directors, agents other than the Misconduct Entities, employees of such QPAMs, and UBS Seconded Employees) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the

criminal conduct that is the subject of the Criminal Activity. Further, any other party engaged on behalf of the 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 Activity;

(c) The Affiliated QPAMs do not currently and will not in the future employ or knowingly engage any of the individuals who participated in the criminal conduct underlying the Criminal Activity;

(d) At all times during the Exemption Period, no Affiliated 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 Affiliated QPAM with respect to one or more Covered Plans, to enter into any transaction with a Misconduct Entity or to engage a Misconduct Entity 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. An Affiliated QPAM will not fail this condition solely because:

(1) A UBS (or successor) affiliate serves as a local sub-custodian that is selected by an unaffiliated global custodian that, in turn, is selected by someone other than a UBS QPAM; or

(2) Services are provided by UBS Seconded Employees;

(e) Any failure of an Affiliated QPAM to satisfy Section I(g) of PTE 84–14 arose solely from the Covered Convictions;

(f) A UBS QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an “ERISA-covered plan”) or Code section 4975 (an “IRA”) in a manner that it knew or should have known would further the criminal conduct underlying the Criminal Activity; or cause the UBS QPAM or its affiliates to directly or indirectly profit from the criminal conduct underlying the Criminal Activity;

(g) No Misconduct Entity will act as a fiduciary within the meaning of ERISA section 3(21)(A)(i) or (iii) or Code section 4975(e)(3)(A) and (C) with respect to ERISA-covered Plan and IRA assets, except that each may act as such a fiduciary with respect to employee benefit plans sponsored for its own employees or employees of an affiliate. No Misconduct Entity will be treated as violating the conditions of the

³¹ 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430, (Oct. 10, 1985), as amended at 70 FR 49305 (Aug. 23, 2005), as amended at 75 FR 38837 (July 6, 2010), and as amended at 89 FR 23090 (April 3, 2024).

exemption solely because it acted as an investment advice fiduciary within the meaning of ERISA section 3(21)(A)(ii) or Code section 4975(e)(3)(B);

(h)(1) Each Affiliated QPAM must maintain, adjust (to the extent necessary), implement, and follow the written policies and procedures described below (Policies).³² The Policies must require and must be reasonably designed to ensure that:

(i) The asset management decisions of the QPAM are conducted independently of the corporate and management and business activities of each Misconduct Entity, and without considering any fee a related local sub-custodian may receive from those decisions. This condition does not preclude an Affiliated QPAM, as defined in Section I(b)(1), from receiving publicly available research and other widely available information from a UBS affiliate;

(ii) The 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 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 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 its knowledge at that time, the 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 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. This report must be made to the head of compliance and the general counsel (or their functional equivalent) of the relevant QPAM that engaged in the violation or failure, and the independent auditor responsible for reviewing compliance with the Policies. A QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, if it corrects any instance of noncompliance as soon as reasonably possible upon discovery, or as soon as reasonably possible after the 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 Affiliated QPAM must maintain, adjust (to the extent necessary), and implement or continue a program of training during the Exemption Period (the Training) that is conducted at least annually for all relevant Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel.³³ 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 the requirement for prompt reporting of wrongdoing;

(ii) 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; and

(iii) Be conducted in-person, electronically, or via a website;

(i)(1) Each Affiliated 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 Affiliated QPAM's compliance with, the Policies and Training described above in Section (h). The audit requirement must be incorporated in the Policies. The initial audit under this exemption must cover the period that begins on June 12, 2024, and ends on June 11, 2025, and the audit must be completed

by Thursday, December 11, 2025. The second audit must cover the period that begins on June 12, 2025, and ends on June 11, 2026, and must be completed by Friday, December 11, 2026. The third audit must cover the period that begins on June 12, 2026, and ends on June 11, 2027, and must be completed by Monday, December 13, 2027. The fourth audit must cover the period that begins on June 12, 2027, and ends on June 11, 2028, and must be completed by Monday, December 11, 2028. The fifth audit must cover the period that begins on June 12, 2028, and ends on June 11, 2029, and must be completed by Tuesday, December 11, 2029.

Notwithstanding the audit periods described above, the audit required under PTE 2023-14 must be completed for the prior period of June 12, 2023, through June 11, 2024 and delivered to the Department in accordance with the terms of that exemption. The prior exemption audit report(s) must be submitted in accordance with section III(i)(9) below;

(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 Affiliated QPAM and, if applicable, UBS, must 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 Affiliated QPAM has developed, implemented, maintained, and followed the Policies in accordance with the conditions of this one-year exemption, and has developed and implemented the Training, as required herein;

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

(5) For the audit, on or before the end of the relevant period described in

³² This exemption does not preclude the UBS QPAMs and CS Affiliated QPAM from maintaining separate Policies provided that the Policies comply with this exemption.

³³ The exemption does not preclude a UBS QPAM from maintaining separate training programs provided each training program complies with this exemption.

Section III(i)(1) for completing the audit, the auditor must issue a written report (the Audit Report) to UBS and the Affiliated 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 Affiliated QPAMs. The Audit Report must include the auditor's specific determinations regarding:

(i) The adequacy of each Affiliated QPAM's Policies and Training; each Affiliated QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective Affiliated QPAM's noncompliance with the written Policies and Training described in Section III(h) above. The Affiliated QPAM must promptly address any noncompliance and 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 Affiliated QPAM. Any action taken or the plan of action to be taken by the respective Affiliated QPAM must be included in an addendum to the Audit Report (such addendum must be completed prior to 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 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 an Affiliated 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 an Affiliated QPAM has complied with the requirements under this subparagraph must be based on evidence that each Affiliated QPAM has 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 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 Exemption Review described in Section III(m);

(6) The auditor must notify the respective Affiliated 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 Affiliated 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 Affiliated 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 Affiliated QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed the Audit Report;

(9) Each Affiliated QPAM provides its certified Audit Report, by regular mail to: Office of Exemption Determinations (OED), 200 Constitution Avenue NW, Washington, DC 20001; or via email to *e-OED@dol.gov*. 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 Affiliated 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) 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;

(11) UBS must notify OED no later than August 12, 2024, of the auditor

selected to complete audits required by Section III(i)(1) above for the periods covering June 12, 2024, through June 11, 2029. 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;

(12) For only the initial audit required by Section III(i)(1) above for the period covering June 12, 2024, through June 11, 2025, the auditor must consult with the auditors who performed the audits required pursuant to PTE 2023–14 for the period of June 12, 2023, through June 11, 2024, unless such auditor is the same auditor selected under paragraph 11 of this subsection. UBS must notify OED if for any reason the consultation required by this paragraph 12 cannot occur and must provide an explanation for why the consultation cannot occur. Such consultation may, but need not, occur for subsequent audits;

(13) 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 an Affiliated QPAM and a Covered Plan, the 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 prohibited transactions); and to comply with the standards of prudence and loyalty set forth in ERISA section 404 with respect to each such ERISA-covered plan and IRA to the extent that ERISA section 404 is applicable;

(2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from the QPAM's violation of any conditions of this exemption, 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 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 a Conviction covered under this exemption. The term "actual losses" includes, but is not limited to, 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 as a result of a QPAM's inability to rely upon the relief in PTE 84-14;

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

(4) Not to restrict the ability of the Covered Plan to terminate or withdraw from its arrangement with the 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 arrangement 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 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;

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the QPAM 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 UBS (and affiliates), or damages

arising from acts outside the control of the Affiliated QPAM; and

(7) Within 120 days after the effective date of this five-year exemption, each QPAM must provide a notice of its obligations under this Section III(j) to each Covered Plan. For prospective Covered Plans that enter into a written asset or investment management agreement with a QPAM on or after a date that is 120 days after the effective date of this exemption, the QPAM must agree to its obligations under this Section III(j) in an updated investment management agreement between the QPAM and such clients or other written contractual agreement. Notwithstanding the above, a QPAM will not violate the condition solely because a Covered Plan refuses to sign an updated investment management agreement. For new Covered Plans that were provided an investment management agreement prior to the effective date of this exemption, returning it within 120 days after the effective date of this exemption, and that signed investment management agreement requires amendment to meet the terms of the exemption, the QPAM may provide the new Covered Plan with amendments that need not be signed with any documents required by this subsection (j) within ten (10) business days after receipt of the signed agreement.

(k) Within 60 days after the publication date of the notice of final exemption in the **Federal Register**, each Affiliated QPAM provides notice of the proposed and final exemption as published in the **Federal Register**, along with a summary describing the facts that led to the Covered Convictions (the Summary), which has been submitted to the Department, and a prominently displayed statement (the Statement) that the Covered Convictions result 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 an Affiliated QPAM, or the sponsor of an investment fund in any case where an Affiliated QPAM acts as a sub-adviser to the investment fund in which such ERISA-covered plan and IRA invests. The Summary will be submitted to OED before it is distributed by each Affiliated QPAM. All prospective Covered Plan clients that enter into a written asset or investment management agreement with an Affiliated QPAM 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 the Affiliated QPAM. The notices may be delivered electronically (including by an email that has a link to the one-year exemption).

(l)(1) The Affiliated QPAMs must comply with each condition of PTE 84-14, as amended, with the sole exception of the violation of Section I(g) of PTE 84-14 that is attributable to the Covered Convictions. If, during the Exemption Period, an entity within UBS's corporate structure is convicted of a crime described in Section I(g) of PTE 84-14 (other than the Covered Convictions), relief in this exemption would terminate immediately.

(m)(1) Within 60 days after the date of publication of the exemption, each Affiliated QPAM must designate a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. For purposes of this condition (m), each relevant line of business within an Affiliated QPAM may designate its own Compliance Officer(s). Notwithstanding the above, the appointed Compliance Officer must not be a person who: (i) participated in the criminal conduct underlying the Criminal Activity, or knew of, or (ii) had reason to know of, the Criminal Activity without taking active documented steps to stop the misconduct;

The Compliance Officer must conduct a review of each twelve-month period of the Exemption Period (the Exemption Review), to determine the adequacy and effectiveness of the implementation of the Policies and Training.³⁴ 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 compliance for the applicable Affiliated QPAM.

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

(i) The Annual Exemption Review includes a review of the Affiliated QPAM's compliance with and effectiveness of the Policies and Training and of the following: any

³⁴ Pursuant to PTE 2023-14, the Compliance Officer also must conduct and complete an exemption review within three months of June 11, 2024.

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 time period; the most recent Audit Report issued pursuant to this exemption or PTE 2023–14; any material change in the relevant business activities of the Affiliated 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 Affiliated QPAMs;

(ii) The Compliance Officer prepares a written report for the Exemption Review (an Exemption Report) that (A) summarizes their material activities during the prior year; (B) sets forth any instance of noncompliance discovered during the prior year, 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 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) the Affiliated QPAMs have 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 UBS and to each Affiliated QPAM to which such report relates, and to the head of compliance and the general counsel (or their functional equivalent) of UBS, and the relevant Affiliated QPAM. The Exemption Report 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 Annual Exemption Report, must cover the Exemption Period, and the Annual Review, including the Compliance Officer's written Report, must be completed within three (3) months

following the end of the period to which it relates;

(n) UBS imposes its internal procedures, controls, and protocols on each Misconduct Entity to reduce the likelihood of any recurrence of conduct that is the subject of the Criminal Activity;

(o) Relief in this exemption will terminate on the date that is six months following the date that a U.S. regulatory authority makes a final decision that UBS or an affiliate of either failed to comply in all material respects with any requirement imposed by such regulatory authority in connection with the Covered Convictions;

(p) Each Affiliated QPAM will maintain 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 the Affiliated QPAM relies upon the relief in this 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 via email addressed to *e-OED@dol.gov*; 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 via email addressed to *e-OED@dol.gov*;

(r) Within 60 days after the effective date of this exemption, each Affiliated 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 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 (6) months following the end of the calendar year during which the Policies were changed.³⁵ With respect to this requirement, the description may be continuously maintained on a website, provided that such website link to the

³⁵ If 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.

Policies or Summary Policies is clearly and prominently disclosed to each Covered Plan;

(s) An Affiliated QPAM will not fail to meet the terms of this five-year exemption solely because a different Affiliated QPAM fails to satisfy a condition for relief described in Section III(c), (d), (h), (i), (j), (k), (m), (p), or (r); or if the independent auditor described in Section III(i) fails to comply with a provision of the exemption other than the requirement described in Section III(i)(11), provided that such failure did not result from any actions or inactions of UBS or its affiliates; and

(t) If the independent auditor or UBS or its affiliates learns of any material noncompliance with a condition of this exemption, UBS must send a notice (a "Violation Notice") to all affected Covered Plans and the Department that prominently and conspicuously states or describes: (1) UBS, or the UBS QPAM, as applicable, failed to meet the terms of this exemption (and describe the failure), (2) the extent to which UBS QPAMs have potentially been operating without an exemption due to the failure, (3) whether UBS plans to apply for retroactive relief from the Department for this failed condition; (4) any further transactions engaged in by the UBS QPAMs on behalf of Covered Plans that may be non-exempt prohibited transactions unless the Department grants retroactive relief for the period in which the transactions occurred; and (5) UBS must indemnify and hold harmless the Covered Plan for: any actual losses resulting directly from the QPAM's failure to comply with any conditions of this exemption, ERISA's fiduciary duties and of the prohibited transaction provisions of ERISA and the Code, a breach of contract by the QPAM, or any claim arising out of the failure of such QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of PTE 84–14 Section I(g), other than a Conviction covered under the exemption. The Violation Notice must be sent to all affected Covered Plans and the Department within 14 days of discovering the violation.

(u) All the material facts and representations set forth in the Summary of Facts and Representations are true and accurate at all times.

(v) Each UBS QPAM to develop written processes that clearly describe: (1) how the QPAM identifies and quantifies "actual losses" for purposes of Section III(j)(2); and (2) how Covered Plans may recover or avoid incurring the losses that the UBS QPAM must indemnify or hold Covered Plans harmless from incurring pursuant to Section III(j)(2). Each UBS QPAM must

develop these processes within 30 days after the date the Department publishes a final exemption in the **Federal Register**.

Applicability Date: This exemption will be in effect for the period beginning on June 12, 2024 and ending on June 11, 2029.

Signed at Washington, DC, this 5th day of June 2024.

George Christopher Cosby,

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

[FR Doc. 2024-12746 Filed 6-10-24; 8:45 am]

BILLING CODE 4510-29-P

DEPARTMENT OF LABOR

Employment and Training Administration

Work Opportunity Tax Credit (WOTC) Program

AGENCY: Employment and Training
Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: This Notice announces the revised administrative formula methodology that ETA uses to distribute annual allotment funding to State grantees (53 State Workforce Agencies (SWAs)) for the purpose of administering the Work Opportunity Tax Credit (WOTC). Additionally, this Notice formally communicates the substantial changes to the administrative formula and announces the actualized State allotments for fiscal year (FY) 2024, the revised formula's implementation year, based on Congress' budgetary appropriations.

DATES: The FY 2024 allotment covers the period of October 1, 2023–September 30, 2024.

FOR FURTHER INFORMATION CONTACT:

LaToria Strickland, Office of Workforce Investment, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Suite C-4510, Washington, DC 20210, telephone: (202) 693-3980 (this is not a toll-free number) or by email: Ask.WOTC@dol.gov. For persons with a hearing or speech disability who need assistance to use the telephone system, please dial 711 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION:

Background: WOTC is a Federal tax credit available to eligible employers that hire and pay wages to first-time, qualifying members of WOTC targeted groups. Section 51 of the Internal Revenue Code of 1986, as amended, provides the legislative authority for the

WOTC. (See [https://uscode.house.gov/view.xhtml?req=\(title:26%20section:51%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:26%20section:51%20edition:prelim))). WOTC is authorized until December 31, 2025, under division EE, title I, section 113 of the Consolidated Appropriations Act, 2021 (Pub. L. 116-260).

This Notice represents the second of a two-stage process. On February 21, 2023, ETA published a Request for Comment in which the Department proposed modifications to WOTC procedural guidance and the administrative formula (88 FR 10540), hereinafter referred to as the initial Notice. The 60-day public comment period closed on April 24, 2023. The initial Notice presented planning estimates for the modified administrative formula's implementation year, FY 2024, and the FY 2022 actualized allotments. In the initial Notice, ETA committed to publishing modifications to WOTC procedural guidance in a Change 1 to Training and Employment Guidance Letter (TEGL) No. 16-20, "*Updated Work Opportunity Tax Credit (WOTC) Procedural Guidance*,"¹ and publishing the updated administrative formula in the **Federal Register**. Based on the comments received during the public comment period and ETA's consideration of them, ETA finalized the WOTC administrative formula with updated data metrics in the formula methodology, as originally proposed in the initial Notice.

In this second stage, the finalized formula and actual FY 2024 State allotments are described further in this subsequent Notice. (The FY 2024 State allotments are also published in Change 2 to TEGL No. 06-23, "*Work Opportunity Tax Credit (WOTC) Initial Fiscal Year (FY) 2024 Funding Allotments*,"²

This subsequent Notice contains five sections, as follows:

- *Section I* provides the historical formula methodology used for WOTC State allotments, effective FYs 1996–2023.

- *Section II* reviews the proposed administrative formula that was described in the initial Notice (88 FR 10540), published in the **Federal Register** on February 21, 2023.

¹ETA, TEGL No. 16-20, Change 1, "*Updated Work Opportunity Tax Credit (WOTC) Procedural Guidance*," Nov. 20, 2023, <https://www.dol.gov/agencies/eta/advisories/tegl-16-20-change-1>.

²ETA, TEGL No. 06-23, Change 2, "Change 2 to Training and Employment Guidance Letter No. 06-23, *Work Opportunity Tax Credit (WOTC) Initial Fiscal Year Allotments for Fiscal Year 2024*," May 09 2024, <https://www.dol.gov/agencies/eta/advisories/tegl-06-23-change-2>.

- *Section III* summarizes the comments that ETA received in response to the initial Notice and ETA's decisions concerning the allotment formula modifications, based on those comments.

- *Section IV* describes the formula's "stop-loss/stop-gain" provisions, which are designed to provide a staged transition from the old to the new funding levels for State allotments. Additionally, section IV describes the minimum funding provisions for States under the modified formula. These provisions were previously discussed in detail in the initial Notice (88 FR 10540).

- *Section V* describes the application of the modified formula (using congressional budgetary appropriations) for FY 2024 allotments and subsequent years. The table appended to this Notice reflects the actual FY 2024 distribution resulting from the revised allotment formula.

I. Historical Formula Methodology

The WOTC administrative formula was developed by ETA in 1996 for the purpose of distributing Federal funds to 52 State grantees (50 United States, District of Columbia, and U.S. Virgin Islands) to administer the WOTC and the Welfare-to-Work (WtW), enacted in 1997, tax credit programs. ETA published the original formula methodology in a **Federal Register** Notice (68 FR 15745) on April 1, 2003, announcing the FY 2003 WOTC and WtW program grants to States:

"After reserving \$584,200 for postage and \$20,000 for the Virgin Islands, funds are distributed to states by administrative formula with a \$64,000 minimum allotment and a 95 percent stop-loss/120 percent stop-gain from the prior year allotment share percentage.

The allocation formula is as follows:

(1) 50 percent based on each state's relative share of total FY 2002 (the prior FY) certifications issued for the WOTC/WtW Tax Credit program;

(2) 30 percent based on each state's relative share of the civilian labor force (CLF) for calendar year 2001 (the preceding calendar year); and

(3) 20 percent based on each state's relative share of the adult recipients of Temporary Assistance for Needy Families (TANF) for FY 2001" (FY 2001 was the second preceding FY for which complete annual TANF data was available).

The WtW program, which focused on TANF recipients, was folded into WOTC in 2006 by division A, title I, section 105 of the Tax Relief and Health Care Act of 2006 (Pub. L. 109-432). While ETA has made incremental