



**DEPARTMENT OF LABOR**

Employee Benefits Security Administration

**[Prohibited Transaction Exemption 2013-09;**

**Application No. D-11772]**

Grant of Individual Exemption Involving UBS AG (UBS or the Applicant)

Located in Zurich, Switzerland

**AGENCY:** Employee Benefits Security Administration, U.S.

Department of Labor.

**ACTION:** Grant of individual exemption.

**SUMMARY:** This document contains an individual exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act) and the Internal Revenue Code of 1986, as amended (the Code). The transactions involve UBS, and certain entities within UBS's Global Asset Management and Wealth Management Americas divisions that function as "qualified professional asset managers" (QPAMs) under Prohibited Transaction Class Exemption 84-14 (PTE 84-14).<sup>1</sup>

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<sup>1</sup> 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430

The individual exemption affects UBS QPAMS, and participants and beneficiaries of ERISA plans the assets of which plan are managed by a UBS QPAM.

**EFFECTIVE DATE:** This exemption is effective as of the date a judgment of conviction against UBS Securities Japan for wire fraud is entered in the District Court of Connecticut in Case Number 3:12-cr-00268-RNC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Erin S. Hesse of the Department, telephone (202) 693-8546. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** On July 9, 2013, the Department of Labor (the Department) published a notice of proposed individual exemption in the Federal Register at 78 FR 41105, such that entities within UBS's Global Asset Management and Wealth Management Americas divisions that function as QPAMS, would not be precluded from relying on the relief provided by PTE 84-14, solely due to the failure to satisfy the condition in section I(g) of PTE 84-14 as a

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(October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

result of their affiliation with UBS Securities Japan Co. Ltd., against whom a judgment of conviction for one count of wire fraud is scheduled to be entered in the District Court of Connecticut in Case Number 3:12-cr-00268-RNC. The proposed exemption was requested by UBS pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, October 27, 2011).<sup>2</sup> Effective December 31, 1978, section 102 of the Reorganization Plan No. 4 of 1978, (5 USC App. 1 (1996)) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this final individual exemption is being issued solely by the Department.

#### WRITTEN COMMENTS

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption. All comments and requests for hearing were due by August

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<sup>2</sup> For purposes of this exemption, references to the provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

11, 2013. During the comment period, the Department received no comments and no requests for a hearing from interested persons. Accordingly, after giving full consideration to the entire record, the Department has decided to grant the exemption. The complete application file (Application No. D-11772), including all supplemental submissions received by the Department, is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1513, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 9, 2013, at 78 FR 41105.

#### GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any

prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) In accordance with section 408(a) of ERISA and/or section 4975(c)(2) of the Code, the Department makes the following determinations: the exemption is administratively feasible, the exemption is in the interests of the plan and of its participants and beneficiaries, and the exemption is protective of the rights of participants and beneficiaries of the plan;

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

prohibited transaction; and

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

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

#### EXEMPTION

Entities within UBS's Global Asset Management and Wealth Management Americas divisions that function as "qualified professional asset managers" (QPAMs), shall not be precluded from relying on the relief provided by Prohibited Transaction Exemption 84-14 (PTE 84-14),<sup>3</sup> solely due to the failure to satisfy the condition in section I(g) of PTE 84-14 as a result of their affiliation with UBS Securities Japan Co. Ltd. (UBS Securities Japan), against

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<sup>3</sup> 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

whom a judgment of conviction for one count of wire fraud (the Conviction) is scheduled to be entered in the District Court of Connecticut in Case Number 3:12-cr-00268-RNC, provided the following conditions are satisfied:

(a) No ERISA-covered assets were involved in, or directly affected by, the conduct of UBS Securities Japan that is the subject of the Conviction. For purposes of this paragraph, ERISA-covered assets are not considered directly affected solely because an ERISA plan held an economic interest in a security or investment product, the value of which was tied to one of the benchmark interest rates manipulated in connection with conduct by certain UBS personnel;

(b) The entities acting as QPAMs within UBS's Global Asset Management and Wealth Management Americas divisions (UBS QPAMs) did not know of, have reason to know of, participate in, or directly receive compensation in connection with, the conduct by certain UBS personnel that gave rise to the manipulation of certain benchmark interest rates;

(c) UBS Securities Japan did not provide any fiduciary services to, or act as a QPAM for, ERISA plans or otherwise exercise any discretionary control over ERISA-covered assets;

(d) UBS Securities Japan will not enter into any transactions with funds managed by UBS QPAMs or provide any services to UBS QPAMs;

(e) UBS QPAMs were insulated from UBS Securities Japan due to: (1) The independent business operations of the Wealth Management Americas and Global Asset Management divisions from UBS's other divisions, and (2) Written policies and procedures which created information barriers that were in place to ensure that the UBS QPAMs, and the ERISA-covered assets they manage, were not affected by the business activities of UBS affiliates within the Investment Bank division, such as UBS Securities Japan;

(f) UBS maintains and follows written policies and procedures that create information barriers designed to ensure UBS QPAMs, and the ERISA-covered assets they manage, are not affected by the business activities of UBS affiliates within the Investment Bank division, such as UBS Securities Japan. UBS also develops and implements a program of training for UBS personnel regarding such written policies and procedures;

(g) UBS submits to an annual audit which meets the following requirements:

(1) An independent auditor, who has appropriate technical training and proficiency with Title I of ERISA,

shall conduct an annual written audit;

(2) The audit shall specifically require the auditor to determine whether UBS has continued to maintain and follow, and developed and implemented a training program with respect to, written policies and procedures that create information barriers designed to ensure that the UBS QPAMs, and the ERISA-covered assets they manage, are not improperly influenced or affected by the business activities of UBS affiliates within the Investment Bank division, such as UBS Securities Japan;

(3) The audit shall test operational compliance with the training requirements and written policies and procedures requirements described in paragraph (f);

(4) The auditor shall issue a written report (the Audit Report) describing the steps performed by the auditor during the course of its examination. The Audit Report shall include the auditor's specific determinations regarding the adequacy of the training requirements and written policies and procedures requirements described in paragraph (f), the auditor's recommendations (if any) with respect to strengthening such training requirements and policies and procedures, and any instances of UBS's noncompliance with developing and implementing such training requirements and policies and procedures. Any

determinations made by the auditor as a result of the audit regarding the adequacy of the training requirements and written policies and procedures requirements described in paragraph (f) and the auditor's recommendations (if any) with respect to strengthening such training requirements and policies and procedures shall be promptly addressed by UBS, and any actions taken by UBS to address such recommendations should be included in an addendum to the Audit Report. Any determinations by the auditor that UBS has developed and maintained sufficient written policies and procedures, and developed and maintained a training program regarding such policies and procedures, shall not be based solely or in substantial part on an absence of evidence indicating noncompliance;

(5) UBS shall provide notice to the Department's Office of Exemption Determinations (OED) of any instances of UBS's noncompliance reviewed by the auditor within ten (10) business days after such noncompliance is determined by the auditor, regardless of whether the audit has been completed as of that date. Upon request, the auditor shall provide OED with all of the relevant workpapers reflecting the instances of noncompliance. The workpapers should identify whether and to what extent the assets of ERISA plans were involved in the instance(s) of noncompliance and

an explanation of any corrective actions taken by UBS;

(6) The yearly Audit Report will be provided to OED no later than 90 days following the 12-month period to which it relates and will be unconditionally available for examination by any duly authorized employee or representative of the Department, Internal Revenue Service, U.S. Commodity Futures Trading Commission, U.S. Department of Justice, Japanese Financial Services Authority, other relevant regulators, and any fiduciary of an ERISA plan the assets of which plan are managed by a UBS QPAM;

(7) This audit requirement in paragraph (g) herein shall continue to be applicable for five (5) years from the date of Conviction;

(h) Notwithstanding the Conviction, UBS complies with each condition of PTE 84-14, as amended;

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

(j) UBS complies in all material respects with the audit and monitoring procedures imposed on UBS by the United States Commodity Futures Trading Commission Order,

dated December 19, 2012;

(k) UBS maintains records necessary to demonstrate that the conditions of this exemption have been met for six (6) years following the completion date of the last audit conducted in accordance with paragraph (g); and

(l) Each sponsor of an ERISA plan the assets of which plan are managed by a UBS QPAM receives: Notice of the proposed exemption with a copy of the summary of facts that led to the Conviction, which was submitted to the Department; and a prominently displayed statement that the Conviction results in a failure to meet a condition in PTE 84-14.

Effective Date: This exemption is effective as of the date a judgment of conviction against UBS Securities Japan for wire fraud is entered in the District Court of Connecticut in Case Number 3:12-cr-00268-RNC.

Signed at Washington, DC, this 9th day of September, 2013.

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Lyssa E. Hall, Director  
Office of Exemption  
Determinations  
Employee Benefits Security  
Administration  
**U.S. DEPARTMENT OF LABOR**

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