



**DEPARTMENT OF LABOR  
Employee Benefits Security Administration**

**[Exemption Application No. D-11962]**

**Proposed Exemption from Certain Prohibited Transaction  
Restrictions Credit Suisse Group AG (CSG) and Its Current  
and Future Affiliates, including Credit Suisse AG (CSAG)  
(collectively, Credit Suisse or the Applicant)**

**Located in Zurich, Switzerland.**

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

**ACTION:** Notice of Proposed Exemption.

**SUMMARY:** This document contains notice of pendency before the Department of Labor (the Department) of a proposed temporary five-year 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). If this proposed exemption is granted, certain entities with specified relationships to CSAG will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84-14.

**DATES:** If granted, this exemption will be effective for five years following the date exemptive relief is no longer available under PTE 2015-14.

Written comments and requests for a public hearing on the proposed exemption should be submitted to the Department by [INSERT DATE 45 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, U.S. Department of Labor, 200 Constitution Avenue, N.W., Suite 400, Washington, D.C. 20210, Attention: Application No. D-11962 or via private delivery service or courier to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, U.S. Department of Labor, 122 C St. N.W., Suite 400, Washington, D.C. 20001. Attention: Application No. D-11962. Interested persons may also submit comments and/or hearing requests to EBSA via email to [e-OED@dol.gov](mailto:e-OED@dol.gov) or by FAX to (202) 693-8474, 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, N.W., Washington, D.C. 20210. See SUPPLEMENTARY INFORMATION below for additional information regarding comments.

**FOR FURTHER INFORMATION CONTACT:** Ms. Blessed Chuksorji-Keefe of the Department at (202) 693-8402. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:**

**Comments:**

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. A request for a hearing can be requested by any interested person who may be adversely affected by an 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 where: (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.

**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 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:**

On May 19, 2014, CSAG entered a guilty plea for assisting U.S. citizens in federal income tax evasion. On November 21, 2014, the District Court entered a judgment of conviction (the Conviction) against CSAG. As a result of the Conviction, QPAMs with certain corporate relationships

to CSAG, as well as its client plans that are subject to Part 4 of Title I of ERISA (ERISA-covered plans) or section 4975 of the Code (IRAs), could no longer rely on PTE 84-14 without an individual exemption issued by the Department. As described below, in order to protect plans and IRAs managed by CS-related QPAMs, the Department issued a temporary one-year exemption allowing Credit Suisse Affiliated and Related QPAMs to continue to rely on PTE 84-14, if numerous conditions were met. Prior to the expiration of that exemption, the Department issued another exemption allowing Credit Suisse Affiliated and Related QPAMs to continue to rely on PTE 84-14 for a period of four years and ten years respectively, if numerous conditions were met. On June 14, 2018, the Applicant filed an exemption request for Credit Suisse Affiliated asset managers to continue to rely on PTE 84-14 after the November 20, 2019, expiration of the four-year exemption.

The Department is proposing this exemption to protect plans and IRAs that use Credit Suisse Affiliated QPAMs, from the costs and expenses that may arise if those asset managers are no longer able to rely on the relief provided by PTE 84-14.

This proposed five-year exemption, if granted, provides relief from certain of the restrictions set forth in sections 406 and 407 of ERISA. 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 immediately if, among other things, an entity within the Credit Suisse corporate structure is convicted of any crime covered by Section I(g) of PTE 84-14 (other than the Conviction during the effective period of the proposed five-year exemption. While such an entity could apply for a new exemption in that circumstance, the Department is not obligated to grant a requested exemption.

The terms of this proposed five-year exemption have been specifically designed to permit plans to terminate their relationships in an orderly and cost-effective fashion in the event of an additional conviction or a determination that it is otherwise prudent for a plan to terminate its relationship with the Applicant.

When interpreting and implementing this exemption, the Applicant and the Credit Suisse Affiliated QPAMs should resolve any ambiguities in light of the exemption's protective purposes. To the extent additional

clarification is necessary, these persons or entities should contact EBSA's Office of Exemption Determinations, at 202-693-8540.

## **SUMMARY OF FACTS AND REPRESENTATIONS<sup>1</sup>**

### *The Applicant(s)*

1. Credit Suisse Group AG (CSG) is a publicly-traded corporation headquartered in Zurich, Switzerland. CSG and its affiliates (which are collectively referred to herein as the Applicant or Credit Suisse) operate in about 50 countries and currently have approximately 46,720 employees. As of December 31, 2017, CSG and its consolidated subsidiaries had total balance sheet assets of CHF 796 billion, and total shareholders' equity of CHF 42 billion (approximately \$817 billion and \$43 billion, respectively).

2. CSG owns a 100% interest in Credit Suisse AG (CSAG). CSAG operates as a bank, in Switzerland and abroad. CSAG currently has two affiliates: CSAM LLC and CSAM Ltd. that manage the assets of ERISA-covered plans on a discretionary basis. CSAG also owns a five percent or more

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<sup>1</sup> The Summary of Facts and Representations is based on the Applicant's representations, unless indicated otherwise.



interest in certain other entities that may provide investment management services to plans (the CS Related QPAMs), but that are not affiliates of CSAG.

ERISA and Code Prohibited Transactions and PTE 84-14

3. The rules set forth in section 406 of ERISA and section 4975(c)(1) of the Code proscribe certain "prohibited transactions" between plans and related parties with respect to those plans. Under ERISA such parties are known as "parties in interest." Under section 3(14) of ERISA, parties in interest with respect to a plan 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.<sup>2</sup> The prohibited transaction provisions under section 406(a) of ERISA and 4975(c)(1) of the Code 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, or a transfer of plan assets to, a

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<sup>2</sup> Under the Code such parties, or similar parties, are referred to as "disqualified persons."

party in interest.<sup>3</sup> Under the authority of section 408(a) of ERISA and section 4975(c)(2) of the Code, the Department has the authority to grant exemptions from such "prohibited transactions" in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011).

4. Prohibited Transaction Exemption 84-14 (PTE 84-14)<sup>4</sup> exempts certain prohibited transactions between a party in interest and an "investment fund" (as defined in Section VI(b) of PTE 84-14)<sup>5</sup> in which a plan has an interest, if the investment manager satisfies the definition of "qualified professional asset manager" (QPAM) and satisfies additional conditions for the exemption. PTE 84-14 was developed and granted based on the essential premise that broad relief could be afforded for all types of transactions in which a

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<sup>3</sup> The prohibited transaction provisions also include certain fiduciary prohibited transactions under section 406(b) of ERISA and 4975(c)(1)(E) and (F) of the Code. 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 Section 406(b) of ERISA.

<sup>4</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).

<sup>5</sup> An "investment fund" includes single customer and pooled separate accounts maintained by an insurance company, individual trusts and common, collective or group trusts maintained by a bank, and any other account or fund to the extent that the disposition of its assets (whether or not in the custody of the QPAM) is subject to the discretionary authority of the QPAM.

plan engages only if the commitments and the investments of plan assets and the negotiations leading thereto are the sole responsibility of an independent, discretionary, manager.<sup>6</sup>

5. However, Section I(g) of PTE 84-14 prevents an entity that may otherwise meet the definition of QPAM from utilizing the exemptive relief provided by PTE 84-14, for itself and its client plans, if that entity or an "affiliate"<sup>7</sup> thereof or any owner, direct or indirect, of a 5 percent or more interest in the QPAM has, within 10 years immediately preceding the transaction, been either convicted or released from imprisonment, whichever is later, as a result of criminal activity described in that section. Section I(g) was included in PTE 84-14, in part, based on the expectation that a QPAM, and those who may be

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<sup>6</sup> See 75 FR 38837, 38839 (July 6, 2010).

<sup>7</sup> Section VI(d) of PTE 84-14 defines the term "affiliate" for purposes of Section I(g) as "(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person, (2) Any director of, relative of, or partner in, any such person, (3) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, or a 5 percent or more partner or owner, and (4) Any employee or officer of the person who- (A) Is a highly compensated employee (as defined in Section 4975(e)(2)(H) of the Code) or officer (earning 10 percent or more of the yearly wages of such person), or (B) Has direct or indirect authority, responsibility or control regarding the custody, management or disposition of plan assets."

in a position to influence its policies, maintain a high standard of integrity.<sup>8</sup>

*The Guilty Plea and the Conviction*

6. On May 19, 2014, in the U.S. District Court for the Eastern District of Virginia (the District Court),<sup>9</sup> the U.S. Department of Justice charged CSAG with, and CSAG pled guilty to, one criminal count of conspiracy to violate Code section 7206(2).<sup>10</sup> As described in further detail below, the charging documents cite the Applicant and its subsidiaries, Credit Suisse Fides and Clariden Leu Ltd., for willfully aiding, assisting in, procuring, counseling, and advising the preparation and presentation of false income tax returns and other documents to the Internal Revenue Service of the Treasury Department (IRS), for decades, prior to and through approximately 2009.

7. On May 19, 2014, pursuant to a plea agreement (the Plea Agreement), CSAG entered a guilty plea for assisting

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<sup>8</sup> See 47 FR 56945, 56947 (December 21, 1982).

<sup>9</sup> *United States of America v. Credit Suisse AG*, Case Number 1:14-cr-188-RBS.

<sup>10</sup> Section 7206(2) of the Code prohibits willfully aiding, assisting, procuring, counseling, or advising the preparation or presentation of false income tax returns. Section 371 of Title 18 of the United States Code generally prohibits two or more persons from conspiring either to commit any offense against the United States or to defraud the United States.

U.S. citizens in federal income tax evasion. On November 21, 2014, the District Court entered a judgment of conviction (the Conviction). As part of its sentence, CSAG agreed to pay a total of \$2.815 billion, which included: (a) a criminal fine of \$1.33 billion; (b) restitution to the IRS of \$0.67 billion; (c) a civil penalty of \$715 million to New York State; and (d) a civil penalty of \$100 million to the Federal Reserve.

8. As a result of the Conviction, QPAMs with certain corporate relationships to CSAG, as well as its client plans that are subject to Part 4 of Title I of ERISA (ERISA-covered plans) or section 4975 of the Code (IRAs), cannot rely on PTE 84-14 without an individual exemption issued by the Department.

#### Prior Exemptions and the Public Hearing

9. On September 3, 2014, the Department published a proposed exemption (the First Proposed Exemption) for certain entities with specified relationships to CSAG, to continue to rely upon the relief provided by PTE 84-14, notwithstanding the Conviction.<sup>11</sup> The Department received

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<sup>11</sup> See 79 FR 52365.

ten comments and four requests for a hearing regarding the First Proposed Exemption.

10. The requested hearing could not be held prior to the date of the Conviction, so, in order to protect plans and IRAs managed by CS-related QPAMs, the Department issued a temporary exemption.<sup>12</sup> The temporary exemption allowed Credit Suisse asset managers to continue to rely on PTE 84-14, for one year following the date of the Conviction, while the Department determined whether further relief would be protective of affected plans and IRAs.

11. The public hearing (requested by commenters to the First Proposed Exemption) was held on January 15, 2015. The Department considered all the testimony and information provided at the hearing, and all the issues raised by the commenters, and thereafter published the Second Final Exemption.<sup>13</sup> The Second Final Exemption addressed all the material information and issues submitted in connection with the hearing.

#### Current Exemption Request

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<sup>12</sup> See 79 FR 68716.

<sup>13</sup> The proposal to the Second Final Exemption was published on November 18, 2014, at 79 FR 68712.

12. On June 14, 2018, the Applicant filed an exemption request for Credit Suisse Affiliated asset managers to continue to rely on PTE 84-14 after the November 20, 2019, expiration of the Second Final Exemption. The request was for an exemption modeled on PTE 2015-14, with certain exceptions. On August 24, 2018, the Applicant submitted a letter in further support of its request (the CSAG Letter). In the CSAG Letter, the Applicant requested that the Department "not make small, nonmaterial language changes [to the conditions of this exemption] that do not change the substance of the provision[s] but nonetheless will require changes to Credit Suisse's policies and training, and explanations to its clients." The Applicant stated further that while "it understands the Department's interest in consistency, this goal should not override the expense, effort and confusion for clients that such changes would cause." The Applicant notes that the facts underlying the Second Final Exemption have not changed, and the Department already found the Second Final Exemption to be in the interest of and protective of affected plans and IRAs, and administratively feasible.

13. In developing administrative exemptions under Section 408(a) of ERISA, the Department seeks to implement its statutory directive to grant only exemptions that are appropriately protective of affected plans and IRAs and in their interest. In discharging this obligation, the Department will sometimes impose conditions that depart from those provided in older exemptions based on the Department's experience with those exemptions, the Department's conclusion that new or revised conditions will better serve the interests of affected plans and IRAs, similar changes in more recent exemptions applicable to other firms providing the same services, and other factors. Many of the conditions of this exemption are new or revised, relative to the Second Final Exemption, reflecting the Department's current views on how best to ensure that Covered Plans are adequately protected. In general, the revised conditions are the same as or similar to conditions imposed in other recent Section I(g) exemptions. The distinctions between the conditions in the Second Final Exemption and this proposed exemption are material.

For example, the Second Final Exemption requires that "(t)he Credit Suisse Affiliated QPAMs and the Credit Suisse



Related QPAMs did not directly receive compensation in connection with the criminal conduct of Credit Suisse AG that is the subject of the Conviction." CSAG states that this condition is "substantively the same" as a parallel provision in the Department's most recent line of QPAM Section I(g) exemptions. However, the analogous provision in those exemptions, and in this proposed exemption further require that the CS Affiliated QPAMs and the CS Related QPAMs must not have knowingly received indirect compensation in connection with the criminal conduct of CSAG that is the subject of the Conviction.

As another example, Section I(g) of PTE 2015-14 provides that, "Each Credit Suisse Affiliated QPAM will ensure that it does not engage or employ any person involved in the criminal conduct that underlies the Conviction in connection with the transactions involving any 'investment fund' (as defined in PTE 84-14) subject to ERISA and managed by such Credit Suisse Affiliated QPAMs." Although CSAG asserts that Section I(g) of the Second Final Exemption is "substantively the same" as the analogous provision in the Department's most recent line of cases, the analogous condition in those exemptions, and in this

proposed exemption, contains a more expansive prohibition against hiring individuals engaging in wrongful misconduct, requiring that, "(t)he CS Affiliated QPAMs will not employ or knowingly engage any of the individuals that 'participated in' the criminal conduct of CSAG that is the subject of the Conviction, where 'participate in' refers not only to active participation in the criminal conduct of CSAG that is the subject of the Conviction, but also to knowing approval of the criminal conduct, or knowledge of such conduct without taking active steps to prohibit such conduct, including reporting the conduct to such individual's supervisors, and to the Board of Directors."

Other meaningful distinctions between the Second Final Exemption and the Department's most recent line of QPAM Section I(g) exemptions are described below. In all cases, the revised conditions of this exemption are consistent with the record provided by the Applicant, and the Department's understanding of the facts attributable to the Conviction. CSAG has not demonstrated that the revised conditions would confuse fiduciaries of Covered Plans, or would cause unnecessary expense to CSAG and/or its QPAMs, as it asserts.

14. A summary of the proposed exemption appears below, and is organized into several parts. The first part describes the conditions in this proposed exemption that are materially similar to the conditions in CS's soon-to-expire exemption (i.e., the Second Final Exemption or PTE 2015-14). The second part summarizes the conditions in this proposed exemption that are new or enhanced, relative to the Second Final Exemption. The third part describes the Applicant's request that certain exceptions be made to one of the conditions described in the Second Final Exemption. The fourth part summarizes this proposed exemption's audit requirement, and the Applicant's comment regarding the necessity of the audit. The remaining parts summarize the Department's findings.

I. Conditions in this Proposed Exemption that are Substantially Similar to Conditions in CS's Second Final Exemption.

15. This proposed exemption requires that any failure of a CS Affiliated QPAM to satisfy Section I(g) of PTE 84-14 arose solely from the Conviction.

16. Further, this proposed exemption requires that

each CS Affiliated QPAM continue to maintain, adjust or immediately implement and follow written Policies designed to protect the interests of plans and IRAs in conformity with fiduciary standards.<sup>14</sup> The written Policies cover a range of issues, from asset management decisions of the CS Affiliated QPAMs to the CS Affiliated QPAM's compliance with ERISA's fiduciary duties. The proposed exemption requires the continuation of a program of training for each Credit Suisse Affiliated QPAM's relevant legal, compliance, management and internal audit personnel. In addition, the CS Affiliated QPAMs must promptly address any determination as to the adequacy of the Policies and Training and the auditor's recommendations (if any) on strengthening the Policies and Training of the respective CS Affiliated QPAM. Finally, each CS Affiliated QPAM must maintain for six years the records necessary to demonstrate that the conditions of this proposed five-year exemption have been met.

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<sup>14</sup> The Department notes that a CS Affiliated QPAM established after November 20, 2019 would need to immediately implement and follow written Policies, where CS Affiliated QPAMs established prior to that date must have already immediately implemented and followed the written Policies.

II. Conditions in this Proposed Exemption that Contain Material Distinctions with the Second Final Exemption.

17. The Second Final Exemption provided that the CS Affiliated and Related QPAMs did not participate in the criminal conduct that was the subject of the Conviction. This proposed exemption adds clarifying language to that condition, consistent with the record provided by the Applicant. Accordingly, the proposed exemption mandates that the CS Affiliated QPAMs and the CS Related QPAMs (including their officers, directors, agents other than CSAG, employees of such QPAMs, and certain CSAG employees described below) did not know of, have reason to know of, or "participate in" the criminal conduct of CSAG that is the subject of the Conviction. The proposed exemption clarifies further that "participate in" refers not only to active participation in the criminal conduct of CSAG, but also to knowing approval of the criminal conduct, or knowledge of such conduct without taking active steps to prohibit such conduct, including reporting the conduct to supervisors, and to the Board of Directors. In this

regard, unless the individual reasonably believed that his or her initial report was given an appropriate response within a reasonable time, the individual must have further reported the criminal conduct to the person or persons the individual reasonably expected would carry out the appropriate response. Whether an individual reasonably believed that an appropriate response was taken turns on the facts and circumstances.

18. The Second Final Exemption provided that the CS Affiliated and Related QPAMs did not directly receive compensation in connection with the criminal conduct. This proposed exemption expands that prohibition in a manner that is consistent with the record provided by the Applicant, and the Department's understanding of the facts attributable to the Conviction. In addition to the Second Final Exemption requirement that the CS Affiliated and Related QPAMs (including their officers, directors, agents other than CSAG, employees of such QPAMs, and certain CSAG employees described below) did not directly receive compensation in connection with the criminal conduct, this proposed exemption further specifies that the CS Affiliated QPAMs and the CS Related QPAMs did not knowingly receive

indirect compensation in connection with the criminal conduct of CSAG.

19. The Second Final Exemption provided that criminal conduct of CSAG that is the subject of the Conviction did not directly or indirectly involve the assets of an ERISA-covered Plan or IRA. Whereas that condition in the Second Final Exemption focused on the criminal conduct of CSAG, this proposed exemption contains a condition that focuses on the conduct of the CS Affiliated and Related QPAMs. This proposed exemption requires that no CS Affiliated QPAM or CS Related QPAM exercised authority over the assets of an ERISA-covered plan or IRA in a manner that it knew or should have known would: further criminal conduct that is the subject of the Conviction; or cause the CS Affiliated QPAM or CS Related QPAM, its affiliates, or related parties to directly or indirectly profit from the criminal conduct that is the subject of the Conviction.

20. The Second Final Exemption required that each Credit Suisse Affiliated QPAM ensure that none of its employees or agents, if any, that were involved in the criminal conduct underlying the Conviction will engage in transactions on behalf of any investment fund managed by

the QPAM. This proposed exemption expands that prohibition, in a manner that is consistent with the record provided by the Applicant, and the Department's understanding of the facts attributable to the Conviction. In this regard, this proposed exemption prohibits each CS Affiliated QPAM from employing or knowingly engaging any of the individuals that "participated in" the criminal conduct of CSAG that is the subject of the Conviction, where "participated in" refers not only to active participation in the criminal conduct of CSAG, but also to knowing approval of the criminal conduct, or knowledge of such conduct without taking active steps to prohibit such conduct, including reporting the conduct to such individual's supervisors, and to the Board of Directors. In this regard, unless the individual reasonably believed that his or her initial report was given an appropriate response within a reasonable time, the individual must further report the criminal conduct to the person or persons the individual reasonably expected would carry out the appropriate response. Whether an individual reasonably believed that an appropriate response was taken turns on the facts and circumstances.



21. The Second Final Exemption provided that CSAG would not provide any fiduciary services to ERISA-covered Plans or IRAs, except in connection with securities lending services of the New York branch of CSAG, or act as a QPAM. this proposed exemption mandates instead that CSAG will not act as a fiduciary within the meaning of section 3(21)(A)(i) or (iii) of ERISA, or section 4975(e)(3)(A) and (C) of the Code, other than with respect to employee benefit plans sponsored for its own employees or employees of an affiliate, or in connection with securities lending services of the New York branch of CSAG.

22. The Second Final Exemption requires that the CS Affiliated QPAMs agree to certain conduct and standards, and to refrain from certain conduct, in their dealings with ERISA-covered plans and IRAs.<sup>15</sup> This condition was intended

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<sup>15</sup> Specifically, condition (k) of the Second Final Exemption requires that, each Credit Suisse Affiliated QPAM agrees: (1) To comply with ERISA and the Code, as applicable with respect to such ERISA-covered plan or IRA, and refrain from engaging in prohibited transactions that are not otherwise exempt; (2) not to waive, limit, or qualify the liability of the Credit Suisse Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions; (3) not to require the ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the Credit Suisse Affiliated QPAM for violating ERISA or engaging in prohibited transactions, except for violations or prohibited transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of Credit Suisse AG; (4) not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the Credit Suisse Affiliated QPAM, with the exception of reasonable restrictions,

to ensure that, when an ERISA-covered plan or IRA entered into an asset management agreement with a CS Affiliated QPAM in reliance on the manager's qualification as a QPAM, the plan or IRA could expect adherence to basic fiduciary norms and standards of fair dealing, notwithstanding the Conviction. The condition was further intended to ensure that the ERISA-covered plan or IRA could disengage from that relationship, without undue injury.

This proposed exemption enhances those important protections. Specifically, each CS Affiliated QPAM must not only agree, but must also warrant, to Covered Plans: (a) to comply with ERISA and the Code, as applicable with respect to the Covered Plan; (b) not to require (or otherwise cause) the Covered Plan to waive, limit, or qualify the liability of the CS Affiliated QPAM for violating ERISA or the Code or engaging in prohibited

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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, provided that such restrictions are applied consistently and in like manner to all such investors; and (5) not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors.

transactions; (c) not to restrict the ability of the Covered Plan to terminate or withdraw from its arrangement with the CS Affiliated QPAM; (d) not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance; (e) not to include exculpatory provisions disclaiming or otherwise limiting liability of the CS Affiliated QPAMs for a violation of the agreement's terms; (f) to indemnify and hold harmless the Covered Plan for any actual losses resulting directly from a CS Affiliated QPAM's violation of ERISA's fiduciary duties, as applicable; and (g) to provide a notice of its obligations to each Covered Plan. Further, this proposed exemption requires that by January 21, 2020, each CS Affiliated QPAM is required to provide a notice of the five-year exemption, along with a separate summary describing the facts that led to the Conviction.

23. The Second Final Exemption required that the CS Affiliated QPAM comply with each condition of PTE 84-14, as amended, with the sole exception of the violation of Section I(g) of PTE 84-14 that is attributable to the Conviction. This proposed exemption clarifies that if,

during the Exemption Period, an entity within the Credit Suisse corporate structure is convicted of a crime described in Section I(g) of PTE 84-14, (other than the Conviction), including a conviction in a foreign jurisdiction for a crime described in Section I(g) of PTE 84-14, relief in this proposed exemption would terminate immediately.

24. Unlike the Second Final Exemption, this proposed exemption requires CSAG to immediately disclose to the Department any Deferred Prosecution Agreement or Non-Prosecution Agreement that Credit Suisse Group AG or CSAG or any affiliate enters into with the U.S Department of Justice. This proposed exemption also requires that, by May 20, 2020, CSAG must designate a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. Further, by May 20, 2020, each CS Affiliated QPAM, in its agreements with, or in other written disclosures provided to Covered Plans, must clearly inform Covered Plan clients of their right to obtain a copy of the Policies or a description which accurately summarizes key components of the CS Affiliated QPAM's

Policies developed in connection with this proposed exemption.

25. Finally, under this proposed exemption, a Credit Suisse Affiliated QPAM will fail to meet the terms of this exemption if: (a) a different Credit Suisse Affiliated QPAM (or a Credit Suisse Related QPAM) knew of, had reason to know of, or participated in the criminal conduct of CSAG that is the subject of the Conviction; (b) a CS Affiliated QPAM or a CS Related QPAM (including their officers, directors, agents other than CSAG, and employees of such QPAMs) received direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct of CSAG that is the subject of the Conviction; (c) any failure of a CS Affiliated QPAM to satisfy Section I(g) of PTE 84-14 arose from a conviction other than the Conviction; (d) a CS Affiliated QPAM or a CS Related QPAM exercised authority over the assets of an ERISA-covered plan or an IRA in a manner that it knew or should have known would: further criminal conduct that is the subject of the Conviction; or cause the CS Affiliated QPAM, its affiliates, or related parties to directly or indirectly profit from the criminal conduct that is the subject of the

Conviction; (e) with limited exceptions, CSAG acts as a fiduciary within the meaning of section 3(21)(A)(i) or (iii) of ERISA, or section 4975(e)(3)(A) and (C) of the Code, with respect to ERISA-covered Plan and IRA assets; (f) CSAG fails to designate a Compliance Officer, or if the Compliance office fails to meet his or her responsibilities under the exemption; and (g) CSAG fails to immediately disclose to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) Credit Suisse Group AG or CSAG or any affiliate enters into with the U.S Department of Justice, to the extent such DPA or NPA relates to the conduct described in Section I(g) of PTE 84-14 or section 411 of ERISA, or (h) if CSAG fails to immediately provide the Department any information requested by the Department, as permitted by law, regarding any agreement under subparagraph (g) and/or the conduct and allegations that led to the agreement.

III. Applicant's Request for Exceptions to Section I(f) of CS's Second Final Exemption.

26. Section I(f) of the Second Final Exemption provides, in relevant part, that a CS Affiliated QPAM will

not use its authority or influence to direct an investment fund to enter into any transaction with CSAG, or engage CSAG to provide any service to such investment fund, for a direct or indirect fee borne by the investment fund.<sup>16</sup> The Applicant requests that the Department add three exceptions to this proposed condition:

Request 1. *CSAG Should Be Permitted to Act as Local Sub-Custodian.*

27. The Applicant notes that Section I(f) of the Second Final Exemption precludes a CS Affiliated QPAM from investing plan assets in a market where CSAG or its branch or affiliate might serve as the sub-custodian CSAG. In this regard, this condition might not be met if a CS Affiliated QPAM invests plan assets in a market where CSAG or its branch or affiliate might serve as the sub-custodian, even where the CS Affiliated QPAM has no

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<sup>16</sup> In its entirety, Section I(f) of the Second Final Exemption provides that, "A Credit Suisse Affiliated QPAM will not use its authority or influence to direct an "investment fund" (as defined in Section VI(b) of PTE 84-14) that is subject to ERISA and managed by such Credit Suisse Affiliated QPAM to enter into any transaction with Credit Suisse AG or engage Credit Suisse AG to provide additional services to such investment fund, for a direct or indirect fee borne by such investment fund regardless of whether such transactions or services may otherwise be within the scope of relief provided by an administrative or statutory exemption[.]"

role in selecting the global custodian, or the local sub-custodians in its network. According to the Applicant, Section I(f) of the Second Final Exemption may only be met by prohibiting plans managed by the CS Affiliated QPAMs from investing in that market. In that event, the Applicant asserts that Plans that want to invest with the CS Affiliated QPAMs would be deprived of the ability to choose from a full slate of investment products, and would be compelled to invest in a different product, or with an alternate investment manager, which could have an adverse impact on investment performance.

28. The Applicant notes that the Department previously expressed concern that sub-custodian arrangements had ERISA section 406(b) implications, and PTE 84-14 only provides relief from section 406(a) of ERISA.<sup>17</sup> In the Applicant's view, a CS Affiliated QPAM's investment in a market where an unaffiliated global custodian has selected a CSAG affiliate as its local sub-custodian does not automatically result in a

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<sup>17</sup> In granting the Second Final Exemption, the Department expressed concern, in relation to Section I(f), that a CS Affiliated QPAM might effectively use its "authority or influence to direct" an investment fund to "enter into" a "transaction with" Credit Suisse AG or "provide additional services, for a fee borne by" the investment fund.



violation of section 406(b) of ERISA. The Applicant states it should be capable of factually demonstrating when sub-custodial arrangements do not violate ERISA section 406(b).

29. The Applicant states that preventing a plan from investing in markets covered by its chosen strategy and chosen investment manager, could have an adverse impact on investment performance in that strategy. For ERISA-covered plans, there are four primary global custodians. None of these are affiliated with CSAG. The global custodian may not have a local custodian in its network in every market where an investment manager trades on behalf of its clients. In such instances, the global custodian will engage a local sub-custodian. The global custodian's choice of local sub-custodian is based on factors including potential local sub-custodians' credit, efficiency in trade processing, back office functions, and tax reclaims processing. None of these factors are related to asset management. When a plan's custodian uses more than one local sub-custodian in a market, the decision of the plan's custodian on how to

divide its custody clients among those local sub-custodians is entirely its own.

30. The Applicant requests that Section I(d) of this proposed exemption contain an exception that permits CSAG and its branches and affiliates to serve as local sub-custodians.

Department's Response to Request that CSAG Should Be Permitted to Act as Local Sub-Custodian.

31. The Department is tentatively persuaded that, in narrow circumstances, plans and IRAs would benefit from the broader range of investment options that may result from CSAG affiliates being permitted to serve as local sub-custodians. However, given the magnitude of CSAG's fraudulent misconduct, the Department is not proposing that CSAG itself or its branches be permitted to act as local sub-custodians in these arrangements. Accordingly, Section I(d) of this proposed exemption contains an exception that permits CSAG affiliates to serve as a local sub-custodian, if the global custodian and the sub-custodian are selected by someone other than a

CSAG-related entity. This proposed exemption requires each CS Affiliated QPAM to have policies and procedures in place to ensure that its asset management decisions are not made with any consideration of the fee a related local sub-custodian may receive. Further, the auditor must review these policies and procedures and test a representative sample of transactions involving CSAG affiliates that serve as a local sub-custodian.

Request 2. *CSAG Should be Permitted to Provide Support Services to CS Affiliated QPAMs.*

32. The Applicant notes that Section I(f) of the Second Final Exemption may prevent CSAG from providing services supporting the operations of the CS Affiliated QPAM, without cost to an ERISA-covered plan or IRA (e.g., at the QPAM's own expense). These services include necessary non-investment, non-fiduciary "back-office" or "middle-office" administrative functions such as human resources, information technology, finance, accounting, legal, compliance, treasury, and tax services. Currently, certain CS asset managers that do not manage

ERISA money use CSAG for these types of services.

33. The Applicant requests that Section I(d) of this proposed exemption contain an exception which permits CSAG to provide the services described above to CS Affiliated QPAMs.

Department's Response to Request that CSAG Be Permitted to Provide Support Services to CS Affiliated QPAMs.

34. Section I(d) of this proposed exemption contains an exception that permits CSAG to provide only necessary, non-investment-related and non-fiduciary administrative services to CS Affiliated QPAMs, solely at the QPAM's own expense. Given its misconduct, the Department is not proposing that CSAG be allowed to provide services to investment funds managed by CSAG. The auditor must make express findings regarding the Applicant's compliance with this condition, and these findings must be set forth in the written report.

Request 3. *The Exemption Should Permit CS Employees To Be*

*Seconded to CS Affiliated QPAMs.*

35. The Applicant states that, from time to time, employees from other affiliates are "seconded" to a CS-affiliated asset manager. Although these employees are paid by their home location, they are fully subject to the authority, control, and supervision of the QPAM, and to all of its rules, regulations, and restrictions. The Applicant requests that, consistent with recent QPAM Section I(g) exemptive relief for other convicted entities, the Department clarify that Section I(d) of the proposed exemption will not be violated if employees from other affiliates are "seconded" to a CS Affiliated QPAM.

*Department's Response to Request that the Exemption Permit CS Employees To Be Seconded to CS Affiliated QPAMs.*

36. Section I(d) of this proposed exemption contains an exception allowing employees from CSAG affiliates to be seconded to a CS-affiliated asset manager.

IV. *The Audit Requirement.*

37. The Applicant requested that, unlike the Second

Final Exemption, this proposed exemption not contain an annual audit requirement. The Applicant states that the independent auditor found the compliance environment of the CS Affiliated QPAMs to be compliant. The Applicant states that over the last several audits, the auditor made no suggestions for improving the compliance environment. The Applicant represents that the audits have been detailed, comprehensive, and exacting. For example, the auditor reviewed systems used by the QPAMs to effect compliance, met in person and by phone several times during each audit with operations personnel and others, reviewed floorplans and physical information barriers, and discussed and reviewed the CS Affiliated QPAMs' incident reports. In addition, the auditor sampled and reviewed accounts and transactions, reviewed the ERISA compliance manual, the proxy voting policy, the global error handling policy, the performance fee policy, organizational charts, information technology protocols to restrict access to electronic systems based on user profiles, investment management agreements with investment guidelines, various reports, including the training mandated by the exemption, and the roster of

employees trained. The auditor matched guidelines to investment guidelines monitoring exception reports, and noted that alerts or warnings were promptly addressed with either an explanation or correction. Finally, the auditor reviewed the trade blotters and systems to determine whether the transactions complied with the prohibited transaction rules.

38. The Applicant states that over the course of four audits, the independent auditor has thoroughly examined the CS Affiliated QPAMs' ERISA compliance programs, and has not made any findings of noncompliance with the Second Final Exemption (which requires compliance with ERISA generally, including its prohibited transaction and fiduciary responsibility provisions), PTE 84-14, or their internal ERISA policies. To the contrary, the Applicant represents that the independent auditor has found that the CS Affiliated QPAMs have: (a) updated and consolidated-their policies and procedures; (b) developed and implemented ERISA training; and (c) complied with PTE 84-14, the Second Final Exemption, and their internal ERISA policies. Thus, the Applicant is of the view that these audits have demonstrated the CS Affiliated QPAMs'

comprehensive and robust ERISA compliance environment.

39. The Applicant states that these factors demonstrate that the CS Affiliated QPAMs had strong controls in place before the Second Final Exemption was granted, which have improved since the exemption was issued. The Applicant requests that the Department conclude that an additional five years of exemptive relief is warranted for the CS Affiliated QPAMs, and that the relief not be conditioned on an annual audit.

Department's Response to Request for Removal of Annual Audit Requirement.

40. The Department is not removing the Annual Audit Requirement. The Conviction arose from serious, prolonged and widespread misconduct. According to the Statement of Facts filed in the criminal case (the Statement of Facts), for decades prior to 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<sup>18</sup> concealing their offshore assets and income from the IRS. Private bankers employed by CSAG (referred to as "Relationship Managers" or "RMs") served as the primary contact for U.S. clients with undeclared accounts at CSAG. CSAG used a variety of means to assist U.S. clients in concealing their undeclared accounts, including: (a) assisting clients in using sham entities as nominee beneficial owners of the undeclared accounts; (b) soliciting IRS forms that falsely stated under penalty of perjury that the sham entities beneficially owned the assets in the accounts; (c) failing to maintain in the United States records related to the accounts; (d) destroying account records sent to the United States for client review; (e) using Credit Suisse managers and employees as unregistered investment advisors on undeclared accounts; (f) facilitating withdrawals of funds from undeclared accounts by either providing hand-delivered cash in the United States or using Credit Suisse's correspondent bank accounts in the United States; (g) structuring

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<sup>18</sup> An "undeclared account" is a financial account owned by an individual subject to U.S. tax and maintained in a foreign country that has not been reported by the individual account owner to the U.S. government on an income tax return and a Report of Foreign Bank and Financial Accounts. U.S. citizens, resident aliens, and legal permanent residents have an obligation to report all income earned from foreign bank accounts on their tax returns and to pay the taxes due on that income.

transfers of funds to evade currency transaction reporting requirements; and (h) providing offshore credit and debit cards to repatriate funds in the undeclared accounts.

41. Given the above, the four annual audits of the CS Affiliated QPAMs do not provide an adequate basis for the Department to determine that asset managers controlled by CSAG should be allowed to engage in prohibited transactions, unmonitored, over the next five years, using an exemption that otherwise relies on an asset manager's integrity. The five additional consecutive years of in-depth audits required by this proposed exemption are essential to the Department's findings that this proposed exemption will be protective of Covered Plans.

*This Proposed Exemption's Audit Requirement*

42. Section I(i) of this proposed five-year exemption requires that each CS Affiliated QPAM submit to an audit conducted annually by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and the CS Affiliated QPAM's

compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. Each annual audit must cover a consecutive twelve month period starting with the twelve month period that begins on the effective date of the proposed five-year exemption, and each annual audit must be completed no later than six (6) months after the period to which the audit applies.

43. The audit condition requires that, 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 CS Affiliated QPAM and, if applicable, CSAG, will grant the auditor unconditional access to its business, including, but not limited to: its computer systems; business records; transactional data; workplace locations; training materials; and personnel. This access is limited to information that is relevant to the auditor's objectives, as specified by the proposed exemption.

44. The auditor's engagement must specifically require the auditor to determine whether each CS Affiliated QPAM has developed, implemented, maintained and followed the Policies in accordance with the conditions of this proposed five-year exemption, and has developed and implemented the training, as required herein, and must further require the auditor to test each CS Affiliated QPAM's operational compliance with the Policies and Training. In this regard, the auditor must test a sample of each CS Affiliated QPAM's transactions involving Covered Plans, sufficient in size and nature to afford the auditor a reasonable basis to determine the QPAM's operational compliance with the Policies and Training.

45. For each audit, on or before the end of the relevant period described in Section I(i)(1) for completing the audit, the auditor must issue a written report (the Audit Report) to CSAG and the CS Affiliated QPAM to which the audit applies that describes the procedures performed by the auditor during the course of its examination. The auditor may issue one consolidated Audit Report that covers all the CS Affiliated QPAMs. The Audit Report must include the auditor's specific determinations regarding: (a) the

adequacy of the CS Affiliated QPAM's Policies and Training;  
(b) the CS Affiliated QPAM's compliance with the Policies and Training; (c) the need, if any, to strengthen such Policies and Training; and (d) any instance of the respective CS Affiliated QPAM's noncompliance with the written Policies and Training.

46. The CS Affiliated QPAM must promptly address or prepare a written plan of action to address any determination as to the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective CS Affiliated QPAM, and any action taken or the plan of action to be taken by the CS Affiliated QPAM must be included in an addendum to the Audit Report (the addendum must be completed prior to the certification described below). In the event 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.

47. Any determination by the auditor that the

respective CS 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 the CS Affiliated QPAM has complied with the requirements herein must be based on evidence that the particular CS Affiliated QPAM has actually implemented, maintained and followed the Policies and Training required by this proposed five-year exemption. Furthermore, the auditor must not solely rely on the Annual Exemption Report as the basis for the auditor's conclusions in lieu of independent determinations and testing performed by the auditor. Finally, the Audit Report must address the adequacy of the Annual Exemption Review required under this proposed exemption.

48. Further, the auditor must notify the respective CS 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. In addition, this proposed five-year exemption requires that certain senior personnel of CSAG review the

Audit Report, make certain certifications, and take various corrective actions. In this regard, the General Counsel, or one of the three most senior executive officers of the CS 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 proposed five-year exemption; and that to the best of such officer's knowledge at the time the CS Affiliated QPAM has: (a) addressed, corrected, or remedied any noncompliance and inadequacy or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report; and (b) determined that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this proposed five-year exemption and with the applicable provisions of ERISA and the Code.

49. The Risk Committee, the Audit Committee, and CSAG's Board of Directors are provided a copy of each Audit Report; and a senior executive officer of CSAG's Compliance function must review the Audit Report for each CS Affiliated QPAM and must certify in writing, under penalty of perjury, that the officer has reviewed each Audit

Report.

50. In order to create a more transparent record in the event that the proposed relief is granted, each CS Affiliated QPAM must provide its certified Audit Report to the Department no later than 30 days following its completion. The Audit Report will be part of the public record regarding this proposed five-year exemption. Furthermore, each CS Affiliated QPAM must make its Audit Report unconditionally available, electronically or otherwise, for examination upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan, the assets of which are managed by such CS Affiliated QPAM.

51. Additionally, any engagement agreement entered into pursuant to the engagement of the auditor under this proposed five-year exemption must be submitted to the Department's Office of Exemption Determinations (OED). Finally, if the proposed five-year exemption is granted, the auditor must provide the Department, upon request, for inspection and review, access to all of the workpapers created and used in connection with the audit, provided the



access and inspection are otherwise permitted by law.

52. In order to enhance oversight of the compliance with the proposed exemption, CSG must notify the Department no later than two (2) months after the engagement of a substitute or subsequent auditor, and CSG must provide an explanation for the substitution or change including a description of any material disputes between the terminated auditor and CSG.

Statutory Findings

53. Section 408(a) of ERISA 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.

a. "Administratively Feasible." The Department has tentatively determined that the proposal is administratively feasible since, among other things, a qualified independent auditor will be required to perform an in-depth audit covering, among other things, each CS

Affiliated QPAM's compliance with the proposed exemption, and a corresponding written audit report will be provided to the Department and available to the public. The independent audit will provide an incentive for and measure of compliance, while reducing the immediate need for review and oversight by the Department.

b. "In the interest of." The Department has tentatively determined that the proposed exemption is in the interests of the participants and beneficiaries of each affected Covered Plan. It is the Department's understanding, based on representations from the Applicant, that if the requested exemption is denied, the CS Affiliated QPAMs may be unable to effectively manage plan assets subject to ERISA or the prohibited transaction provisions of the Code. The CS Affiliated QPAMs state that this would cause client ERISA-covered plans to question the prudence of retaining the CS Affiliated QPAMs as a manager of choice, and client ERISA-covered plans could feel compelled to find other managers who could manage their assets without having to either forego transactions or rely on other more complex prohibited transaction exemptions.

54. The CS Affiliated QPAMs have represented that if

client ERISA-covered plans were to move to new asset managers they could incur transition costs including the costs associated with identifying an asset manager (such as the costs and management time required in a Request for Proposal process, consultant fees and other due diligence expenses), brokerage and other transaction costs associated with the sale of portfolio investments to accommodate the investment policies and strategy of the new asset manager, the opportunity costs of holding cash pending investment by the new asset manager, and lost investment opportunities in connection with a change of asset managers. The CS Affiliated QPAMs claim that losing the ability to use PTE 84-14 would make it difficult, costly, and impracticable to enter into many transactions that are in the best interests of client ERISA-covered plans, reducing plan choices, especially among large institutional financial banks.

55. The CS Affiliated QPAMs represent further that if the requested exemption is not granted, client ERISA-covered plans may be effectively prohibited from entering into certain transactions, either because no other exemption is available or the counterparty is not willing to enter into the transaction without the protections

provided by PTE 84-14. The CS Affiliated QPAMS state that these transactions would include those not covered by other exemptions such as a purchase or sale from a party in interest of a security without a readily ascertainable fair market value. The CS Affiliated QPAMS claim that the loss of the ability to utilize PTE 84-14 could significantly delay or even make impossible transactions that would be beneficial for the ERISA-covered plans because other statutory and class prohibited transaction exemptions are not broad enough to cover such routine transactions entered at the direction of the CS Affiliated QPAMS. The CS Affiliated QPAMS also represent that counterparties could seek to terminate contracts for certain outstanding transactions (including swaps) that require the CS Affiliated QPAMS to represent that they are QPAMS and/or utilize PTE 84-14 and additionally, pursuant to these contracts, swap transactions with certain counterparties could automatically and immediately be terminated without any notice or action of such counterparties, even if other prohibited transaction exemptions are available. The CS Affiliated QPAMS further claim that such a termination could result in significant losses for the client ERISA-

covered plans that would be avoided if the proposed exemption were granted.

c. "Protective of." The Department has tentatively determined that the exemption, as proposed, will be protective of the rights of participants and beneficiaries of Covered Plans. As described above, the proposed exemption is subject to a suite of conditions, including: (a) the creation, maintenance and compliance with policies and procedures (the Policies); (b) the implementation of and participation in a comprehensive training program (the Training); (c) a robust annual audit conducted by an independent auditor evaluating the CS Affiliated QPAMs' operational compliance with the Policies and Training, to be submitted to the Department and made available as part of the public record; (d) the provision of certain agreements and warrants on the part of the CS Affiliated QPAMs with respect to any arrangement, agreement, or contract between a CS Affiliated QPAM and a Covered Plan for which the CS Affiliated QPAM provides asset management or other discretionary fiduciary services, including provisions requiring compliance with ERISA and the Code, as well as indemnification of such Covered Plans for any

actual losses resulting directly from certain enumerated actions by the CS Affiliated QPAM; (e) specific notice and disclosure requirements with respect to the circumstances leading to this proposed exemption and compliance with the proposed exemption; and (f) the designation of a Compliance Officer responsible for compliance with the Policies and Training requirements and the completion by the Compliance Officer of an annual Exemption Review and corresponding Exemption Report; and (g) the immediate disclosure by CSAG to the Department of any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) that CSAG or an affiliate enters into with the U.S Department of Justice, to the extent such DPA or NPA in connection with the conduct described in Section I(g) of PTE 84-14 or section 411 of ERISA, and any additional information requested by the Department in connection therewith.

Summary

56. Given the conditions described above, the Department has tentatively determined that the five-year relief sought by the Applicant satisfies the statutory requirements for an exemption under section 408(a) of ERISA

and section 4975(c)(2) of the Code.

**NOTICE TO INTERESTED PERSONS**

Notice of the proposed exemption will be provided to all interested persons within fifteen (15) days of the publication of the notice of proposed five-year exemption in the Federal Register. The notice will be provided to all interested persons in the manner described in Section I(k) of this proposed five-year exemption and will contain the documents described therein and a supplemental statement, as required pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on and to request a hearing with respect to the pending exemption. All written comments and/or requests for a hearing must be received by the Department within forty five (45) days of the date of publication of this proposed five-year exemption in the Federal Register. All comments will be made 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 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) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, 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 the Act 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 a five-year exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (76

FR 66637, 66644, October 27, 2011).<sup>19</sup>

## SECTION I. COVERED TRANSACTIONS

If the proposed five-year exemption is granted, the CS Affiliated QPAMs, as further defined in Section II(d), will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Exemption 84-14 (PTE 84-14),<sup>20</sup> notwithstanding the "Conviction" against CSAG (as further defined in Section II(a)),<sup>21</sup> during the Exemption Period, provided that the following conditions are satisfied:

(a) The CS Affiliated QPAMs and the CS Related QPAMs (including their officers, directors, agents other than CSAG, employees of such QPAMs, and CSAG employees described in subparagraph (d) below) did not know of, have reason to

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<sup>19</sup> For purposes of this proposed five-year exemption, references to section 406 of Title I of ERISA, unless otherwise specified, should be read to refer as well to the corresponding provisions of section 4975 of the Code.

<sup>20</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).

<sup>21</sup> Section I(g) of PTE 84-14 generally provides that "[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of" certain criminal activity therein described.

know of, or participate in the criminal conduct of CSAG that is the subject of the Conviction. For purposes of this exemption, including paragraph (c) below, "participate in" refers not only to active participation in the criminal conduct of CSAG that is the subject of the Conviction, but also to knowing approval of the criminal conduct, or knowledge of such conduct without taking active steps to prohibit such conduct, including reporting the conduct to such individual's supervisors, and to the Board of Directors. In this regard, unless the individual reasonably believed that his or her initial report was given an appropriate response within a reasonable time, the individual must further report the criminal conduct to the person or persons the individual reasonably expected would carry out the appropriate response.

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

(c) The CS Affiliated QPAMs will not employ or knowingly engage any of the individuals that "participated in" the criminal conduct of CSAG that is the subject of the Conviction;

(d) At all times during the Exemption Period, a CS Affiliated QPAM will not use its authority or influence to direct an "investment fund" (as defined in Section VI(b) of PTE 84-14) that is subject to ERISA or the Code and managed by such CS Affiliated QPAM with respect to one or more Covered Plans, to enter into any transaction with CSAG or to engage CSAG 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. A CS Affiliated QPAM will not fail this condition solely because:

(1) A CSAG 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 CS Affiliated QPAM or CS Related QPAM;

(2) CSAG provides only necessary, non-investment, non-fiduciary services that support the operations of CS

Affiliated QPAMs, at the CS Affiliated QPAM's own expense, and the Covered Plan is not required to pay any additional fee beyond its agreed-to asset management fee. This exception does not permit CSAG or its branches to provide any service to an investment fund managed by a CS Affiliated QPAM or CS Related QPAM; or

(3) CSAG employees are double-hatted, seconded, supervised, or subject to the control of a CS Affiliated QPAM;

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

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

(g) CSAG will not act as a fiduciary within the meaning of section 3(21)(A)(i) or (iii) of ERISA, or

section 4975(e) (3) (A) and (C) of the Code, with respect to ERISA-covered Plan and IRA assets, except it may act as such a fiduciary (1) with respect to employee benefit plans sponsored for its own employees or employees of an affiliate; or (2) in connection with securities lending services of the New York Branch of CSAG. CSAG will not be treated as violating the conditions of the exemption solely because it acted as an investment advice fiduciary within the meaning of section 3(21) (A) (ii) or section 4975(e) (3) (B) of the Code;

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

(i) The asset management decisions of the CS Affiliated QPAMs are conducted independently of CSAG's corporate management and business activities, and without considering any fee a CS-related local sub-custodian may receive from those decisions. This condition does not preclude a CS Affiliated QPAM from receiving publicly available research and other widely available information

from a CSAG affiliate;

(ii) The CS Affiliated 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 CS Affiliated 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 CS Affiliated QPAM to regulators, including but not limited to, the Department of Labor, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of, 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 the time, the CS Affiliated 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 CS Affiliated QPAM complies with the terms of this five-year exemption, and CSAG complies with the terms of Section I(d) (2);

(2) Any violation of, or failure to comply with, an item in subparagraphs (h) (1) (ii) through (vi) of this section, 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 discovery of such failure to so correct, in writing, to appropriate corporate officers, the head of Compliance and the General Counsel (or their functional equivalent) of the relevant CS Affiliated QPAM, and the independent auditor responsible for reviewing compliance with the Policies. A CS Affiliated QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance 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 paragraph (2);

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

(i) At a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this five-year exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing; and

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

(i)(1) Each CS Affiliated QPAM submits to three audits, 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 CS Affiliated QPAM's compliance with, the Policies and Training described

herein. The audit requirement must be incorporated in the Policies. The first audit must cover the 24 month period that begins on November 21, 2019. The second audit must cover the 24 month period that begins on November 21, 2021, and the third audit must cover the 12 month period that begins on November 21, 2023. Each audit must be completed no later than six (6) months after the period to which the audit applies;<sup>22</sup>

(2) Within the scope of the audit and to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, and only to the extent such disclosure is not prevented by state or federal statute, or involves communications subject to attorney client privilege, each CS Affiliated QPAM and, if applicable, CSAG, will grant the auditor unconditional access to its business, including, but not limited to: its computer systems; business records; transactional data; workplace locations; training materials; and personnel. Such access is limited to information relevant to the auditor's objectives, as specified by the terms of this exemption;

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<sup>22</sup> Periods prior to November 21, 2019 must be audited consistent with PTE 2015-14.

(3) The auditor's engagement must specifically require the auditor to determine whether each CS Affiliated QPAM has developed, implemented, maintained, and followed the Policies in accordance with the conditions of this five-year exemption, and has developed and implemented the Training, as required herein;

(4) The auditor's engagement must specifically require the auditor to test each CS Affiliated QPAM's operational compliance with the Policies and Training. In this regard, the auditor must test a sample of: (1) each CS Affiliated QPAM's transactions involving Covered Plans; (2) each CS Affiliated QPAM's transactions involving CSAG affiliates that serve as a local sub-custodian. The samples must be sufficient in size and nature to afford the auditor a reasonable basis to determine the QPAM's operational compliance with the Policies and Training;

(5) For each audit, on or before the end of the relevant period described in Section I(i)(1) for completing the audit, the auditor must issue a written report (the Audit Report) to CSAG and the CS Affiliated QPAMs to which the audit applies that describes the procedures performed by the auditor during the course of its examination. The

auditor, at its discretion, may issue a single consolidated Audit Report that covers all the CS Affiliated QPAMs. The Audit Report must include the auditor's specific determinations regarding:

(i) The adequacy of the CS Affiliated QPAM's Policies and Training; the CS 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 CS Affiliated QPAM's noncompliance with the written Policies and Training described in Section I(h) above. The CS Affiliated QPAMs must promptly address any noncompliance. The CS Affiliated QPAM must promptly address or prepare a written plan of action to address any determination as to the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective CS Affiliated QPAM. Any action taken or the plan of action to be taken by the respective CS Affiliated QPAM must be included in an addendum to the Audit Report (such addendum must be completed prior to the certification described in Section I(i)(7) below). In the event such a plan of action to address the auditor's recommendation

regarding the adequacy of the Policies and Training is not completed by the time of submission of the Audit Report, the following period's Audit Report must state whether the plan was satisfactorily completed. Any determination by the auditor that the respective CS 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 a CS Affiliated QPAM has complied with the requirements under this subparagraph must be based on evidence that the particular CS Affiliated QPAM has actually implemented, maintained, and followed the Policies and Training required by this exemption.

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

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

(6) The auditor must notify the respective CS

Affiliated QPAMs of any instance of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) With respect to each Audit Report, the General Counsel, or one of the three most senior executive officers of the CS Affiliated QPAMs to which the Audit Report applies, must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this five-year exemption; that to the best of such officer's knowledge at the time the CS Affiliated QPAM addressed, corrected, or remedied any noncompliance and inadequacy or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. Such certification must also include the signatory's determination that, to the best of the 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 the applicable provisions of ERISA and the Code;

(8) The Risk Committee, the Audit Committee, and

CSAG's Board of Directors are provided a copy of each Audit Report; and the head of Compliance and the General Counsel must review the Audit Report for each CS Affiliated QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report;

(9) Each CS Affiliated QPAM must provide its certified Audit Report, by regular mail to: the Department's Office of Exemption Determinations (OED), 200 Constitution Avenue, NW, Suite 400, Washington DC 20210, or by private carrier to: 122 C Street, NW, Suite 400, Washington, DC 20001-2109. The delivery must take place no more than 30 days following the completion of the Audit Report. The Audit Report will be part of the public record regarding this five-year exemption. Furthermore, each CS Affiliated QPAM must make its Audit Report unconditionally available, electronically or otherwise, for examination upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan;

(10) Any engagement agreement with an auditor to perform the audit required by this exemption must be submitted to OED no later than two (2) months after the



execution of the engagement agreement;

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

(12) CSG must notify the Department of a change in the independent auditor no later than two (2) 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 CSAG;

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

(1) To comply with ERISA and the Code, as applicable with respect to the Covered Plan; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions); and to comply with the standards of prudence

and loyalty set forth in section 404 of ERISA with respect to each such ERISA-covered plan and IRA to the extent that section 404 is applicable;

(2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from a CS Affiliated 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 a CS Affiliated QPAM or any claim arising out of the failure of such CS Affiliated QPAMs to qualify for the exemptive relief provided by PTE 84-14 as a result of a violation of Section I(g) of PTE 84-14 other than the Conviction. This condition only applies to actual losses caused by the CS Affiliated QPAM's violations;

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

(4) Not to restrict the ability of the Covered Plan to terminate or withdraw from its arrangement with the CS Affiliated QPAM, with respect to any investment in a separately-managed account or pooled fund subject to ERISA

and managed by such QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any such 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 effective no longer than reasonably necessary to avoid the adverse consequences;

(5) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally-recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have

adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors;

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the CS Affiliated QPAMs for a violation of the agreement's terms. To the extent consistent with section 410 of ERISA, however, this provision does not prohibit disclaimers for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of CSAG and its affiliates, or damages arising outside the control of the CS Affiliated QPAM; and

(7) Within four (4) months of the effective date of this five-year exemption, each CS Affiliated QPAM must provide a notice of its obligations under this Section I(j) to each Covered Plan. For Covered Plans that enter into a written asset or investment management agreement with a CS Affiliated QPAM on or after November 21, 2019, the CS Affiliated QPAM must agree to its obligations under this Section I(j) in an updated investment management agreement between the CS Affiliated QPAM and such clients or other written contractual agreement. Notwithstanding the above,

a CS Affiliated QPAM will not violate the condition solely because a Covered Plan refuses to sign an updated investment management agreement. This condition will be deemed met for each Covered Plan that received a notice pursuant to PTE 2015-14 that meets the terms of this condition.

(k) Notice to Covered Plan Clients. Each CS Affiliated QPAM provides a notice of the five-year exemption, along with a separate summary describing the facts that led to the Conviction (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that the Conviction results in a failure to meet a condition in PTE 84-14, to each sponsor and beneficial owner of a Covered Plan that entered into a written asset or investment management agreement with a CS Affiliated QPAM, or the sponsor of an investment fund in any case where a CS Affiliated QPAM acts as a sub-adviser to the investment fund in which such ERISA-covered plan and IRA invests. The notice, Summary and Statement must be provided prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the CS Affiliated QPAM. If this five-year exemption is granted,

the clients must receive a Federal Register copy of the notice of final five-year exemption within sixty (60) days of its publication in the Federal Register. The notice may be delivered electronically (including by an email that has a link to the five-year exemption).

(l) The CS Affiliated QPAM must comply with each condition of PTE 84-14, as amended, with the sole exception of the violation of Section I(g) of PTE 84-14 that is attributable to the Conviction. If, during the Exemption Period, an entity within the Credit Suisse corporate structure is convicted of a crime described in Section I(g) of PTE 84-14, (other than the Conviction), including a conviction in a foreign jurisdiction for a crime described in Section I(g) of PTE 84-14, relief in this exemption would terminate immediately;

(m)(1) By May 20, 2020, CSAG designates a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. The Compliance Officer must conduct an annual review for each twelve month period, beginning on November 21, 2019, (the Annual Review) to determine the adequacy and effectiveness of the

implementation of the Policies and Training. With respect to the Compliance Officer, the following conditions must be met:

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

(ii) The Compliance Officer must have a direct reporting line to the highest ranking corporate officer in charge of compliance for asset management;

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

(i) The Annual Exemption Review includes a review of the CS Affiliated QPAMs compliance with and effectiveness of the Policies and Training and of the following: any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the compliance and risk control function (or its equivalent) during the previous year; the most recent audit report issued pursuant to this exemption or PTE 2015-14; any material change in the relevant business activities of the CS 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 CS Affiliated QPAMs;

(ii) The Compliance Officer prepares a written report for each Annual Exemption Review (each, an Annual Exemption Report) that (A) summarizes his or her material activities during the preceding year; (B) sets forth any instance of noncompliance discovered during the preceding 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 each Annual 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 preceding year



and any related correction taken to date have been identified in the Annual Exemption Report; and (D) the CS Affiliated QPAMs have complied with the Policies and Training, and/or corrected (or are correcting) any known instances of noncompliance in accordance with Section I(h) above;

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

(v) Each Annual Exemption Review, including the Compliance Officer's written Annual Report, must be completed within three (3) months following the end of the period to which it relates;

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

(o) During the Exemption Period, CSAG: (1) immediately discloses to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) that Credit Suisse Group AG or CSAG or any affiliate (as defined in Section VI(d) of PTE 84-14) enters into with the U.S Department of Justice, to the extent such DPA or NPA relates to the conduct described in Section I(g) of PTE 84-14 or section 411 of ERISA; and (2) immediately provides the Department any information requested by the Department, as permitted by law, regarding the agreement and/or the conduct and allegations that led to the agreement;

(p) Within 60 days of the effective date of the five-year exemption, each CS 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 CS Affiliated 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.<sup>23</sup> With respect to this requirement, the description may be continuously maintained on a website, provided that such website link to the Policies or Summary Policies is clearly and prominently disclosed to each Covered Plan; and

(q) A CS Affiliated QPAM will not fail to meet the terms of this five-year exemption, solely because a different CS Affiliated QPAM fails to satisfy a condition for relief under this five-year exemption described in Sections I(c), (d), (h), (i), (j), (k), (l), (n), and (p); or, if the independent auditor described in Section I(i) fails a provision of the exemption other than the requirement described in Section I(i)(11), provided that such failure did not result from any actions or inactions of CSAG or its affiliates.

## SECTION II. DEFINITIONS

(a) The term "Conviction" means the judgment of conviction against CSAG for one count of conspiracy to violate section 7206(2) of the Internal Revenue Code in

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<sup>23</sup> In the event the Applicant meets this disclosure requirement through Summary Policies, changes to the Policies shall not result in the requirement for a new disclosure unless, as a result of changes to the Policies, the Summary Policies are no longer accurate.

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.

(b) The term "Covered Plan" means a plan subject to Part 4 of Title I of ERISA (an "ERISA-covered plan") or a plan subject to section 4975 of the Code (an "IRA"), in each case, with respect to which a CS Affiliated QPAM relies on PTE 84-14, or with respect to which a CS Affiliated QPAM (or any CSAG affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84-14). A Covered Plan does not include an ERISA-covered plan or IRA to the extent the CS 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.

(c) The term "CSAG" means Credit Suisse AG.

(d) The term "CS Affiliated QPAM" means a "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 CSAG is a current or future

"affiliate" (as defined in Section VI(d) of PTE 84-14), but is not a CS Related QPAM. The term "CS Affiliated QPAM" excludes the parent entity, CSAG.

(e) The term "CS 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 CSAG owns a direct or indirect five (5) percent or more interest, but with respect to which CSAG is not an "affiliate" (as defined in section VI(d)(1) of PTE 84-14).

(f) The term "Exemption Period" means the period from November 21, 2019 through November 20, 2024.

Effective Date: If granted, this proposed five-year exemption will be in effect for five years beginning on the expiration of PTE 2015-14.

FOR FURTHER INFORMATION CONTACT: Mrs. Blessed Chuksorji-Keefe of the Department, telephone (202) 693-8567. (This is not a toll-free number.)

Signed at Washington, DC, this 10th day of July, 2019.

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

[FR Doc. 2019-15069 Filed: 7/15/2019 8:45 am; Publication Date: 7/16/2019]