



4510-29-P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Exemption Application No. D-11998]

Proposed Exemption from Certain Prohibited Transaction Restrictions Involving UBS Asset Management (Americas) Inc.; UBS Realty Investors LLC; UBS Hedge Fund Solutions LLC; UBS O'Connor LLC; and Certain Future Affiliates in UBS's Asset Management and Global Wealth Management U.S. Divisions (collectively, the Applicants or the UBS QPAMs) Located in Chicago, Illinois; Hartford, Connecticut; New York, New York; and Chicago, Illinois, Respectively.

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document provides notice of the pendency before the Department of Labor (the Department) of a proposed individual exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). If this proposed exemption is granted, certain entities with specified relationships to UBS AG (UBS), UBS Securities

Japan and UBS France will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84-14.

DATES: If granted, this proposed exemption will be in effect for five years beginning on February 20, 2020 and ending on February 20, 2025.

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-11998 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, DC 20001. Attention: Application No. D-11998. Interested persons may also submit comments and/or hearing requests to EBSA via email to 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: Brian Mica 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. Any person who may be adversely affected by an exemption can request a hearing on the exemption. A request for a hearing must state: (1) The name, address, telephone number, and email address of the person making the request;

(2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption; and (3) a statement of the issues to be addressed and a general description of the evidence to be presented at the hearing. The Department will grant a request for a hearing made in accordance with the requirements above where a hearing is necessary to fully explore material factual issues identified by the person requesting the hearing. A notice of such hearing shall be published by the Department in the Federal Register. The Department may decline to hold a hearing if:

(1) The request for the hearing does not meet the requirements above; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the factual issues identified can be fully explored through the submission of evidence in written (including electronic) form.

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 February 26, 2019, the Department published Prohibited Transaction Exemption (PTE) 2019-01, which is a

one year exemption permitting certain entities with specified relationships to UBS to continue to rely upon the relief provided by PTE 84-14¹ for a period of one year beginning February 20, 2019, notwithstanding certain criminal convictions, as described herein (the Convictions) and the 2019 French Conviction.² The Department granted PTE 2019-01 to protect plans and IRAs that use UBS asset managers, from the costs and expenses that could have arisen if the UBS QPAMs had lost their ability to rely on PTE 84-14 as of the 2019 French Conviction Date, as represented by the Applicants. The temporary nature of PTE 2019-01 allows the Department sufficient time, including a longer comment period for this proposed five-year exemption, to determine whether a longer-term exemption is necessary and appropriate.

The UBS QPAMs request a longer-term individual exemption providing the same relief as was provided in PTE 2019-01. Accordingly, the Department proposes to grant this

¹ 49 FR 9494, March 13, 1984, as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005) and as amended at 75 FR 38837 (July 6, 2010), hereinafter referred to as PTE 84-14 or the QPAM exemption.

² PTE 2019-01; 84 FR 6163, February 26, 2019.

five-year exemption to protect Covered Plans³ from certain costs and/or investment losses that may arise to the extent entities with a corporate relationship to UBS, UBS Securities Japan, or UBS France lose their ability to rely on PTE 84-14 as of February 20, 2020.

The proposed exemption would provide relief from certain of the restrictions set forth in sections 406 and 407 of ERISA. It would not, however, provide relief from any other violation of law. Furthermore, the Department cautions that the relief in this proposed exemption would terminate immediately if, among other things, an entity within the UBS corporate structure is convicted of a crime covered by Section I(g) of PTE 84-14 (other than the 2013 Conviction, 2018 Conviction, and the 2019 French Conviction) during the exemption period (as defined in Section II(j)). Although the UBS QPAMs could apply for a new exemption in that circumstance, the Department would

³ A "Covered Plan" is a plan subject to Part 4 of Title 1 of ERISA ("ERISA-covered plan") or a plan subject to section 4975 of the Code ("IRA") with respect to which a UBS QPAM relies on PTE 84-14, or with respect to which a UBS QPAM (or any UBS affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84-14). A Covered Plan does not include an ERISA-covered plan or IRA to the extent the UBS QPAM has expressly disclaimed reliance on QPAM status or PTE 84-14 in entering into its contract, arrangement, or agreement with the ERISA-covered plan or IRA.

not be obligated to grant the exemption. The terms of this 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 the expiration of this exemption without additional relief, or a determination that it is otherwise prudent for a plan to terminate its relationship with an entity covered by the exemption.

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 REPRESENTATIONS⁴

UBS and the QPAMs

1. UBS AG (UBS) is a Swiss-based global financial services company organized under the laws of Switzerland. UBS has banking divisions and subsidiaries throughout the world, with its United States headquarters located in New York, New York and Stamford, Connecticut. UBS itself does not provide investment management services to client plans that are subject to Part 4 of Title I of ERISA

⁴ The Summary of Facts and Representations is based on the Applicants' representations, unless indicated otherwise.

(ERISA plans) or section 4975 of the Code (IRAs), or otherwise exercise discretionary control over ERISA assets. All ERISA assets are managed by U.S. affiliates of UBS.

2. UBS Asset Management (Americas) Inc., UBS Realty Investors LLC, UBS Hedge Fund Solutions LLC, and UBS O'Connor LLC⁵ are currently the four UBS affiliates that rely on PTE 84-14. Collectively, these UBS QPAMs have total ERISA assets under management of approximately \$11.5 billion as of June 30, 2018, excluding ERISA assets invested in pooled funds that are not plan asset funds.

ERISA and Code Prohibited Transactions and PTE 84-14

3. 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

⁵ UBS Asset Management (Americas) Inc. and UBS Realty Investors LLC are wholly-owned by UBS Americas, Inc., a wholly-owned subsidiary of UBS AG. UBS Hedge Fund Solutions LLC (formerly UBS Alternative and Quantitative Investments, LLC) and UBS O'Connor LLC are wholly-owned by UBS Americas Holding LLC, a wholly-owned subsidiary of UBS AG.

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.⁶ 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 party in interest.⁷ 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).

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

⁷ 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.

4. PTE 84-14 exempts certain prohibited transactions between a party in interest and an "investment fund" (as defined in Section VI(b) of PTE 84-14)⁸ 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 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.⁹

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

⁸ 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.

⁹ See 75 FR 38837, 38839 (July 6, 2010).

"affiliate"¹⁰ 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 in a position to influence its policies, maintain a high standard of integrity.¹¹

Previous convictions

6. UBS Securities Japan was previously convicted (2013 Conviction) of a crime arising out of its fraudulent submission of Yen London Interbank Offer Rate (Yen LIBOR) rates between 2006 and 2009, and its

¹⁰ 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."

¹¹ See 47 FR 56945, 56947 (December 21, 1982).

participation in a scheme to defraud counterparties to interest rate derivatives trades executed on its behalf, by secretly manipulating certain benchmark interest rates, to which the profitability of those trades was tied. This crime was described in detail in PTE 2013-09.¹²

Although UBS and the United States Department of Justice (DOJ) entered into a Non-Prosecution Agreement (the LIBOR NPA) related to UBS's misconduct involving its submission of Yen LIBOR rates and other benchmark rates between 2001 and 2010, the DOJ subsequently determined that the LIBOR NPA had been breached due to, among other things, UBS having engaged in deceptive currency trading and sales practices in conducting certain foreign exchange (FX) market transactions, as well as collusive conduct in certain FX markets (FX Misconduct). UBS then entered a guilty plea and was itself convicted (2018 Conviction) of a crime arising out of UBS's scheme to defraud counterparties to interest rate derivatives transactions, by secretly manipulating benchmark interest

¹² See PTE 2013-09, 78 FR 56740 (September 13, 2003).

rates to which the profitability of those transactions was tied. This crime was described in detail in PTE 2017-07.¹³

Previous Exemptions

7. PTE 2013-09 allowed UBS QPAMs to continue to rely on PTE 84-14, notwithstanding the 2013 conviction, as long as a number of conditions were met. One of those conditions requires that UBS or any of its affiliates may not be further convicted of a crime described in Section I(g) of PTE 84-14. The 2018 Conviction violated this condition in PTE 2013-09 and therefore, the UBS QPAMs could no longer rely on the relief provided by PTE 2013-09. The Department granted PTE 2017-07 to allow the UBS QPAMs to continue to rely on PTE 84-14 notwithstanding the Convictions.

¹³ See PTE 2017-07, 82 FR 61916 (December 29, 2017).

2019 French Conviction

8. In 2013, France opened an investigation into UBS, UBS France, and certain former employees of UBS France S.A. The investigation centered on the maintenance of foreign ("cross-border") UBS bank accounts held for private citizens. The investigating judges closed the investigation in February 2016. UBS and UBS France received the National Financial Prosecutor's recommendation ("requisitoire") in July 2016 that charges be filed. The investigating judges issued the trial order ("Ordonnance de renvoi") in March 2017 that set out the precise charges against UBS, UBS France, and the individual former employees. UBS was charged with: (1) "illicit solicitation," based on the alleged solicitation of French clients within French territory from 2004-2011 by Swiss-based UBS client advisors without authorization to conduct such business in France; and (2) laundering the proceeds of tax fraud, based on UBS's alleged assistance from 2004 to 2012 to French taxpayers in opening bank accounts outside of France to conceal their identities from relevant authorities for the purposes of alleged tax evasion. Following a trial in the French

First Instance Court, UBS and UBS France were convicted of illegally soliciting clients from 2004 to 2012 and laundering the proceeds of tax fraud from 2004 to 2012. The French court imposed penalties of 3.7 billion Euros on UBS and 15 million Euros on UBS France. UBS and UBS France were also assessed civil damages of 800 million Euros by the French court. UBS and UBS France are appealing the 2019 French Conviction.

The 2019 French Conviction violated PTE 2017-07 and therefore, the UBS QPAMs could no longer rely on the relief provided by PTE 2017-07 as of the 2019 French Conviction Date. As stated above, the Department granted PTE 2019-01 to allow the UBS QPAMs to rely on PTE 84-14 notwithstanding the Convictions and the 2019 French Conviction for a period of one-year.

Current Exemption Request

9. On June 3, 2019, the UBS QPAMs filed an exemption request to continue to rely on PTE 84-14 after the expiration of the temporary one-year exemption, PTE 2019-01. The UBS QPAMs request that the Department issue an exemption which would allow for the continued reliance

on PTE 84-14 by the UBS QPAMs notwithstanding the Convictions and the 2019 French Conviction. The UBS QPAMs request an exemption that covers the remaining disqualification period under Section I(g) of PTE 84-14 (nine years beginning on February 20, 2020), and that the exemption contain the same conditions as PTE 2017-07.

10. The UBS QPAMs represent they are separate entities from the entities involved in the 2019 French Conviction and none of the UBS QPAMs or their personnel knew of, had reason to know of, or participated in the conduct that is the subject of the 2019 French Conviction. Additionally, the UBS QPAMs represent that neither the UBS QPAMs nor their personnel received direct compensation, or knowingly received indirect compensation, in connection with the conduct that is the subject of the 2019 French Conviction. Furthermore, the UBS QPAMs represent that no UBS QPAM exercised authority over the assets of any plan in a manner that it knew or should have known would further the conduct that is the subject of the 2019 Conviction, or otherwise caused the UBS QPAMs, their affiliates, or related parties to directly or indirectly profit from the conduct that is

the subject of the 2019 French Conviction.

11. The UBS QPAMs represent that the conduct that is the subject of the 2019 French Conviction relates to cross-border banking practices, and that UBS was the first Swiss bank to accept responsibility for the misconduct and to remediate. According to the UBS QPAMs, UBS resolved similar charges in the U.S. when UBS entered into a deferred prosecution agreement with the United States Department of Justice (DOJ) in 2009 regarding cross-border banking practices from 2000 through 2007 taking place at UBS's now-defunct U.S. cross-border desk within the UBS wealth management business. Additionally, according to the UBS QPAMs, by 2010, UBS adopted a global Policy on Cross-border Standards establishing global standards and a robust framework for compliance with applicable laws and regulations in each country in which UBS continued its cross-border business. UBS also made a decision to provide wealth management services only to clients willing to attest that they are in compliance with their tax obligations of their home countries.

12. The UBS QPAMs represent that the majority of the conduct that is the subject of the 2019 French Conviction

occurred prior to 2012 when UBS implemented reforms to its control framework and compliance programs. UBS QPAMs state that UBS substantially transformed its organization through a series of remedial measures and compliance reforms from 2008 through 2011. These efforts, according to the UBS QPAMs, were a result of significant changes to UBS's senior management in late 2011 and early 2012 which were supported by the highest levels of the bank, including the appointment of a new Chief Executive Officer, a new Chairman of the Board of Directors, and a new Chief Risk Officer. Moreover, the UBS QPAMs represent that the cross-border criminal misconduct in France took place prior to the granting of PTE 2013-09 and PTE 2017-07 which imposed additional comprehensive conditions on UBS and the UBS QPAMs designed to protect the rights of participants and beneficiaries.

13. The UBS QPAMs represent they have worked diligently to comply with each of the conditions of PTE 2013-09, PTE 2016-17,¹⁴ and PTE 2017-07. The UBS QPAMs

¹⁴ 81 FR 94049 (December 22, 2016). PTE 2016-17 is a temporary exemption for UBS QPAMs to rely on the exemptive relief provided by PTE 84-14, notwithstanding the Convictions, for up to twelve months from January 5, 2017.

claim that the policies, practices and conditions implemented in accordance with PTE 2017-07 are sufficient to protect the rights and interest of plans and plan participants particularly. They argue that this is particularly true because all the conduct that is the subject of the 2019 French Conviction occurred before they had reformed their compliance structure and culture in response to the LIBOR and FX matters, implemented the protective conditions of PTE 2017-07, and engaged in the cross-border remediation efforts noted above.

Term of the Exemption

14. As noted above, the UBS QPAMs have requested a nine year exemption. The UBS QPAMs state that, by the time a final exemption takes effect, they will have been operating under the comprehensive conditions of PTE 2017-07 for more than two years and under the conditions of PTE 2013-09 for nearly six years. The UBS QPAMs state that the Department has had sufficient time to assess the UBS QPAMs' compliance with these conditions and consider any relevant comments. In addition, they claim that granting longer-term relief would be in the best interest

of plans, which are otherwise uncertain of the duration of relief and, accordingly, have to expend the time and resources necessary to be sure that they can replace the UBS QPAMs in the event that the Department does not grant permanent relief. The UBS QPAMs argue that nothing about the 2019 French Conviction would prevent the Department from granting an exemption for the remaining disqualification period provided under Section I(g).

The UBS QPAMs also argue that, in other cases, the Department has granted exemptions for the full 10-year period based on the foreign conviction of an affiliate of the QPAM where, as in this instance, the QPAM did not engage in the misconduct or act as a fiduciary to ERISA-covered plans or exercise discretionary control over ERISA-covered assets. Moreover, the UBS QPAMs state the conduct that is the subject of the 2019 French Conviction occurred over ten years ago, and well before the Department had concluded the conditions of the 2013 exemption were sufficiently protective. Accordingly, they argue that the conditions of that exemption are appropriate for the 2019 French Conviction as well. The UBS QPAMs also request that the exemption's term be

defined in such a way that if UBS's appeal of the 2019 French Conviction is successful, the term of the exemption would be for ten years, beginning from the date of the 2018 Conviction.

The Department is not persuaded that the exemptive relief for the remaining nine year disqualification period under PTE 84-14 Section I(g) would be protective and in the best interest of participants and beneficiaries. This exemption, if granted, would provide exemptive relief notwithstanding the 2013 Conviction, the 2018 Conviction, as well as the 2019 French Conviction. As stated in previous exemptions, the Department considers the entirety of the record before it when developing an exemption. In the case of the UBS QPAMs, that record includes consideration of the 2013 Conviction, the Plea Agreement, the LIBOR NPA in which UBS agreed, among other things, not to commit any crime in violation of U.S. laws for a period of two years and the Plea Agreement, the breach of the LIBOR NPA, the 2018 conviction, and the 2019 French Conviction.

Both the LIBOR NPA and the Plea Agreement contain a Statement of Facts (SOF) that describes the circumstances

of UBS's scheme to defraud counterparties to interest rate derivatives transactions by secretly manipulating benchmark interest rates to which the profitability of those transactions was tied. The SOF describes the wide-ranging and systematic efforts, practiced nearly on a daily basis, by several UBS employees: (a) to manipulate the YEN LIBOR in order to benefit UBS's trading positions; (b) to use cash brokers to influence other Contributor Panel banks' Yen LIBOR submissions; and (c) to collude directly with employees at other Contributor Panel banks to influence those banks' Yen LIBOR submissions. The Department considered the DOJ's determination that UBS subsequently breached the LIBOR NPA when certain employees engaged in fraudulent and deceptive trading and sales practices in certain foreign exchange (FX) market transactions via telephone, email and/or electronic chat, to the detriment of UBS customers.¹⁵ These employees also colluded with other actors in certain FX markets in order to manipulate those

¹⁵ The circumstances of UBS's violation of the terms of the LIBOR NPA are described in detail in Exhibit 1 to the Plea Agreement, entitled "The Factual Basis for Breach of the Non-Prosecution Agreement" (the Factual Basis for Breach).

markets. The Department considered the Factual Basis for Breach attached to the Plea Agreement which details that conduct (the FX Misconduct as defined in Section II(d)).

In developing this exemption, the Department also considered statements from a number of regulators about the FX Misconduct. The Financial Conduct Authority's (FCA) Final Notice dated November 11, 2014 states: "During the Relevant Period, UBS did not exercise adequate and effective control over its G10 spot FX trading business. . . . The front office failed adequately to discharge these responsibilities with regard to obvious risks associated with confidentiality, conflicts of interest and trading conduct." That notice also states: "These failings occurred in circumstances where certain of those responsible for managing front office matters were aware of and/or at times involved in behaviors described above." The United States Commodity and Futures Trading Commission's (CFTC) Order dated November 11, 2014 states: "During the Relevant Period, UBS failed to adequately address the risks associated with its FX traders participating in the fixing of certain FX benchmark rates. UBS also lacked adequate

internal controls in order to prevent its FX traders from engaging in improper communications with certain FX traders at other banks. UBS lacked sufficient policies, procedures and training specifically governing participation in trading around the FX benchmark rates....” The Department took into consideration the monetary penalties imposed and the agreements by UBS with certain other U.S. and non-U.S. regulatory agencies to further strengthen its internal controls.

In light of the breach of two previous exemptions, which were themselves necessitated by criminal conduct, the severity of the misconduct, and the repeated criminal violations, the Department has concluded that it is appropriate to propose a limited five-year term of relief. Relevant to this determination is a finding set forth in an audit report required by PTE 2016-17, performed by Fiduciary Counselors, Inc., dated August 7, 2018.¹⁶ The five-year term and the exemption’s

¹⁶ In that audit report, Fiduciary Counselors, Inc. states, on page 26: "Asset Management [QPAM] informed us that during the Audit Period it utilized PTE 86-128 with respect to effecting securities transactions using affiliated brokers for one ERISA Plan client. However, it does not appear that Asset Management correctly followed all of the requirement of PTE 86-128. Specifically, it does not

protective conditions reflect the Department's intent to protect Covered Plans that entrust substantial assets with a UBS QPAM, following serious misconduct, supervisory failures, repeated criminal convictions, and violations of a two previous exemptions.

The 2019 French Conviction violated one of the conditions of the previous exemptions. The conduct that is the subject of the 2019 French Conviction reinforces the Department's concerns about the need for careful scrutiny to ensure that the interests of plan participants, beneficiaries, and IRA owners are safeguarded. As stated in PTE 2017-07, the five-year term gives the Department the opportunity to review, on an ongoing basis, the UBS QPAMs' adherence to the conditions set out herein. The five-year period stresses the importance of the UBS QPAMs' efforts to maintain supervisory mechanisms, policies, and procedures that safeguard plans and IRAs, and guard against the risk of further misconduct.

appear that Asset Management provided its client with the required annual termination notice. Additionally, it does not appear that Asset Management timely provided its client with the required annual disclosure summary.

The Department additionally notes that, if the UBS QPAMs' appeal of the 2019 French Conviction is successful the UBS QPAMs may rely on PTE 2017-07, PTE 2019-01, or, if granted, this exemption, during their respective effective periods, as long as the applicable conditions therein are met.¹⁷ The Applicants may apply for an additional extension at such time as they believe appropriate. Before granting an extension, however, the Department expects to consider carefully the efficacy of this exemption and any public comments on additional extensions, particularly including comments on how well the exemption has or has not worked to safeguard the interests of Covered Plans.

Conditions of the Exemption

15. The UBS QPAMs have requested that the Department omit from this proposed exemption any reference to foreign convictions as it appears in Section

¹⁷ In this circumstance, the Department would consider good faith compliance with the conditions of PTE 2019-01 and this exemption, if granted, as compliance with the conditions of PTE 2017-07.

I(1) of PTE 2019-01. PTE 2019-01 Section I(1) states in part "if, during the Exemption Period, an entity within the UBS corporate structure is convicted of a crime described in Section I(g) of PTE 84-14..., 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." The UBS QPAMs argue the inclusion of this language by the Department "is superfluous given the Department's current stated interpretation of Section I(g), unnecessary given the Department's articulation of that interpretation throughout the temporary exemption's preamble, and could produce uncertainty if included in a longer-term exemption in the event the Department were subsequently to 'reverse its view' on Section I(g)'s applicability to foreign convictions." Given the Department's current stated interpretation of Section I(g) as articulated in PTE 2019-01, it adopts the UBS QPAMs' request.

16. The UBS QPAMs recommended the proposed exemption contain certain revisions to the conditions of the one-year exemption, PTE 2019-01, to align this proposed exemption with PTE 2017-07.

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. In the Department's view, the conditions set forth in PTE 2019-01 best protect the interests of plan participants, beneficiaries, and IRA owners, and are consistent with the terms of similar exemptions relied upon by other service providers. Therefore, the conditions of this proposed exemption follow the conditions of PTE 2019-01 while incorporating certain updates the Department finds necessary to protect the interest of plans and IRAs and certain conditions that have been modified at the request of the UBS QPAMs.

17. The UBS QPAMs specifically request that the Department modify text in Section I(a) of PTE 2019-01, which conditions relief on the fact that third parties engaged "on behalf of" the UBS QPAMs did not "know of, have reason to know of, or participate in" the criminal conduct that is the subject of the 2019 French Conviction. In particular, the UBS QPAMs request deletion of the exemption's reference to such third parties who "had responsibility for, or exercised authority in connection with the management of plan assets." Additionally, the UBS QPAMs object to the exemption's provision stating that a person is treated as having participated in criminal misconduct not only if the person actively engaged in the misconduct, but also if he or she knowingly approved of the criminal conduct or, with knowledge of the misconduct, failed to take active steps to prohibit it, such as reporting the conduct to supervisors.

The Department declines to make the requested modifications to Section I(a) of the proposed exemption. In the Department's view, the UBS QPAMs are appropriately held accountable in this manner for the conduct of the

third parties they engaged on their behalf to manage or exercise authority over plan assets. If such parties knowingly participated in the criminal conduct that is the subject of the 2019 French conviction, the QPAMs' culpability is potentially greater than the Department assumed in drafting exemption conditions, and there may be need for greater protections or reduced relief.

Moreover, the Department's expectation of adherence to high standards of integrity is not satisfied merely by avoiding actively engaging in misconduct, but also extends to taking measures to stop misconduct that is known or should be known. Silent acquiescence to criminal conduct falls far short of the standards expected of parties relying on the exemption.

The condition as written in PTE 2019-01 was specifically designed to give assurance that the UBS QPAMs and third parties engaged on the UBS QPAMs' behalf did not participate, approve, or facilitate criminal misconduct. Accordingly, the condition treats as knowing participation a party's failure to take active steps to prevent the criminal conduct that is the subject of the 2019 exemption.

18. The UBS QPAMs similarly request that Section I(b) of the proposed exemption not include the condition set forth in Section I(b) of PTE 2019-01, which provides that the parties engaged to act on behalf of the UBS QPAMs must not have received compensation in connection with the criminal conduct that is the subject of the 2019 French Conviction. This condition too reflects the Department's view that the QPAMs and the parties engaged on their behalf to manage or exercise authority over plan assets should adhere to high standards of integrity. Accordingly, they should neither have participated in nor profited from the criminal conduct that is the subject of the 2019 French conviction. If such parties, in fact, received direct or indirect compensation in connection with the criminal conduct, their culpability, and the culpability of the USB QPAMs, is potentially greater than the Department assumed in drafting exemption conditions, and there may be need for greater protections or reduced relief.

Therefore, Section I(b) of the proposed exemption will continue to extend the prohibition against the receipt of compensation in connection with the conduct

that is the subject of the 2019 French Conviction to third parties with responsibility or authority over plan assets.

19. The UBS QPAMs request that the timing of the audit periods and the Exemption Review be such that the initial periods under audit and review be for a period of thirteen months. The Department has accommodated this request and Sections I(i) and I(m) of the proposed exemption provide for initial periods of thirteen months.

Statutory Findings

20. 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 UBS QPAM's compliance with the exemption, and a corresponding written audit report will be provided to the Department and available to the public. The independent audit will provide an incentive for, and a measure of, 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. Based on the representation of the UBS QPAMs, it is the Department's understanding that if the requested exemption were denied, client ERISA-covered plans would be unable to maintain their investment strategy with their current asset manager and would be subject to disruptions and costs associated with changing asset managers. The UBS QPAMs claim that their ERISA plan clients have long availed themselves of the benefit of the UBS QPAMs' investment expertise, even after the grant of PTE 2013-09 and PTE 2017-07. The UBS QPAMs state that granting the exemption would enable the UBS QPAMs to continue to effect a wide range of

beneficial transactions on their ERISA clients' behalf without undue administrative delay or other conditions or limitations that could be disadvantageous to the ERISA plan clients. The UBS QPAMs represent that without the ability to serve as QPAMs certain prudent and appropriate investment opportunities may not be available to such ERISA plan clients. The UBS QPAMs state that PTE 84-14 is one of the most commonly used prohibited transaction exemptions and, for some transactions, may be the only available exemption. In addition, the UBS QPAMs and counterparties to transactions with the UBS QPAMs frequently rely on PTE 84-14 as a backup exemption for transactions. The UBS QPAMs claim that some third parties may elect not to engage in transactions involving plan assets managed by the UBS QPAMs without the assurance they receive from the availability of PTE 84-14 or, if they do engage in the transactions, may only do so on less advantageous terms.

Additionally, the UBS QPAMs represent that if client ERISA 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 UBS 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 ERISA client plans, reducing plan choices, especially among large institutional banks.

Further, the UBS QPAMs represent that if the requested exemption were not granted, ERISA plan clients could 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 UBS QPAMs claim that the loss of the ability to use PTE 84-14 could significantly delay or even make impossible transactions that would be

beneficial for the ERISA plans. The UBS QPAMs also represent that counterparties could seek to terminate contracts for certain outstanding transactions (including swaps) that require the UBS QPAMs to represent that they are QPAMs and/or use 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 which could result in significant losses for the client ERISA plans.

c. "Protective of." The Department has tentatively determined that the exemption, as proposed, will be protective of the rights of participants and beneficiaries of affected plans and IRAs and will appropriately protect plans subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or plans subject to section 4975 of the Code (an IRA), in each case, with respect to which a UBS QPAM relies on PTE 84-14, or with respect to which a UBS QPAM (or any UBS affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84-14)

(Covered Plans).¹⁸ This exemption, if granted, would provide relief for the UBS QPAMs to rely on PTE 84-14, notwithstanding the 2013 Conviction, the 2018 Conviction, and the 2019 French Conviction for a five-year period from the expiration of PTE 2019-01. The proposal has essentially the same conditions as PTE 2019-01.

Relief is necessary since, at present, the judgment in the French First Instance Court constitutes a conviction, consistent with the Department's prior practice and treatment of foreign convictions.¹⁹ If UBS is successful in its appeal of the verdict of the French First Instance Court, the UBS QPAMs may rely on PTE 2017-07, PTE 2019-01, or, if granted this exemption, during the exemptions' respective effective periods, as long as the applicable conditions therein are met.²⁰

Several of the conditions are aimed at ensuring that

¹⁸ For purposes of this exemption, a Covered Plan does not include an ERISA-covered plan or IRA to the extent the UBS QPAM has expressly disclaimed reliance on QPAM status or PTE 84-14 in entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA.

¹⁹ The UBS QPAMs have requested the Department revisit application of PTE 84-14, Section I(g), to foreign convictions through an Advisory Opinion. The Department has not yet responded to this request.

²⁰ In this circumstance, the Department would consider good faith compliance with the conditions of PTE 2019-01 and this exemption, if granted, as compliance with the conditions of PTE 2017-07.

the UBS QPAMs were not involved in the conduct that gave rise to any of the Convictions and the 2019 French Conviction. Accordingly, the proposal generally precludes relief to the extent the UBS QPAMs and any other party engaged on behalf of such QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets, and were aware of, participated in, approved of, furthered, benefitted, or profited from: 1) the FX Misconduct; (2) the criminal conduct of UBS Securities Japan and UBS that is the subject of the Convictions; or (3) the criminal conduct of UBS and UBS France that is the subject of the 2019 French Conviction.²¹ Further, the UBS QPAMs may not employ or knowingly engage any of the individuals that participated in the conduct attributable to the FX Misconduct, the 2013 and 2018 Convictions, or the 2019 French Conviction.

The proposal further provides that no UBS QPAM will use its authority or influence to direct an "investment

²¹ For clarity, references to the UBS QPAMs include any individual employed by or engaged to work on behalf of these QPAMs during or after the period of misconduct.

fund" that is subject to ERISA or the Code and managed by such UBS QPAM with respect to one of more Covered Plans, to enter into any transaction with UBS, UBS Securities Japan, or UBS France, or engage UBS, UBS Securities Japan, or UBS France to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption. Also, with very limited exceptions, UBS, UBS Securities Japan, and UBS France may 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.

The proposal requires each UBS QPAM to update, implement and follow certain written policies and procedures (the Policies). These Policies are similar to the policies and procedures mandated by PTE 2019-01. In general terms, the Policies must require, and must be reasonably designed to ensure that, among other things: the asset management decisions of the UBS QPAMs are conducted independently of the corporate management and

business activities of UBS, UBS Securities Japan, and UBS France; the UBS QPAMs fully comply with ERISA's fiduciary duties, and with ERISA and the Code's prohibited transaction provisions; the UBS QPAMs do not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans; any filings or statements made by the UBS QPAMs to regulators, on behalf of or in relation to Covered Plans, are materially accurate and complete; the UBS QPAMs do not make material misrepresentations or omit material information in its communications with such regulators with respect to Covered Plans; the UBS QPAMs do not make material misrepresentations or omit material information in its communications with Covered Plans; the UBS QPAMs comply with the terms of this exemption; and any violation of, or failure to comply with any of these items by the UBS QPAMs, is corrected as soon as reasonably possible upon discovery, or as soon after the UBS QPAMs reasonably should have known of the noncompliance (whichever is earlier). Any such violation or compliance failure not so corrected must be reported, upon the 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), and the independent auditor responsible for reviewing compliance with the Policies.

This proposal mandates training (Training), which is similar to the training required under PTE 2019-01. In this regard, all relevant UBS QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel must be trained annually during the Exemption Period. Among other things, the Training must, at a minimum, cover the Policies, ERISA and Code compliance, ethical conduct, the consequences of not complying with the conditions of this exemption (including any loss of exemptive relief provided herein), and the requirement for prompt reporting of wrongdoing. The Training must be conducted by a professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code.

Under this proposal, as in PTE 2019-01, each UBS QPAM must submit to an annual audit conducted by an

independent auditor.²² Among other things, the auditor must test a sample of each UBS QPAM's transactions involving Covered Plans, sufficient in size and nature to afford the auditor a reasonable basis to determine such QPAM's operational compliance with the Policies and Training. The auditor's conclusions cannot be based solely on the Exemption Report created by the Compliance Officer, described below, in lieu of independent determinations and testing performed by the auditor.

The Audit Report must be certified by the General Counsel or one of the three most senior executive officers of the UBS QPAM to which the Audit Report applies. A copy of the Audit Report must be provided to the Risk Committee of UBS's Board of Directors. Among other things, UBS must submit to the Office of Exemption Determinations (OED), any engagement agreement with an auditor to perform the audit required under the terms of

²² Audits covering time periods prior to the 2019 French Conviction Date must be completed in accordance with the requirements of PTE 2017-07 and PTE 2019-01, as applicable. Accordingly, the last audit performed pursuant to PTE 2017-07 will cover the period beginning January 10, 2018 and ending on the 2019 French Conviction Date and the corresponding Audit Report must be completed within six months and submitted to the Department within 45 days of completion.

this exemption no later than two (2) months after the execution of such agreement;

This proposal requires that, as of the effective date this exemption, and throughout the Exemption Period, with respect to any arrangement, agreement, or contract between a UBS QPAM and a Covered Plan, the UBS QPAM must agree and warrant: (i) to comply with ERISA and the Code, as applicable with respect to such Covered Plan; and (ii) to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions). The UBS QPAMs must further agree and warrant 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. Each UBS QPAM must also agree and warrant to indemnify and hold harmless such Covered Plan for any actual losses resulting directly from any of the following: (a) a UBS QPAM's violation of ERISA's fiduciary duties, as applicable, and/or the prohibited transaction provisions of ERISA and the Code, as applicable; (b) a breach of contract by the UBS QPAM; or (c) any claim arising out of

the failure of such UBS QPAM to qualify for the exemptive relief provided by PTE 84-14 as a result of a violation of Section I(g) of PTE 84-14 other than the 2013 Conviction, the 2018 Conviction, or the 2019 French Conviction. This condition applies only to actual losses caused by the UBS QPAM. As noted above, the Applicant has identified a wide range of potential harm and costs that may be incurred by plans and IRAs if the UBS QPAMs were no longer able to rely on PTE 84-14. The Department views actual losses arising from unwinding transactions with third parties, and from transitioning Covered Plan assets to third parties, to be "direct" results of violating the terms of this provision.

This exemption contains specific notice requirements. In this regard, each UBS QPAM will provide a notice of the 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 Convictions, and in the Department's view, the 2019 French Conviction, each separately result in a failure to meet a condition in PTE 84-14 and/or PTE 2017-

07, to each sponsor and beneficial owner of a Covered Plan, or the sponsor of an investment fund in any case where a UBS QPAM acts as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests. 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 UBS QPAM. Disclosures may be delivered electronically.

The proposal requires that each UBS QPAM maintain records necessary to demonstrate that the conditions of this exemption have been met, for six (6) years following the date of any transaction for which such UBS QPAM relies upon the relief in the exemption. The proposal mandates that UBS continue to designate a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. The Compliance Officer must conduct an annual reviews (the Exemption Review) during the Exemption Period²³ to determine the adequacy

²³ All Exemption Reviews for periods prior to the effective date of this exemption must be conducted and completed pursuant to the requirements of PTE 2017-07 or PTE 2019-01, as applicable.

and effectiveness of the implementation of the Policies and Training. The Compliance Officer must be a professional with extensive relevant experience and must have a reporting line within UBS's Compliance and Operational Risk Control function to the Head of Compliance and Operational Risk Control, Asset Management. At a minimum, the Exemption Review must include review of the following items: (i) any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer during the previous year; (ii) the most recent Audit Report issued pursuant to this exemption or PTE 2019-01; (iii) any material change in the relevant business activities of the UBS QPAMs; and (iv) any change to ERISA, the Code, or regulations that may be applicable to the activities of the UBS QPAMs.

The Compliance Officer must prepare a written report (an Exemption Report) that summarizes his or her material activities during the Exemption Period and sets forth any instance of noncompliance discovered during the Exemption Period, and any related corrective action. In each Exemption Report, the Compliance Officer must certify in

writing that to his or her knowledge the report is accurate and the UBS QPAMs have complied with the Policies and Training, and/or corrected (or are correcting) any instances of noncompliance.

Each Exemption Report must be provided to the appropriate corporate officers of UBS and each UBS QPAM to which such report relates and to the head of compliance and the General Counsel (or their functional equivalent) of the relevant UBS QPAM. The Exemption Report must be made unconditionally available to the independent auditor. The Exemption Review, including the Compliance Officer's written Exemption Report, must be completed within three (3) months following the end of the period to which it relates.

UBS must also immediately disclose to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) with the U.S. Department of Justice, entered into by UBS or any of its affiliates (as defined in Section VI(d) of PTE 84-14) in connection with conduct described in Section I(g) of PTE 84-14 or section 411 of ERISA. UBS must also immediately provide the Department with any information requested by the

Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement.

The proposal mandates that, among other things, each UBS QPAM clearly and prominently inform Covered Plan clients of their right to obtain a copy of the Policies or a description (Summary Policies) which accurately summarizes key components of the UBS QPAM's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within six (6) months following the end of the calendar year during which the Policies were changed.²⁴ 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.

The proposal requires that UBS QPAMs must comply with each condition of PTE 84-14, as amended, with the sole exception of the conduct that is attributable to the

²⁴ In the event Applicant meets this disclosure requirement through Summary Policies, changes to the Policies shall not result in the requirement for a new disclosure unless the Summary Policies are no longer accurate because of the changes.

2013 Conviction, the 2018 Conviction and the 2019 French Conviction. If, during the Exemption Period, an entity within the UBS corporate structure is convicted of a crime described in Section I(g) of PTE 84-14, (other than the 2013 Conviction, 2018 Conviction, and the 2019 French Conviction) relief in this exemption, if granted, would terminate immediately.

Summary

21. Given the conditions described above, the Department has tentatively determined that providing five-year relief to 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 EXEMPTION

The Department is considering granting a five-year exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Internal Revenue Code (or Code), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).²⁵ Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of proposed exemption is issued solely by the Department.

SECTION I. COVERED TRANSACTIONS

Certain entities with specified relationships to UBS (hereinafter, the UBS QPAMs, as defined in Section II(e)) will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84-14

²⁵ For purposes of this proposed three-year temporary exemption, references to section 406 of Title I of the Act, unless otherwise specified, should be read to refer as well to the corresponding provisions of section 4975 of the Code.

(PTE 84-14 or the QPAM Exemption) during the Exemption Period,²⁶ notwithstanding the 2013 Conviction of UBS Securities Japan Co., Ltd., the 2018 Conviction of UBS (collectively the Convictions, as defined in Section II(a)), and the 2019 French Conviction of UBS and UBS France (as defined in Section II(b)), provided that the following conditions are satisfied:

(a) The UBS QPAMs (including their officers, directors, agents other than UBS, UBS Securities Japan and UBS France, and the employees of such UBS QPAMs, did not know of, did not have reason to know of, or did not participate in: (1) the FX Misconduct; (2) the criminal conduct of UBS Securities Japan and UBS that is the subject of the Convictions; or (3) the criminal conduct of UBS and UBS France that is the subject of the 2019 French Conviction. Further, any other party engaged on behalf of such UBS QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not know of, did not have reason to know of, or

²⁶ 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).

participate in the criminal conduct of UBS and UBS France that is the subject of the 2019 French Conviction. For purposes of this exemption, "participate in" refers not only to active participation in the FX Misconduct, the criminal conduct that is the subject of the Convictions, and the criminal conduct that is the subject of the 2019 French Conviction, but also to knowing approval of the criminal conduct, or knowledge of such conduct without taking active steps to prohibit such conduct, including reporting the conduct to such individual's supervisors, and to the Board of Directors;

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

plan assets did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct of UBS and UBS France that is the subject of the 2019 French Conviction;

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

(d) At all times during the Exemption Period, no UBS QPAM will use its authority or influence to direct an "investment fund" (as defined in Section VI(b) of PTE 84-14) that is subject to ERISA or the Code and managed by such UBS QPAM with respect to one or more Covered Plans (as defined in Section II(c)) to enter into any transaction with UBS, UBS Securities Japan, or UBS France or to engage UBS, UBS Securities Japan, or UBS France to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the

scope of relief provided by an administrative or statutory exemption;

(e) Any failure of the UBS QPAMs to satisfy Section I(g) of PTE 84-14 arose solely from the Convictions and the 2019 French Conviction;

(f) A UBS QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA) in a manner that it knew or should have known would: further the FX Misconduct, the criminal conduct that is the subject of the Convictions, or the criminal conduct that is the subject of the 2019 French Conviction; or cause the UBS QPAM or its affiliates to directly or indirectly profit from the FX Misconduct, the criminal conduct that is the subject of the Convictions, or the criminal conduct that is the subject of the 2019 French Conviction;

(g) Other than with respect to employee benefit plans maintained or sponsored for its own employees or the employees of an affiliate, UBS, UBS Securities Japan, and UBS France will not act as fiduciaries within the meaning of section 3(21)(A)(i) or (iii) of ERISA, or section 4975(e)(3)(A) and (C) of the Code, with respect to ERISA-

covered plan and IRA assets; provided, however, that UBS, UBS Securities Japan, and UBS France will not be treated as violating the conditions of this exemption solely because they acted as an investment advice fiduciary within the meaning of section 3(21)(A)(ii) of ERISA or section 4975(e)(3)(B) of the Code;

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

(i) The asset management decisions of the UBS QPAM are conducted independently of UBS's corporate management and business activities, including the corporate management and business activities of the Investment Bank division, UBS Securities Japan, and UBS France. This condition does not preclude a UBS QPAM from receiving publicly available research and other widely available information from a UBS affiliate;

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

participate in any violation of these duties and provisions with respect to Covered Plans;

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

(iv) Any filings or statements made by the UBS QPAM to regulators, including, but not limited to, the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of or in relation to Covered Plans, are materially accurate and complete, to the best of such QPAM's knowledge at that time;

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

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

(2) Any violation of, or failure to comply with an item in subparagraphs (h)(1)(ii) through (vi), is corrected

as soon as reasonably possible upon discovery, or as soon after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and any such violation or compliance failure not so corrected is reported, upon the discovery of such failure to so correct, in writing. Such report shall be made to the head of compliance and the General Counsel (or their functional equivalent) of the relevant UBS QPAM that engaged in the violation or failure, and the independent auditor responsible for reviewing compliance with the Policies. A UBS QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance as soon as reasonably possible upon discovery, or as soon as reasonably possible after the UBS QPAM reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (2);

(3) Each UBS QPAM will maintain, adjust (to the extent necessary) and implement a program of training during the Exemption Period, to be conducted at least annually, for all relevant UBS QPAM asset/portfolio

management, trading, legal, compliance, and internal audit personnel. The Training must:

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

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

(i) (1) Each UBS QPAM submits to an audit conducted by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and each UBS QPAM's compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. The initial audit must cover the thirteen (13) month period that begins on February 20, 2020 and ends on March 19, 2021, and must be completed by September 19, 2021. The second audit must cover the period March 20, 2021 through March 19, 2022 and must be completed

by September 19, 2022. The third audit must cover the period March 20, 2022 through March 19, 2023 and must be completed by September 19, 2023. The fourth audit must cover the period March 20, 2023 through March 19, 2024 and must be completed by September 19, 2024. The fifth audit must cover the period March 20, 2024 through February 20, 2025 and must be completed by August 20, 2025. The corresponding certified Audit Reports must be submitted to the Department no later than 45 days following the completion of the audit;²⁷ For time periods ending prior to February 20, 2020, and covered by the audit required pursuant to PTE 2017-07²⁸ and PTE 2019-01,²⁹ the audit

²⁷ The initial Audit Report must be submitted to the Department by November 3, 2021. The second Audit Report must be submitted to the Department by November 3, 2022. The third Audit Report must be submitted to the Department by November 3, 2023. The fourth Audit Report must be submitted to the Department by November 3, 2024. The fifth Audit Report must be submitted to the Department by October 4, 2025.

²⁸ 82 FR 61903 (December 29, 2017). PTE 2017-07 is an exemption that permits UBS QPAMs to rely on the exemptive relief provided by PTE 84-14, notwithstanding the 2013 and 2018 Convictions.

²⁹ 84 FR 6163 (February 26, 2019). PTE 2019-01 is an exemption that permits the UBS QPAMs to rely on the exemptive relief provided by PTE 84-14 notwithstanding the 2013 and 2018 Convictions and the 2019 French Conviction.

requirements in Section I(i) of PTE 2017-07 and PTE 2019-01 will remain in effect.³⁰

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

(3) The auditor's engagement must specifically require the auditor to determine whether each UBS QPAM has

³⁰ Accordingly, pursuant to PTE 2019-01, the final audit under PTE 2017-07 will cover the period beginning on January 10, 2018 and ending on February 19, 2019, and the corresponding Audit Report must be completed by August 19, 2019 and the Audit Report submitted to the Department by October 3, 2019. Likewise, the audit required under PTE 2019-01 must cover the period cover the period beginning February 20, 2019 and ending on February 19, 2020. The corresponding Audit Report must be completed by August 19, 2020 and submitted to the Department by October 3, 2020.

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

(5) For the audit, on or before the end of the relevant period described in Section I(i)(1) for completing the audit, the auditor must issue a written report (the Audit Report) to UBS and the UBS QPAM to which the audit applies that describes the procedures performed by the auditor in connection with its examination. The auditor, at its discretion, may issue a single consolidated Audit Report that covers all the UBS QPAMs. The Audit Report must include the auditor's specific determinations regarding:

(i) The adequacy of each UBS QPAM's Policies

and Training; each UBS QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective UBS QPAM's noncompliance with the written Policies and Training described in Section I(h) above. The UBS QPAM must promptly address any noncompliance. The UBS QPAM must promptly address or prepare a written plan of action to address any determination as to the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective UBS QPAM. Any action taken or the plan of action to be taken by the respective UBS QPAM must be included in an addendum to the Audit Report (such addendum must be completed prior to the certification described in Section I(i)(7) below). In the event such a plan of action to address the auditor's recommendation regarding the adequacy of the Policies and Training is not completed by the time of submission of the Audit Report, the following period's Audit Report must state whether the plan was satisfactorily completed. Any determination by the auditor that a UBS QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in

substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that a UBS QPAM has complied with the requirements under this subparagraph must be based on evidence that the particular UBS QPAM has actually implemented, maintained, and followed the Policies and Training required by this exemption. Furthermore, the auditor must not solely rely on the Exemption Report created by the compliance officer (the Compliance Officer), as described in Section I(m) below, as the basis for the auditor's conclusions in lieu of independent determinations and testing performed by the auditor as required by Section I(i) (3) and (4) above; and

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

(6) The auditor must notify the respective UBS QPAM of any instance of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) With respect to the Audit Report, the General Counsel, or one of the three most senior executive officers of the UBS QPAM to which the Audit Report applies, must

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

(8) The Risk Committee of UBS's Board of Directors is provided a copy of the Audit Report; and a senior executive officer of UBS's Compliance and Operational Risk Control function must review the Audit Report for each UBS QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed the Audit Report;

(9) Each UBS QPAM provides its certified Audit Report, by regular mail to: Office of Exemption Determinations (OED), 200 Constitution Avenue NW, Suite

400, Washington, DC 20210; or by private carrier to: 122 C Street NW, Suite 400, Washington, DC 20001-2109. This delivery must take place no later than 45 days following completion of the Audit Report. The Audit Reports will be made part of the public record regarding this five-year exemption. Furthermore, each UBS QPAM must make its Audit Reports unconditionally available, electronically or otherwise, for examination upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan;

(10) Any engagement agreement with an auditor to perform the audit required by this exemption that is entered into subsequent to the effective date of this exemption must be submitted to OED no later than two (2) months after the execution of such agreement;

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

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

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

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

(2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from: a UBS QPAM's violation of ERISA's fiduciary duties, as applicable, and of the prohibited transaction provisions of ERISA and the

Code, as applicable; a breach of contract by the QPAM; or any claim arising out of the failure of such UBS QPAM to qualify for the exemptive relief provided by PTE 84-14 as a result of a violation of Section I(g) of PTE 84-14 other than the Convictions and the 2019 French Conviction. This condition applies only to actual losses caused by the UBS QPAM's violations.

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

(4) Not to restrict the ability of such Covered Plan to terminate or withdraw from its arrangement with the UBS QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any such arrangements involving investments in pooled funds subject to ERISA entered into after the

effective date of PTE 2017-07, the adverse consequences must relate to a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming an ERISA-covered plan's or IRA's investment, and such restrictions must be applicable to all such investors and be effective no longer than reasonably necessary to avoid the adverse consequences;

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

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the UBS QPAM for a violation of such agreement's terms. To the extent consistent with Section 410 of ERISA, however, this

provision does not prohibit disclaimers for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of UBS and its affiliates, or damages arising from acts outside the control of the UBS QPAM;

(7) For Covered Plans that enter into a written asset or investment management agreement with a UBS QPAM on or after the effective date of this exemption, the UBS QPAM will agree to its obligations under this Section I(j) in an updated investment management agreement between the UBS QPAM and such clients or other written contractual agreement. This condition will be deemed met for each Covered Plan that received a notice pursuant to PTE 2016-17, PTE 2017-07, and/or PTE 2019-01 that meets the terms of this condition. Notwithstanding the above, a UBS QPAM will not violate the condition solely because a Plan or IRA refuses to sign an updated investment management agreement.

(k) Each UBS QPAM will provide a notice of the proposed exemption, along with a separate summary describing the facts that led to the Convictions and the 2019 French Conviction (the Summary), which have been submitted to the Department, and a prominently displayed

statement (the Statement) that the Convictions and, in the Department's view, the 2019 French Conviction, each separately result in a failure to meet a condition in PTE 84-14 and PTE 2017-07, to each sponsor and beneficial owner of a Covered Plan that entered into a written asset or investment management agreement with a UBS QPAM, or the sponsor of an investment fund in any case where a UBS QPAM acts as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests. 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 UBS 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 the effective date of the five year exemption. The notice may be delivered electronically (including by an email that has a link to the five-year exemption);

(1) The UBS QPAMs must comply with each condition of PTE 84-14, as amended, with the sole exception of the violations of Section I(g) of PTE 84-14 that are attributable to the Convictions and the 2019 French

Conviction. If, during the Exemption Period, an entity within the UBS corporate structure is convicted of a crime described in Section I(g) of PTE 84-14, (other than the 2013 Conviction, 2018 Conviction, and the 2019 French Conviction), relief in this exemption would terminate immediately;

(m) (1) UBS continues to designate a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. The Compliance Officer must conduct an annual review during the Exemption Period (the Exemption Review), to determine the adequacy and effectiveness of the implementation of the Policies and Training. With respect to the Compliance Officer, the following conditions must be met:

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

(ii) The Compliance Officer must have a reporting line within UBS's Compliance and Operational Risk Control (C&ORC) function to the Head of Compliance and

Operational Risk Control, Asset Management. The C&ORC function is organizationally independent of UBS's business divisions—including Asset Management, the Investment Bank, and Global Wealth Management—and is led by the head of Group Compliance, Regulatory and Governance, or another appropriate member of the Group Executive Board;

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

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

(ii) The Compliance Officer prepares a written report for the Exemption Review (an Exemption Report) that

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

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

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

(v) The first Exemption Review, including the Compliance Officer's written Exemption Report, must cover the thirteen month period beginning on February 20, 2020 and ending on March 19, 2021, and must be completed by June 19, 2021. The second Exemption Review and Exemption Report must cover the period beginning on March 20, 2021 and ending on March 19, 2022, and must be completed by June 19, 2022. The third Exemption Review and Exemption Report must cover the period beginning on March 20, 2022 and ending on March 19, 2023, and must be completed by June 19, 2023. The fourth Exemption Review and Exemption Report must cover the period beginning on March 20, 2023 and ending on March 19, 2024, and must be completed by June 19, 2024. The fifth Exemption Review and Exemption Report must cover the period beginning on March 20, 2024 and ending on February 20,

2025, and must be completed by May 20, 2025. The Exemption review undertaken pursuant to PTE 2019-01 must cover the period February 20, 2019 through February 19, 2020 and be completed by May 19, 2020;³¹

(n) UBS imposes its internal procedures, controls, and protocols on UBS Securities Japan to: (1) Reduce the likelihood of any recurrence of conduct that is the subject of the 2013 Conviction, and (2) comply in all material respects with the Business Improvement Order, dated December 16, 2011, issued by the Japanese Financial Services Authority;

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

(p) Each UBS QPAM will maintain records necessary to demonstrate that the conditions of this exemption have been met, for six (6) years following the date of any

³¹ All Exemption Reviews for periods prior to the effective date of this exemption must be conducted and completed pursuant to the requirements of PTE 2017-07 or PTE 2019-01, as applicable.

transaction for which such UBS QPAM relies upon the relief in the exemption;

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

(r) Each UBS QPAM, in its agreements with, or in other written disclosures provided to Covered Plans, will clearly and prominently inform Covered Plan clients of their right to obtain a copy of the Policies or a description (Summary Policies) which accurately summarizes key components of the UBS QPAM's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within six (6) months following the end of the calendar

year during which the Policies were changed.³² With respect to this requirement, the description may be continuously maintained on a website, provided that such website link to the Policies or Summary Policies is clearly and prominently disclosed to each Covered Plan; and

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

SECTION II. DEFINITIONS

(a) The term "Convictions" means the 2013 Conviction and the 2018 Conviction. The term "2013 Conviction" means the judgment of conviction against UBS Securities Japan Co.

³² 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.

Ltd. in case number 3:12-cr-00268-RNC in the U.S. District Court for the District of Connecticut for one count of wire fraud in violation of Title 18, United States Code, sections 1343 and 2 in connection with submission of YEN London Interbank Offered Rates and other benchmark interest rates. The term "2018 Conviction" means the judgment of conviction against UBS in case number 3:15-cr-00076-RNC in the U.S. District Court for the District of Connecticut for one count of wire fraud in violation of Title 18, United States Code, Sections 1343 and 2 in connection with UBS's submission of Yen London Interbank Offered Rates and other benchmark interest rates between 2001 and 2010. For all purposes under this exemption, "conduct" of any person or entity that is the "subject of the Convictions" encompasses any conduct of UBS and/or their personnel, that is described in (i) Exhibit 3 to the Plea Agreement entered into between UBS and the Department of Justice Criminal Division, on May 20, 2015, in connection with case number 3:15-cr-00076-RNC, and (ii) Exhibits 3 and 4 to the Plea Agreement entered into between UBS Securities Japan and the Department of Justice Criminal Division, on December 19, 2012, in connection with case number 3:12-cr-00268-RNC;

(b) The term "2019 French Conviction" means the adverse judgment on February 20, 2019 against UBS and UBS France in case Number 1105592033 in the French First Instance Court. For all purposes under this exemption, "conduct" of any person or entity that is the "criminal conduct that is the subject of the 2019 French Conviction", includes any conduct of UBS, its affiliates, or UBS France and/or their personnel that is described in any such judgment;

(c) The term "Covered Plan" means a plan subject to Part IV of Title I of ERISA (an "ERISA-covered plan") or a plan subject to section 4975 of the Code (an "IRA"), in each case, with respect to which a UBS QPAM relies on PTE 84-14, or with respect to which a UBS QPAM (or any UBS affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84-14). A Covered Plan does not include an ERISA-covered plan or IRA to the extent the UBS QPAM has expressly disclaimed reliance on QPAM status or PTE 84-14 in entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA.

(d) The term "FX Misconduct" means the conduct engaged

in by UBS personnel described in Exhibit 1 of the Plea Agreement (Factual Basis for Breach) entered into between UBS and the Department of Justice Criminal Division, on May 20, 2015 in connection with Case Number 3:15-cr-00076-RNC filed in the US District Court for the District of Connecticut.

(e) The term "UBS QPAM" means UBS Asset Management (Americas) Inc., UBS Realty Investors LLC, UBS Hedge Fund Solutions LLC, UBS O'Connor LLC, and any future entity within the Asset Management or the Global Wealth Management Americas U.S. divisions of UBS that qualifies as a "qualified professional asset manager" (as defined in Section VI(a) of PTE 84-14)³³ and that relies on the relief provided by PTE 84-14, and with respect to which UBS is an "affiliate" (as defined in Part VI(d) of PTE 84-14). The term "UBS QPAM" excludes UBS securities Japan, the entity implicated in the criminal conduct that is the subject of the 2013 Conviction, UBS, the entity implicated in the

³³ In general terms, a QPAM is an independent fiduciary that is a bank, savings and loan association, insurance company, or investment adviser that meets certain equity or net worth requirements and other licensure requirements and that has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

criminal conduct that is the subject of the 2018 Conviction and implicated in the criminal conduct of UBS and UBS France that is the subject of the 2019 French Conviction and UBS France, the entity implicated in the criminal conduct of UBS and UBS France that is the subject of the 2019 French Conviction.

(f) The term "UBS" means UBS AG.

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

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

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

(j) The term "Exemption Period" means the five year period beginning on February 20, 2020 and ending on February 20, 2025;

(k) The term "Plea Agreement" means the Plea Agreement (including Exhibits 1 and 3 attached thereto) entered into between UBS and the Department of Justice Criminal Division, on May 20, 2015 in connection with Case

Number 3:15-cr-00076-RNC filed in the US District Court for the District of Connecticut.

Effective Date: This exemption will be in effect for a period of five years beginning on February 20, 2020.

Signed at Washington, DC, this 25th day of September, 2019.

Lyssa Hall,

Director,

Office of Exemption Determinations,

Employee Benefits Security Administration,

U.S. Department Of Labor.

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