



DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Exemption Application No. D-12030]

**Proposed Exemption for Certain Prohibited Transaction
Restrictions Involving The Goldman Sachs Group, Inc.
(Goldman Sachs or the Applicant)**

Located in New York, New York

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 Goldman Sachs 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 the Conviction Date. Written comments and requests for a public hearing on the proposed exemption should be submitted to the Department by [INSERT DATE THAT IS 37 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-12030 or via private delivery service or courier to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, U.S. Department of Labor, 122 C St. N.W., Suite 400, Washington, D.C. 20001. Attention: Application No. D-12030. 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: Joseph Brennan of the Department at (202) 693-8456. (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:

The Department is considering granting an exemption under the authority of 408(a) of the Act and section 4975(c)(2) of the Code, in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 46637,

66644, October 27, 2011).¹ If the proposed exemption is granted, the Goldman Sachs Affiliated QPAMs and the Goldman Sachs Related QPAMs, as defined below, will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84-14 (PTE 84-14 or the QPAM Exemption),² notwithstanding the judgment of conviction against Goldman Sachs (Malaysia) Sdn. Bhd. (Goldman Sachs Malaysia), an indirect, wholly-owned subsidiary of Goldman (the Goldman Sachs Malaysia FCPA Conviction),³ for conspiracy to violate the anti-bribery provisions of the Foreign Corrupt Practices Act of 1977 (FCPA). This proposed exemption will be effective for a period of up to five (5) years, beginning on the date a judgment of conviction against Goldman Sachs Malaysia, in Cr. No. 20-438 (MKB), is entered in the United States District Court for the Eastern District of New York (the Conviction Date), provided that the conditions set out below in Section I are satisfied.

¹ For purposes of this proposed exemption reference to specific provisions of Title I of the Act, unless otherwise specified, should be read to refer as well to the corresponding provisions of the Code.

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

³ Section I(g) of PTE 84-14 generally provides that "[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of" certain felonies including violation of the Sherman Antitrust Act, Title 15 United States Code, Section 1.

Summary of Facts and Representations⁴

The Applicant

1. The Goldman Sachs Group, Inc. (Goldman) is a global investment banking, securities and investment management firm with approximately 36,000 employees and offices in over 30 countries. Goldman has a number of affiliated asset managers, including: The Goldman Sachs Trust Company, N.A.; Goldman Sachs Bank USA; Goldman Sachs & Co. LLC; Goldman Sachs Asset Management, L.P.; Goldman Sachs Asset Management International; Goldman Sachs Hedge Fund Strategies LLC; GS Investment Strategies, LLC; GSAM Stable Value, LLC; The Ayco Company, L.P.; Aptitude Investment Management LP; Rocaton Investment Advisors, LLC; United Capital Financial Advisors, LLC; and PFE Advisors, Inc. (together, the Goldman Sachs Affiliated QPAMs). Goldman may be related to, but does not own a controlling interest in, a number of other asset managers. Similarly, Goldman Sachs Malaysia may be related to, but does not own a controlling interest in, a number of other asset managers (the Goldman Sachs Related QPAMs).

2. The Goldman affiliated asset managers' clients include plans subject to Part IV of Title I of ERISA and plans subject to section 4975 of the Code, with respect to which the Goldman Sachs Affiliated QPAMs rely on PTE 84-14,

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

or with respect to which the Goldman Sachs Affiliated QPAMs (or a Goldman Sachs affiliate) have expressly represented that the managers qualify as a QPAM or rely on the QPAM Exemption.⁵ These plans are hereinafter referred to as Covered Plans.

Relevant ERISA Provisions and PTE 84-14

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

4. 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

⁵ 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).

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

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).

5. PTE 84-14 reflects the Department's conclusion that it could provide broad relief from the prohibited transaction provisions of section 406(a) of ERISA and 4975(c)(1) of the Code, in the circumstances set forth in that exemption, only if the commitments and the investments of plan assets, and the negotiations leading thereto, are the sole responsibility of an independent, discretionary manager.

6. Section I(g) of PTE 84-14 prevents an entity that may otherwise meet the definition of a QPAM from utilizing the exemptive relief provided by PTE 84-14, for itself and its client plans, if that entity or an "affiliate"⁸ thereof

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.

⁸ 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

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.

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

Goldman Sachs Malaysia FCPA Conviction

8. On October 21, 2020, Goldman Sachs Malaysia entered a guilty plea for conspiracy to commit offenses against the United States, in violation of the anti-bribery provisions of the Foreign Corrupt Practices Act of 1977 (FCPA). The following day, the District Court for the Eastern District of New York accepted Goldman Sachs Malaysia's guilty plea Goldman Sachs Malaysia FCPA Conviction. For purposes of Section I(g) of PTE 84-14, the date Goldman is sentenced is the Conviction Date. Therefore Goldman Sachs (Malaysia) Sdn. Bhd. (Goldman Sachs Malaysia), and the Goldman Sachs Affiliated and Related QPAMs will no longer be able to rely on the relief provided

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.”

by PTE 84-14 as of the date of Goldman Sachs Malaysia's sentencing.

Statement of Facts that served as the basis for the Plea Agreement.

9. According to the Plea Agreement's Statement of Facts,⁹ between 2009 and 2014, Goldman, together with several of its wholly-owned subsidiaries and affiliated entities,¹⁰ through certain of its agents and employees including Tim Leissner and Roger Ng, knowingly and willfully conspired and agreed with others to corruptly provide payments and things of value to, or for the benefit of, certain foreign officials and their relatives. The purpose of these payments was to induce those foreign officials to influence the decisions of 1Malaysia Development Berhad (1MDB), a strategic investment and development company wholly owned by the Government of Malaysia through its Ministry of Finance; International Petroleum Investment Company (IPIC), an investment fund wholly owned by the Government of Abu Dhabi; and Aabar Investments PJS (Aabar), a subsidiary of IPIC, to obtain

⁹ Plea Agreement entered into between the United States of America, by and through the United States Department of Justice, Criminal Division, Fraud Section and Money Laundering and Asset Recovery Section, and the United States Attorney's Office for the Eastern District of New York and Goldman Sachs (Malaysia) Sdn. Bhd., Cr. No. 20-438 (MKB), filed Oct. 21, 2020.

¹⁰ Goldman Sachs (Malaysia) Sdn. Bhd, Goldman Sachs (Singapore) Pte., Goldman Sachs International, Goldman Sachs Bank USA, Goldman Sachs & Co. L.L.C. and Goldman Sachs (Asia) L.L.C.

and retain business for Goldman, including in positions as an advisor to 1MDB on the acquisitions of Malaysian energy assets, as underwriter of the 1MDB bonds, and as underwriter of certain other 1MDB business, including the contemplated initial public offering of 1MDB's Malaysian energy assets (the Goldman Sachs Malaysia FCPA Misconduct).

10. Tim Leissner (Leissner) was employed by Goldman between 1998 and 2016, and was a Participating Managing Director between November 2006 and February 2016. Additionally, he held various senior positions in Goldman's Investment Banking Division in Asia between 2011 and 2016, including Chairman of Southeast Asia, a region that included Malaysia, between July 2014 and February 2016, and he served on the Board of Directors for Goldman Malaysia. Leissner's job included obtaining and executing business for Goldman.¹¹

Ng Chong Hwa, also known as "Roger Ng" (Ng), was employed by various Goldman subsidiaries between 2005 and 2014, including Goldman Malaysia. Between April 2010 and May 2014, Ng was a Managing Director of Goldman. For part of that time, Ng served as Head of Investment Banking and on the Board of Directors for Goldman Malaysia, and was then employed by another Goldman subsidiary in Malaysia.

11. The bribes resulted in Goldman being engaged on,

¹¹ To the Department's knowledge, on numerous occasions, the timing of Goldman's misconduct is uncertain. Therefore, the dates herein regarding their misconduct are approximate.

among other projects, three bond offerings that were related to 1MDB's energy acquisitions and that raised a total of approximately \$6.5 billion for 1MDB in 2012 and 2013. The bribes were also intended to help Goldman secure a role on an anticipated IPO with respect to 1MDB's energy acquisitions. These three bond offerings and a related acquisition, along with a transaction involving Jho Low (Low) and IPIC, ultimately earned Goldman in excess of \$600 million in fees and revenue across its divisions, and increased Goldman's stature in Southeast Asia. The parties made payments and communications in furtherance of the scheme by wire.

12. Pursuant to Goldman's internal accounting controls, each 1MDB bond transaction required Goldman management's general and specific authorization. Moreover, because Goldman initially purchased the full value of each bond from 1MDB using Goldman's assets, the transactions had to be authorized and properly recorded in accordance with Goldman's procedures. Goldman's internal accounting controls included the Firmwide Capital Committee (FWCC), which Goldman's Chief Executive Officer authorized to provide global oversight and approval of bond transactions, including those transactions in which Goldman used its own assets to purchase financial instruments, such as the 1MDB bonds. Goldman's internal accounting controls also included approval of the bonds by Goldman's Business

Intelligence Group and Compliance Group, both of which were represented on the FWCC.¹²

13. As detailed in the Plea Agreement's Statement of Facts, Low, an individual known to have relationships with high-ranking officials in Malaysia and Abu Dhabi, and whom Goldman had rejected as a client multiple times because of his unexplained source of wealth, conspired with Leissner and Ng to facilitate the bribery scheme. Despite the rejections, Leissner, Ng and others at Goldman continued their relationship with Low and used him to obtain and retain business for Goldman from 1MDB and others. Between 2012 and 2013, Leissner, Ng, Employee 1 and other Goldman employees worked with Low to help 1MDB raise more than \$6.5 billion through three separate bond offering transactions, referred to internally at Goldman as "Project Magnolia," "Project Maximus" and "Project Catalyze," respectively. Employee 1 served as a Goldman participating managing director between October 2007 and November 2018 and, during the relevant time period, held various leadership positions in Goldman's Asia operations.

14. Leissner, Ng and Employee 1 used Low's

¹² According to the U.S. Securities and Exchange Commission's Order Instituting Cease-and-Desist Proceedings In the Matter of the Goldman Sachs Group Inc. (Administrative Proceeding File No. 3-20132), Goldman had a general anti-corruption policy, including both a written Statement of Principles Regarding Anti-Bribery and related policies and procedures (collectively, the Anti-Bribery Policy) applicable to all employees that expressly prohibited improper payments to government officials intended to obtain or retain business for the company. Goldman's Anti-Bribery Policy was overseen and enforced by its compliance function (the Compliance Group) and its Business Intelligence Group.

connections within the Governments of Malaysia and Abu Dhabi to obtain and retain this and other business for Goldman and, in turn, concealed Low's involvement in the deals from certain employees and agents of Goldman. In total, Goldman conspired to provide approximately \$1.6077 billion to, or for the benefit of, foreign officials and their relatives. Approximately \$18.1 million was paid from accounts controlled by Leissner.

15. Certain of Goldman's employees and agents, including Leissner, Ng and Employee 1, circumvented Goldman's internal accounting and other controls, and other Goldman employees and agents responsible for implementing Goldman's internal accounting controls failed to do so in connection with the 1MDB bond deals. Specifically, although employees serving in Goldman's compliance control functions (i.e., the parts of Goldman Sachs responsible for overseeing and enforcing Goldman Sachs' compliance with rules designed to ensure that no improper transactions have or will occur) knew that any transaction involving Low posed a significant risk, and although they were on notice that he was involved in the transactions, they did not take reasonable steps to prevent his involvement. Additionally, there were significant red flags raised during the due diligence process and afterward, including, but not limited to, Low's involvement in the deals, that were either ignored or only nominally addressed so that the

transactions would be approved and Goldman could continue to do business with 1MDB.

16. In February 2012, 1MDB engaged Goldman as its financial advisor for its anticipated purchase of a Malaysian energy company (Malaysian Energy Company A) through a bond transaction. Low helped secure Goldman's role in assisting 1MDB in its pursuit of Malaysian Energy Company A. In early 2012, Leissner, Ng, Low and 1MDB officials met in Malaysia to discuss obtaining a guarantee from IPIC to Goldman, which would purchase all of the bonds initially and then sell the bonds to other investors. It is the Department's understanding that the guarantee was designed to ensure that Goldman was protected in the event the bonds dropped in price between the time the bonds were issued and the time the bonds were sold to investors.

17. In February 2012, Leissner and Ng traveled to London to meet with Low and others to discuss the proposed bond transaction. Leissner and Ng expended Goldman resources on their travel to London. At that meeting, Low explained that government officials from Abu Dhabi and Malaysia would have to be bribed to obtain the guarantee from IPIC and get the necessary approvals from Malaysia and 1MDB. Low advised that a high-ranking official of IPIC and a Malaysian official would have to be paid the largest bribes to approve the transaction, and that other lower-level officials would need to be bribed as well.

Subsequently, Leissner and Ng each separately informed Employee 1 about the discussion on bribing foreign officials.

18. Meanwhile, although employees within Goldman's control functions suspected that Low may be involved in the deal, the only step taken by the control functions to investigate that suspicion was to ask members of the deal team whether Low was involved and to accept their denials without reasonable confirmation. For example, during a telephone call in March 2012, a high-ranking employee in the Business Intelligence Group (BIG), who was a managing director, voiced suspicions that Low was involved in Project Magnolia. During this call, Leissner denied that Low was involved. Similarly, on April 3, 2012, the day before a FWCC meeting to discuss Project Magnolia, a high-ranking executive in BIG, who was also an advisor to the FWCC, emailed other members of BIG that "Leissner said Jho Low not involved at all in deal as far as he [is] aware but that Low was present when Leissner met an IPIC in Abu Dhabi."

19. On April 4, 2012, Goldman executives in New York participated in an FWCC meeting by phone. During this meeting, Leissner was asked whether Low was involved in Project Magnolia and Leissner said that, other than arranging a meeting between Leissner and IPIC Official 1, Low was not involved. Goldman's compliance control

functions accepted the statements of the deal team members about Low's involvement at face value, rather than taking additional steps that Goldman's compliance control functions took in other deals, such as reviewing the electronic communications of members of the deal team to look for evidence of Low's involvement. Had Goldman conducted a review of Leissner's electronic communications at this time, it would have discovered multiple messages linking Low to, among others, the bond deal, 1MDB officials, Malaysian officials and Abu Dhabi officials, as well as the use of personal email addresses by Leissner and Ng to discuss Goldman business.

20. On May 16, 2012, Goldman's committees approved Project Magnolia and on May 21, 2012, the \$1.75 billion bond issuance closed. Goldman purchased the entire bond issuance from 1MDB. On May 22, 2012, Goldman caused approximately \$907,500,000 in proceeds from Project Magnolia to be wired to a 1MDB subsidiary, through a correspondent bank account in New York, New York. Goldman booked approximately \$192,500,000 in fees for this bond transaction and an additional approximately \$16,800,000 in fees for advising on the acquisition of Malaysian Energy Company A. Low and others subsequently caused multiple transfers of funds from the proceeds of Project Magnolia to various shell companies.

21. Within weeks of closing Project Magnolia, in May

2012, 1MDB sought assistance from Goldman to purchase a second Malaysian energy company (Malaysian Energy Company B) and to issue a bond to raise funds for the acquisition. In August 2012, 1MDB agreed to purchase Malaysian Energy Company B for approximately \$814 million and planned to finance the purchase with another \$1.75 billion bond guaranteed indirectly by IPIC.

22. Once again, Goldman's compliance control functions simply accepted at face value the representations of the deal team members and failed to further investigate Low's suspected involvement in this bond deal. For example, on June 20, 2012, a member of Goldman's control functions asked members of the deal team, "Is Jho Low involve[d] in this transaction? Please also keep us posted if there are any other politically exposed person involve[d] in this transaction in a non-official capacity." A deal team member responded "no."

23. Additionally, on October 10, 2012, in response to committee questions, Leissner told a firmwide committee that neither Low nor any intermediary was involved in Project Maximus. Despite their continued concern, as evidenced by their repeated questions, Goldman's compliance control functions did not engage in electronic surveillance of Leissner's correspondence or activities to determine whether Low was involved in the deal.

24. Goldman's continued compliance control failures

were further compounded when Goldman ignored additional red flags raised by Project Maximus, including that 1MDB was seeking to raise additional funds within a few months of raising \$1.75 billion through Project Magnolia without having utilized the full amount from that deal, and was also seeking to raise far more than was needed to acquire Malaysian Energy Company B. Goldman's compliance control functions also failed to verify how Project Magnolia's proceeds were used.

25. Project Maximus closed on October 19, 2012, and Goldman purchased the entire bond issuance from 1MDB. On October 19, 2012, Goldman caused approximately \$1.64 billion to be transferred by wire through correspondent accounts in the United States to another 1MDB subsidiary. Goldman booked approximately \$110,000,000 in fees in connection with Project Maximus. Further, Low and others caused multiple transfers of funds from the proceeds of Project Maximus to a number of different shell companies.

26. In November 2012, almost immediately after Project Maximus closed, Leissner and Low began working on another bond issuance known as Project Catalyze that was purportedly intended to fund 1MDB's portion of a joint venture with Aabar. Ultimately, Goldman underwrote this third bond issuance that raised an additional \$3 billion for 1MDB with Goldman acting as arranger and underwriter.

27. Goldman's compliance control functions had

continuing suspicions that Low was working on the Project Catalyze bond deal. Once again, however, the compliance control functions relied solely on the deal team members' denials of Low's involvement without any further scrutiny. On April 24, 2013, a senior Goldman executive who was a member of Goldman's approval committee located in New York, New York, emailed Leissner about "1MDB," asking: "Is there a story circulating about an intermediary on the Magnolia trades??" Leissner responded, "Not that I am aware of . . . There definitely was no intermediary on any of the trades. The blogs in Malaysia always try to link a young Chinese business man [sic], Jho Low, to 1MDB. That is not the case other than he was an advisor alongside other prominent figures to the King of Malaysia at the time of the creation of 1MDB." There was no follow-up by Goldman's compliance control functions about Low.

28. Goldman also failed to address other red flags that were raised by the proposed \$3 billion transaction, including, 1MDB raising large sums of money with no identified use of proceeds within months of Project Magnolia and Project Maximus, and Goldman's failure to verify use of past bond proceeds.

29. Goldman's committees nevertheless approved Project Catalyze on March 13, 2013, and the proceeds from Project Catalyze were issued on March 19, 2013. Goldman purchased the entire bond issuance from 1MDB and booked

approximately \$279,000,000 in fees on Project Catalyze.

30. Low and Leissner continued to pay bribes to government officials from the bond proceeds. On March 19, 2013, Goldman transferred via wire from and through the United States approximately \$2.7 billion from Project Catalyze to an account for another 1MDB subsidiary (1MDB Subsidiary 3) at Foreign Financial Institution A. Subsequently, Low caused approximately \$1,440,188,045 to be transferred through a series of pass-through accounts to accounts beneficially owned or controlled by Low and Individual 1. Low then directed multiple transfers to various government officials.

31. After the bond deals were completed, in and between March 2013 and February 2016, additional red flags were raised in the press and on internal phone calls among Goldman's employees and executives about Low's involvement in the deals and the possible payment of bribes in connection with the deals. Goldman failed to investigate these red flags or to perform an internal review of its role in the bond deals despite the clear implication that the deals had involved criminal wrongdoing. Further, high ranking employees of Goldman failed to escalate concerns about bribery and other criminal conduct related to the bond deals pursuant to Goldman's escalation policy, which required any Goldman employee who became aware of any conduct that could raise, among other things, "a legal,

compliance, reputational, ethical, accounting, [or] internal accounting control" issue, to report such conduct immediately to a supervisor and to Goldman's compliance control functions.

32. In May 2013, a Goldman participating managing director (Employee 3) who had been involved in the 1MDB deals, discussed the deals in a series of phone calls with Goldman senior executives that were recorded on Goldman phone lines. For example, on May 8, 2013, Employee 3 called a senior Goldman executive about, among other things, Project Catalyze. Employee 3 stated, "the main reason for the delay for [IPIC] not having funded their three billion into the JV with 1MDB is [Abu Dhabi Official 1] is trying to get something on the side in his pocket." He continued later, "I think it's quite disturbing to have come across this piece of information" The senior Goldman executive replied, "What's disturbing about that? It's nothing new, is it?" In response, Employee 3 agreed that the situation was nothing new. Employee 3 had at least one substantially similar phone conversation with at least one other senior Goldman executive.

33. Subsequently, in May 2015 and again in October 2015, amid negative media reporting linking Low with the 1MDB bond deals and Malaysian Official 1, Goldman executives and employees discussed Low's involvement in the 1MDB deals. For example, on a recorded call on October 13,

2015, Employee 3 told the senior Goldman executive that a senior IPIC officer had informed his subordinate that "there are a number of key people who are involved in, let's call it the situation. [Abu Dhabi Official 1] is one. Jho Low for sure. He thinks Jho Low is the leader of the pack. And he has a very strong view that [Leissner] is involved." The compliance control functions never took steps to address these red flags.

34. There were also subsequent emails and recorded phone calls between Employee 3 and senior Goldman executives in the compliance control functions about the disparity between how due diligence and risk issues were handled on various deals. In particular, they discussed the unusual latitude granted to certain employees, such as Leissner and Employee 1.

35. For example, in January 2016, on a recorded call between Employee 2, who had been involved in BIG's review of each of the relevant transactions, and Employee 3, they discussed, among other things, Leissner's conduct, including Leissner's false statements that Low was not involved in the 1MDB deals. Employee 2 then noted that there were several similarly "problematic" people from a compliance perspective at Goldman, and Employee 3 agreed, immediately mentioning Employee 1 as an example of a "problematic" person. Employee 3 also noted the "double standard" between the minor repercussions meted out to

favored employees like Leissner and Employee 1 when they got caught trying to circumvent the compliance control functions, and the more serious repercussions to other, less favored employees who engaged in similar behavior. Employee 2 agreed, stating, "Yes, double standard, and it looks stupid." In the course of the call, Employee 2 also noted that Leissner's email communications had been searched as part of an internal investigation into a separate incident involving the use of an intermediary that occurred subsequent to the 1MDB deals, which Employee 2 stated "seems to me should have been done ages ago." Employee 3 similarly discussed on a recorded call in February 2016 with a high-ranking employee in compliance, who was a managing director, how repercussions for compliance control function violations varied radically between deals.

Exemption Request

36. On October 15, 2020, the Applicant filed an exemption request for Goldman Sachs Affiliated QPAMs and Goldman Sachs Related QPAMs to continue to rely on PTE 84-14, notwithstanding the Goldman Sachs Malaysia FCPA Conviction they expected would be entered against Goldman Sachs Malaysia. As noted above, Section I(g) of PTE 84-14 prevents an entity that may otherwise meet the definition of a QPAM from utilizing the exemptive relief provided by

PTE 84-14, if that entity or an "affiliate" 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 convicted as a result of criminal activity described in that section. Since the Goldman Sachs Affiliated QPAMs are affiliated with Goldman Sachs Malaysia as defined in PTE 84-14, the Goldman Sachs Affiliated QPAMs will no longer be able to rely on the relief provided by PTE 84-14 following the Conviction Date. Further, since Goldman Sachs Malaysia may own five or more percent of an asset manager that is not otherwise affiliated with Goldman Sachs Malaysia (i.e., a Goldman Sachs Related QPAM), the Goldman Sachs Related QPAMs will no longer be able to rely on the relief provided by PTE 84-14 following the Conviction Date.¹³

The Applicant represents that the exemption will enable the Covered Plans to continue their current investment strategy with their current investment manager or trustee. According to the Applicant, if the Department denies the requested exemption, Covered Plans could decide to find other managers, at significant costs to them. The Applicant states that many of the assets of the Covered

¹³ The Department notes that this proposed exemption requires each Goldman Sachs Affiliated QPAM to immediately develop, maintain, implement, and follow written policies and procedures (the Policies). The Policies must require, and must be reasonably designed to ensure, that, among other things: The asset management decisions of the Goldman Sachs Affiliated QPAM are conducted independently of Goldman's corporate management and business activities, and the corporate management and business activities of Goldman Sachs Malaysia.

Plan accounts could be difficult to transition, and the interruption of certain investment strategies, such as stable value, could create significant disruption and liquidation costs for Covered Plans with assets invested in those strategies.

37. The Applicant represents that disqualification from PTE 84-14 would deprive Covered Plans of the investment management services (some of which are highly specialized) that these plans expected to receive when they appointed the Goldman Sachs Affiliated or Related Asset Manager, and could result in the termination of relationships that the fiduciaries of the plans have determined to be in the best interests of the plans.

38. The Applicant represents that, with respect to many Covered Plan transactions, virtually every counterparty to a Covered Plan may be a service provider to that Covered Plan. Transactions between the Covered Plan and the party-in-interest service provider would be prohibited under one or more provisions of Section 406 of ERISA, absent an exemption. The Applicant states that, because counterparties are comfortable with the QPAM Exemption, it is generally the most commonly used prohibited transaction exemption. The Applicant represents further that, with respect to a potential transaction between a Covered Plan and a counterparty, the counterparty may provide less advantageous pricing with respect to the

transaction, or may not bid at all, if the Covered Plan's investment manager is not a QPAM, and various strategies in which Covered Plans are managed may depend significantly on the QPAM Exemption.

39. The Applicant represents that it would be disruptive and expensive to cause plan fiduciaries to reconsider their arrangements with their chosen investment manager because of uncertainties relating to the QPAM Exemption. This uncertainty, according to the Applicant, could disrupt certain investment strategies and could result in significant redemptions from pooled funds, which would frustrate efforts to effectively manage the pooled funds' assets, harm remaining plan investors, and increase the expense ratios of the investment funds.

Applicant's Request for an Exemption with a Ten-Year Duration.

40. In its exemption request, the Applicant seeks a ten-year exemption term. The Department has determined that, given the magnitude, gravity, duration and pervasiveness of the Goldman Sachs Malaysia FCPA Misconduct, along with numerous Goldman compliance control failures associated with the Goldman Sachs Malaysia FCPA Misconduct, limiting relief to five years would be in the interest of, and provide more adequate protection for, the Covered Plans. If the Applicant seeks additional exemptive

relief, it can submit a new exemption request before the end of this exemption's five year term, if granted. At that time, the Department will review the application, the audit reports required by this exemption, and other information it deems necessary to determine whether additional relief is warranted.

Other Changes Sought by the Applicant.

41. The Department's most recent QPAM Section I(g) individual exemptions contain conditions that are substantially similar to the conditions set forth in this proposed exemption.¹⁴ These conditions were carefully designed, after consideration of comments from the public, including the applicants to those exemptions, to protect Covered Plans. As part of its exemption request, the Applicant requested numerous changes to those conditions. Except as described below, the Department declines to make the Applicant's requested changes. The Applicant did not demonstrate that the requested revisions would be in the interest of, or sufficiently protective of, Covered Plans. The Department believes that the proposed revisions would generally weaken important Covered Plan protections.¹⁵

¹⁴ See PTE 2017-03, 82 FR 61816 (December 29, 2017); PTE 2017-04, 82 FR 61840 (December 29, 2017); PTE 2017-05, 82 FR 61864 (December 29, 2017); PTE 2017-06, 82 FR 61881 (December 29, 2017); PTE 2017.

¹⁵ For example, "(b)ecause GS Malaysia does not exercise (and would not exercise) any control over the GS Related QPAMs," the Applicant requested that the Goldman Sachs Related QPAMs receive a ten-year exemption, subject only to the conditions that they did not know of or participate in the Goldman Sachs Malaysia FCPA Conduct, and did not

Conditions

42. In developing administrative exemptions under Section 408(a) of ERISA, the Department implements its statutory directive to grant only exemptions that are appropriately protective of, and in the interest of, affected plans and IRAs. The Department is proposing this exemption with a number of protective conditions that would protect Covered Plans (and their participants and beneficiaries) and allow them to continue to utilize the services of the Goldman Sachs Affiliated and Related QPAMs. If this proposed exemption is granted as proposed, it would allow these Covered Plans to avoid the costs and expenses that may arise if such plans and IRAs are forced on short notice to hire a different QPAM because the Goldman asset managers are no longer able to rely on the relief provided by PTE 84-14, due to the Goldman Sachs Malaysia FCPA Conviction.

receive compensation as a result of that conduct. Granting this request would permit the Goldman Sachs Related QPAMs to be subject to fewer conditions than those set forth in the Department's prior exemptions involving Section I(g) criminal convictions for entities related by direct or indirect 5% ownership, including that: any failure of the Goldman Sachs Related QPAMs to satisfy Section I(g) of PTE 84-14 arose solely from the Goldman Sachs Malaysia FCPA Conviction; and the Goldman Sachs Related QPAMs did not exercise authority over the assets of any ERISA-covered plan or IRA in a manner that it knew or should have known would further the criminal conduct that is the subject of the Goldman Sachs Malaysia FCPA Conviction, or cause the relevant Related QPAM or its affiliates to directly or indirectly profit from the criminal conduct that is the subject of the Goldman Sachs Malaysia FCPA Conviction. The Department notes that the conditions above are consistent with the Department's prior QPAM Section I(g) exemptions, the Applicant's representations, and the Department's understanding of the facts that gave rise to the Goldman Sachs Malaysia FCPA Conviction. Accordingly, the proposed exemption includes these additional conditions with respect to Goldman Sachs Related QPAMs.

43. It is a material condition of this exemption that, with the exception of one individual who worked in a non-fiduciary business within a Goldman Sachs Affiliated QPAM, and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, the Goldman Sachs Affiliated QPAMs and Goldman Sachs Related QPAMs: (a) did not know of, did not have reason to know of, and the Goldman Sachs Malaysia FCPA Misconduct; and (b) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the Goldman Sachs Malaysia FCPA Misconduct.¹⁶

44. The protective conditions in this proposed exemption include a requirement that the fiduciary and asset management functions of the Goldman Sachs Affiliated QPAMs must, at all times, remain isolated from the Goldman Sachs Malaysia FCPA Misconduct that underlies the Goldman Sachs Malaysia FCPA Conviction. Further, under the proposed exemption's conditions, Goldman Sachs Affiliated QPAMs may not employ or knowingly engage any of the individuals who participated in the Goldman Sachs Malaysia FCPA Misconduct.

45. This proposed exemption requires that no Goldman Sachs Affiliated QPAM may use its authority or influence to

¹⁶ For the purposes of this proposed exemption, "participate in" refers not only to active participation in the Goldman Sachs Malaysia FCPA Misconduct, but also to knowing approval of, or knowledge of the conduct without taking active steps to prevent the Goldman Sachs Malaysia FCPA Misconduct.

direct an "investment fund" (as defined in Section VI(b) of PTE 84-14) that is subject to ERISA or the Code to enter into any transaction with Goldman Sachs Malaysia, or to engage Goldman Sachs Malaysia to provide any service to 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. Other than with respect to employee benefit plans maintained or sponsored for its own employees or the employees of an affiliate, Goldman Sachs Malaysia will not act as a fiduciary within the meaning of section 3(21)(A)(i) or (iii) of ERISA, or section 4975(e)(3)(A) and (C) of the Code, with respect to ERISA-covered plan and IRA assets.

46. Each Goldman Sachs Affiliated QPAM must develop, implement and maintain written policies and procedures (the Policies) that are reasonably designed to ensure: (a) that the asset management decisions of the Goldman Sachs Affiliated QPAMs are conducted independently of Goldman and Goldman Sachs Malaysia's corporate management and business activities; (b) that the Goldman Sachs Affiliated QPAMs fully comply with ERISA's fiduciary duties, and with ERISA's and the Code's prohibited transaction provisions; (c) that the Goldman Sachs Affiliated QPAMs do not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans; (d) that

any filings or statements made by the Goldman Sachs Affiliated QPAMs to regulators on behalf of, or in relation to, Covered Plans are materially accurate and complete; (e) that the Goldman Sachs Affiliated QPAMs do not make material misrepresentations or omit material information in their communications with such regulators, or in their communications with Covered Plans; and (f) that the Goldman Sachs Affiliated QPAMs comply with the terms of the exemption.

47. This proposed exemption requires each Goldman Sachs Affiliated QPAM to develop, implement and maintain a program of training (the Training), to be conducted at least annually, for all relevant asset/portfolio management, trading, legal, compliance, and internal audit personnel. This required Training must, at a minimum, cover the Policies, ERISA and Code compliance, ethical conduct, the consequences for not complying with the conditions described in this proposal, and the requirement for prompt reporting of wrongdoing.

48. This proposed exemption requires that each Goldman Sachs Affiliated QPAM submit to three audits, conducted by an independent auditor, to evaluate the adequacy of and compliance with, the Policies and Training required by the exemption, as described below. The independent auditor must be prudently selected and have appropriate technical training and proficiency with ERISA

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

49. The independent auditor must issue a written audit report (the Audit Report) to Goldman and the Goldman Sachs Affiliated QPAM to which the audit applies, that describes the procedures performed by the auditor in connection with its examination. Further, the Goldman Sachs Affiliated QPAMs must promptly address any identified noncompliance, and must promptly address or prepare a written plan of action to address any determination as to the adequacy of the Policies and Training and the auditor's recommendations, if any, with respect to strengthening the Policies and Training of the respective Goldman Sachs Affiliated QPAM.

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

instance of noncompliance or inadequacy regarding the Policies and Training identified in the Audit Report.

51. With respect to any arrangement, agreement, or contract between a Goldman Sachs Affiliated QPAM and a Covered Plan, this proposal requires the Goldman Sachs Affiliated QPAMs to agree and warrant: (a) to comply with ERISA and the Code, including the standards of prudence and loyalty set forth in section 404 of ERISA; (b) to refrain from engaging in prohibited transactions that are not otherwise exempt; (c) to indemnify and hold harmless the Covered Plan for any actual losses resulting directly from, among other things, the Goldman Sachs Affiliated QPAM's violation of ERISA's fiduciary duties; (d) with narrow exceptions, not to restrict the ability of such Covered Plan to terminate or withdraw from its arrangement with the Goldman Sachs Affiliated QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM; (e) with narrow exceptions, not to impose any fees, penalties, or charges for such termination or withdrawal; and (f) not to include exculpatory provisions disclaiming or otherwise limiting the liability of the Goldman Sachs Affiliated QPAM for a violation of such agreement's terms.

52. Each Goldman Sachs Affiliated QPAM must provide a notice of its obligations under this exemption to each Covered Plan. Each Goldman Sachs Affiliated QPAM also must

provide to each sponsor and beneficial owner of a Covered Plan a Federal Register copy of the notice of the exemption, a separate summary describing the facts that led to the Goldman Sachs Malaysia FCPA Conviction (the Summary), and a prominently displayed statement (the Statement) that the Goldman Sachs Malaysia FCPA Conviction results in a failure to meet a condition in PTE 84-14.

53. This proposed exemption requires Goldman to designate a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described in this exemption. The Compliance Officer must conduct five reviews, one for each of the five consecutive twelve month periods that comprise the Exemption Period (the Exemption Review), to determine the adequacy and effectiveness of the implementation of the Policies and Training, and issue a written report (the Exemption Report) on the findings.

54. This proposal requires Goldman to impose internal procedures, controls, and protocols on Goldman Sachs Malaysia to reduce the likelihood of any recurrence of conduct that is the subject of the Goldman Sachs Malaysia FCPA Conviction.

Statutory Findings

55. 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.

56. "*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 Goldman Sachs Affiliated QPAM's compliance with the terms of 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 compliance, while reducing the immediate need for review and oversight by the Department.

57. "*In the interest of.*" The Department has tentatively determined that the proposed exemption is in the interests of the participants and beneficiaries of affected Covered Plans. It is the Department's understanding, based on representations from the Applicant, that if the requested exemption is denied, Covered Plans could decide to find other managers, at significant costs to them. According to the Applicant, disqualification from PTE 84-14 would deprive the Covered Plans of the investment management services that these plans expected to receive when they appointed these managers, and could result in the

termination of relationships that the fiduciaries of the Covered Plans have determined to be in the best interests of those plans.¹⁷

58. "Protective of." The Department has tentatively determined that the proposed exemption is protective of the interests of the participants and beneficiaries of affected Covered Plans. As described above, the proposed exemption is subject to a suite of conditions including but not limited to: (a) the development and maintenance of the Policies; (b) the implementation of the Training; (c) a robust series of audits conducted by a qualified independent auditor; (d) the provision of certain agreements and warranties on the part of the Goldman Sachs Affiliated QPAMs; (e) specific notices and disclosures concerning the circumstances necessitating the need for exemptive relief, and the Goldman Sachs Affiliated QPAMs' obligations under this proposed exemption; and (f) the designation of a Compliance Officer with responsibility to ensure compliance with the Policies and Training requirements under this proposed exemption, and the Compliance Officer's completion of an annual Exemption Review and corresponding Exemption Report. Further, no person, including any person referenced in the Department

¹⁷ The Department specifically requests comments on the scope and magnitude of any impacts, including any increased costs, that Covered Plans and IRAs would sustain if the Department were to deny the exemption.

of Justice's Statement of Facts that gave rise to the Plea Agreement, who knew of, or should have known of, or participated in, any misconduct described in the Statement of Facts, by any party, may be involved with various responsibilities required of Goldman by the exemption, unless the person took active documented steps to stop the misconduct.

59. Department's Notes: This proposed five-year exemption provides relief from certain of the restrictions set forth in sections 406 and 407 of ERISA. No relief or waiver of a violation of any other law is provided by the exemption. The relief in this proposed five-year exemption would terminate immediately if, among other things, an entity within the Goldman Sachs Malaysia corporate structure is convicted of any crime covered by Section I(g) of PTE 84-14 (other than the Goldman Sachs Malaysia FCPA Conviction during the effective period of the proposed five-year exemption). While such an entity could apply for a new exemption in that circumstance, the Department is not obligated to grant a requested exemption.

60. When interpreting and implementing this exemption, the Applicant and the Goldman Sachs Affiliated QPAMs should resolve any ambiguities in light of the exemption's protective purposes. To the extent additional clarification is necessary, these persons or entities should contact EBSA's Office of Exemption Determinations,

at 202-693-8540.

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons within seven (7) 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 approved by the Department 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 thirty seven (37) 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).¹⁸ 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

¹⁸ For purposes of this proposed five-year 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.

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

If this proposed exemption is granted, the Goldman Sachs Affiliated QPAMs and the Goldman Sachs Related QPAMs (as defined in Section II (d) and (e)) will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84-14 (PTE 84-14 or the QPAM Exemption)¹⁹ during the Exemption Period, notwithstanding the Goldman Sachs Malaysia FCPA Conviction, as defined in Section II(a), provided that the following conditions are satisfied:

(a) Other than Tim Leissner, who worked for a non-fiduciary business within a Goldman Sachs Affiliated QPAM, and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, the Goldman Sachs Affiliated QPAMs and Goldman Sachs Related QPAMs (including their officers, directors, agents (other than Goldman Sachs Malaysia), and the employees of the Goldman Sachs Affiliated QPAMs and Goldman Sachs Related QPAMs) did not know of, did not have reason to know of, or did not participate in the criminal conduct

¹⁹ 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).

of Goldman Sachs Malaysia that is the subject of the Goldman Sachs Malaysia FCPA Conviction. Further, any other party engaged on behalf of the Goldman Sachs Affiliated QPAMs and Goldman Sachs Related 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 participate in the criminal conduct of Goldman Sachs Malaysia that is the subject of the Goldman Sachs Malaysia FCPA Conviction. For purposes of this proposed exemption, "participate in" refers not only to active participation in the criminal conduct that is the subject of the Goldman Sachs Malaysia FCPA 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) Other than Tim Leissner, who worked for a non-fiduciary business within a Goldman Sachs Affiliated QPAM, and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, the Goldman Sachs Affiliated QPAMs and the Goldman Sachs Related QPAMs (including their officers, directors, agents (other than Goldman Sachs Malaysia), and employees of such Goldman Sachs Affiliated QPAMs) did not receive direct compensation, or knowingly receive indirect

compensation, in connection with the criminal conduct of Goldman Sachs Malaysia that is the subject of the Goldman Sachs Malaysia FCPA Conviction. Further, any other party engaged on behalf of the Goldman Sachs Affiliated QPAMs and the Goldman Sachs Related 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 Goldman Sachs Malaysia that is the subject of the Goldman Sachs Malaysia FCPA Conviction;

(c) The Goldman Sachs Affiliated QPAMs do not currently and will not in the future employ or knowingly engage any of the individuals who participated in the criminal conduct of Goldman Sachs Malaysia that is the subject of the Goldman Sachs Malaysia FCPA Conviction;

(d) At all times during the Exemption Period, no Goldman Sachs Affiliated QPAM will use its authority or influence to direct an "investment fund" (as defined in Section VI(b) of PTE 84-14) that is subject to ERISA or the Code and managed by such Goldman Sachs Affiliated QPAM with respect to one or more Covered Plans (as defined in Section II(b)) to enter into any transaction with Goldman Sachs Malaysia or to engage Goldman Sachs Malaysia 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 a Goldman Sachs Affiliated QPAM or a Goldman Sachs Related QPAM to satisfy Section I(g) of PTE 84-14 arose solely from the Goldman Sachs Malaysia FCPA Conviction;

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

(g) Other than with respect to employee benefit plans maintained or sponsored for its own employees or the employees of an affiliate, Goldman Sachs Malaysia will not act as a fiduciary within the meaning of section 3(21)(A)(i) or (iii) of ERISA, or section 4975(e)(3)(A) and (C) of the Code, with respect to ERISA-covered plan and IRA assets; provided, however, that Goldman Sachs Malaysia will not be treated as violating the conditions of this exemption, if granted, 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) Within four months of the effective date of this five-year exemption, each Goldman Sachs Affiliated QPAM must immediately develop, maintain, 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 Goldman Sachs Affiliated QPAM are conducted independently of Goldman's corporate management and business activities, and the corporate management and business activities of Goldman Sachs Malaysia. This condition does not preclude a Goldman Sachs Affiliated QPAM from receiving publicly available research and other widely available information from Goldman Sachs Malaysia;

(ii) The Goldman Sachs Affiliated QPAM fully complies with ERISA's fiduciary duties, and with ERISA and the Code's prohibited transaction provisions, in each case as applicable with respect to each Covered Plan, and does not knowingly participate in any violation of these duties and provisions with respect to Covered Plans;

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

(iv) Any filings or statements made by the Goldman Sachs Affiliated QPAM to regulators, including, but

not limited to, the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of or in relation to Covered Plans, are materially accurate and complete, to the best of such QPAM's knowledge at that time;

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

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

(2) Any violation of, or failure to comply with an item in subparagraphs (h)(1)(ii) through (vi), is corrected as soon as reasonably possible upon discovery, or as soon after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and any such violation or compliance failure not so corrected is reported, upon the discovery of such failure to so correct, in writing. This report must be made to the head of compliance and the general counsel (or their functional equivalent) of the relevant Goldman Sachs Affiliated QPAM that engaged in the violation or failure, and the independent auditor responsible for reviewing compliance with the Policies. A Goldman Sachs Affiliated QPAM will

not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance as soon as reasonably possible upon discovery, or as soon as reasonably possible after the Goldman Sachs Affiliated 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) Within six months of the effective date of the exemption, each Goldman Sachs Affiliated QPAM must immediately develop, 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 Goldman Sachs Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must:

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

the tasks required by this exemption, if granted;

(i) (1) Each Goldman Sachs Affiliated QPAM submits to three audits conducted by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and each Goldman Sachs Affiliated QPAM's compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. The first audit must cover the twelve month period that ends on the date that is two years following the date of the Goldman Sachs Malaysia FCPA Conviction, and must be completed within sixty days thereafter. The second audit must cover the twelve month period that ends on the date that is four years following the date of the Goldman Sachs Malaysia FCPA Conviction, and must be within completed sixty days thereafter. The third audit must cover the fifth year covered by this exemption, and must be completed within sixty days thereafter. The corresponding certified Audit Reports must be submitted to the Department no later than 45 days following the completion of the audit.

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

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

(5) For each audit, on or before the end of the relevant period described in Section I(i)(1) for completing

the audit, the auditor must issue a written report (the Audit Report) to Goldman and the Goldman Sachs Affiliated QPAM to which the audit applies that describes the procedures performed by the auditor in connection with its examination. The auditor, at its discretion, may issue a single consolidated Audit Report that covers all the Goldman Sachs Affiliated QPAMs. The Audit Report must include the auditor's specific determinations regarding:

(i) The adequacy of each Goldman Sachs Affiliated QPAM's Policies and Training; each Goldman Sachs Affiliated QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective Goldman Sachs Affiliated QPAM's noncompliance with the written Policies and Training described in Section I(h) above. The Goldman Sachs Affiliated QPAM must promptly address any noncompliance. The Goldman Sachs Affiliated QPAM must promptly address or prepare a written plan of action to address any determination as to the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective Goldman Sachs Affiliated QPAM. Any action taken or the plan of action to be taken by the respective Goldman Sachs Affiliated QPAM must be included in an addendum to the Audit Report (such addendum must be completed prior to the certification described in Section

I(i)(7) below). In the event such a plan of action to address the auditor's recommendation regarding the adequacy of the Policies and Training is not completed by the time of submission of the Audit Report, the following period's Audit Report must state whether the plan was satisfactorily completed. Any determination by the auditor that a Goldman Sachs Affiliated QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that a Goldman Sachs Affiliated QPAM has complied with the requirements under this subparagraph must be based on evidence that the particular Goldman Sachs Affiliated QPAM has actually implemented, maintained, and followed the Policies and Training required by this exemption, if granted. Furthermore, the auditor must not solely rely on the Exemption Report created by 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 Goldman Sachs Affiliated QPAM of any instance of noncompliance identified by the auditor within five (5) business days

after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) With respect to each Audit Report, the general counsel or one of the three most senior executive officers of the Goldman Sachs Affiliated QPAM to which the Audit Report applies, must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption, if granted; that, to the best of such officer's knowledge at the time, the Goldman Sachs Affiliated QPAM has addressed, corrected, and remedied any noncompliance and inadequacy or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. This certification must also include the signatory's determination that, to the best of the officer's knowledge at the time, the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption, if granted, and with the applicable provisions of ERISA and the Code.

Notwithstanding the above, no person, including any person referenced in the Department of Justice's Statement of Facts that gave rise to the Plea Agreement, who knew of, or should have known of, or participated in, any misconduct described in the Statement of Facts, by any party, may provide the certification required by this exemption,

unless the person took active documented steps to stop the misconduct;

(8) The Goldman Sachs Board of Directors is provided a copy of the Audit Report; and a senior executive officer of the Audit Committee established by the Goldman Sachs Board of Directors must review the Audit Report for each Goldman Sachs QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed the Audit Report. Notwithstanding the above, no person, including any person referenced in the Department of Justice's Statement of Facts that gave rise to the Plea Agreement, who knew of, or should have known of, or participated in, any misconduct described in the Statement of Facts, by any party, may provide the certification required by this exemption, unless such person took active documented steps to prohibit the misconduct;

(9) Each Goldman Sachs Affiliated QPAM provides its certified Audit Report, by regular mail to: Office of Exemption Determinations (OED), 200 Constitution Avenue NW, Suite 400, Washington, DC 20210. 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 Goldman Sachs Affiliated QPAM must make its Audit Reports unconditionally available, electronically or otherwise, for examination upon request by any duly

authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan;

(10) Any engagement agreement with an auditor to perform the audit required by this exemption must be submitted to OED no later than two 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) Goldman or a Goldman Sachs Affiliated QPAM must notify the Department of a change in the independent auditor no later than two months after the engagement of a substitute or subsequent auditor and must provide an explanation for the substitution or change including a description of any material disputes involving the terminated auditor;

(j) As of the effective date of this five-year exemption, with respect to any arrangement, agreement, or contract between a Goldman Sachs Affiliated QPAM and a Covered Plan, the Goldman Sachs Affiliated 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 Goldman Sachs Affiliated QPAM's violation of ERISA's fiduciary duties, as applicable, and of the prohibited transaction provisions of ERISA and the Code, as applicable; a breach of contract by the QPAM; or any claim arising out of the failure of such Goldman Sachs Affiliated 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 Goldman Sachs Malaysia FCPA Conviction. This condition applies only to actual losses caused by the Goldman Sachs Affiliated QPAM's violations.

(3) Not to require (or otherwise cause) the Covered Plan to waive, limit, or qualify the liability of the Goldman Sachs Affiliated 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 Goldman Sachs Affiliated QPAM with respect to any investment in a separately managed account or pooled fund

subject to ERISA and managed by such QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any such arrangements involving investments in pooled funds subject to ERISA entered into after the effective date of this exemption, the adverse consequences must relate to a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming 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 Goldman Sachs Affiliated 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 Goldman and its affiliates, or damages arising from acts outside the control of the Goldman Sachs Affiliated QPAM;

(7) Within four (4) months of the effective date of this five-year exemption, each Goldman Sachs Affiliated QPAM must provide a notice of its obligations under this Section I(j) to each Covered Plan. For Covered Plans that enter into a written asset or investment management agreement with a Goldman Sachs Affiliated QPAM on or after the effective date of this exemption, if granted, the Goldman Sachs Affiliated QPAM must agree to its obligations under this Section I(j) in an updated investment management agreement between the Goldman Sachs Affiliated QPAM and such clients, or other written contractual agreement. Notwithstanding the above, a Goldman Sachs Affiliated QPAM will not violate the condition solely because a Plan or IRA refuses to sign an updated investment management agreement.

(k) Within 60 days of the effective date of this five-year exemption, each Goldman Sachs Affiliated QPAM will

provide a Federal Register copy of the notice of the exemption, along with a separate summary describing the facts that led to the Goldman Sachs Malaysia FCPA Conviction (the Summary), which has been submitted to the Department, and a prominently displayed statement (the Statement) that the Goldman Sachs Malaysia FCPA Conviction results in a failure to meet a condition in PTE 84-14, to each sponsor and beneficial owner of a Covered Plan that has entered into a written asset or investment management agreement with a Goldman Sachs Affiliated QPAM, or the sponsor of an investment fund in any case where a Goldman Sachs Affiliated QPAM acts as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests. All Covered Plan clients that enter into a written asset or investment management agreement with a Goldman Sachs Affiliated QPAM after that date must receive a copy of the notice of the exemption, the Summary, and the Statement prior to, or contemporaneously with, the Covered Plan's receipt of a written asset or investment management agreement from the Goldman Sachs Affiliated QPAM. The notices may be delivered electronically (including by an email that has a link to the five-year exemption);

(1) The Goldman Sachs Affiliated QPAMs must comply with each condition of PTE 84-14, as amended, with the sole exception of the violation of Section I(g) of PTE 84-14 that is attributable to the Goldman Sachs Malaysia FCPA

Conviction. If, during the Exemption Period, an entity within the Goldman corporate structure is convicted of a crime described in Section I(g) of PTE 84-14 (other than the Goldman Sachs Malaysia FCPA Conviction), relief in this exemption, if granted, would terminate immediately;

(m) (1) Within 60 days of the effective date of this exemption, Goldman must designate a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. Notwithstanding the above, no person, including any person referenced in the Department of Justice's Statement of Facts that gave rise to the Plea Agreement, who knew of, or should have known of, or participated in, any misconduct described in the Statement of Facts, by any party, may be involved with the designation or responsibilities required by this condition, unless the person took active documented steps to stop the misconduct. The Compliance Officer must conduct a review of each twelve month period of the Exemption Period (the Exemption Review), to determine the adequacy and effectiveness of the implementation of the Policies and Training. With respect to the Compliance Officer, the following conditions must be met:

(i) The Compliance Officer must be a professional who has extensive experience with, and knowledge of, the regulation of financial services and

products, including under ERISA and the Code; and

(ii) The Compliance Officer must have a direct reporting line within Goldmans' Audit Committee and a direct reporting line to the highest ranking corporate officer in charge of compliance for the applicable Goldman Sachs Affiliated QPAM;

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

(i) The Exemption Review includes a review of the Goldman Sachs Affiliated QPAMs' compliance with and effectiveness of the Policies and Training and of the following: any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or the Audit Committee, during the previous year; the most recent Audit Report issued pursuant to this exemption, if granted; any material change in the relevant business activities of the Goldman Sachs Affiliated QPAMs; and any change to ERISA, the Code, or regulations related to fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of the Goldman Sachs Affiliated 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 prior year; (B) sets forth any instance of noncompliance discovered during the prior year, and any related

corrective action; (C) details any change to the Policies or Training to guard against any similar instance of noncompliance occurring again; and (D) makes recommendations, as necessary, for additional training, procedures, monitoring, or additional and/or changed processes or systems, and management's actions on such recommendations;

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

(iv) The Exemption Report must be provided to appropriate corporate officers of Goldman and Goldman Sachs Affiliated QPAM to which such report relates, and to the head of compliance and the general counsel (or their functional equivalent) of the relevant Goldman Sachs Affiliated 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 twelve month period beginning on the date of the Goldman Sachs Malaysia FCPA Conviction. The next four Exemption Reviews and Exemption Reports must each cover a twelve month period that begins on the date that follows the end of a prior Exemption Review coverage period. Each Annual Review, including the Compliance Officer's written Annual Report, must be completed within three months following the end of the period to which it relates;

(n) Goldman imposes its internal procedures, controls, and protocols on Goldman Sachs Malaysia to reduce the likelihood of any recurrence of conduct that is the subject of the Goldman Sachs Malaysia FCPA Conviction;

(o) Goldman complies in all material respects with the requirements imposed by a U.S regulatory authority in connection with the Goldman Sachs Malaysia FCPA Conviction;

(p) Each Goldman Sachs Affiliated QPAM will maintain records necessary to demonstrate that the conditions of this exemption have been met for six years following the date of any transaction for which such Goldman Sachs Affiliated QPAM relies upon the relief in this exemption;

(q) During the Exemption Period, Goldman 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 The Goldman Sachs Group, Inc. 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 provide 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) Within 60 days of the effective date of the five-year exemption, each Goldman Sachs Affiliated QPAM, in its agreements with, or in other written disclosures provided to Covered Plans, will clearly and prominently inform Covered Plan clients of their right to obtain a copy of the Policies or a description (Summary Policies) which accurately summarizes key components of the Goldman Sachs Affiliated QPAM's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within six months following the end of the calendar year during which the Policies were changed.²⁰ With respect to this requirement, the description may be continuously maintained on a website, provided that such

²⁰ 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.

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

(s) A Goldman Sachs Affiliated QPAM will not fail to meet the terms of this five-year exemption, if granted, solely because a different Goldman Sachs Affiliated 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 Goldman.

SECTION II. DEFINITIONS

(a) The term "Goldman Sachs Malaysia FCPA Conviction" means the judgment of conviction against Goldman Sachs Malaysia in connection with a U.S. plea by Goldman Sachs Malaysia to one count of conspiracy to commit offenses against the United States, in violation of Title 18, United States Code, Section 371, that is, to violate the anti-bribery provisions of the Foreign Corrupt Practices Act of 1977, as amended, see Title 15, United States Code, Sections 78dd-1 and 78dd-3.

(b) The term "Covered Plan" means a plan subject to Part IV of Title I of ERISA (an "ERISA-covered plan") or a plan subject to section 4975 of the Code (an "IRA"), in each case, with respect to which a Goldman Sachs Affiliated

QPAM relies on PTE 84-14, or with respect to which a Goldman Sachs Affiliated QPAM (or any Goldman Sachs 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 Goldman Sachs Affiliated QPAM has expressly disclaimed reliance on QPAM status or PTE 84-14 in entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA.

(c) The term "Goldman" means The Goldman Sachs Group, Inc.

(d) The term "Goldman Sachs Affiliated QPAMs" means The Goldman Sachs Trust Company, N.A.; Goldman Sachs Bank USA; Goldman Sachs & Co. LLC; Goldman Sachs Asset Management, L.P.; Goldman Sachs Asset Management International; Goldman Sachs Hedge Fund Strategies LLC; GS Investment Strategies, LLC; GSAM Stable Value, LLC; The Ayco Company, L.P.; Aptitude Investment Management LP; Rocaton Investment Advisors, LLC; United Capital Financial Advisers, LLC; and PFE Advisors, Inc., and any future "affiliate" of Goldman (as defined in Part VI(d) of PTE 84-14) that qualifies as a "qualified professional asset manager" (as defined in Section VI(a) of PTE 84-14)²¹ and

²¹ 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

that relies on the relief provided by PTE 84-14. The term "Goldman Sachs Affiliated QPAMs" excludes Goldman Sachs Malaysia.

(e) The term "Goldman Sachs Related QPAMs" means any current or future "qualified professional asset manager" (as defined in Section VI(a) of PTE 84-14) that relies on the relief provided by PTE 84-14, and with respect to which Goldman Sachs Malaysia owns a direct or indirect five (5) percent or more interest, but with respect to which Goldman Sachs Malaysia is not an "affiliate" (as defined in section VI(d) (1) of PTE 84-14). The term "Goldman Sachs Related QPAMs" excludes Goldman Sachs Malaysia.

(f) The term "Goldman Sachs Malaysia" means Goldman Sachs (Malaysia) Sdn. Bhd.

(g) The term "Exemption Period" means the five-year period beginning on the date Goldman Sachs Malaysia is sentenced for one count of conspiracy to commit offenses against the United States, in violation of Title 18, United States Code, Section 371, that is, to violate the anti-bribery provisions of the Foreign Corrupt Practices Act of 1977, as amended, see Title 15, United States Code, Sections 78dd-1 and 78dd-3.

(h) The term "Plea Agreement" means the Plea Agreement entered into between the United States of

agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

America, by and through the United States Department of Justice, Criminal Division, Fraud Section and Money Laundering and Asset Recovery Section, and the United States Attorney's Office for the Eastern District of New York and Goldman Sachs (Malaysia) Sdn. Bhd. Cr. No. 20-438 (MKB), filed October 21, 2020.

(i) The term "Conviction Date" means the date that a judgment of conviction against Goldman Sachs (Malaysia) Sdn. Bhd., in Cr. No. 20-438 (MKB), is entered in the United States District Court for the Eastern District of New York.

Effective Date: This exemption will be in effect for a period of five years beginning on the Conviction Date.

Signed at Washington, DC, this 29th day of December, 2020.

Christopher Motta,
Chief, Division of Individual
Exemptions,
Office of Exemption
Determinations,
Employee Benefits Security
Administration,
U.S. Department of Labor.

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