



LABOR DEPARTMENT

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2024-01; Exemption Application No. D-12096]

Exemption from Certain Prohibited Transaction Restrictions Involving TT

International Asset Management Ltd (TTI or the Applicant) Located in London, United Kingdom

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of exemption.

SUMMARY: This document contains a notice of exemption issued by the Department of Labor (the Department) 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). This exemption allows TTI to continue to rely on the exemptive relief provided by Prohibited Transaction Class Exemption 84-14 (PTE 84-14 or the QPAM Exemption), notwithstanding the judgment of conviction against SMBC Nikko Securities, Inc. (Nikko Tokyo), as described below.

DATES: The exemption will be in effect for a period of five years, beginning on February 13, 2024, and ending on February 12, 2029.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Brennan of the Department at (202) 693-8456. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On December 20, 2023, the Department published a notice of proposed exemption in the *Federal Register*¹ that would permit TTI to continue its reliance on the exemptive relief provided by the QPAM Exemption² for a

¹ 88 FR 88115 (December 20, 2023).

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).

period of five years, notwithstanding the judgment of conviction against TTI's affiliate, Nikko Tokyo for attempting to peg, fix or stabilize the prices of certain Japanese equity securities that Nikko Tokyo was attempting to place in a block offering (the Conviction).³ After considering the Applicant's comment on the proposal, the Department is granting this exemption to protect the interests of participants and beneficiaries of ERISA-covered Plans and IRAs managed by TTI (together, Covered Plans).⁴

This exemption provides only the relief specified in the text of the exemption and does not provide relief from violations of any law other than the prohibited transaction provisions of Title I of ERISA and the Code expressly stated herein.

The Department intends for the terms of this exemption to promote adherence by TTI to basic fiduciary standards under Title I of ERISA and the Code. An important objective in granting this exemption is to ensure that Covered Plans can terminate their relationships with TTI in an orderly and cost-effective fashion if the fiduciary of a Covered Plan determines it is prudent to do so.

Based on the Applicant's adherence to all the conditions of PTE 2023-13 and this exemption, the Department makes the requisite findings under ERISA section 408(a) that the exemption is: (1) administratively feasible for the Department, (2) in the interest of Covered Plans and their participants and beneficiaries, and (3) protective of the rights of the participants and beneficiaries of Covered Plans. Accordingly, affected parties should be aware that the conditions incorporated in this exemption are necessary, individually and taken as a whole, for the Department to grant the relief requested by the Applicant.

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 crimes.

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

Absent these or similar conditions, the Department would not have granted this exemption.

The Applicant requested an individual exemption pursuant to ERISA section 408(a) in accordance with the Department's exemption procedures set forth in 29 CFR part 2570, subpart B.⁵

Background

1. The Sumitomo Mitsui Banking Corporation group (SMBC) is a Japanese financial services firm that provides asset management services through two subsidiaries. The first is TTI, which is managed independently of the broader SMBC group. The second is Sumitomo Mitsui DS Asset Management Company, Limited, an investment manager headquartered in Tokyo. The SMBC group also conducts securities market activities through the SMBC Nikko Securities franchise, which includes Nikko Tokyo, a Japanese broker-dealer.

2. TTI is a global investment firm headquartered in London, UK that manages approximately \$7.1 billion in assets. TTI and its subsidiaries have operations in the United States, Hong Kong, and Japan.⁶ TTI was wholly acquired by Sumitomo Mitsui Financial Group, Inc. (SMFG) on February 28, 2020, and is currently a member of the SMBC Group. Since the acquisition, TTI has remained a stand-alone business with distinct reporting lines, governance structures, and control frameworks.

3. TTI is an SEC-registered investment advisor that specializes in managing portfolios for institutional investors, including ERISA-covered Plans, public retirement plans, and other collective investment vehicles through a variety of investment strategies and industry sectors.

⁵ 76 FR 66637, 66644, (October 27, 2011).

⁶ TTI subsidiaries include TT International Investment Management LLP, TT International (Hong Kong) Ltd, TT Crosby Ltd, and TT International Advisors Inc.

4. When offering investment management services, TTI operates as a QPAM in reliance on PTE 84-14.⁷ TTI advises four segregated ERISA accounts on behalf of the ERISA-covered plans of two major U.S. employers⁸ and operates a single public pension plan account with approximately \$40 million in assets. TTI also manages two funds as ERISA “plan asset” funds: the TT Emerging Markets Opportunities Fund II Limited, which is operational and holds ERISA assets;⁹ and the TT Environmental Solutions Equity Master Fund II Limited, which TTI is in the process of launching.

ERISA and Code Prohibited Transactions and PTE 84-14

5. The rules set forth in ERISA section 406 and Code section 4975(c)(1) proscribe certain “prohibited transactions” between plans and certain parties in interest with respect to those plans.¹⁰ ERISA section 3(14) defines parties in interest with respect to a plan to include, among others, the plan fiduciary and a sponsoring employer of the plan, and certain of their affiliates.¹¹ The prohibited transaction provisions under ERISA section 406(a) and Code section 4975(c)(1) prohibit, in relevant part, (1) 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), (2) the use of plan assets by or for the benefit of a party in interest, or (3) a transfer of plan assets to a party in interest.¹²

6. Under the authority of ERISA section 408(a) and Code section 4975(c)(2), the Department has the authority to grant an exemption from such “prohibited transactions” in accordance with the procedures set forth in its exemption procedure regulation, if the

⁷ TTI is currently the only member of the SMBC group that relies on the QPAM Exemption.

⁸ Together, these two ERISA-covered plans currently hold approximately \$352.7 million in assets.

⁹ As of February 29, 2024, the total value of ERISA plan assets in TT Emerging Markets Opportunities Fund II Limited was \$135,959,197.43.

¹⁰ For purposes of the Summary of Facts and Representations, references to specific provisions of Title I of ERISA, unless otherwise specified, refer also to the corresponding provisions of the Code.

¹¹ Under the Code, such parties, or similar parties, are referred to as “disqualified persons.”

¹² The prohibited transaction provisions also include certain fiduciary prohibited transactions under ERISA Section 406(b). These include transactions involving fiduciary self-dealing, fiduciary conflicts of interest, and kickbacks to fiduciaries.

Department finds that an exemption is: (a) administratively feasible, (b) in the interests of the plan and of its participants and beneficiaries, and (c) protective of the rights of the plan's participants and beneficiaries.¹³

7. PTE 84-14 exempts certain prohibited transactions between a party in interest and an "investment fund" (as defined in Section VI(b) of PTE 84-14) in which a plan has an interest if the investment manager managing the investment fund satisfies the definition of a "qualified professional asset manager" (QPAM) and satisfies additional conditions of the exemption. PTE 84-14 was developed and granted based on the essential premise that broad relief could be afforded for all types of transactions in which a plan engages only if the commitments and the investments of plan assets and the negotiations leading thereto are the sole responsibility of an independent, discretionary manager.¹⁴

8. Section I(g) of PTE 84-14 prevents an entity that may otherwise meet the QPAM definition from utilizing the exemptive relief for itself and its client plans if that entity, an "affiliate" thereof, or any direct or indirect five percent or more owner in the QPAM has been either convicted or released from imprisonment, whichever is later, as a result of criminal activity described in Section I(g) within the 10 years immediately preceding a transaction.¹⁵

Nikko Tokyo Conviction and PTE 84-14 Disqualification

9. On February 13, 2023, Nikko Tokyo was convicted in Tokyo District Court of violating Japan's Financial Instruments and Exchange Act (the FIEA) for attempting to

¹³ The Department's exemption procedure regulation is codified at 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).

¹⁴ See 75 FR 38837, 38839 (July 6, 2010).

¹⁵ 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).

peg, fix, or stabilize¹⁶ the prices of certain Japanese equity securities that Nikko Tokyo was attempting to place in a block offering (the Conviction). Nikko Tokyo was convicted of 10 violations of the FIEA and was ordered to pay a ¥700 million fine (approximately \$5.3 million) and a surcharge of approximately ¥4.5 billion (approximately \$33.7 million).¹⁷

Between December 2019 and November 2021, Nikko Tokyo, through the actions of relevant officers and employees, purchased shares of ten issuers for its own account in an attempt to peg, fix, or stabilize the prices of those securities in anticipation of a block offer. This activity was intended to ensure that the price of the securities being sold through the block offering did not decline significantly, which would have potentially harmed Nikko Tokyo's interests.¹⁸

Nikko Tokyo Affiliation and Loss of QPAM Status

10. Both TTI and Nikko Tokyo are direct subsidiaries of SMFG and thus are affiliates for purposes of Section I(g) of PTE 84-14. When the Tokyo District Court sentenced Nikko Tokyo in connection with the Conviction, Section I(g) of PTE 84-14 was triggered, and TTI became ineligible to rely on the QPAM Exemption to service its plan clients without receiving an individual prohibited transaction exemption from the Department.

PTE 2023-13

11. On April 28, 2023, the Department granted PTE 2023-13,¹⁹ which permits

¹⁶ According to the Applicant, the unofficial English-language translation of Article 159, paragraph 3 of the FIEA, available on the Japanese Financial Services Agency website, provides that no person may “conduct a series of Sales and Purchase of Securities, etc. or make offer, Entrustment, etc. or Accepting an Entrustment, etc. therefore in violation of a Cabinet Order for the purpose of pegging, fixing or stabilizing prices of Listed Financial Instruments, etc. in a Financial Instruments Exchange Market or prices of Over-the-Counter Traded Securities in an Over-the-Counter Securities Market.”

¹⁷ A block offering is a type of limited public offering that is common in Japan whereby a dealer typically applies a spread to the price at which it purchases the shares from the seller and the price at which it sells them in the block offering.

¹⁸ The Tokyo Public Prosecutor alleged that these “stabilization transactions” violated Article 197 Paragraph 1, Item 5, Article 159, Paragraph 3, and Article 207, Paragraph 1, Item 1 of the FIEA and Article 60 of the Penal Code.

¹⁹ See PTE 2023-13, 88 FR 26336 (April 28, 2023).

TTI to continue to rely upon the relief provided in the QPAM exemption for a one-year period from the date of the Conviction. The Department declined TTI's request for a longer five-year exemption term and instead granted a limited one-year term that applies exclusively to TTI, to provide the Department with the opportunity to review TTI's adherence to the conditions set out in the one-year exemption before considering whether to provide TTI with longer-term relief after TTI submitted an exemption request for further relief.

TTI's Compliance with the Conditions of PTE 2023-13

12. PTE 2023-13 contains a set of conditions that are designed to protect Covered Plans that entrust their assets to TTI despite the serious nature of the criminal misconduct underlying the Conviction of Nikko Tokyo. TTI states that it has complied with the conditions of PTE 2023-13 and, therefore, should be permitted to continue to rely upon PTE 84-14 to avoid substantial costs and other disruptions that would occur if TTI could no longer act as a QPAM. TTI represents that it has taken the following concrete steps described in items 13-17 below to comply with the requirements of PTE 2023-13.

13. *Adoption of Comprehensive Policies.* TTI represents that it has developed and implemented specific policies (the ERISA Policies) that ensure that asset management decisions of TTI are conducted independently of Nikko Tokyo. TTI represents that its ERISA Policies promote compliance with ERISA's fiduciary duties and prohibited transaction provisions, including with respect to co-fiduciary liability, and ensure accuracy in communications with regulators and Covered Plan clients. TTI further represents that its ERISA Policies require monitoring to ensure compliance with the specific terms of PTE 2023-13 and the prompt identification and correction of any policy violations.

TTI represents that it maintains policies and procedures that are reasonably designed to ensure that all TTI personnel comply with applicable regulations and act in

the best interests of TTI's clients, including ERISA plan participants. TTI represents that it does not share trading decisions and investment strategies for its clients with personnel outside of TTI's asset management businesses and does not consult with other parts of the SMBC group in connection with the investment decisions it makes on behalf of its clients.

14. *Implementation of a Training Program.* TTI represents that it has implemented a comprehensive, mandatory training program for all relevant TTI asset/portfolio management, trading, legal, compliance, and internal audit personnel (the ERISA Training). TTI submits that initial ERISA Training sessions under PTE 2023-13 have been completed, with mandatory attendance for relevant personnel. TTI represents further that it has made electronic training modules available for new relevant personnel and that follow-ups are made to ensure that all relevant personnel complete the Training.

15. *Disclosure to Client and Amendment of Client Agreements.* TTI represents that it has provided its Covered Plan clients with a copy of PTE 2023-13, a summary of TTI's written ERISA Policies developed in connection therewith, a summary of the conduct leading to the Conviction, and notice that the requirements of the QPAM Exemption were not satisfied as a result of the Conviction. TTI states further that it has amended its agreements with Covered Plan clients to allow for the termination of the relationship with TTI without penalty to the Covered Plan clients, and to incorporate all other conditions of PTE 2023-13. TTI notes that, throughout this process, no Covered Plan client has decided to terminate its relationship with TTI.

16. *Strengthening of Compliance within TTI.* TTI represents that it has designated its Chief Compliance Officer as the initial Compliance Officer under PTE 2023-13 to oversee TTI's ERISA Policies and ERISA Training and ensure that each conforms to the requirements set out in PTE 2023-13. TTI states that its Chief Compliance Officer has a direct reporting line to senior management.

17. *Strengthening of Compliance within the SMBC Group.* TTI represents that TTI and the SMBC group have strengthened their group-wide coordination regarding potentially disqualifying conduct to ensure compliance with the conditions of PTE 2023-13, including identification of deferred prosecution or non-prosecution agreements. Further, to prevent the possibility of reoccurrence, Nikko Tokyo has ceased block offerings while completing remedial measures supervised by Japanese regulators, including a verification process to assess whether the root causes of the problems have been addressed. For more information on TTI's compliance with the requirements of PTE 2023-13, please see Representations 14-20 of the proposed exemption.²⁰

Remedial Efforts by Nikko Tokyo and SMFG

18. According to TTI, Nikko Tokyo has taken significant steps to address the issues that led to the Conviction and has enhanced its policies and procedures related to proprietary trading and enhanced its surveillance over that activity, including hiring additional compliance officers. In addition, Nikko Tokyo refused to renew its employment contracts with each of the four executive officers who were alleged to have been involved in the misconduct underlying the Conviction and has dismissed the remaining two employees on disciplinary grounds.

Separation of TTI and Nikko Tokyo

19. TTI represents that: none of the misconduct underlying the Nikko Tokyo Conviction involved TTI or the SMBC group's asset management businesses; no TTI personnel were involved in the misconduct; and no individual officer or employee of Nikko Tokyo had any role at TTI. According to the Applicant, TTI and Nikko Tokyo have separate businesses, operations, management teams, systems, premises, and legal

²⁰ See 88 FR at 88118 (December 20, 2023).

and compliance personnel. Since its acquisition by SMFG on February 28, 2020, TTI has remained a stand-alone business with distinct reporting lines, governance structures, and control frameworks. Further, TTI is not directly owned by or in the same vertical ownership chain as Nikko Tokyo, and TTI and Nikko Tokyo do not share personnel or office space.

20. According to the Applicant, TTI personnel remain fully and independently responsible for TTI's material functions, including portfolio and risk management activities, investment and trading decisions, compliance, marketing, and the provision of client services. TTI states that it has detailed policies setting forth its process for handling ERISA assets, identifying and addressing conflicts of interest, and best execution. TTI also represents that it has a dedicated Compliance Manual that sets forth, among other things, firm policies related to whistleblowing, handling internal and external complaints, client onboarding, and the process for approving new products or instruments.

TTI further represents that Nikko Tokyo is not a QPAM, does not manage any ERISA assets, and that no ERISA assets were involved in the misconduct underlying the Nikko Tokyo Conviction. Further, TTI has not engaged in trading activity with Nikko Tokyo on behalf of ERISA accounts at any point since TTI became affiliated with Nikko Tokyo. For more information on the separation of TTI and Nikko Tokyo, please see Representations 22-26 of the proposed exemption.²¹

Hardship to Covered Plans

21. TTI represents that Covered Plans would suffer certain hardships if TTI loses its eligibility to rely on the QPAM Exemption. TTI's representations regarding these hardships are set forth below in paragraphs 22 through 29.

²¹ See 88 FR at 88118-88119 (December 20, 2023).

22. According to the Applicant, loss of the QPAM Exemption would severely limit the investment transactions available to the accounts that TTI manages on behalf of Covered Plans, hindering TTI's ability to efficiently manage the strategies for which it contracted with Covered Plan clients. Further, if TTI were ineligible to rely on the QPAM Exemption, it could receive less advantageous pricing for transactions it engages in on behalf of Covered Plans.

23. TTI represents that the QPAM Exemption is the only exemption available to provide relief for certain types of investment transactions it enters into on behalf of Covered Plans. TTI represents that counterparties to the swaps and other transactions in which TTI-managed accounts engage require compliance with, and a representation as to satisfaction of the conditions of, the QPAM Exemption.

24. TTI represents that considering the nature of emerging market investments and swap, options, and other derivative transactions, Covered Plan clients and counterparties are reluctant to utilize more recent alternative exemptions, such as the service provider exemption under ERISA section 408(b)(17). This reluctance is due to uncertainty about the application of the adequate consideration requirements of the statutory exemption and the resulting possibility that the use of the exemption could later be challenged by the Department on those grounds.

25. TTI states that it relies on the QPAM Exemption to conduct a variety of transactions on behalf of Covered Plans, including buying and selling equity securities; preferred stock; American Depositary Receipts, and related options; U.S. and foreign fixed-income instruments, including unregistered offerings; various derivatives, including futures, options on futures, and swaps; and foreign exchange products, including spot currencies, forwards, and swaps.²²

²² TTI also relies upon the QPAM Exemption for the purchase and sale of both foreign and domestic equity securities, registered and sold under Rule 144A or otherwise (*e.g.*, traditional private placement).

26. TTI represents that if it loses its ability to rely upon the QPAM Exemption, it would no longer be able to hedge currency for its private and public plan asset clients, preventing it from managing absolute and relative currency risk for such clients in such clients' best interests. TTI states that it specializes in international and emerging market strategies that depend on TTI's ability to translate and maintain the value of Covered Plan investments from the local currency in which the investment is made into U.S. dollars, the benchmark currency in which performance is measured. To limit plan risk exposure to the underlying securities without simultaneously exposing them to the risk of currency fluctuation, TTI makes substantial use of foreign exchange (FX) hedges by using forward transactions and other FX derivatives. If this exemption is not granted, TTI states that nearly \$900 million in ERISA plans and separately managed accounts for private and public employers would likely be affected, either directly or as a result of TTI's inability to effectively hedge risk. For all but one of the ERISA funds that TTI manages, virtually all assets are either actively or dynamically hedged based on exposures and market conditions.²³

As of November 3, 2022, approximately 16% of the assets under management (AUM) in each of the four segregated ERISA accounts that TTI manages are hedged with respect to Indian, Taiwanese, and Chinese currency, which translates to approximately \$35 million in hedges. Further, the TT Emerging Markets Opportunities Fund II has over the past two years hedged risks associated with British, Indian, Taiwanese, Chinese, Mexican, and Polish currencies. Without these positions, the Applicant states that the TT Emerging Markets Opportunities Fund II would have incurred nearly \$5.5 million in losses due to unhedged FX exposures, negatively impacting overall returns.

27. TTI represents that the loss of the QPAM Exemption would also impact TTI's

²³ The actual percentage of AUM in each fund that is hedged at any given time varies.

agreements with the swap dealers it executes these hedges with pursuant to International Swaps and Derivatives Association Agreements (ISDA Agreements). ISDA agreements require TTI to represent that it meets all conditions of the QPAM Exemption, and a breach of this representation would entitle the counterparty to terminate the transaction. TTI states that, as a practical matter, swap dealers would be nearly certain to exercise their right to terminate because TTI's loss of the QPAM Exemption would increase the swap dealers' exposure to risk. Thus, these agreements would be unwound and TTI would no longer be able to employ the hedging activities on which its strategies depend. If these ISDA Agreements were terminated, TTI states that it would immediately need to unwind approximately \$73,784,388 million in hedges.

28. TTI submits that if this exemption is not granted, Covered Plans could incur transaction costs, costs associated with finding and evaluating other managers, and costs associated with reinvesting assets with those new managers. These costs, according to TTI include the following: (a) consultant fees, legal fees, and other due diligence expenses associated with identifying new managers; (b) transaction costs associated with a change in investment manager, including the sale and purchase of portfolio investments to accommodate the investment policies and strategy of the new manager, and the cost of entering into new custodial arrangements; and (c) lost investment opportunities as a result of the change in investment managers.

The Applicant states that, given the sophistication of TTI's investment strategies, Covered Plan clients would likely engage in a full RFP process that could take several months to complete. TTI states that plans generally incur tens of thousands of dollars in consulting and legal fees in connection with a search for a new manager and that consultants may charge more for searches involving specialized strategies, such as TTI's international, emerging markets, and environmentally conscious portfolios.

29. TTI provides estimated liquidation costs associated with a loss of QPAM

status as dollar cost estimates for its emerging market equity portfolios only, which represents the predominant strategy for ERISA Clients. TTI states that its estimates on equity liquidation costs listed below are based on the gross values of the portfolio, utilizing the basis point figures, without analysis as to the specific portfolio components.

ERISA Client	Emerging Market Portfolio AUM at 12/7/23	Min. 30-day Equity Liquidation Cost (30 bps)	Max. 30-day Liquidation Cost (50 bps)	Min. Intermediate Liquidation Cost (40 bps)
1	\$54,845,803	\$164,537	\$274,229	\$219,383
2	\$172,160,384	\$516,481	\$860,801	\$688,641
3	\$102,787,100	\$308,361	\$513,935	\$411,148
(Plan Asset Fund)	\$441,117,644	\$1,323,352	\$2,205,588	\$1,764,470
Total	\$770,910,931	\$2,312,731	\$3,854,553	\$3,083,642

ERISA Client	Max. Intermediate Liquidation Cost (80 bps)	Commission Fees (10 bps)	Liquidation Cost of Currency Hedge (50 bps)
1	\$438,766	\$54,845	\$27,788
2	\$1,377,283	\$172,160	\$86,914
3	\$822,296	\$102,787	\$51,982
Plan Asset Fund	\$3,528,941	\$441,117	\$202,235
Total	\$6,167,286	\$770,909	\$368,919

The Department notes that this exemption includes protective conditions that allow Covered Plans to continue to utilize the services of TTI if they determine that it is prudent to do so. In this regard, this exemption allows Covered Plans to avoid cost and disruption to investment strategies that may arise if such Covered Plans are forced, on short notice, to hire a different QPAM or asset manager because TTI is no longer able to rely on the relief provided by PTE 84-14 due to the Conviction.

Written Comments

In the proposed exemption, the Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption by February 2, 2024. The Department received one written comment from the Applicant and no requests for a public hearing.

I. Comments from the Applicant

Comment 1: SMFG Review of the Audit Report (Section (III)(i)(8))

The Applicant requests that condition (i)(8) of the proposed exemption be modified to permit the General Manager of the Corporate Planning Department to review and certify the Audit Report. The Applicant asserts that the General Manager of the Corporate Planning Department is senior to the joint general manager of SMFG's Corporate Planning Department.

Department's Response: The Department agrees with the Applicant's request and has modified Section (III)(i)(8) accordingly.

Comment 2: Summary of Facts and Representations

The Applicant notes the following updates and clarifications to the Summary of Facts and Representations.

- Paragraph 4: TTI currently has a single public plan account with approximately \$40 million in assets, and the TT Non-U.S. Equity Master Fund Limited is now closed.

- Paragraph 9: Because the Conviction that occurred on February 13, 2023, only included Nikko Tokyo and not Nikko Tokyo *and four of its officers and employees* as stated in the proposed exemption, the first sentence of Paragraph 9 should state, "On February 13, 2023, Nikko Tokyo was convicted . . ."

- Paragraph 9: the second sentence of the second paragraph should be updated as follows: "Between December 2019 and April 2021, Nikko Tokyo, through the actions of relevant officers and employees, purchased shares of ten issuers for its own account . . ."

- Paragraph 21: the words “its employment contracts” should be “its contracts”.
- Paragraph 23: the TTI Board now consists of six directors, made up of three TTI directors and three representatives of the SMBC group.

Department’s Response: The Department accepts the Applicant’s updates and clarifications to the Summary of Facts and Representations.

The complete application file (D-12096) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1515, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210. For a more complete statement of the facts and representations supporting the Department’s decision to grant this exemption, please refer to the notice of proposed exemption published on December 20, 2023, at 88 FR 88115.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under ERISA section 408(a) does not relieve a fiduciary or other party in interest from certain requirements of other ERISA provisions, including but not limited to any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA section 404, which, among other things, require a fiduciary to discharge their duties respecting the plan solely in the interest of the plan’s participants and beneficiaries and in a prudent fashion in accordance with ERISA section 404(a)(1)(B).

(2) As required by ERISA section 408(a), the Department hereby finds that the exemption is: (a) administratively feasible for the Department; (b) in the interests of Covered Plans and their participants and beneficiaries; and (c) protective of the rights of the Covered Plans’ participants and beneficiaries.

(3) This exemption is supplemental to, and not in derogation of, any other ERISA provisions, 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 for determining whether the transaction is in fact a prohibited transaction.

(4) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describe all material terms of the transactions that are the subject of the exemption and are true at all times.

Accordingly, after considering the entire record developed in connection with the Applicant's exemption application, the Department has determined to grant the following exemption under the authority of ERISA section 408(a) in accordance with the Department's exemption procedures set forth in 29 CFR part 2570, subpart B:²⁴

Exemption

Section I. Definitions

(a) The term "Conviction" means the judgment of conviction against SMBC Nikko Securities, Inc. (Nikko Tokyo) in Tokyo District Court for attempting to peg, fix or stabilize the prices of certain Japanese equity securities that Nikko Tokyo was attempting to place in a block offering that occurred on February 13, 2023.

(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 Code section 4975 (an "IRA"), in each case, with respect to which TTI relies on PTE 84-14, or with respect to which TTI has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84-14 or the QPAM Exemption). A Covered Plan does not include an

²⁴ 76 FR 66637, 66644 (October 27, 2011).

ERISA-covered plan or IRA to the extent that TTI has expressly disclaimed reliance on QPAM status or PTE 84-14 when entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA.

(c) The term “Exemption Period” means the five-year period beginning on February 13, 2024, and ending on February 12, 2029.

(d) The term “TTI” means TT International Asset Management Ltd, and does not include SMBC Nikko Securities, Inc. (Nikko Tokyo), or any other entity affiliated with TT International Asset Management Ltd.

Section II. Covered Transactions

Under this exemption, TTI 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) notwithstanding the Conviction, as defined in Section I(a), during the Exemption Period, as defined in Section I(c), provided that it satisfies the conditions set forth in Section III below.

Section III. Conditions

(a) TTI (including its officers, directors, agents other than Nikko Tokyo, and employees) did not know of, did not have reason to know of, and did not participate in the criminal conduct that is the subject of the Conviction. Further, any other party engaged on behalf of TTI who had responsibility for or exercised authority in connection with the management of plan assets did not know or have reason to know of and did not participate in the criminal conduct that is the subject of the Conviction. For purposes of this exemption, “participate in” refers not only to active participation in the criminal conduct of Nikko Tokyo that is the subject of the Conviction, but also to knowing approval of the criminal conduct or knowledge of such conduct without taking active steps to prohibit it, including reporting the conduct to such individual’s supervisors, and

to TTI's Board of Directors;

(b) TTI (including its officers, directors, employees, and agents, other than Nikko Tokyo) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the Conviction. Further, any other party engaged on behalf of TTI 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 that is the subject of the Conviction;

(c) TTI does not currently and will not in the future employ or knowingly engage any of the individuals who participated in the criminal conduct that is the subject of the Conviction;

(d) At all times during the Exemption Period, TTI will not use its authority or influence to direct an "investment fund" (as defined in Section VI(b) of PTE 84-14) that is subject to ERISA or the Code and managed by TTI in reliance on PTE 84-14, or with respect to which TTI has expressly represented to a Covered Plan that it qualifies as a QPAM or relies on the QPAM Exemption, to enter into any transaction with Nikko Tokyo, or to engage Nikko Tokyo 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 TTI to satisfy Section I(g) of PTE 84-14 arose solely from the Conviction;

(f) TTI did not exercise authority over the assets of any Covered Plan in a manner that it knew or should have known would further the criminal conduct that is the subject of the Conviction or cause TTI or its affiliates to directly or indirectly profit from the criminal conduct that is the subject of the Conviction;

(g) Other than with respect to employee benefit plans maintained or sponsored for its own employees or the employees of an affiliate, Nikko Tokyo will not act as a fiduciary within the meaning of ERISA section 3(21)(A)(i) or (iii), or Code section 4975(e)(3)(A) and (C), with respect to Covered Plan assets.

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

(i) The asset management decisions of TTI are conducted independently of the corporate management and business activities of Nikko Tokyo;

(ii) TTI fully complies with ERISA's fiduciary duties and with ERISA and the Code's prohibited transaction provisions, 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) TTI 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 TTI to regulators, including, but not limited to, the Department of Labor (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 TTI's knowledge at the time, TTI 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;

(vi) TTI complies with the terms of this exemption; and

(vii) Any violation of or failure to comply with an item in subparagraphs

(ii) through (vi) is corrected as soon as reasonably possible upon discovery or as soon after TTI 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, to the head of compliance and the general counsel (or their functional equivalent) of TTI, and the independent auditor responsible for reviewing compliance with the Policies. TTI will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided it corrects any instance of noncompliance as soon as reasonably possible upon discovery, or as soon as reasonably possible after TTI reasonably should have known of the noncompliance (whichever is earlier), and provided it adheres to the reporting requirements set forth in this subparagraph (vii);

(2) TTI must continue to implement an annual training program (the Training) during the Exemption Period for all relevant TTI asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training required under this exemption may be conducted electronically and must: (a) at a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing; and (b) 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;

(i)(1) TTI must submit to biennial 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 TTI's compliance with the Policies and Training conditions described herein. The audit requirement must be incorporated into the Policies. The first audit covered under this exemption must

cover the period of February 13, 2025, through February 12, 2026, and must be completed by August 12, 2026. The second audit covered under this exemption must cover the period of February 13, 2027, through February 12, 2028, and must be completed by August 12, 2028.

(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, TTI will grant the auditor unconditional access to its businesses, including, but not limited to: its computer systems; business records; transactional data; workplace locations; training materials; and personnel. Such access will be provided only to the extent that it is not prevented by state or federal statute, or involves communications subject to attorney client privilege, and may be 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 TTI has developed, implemented, maintained, and followed the Policies in accordance with the conditions of the exemption, and has developed and implemented the Training, as required herein;

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

(5) Before the end of the relevant period for completing the audit, the auditor must issue a written report (the Audit Report) to TTI that describes the procedures performed by the auditor during the course of its examination. The Audit Report must include the auditor's specific determinations regarding:

(i) the adequacy of TTI's Policies and Training; TTI's compliance with

the Policies and Training conditions; the need, if any, to strengthen such Policies and Training; and any instance of TTI's noncompliance with the written Policies and Training described in Section III(h) above. TTI must promptly address any noncompliance and promptly address or prepare a written plan of action to address any determination by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training. Any action taken, or the plan of action to be taken by TTI must be included in an addendum to the Audit Report (and such addendum must be completed before the certification described in Section III(i)(7) below). In the event such a plan of action to address the auditor's recommendation regarding the adequacy of the Policies and Training is not completed by the time the Audit Report is submitted, the following period's Audit Report must state whether the plan was satisfactorily completed. Any determination by the auditor that TTI 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 TTI has complied with the requirements under this subparagraph must be based on evidence that TTI has actually implemented, maintained, and followed the Policies and Training required by the exemption. Furthermore, the auditor must not solely rely on the Report created by the compliance officer (the Compliance Officer), as described in Section III(m) below, as the basis for the auditor's conclusions in lieu of independent determinations and testing performed by the auditor, as required by Section III(i)(3) and (4) above; and

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

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

(7) With respect to the Audit Report, the general counsel, or one of the three

most senior executive officers of TTI must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and the exemption and that to the best of such officer's knowledge at the time, TTI has addressed, corrected or remedied any noncompliance and inadequacy, or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. The certification must also include the signatory's determination that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code. Notwithstanding the above, no person, including any person identified by Japanese authorities, who knew of, or should have known of, or participated in, any misconduct underlying the Conviction, by any party, may provide the certification required by the exemption, unless the person took active documented steps to stop the misconduct underlying the Conviction;

(8) TTI's Board of Directors must be provided a copy of the Audit Report and the general manager or the joint general manager of SMFG's Corporate Planning Department must review the Audit Report for TTI and certify in writing, under penalty of perjury, that such officer has reviewed the Audit Report. With respect to this subsection (8), such certifying general manager or joint general manager must not have known of, had reason to know of, or participated in, any misconduct underlying the Conviction. If the certifying general manager or joint general manager was aware of the misconduct, they must have taken documented steps to stop the misconduct underlying the Conviction;

(9) TTI must provide its certified Audit Report, by electronic mail to e-oed@dol.gov. This delivery must take place no later than thirty (30) days following completion of the Audit Report. The Audit Report will be made part of the public record regarding this exemption. Furthermore, TTI must make its Audit Report unconditionally

available, electronically or otherwise, for examination upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan;

(10) TTI and the auditor must submit to e-OED@dol.gov, any engagement agreement(s) entered into pursuant to the engagement of the auditor under the exemption no later than two (2) months after the execution of any such engagement agreement;

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

(12) TTI must notify the Department of a change in the independent auditor no later than 60 days after the engagement of a substitute or subsequent auditor and must provide an explanation for the substitution or change including a description of any material disputes between the terminated auditor and TTI;

(j) Throughout the Exemption Period, with respect to any arrangement, agreement, or contract between TTI and a Covered Plan, TTI agrees and warrants:

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

(2) To indemnify and hold harmless the Covered Plan with respect to: any actual losses resulting directly from TTI'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 TTI; or any claim arising out of the failure of TTI to qualify for the exemptive relief provided by PTE 84-14 as a result of a violation of Section I(g) of PTE 84-14, other than the Conviction. This condition applies only to

actual losses caused by TTI's violations. Actual losses include losses and related costs arising from unwinding transactions with third parties and from transitioning Plan assets to an alternative asset manager as well as costs associated with any exposure to excise taxes under Code section 4975 because of TTI's inability to rely upon the relief in the QPAM Exemption.

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

(4) Not to restrict the ability of the Covered Plan to terminate or withdraw from its arrangement with TTI with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by TTI, 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 of these 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 a Covered Plan's investment, and the restrictions must be applicable to all such investors and effective no longer than reasonably necessary to avoid the adverse consequences;

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

investors;

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

(7) TTI must provide a notice of its obligations under this Section III(j) to each Covered Plan. For all other prospective Covered Plans, TTI must agree to its obligations under this Section III(j) in an updated investment management agreement between TTI and such clients or other written contractual agreement. Notwithstanding the above, TTI will not violate this condition solely because a Covered Plan refuses to sign an updated investment management agreement;

(k) Within 60 days after the effective date of this exemption, TTI must provide notice of the exemption as published in the *Federal Register* to each sponsor and beneficial owner of a Covered Plan that has entered into a written asset or investment management agreement with TTI, along with a separate summary describing the facts that led to the Conviction (the Summary), which has been submitted to the Department. The Summary must contain a prominently displayed statement (the Statement) that the Conviction resulted in TTI's failure to meet a condition in PTE 84-14. All prospective Covered Plan clients that enter into a written asset or investment management agreement with TTI within 60 days after the effective date of this exemption must receive a copy of the notice of the exemption, the Summary, and the Statement before, or contemporaneously with, the Covered Plan's receipt of a written asset or investment management agreement from TTI. The notices may be delivered electronically (including by an email that has a website link to the exemption). Notwithstanding the

above, TTI will not violate the condition solely because a Covered Plan refuses to sign an updated investment management agreement.

(l) TTI must comply with each condition of PTE 84-14, as amended, with the sole exception of the violation of Section I(g) of PTE 84-14 that is attributable to the Conviction. If an affiliate of TTI (as defined in Section VI(d) of PTE 84-14) is convicted of a crime described in Section I(g) of PTE 84-14 (other than the Conviction) during the Exemption Period, relief in the exemption would terminate immediately;

(m)(1) TTI must continue to designate a senior compliance officer (the Compliance Officer) to be responsible for compliance with the Policies and Training requirements described herein. The Compliance Officer previously designated by TTI under PTE 2023-13 may continue to serve in the role of Compliance Officer provided they meet all the requirements of this Section (m)(1). Notwithstanding the above, no person, including any person referenced in the indictment that gave rise to the Conviction, who knew of, or should have known of, or participated in, any misconduct described in the indictment, 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 the Exemption Period (the Exemption Review), to determine the adequacy and effectiveness of TTI's implementation of the Policies and Training. With respect to the Compliance Officer, TTI must meet the following conditions:

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

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

(2) With respect to the Exemption Review, TTI must meet the following

conditions:

(i) The Exemption Review must include a review of TTI's compliance with and effectiveness of the Policies and Training and of the following: any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the compliance and risk control function (or its equivalent) during the previous year; any material change in the relevant business activities of TTI; 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 TTI;

(ii) The Compliance Officer must prepare a written report for the Exemption Review (an Exemption Report) that (A) summarizes their material activities during the Exemption Period; (B) sets forth any instance of noncompliance discovered during the Exemption Period and any related corrective action; (C) details any change to the Policies or Training to guard against any similar instance of noncompliance occurring again; and (D) makes recommendations, as necessary, for additional training, procedures, monitoring, or additional and/or changed processes or systems, and management's actions in response to such recommendations;

(iii) In the Exemption Report, the Compliance Officer must certify in writing that to the best of their 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, has been identified in the Exemption Report; and (D) TTI complied with the Policies and Training, and/or corrected (or are correcting) any known instances of noncompliance in accordance with Section III(h) above;

(iv) The Exemption Report must be provided to appropriate corporate

officers of TTI; the head of compliance and the general counsel (or their functional equivalent) of TTI; and must be made unconditionally available to the independent auditor described above;

(v) The Exemption Review, including the Compliance Officer's written Report, must be completed within 90 days following the end of the period to which it relates.

(n) TTI must impose internal procedures, controls, and protocols to reduce the likelihood of a recurrence of conduct that is the subject of the Conviction;

(o) Nikko Tokyo must comply in all material respects with any requirements imposed by a U.S. regulatory authority in connection with the Conviction;

(p) TTI must maintain records necessary to demonstrate that it has met the conditions of the exemption for six (6) years following the date of any transaction for which TTI relies upon the relief provided in this exemption;

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

(r) Within 60 days after the effective date of this exemption, TTI, must clearly and prominently inform Covered Plan clients in its agreements with, or in other written disclosures provided to Covered Plans of their right to obtain a copy of the Policies or a description (Summary Policies) which accurately summarizes key components of TTI'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 180

days following the end of the calendar year during which the Policies were changed. If TTI meets this disclosure requirement by providing Summary Policies, changes to the Policies will not result in the requirement for TTI to provide a new disclosure to Covered Plans unless the Summary Policies are no longer accurate as a result of changes to the Policies. With respect to this requirement, TTI may maintain the description continuously on a website, provided that TTI clearly and prominently provides a website link to the Policies or Summary Policies to each Covered Plan;

(s) TTI must provide the Department with the records necessary to demonstrate that each condition of this exemption has been met within 30 days of a request by the Department; and

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

Exemption Date: This exemption is in effect for a period of five years beginning on February 13, 2024, and ending on February 12, 2029.

Signed at Washington, DC, this 19th day of March 2024.

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

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