



## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

[Prohibited Transaction Exemption 2025-03; Exemption Application No. D-12098]

### Exemption from Certain Prohibited Transaction Restrictions Involving UBS AG (UBS), Located in Zurich, Switzerland

**AGENCY:** Employee Benefits Security Administration, Department of Labor.

**ACTION:** Notice of exemption.

**SUMMARY:** This exemption provides conditional prospective relief that allows current and future asset managers under the UBS corporate umbrella (UBS QPAMs) to continue to rely on PTE 84-14 for the five-year period from June 12, 2024, through June 11, 2029, notwithstanding four judgments of conviction involving entities within the UBS and CSAG (Credit Suisse AG) corporate umbrellas. The exemption also provides conditional retroactive relief to UBS QPAMs covering their reliance on PTE 84-14 during the one-year period from June 12, 2023, through June 11, 2024.

**DATES:** The exemption is in effect from June 12, 2023, through June 11, 2029.

**FOR FURTHER INFORMATION CONTACT:** Nicholas Schroth of the Department at (202) 693-8571 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** On June 11, 2024, the Department published a notice of proposed exemption in the *Federal Register*,<sup>1</sup> (the Proposal) that would permit UBS' Affiliated QPAMs and/or the Related QPAMs (referred to herein individually or collectively as the UBS QPAMs)<sup>2</sup> to continue to rely on the exemptive relief provided by

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<sup>1</sup> 88 FR 30785 (May 12, 2023).

<sup>2</sup> For purposes of this exemption, the term "Affiliated QPAM" and "Related QPAM" mean, respectively: (1) UBS Americas, UBS Hedge Fund Solutions LLC, Credit Suisse Asset Management, LLC, and any future separate legal entity within the Asset Management or the Global Wealth Management Americas U.S. divisions of UBS that qualifies as a "qualified professional asset manager" (as defined in Section VI(a) of PTE 84-14) and that relies on the relief provided by PTE 84-14, and with respect to which UBS is an

PTE 84-14, notwithstanding several judgments of conviction involving entities within the UBS and CSAG corporate umbrellas that are described below.<sup>3</sup> The Department is hereby granting this exemption to ensure that participants and beneficiaries of ERISA-covered plans and Individual Retirement Accounts managed by UBS QPAMs (collectively referred to as Covered Plans)<sup>4</sup> do not suffer harm that UBS represented would occur if the UBS QPAMs can no longer rely on PTE 84-14. This exemption provides only the relief expressly specified herein and does not provide relief from violations of any law other than the prohibited transaction provisions of Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and the Internal Revenue Code of 1986, as amended (the Code).

As discussed below, based on the administration record, the Department makes the requisite findings under ERISA section 408(a) that this exemption is: (1) administratively feasible, (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. Effective December 31, 1978, section 102 of the Reorganization Plan No. 4 of 1978, (5 U.S.C. App. 1 (1996)) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor.

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“affiliate” (as defined in Part VI(d) of PTE 84-14) and (2) 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 UBS owns a direct or indirect five (5) percent or more interest. The terms “Affiliated QPAM” and “Related QPAM” exclude any Misconduct Entity, and the term “Related QPAM” excludes any entity with respect to which a Misconduct Entity is an “affiliate” (as defined in section VI(d)(1) of PTE 84-14).

<sup>3</sup> 89 FR 65, 23090 (April 3, 2024)

<sup>4</sup> 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 an Affiliated QPAM relies on PTE 84-14 or with respect to which an Affiliated QPAM (or any UBS affiliate) 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 the 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. Notwithstanding the above, an Affiliated QPAM may disclaim reliance on QPAM status or PTE 84-14 in a written modification of a contract, arrangement, or agreement with an ERISA-covered plan or IRA, where: the modification is made in a bilateral document signed by the client; the client's attention is specifically directed toward the disclaimer; and the client is advised in writing that, with respect to any transaction involving the client's assets, the Affiliated QPAM will not represent that it is a QPAM, and will not rely on the relief described in PTE 84-14.

Accordingly, this final individual exemption is being issued solely by the Department. Affected parties should be aware that the exemption's conditions are, individually and collectively, necessary for the Department to grant the requested relief. Absent these conditions, the Department would not have granted this exemption.

**Benefits of the Exemption:**

The Department's objective in granting this exemption is to protect Covered Plans from the harms and costs UBS represents would be imposed on them if the UBS QPAMs no longer could rely on the relief provided in PTE 84-14. Among other important conditions, this exemption ensures that Covered Plans can terminate their relationships with one of the UBS QPAMs in an orderly and cost-effective fashion when the fiduciary of a Covered Plan determines that it is prudent to do so. This exemption promotes adherence to basic fiduciary standards and responsibilities required by Title I of ERISA and the Code by the UBS QPAMs and reinforces their obligation to act with a high degree of integrity on behalf of their Covered Plan clients as required by PTE 84-14.

**BACKGROUND**

1. UBS is a Swiss-based global financial services company organized under the laws of Switzerland. On June 12, 2023, UBS acquired CSAG, another Swiss-based global financial services firm. This acquisition brought Credit Suisse Asset Management, LLC, a subsidiary of CSAG and a QPAM, under the UBS corporate umbrella. UBS represents that on May 1, 2024, Credit Suisse Asset Management, LLC was merged into UBS Asset Management (Americas) LLC. (UBS Americas), and UBS Americas is the surviving entity after the merger. As of November 5, 2024, UBS represents that UBS Americas is the only current Affiliated QPAM.

PTE 84-14

2. PTE 84-14 reflects the Department’s conclusion that it could provide broad relief from the prohibited transaction provisions of ERISA section 406(a) and Code section 4975(c)(1) only if the commitments and the investments of plan assets and the negotiations leading thereto are the sole responsibility of an independent discretionary manager called a Qualified Plan Asset Manager or “QPAM” that meets the exemption’s conditions.<sup>5</sup>

3. Section I(g) of PTE 84-14 provides that a QPAM becomes ineligible to rely on the relief provided by PTE 84-14 for ten years following: (1) a Criminal Conviction, as such term is defined in Section VI(s) of PTE 84-14, of the QPAM or an “affiliate” thereof,<sup>6</sup> or any direct or indirect owner of a five percent or more interest in the QPAM; or (2) on or after June 17, 2024, the date on which the QPAM, an “affiliate” thereof, or any direct or indirect owner of a five percent or more interest in the QPAM is found or determined in a final judgment or court-approved settlement by a Federal or State criminal or civil court to have engaged in Prohibited Misconduct, as such term is defined in Section VI(t) of amended PTE 84-14.<sup>7</sup>

4. The Department included Section I(g) in PTE 84-14 based on its expectation that QPAMs will maintain a high standard of integrity in order to remain eligible to receive the broad prohibited transaction relief provided in PTE 84-14. This expectation extends not only to the QPAM itself, but also to those who may be in a position to

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<sup>5</sup> “Qualified Plan Asset Manager” or “QPAM” is defined in Section VI(a) of PTE 84-14. (See 89 FR 65, 23090, 23141 (April 3, 2024)).

<sup>6</sup> Section VI(d) of PTE 84-14 defines the term “affiliate” for purposes of Section I(g) as “(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person, (2) Any director of, relative of, or partner in, any such person, (3) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, or a five percent or more partner or owner, and (4) Any employee or officer of the person who—(A) is a highly compensated employee (as defined in Section 4975(e)(2)(H) of the Code) or officer (earning 10 percent or more of the yearly wages of such person), or (B) has direct or indirect authority, responsibility or control regarding the custody, management or disposition of plan assets.” (See 89 FR 23090, 23141 (April 3, 2024)).

<sup>7</sup> The prohibited misconduct provision was effective on June 17, 2024 (89 FR 65, 23090 (April. 3, 2024)).

influence the QPAM's policies.

## RELEVANT CONVICTIONS

5. UBS-related entities are currently the subject of four criminal convictions that violate Section I(g) of PTE 84-14 (the Convictions). To protect Covered Plans from the costs and harms that UBS represents could arise if the UBS QPAMs suddenly lost their ability to engage in potentially beneficial transactions on behalf of their Covered Plan clients under PTE 84-14 due to these Convictions, the Department issued several temporary individual prohibited transaction exemptions over several years with protective conditions that are discussed below.<sup>8</sup>

6. The 2017 UBS Conviction. In 2013, UBS Securities Japan Co. Ltd. (UBS Securities Japan) pled guilty to a crime arising out of its fraudulent submission of Yen London Interbank Offer (Yen LIBOR) rates between 2006 and 2009, and its participation in a scheme to defraud counterparties to interest rate derivatives trades executed on its behalf by secretly manipulating certain benchmark interest rates to which the profitability of those trades was tied (the 2013 UBS Conviction).<sup>9</sup>

7. In connection with misconduct related to the 2013 UBS Conviction, UBS and the United States Department of Justice (DOJ) entered into a Non-Prosecution Agreement (the LIBOR NPA) wherein the DOJ agreed not to criminally prosecute UBS for any crimes related to UBS's misconduct involving its submission of Yen LIBOR rates and other benchmark rates between 2001 and 2010 (LIBOR Manipulation). A provision

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<sup>8</sup> In connection with the Credit Suisse-related convictions, the Department issued the following exemptions: PTE 2022-01 (87 FR 1186 (Jan. 10, 2022)); PTE 2019-07 (84 FR 61928 (Nov. 14, 2019)); PTE 2015-14 (80 FR 59817 (Oct. 2, 2015)); PTE 2014-11 (79 FR 68716 (Nov. 18, 2014)). In connection with the UBS-related convictions, the Department issued: PTE 2020-01 (85 FR 8020 (Feb. 12, 2020)); PTE 2019-01 (84 FR 6163 (Feb. 26, 2019)); PTE 2017-07 (82 FR 61903 (Dec. 29, 2017)); PTE 2016-17 (81 FR 94049 (Dec. 22, 2016)); PTE 2013-09 (78 FR 56740 (Sep. 13, 2013)).

<sup>9</sup> The UBS QPAMs received exemptive relief to continue to rely on PTE 84-14 notwithstanding the 2013 Conviction. However, the Section I(g) disqualification period for the 2013 Conviction expired on or about February 19, 2023; therefore, the UBS QPAMs no longer require exemptive relief from the Department to continue their reliance on PTE 84-14 with respect to the 2013 conviction.

of DOJ's LIBOR NPA required UBS to avoid engaging in additional criminal activity for two years from the date of the LIBOR NPA.

8. Separately from the LIBOR Manipulation and after entering into the LIBOR NPA, UBS also was determined by DOJ to have participated in deceptive currency trading and sales practices with respect to certain foreign exchange (FX) market transactions and collusive conduct in certain FX markets (FX Misconduct). DOJ determined that by engaging in the FX Misconduct, UBS had breached the terms of the LIBOR NPA. As a result, UBS entered a guilty plea and was convicted on January 10, 2017 of engaging in the LIBOR Manipulation that was the subject of the LIBOR NPA. Specifically, UBS pled guilty to a scheme to defraud counterparties to interest rate derivatives transactions by secretly manipulating benchmark interest rates to which the profitability of those transactions was tied. This conviction is referred to as the "2017 UBS Conviction,"<sup>10</sup> which disqualifies UBS-related QPAMs from relying on the relief set forth in PTE 84-14 for a ten-year period from January 10, 2017, through January 9, 2027.

9. The 2014 CSAG Conviction. On May 19, 2014, the Tax Division of DOJ and the U.S. Attorney's Office for the Eastern District of Virginia filed a one-count criminal information in the District Court for the Eastern District of Virginia charging CSAG with a conspiracy to violate Code section 7206(2) in contravention of Title 18, United States Code, Section 371. According to the Statement of Facts, for decades before and through approximately 2009, CSAG operated an illegal cross-border banking business that knowingly and willfully aided and assisted thousands of U.S. clients in opening and maintaining undeclared accounts that concealed offshore assets and income from the Internal Revenue Service. On May 19, 2014, pursuant to a plea agreement (the Plea

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<sup>10</sup> In PTE 2023-14, the Department erroneously referred to this conviction as the 2018 Conviction. The conviction actually occurred on January 10, 2017 (as described in PTE 2020-01, the prior UBS exemption).

Agreement), CSAG pleaded guilty to a charge of assisting U.S. citizens in federal income tax evasion. The District Court entered a judgment of conviction against CSAG on November 21, 2014, which disqualified CSAG-related (and, thus, UBS-related QPAMs due to the merger) from the relief set forth in PTE 84-14 from November 21, 2014, through November 20, 2024.

10. The 2019 UBS France Conviction. In 2013, France opened an investigation into UBS, UBS France, and certain former employees of UBS France S.A. The investigation centered on the maintenance of foreign (“cross-border”) UBS bank accounts held for private citizens. Following a trial in the French First Instance Court, the French court convicted UBS and UBS France on February 20, 2019, of illegally soliciting clients from 2004 to 2012 and laundering the proceeds of tax fraud from 2004 to 2012. Based on this conviction, the UBS-related QPAMs were disqualified from relying on the relief provided in PTE 84-14 from February 20, 2019, through February 19, 2029.

11. The 2022 Credit Suisse Securities (Europe) Limited (CSSEL) Conviction. On October 19, 2021, DOJ’s, Criminal Division, Money Laundering and Asset Recovery Section and Fraud Section and the United States Attorney’s Office for the Eastern District of New York, filed a criminal information in the District Court for the Eastern District of New York charging CSSEL with one count of conspiracy to commit wire fraud in violation of 18 U.S.C. 1349. CSSEL agreed to resolve the action through a plea agreement presented to the New York District Court on October 19, 2021 (the CSSEL Plea Agreement). Under the CSSEL Plea Agreement, CSSEL agreed to enter a guilty plea to the charge set out in the CSSEL information (the CSSEL Plea). The District Court entered a judgment of conviction against CSSEL on July 22, 2022. Due to the judgement of conviction, the CSAG-related QPAMs (and, thus, UBS-related QPAMs due to the merger) are ineligible from relying on the relief set forth in PTE 84-14 from July 22, 2022 through July 21, 2032.

## REQUESTS FOR RELIEF AND ADDITIONAL INFORMATION

12. On April 17, 2023, UBS and CSAG (and their affiliated QPAMs) submitted an exemption application to the Department that requested modifications to their existing exemptions due to their imminent merger. On June 2, 2023, the Department published PTE 2023-14, which allowed UBS-related and Credit Suisse-related QPAMs to continue to rely on PTE 84-14, notwithstanding the Convictions, for one year following the date of the merger, which UBS represents occurred on June 12, 2023 (the Merger). PTE 2023-14 had an audit requirement tailored to the unique circumstances of the one-year exemption, which is referred to as the Stub Period Audit.<sup>11</sup>

13. On February 22, 2024, UBS filed an exemption application with the Department that requested a five-year extension of PTE 2023-14 from June 12, 2024, through June 11, 2029. During the Department's review process for UBS' exemption application, the Department requested additional information from UBS regarding the auditor's findings for each audit that was performed before its application was submitted. In response, UBS' counsel notified the Department on May 3, 2024, that UBS failed to complete the Stub Period Audit report, and UBS did not submit the certified audit report to the Department until May 10, 2024.<sup>12</sup> In fact, the record currently before the Department indicates that UBS did not engage the independent auditor, Fiduciary Counselors Inc, to complete the Stub Period Audit until March 18, 2024, notwithstanding

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<sup>11</sup> Before the merger of UBS and CSAG, PTE 2020-01 required that the UBS QPAMs submit to annual audits covering periods from March 20 through March 19 of the following year (the CS QPAMs were on a different audit schedule). Upon the merger of UBS and CSAG on June 12, 2023, a one-year temporary exemption provided in PTE 2023-14 became effective. PTE 2023-14 provided that the combined UBS-CSAG entity would resume audits on a unified schedule from June 12, 2023, through June 11, 2024. Thus, the last audit to occur under PTE 2020-01, originally scheduled from March 20, 2023 through March 19, 2024, was modified to run from March 20, 2023, through June 11, 2023 and became known as the Stub Period Audit.

<sup>12</sup> In a supplemental letter to the Department dated May 29, 2024, UBS' counsel informed the Department that the auditor notified UBS about the failure to complete the stub audit in January 2024, and the auditor sent a draft of the engagement letter to perform the audit to UBS on February 12, 2024. These events occurred before the Department received UBS' exemption application on February 23, 2024, and UBS should have disclosed them in its exemption application.

the fact that PTE 2023–14 required the audit to be completed by December 9, 2023, and for the audit report to be certified and submitted to the Department by January 23, 2024. The Department stated in the proposed exemption that UBS should have engaged an independent auditor well in advance of the dates set forth in Section III(j) of the exemption for the audit to be timely completed and for the audit report to be timely certified and submitted to the Department.

14. On June 11, 2024, the Department published a proposed exemption in the *Federal Register* with an effective period from June 12, 2024, through June 11, 2029. The Proposal alerted UBS that its failure to timely comply with the Stub Period Audit requirement violated an important condition of the relief the Department provided in PTE 2023-14. UBS itself pointed out the importance of the audit requirement in its exemption application where it stated that, “[t]he purpose of the independent audit is to give [Covered Plan] clients and the Department the confidence that the asset manager is complying with ERISA, and that continued exemptive relief is warranted.” In the Proposal, the Department reiterated this point by stating that it included the independent audit requirements in the exemption to ensure that the UBS QPAMs remain insulated from the convicted UBS and Credit Suisse entities and could be trusted to safeguard plan assets, notwithstanding the convictions.

15. Because the UBS QPAMs failed to comply with the audit conditions of the exemption, the Department determined that they were ineligible to rely on the relief provided by PTE 2023-14, and the Department indicated in the proposed exemption that it is considering whether it should grant retroactive relief extending back to June 12, 2023 as part of this exemption, which would otherwise provide relief only from June 12, 2024 through June 11, 2029. The Department requested comments from UBS, the public, and interested parties on whether retroactive relief is appropriately including in this exemption, which would extend exemptive coverage to include the period from June 12,

2023, through June 11, 2024, as well as June 12, 2024, through June 11, 2029. The Department also requested UBS provide a detailed statement regarding how a grant of retroactive relief would be consistent with the requirements for such relief set forth in the Department's exemption procedure regulation.<sup>13</sup>

16. In connection with the Department's request for comment on retroactive relief, in the Proposal, the Department also requested UBS to describe how Covered Plans were safeguarded in light of this failure to satisfy the Stub Audit condition and whether UBS acted in good faith despite its failure. UBS's comments and the Department's responses to those comments are discussed below.

### **RETROACTIVE RELIEF PERIODS**

17. The exemption provides retroactive relief to UBS for two periods. The first period covers June 12, 2023, through June 11, 2024, and allows UBS QPAMs to rely on PTE 84-14 despite UBS' failure to comply with the Stub Period Audit requirement in Section III(j)(1) of PTE 2023-14. The second period of retroactive relief applies from June 12, 2024, through **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**, and is needed because UBS failed to submit a complete exemption application with sufficient information (including a description of its failure to meet the Stub Period Audit Requirement) and enough lead time for the Department to develop a complete administrative record, publish a proposed exemption with an adequate public notice and comment period, consider the public comments received, and publish this grant notice exemption before the relief provided under PTE 2023-14 expired.

#### **Department's Note:**

18. The Department notes that this individual exemption would solely provide relief from the ineligibility under PTE 84-14 Section I(g) that occurred with respect to the four criminal convictions of entities within the UBS corporate family that are described

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<sup>13</sup> 29 CFR 2570.35(d).

above. The conditions of this exemption require the UBS QPAMs to adhere to every other specific condition for relief that is required under PTE 84-14, as amended, including the ineligibility provision in the amended version of PTE 84-14, which became effective on June 17, 2024. If any UBS-Affiliated QPAMs violate any conditions of amended PTE 84-14 in the future, they would fail to comply with the requirements of the exemption, and the relief provided under this exemption would become unavailable.

## WRITTEN COMMENTS

19. In the Proposal, the Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of the Proposal by July 29, 2024.<sup>14</sup> The Department received written comments from the following commenter: (1) UBS; (2) an anonymous commenter; (3) the ERISA Industry Committee; (4) SIFMA; and (5) a group of individuals referring to themselves as the “QPAM Coalition.”<sup>15</sup>

20. In granting this exemption, the Department has considered the public comments noted above, as well as representations by UBS. If any material statement or representation by UBS to the Department that is included in its application or its comment is not or has not remained completely and factually accurate, UBS must immediately alert the Department.<sup>16</sup>

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<sup>14</sup> PTE 2024-03’s original deadline for the comment period was July 15, 2024. The Department extended the comment period to July 29, 2024, based on two requests from commentors. (See 89 FR 137, 58189).

<sup>15</sup> The Department also received comments three months after the end of the comment period, as extended, which the Department did not consider.

<sup>16</sup> The representations stated herein that are attributable to UBS or any commenter do not reflect factual findings or opinions of the Department. The Department notes that the availability of this exemption is subject to the express condition that the material facts and representations contained in the are true and complete at all times, and accurately describe all material terms of the transactions covered by the exemption. If there is any material change in a transaction covered by the exemption, or in a material fact or representation described in the application, the exemption will cease to apply as of the date of the change.

## Comments from UBS

### **Comment 1: Department's Request for Justification of Retroactive Relief for Failure to Perform Audit**

21. As stated above, in the Proposal, the Department requested that UBS demonstrate whether retroactive relief is appropriate, and that the UBS QPAMs at a minimum: (a) ensured that appropriate safeguards were established during the period of exemptive relief provided under PTE 2023–14 from June 12, 2023 to June 11, 2024, to protect the interests of Covered Plan clients (the First Retroactive Period); (b) Covered Plan clients were not harmed by non-exempt transactions during the First Retroactive Period; (c) a responsible plan fiduciary acted in good faith and took appropriate steps that were necessary to protect the Covered Plans from abuse, loss, and risk during the First Retroactive Period; and (d) the UBS QPAMs have adjusted their policies and procedures in light of past failures to comply with PTE 2023-14 to ensure that such failures will not reoccur.

22. Comment #1(a): *UBS Ensured and will ensure that appropriate safeguards were established during the First Retroactive Period to protect the interests of Covered Plan.* UBS stated that appropriate safeguards were established during the First Retroactive Period despite its failure to properly perform the required audit. Specifically, UBS represents that the UBS official responsible for overseeing the audits failed to meet the deadline, in part, because they mistakenly believed that the Stub Period Audit's findings would be rolled into the following year's audit report. UBS represents that, upon realizing the mistake, it engaged an independent auditor who completed the Stub Period Audit. The Auditor concluded that it found no deficiencies on behalf of UBS or the UBS QPAMs during the Stub Audit period, and the Auditor provided no recommendations for improvement. In its comment letter, UBS asserted that the successful completion of the

Stub Period Audit, albeit late, evidences that UBS established adequate safeguards to protect Covered Plans during the First Retroactive Period.

23. Comment #1(b): *Covered Plan clients were not harmed by non-exempt transactions during the First Retroactive Period.* UBS represented that Covered Plans were not harmed by non-exempt transactions. To make that determination, UBS reviewed all Client Plan transactions that UBS conducted from June 2023 to June 2024, which encompassed more than 16,000 transactions. UBS' review determined that there were, in fact, no non-exempt prohibited transactions. In this regard, UBS determined that potentially implicated Client Plan transactions for which UBS QPAMs would otherwise rely on PTE 84-14 were either (1) covered, in the alternative, by other prohibited transaction exemptions or (2) were not, in fact, prohibited transactions.

24. The transactions that UBS determined were not prohibited transactions in need of exemptive relief consisted of approximately three to four hundred loans held during the relevant period in which one component of the investment—a service fee paid to an administrative agent by the borrower, rather than the plan—was not covered by an alternative exemption and very likely involved a party in interest for many of the transactions. UBS confirmed to the Department, however, that the fee was not paid from plan assets. UBS provided that the fee was paid by the *counterparty* to the loans, not the plan or UBS, and the fee was not incorporated in the plan's payment for the loans' overarching investment because, as the *lender*, the plan's investment was in the form of lending money to the counterparty. UBS further stated that the borrower of these loans also selects the administrative agent on its own accord without direction from plans or UBS. Furthermore, the fees are usually negotiated between the administrative service agent and the borrower before the identity of the plan lender is even known.<sup>17</sup>

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<sup>17</sup> The Department is not opining on UBS' determination as to whether the transactions it has described are prohibited transactions as that is outside the scope of this prohibited transaction exemption.

25. Comment 1(c): *A responsible plan fiduciary acted (and is acting) in good faith and took (and will take) appropriate steps that are necessary to protect the Covered Plans from abuse, loss, and risk during the Relief Period.* UBS maintains that the UBS QPAMs acted in good faith to protect Covered Plans because they maintained extensive protocols to ensure it upheld its fiduciary responsibilities and no Covered Plans were harmed during the Relief Period. For example, UBS represents that its protocols required the UBS QPAMs to seek the best possible trade execution for each and every transaction regardless of the identity of the counterparty, and in accordance with each of the written investment guidelines approved by each Covered Plan. Further, UBS addressed the failure to perform the Stub Audit and proposed changes to its protocols, as discussed immediately below, to ensure that such a failure does not reoccur.

26. Comment 1(d): *The UBS QPAMs have adjusted their policies and procedures in light of past failures to comply with PTE 2023-14 to ensure that such failures will not reoccur.* To prevent the reoccurrence of a missed Stub Period Audit, UBS proposed to take the following steps: (1) designate a second Compliance Officer both to facilitate the timely completion of exemption reviews and audits and check to ensure that exemption deadlines are correctly identified and completed; (2) inform the Auditor in writing within 45 days after receiving the Auditor's engagement agreement of the target dates for the Auditor to send UBS the initial document requests and for UBS to respond to those requests; (3) require the Compliance Officers to provide the Auditor with the Exemption Report created pursuant to Section III(m)(4)(ii) of the exemption within seven days after the Exemption Report's completion; (4) allow the Department to receive audit updates from UBS and the Auditor upon request; and (5) provide the Department with a copy of the Auditor's engagement agreement within 15 days after its execution.

27. The Department is persuaded that adding these conditions to the exemption's existing protective conditions will be beneficial to Covered Plans and has included them in this final exemption.

**Comment 2: UBS' Materiality Argument.**

28. UBS contends that failing to adhere to a condition of PTE 2023-14 relating to the due date of the Stub Period Audit should not cause it to forfeit the exemptive relief provided in PTE 2023-14 because its failure to comply with the condition was not a "material failure."

29. The Department strongly disagrees with UBS's materiality argument. First, each condition in an exemption is material to the Department's findings and must be adhered to in order for an ERISA-covered plan, IRA, a party in interest, or disqualified person to rely on the exemption. Second, the independent audits required by PTE 2023-14 and similar exemptions are particularly vital to the Department's findings, because they help ensure that, among other things: the QPAMs adhere to their basic fiduciary obligations under ERISA; transactions prohibited under ERISA section 406 are implemented in accordance with the requirements of PTE 84-14 and monitored in a way that protects participants; the Policies and Training requirements of the exemption are maintained; and violations of the Policies and Training requirements are promptly reported and remedied. The purpose of the audit requirement is not merely to ascertain possible past violations, but rather to promote and encourage an ongoing culture of compliance for personnel subject to the audit. The latter goal is ill-served when the QPAMs disregard their obligation to perform timely audits, irrespective of whether any particular audit would have found serious past violations of the exemption's conditions. Lastly, in contradiction of UBS' contention that the failure to comply with the condition was not a "material failure," UBS acknowledged the importance of the independent audit requirement in its exemption application, which stated that, "[t]he purpose of the

independent audit is to give [Covered Plans] clients and the Department the confidence that the asset manager is complying with ERISA, and that continued exemptive relief is warranted.”

### **Comment 3: Covered Plans Would be Harmed Without an Exemption**

30. UBS asserts that Covered Plans would incur harm if relief is not granted, because Covered Plans would likely terminate their relationships with the UBS QPAMs and hire new asset managers. UBS contends that Covered Plans would switch because the Covered Plan’s fiduciaries would be uncertain as to which transactions would have prohibited transaction relief, and as to the specific conditions and limitations that would be imposed upon those transactions. UBS argues that Covered Plans that switch asset managers would be harmed because they would lose access to UBS’s unique services and strategies. Further, the Covered Plans would spend additional fees and incur lost opportunities costs as a result of an asset manager switch, and the additional fees would include costs incurred to solicit and hire a new asset manager. UBS estimates Covered Plans would incur \$90 million in liquidation and reinvestment costs as a result of liquidating all of the Covered Plan positions.<sup>18</sup> In support of this estimate, UBS provided a report from an institutional investment consultant concluding that UBS’ assumptions and methodology in calculating these liquidation costs were reasonable and the estimation of \$90 million in liquidation costs was also reasonable.<sup>19</sup>

31. **Department’s Note:** While the Department recognizes that Covered Plans may incur certain liquidation and reinvestment costs as a result of liquidating their

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<sup>18</sup> UBS submitted a report by an independent consultant in support of the estimated liquidation cost.

<sup>19</sup> The report was provided by John Minihan, PhD., a former Senior Lecturer of finance at MIT Sloan School of Management, a former associate editor of the Journal of Investing, and currently an investment management industry consultant with 30 years of experience in institutional investment consulting. Dr. Minahan provided, in summary, that UBS’s estimates and assumptions were reasonable as expected values but with two minor caveats. First, asset managers can take several years to transition assets and if market conditions deteriorate during that time transitions could cause additional risk to ERISA clients. Second, new asset managers may decide that not all assets need to be liquidated and, if so, an assumption that all assets need to be liquidated would overstate transition costs. Dr. Minahan believes that these two caveats do not undermine the reasonableness of the estimated expected values “as long as they do not overwhelm each other.” He also provides that these caveats are difficult to quantify and work in opposite directions.

positions, UBS QPAMs are cautioned that if UBS engages in future conduct prohibited by PTE 84-14, the Department may not be able to make its required findings in order to grant future exemptive relief. UBS QPAMs must take all prudent steps pursuant to its obligations under ERISA section 404 to mitigate risks of losses to, and to defray the reasonable expenses related to the investment of, Covered Plan assets if UBS engages in future conduct prohibited by PTE 84-14. The Department believes that the failure to take such basic steps, in the event that the UBS QPAMs become ineligible for their exemptive relief under PTE 84-14, would likely constitute a violation of the QPAMs' fiduciary duties to act in the best interest of their Covered Plan clients.

**Comment 4: Nonquantifiable Harms Should be Considered.**

32. UBS argues that the Department should include nonquantifiable harms in the Department's findings. UBS suggests that the Department has foreclosed including information about potential harms in its findings unless the harm is estimated in dollar amounts.<sup>20</sup> The Department has no objection to considering any nonquantifiable harms identified by UBS. However, information concerning the dollar value of harms, including the methodology and assumptions made in reaching such dollar values, are important to the Department's analysis. The Department will consider representations about nonquantifiable harm to Covered Plans to the extent the Department is able to determine that the information presented is relevant, reliable, and necessary to the Department's findings. The Department notes, however, that depending on context and the type of harm that the applicant represents may occur, the Department will request to see additional, quantifiable data in order appropriately consider such representations.

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<sup>20</sup> In footnote 24 of the Proposal, "[t]he Department notes that UBS provided information not mentioned in this proposal regarding the potential losses to ERISA clients, but without clearly identifying the dollar amount of losses to plans in concrete terms. In such cases, the Department does not have enough information to include such representations in its findings. However, the information that UBS provided that the Department can rely on is described below." 89 FR 49219 n.24

**Comment 5: Denying exemptive relief would negatively impact the QPAM program as a whole.**

33. UBS argues that denying prospective or retroactive relief would result in wide-ranging consequences for all retirement accounts within the financial industry. UBS contends, for example, that denying relief would make it more difficult for counterparties to transact with any industry QPAMs because counterparties would be unsure if new convictions or later-discovered issues would result in crippling financial penalties for those counterparties. UBS argues that this increased risk would be priced into the market for all retirement plans, whether or not a QPAM is compliant with PTE 84-14 or an individual exemption with respect to a failure to comply with PTE 84-14 I(g).

34. The Department agrees that a denial of UBS' exemption request could have consequences for Covered Plans. However, these consequences would be due to the widespread UBS-related criminal behavior that occurred over long periods of time, involved massive amounts of client assets, and UBS' inability to comply with the terms of PTE 2023-14 that are described above. The Department does not believe that UBS' history of criminal sanctions is representative of the industry as a whole, or is likely to result in the sorts of consequences suggested by UBS with respect to entities that have far different compliance histories.

35. Additionally, the Department notes that it is aware that UBS and/or its affiliates are the subject of additional investigations that could result in future violations of Section I(g) of PTE 84-14.<sup>21</sup> While the Department cannot opine on the likelihood that UBS asset managers will receive additional exemptive relief if it engages in additional violations of Section I(g) of PTE 84-14, the Department may take a proactive

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<sup>21</sup> See, for example, the following publicly available news articles describing inquiries into possible UBS/Credit Suisse-related misconduct: UBS's French unit placed under formal investigation at <https://www.fnlonon.com/articles/ubs-french-division-placed-under-formal-investigation-20160304>; Credit Suisse has violated US tax evasion deal, Senate Committee finds | The Business Standard, at <https://www.tbsnews.net/world/global-economy/credit-suisse-has-violated-us-tax-evasion-deal-senate-committee-finds-607578>.

approach to protecting Covered Plans in light of the uncertainty created by these additional investigations. Especially given the history and extent of criminal conduct at issue, the Department is considering proposing an individual exemption that would, in certain circumstances, permit UBS asset managers to continue to engage in the same covered transactions described in Section I of PTE 84-14, if the UBS QPAMs become ineligible again to rely on PTE 84-14 due to another violation of Section I(g) of PTE 84-14.<sup>22</sup>

36. As currently contemplated, the relief that would be provided in the individual exemption would not be linked to PTE 84-14, and the asset managers that rely on the individual exemption would not be referred to as QPAMs.<sup>23</sup> If the Department takes this approach, the proposed individual exemption would be subject to a full notice and comment period, and UBS, plan fiduciaries and plan counterparties would have ample opportunity to comment.

37. The Department previously raised the possibility of this type of individual exemption in the preamble to the PTE 2023-14 proposal and requested comment from UBS. UBS responded that current QPAMs have existing contracts that expressly rely on the QPAM exemption or include representations that the asset manager is a QPAM, and those contracts do not account for an alternative individual exemption such as the one the Department described in the preamble to the proposal for PTE 2023-14. Moreover, UBS asserted that the QPAM exemption is widely accepted and understood by sophisticated clients; therefore, the Department's withdrawal of the availability of the relief provided in

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<sup>22</sup> It is expected that a number of conditions would apply, including that no QPAM or its personnel were involved in the Prohibited Misconduct.

<sup>23</sup> The Department notes that, should UBS QPAMs become disqualified from the relief in this exemption due to additional UBS-related prohibited misconduct described in Section I(g) of PTE 84-14, Section I(i) of PTE 84-14 may permit UBS QPAMs to continue to rely on the class exemption for one year, if the terms and conditions of the class exemption are met. In that instance, the effective date of the above-described individual exemption, if granted, would begin following the period covered by Section I(i) of PTE 84-14.

PTE 84-14 for a particular asset manager and substituting an alternative individual exemption would put that asset manager at a competitive disadvantage. UBS claimed that this result is directly contrary to the financial strength and stability that regulators intended to be achieved by the Merger, and that if the Department is interested in creating an alternative individual exemption to the QPAM exemption, it should make the alternative available to all asset managers concurrently with the QPAM exemption, so that the alternative can gain broad market adoption.

38. The Department is not persuaded by UBS' response. The fact that UBS QPAMs may have existing contracts with the provisions and limitations described above, is not dispositive to the Department's determination whether UBS QPAMs should be permitted to continue to rely on PTE 84-14, especially considering UBS' multiple violations of Section I(g) of the class exemption that call its integrity and compliance culture into question. The Department is also skeptical of assertions that it should rely on the parties' contract provisions as a basis for disregarding exemption conditions or limiting the consequences of violating those provisions. A QPAM cannot simply contract with a client in a manner that ensures the QPAM will always be able to remain a QPAM, regardless of the QPAM's or its affiliates' behavior.

39. Further, the fact that the QPAM exemption is widely accepted and understood by sophisticated clients suggests to the Department that these counterparties would not be confused by an individual exemption that clearly states it has the same scope of relief as Section I of PTE 84-14. UBS' "competitive disadvantage" arguments also do not support a finding under ERISA Section 408(a) that UBS QPAMs should be permitted to rely on PTE 84-14; particularly where to the Department's knowledge, none of UBS' "competitors" have as many disqualifying convictions as UBS.

40. Regarding UBS's suggestion that the Department should make the individual exemption approach "available to all asset managers concurrently with the QPAM

exemption, so that the alternative can gain broad market adoption,” the Department notes that the scope, seriousness, and recurrent nature of UBS’ prohibited misconduct are unique. Therefore, the Department is not persuaded that making such an individual exemption available for broad market adoption is presently warranted.

#### **Comment 6: Indemnification**

41. Section III(k) of PTE 2023-14 requires UBS to “indemnify and hold harmless the Covered Plans for any actual losses resulting directly from UBS QPAM’s violation of fiduciary duties, prohibited transactions, breach of contract, or any claim arising out of the failure of such QPAM to qualify for the exemptive relief provided by PTE 84-14 as a result of violation of Section I(g) of PTE 84-14.”<sup>24</sup> Given this requirement, the Department requested in the Proposal that UBS comment on why Covered Plans would incur the liquidation and other costs identified by UBS if the Department does not grant relief.

42. In its response, UBS argues that liquidation and additional costs do not result “directly” from UBS’s criminal convictions and failures to comply with exemptive conditions. UBS argues instead that a Covered Plan fiduciary and new asset manager’s decision to liquidate and reinvest plan assets is an intervening decision by a separate agent, which is inconsistent with one of many definitions of “directly” contained in the Oxford Dictionary.

43. The Department disagrees with UBS’s analysis. The condition requires indemnification for costs that result “directly” from, among other things, “the failure of

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<sup>24</sup> PTE 2023-14, Section III(k)(2) requires UBS QPAMs “[t]o indemnify and hold harmless the Covered Plan for any actual losses resulting directly from the 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 QP AM; or any claim arising out of the failure of such 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 a Conviction covered under this exemption. This condition applies only to actual losses caused by the QPAM’s violations.”

such QPAM to qualify for the exemptive relief provided by PTE 84-14 as a result of violation of Section I(g) of PTE 84-14.” As UBS itself noted in a letter to the Department, dated July 29, 2024, “[i]n fact, Dr. Minahan, an expert in the field of ERISA plan transitions, projects that if the Department does not grant UBS a new exemption, “then most, and likely all, UBS ERISA Clients would feel forced to replace UBS as their asset manager.” Certainly, to the extent Covered Plans “feel forced” to transition to new asset managers because the UBS QPAMs could no longer rely on PTE 84-14, the liquidation and additional costs arising from the transition constitute actual losses resulting directly from the failure of such QPAM to qualify for the exemptive relief provided by PTE 84-14 as a result of violation of Section I(g) of PTE 84-14. If a plan’s fiduciary is compelled to replace a UBS asset manager as a result of a violation of Section I(g) and the asset manager’s loss of QPAM status, the affected plan is entitled to indemnification of its associated losses, including the transitional expenses necessary to effectuate the switch to a qualified QPAM.

**Comment 7. Violation Notice**

44. Section III(t) of the Proposal includes a condition that would require UBS to send a Violation Notice, as defined therein, to Covered Plans if UBS fails to comply with an exemption condition. UBS commented that this proposed condition would be too difficult to administer and would not materially increase protection for Covered Plans.

45. The Department disagrees. Providing timely information to Covered Plans will allow their fiduciaries to take prudent and timely steps, as necessary to protect themselves from loss of the exemption’s protections. This Violation Notice is particularly relevant to UBS due to its history of recidivism.

46. However, the Department understands UBS’ position that certain aspects of the Violation Notice requirement may be difficult to administer. In particular, UBS raised concerns regarding the difficulty it would confront to determine whether a

Violation Notice must be issued. In response to this concern, and as a recognition that UBS may need more time to make its required determination that sending a violations notice is required, the Department has revised the deadline in Section III to extend the time a Violation Notice must be provided to Covered Plans as a result of a breach of an exemption condition, from 14 to 30 days after the violation is discovered. In situations where the auditor discovers a violation that the UBS QPAM had not previously detected, the UBS QPAM may comply with the Violation Notice condition by sending the Violation Notice to all affected Covered Plans and the Department within 30-days after the completion of the audit, if the notice includes an addendum describing the reason for the UBS QPAM's failure to send the Violation Notice. This last provision is not a substitute for UBS' own responsibility to take reasonable steps to determine whether a violation has occurred.

**Comment 8: Written Processes related to indemnification**

47. Section III(v) of the Proposal would require all UBS QPAMs to develop written processes that clearly describe: (a) how the QPAM identifies and quantifies "actual losses" for purposes of Section III(j)(2) of the exemption; and (b) how Covered Plans may recover or avoid incurring the losses that the UBS QPAM must indemnify or hold Covered Plans harmless from incurring pursuant to Section III(j)(2) of the exemption. UBS commented that losses are too specific to each Covered Plan for it to develop an effective written indemnification process. Additionally, UBS asserted that it would be unable to develop written processes for indemnification because the party seeking indemnification would have to identify the specific covered losses or expenses.

48. The Department disagrees with UBS' interpretation of this condition. The condition simply requires UBS to establish a process that would apply when Covered Plans submit indemnification claims, not to identify all the specific losses or expenses that could conceivably be covered in advance of violation. The process should, at a

minimum, inform Covered Plans of how to initiate a claim for indemnification with a UBS QPAM (including a description of the information required to be submitted) and provide reasonable time frames for the resolution of claims. The process should also ensure that substantially similar claims are treated alike, and Covered Plans are equitably treated based on the merits of the claim rather than type or size of client. The process also should require the UBS QPAM to fully and fairly notify Covered Plans of the indemnification requirement and inform them that they can submit questions relating to the final indemnification provision to the Department’s email inbox (e-oed@dol.gov). The Department believes that these clarifications address the concerns raised by UBS.

49. Further, the Department has revised the provision in the final exemption to require each UBS QPAM to complete the development of the indemnification claims process and deliver a copy of the process to each Covered Plan within 90 days after **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**, rather than within 30 days as originally proposed. The extended timelines give the UBS QPAMs enough time to specify appropriate processes and make any required internal changes to operationalize such processes. The exemption requires the UBS QPAMs to notify Covered Plans of any subsequent material changes to the processes within 30 days after the effective date of such changes.

#### **Comment 9: Seconded Employee Definition**

50. UBS commented that it has no fundamental objection to the Department’s proposed definition of “UBS Seconded Employee” in Section I(1) of the Proposal.<sup>25</sup>

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<sup>25</sup> The Proposal added a new definition of the term “UBS Seconded Employee” that means, an individual nominally employed by a Misconduct Entity who performs work on behalf of a qualified UBS QPAM, provided that such UBS QPAM is solely responsible for the management and control of the employee’s job activities performed on behalf of such QPAM. The UBS QPAM must be solely responsible for the establishment of the employee’s job duties and terms of employment (including compensation, promotions, and benefits), and must have supervisory responsibility with respect to, among other things, the employee’s performance, training, and disciplinary actions. The definition of UBS Seconded Employee is used in Sections III(d) to clarify that an employee of a Misconduct Entity may provide services to a UBS QPAM, as long as the individual is a “Seconded Employee.” Sections III(a) and (b) require that Seconded Employees did not participate in the conduct underlying the Criminal Activity or receive compensation in connection therewith.

However, UBS believes that the definition should reflect the language in the recent Deutsche Bank exemption (PTE 2024-02), which does not contain this new definition of Seconded Employee, to promote greater consistency across individual QPAM exemptions.<sup>26</sup>

51. The Department has decided to retain the proposed language in the final exemption. Conditions in the Department's individual exemptions may evolve over time as it becomes clear that additional clarity or substantive improvements are appropriate. The Department notes that prior QPAM Section I(g) exemptions relied on the term "seconded employee" to permit certain employees to perform services for QPAMs notwithstanding the fact that such employees were nominally employed by a corporate entity that had been involved in misconduct.<sup>27</sup> In the recent Deutsche Bank exemption, PTE 2024-02, that the Applicant points out, the Department declined to use the term "seconded employee" and instead included a description of the type of employees permitted to perform services under these circumstances.<sup>28</sup> In the Proposal, the Department created a defined term "UBS Seconded Employee" in order to further streamline the operative language of the exemption. The defined term also slightly modified the language from that which was in the Deutsche Bank exemption to more clearly set forth the requirement that the QPAMs have control over the seconded employee. For example, the term "oversight" was changed to "control" and the term "day to day activities" was changed to "job activities."

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<sup>26</sup> See 89 FR 76, 27789 (April 18, 2024).

<sup>27</sup> These employees were required not to have participated in, been aware of, and received compensation in respect of, any of the misconduct.

<sup>28</sup> Section III(g) of PTE 2024-02 provides that, "Other than with respect to employee benefit plans maintained or sponsored for its own employees or the employees of an affiliate, DB Group Services will not act as a fiduciary within the meaning of ERISA Sections 3(21)(A)(i) or (iii) or Code Sections 4975(e)(3)(A) and (C) with respect to ERISA-covered plan and IRA assets; provided, however, that DB Group Services will not be treated as violating the conditions of this exemption solely because....(2) DB Group Services' employees perform work on behalf of a DB QPAM that is solely responsible for the management and oversight of the DB Group Services' employee's day to day activities performed on behalf of such QPAM, including the employee's performance, training, and terms of employment (including compensation, promotions, and benefits), including any such employees acting in a discretionary fiduciary capacity with respect to the DB QPAM." See also 89 FR 76, 27795-96.

## **Comment 10: Other Edits**

52. UBS requested that the Department make the following edits to the Proposal's operative text, which it characterizes as clarification of facts or technical corrections:

(a) The definition of "CSAG" in Section I(a)(1) should be revised to clarify that CSAG merged into UBS AG on May 31, 2024, with UBS AG as the surviving entity.

Department Response: The Department concurs and has made the change.

(b) The definition of "UBS Americas" in Section I(a)(5) should be revised to reflect that UBS AM Americas no longer is wholly owned by UBS Americas, Inc.

Department Response: The Department concurs and has revised Section I(a)(5) to reflect that UBS AM is *majority*-owned by UBS Americas, Inc.

(c) The definition of "UBS Hedge Fund Solutions LLC" in Section I(a)(7) should be deleted because UBS Hedge Fund Solutions LLC merged with UBS Asset Management (Americas) LLC, on April 1, 2024.

Department's Response: The Department has not made the requested change, because the definition in the Proposal provides clarity that the retroactive relief covers the subject entity as well.

(d) The definition of "Affiliated QPAM" should be modified to reflect that UBS AM Americas is the only current UBS QPAM, and a future additional QPAM may sit within a successor of the Asset Management or Global Wealth Management Americas U.S. divisions of UBS.

Department's Response: The Department has not made UBS' requested changes, because the retrospective nature of this exemption warrants defining the term "Affiliated QPAM" consistent with PTE 2023-14, and UBS' requested change would allow an entity to qualify as an Affiliated QPAM notwithstanding that it also fits within the definition of Misconduct Entity.

(e) The footnote in Section I(b) should be deleted.<sup>29</sup> This footnote is unnecessary. Moreover, UBS O'Connor LLC no longer exists; it merged with UBS AM Americas on April 1, 2024, with UBS AM Americas as the surviving entity.

Department's Response: The Department concurs and has made the change.

(f) The definition of "Misconduct Entity" in Section I(i) should be revised to remove "CSAG," as CSAG no longer exists.

Department's Response: The Department has not made the requested change, because the proposed definition provides clarity that retroactive relief covers periods of time that CSAG existed.

(g) The reference to "CS Affiliated QPAM[s]" in the footnote in Section III(h)(1) should be deleted.<sup>30</sup>

Department's Response: The Department concurs and has made the change.

(h) Section III(i) should be revised to require provision of a copy of the audit report to the Risk Committee of *UBS Group AG's* Board of Directors and to a senior executive officer of *UBS Group AG's* Compliance and Operational Risk Control function.

Department's Response: The Department concurs and has made the requested change.

(i) The phrase "one-year exemption" should be revised to "five-year exemption" in Sections III(i)(3) and III(k).

Department's Response: The Department concurs that the operative language in Sections III(i)(3) and III(k) should not read "one-year exemption" and has modified the provisions to read "exemption."

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<sup>29</sup> This footnote states that "UBS represents that UBS O'Connor LLC and UBS Realty Investors LLC are entities under the UBS corporate umbrella that currently offer investment products which are accessible by ERISA-covered plans, but do not currently rely on Class PTE 84-14 when managing those products."

<sup>30</sup> The referenced footnote states that "[t]he exemption does not preclude the UBSQPAMs and CS Affiliated QPAM from maintaining separate Policies provided that the Policies comply with this exemption."

(j) Section III(m)(1)(ii) should be revised to require that the compliance officer (or officers) have a direct reporting line to either the highest-ranking corporate officer in charge of compliance for the applicable Affiliated QPAM *or the highest-ranking corporate officer in charge of the applicable Affiliated QPAM*. This would allow the QPAM to designate the highest-ranking corporate compliance officer as a “compliance officer” under the exemption.

Department’s Response: The Department concurs and has made the requested change.

(k) Section III(l) should be included in the list in the first clause of Section III(s), and the reference in the second clause of Section III(s) should be to Section III(i)(10), not Section III(i)(11).

Department’s Response: The Department concurs and has made UBS’ requested changes, although due to changes to Section III(i) described above, the latter change was made to Section III(i)(12) not Section III(i)(11)

(l) The phrase “at all times” should be deleted from Section III(u),<sup>31</sup> because that phrase is inconsistent with the Proposed Exemption’s statement that only “material change[s]” in “material fact[s] or representation[s]” would affect the status of the exemption.

Department’s Response: The Department disagrees with this revision. If, at any time, a material representation UBS made to the Department is no longer accurate, UBS must immediately inform the Department. If UBS has questions regarding the materiality of a representation, it should contact the Office of Exemption Determinations immediately.

### **Industry Comments**

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<sup>31</sup> Section III(u) provides that, “All the material facts and representations set forth in the Summary of Facts and Representations are true and accurate at all times.”

**SIFMA (Securities Industry and Financial Markets Association) and the ERISA Industry Committee (ERIC).**

53. SIFMA and ERIC's comment letters argue that if the Department does not grant UBS retroactive relief, it will cause wide ranging disruption to the securities markets.

54. The Department notes that it has addressed these broad concerns in its response to Comment 5, above. The Department reiterates that it must make the findings required by ERISA section 408(a) in order to grant an exemption with respect to the particular applicant seeking relief and for the transactions described in the application. If a QPAM or related party's behavior precludes such a finding, any wide-ranging disruption to the securities markets that results would be solely attributable to behavior of such QPAM or related party. As such, many of the concerns raised in SIFMA and ERIC's comments are outside the scope of this exemption.

**Anonymous.**

55. An anonymous commenter stated without specificity that the Department should not grant the proposed exemption in order to better protect the financial industry from corruption. Since the comment offered no further reasoning or substance, the Department cannot respond with specificity to this comment. This exemption, however, has taken the commenter's position into account by ensuring that Covered Plans are insulated from UBS' malfeasance.

**The QPAM Coalition Comment 1: Hearing Request.**

56. A commenter entitled the "QPAM Coalition," is comprised of, at various times, Mr. James S. Henry; Mr. John Christensen; Dr. Paul J. Morganoff; Mr. Ralph Nader; Mr. Khadija Sharife; Mr. Ke Francis Karugu; and Mr. and Mrs. Andreas and

Dagmar Frank. The coalition made two separate submissions during the comment period, which are considered together for purposes of this granted notice. As a preliminary matter, the QPAM Coalition requested a public hearing to provide a “more thorough examination and interrogation.” In the view of the QPAM Coalition, the Application omitted critical data required by the Department’s exemption procedure regulation, and a public hearing is needed to fully air the universe of relevant lawsuits and criminal investigations concerning UBS’ and Credit Suisse’s conduct as a fiduciary....<sup>32</sup> The QPAM Coalition states that “extraordinary new details about UBS/CS misconduct [discussed below] really do deserve to be aired in public.” The QPAM Coalition states that its members “would be available to present even more [i]mportant evidence directly related to the question of whether UBS/CS deserve to have their (collectively) 14th QPAM Exemption since 1994, despite serial criminal convictions.”

57. The Department notes that most of the exemptions identified by the QPAM Coalition were either extensions of existing exemptions or necessitated by the merger of UBS and Credit Suisse. Such extensions do not involve new instances of misconduct, and it is inappropriate to treat them as if they were the result of new, distinct, and separate violations of exemption conditions. To the contrary, the grants of extensions generally reflected the Department’s view that the QPAMs had complied with the conditions of the initial exemptions. Similarly, it is inappropriate to penalize the UBS QPAMs solely because they received exemptions (including this one) that arose from the merger of Credit Suisse and UBS; particularly when considering that these exemptions did not arise from any additional criminal misconduct or failure to supervise by UBS or its affiliates.

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<sup>32</sup> 29 CFR 2570.35(a)(5). The QPAM Coalition also takes issue with UBS’ representation that the “number of plans and IRAs to which the exemption will apply are too numerous to identify.”

58. As the Department notes in its exemption procedure regulation (the Procedures),<sup>33</sup> “[t]he Department will grant a request for a hearing ... where a hearing is necessary to fully explore material factual issues identified by the person requesting the hearing.”<sup>34</sup> The QPAM Coalition provided an expansive and detailed description of the “extraordinary new details” that needed to be discussed at a public hearing in their comment letter. Although the QPAM Coalition suggests that it could provide more evidence at a hearing, the Department’s regulations provide that it may decline to hold a hearing if, among other things, “the factual issues identified can be fully explored through the submission of evidence in written (including electronic) form.”<sup>35</sup>

59. In the Department’s view, the “factual issues” identified by the QPAM Coalition could be and have been fully explored through the submission of its written and electronically provided evidence. The Department also notes that its Procedures provide that hearing requestors must state, among other things, “the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption.”<sup>36</sup> The QPAM Coalition did not state in their comment letters how they would be “materially affected by the exemption.”

60. The Department notes that in processing UBS’ exemption request, it thoroughly reviewed UBS’ application. The Department relied on public comments and a robust exchange of information with UBS and external stakeholders to fill in factual gaps in the public record. The QPAM Coalition’s own comment provided information concerning a number of past and current investigations and prosecutions that form part of the public record that the Department has reviewed in making its requisite findings under ERISA section 408(a). Among other materials provided in their comments, the QPAM

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<sup>33</sup> 29 CFR part 2570 (76 FR 66637 (Oct. 27, 2011)).

<sup>34</sup> See Section 2570.46(b).

<sup>35</sup> See Section 2570.46(b)(3).

<sup>36</sup> See Section 2570.46(a)(2).

Coalition provided the text of a decision of the French Court of Cassation, Criminal Division, dated November 15, 2023 dealing with UBS' participation in a cross-border tax evasion via French and Swiss branches of UBS; a copy of the criminal complaint filed by the U.S. Department of Justice against UBS Securities LLC, et. al. on November 08, 2018 in Case No. 1:18-cv-06369-RPK-PK; a comment letter describing additional lawsuits and criminal trials that they believe should be taken into consideration by the Department;<sup>37</sup> copies of letters written by members of the QPAM Coalition to the UBS General Counsel<sup>38</sup> describing shortcomings in the compliance and controls of Credit Suisse' banking systems and generally detailing efforts to inform UBS and Credit Suisse of "entrenched criminal structures" within Credit Suisse; a transcript of comments at the Department's November 2022 hearing regarding amendments to the QPAM Exemption; and a copy of a letter to the Department<sup>39</sup> advocating for the denial of Credit Suisse's exemption application No. D-11819.<sup>40</sup>

61. The QPAM Coalition's comment further supplemented the record with articles written by its members that describe, among other things: the role of Swiss banks in money laundering and corrupt banking practices in Kenya; how, in the QPAM Coalition's view, Swiss bank secrecy laws facilitate participation by UBS and Credit Suisse in various criminal and political activities, including Swiss banks' past involvement in South Africa's "apartheid machinery"; political activities in Yemen, the Democratic Republic of Congo, and Mozambique; circumvention of European Union sanctions on various governments; the facilitation of corrupt finance and banking

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<sup>37</sup> The comment letter provides information about: *United States v. UBS Securities, LLC, et. al.* (generally, UBS' conduct in the mortgage crisis); *Murray v. UBS Securities, LLC* 601 U.S. 23 (2024) (regarding an employee's claim that UBS forced him to fraudulently certify his analyst reports); *U.S. v. Birkenfeld*, Case No. 08-60099-CR-ZLOCH (concerning offshore bank accounts and suppression of whistleblower activity); and links to various French and German tax fraud matters involving UBS.

<sup>38</sup> Letter from Dr. Paul Morjanoff, Financial Recovery and Consulting Services Pty Ltd to Ms. Barbara Levi, UBS Group General Counsel, dated July 11, 2023.

<sup>39</sup> Letter from Dr. Paul Morjanoff, Financial Recovery and Consulting Services Pty Ltd to Thomas Perez, U.S. Secretary of Labor, dated June 23, 2014.

<sup>40</sup> Credit Suisse was granted PTE 2014-11 on November 18, 2014 (79 FR 68716).

activities in various developing countries; and UBS' leveraging of the British Channel Island's legal jurisdiction to avoid criminal prosecution for various acts.

62. Finally, the QPAM Coalition submitted a brief article advocating for an "institutional grey list" similar to ones established by various inter-governmental organizations, such as the Organization for Economic Co-operation and Development, that would assist the Department in evaluating financial institutions that repeatedly find themselves in violation of applicable law. Even though the information provided by the QPAM Coalition does not lead the Department to conclude that a hearing is necessary to further explore any of the issues presented in its comment, the information provided by the QPAM Coalition validates the importance of one of the exemption's critical conditions: an in-depth annual audit of each UBS QPAM by a qualified, independent auditor. In this regard, the scope of ongoing investigations and potential misconduct identified by the QPAM Coalition in its comments illustrates the need for an independent audit to verify on an annual basis that the UBS QPAMs continue to adhere to applicable fiduciary provisions and the terms of this exemption and maintain a strong culture of compliance.

63. Based on the record developed by the Department, it does not appear to the Department that UBS QPAM personnel participated in the conduct described by the QPAM Coalition. In fact, the Department is able to make its findings that the UBS QPAMs may continue to rely on PTE 84-14 in part because the QPAMs and their personnel are insulated from the corporate management and business activities of UBS entities that were involved in criminal activity described above. In this regard, the independent auditor must continue to validate, among other things, that the asset management decisions of the QPAM are conducted independently of the corporate and management and business activities of each Misconduct Entity, and any failures of the

QPAMs to maintain or follow the Policies must be corrected and reported to the QPAM's head of compliance and general counsel.

**The QPAM Coalition Comment 2: Rebutting UBS.**

64. The QPAM Coalition's comment focuses on rebutting UBS' five "principal reasons" justifying the Department's grant of a five-year exemption. As described by the QPAM Coalition, UBS argues that (1) the convictions and the pending French charge do not relate to the UBS QPAMs, which are operated as separate businesses from the entities involved in the underlying conduct; (2) the disqualifying conduct described in the convictions and the pending French charge is historical in nature; (3) the UBS QPAMs have documented proof that ERISA plan assets have been safeguarded, as evidenced by their ERISA audit results for many years; (4) it is in the best interest of plans and their participants and beneficiaries for plan fiduciaries, well versed in their obligations to protect plan assets, to be able to select the asset managers they judge best, particularly when DOL-supervised audits confirm the managers' capability; and (5) UBS and the UBS QPAMs should not be punished, in effect, for the acquisition of Credit Suisse AG by UBS Group AG at the strong encouragement of the Swiss government.<sup>41</sup>

65. In response to these arguments, the QPAM Coalition states that (1) is irrelevant because the QPAM Exemption's required standard of integrity relates to the "corporate family's culture of compliance," and the exemption is a privilege to execute transactions which would otherwise be illegal; (2) is irrelevant because "UBS and Credit Suisse repeatedly engaged in stonewalling and obstruction of investigations, as well as legal tactics of interminable delays, even when they knew of their own guilt;" (3) the UBS and Credit Suisse audit reports are not "proof" because they did not assess all relevant factors, "including if financial instruments were being illegitimately laundered

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<sup>41</sup> See UBS Exemption Application, dated February 22, 2024, pp. 1-2.

through pension funds;” (4) UBS and Credit Suisse should have taken its responsibility more seriously before engaging in criminal activity; moreover, according to the QPAM Coalition, the UBS entities are still engaging in some of these behaviors; and (5) UBS benefitted greatly from taking over Credit Suisse AG. The QPAM Coalition also points out in their comment that the UBS QPAMs violated various conditions of the exemption, including the requirement for the stub audit.

66. The Department has considered and rejected the QPAM Coalition’s request to deny the UBS QPAMs’ exemption application. The QPAM Coalition’s points are addressed in turn:

(1) The Department agrees with the principle that the required standard of integrity in PTE 84-14 relates not just to the QPAM’s compliance culture, but also to its “corporate family's culture of compliance.” Therefore, an important aspect of the Proposal is that the UBS QPAMs are operated separately from the parts of the UBS organization that engaged in criminal misconduct underlying the Convictions (Criminal Misconduct). The record in this case demonstrates that the UBS QPAMs have been insulated from UBS’ corporate and business decisions, and from the parts of UBS that were involved in the Criminal Misconduct. Furthermore, the Department designed the Proposal’s first six conditions for relief to ensure that the UBS QPAMs: (1) had no involvement with the Criminal Misconduct; and (2) continue to have no relationship with any entity or individual that was involved in the Criminal Misconduct. In order to further support the UBS QPAMs’ insulation from the rest of UBS and to strengthen their own culture of compliance, the Department included other conditions in the Proposal that would require the UBS QPAMs to maintain their own policies, procedures, and training program, perform internal compliance reporting, and submit to a publicly available independent audit;

(2) The Department agrees that it is important that the Department consider the Criminal Misconduct irrespective of the applicant’s suggestion that it is “historical in nature,” and the Department has, accordingly, considered all the Criminal Misconduct in connection with this exemption. The Department considered the numerous convictions, and the extent of UBS’ cooperation (or non-cooperation) with investigators, as well as the information provided by UBS, commenters (including the QPAM Coalition), and other internal and external stakeholders, in formulating the conditions for relief described in this exemption and making its findings under ERISA section 408(a);

(3) The Department notes that the independent audits are meant to verify that the assets of Covered Plans are managed in accordance with the requirements of Title I of ERISA and the Code, as applicable, and that the requirements of the individual exemptions from Section I(g) of PTE 84-14 are met. The Department determined in this exemption and in others that an independent audit with the requirements described herein, provides a sufficient mechanism for the Department to make its findings that the Proposal is protective of the rights of participants and beneficiaries of Covered Plans;<sup>42</sup>

(4) The QPAM Coalition is not clear which responsibilities it is referring to in its statement that UBS should have taken its responsibilities more seriously before engaging in criminal activity. In this regard, the Department notes that the Proposal is focused on the actions of the UBS QPAMS and is not aware that the UBS QPAMS failed to take their responsibilities under ERISA seriously prior to the criminal activity engaged in by other UBS entities. However, the conditions for relief in this grant notice require the UBS QPAMS to adhere to Policies and Training designed to promote adherence to basic fiduciary standards under Title I of ERISA and the Code and reinforce their obligation to

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<sup>42</sup> The Department notes that the record does not contain any information that the UBS QPAMS illegally laundered financial instruments through pension plans, and this has not been a specific target of the independent audits required by the Department in numerous individual exemptions. If the QPAM Coalition or any other commenter has evidence demonstrating that the UBS QPAMS had used or permitted money laundering through pension funds, this would be of great import to the Department, and likely also to a number of other Federal and international regulators.

act with a high degree of integrity on behalf of their Covered Plan clients as required by PTE 84-14. The Department acknowledges the QPAM Coalition's statement that certain UBS entities continue to be investigated for their participation in various forms of misconduct, but it has not seen evidence of wrongdoing sufficient to warrant a different approach to the exemption than that taken by the Department. Also, when considering past and continuing Criminal Misconduct by other corporate entities, the Department must consider the potential harms to Covered Plans that may result from a denial of the exemption. The final exemption reflects the Department's primary focus on protecting Covered Plans and their participants and beneficiaries from the costs that they may incur if the UBS QPAMs become ineligible to rely on PTE 84-14, subject to the QPAMs' adherence to protective conditions that insulate UBS QPAMs, and by extension Covered Plans, from potential concerns based on the compliance culture in other parts of the organization; and

(5) Lastly, the QPAM Coalition states that UBS benefitted greatly from taking over Credit Suisse, thus undercutting the Applicant's argument that UBS should not be punished, in effect for acquiring Credit Suisse AG at the behest of the Swiss government. The Department notes that its primary concern is to ensure that an exemption is in the interest and protective of the rights of Covered Plans and their participants and beneficiaries – not whether UBS benefitted from the acquisition of Credit Suisse AG.

67. In sum, in response to the QPAM Coalition's rebuttal of UBS, the Department acknowledges the severity of the misconduct at issue, but also notes that none of the specific entities responsible for the wrongdoing are granted relief under the terms of this exemption. In addition to considering past misconduct, the Department must consider the potential harms to Covered Plans that may result from a denial of the exemption. Based on the written administrative record for this exemption, the Department has concluded that the exemption's conditions will appropriately ensure that

Covered Plans are protected from future violations, and insulated from the injury they could experience from denial of the requested exemption. The Department also has determined that a hearing is not necessary to further explore the issues raised in the commenter's written submission.

**The QPAM Coalition Comment 3: Request for Changes to the Exemption.**

68. The QPAM Coalition made a series of requests if the Department determines to grant exemptive relief for the UBS QPAMs. Generally, the QPAM Coalition requested that the Department: (1) require UBS to provide additional information regarding the plans for which it provides services; prohibit UBS from managing plan assets due to a self-perception that it is "above the law"; (2) limit the exemption's effective period to two-years; (3) require UBS to pay monetary penalties (presumably in order to rely on the QPAM Exemption); implement a regime for monitoring UBS compliance with the exemption's conditions that includes a panel of independent auditors; (4) establish a public registry for all financial actors involved in working with QPAMs; and (5) collaborate with financial regulators from around the world in making its determinations regarding UBS' exemption request, and other financial entities that on the relief provided in PTE 84-14.

69. The Department carefully considered the QPAM Coalition's comments and determined not to make their requested changes for the following reasons. First, the Department does not have the authority to make some of the requested changes. For example, in connection with the exemption process, the Department does not have the authority to prohibit the UBS QPAMs from managing plan assets if the UBS QPAMs rely on other available prohibited transaction exemptions or to require the UBS QPAMs to pay additional monetary penalties based on the Covered Convictions.

70. Second, in the Department's view, several of the QPAM Coalition's recommendations would not provide meaningful protections to Covered Plans. For example, limiting relief in the exemption to two years as suggested by coalition would not provide much additional protection to Covered Plans especially considering the exemption condition requiring the UBS QPAMs to undergo an in-depth annual audit by an independent auditor. The audit reports are publicly available and could form the basis for the Department to revise or revoke this exemption, if warranted or lead to a referral of the UBS QPAMs to EBSA's Office of Enforcement in the event that violations of ERISA were revealed through the audit. UBS QPAMs are well aware of these potential consequences, which makes the audit an effective means to ensure compliance with the provisions of Title I of ERISA and the terms of this exemption. The Department also is not persuaded that a panel of auditors would provide significant additional protection to Covered Plans as compared to a single independent auditor experienced and knowledgeable about ERISA and the terms of this exemption.<sup>43</sup> The Department reviews each audit and is empowered to seek additional information from the auditor if the audit appears lacking in any respect. The Department notes that Covered Plans already receive a copy of the proposed exemption, the final exemption, the Summary and the Statement. Further, the annual independent audit is available to all Covered Plan fiduciaries through EBSA's Public Disclosure Room (see above). This final exemption also adds two additional disclosure requirements (the Violation Notice, and disclosure of the QPAMs' indemnification procedures). The Department is skeptical that, under the circumstances,

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<sup>43</sup> The ERISA Coalition also failed to provide any detail regarding how the "panel of auditors" could be operationalized as a condition for relief. Important unanswered questions include how a panel of auditors would be chosen, how they would coordinate their audit findings, and how any conflicts in their findings would be resolved.

more disclosure of the kind suggested by the QPAM Coalition<sup>44</sup> will benefit Covered Plans, and the QPAM Commenters Coalition has not made a showing to the contrary.

71. Regarding the comment that the Department should coordinate with regulators around the world, the Department notes that it has communicated with other regulators in the past during its consideration of exemption requests and will continue to do so in the future when appropriate to protect affected plans.

The conditions of this exemption are not intended to punish UBS or burden the UBS QPAMs in a manner that will not provide meaningful protections to Covered Plans. Instead, the Department's objective in granting this exemption is to (i) insulate UBS QPAMs from the business and corporate decision making of UBS and its affiliates and any Criminal Misconduct or potential future misconduct of UBS and its affiliates; (ii) allow Covered Plans to terminate their relationship with the UBS QPAMs with minimal disruption to the Covered Plans; (iii) create an annual reliable and independent public record that documents the UBS QPAMs' level of compliance with the terms of this exemption and adherence to their basic fiduciary duties; and (iv) provide the Department with the flexibility to revise or revoke the relief in this exemption in a manner most protective of Covered Plans if UBS engages in future criminal activity.

**Modifications to the Proposal the Department Is Making on Its Own Motion:**

72. The Department has decided to make several minor changes to the Proposal in the final exemption to correct scrivener's errors in the operative text, renumber sections of the operative text, and make certain updates to the factual record.

73. The Department also revised Section III(1) of the Proposal by replacing text referencing the exemption's termination if a UBS entity is *convicted of a crime* described

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<sup>44</sup> The QPAM Coalition, suggests, among other things, that "foreign banks should provide information on why they wish to open branches in the E.U. financial market, including submission of all possible convictions, deferred prosecution agreements, and equivalent measures, transparently and publicly."

in Section I(g) of PTE 84-14 and replacing this text with the exemption's termination if a UBS entity engages in *conduct prohibited* by Section I(g) of PTE 84-14 (see Section III (l) in this exemption). The Department made this modification to ensure consistency with the ineligibility requirements of the recently amended PTE 84-14.

74. Section III(o) of the Proposal reads: "Relief in this exemption will terminate on the date that is six months following the date that a U.S. regulatory authority makes a final decision that UBS or an affiliate of either failed to comply in all material respects with any requirement imposed by such regulatory authority in connection with the Covered Convictions." The Department inadvertently omitted the words "or CSAG" following "UBS." Further, the Department has determined to extend the relief period to one year to make the provision consistent with the one-year transition period requirement in Section I(i) of amended PTE 84-14. After these edits, Condition (o) of this final exemption reads: "this exemption will terminate on the date that is one year following the date that a U.S. regulatory authority makes a final decision that UBS *or CSAG* or an affiliate of either failed to comply in all material respects with any requirement imposed by such regulatory authority in connection with the Covered Convictions [emphasis added]."

75. Finally, the Department modified Section III(s) of the Proposal by adding language that an Affiliated QPAM will not fail to meet the terms of this exemption if a different Affiliated QPAM failed to provide Covered Plans with a Violation Notice required by Section III(t) of this exemption. The Department is making this revision because it did not intend for a QPAM to lose exemptive relief under the exemption solely when a different QPAM fails to provide a Violation Notice.

**Publicly Available Information:**

76. The complete application file (D-12098) 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, reachable by phone at (202) 693-8673. 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 June 11, 2024 (89 FR 49213).

### **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) and/or Code section 4975(c)(2) does not relieve a fiduciary or other party in interest from certain requirements of other provisions of ERISA or the Code, 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); nor does it affect the requirement of Code section 401(a) that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) As required by ERISA section 408(a) and/or Code section 4975(c)(2), the Department 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 Plan's participants and beneficiaries.

(3) This exemption is supplemental to and not in derogation of any other provisions of ERISA 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 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 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 UBS's exemption application, the Department has determined to grant the following exemption under the authority of ERISA section 408(a) and Code section 4975(c)(2) and in accordance with the Department's exemption procedures set forth in 29 CFR Part 2570, Subpart B.<sup>45</sup>

## **EXEMPTION**

### **SECTION I. DEFINITIONS**

(a) Names of Certain Corporate Entities:

(1) The term "CSAG" means Credit Suisse AG, which was 100% owned by Credit Suisse Group AG, before UBS acquired Credit Suisse Group AG on June 12, 2024, and became the sole surviving entity.

(2) The term "CSAM LLC" means Credit Suisse Asset Management, LLC. On May 1, 2024, CSAM LLC was merged into UBS Americas, with UBS Americas as the surviving entity.

(3) The term "CSSEL" means Credit Suisse Securities (Europe) Limited an indirectly a wholly owned subsidiary of UBS Group AG.

(4) The term "UBS" means UBS AG which is a wholly owned subsidiary of UBS Group AG.

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<sup>45</sup> 76 FR 66637, 66644, October 27, 2011

(5) The term “UBS Americas” means UBS Asset Management (Americas) LLC, which is majority owned by UBS Americas, Inc., a wholly owned subsidiary of UBS AG.

(6) The term “UBS Europe” means UBS Europe SE. UBS Europe is the successor to UBS (France) S.A. UBS (France) S.A. was a wholly owned subsidiary of UBS under the laws of France until 2023. In July of 2023, UBS France S.A. merged into UBS Europe and set up a branch in France called UBS Europe SE France Branch.

(7) The term “UBS Hedge Fund Solutions LLC” was formerly known as UBS Alternative and Quantitative Investments, LLC and is wholly owned by UBS Americas Holding LLC, a wholly owned subsidiary of UBS. UBS Hedge Fund Solutions merged into UBS Americas on April 1, 2024.

(8) The term “UBS Securities Japan” means UBS Securities Japan Co. Ltd, a wholly owned subsidiary of UBS incorporated under the laws of Japan.

(b) The term “Affiliated QPAM” means: UBS Americas, UBS Hedge Fund Solutions LLC, Credit Suisse Asset Management, LLC, and any future separate legal entity within the Asset Management or the Global Wealth Management Americas U.S. divisions of UBS that qualifies as a “qualified professional asset manager” (as defined in Section VI(a) of PTE 84-14) and that relies on the relief provided by PTE 84-14, and with respect to which UBS is an “affiliate” (as defined in Part VI(d) of PTE 84-14). The term Affiliated QPAM excludes a Misconduct Entity.

(c) The term “Criminal Activity” means the Covered Convictions, the 2013 UBS Conviction, and the FX Misconduct.

(d) The term “Covered Convictions” means (1) the judgment of conviction against CSAG for one count of conspiracy to violate section 7206(2) of the Internal Revenue Code in violation of Title 18, United States Code, Section 371, that was entered in the District Court for the Eastern District of Virginia in Case Number 1:14-cr-188-RBS, on November 21, 2014 (the “2014 CSAG Conviction”); (2) the judgment of

conviction against CSSEL in Case Number 1:21-cr-00520-WFK (the “2022 CSSEL Conviction”); (3) the judgment of conviction against UBS in case number 3:15-cr-00076-RNC in the U.S. District Court for the District of Connecticut for one count of wire fraud in violation of Title 18, United States Code, Sections 1343 and 2 in connection with UBS's submission of Yen London Interbank Offered Rates and other benchmark interest rates between 2001 and 2010; and (4) the judgment of conviction on February 20, 2019, against UBS and UBS France in case Number 1105592033 in the French First Instance Court (the “2019 UBS France Conviction”).

(e) The term “2013 UBS Conviction” means the judgment of conviction against UBS Securities Japan Co. Ltd. in case number 3:12 cr 00268 RNC in the U.S. District Court of the District of Connecticut for one count of wire fraud in violation of Title 18, United States Code, sections 1343 and 2 in connection with submission of YEN London Interbank Offered Rates and other benchmark interest rates.

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

(g) 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 an Affiliated QPAM relies on PTE 84-14, or with respect to which an Affiliated QPAM (or any UBS affiliate) 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 the 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. Notwithstanding the

above, an Affiliated QPAM may disclaim reliance on QPAM status or PTE 84-14 in a written modification of a contract, arrangement, or agreement with an ERISA-covered plan or IRA, where: the modification is made in a bilateral document signed by the client; the client's attention is specifically directed toward the disclaimer; and the client is advised in writing that, with respect to any transaction involving the client's assets, the Affiliated QPAM will not represent that it is a QPAM, and will not rely on the relief described in PTE 84-14.

(h) The term “Exemption Period” means the period beginning on June 12, 2024, and ending on June 11, 2029.

(i) The term “Misconduct Entity” means any one of the following: an entity subject to one of the Covered Convictions, i.e., UBS, UBS France (recently merged into UBS Europe), CSAG and CSSEL; the entity subject to the 2013 UBS Conviction, i.e., UBS Securities Japan; or an entity that was the subject of the FX Misconduct, i.e., UBS.

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

(k) The term “best knowledge,” “to the best of one’s knowledge,” “best knowledge at that time,” and other similar “best knowledge” terms shall include matters that are known to the applicable individual or should be known to such individual upon the exercise of such individual’s due diligence required under the circumstances, and, with respect to an entity other than a natural person, such term includes matters that are known to the directors and officers of the entity or should be known to such individuals upon the exercise of such individuals’ due diligence required under the circumstances.

(l) The term “UBS Seconded Employee” means, an individual nominally employed by a Misconduct Entity who performs work on behalf of a UBS QPAM; provided that such UBS QPAM is solely responsible for the management and control of the employee’s job activities performed on behalf of such QPAM. Notwithstanding the preceding sentence, the UBS QPAM must be solely responsible for the establishment of the employee’s job duties and terms of employment (including compensation, promotions, and benefits); and must have supervisory responsibility with respect to, among other things, the employee’s performance, training, and disciplinary actions.

(m) The term “UBS QPAMs” means, individually or collectively, the Affiliated QPAMs and/or the Related QPAMs.

(n) The “conduct” of any person or entity that is the “subject of” the Criminal Activity encompasses any misconduct of CSAG, CSSEL, UBS, UBS France (later merged with UBS Europe), UBS Securities Japan, and/or their personnel: (i) that is described in Exhibit 3 to the Plea Agreement entered into between UBS and the Department of Justice Criminal Division, on May 20, 2015, in connection with case number 3:15-cr-00076-RNC; (ii) that is described in Exhibits 3 and 4 to the Plea Agreement entered into between UBS Securities Japan and the Department of Justice Criminal Division, on December 19, 2012, in connection with case number 3:12-cr-00268-RNC; (iii) that is described in Exhibit 1 of the Plea Agreement (Factual Basis for Breach) entered into between UBS and the Department of Justice Criminal Division, on May 20, 2015, in connection with Case Number 3:15-cr-00076-RNC filed in the US District Court for the District of Connecticut; (iv) that is the basis of the 2019 UBS France Conviction; and (v) that is the subject of the 2014 CSAG Conviction and the 2022 CSSEL Conviction described in Section I(c)(1) and (c)(2).

(o) The term “participate in” when used to describe an individual or entity’s participation in the Criminal Activity refers not only to active participation in the

Criminal Activity but also includes an individual or entity's knowledge or approval of the Criminal Activity, without taking active steps to prohibit such conduct, such as reporting the conduct to the individual's supervisors, and to the Board of Directors.

## **SECTION II. COVERED TRANSACTIONS**

(a) UBS QPAMs are not precluded from relying on the exemptive relief provided by Prohibited Transaction Exemption 84-14 (PTE 84-14)<sup>46</sup> during the Exemption Period, notwithstanding the "Covered Convictions," provided that the definitions in Section I and the conditions in Section III are satisfied.

(b) UBS QPAMS are not precluded from relying on the exemptive relief provided by PTE 84-14 during the period from June 12, 2023, to June 11, 2024, notwithstanding UBS's failure to comply with Section III(j)(1) of PTE 2023-14.

## **SECTION III. CONDITIONS**

(a) The UBS QPAMs (including their officers, directors, agents other than the Misconduct Entities, employees of such QPAMs, and UBS Seconded Employees) did not know nor have reason to know of and did not participate in the conduct underlying the Criminal Activity. Further, any other party engaged on behalf of the UBS QPAMs 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 underlying the Criminal Activity.

(b) The UBS QPAMs (including their officers, directors, agents other than the Misconduct Entities, employees of such QPAMs, and UBS Seconded Employees) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the Criminal Activity. Further, any other party engaged on behalf of the UBS QPAMs who had responsibility for, or exercised

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<sup>46</sup> 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430, (Oct. 10, 1985), as amended at 70 FR 49305 (Aug. 23, 2005), as amended at 75 FR 38837 (July 6, 2010), and as amended at 89 FR 23090 (April 3, 2024).

authority in connection with the management of plan assets did not receive direct compensation, or knowingly receive indirect compensation, in connection with the Criminal Activity.

(c) The 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 underlying the Criminal Activity.

(d) At all times during the Exemption Period, no 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 Affiliated QPAM with respect to one or more Covered Plans, to enter into any transaction with a Misconduct Entity or to engage a Misconduct Entity 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. An Affiliated QPAM will not fail this condition solely because:

(1) A UBS (or successor) affiliate serves as a local sub-custodian that is selected by an unaffiliated global custodian that, in turn, is selected by someone other than a UBS QPAM; or

(2) Services are provided by UBS Seconded Employees.

(e) Any failure of an Affiliated QPAM to satisfy Section I(g) of PTE 84-14 arose solely from the Covered Convictions.

(f) A UBS QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an “ERISA-covered plan”) or Code section 4975 (an “IRA”) in a manner that it knew or should have known would further the criminal conduct underlying the Criminal Activity; or cause the UBS QPAM or its affiliates to directly or indirectly profit from the criminal conduct underlying the Criminal Activity.

(g) No Misconduct Entity will 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 ERISA-covered Plan and IRA assets, except that each may act as such a fiduciary with respect to employee benefit plans sponsored for its own employees or employees of an affiliate. No Misconduct Entity will be treated as violating the conditions of the exemption solely because it acted as an investment advice fiduciary within the meaning of ERISA section 3(21)(A)(ii) or Code section 4975(e)(3)(B).

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

(i) The asset management decisions of the QPAM are conducted independently of the corporate and management and business activities of each Misconduct Entity, and without considering any fee a related local sub-custodian may receive from those decisions. This condition does not preclude an Affiliated QPAM, as defined in Section I(b)(1), from receiving publicly available research and other widely available information from a UBS affiliate;

(ii) The 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 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 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 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 QPAM complies with the terms of this 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 UBS QPAM that engaged in the violation or failure and the independent auditor responsible for reviewing compliance with the Policies. A QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, if it corrects any instance of noncompliance as soon as reasonably possible upon discovery, or as soon as reasonably possible after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (2);

(3) Each Affiliated QPAM must maintain, adjust (to the extent necessary), and implement or continue a program of training during the Exemption Period (the Training) that is conducted at least annually for all relevant Affiliated QPAM asset/portfolio

management, trading, legal, compliance, and internal audit personnel.<sup>47</sup> 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 any wrongdoing;

(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; and

(iii) Be conducted in-person, electronically, or via a website.

(i)(1) Each Affiliated QPAM submits to an audit conducted by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and each Affiliated QPAM's compliance with, the Policies and Training described above in Section (h). The audit requirement must be incorporated in the Policies.

(2) UBS shall provide the Department a copy of the engagement agreement with the independent auditor within 15 days after its execution. Within 45 days after executing the engagement agreement with the independent auditor, and after consultation with the auditor, UBS must finalize and provide to the independent auditor a schedule for completion of the audit. The schedule must include target dates for the auditor to send initial information and document requests to UBS and for UBS to respond to those requests. The Department's receipt and incorporation of the engagement agreement into

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<sup>47</sup> The exemption does not preclude an Affiliated QPAM from maintaining separate training programs provided each training program complies with this exemption.

the record, with or without comment, should not be taken as an indication that the Department has approved of the engagement agreement.

(3) The initial audit under this exemption must cover the period that begins on June 12, 2024, and ends on June 11, 2025, and the audit must be completed by Thursday, December 11, 2025. The second audit must cover the period that begins on June 12, 2025, and ends on June 11, 2026, and must be completed by Friday, December 11, 2026. The third audit must cover the period that begins on June 12, 2026, and ends on June 11, 2027, and must be completed by Monday, December 13, 2027. The fourth audit must cover the period that begins on June 12, 2027, and ends on June 11, 2028, and must be completed by Monday, December 11, 2028. The fifth audit must cover the period that begins on June 12, 2028, and ends on June 11, 2029, and must be completed by Tuesday, December 11, 2029. Notwithstanding the audit periods described above, the audit required under PTE 2023-14 must be completed for the prior period of June 12, 2023, through June 11, 2024 and delivered to the Department in accordance with the terms of that exemption. The prior exemption audit report(s) must be submitted in accordance with section III(i)(9) below;

(4) 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 Affiliated QPAM and, if applicable, UBS, must 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;

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

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

(7) For the audit, on or before the end of the relevant period described in Section III(i)(1) for completing the audit, the auditor must issue a written report (the Audit Report) to UBS and the 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 Affiliated QPAMs. The Audit Report must include the auditor's specific determinations regarding:

(i) The adequacy of each Affiliated QPAM's Policies and Training; each 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 Affiliated QPAM's noncompliance with the written Policies and Training described in Section III(h) above. The Affiliated QPAM must promptly address any noncompliance and 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 Affiliated QPAM. Any action taken or the plan of action to be taken by the respective Affiliated QPAM must be included in an addendum to the Audit Report (such addendum must be completed prior to

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 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 an 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 an Affiliated QPAM has complied with the requirements under this subparagraph must be based on evidence that each Affiliated QPAM has implemented, maintained, and followed the Policies and Training required by this exemption. Furthermore, the auditor must not solely rely on the Exemption Report created by the Compliance Officers, 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 Exemption Review described in Section III(m);

(8) The auditor must notify the respective 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;

(9) With respect to the Audit Report, the General Counsel, or one of the three most senior executive officers of the 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; that, to the best of such officer's knowledge at the time, such 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. Such certification must also include

the signatory's determination that, to the best of such officer's knowledge at the time, the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code;

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

(11) Each Affiliated QPAM provides its certified Audit Report, by regular mail to: Office of Exemption Determinations (OED), 200 Constitution Avenue NW, Washington, DC 20001; or via email to e-OED@dol.gov. 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 exemption. Furthermore, each 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;

(12) 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;

(13) UBS must notify the Department of Labor's Office of Exemption Determinations (OED) no later than 90 days after the Effective Date of this exemption, of the auditor selected to complete audits required by Section III(i)(1) above for the periods covering June 12, 2024, through June 11, 2029. Any engagement agreement with an auditor to perform the audit required by this exemption that is entered into subsequent to

the effective date of this exemption must be submitted to OED no later than two months after the execution of such agreement;

(14) At the Department's request, UBS and the Auditor shall provide the Department with updates about the progress of the audit. The Department's requests may be directed to UBS and/or the auditor;

(15) For only the initial audit required by Section III(i)(1) above for the period covering June 12, 2024, through June 11, 2025, the auditor must consult with the auditors who performed the audits required pursuant to PTE 2023-14 for the period of June 12, 2023, through June 11, 2024, unless such auditor is the same auditor selected under paragraph 11 of this subsection. UBS must notify OED if for any reason the consultation required by this paragraph 12 cannot occur and must provide an explanation for why the consultation cannot occur. Such consultation may, but need not, occur for subsequent audits; and

(16) UBS 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 between the terminated auditor and UBS.

(j) As of the effective date of this exemption, with respect to any arrangement, agreement, or contract between an Affiliated QPAM and a Covered Plan, the 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 prohibited transactions); and to comply with the standards of prudence and loyalty set forth in ERISA section 404 with respect to each such ERISA-covered plan and IRA to the extent that ERISA section 404 is applicable;

(2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from the QPAM's violation of any conditions of this exemption, 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 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 a Conviction covered under this exemption. The term "actual losses" includes, but is not limited to, 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 as a result of a QPAM's inability to rely upon the relief in PTE 84-14;

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

(4) Not to restrict the ability of the Covered Plan to terminate or withdraw from its arrangement with the QPAM, with respect to any investment in a separately-managed account or pooled fund subject to ERISA and managed by such QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any such arrangement involving investments in pooled funds subject to ERISA entered into after the effective date of this exemption, the adverse consequences must relate to a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming an ERISA-covered plan's or IRA's investment, and such restrictions must be applicable to all such investors and 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;

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the QPAM 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 UBS (and affiliates), or damages arising from acts outside the control of the Affiliated QPAM; and

(7) Within 120 days after the effective date of this exemption, each QPAM must provide a notice of its obligations under this Section III(j) to each Covered Plan. For prospective Covered Plans that enter into a written asset or investment management agreement with a QPAM on or after a date that is 120 days after the effective date of this exemption, the QPAM must agree to its obligations under this Section III(j) in an updated investment management agreement between the QPAM and such clients or other written contractual agreement. Notwithstanding the above, a QPAM will not violate the condition solely because a Covered Plan refuses to sign an updated investment management agreement. For new Covered Plans that were provided an investment management agreement prior to the effective date of this exemption, returning it within 120 days after the effective date of this exemption, and that signed investment management agreement requires amendment to meet the terms of the exemption, the QPAM may provide the new Covered Plan with amendments that need not be signed

with any documents required by this subsection (j) within ten (10) business days after receipt of the signed agreement.

(k) Within 60 days after the publication date of the notice of final exemption in the *Federal Register*, each Affiliated QPAM provides notice of the proposed and final exemption as published in the *Federal Register*, along with a summary describing the facts that led to the Covered Convictions (the Summary), which has been submitted to the Department, and a prominently displayed statement (the Statement) that the Covered Convictions result 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 an Affiliated QPAM, or the sponsor of an investment fund in any case where an Affiliated QPAM acts as a sub-adviser to the investment fund in which such ERISA-covered plan and IRA invests. The Summary will be submitted to OED before it is distributed by each Affiliated QPAM. All prospective Covered Plan clients that enter into a written asset or investment management agreement with an Affiliated QPAM after a date that is 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 the Affiliated QPAM. The notices may be delivered electronically (including by an email that has a link to the exemption).

(l) The 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 Covered Convictions. If, during the Exemption Period, an entity within UBS's corporate structure engages in conduct prohibited by Section I(g) of PTE 84-14 (other than the Covered Convictions), relief in this exemption would terminate immediately.

(m)(1) Within 60 days after the date of publication of the exemption, each Affiliated QPAM must designate two senior Compliance Officers (the Compliance Officers) who will be responsible for compliance with the Policies and Training requirements described herein. For purposes of this condition (m), each relevant line of business within an Affiliated QPAM may designate its own two Compliance Officers. Notwithstanding the above, the appointed Compliance Officers must not be a person who: (i) participated in the criminal conduct underlying the Criminal Activity, or knew of, or (ii) had reason to know of, the Criminal Activity without taking active documented steps to stop the misconduct.

(2) The Compliance Officers 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.<sup>48</sup>

(3) With respect to the Compliance Officers, the following conditions must be met:

(i) Each 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;

(ii) Each Compliance Officer must have a direct reporting line to the highest-ranking corporate officer in charge of compliance for the applicable Affiliated QPAM or the highest-ranking corporate officer in charge of the applicable Affiliated QPAM and

(iii) The Compliance Officers responsible for the Exemption Review must provide the Exemption Report described in Section III(m)(4)(ii) below to the Auditor within seven (7) days of completing the report.

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

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<sup>48</sup> Pursuant to PTE 2023-14, the Compliance Officer also must conduct and complete an exemption review within three months of June 11, 2024.

(i) The Annual Exemption Review includes a review of the Affiliated QPAM'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 Officers or others within the compliance and risk control function (or its equivalent) during the time period; the most recent Audit Report issued pursuant to this exemption or PTE 2023-14; any material change in the relevant business activities of the 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 Affiliated QPAMs;

(ii) The Compliance Officers must prepare a written report for the Exemption Review (an Exemption Report) that (A) summarizes their 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, each 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 Affiliated QPAMs have 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 UBS and to each Affiliated QPAM to which such report relates, and to the head of compliance and the general counsel (or their functional equivalent) of UBS, and the relevant Affiliated QPAM. The Exemption Report must be made unconditionally available to the independent auditor described in Section III(i) above; and

(v) The Exemption Review, including the Compliance Officers' written Annual Exemption Report, must cover the Exemption Period, and the Annual Review, including the Compliance Officers' written Report, must be completed within three (3) months following the end of the period to which it relates.

(n) UBS imposes its internal procedures, controls, and protocols on each Misconduct Entity to reduce the likelihood of any recurrence of conduct that is the subject of the Criminal Activity.

(o) Relief in this exemption will terminate on the date that is one year following the date that a U.S. regulatory authority makes a final decision that UBS or CSAG or an affiliate of either failed to comply in all material respects with any requirement imposed by such regulatory authority in connection with the Covered Convictions.

(p) Each Affiliated QPAM will maintain records necessary to demonstrate that the conditions of this exemption have been met for six (6) years following the date of any transaction for which the Affiliated QPAM relies upon the relief in this exemption.

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

conduct and allegations that led to the agreement via email addressed to e-OED@dol.gov.

(r) Within 60 days after the effective date of this exemption, each 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 QPAM's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within six (6) months following the end of the calendar year during which the Policies were changed.<sup>49</sup> With respect to this requirement, the description may be continuously maintained on a website, provided that such website link to the Policies or Summary Policies is clearly and prominently disclosed to each Covered Plan.

(s) An Affiliated QPAM will not fail to meet the terms of this exemption solely because a different Affiliated QPAM fails to satisfy a condition for relief described in Section III(c), (d), (h), (i), (j), (k), (l), (m), (p), (r), or (t); or if the independent auditor described in Section III(i) fails to comply with a provision of the exemption other than the requirement described in Section III(i)(12), provided that such failure did not result from any actions or inactions of UBS or its affiliates;

(t) If the independent auditor or UBS or its affiliates learns of any material noncompliance with a condition of this exemption, UBS must send a notice (a "Violation Notice") to all affected Covered Plans and the Department that prominently and conspicuously states or describes: (1) that UBS, or the UBS QPAM, as applicable, failed to meet the terms of this exemption (and describes the failure); (2) the extent to which UBS QPAMs have potentially been operating without an exemption due to the failure;

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<sup>49</sup> If the UBS 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.

(3) whether UBS plans to apply for retroactive relief from the Department for this failed condition; (4) any further transactions engaged in by the UBS QPAMs on behalf of Covered Plans that may be non-exempt prohibited transactions unless the Department grants retroactive relief for the period in which the transactions occurred; and (5) UBS must indemnify and hold harmless the Covered Plan for any actual losses resulting directly from the QPAM's failure to comply with any conditions of this exemption, ERISA's fiduciary duties and of the prohibited transaction provisions of ERISA and the Code, a breach of contract by the QPAM, or any claim arising out of the failure of such QPAM to qualify for the exemptive relief provided by PTE 84-14 as a result of a violation of PTE 84-14 Section I(g), other than a Conviction covered under the exemption. The Violation Notice must be sent to all affected Covered Plans and the Department within 30 days after the independent auditor becomes aware of the violation. If the Violation Notice is not sent within the 30-day period, the UBS QPAM may self-correct the failure by sending the Violation Notice to all affected Covered Plans and the Department with an addendum describing the failure within 30 days after the completion of next scheduled audit.

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

(v) Each UBS QPAM must develop written processes that clearly describe: (1) how the QPAM identifies and quantifies "actual losses" for purposes of Section III(j)(2); and (2) how Covered Plans may recover or avoid incurring the losses that the UBS QPAM must indemnify or hold Covered Plans harmless from incurring pursuant to Section III(j)(2). Each UBS QPAM must develop these processes and deliver a copy of the processes to each Covered Plan within 90 days after the date the Department publishes a final exemption in the *Federal Register* and notify Covered Plans of any subsequent material changes to the processes within 30 days of the effective date of such

changes. *Applicability Date:* This exemption will be in effect for the period beginning on June 12, 2024 and ending on June 11, 2029, as well as the period of June 12, 2023, through June 11, 2024.

Signed at Washington, DC.

**George Christopher Cosby,**

*Director, Office of Exemption Determinations,*

*Employee Benefits Security Administration,*

*U.S. Department of Labor.*

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