DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Exemptions From Certain Prohibited Transaction Restrictions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following proposed exemptions: D–11856, Deutsche Investment Management Americas Inc. and Certain Current and Future Asset Management Affiliates of Deutsche Bank AG; D–11859, Citigroup, Inc.; D–11861, JPMorgan Chase & Co.; D–11862, Barclays Capital Inc.; D–11906, JPMorgan Chase & Co.; D–11907, UBS Assets Management, UBS Realty Investors, UBS Hedge Fund Solutions LLC, UBS O'Connor LLC, and Certain Future Affiliates in UBS's Asset Management and Wealth Management Americas Divisions; D–11908, Deutsche Investment Management Americas Inc. and Certain Current and Future Asset Management Affiliates of Deutsche Bank; D–11909, Citigroup, Inc.; and, D–11910, Barclays Capital Inc.

DATES: All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice.

ADDRESSES: Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, U.S. Department of Labor, 200 Constitution Avenue NW., Suite 400, Washington, DC 20210. Attention: Application No. ____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via email or FAX. Any such comments or requests should be sent either by email to: *moffitt.betty@dol.gov*, or by FAX to (202) 693–8474 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1515, 200 Constitution Avenue NW., Washington, DC 20210.

Warning: All comments will be made available to the public. Do not include any personally identifiable information (such as Social Security number, name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

SUPPLEMENTARY INFORMATION:

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).[1] Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Deutsche Investment Management Americas Inc. (DIMA) and Certain Current and Future Asset Management Affiliates of Deutsche Bank AG (Collectively, the Applicant or the DB QPAMs), Located in New York, New York

[Exemption Application No. D–11856]

Proposed Temporary Exemption

The Department is considering granting a temporary exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act), and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).[2]

Section I: Covered Transactions

If the proposed temporary exemption is granted, certain entities with specified relationships to Deutsche Bank AG (hereinafter, the DB QPAMs, as further defined in Section II(b)) will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Exemption (PTE) 84–14,[3] notwithstanding (1) the ''Korean Conviction'' against Deutsche Securities Korea Co., a South Korean affiliate of Deutsche Bank AG (hereinafter, DSK, as further defined in Section II(f)), entered on January 23, 2016; and (2) the ''US Conviction'' against DB Group Services UK Limited, an affiliate of Deutsche Bank based in the United Kingdom (hereinafter, DB Group Services, as further defined in Section II(e)), scheduled to be entered on the April 3, 2017 (collectively, the Convictions, as further defined in Section II(a)),[4] for a period of up to 12 months beginning on the U.S. Conviction Date (as further defined in Section II(d)), provided that the following conditions are satisfied:

[1] The Department has considered exemption applications received prior to December 27, 2011 under the exemption procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

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

[3] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

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

(a) The DB QPAMs (including their officers, directors, agents other than Deutsche Bank, and employees of such DB QPAMs) did not know of, have reason to know of, or participate in the criminal conduct of DSK and DB Group Services that is the subject of the Convictions (for purposes of this paragraph (a), ''participate in'' includes the knowing or tacit approval of the misconduct underlying the Convictions);

(b) The DB QPAMs (including their officers, directors, agents other than Deutsche Bank, and employees of such DB QPAMs) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the Convictions;

(c) The DB QPAMs will not employ or knowingly engage any of the individuals that participated in the criminal conduct that is the subject of the Convictions (for purposes of this paragraph (c), ''participated in'' includes the knowing or tacit approval of the misconduct underlying the Convictions);

(d) A DB QPAM will not use its authority or influence to direct an ''investment fund'' (as defined in Section VI(b) of PTE 84–14) that is subject to ERISA or the Code and managed by such DB QPAM to enter into any transaction with DSK or DB Group Services, or engage DSK or DB Group Services to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e) Any failure of the DB QPAMs to satisfy Section I(g) of PTE 84–14 arose solely from the Convictions;

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

(g) DSK and DB Group Services will not provide discretionary asset management services to ERISA-covered plans or IRAs, nor will otherwise act as a fiduciary with respect to ERISA-covered plan and IRA assets;

(h)(1) Each DB QPAM must immediately develop, implement, maintain, and follow written policies and procedures (the Policies) requiring and reasonably designed to ensure that:

(i) The asset management decisions of the DB QPAM are conducted independently of Deutsche Bank's corporate management and business activities, including the corporate management and business activities of DB Group Services and DSK;

(ii) The DB QPAM fully complies with ERISA's fiduciary duties and with ERISA and the Code's prohibited transaction provisions, and does not knowingly participate in any violations of these duties and provisions with respect to ERISA-covered plans and IRAs;

(iii) The DB QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs;

(iv) Any filings or statements made by the DB QPAM to regulators, including but not limited to, the Department of Labor, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA-covered plans or IRAs are materially accurate and complete, to the best of such QPAM's knowledge at that time;

(v) The DB QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plan and IRA clients;

(vi) The DB QPAM complies with the terms of this temporary exemption; and

(vii) Any violation of, or failure to comply with, an item in subparagraph (ii) through (vi), is corrected promptly upon discovery, and any such violation or compliance failure not promptly corrected is reported, upon the discovery of such failure to promptly correct, in writing, to appropriate corporate officers, the head of compliance and the General Counsel (or their functional equivalent) of the relevant DB QPAM, the independent auditor responsible for reviewing compliance with the Policies, and an appropriate fiduciary of any affected ERISA-covered plan or IRA where such fiduciary is independent of Deutsche Bank; however, with respect to any ERISA-covered plan or IRA sponsored by an ''affiliate'' (as defined in Section VI(d) of PTE 84–14) of Deutsche Bank or beneficially owned by an employee of Deutsche Bank or its affiliates, such fiduciary does not need to be independent of Deutsche Bank. A DB QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance promptly when discovered or when it reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (vii);

(2) Each DB QPAM must immediately develop and implement a program of training (the Training), conducted at least annually, for all relevant DB QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must be set forth in the Policies and 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 temporary exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing;

(i)(1) Each DB 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 the DB QPAM's compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. The audit period under this proposed temporary exemption begins on October 24, 2016, and continues through the entire effective period of this temporary exemption (the Audit Period). The Audit Period will cover the contiguous periods of time during which PTE 2016–12, the Extension of PTE 2015–15 (81 FR 75153, October 28, 2016) (the Extension) and this proposed temporary exemption are effective. The audit terms contained in this paragraph (i) supersede the terms of paragraph (f) of the Extension. However, in determining compliance with the conditions for the Extension and this proposed temporary exemption, including the Policies and Training requirements, for purposes of conducting the audit, the auditor will rely on the conditions for exemptive relief as then applicable to the respective portions of the Audit Period. The audit must be completed no later than six (6) months after the period to which the audit applies;

(2) 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 as permitted by law, each DB QPAM and, if applicable, Deutsche

Bank, will grant the auditor unconditional access to its business, including, but not limited to: Its computer systems; business records; transactional data; workplace locations; training materials; and personnel;

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

(4) The auditor's engagement must specifically require the auditor to test each DB QPAM's operational compliance with the Policies and Training. In this regard, the auditor must test a sample of each QPAM's transactions involving ERISA-covered plans and IRAs sufficient in size and nature to afford the auditor a reasonable basis to determine the operational compliance with the Policies and Training;

(5) For each audit, on or before the end of the relevant period described in Section I(i)(1) for completing the audit, the auditor must issue a written report (the Audit Report) to Deutsche Bank and the DB QPAM to which the audit applies that describes the procedures performed by the auditor during the course of its examination. The Audit Report must include the auditor's specific determinations regarding: The adequacy of the DB QPAM's Policies and Training; the DB QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective DB QPAM's noncompliance with the written Policies and Training described in Section I(h) above. Any determination by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective DB QPAM must be promptly addressed by such DB QPAM, and any action taken by such DB QPAM to address such recommendations must be included in an addendum to the Audit Report (which addendum is completed prior to the certification described in Section I(i)(7) below). Any determination by the auditor that the respective DB QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that the DB QPAM has complied with the requirements under this subsection must be based on evidence that demonstrates the DB QPAM has actually implemented, maintained, and followed the Policies and Training required by this temporary exemption; and

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

(7) With respect to each Audit Report, the General Counsel, or one of the three most senior executive officers of the DB 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 temporary exemption; addressed, corrected, or remedied any inadequacy identified in the Audit Report; and determined that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this proposed temporary exemption, and with the applicable provisions of ERISA and the Code;

(8) The Risk Committee of Deutsche Bank's Board of Directors is provided a copy of each Audit Report; and a senior executive officer with a direct reporting line to the highest ranking legal compliance officer of Deutsche Bank must review the Audit Report for each DB QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report;

(9) Each DB QPAM provides its certified Audit Report, by regular mail to: the Department's Office of Exemption Determinations (OED), 200 Constitution Avenue NW., Suite 400, Washington, DC 20210, or by private carrier to: 122 C Street NW., Suite 400, Washington, DC 20001–2109, no later than 45 days following its completion. The Audit Report will be part of the public record regarding this temporary exemption. Furthermore, each DB QPAM must make its Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of an ERISA-covered plan or IRA, the assets of which are managed by such DB QPAM;

(10) Each DB QPAM and the auditor must submit to OED: (A) Any engagement agreement(s) entered into pursuant to the engagement of the auditor under this exemption; and (B) any engagement agreement entered into with any other entity retained in connection with such QPAM's compliance with the Training or Policies conditions of this proposed temporary exemption, no later than six (6) months after the effective date of this temporary exemption (and one month after the execution of any agreement thereafter);

(11) The auditor must provide OED, upon request, all of the workpapers created and utilized in the course of the audit, including, but not limited to: The audit plan; audit testing; identification of any instance of noncompliance by the relevant DB QPAM; and an explanation of any corrective or remedial action taken by the applicable DB QPAM; and

(12) Deutsche Bank must notify the Department at least 30 days prior to any substitution of an auditor, except that no such replacement will meet the requirements of this paragraph unless and until Deutsche Bank demonstrates to the Department's satisfaction that such new auditor is independent of Deutsche Bank, experienced in the matters that are the subject of the exemption, and capable of making the determinations required of this exemption;

(j) Effective as of the effective date of this temporary exemption, with respect to any arrangement, agreement, or contract between a DB QPAM and an ERISA-covered plan or IRA for which a DB QPAM provides asset management or other discretionary fiduciary services, each DB QPAM agrees:

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

(2) Not to require (or otherwise cause) the ERISA-covered plan or IRA to waive, limit, or qualify the liability of the DB QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(3) Not to require the ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the DB QPAM for violating ERISA or engaging in prohibited transactions, except for violations or prohibited transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of Deutsche Bank;

(4) Not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the DB QPAM (including 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 as a result of an actual lack of liquidity of the underlying assets, provided that such restrictions are applied consistently and in like manner to all such investors;

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

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the DB QPAM for a violation of such agreement's terms, except 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 Deutsche Bank and its affiliates; and

(7) To indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a violation of applicable laws, a breach of contract, or any claim arising out of the failure of such DB QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Convictions;

Within four (4) months of the effective date of this temporary exemption, each DB QPAM will provide a notice of its obligations under this Section I(j) to each ERISA-covered plan and IRA for which the DB QPAM provides asset management or other discretionary fiduciary services;

(k) The DB QPAMs comply with each condition of PTE 84–14, as amended, with the sole exceptions of the violations of Section I(g) of PTE 84–14 that are attributable to the Convictions;

(l) Deutsche Bank disgorged all of its profits generated by the spot/futures-linked market manipulation activities of DSK personnel that led to the Conviction against DSK entered on January 25, 2016, in Seoul Central District Court;

(m) Each DB QPAM will maintain records necessary to demonstrate that the conditions of this temporary exemption have been met, for six (6) years following the date of any transaction for which such DB QPAM relies upon the relief in the temporary exemption;

(n) During the effective period of this temporary exemption, Deutsche Bank: (1) Immediately discloses to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) that Deutsche Bank or any of its affiliates enter into with the U.S Department of Justice, to the extent such DPA or NPA involves conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA; and (2) immediately provides the Department any information requested by the Department, as permitted by law, regarding the agreement and/or the conduct and allegations that led to the agreements; and

(o) A DB QPAM will not fail to meet the terms of this temporary exemption, solely because a different DB QPAM fails to satisfy a condition for relief under this temporary exemption described in Sections I(c), (d), (h), (i), (j), (k), and (m).

Section II: Definitions

(a) The term ''Convictions'' means (1) the judgment of conviction against DB Group Services, in Case 3:15–cr–00062–RNC to be entered in the United States District Court for the District of Connecticut to a single count of wire fraud, in violation of 18 U.S.C. 1343, and (2) the judgment of conviction against DSK entered on January 25, 2016, in Seoul Central District Court, relating to charges filed against DSK under Articles 176, 443, and 448 of South Korea's Financial Investment Services and Capital Markets Act for spot/futures-linked market price manipulation. For all purposes under this exemption, ''conduct'' of any person or entity that is the ''subject of [a] Conviction'' encompasses any conduct of Deutsche Bank and/or their personnel, that is described in the Plea Agreement (including the Factual Statement thereto), Court judgments (including the judgment of the Seoul Central District Court), criminal complaint documents from the Financial Services Commission in Korea, and other official regulatory or judicial factual findings that are a part of this record;

(b) The term ''DB QPAM'' means a ''qualified professional asset manager'' (as defined in section VI(a)[5] of PTE 84–14) that relies on the relief provided by PTE 84–14 and with respect to which DSK or DK Group Services is a current or future ''affiliate'' (as defined in section VI(d) of PTE 84–14). For purposes of this temporary exemption, Deutsche Bank Securities, Inc. (DBSI), including all entities over which it exercises control; and Deutsche Bank AG, including all of its branches, are excluded from the definition of a DB QPAM;

(c) The term ''Deutsche Bank'' means Deutsche Bank AG but, unless indicated otherwise, does not include its subsidiaries or affiliates;

(d) The term ''U.S. Conviction Date'' means the date that a judgment of conviction against DB Group Services, in Case 3:15–cr–00062–RNC, is entered in the United States District Court for the District of Connecticut;

(e) The term ''DB Group Services'' means DB Group Services UK Limited, an ''affiliate'' of Deutsche Bank (as defined in Section VI(c) of PTE 84–14) based in the United Kingdom;

(f) The term ''DSK'' means Deutsche Securities Korea Co., a South Korean ''affiliate'' of Deutsche Bank (as defined in Section VI(c) of PTE 84–14);

(g) The term ''Plea Agreement'' means the Plea Agreement (including the Factual Statement thereto), dated April 23, 2015, between the Antitrust Division and Fraud Section of the Criminal Division of the U.S. Department of Justice (the DOJ) and DB Group Services resolving the actions brought by the DOJ in Case 3:15–cr–00062–RNC against DB Group Services for wire fraud in violation of Title 18, United States Code, Section 1343 related to the manipulation of the London Interbank Offered Rate (LIBOR); and

(h) The terms ''ERISA-covered plan'' and ''IRA'' mean, respectively, a plan subject to Part 4 of Title I of ERISA and a plan subject to section 4975 of the Code;

Effective Date: This proposed temporary exemption will be effective for the period beginning on the U.S. Conviction Date, and ending on the earlier the date that is twelve months following the U.S. Conviction Date; or the effective date of a final agency action made by the Department in connection with Exemption Application No. D–11908, an application for long-term exemptive relief for the covered transactions described herein.

Department's Comment: The Department is publishing this proposed

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

temporary exemption in order to protect ERISA-covered plans and IRAs from certain costs and/or investment losses for up to one year, that may arise to the extent entities with a corporate relationship to Deutsche Bank lose their ability to rely on PTE 84–14 as of the U.S. Conviction Date, as described below. Elsewhere today in the **Federal Register**, the Department is also proposing a five-year proposed exemption, Exemption Application No. D–11908, that would provide the same relief that is described herein, but for a longer effective period. The five-year proposed exemption is subject to enhanced conditions and a longer comment period. Comments received in response to this proposed temporary exemption will be considered in connection with the Department's determination whether or not to grant such five-year exemption.

The proposed exemption would provide relief from certain of the restrictions set forth in sections 406 and 407 of ERISA. If granted, no relief from a violation of any other law would be provided by this exemption.

Furthermore, the Department cautions that the relief in this proposed temporary exemption would terminate immediately if, among other things, an entity within the Deutsche Bank corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Conviction) during the effective period of the exemption. While such an entity could apply for a new exemption in that circumstance, the Department would not be obligated to grant the exemption. The terms of this proposed temporary exemption have been specifically designed to permit plans to terminate their relationships in an orderly and cost effective fashion in the event of an additional conviction or a determination that it is otherwise prudent for a plan to terminate its relationship with an entity covered by the proposed exemption.

Summary of Facts and Representations [6]

Background

1. Deutsche Bank AG (together with its current and future affiliates, Deutsche Bank) is a German banking corporation and a commercial bank. Deutsche Bank, with and through its affiliates, subsidiaries and branches, provides a wide range of banking, fiduciary, recordkeeping, custodial, brokerage and investment services to, among others, corporations, institutions, governments, employee benefit plans, government retirement plans and private investors. Deutsche Bank had €68.4 billion in total shareholders' equity and €1,709 billion in total assets as of December 31, 2014.[7]

2. Deutsche Investment Management Americas Inc. (DIMA) is an investment adviser registered with the SEC under the Investment Advisers Act of 1940, as amended. DIMA and other wholly-owned subsidiaries of Deutsche Bank provide discretionary asset-management services to employee benefit plans and IRAs. Such entities include: (A) DIMA; (B) Deutsche Bank Securities Inc., which is a dual-registrant with the SEC under the Advisers Act as an investment adviser and broker-dealer; (C) RREEF America L.L.C., a Delaware limited liability company and investment adviser registered with the SEC under the Advisers Act; (D) Deutsche Bank Trust Company Americas, a corporation organized under the laws of the State of New York and supervised by the New York State Department of Financial Services, a member of the Federal Reserve and an FDIC-insured bank; (E) Deutsche Bank National Trust Company, a national banking association, organized under the laws of the United States and supervised by the Office of the Comptroller of the Currency, and a member of the Federal Reserve; (F) Deutsche Bank Trust Company, NA, a national banking association, organized under the laws of the United States and supervised by the OCC; (G) Deutsche Alternative Asset Management (Global) Limited, a London-based investment adviser registered with the SEC under the Advisers Act; (H) Deutsche Investments Australia Limited, a Sydney, Australia-based investment adviser registered with the SEC under the Advisers Act; (I) DeAWM Trust Company (DTC), a limited purpose trust company organized under the laws of New Hampshire and subject to supervision of the New Hampshire Banking Department; and the four following entities which currently do not rely on PTE 84–14 for the management of any ERISA-covered plan or IRA assets, but may in the future: (J) Deutsche Asset Management (Hong Kong) Ltd.; (K) Deutsche Asset Management International GmbH; (L) DB Investment Managers, Inc.; and (M) Deutsche Bank AG, New York Branch.

3. *Korean Conviction.* On January 25, 2016, Deutsche Securities Korea, Co. (DSK), an indirectly held, wholly-owned subsidiary of Deutsche Bank, was convicted in Seoul Central District Court (the Korean Court) of violations of certain provisions of Articles 176, 443, and 448 of the Korean Financial Investment Services and Capital Markets Act (FSCMA) (the Korean Conviction) for spot/futures linked market manipulation in connection with the unwind of an arbitrage position which in turn caused a decline on the Korean market. Charges under Article 448 of the FSCMA stemmed from vicarious liability assigned to DSK for the actions of its employee, who was convicted of violations of certain provisions of Articles 176 and 443 of the FCMA. Upon conviction, the Korean Court sentenced DSK to pay a criminal fine of 1.5 billion South Korean Won (KRW). Furthermore, the Korean Court ordered that Deutsche Bank forfeit KRW 43,695,371,124, while KRW 1,183,362,400 was ordered forfeited by DSK.

4. *US Conviction.* On April 23, 2015, the Antitrust Division and Fraud Section of the Criminal Division of the U.S. Department of Justice (collectively, the DOJ) filed a one-count criminal information (the Criminal Information) in Case 3:15–cr–00062–RNC in the District Court for the District of Connecticut (the District Court) against DB Group Services UK Limited (DB Group Services). The Criminal Information charged DB Group Services with wire fraud in violation of Title 18, United States Code, Section 1343 related to the manipulation of the London Interbank Offered Rate (LIBOR) for the purpose of creating favorable trading positions for Deutsche Bank traders. DB Group Services agreed to resolve the actions brought by the DOJ through a plea agreement, dated April 23, 2015 (the Plea Agreement), which is expected to result in the District Court issuing a judgment of conviction (the US Conviction and together with the Korean Conviction, the Convictions). Under the terms of the Plea Agreement, DB Group Services plead guilty to the charges set out in the Criminal Information and forfeited $150,000,000 to the United States. Furthermore, Deutsche Bank AG and the DOJ entered into a deferred prosecution agreement, dated April 23, 2015 (the DPA). Pursuant to the terms of the DPA, Deutsche Bank agreed to pay a penalty of $625,000,000.

PTE 84–14

5. The Department notes that the rules set forth in section 406 of the Employee Retirement Income Security Act of 1974, as amended (ERISA) and section 4975(c) of the Internal Revenue Code of 1986, as

[6] The Summary of Facts and Representations is based on Deutsche Bank and DIMA's representations, unless indicated otherwise.

[7] Deutsche Bank represents that its audited financial statements are expressed in Euros and are not converted to dollars.

amended (the Code) proscribe certain ''prohibited transactions'' between plans and related parties with respect to those plans, known as ''parties in interest.'' [8] Under section 3(14) of ERISA, parties in interest with respect to a plan include, among others, the plan fiduciary, a sponsoring employer of the plan, a union whose members are covered by the plan, service providers with respect to the plan, and certain of their affiliates. The prohibited transaction provisions under section 406(a) of ERISA prohibit, in relevant part, sales, leases, loans or the provision of services between a party in interest and a plan (or an entity whose assets are deemed to constitute the assets of a plan), as well as the use of plan assets by or for the benefit of, or a transfer of plan assets to, a party in interest.[9]

6. Under the authority of ERISA section 408(a) and Code section 4975(c)(2), the Department has the authority to grant exemptions from such ''prohibited transactions'' in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).

7. Class Prohibited Transaction Exemption 84–14 (PTE 84–14) [10] exempts certain prohibited transactions between a party in interest and an ''investment fund'' (as defined in Section VI(b) of PTE 84–14) [11] in which a plan has an interest, if the investment manager satisfies the definition of ''qualified professional asset manager'' (QPAM) and satisfies additional conditions for the exemption. In this regard, PTE 84–14 was developed and granted based on the essential premise that broad relief could be afforded for all types of transactions in which a plan engages only if the commitments and the investments of plan assets and the negotiations leading thereto are the sole responsibility of an independent, discretionary, manager.[12] Deutsche Bank has corporate relationships with a wide range of entities that may act as QPAMs and utilize the exemptive relief provided in PTE 84–14.

8. However, Section I(g) of PTE 84–14 prevents an entity that may otherwise meet the definition of QPAM from utilizing the exemptive relief provided by PTE 84–14, for itself and its client plans, if that entity or an affiliate thereof or any owner, direct or indirect, of a 5 percent or more interest in the QPAM has, within 10 years immediately preceding the transaction, been either convicted or released from imprisonment, whichever is later, as a result of certain specified criminal activity described in that section. The Department notes that Section I(g) was included in PTE 84–14, in part, based on the expectation that a QPAM, and those who may be in a position to influence its policies, maintain a high standard of integrity.[13] Accordingly, as a result of the Korean Conviction and the US Conviction, QPAMs with certain corporate relationships to DSK and DB Group Services, as well as their client plans that are subject to Part 4 of Title I of ERISA (ERISA-covered plans) or section 4975 of the Code (IRAs), will no longer be able to rely on PTE 84–14 without an individual exemption issued by the Department.

The DB QPAMs

9. Deutsche Bank represents that certain current and future ''affiliates'' of DSK and DB Group Services, as that term is defined in Section VI(d) of PTE 84–14, may act as QPAMs in reliance on the relief provided in PTE 84–14 (these entities are collectively referred to as the ''DB QPAMs'' or the ''Applicant''). The DB QPAMs are currently comprised of several wholly-owned direct and indirect subsidiaries of Deutsche Bank including: (A) DIMA; (B) Deutsche Bank Securities Inc., which is a dual-registrant with the SEC under the Advisers Act as an investment adviser and broker-dealer; (C) RREEF America L.L.C., a Delaware limited liability company and investment adviser registered with the SEC under the Advisers Act; (D) Deutsche Bank Trust Company Americas, a corporation organized under the laws of the State of New York and supervised by the New York State Department of Financial Services, a member of the Federal Reserve and an FDIC-insured bank; (E) Deutsche Bank National Trust Company, a national banking association, organized under the laws of the United States and supervised by the Office of the Comptroller of the Currency, and a member of the Federal Reserve; (F) Deutsche Bank Trust Company, NA, a national banking association, organized under the laws of the United States and supervised by the OCC; (G) Deutsche Alternative Asset Management (Global) Limited, a London-based investment adviser registered with the SEC under the Advisers Act; (H) Deutsche Investments Australia Limited, a Sydney, Australia-based investment adviser registered with the SEC under the Advisers Act; (I) DeAWM Trust Company (DTC), a limited purpose trust company organized under the laws of New Hampshire and subject to supervision of the New Hampshire Banking Department; and the four following entities which currently do not rely on PTE 84–14 for the management of any ERISA-covered plan or IRA assets, but may in the future: (J) Deutsche Asset Management (Hong Kong) Ltd.; (K) Deutsche Asset Management International GmbH; (L) DB Investment Managers, Inc.; and (M) Deutsche Bank AG, New York Branch.[14]

10. DIMA notes that discretionary asset management services are provided to ERISA-covered plans, IRAs and others under the following Asset & Wealth Management (AWM) business lines, each of which may be served by one or more of the DB QPAMs: (A) Wealth Management—Private Client Services and Wealth Management—Private Bank ($178.1 million in ERISA assets, $643.9 million in IRA assets and $1.8 million in rabbi trust assets); (B) Active Management ($299 million in ERISA assets, $227.9 million in governmental plan assets, and $141.7 million in rabbi trust assets); (C) Alternative and Real Assets ($7.4 billion in ERISA-covered and governmental plan assets); [15] (D) Alternatives & Fund Solutions ($20.8 million in ERISA accounts, $29 million in IRA holdings and $14.1 million in governmental plan holdings); and (E) Passive Management

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

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

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

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

[12] See 75 FR 38837, 38839 (July 6, 2010).

[13] See 47 FR 56945, 56947 (December 21, 1982).

[14] For reasons described below, exemptive relief to rely on PTE 84–14 notwithstanding the Convictions is not being proposed for DBSI and the branches of Deutsche Bank AG (including the NY Branch), and as such, these entities are excluded from the definition of ''DB QPAM'' for purposes of the operative language of this proposed temporary exemption.

[15] The Alternatives and Real Assets business line also provides discretionary asset management services, through a separately managed account, to one church plan with total assets under management of $168.6 million and, through a pooled fund subject to ERISA, to two church plans with total assets under management of $7.9 million. According to Deutsche Bank, with respect to governmental plan assets, most management agreements are contractually subject to ERISA standards.

(no current ERISA or IRA assets).[16] Finally, DTC manages the DWS Stock Index Fund, a collective investment trust with $192 million in assets as of March 31, 2015.

11. The Applicant represents that the AWM business is separate from Group Services. The DB QPAMs that serve the AWM business have their own boards of directors. The Applicant represents that the AWM business has its own legal and compliance teams. The Applicant further notes that the DB QPAMs are subject to certain policies and procedures that are designed to, among other things, ensure that asset management decisions are made without inappropriate outside influence, applicable law and governing documents are followed, personnel act with professionalism and in the best interests of clients, clients are treated fairly, confidential information is protected, conflicts of interest are avoided, errors are reported and a high degree of integrity is maintained.

Market Manipulation Activities of DSK [17]

12. Deutsche Securities Korea Co. (DSK), an indirect wholly-owned subsidiary of Deutsche Bank, is a broker-dealer organized in Korea and supervised by the Financial Supervisory Service in Korea. The Absolute Strategy Group (ASG) of Deutsche Bank's Hong Kong Branch (DB HK) conducts index arbitrage trading for proprietary accounts in Asian markets, including Korea. On January 25, 2016, DSK was convicted in Seoul Central District Court (the Korean Court), under Articles 176, 443, and 448 of South Korea's Financial Investment Services and Capital Markets Act (FSCMA) for spot/futures-linked market price manipulation. The Korean Court issued a written decision (the Korean Decision) in connection with the Korean Conviction.

13. Deutsche Bank represents that index arbitrage trading is a trading strategy through which an investor such as Deutsche Bank seeks to earn a return by identifying and exploiting a difference between the value of futures contracts in respect of a relevant equity index and the spot value of the index, as determined by the current market price of the constituent stocks. For instance, where the futures contracts are deemed to be overpriced by reference to the spot value of the index (*i.e.,* if the premium is sufficiently large), then an index arbitrageur will short sell the relevant futures contracts (either the exchange-traded contracts or the put and call option contracts which together synthetically replicate the exchange-traded futures contracts) and purchase the underlying stocks. The short and long positions offset each other in order to be hedged (although the positions may not always be perfectly risk-neutral).

14. Deutsche Bank represents that ASG pursued an index arbitrage trading strategy in various Asian markets, including Korea. In Korea, the index arbitrage position involved the Korean Composite Stock Price Index (KOSPI 200 Index), which reflects stocks commonly traded on the Korea Exchange (KRX). Deutsche Bank represents that, while ASG tried to track the KOSPI 200 Index as closely as possible, there is a limit on foreign ownership for certain shares such as telecommunication companies. Thus, once ASG's cash position reached this limitation, DSK carried the remainder and ASG's book, combined with DSK's book for Korea telecommunication companies, reflected ASG's overall KOSPI 200 index arbitrage position.

15. On November 11, 2010, the Applicant states that ASG ''unwound'' an arbitrage position on the KOSPI 200 Index through DSK.[18] The ''unwind'' included a sale of $2.1 billion worth of stocks in the KRX during the final 10 minutes of trading (*i.e.,* the closing auction period) and comprised 88% of the volume of stock traded during this period. This large volume sale contributed to a drop of the KOSPI 200 Index by 2.7%.

16. Prior to the unwinding, but after the decision to unwind was made, ASG had taken certain derivative positions, including put options on the KOSPI 200 Index. Thus, ASG earned a profit when the KOSPI 200 Index declined as a result of the unwind trades (the derivative positions and unwind trades cumulatively referred to as the Trades). DSK had also purchased put options on that day that resulted in it earning a profit as a result of the drop of the KOSPI 200 Index. The aggregate amount of profit earned from such Trades was approximately $40 million.

17. The Seoul Central District Prosecutor's Office (the Korean Prosecutors) alleged that the Trades constitute spot/futures linked market manipulation, a criminal violation under Korean securities law. In this regard, the Korean Prosecutors alleged that ASG unwound its cash position of certain securities listed on the KRX(spot) through DSK, and caused a fluctuation in the market price of securities related to exchange-traded derivatives (the put options) for the purpose of gaining unfair profit from such exchange-traded derivatives. On August 19, 2011, the Korean Prosecutors indicted DSK and four individuals on charges of stock market manipulation to gain unfair profits. Two of the individuals, Derek Ong and Bertrand Dattas, worked for ASG at DB HK. Mr. Ong was a Managing Director and head of ASG, with power and authority with respect to the KOSPI 200 Index arbitrage trading conducted by Deutsche Bank. Mr. Dattas served as a Director of ASG and was responsible for the direct operations of the KOSPI 200 Index arbitrage trading. Philip Lonergan, the third individual, was employed by Deutsche Bank Services (Jersey) Limited. At the time of the transaction, Mr. Lonergan was seconded to DB HK and served as Head of Global Market Equity, Trading and Risk. Mr. Lonergan served as Mr. Ong's regional superior and was in charge of risk management for his team. The fourth individual charged, Do-Joon Park, was employed by DSK, serving as a Managing Director of Global Equity Derivatives (GED) at DSK and was in charge of the index arbitrage trading using DSK's book that had been integrated into and managed by ASG. Mr. Park was also a de facto chief officer of equity and derivative product operations of DSK.

18. The Korean Prosecutors' case against DSK was based on Korea's criminal vicarious liability provision, under which DSK may be held vicariously liable for an act of its employee (*i.e.,* Mr. Park) if it failed to exercise due care in the appointment and supervision of its employees.[19]

19. The trial commenced in January 2012 in the Korean Court. The Korean Court convicted both DSK and Mr. Park on January 25, 2016. The Korean Court sentenced Mr. Park to five years imprisonment. Upon conviction, the

[16] With the exception of Passive Management, the statistics for each of the individual business lines listed here have been updated by Deutsche Bank and are current as of June 30, 2015, to the best of Deutsche Bank's knowledge.

[17] The Department has incorporated the facts related to the circumstances leading to the Korean Conviction as represented by Deutsche Bank in Application No. D–11696 and included in the **Federal Register** in the notice of proposed exemption for the aforementioned application at 80 FR 51314 (August 24, 2015).

[18] The Department understands the ''unwinding'' of a transaction to mean closing out a relatively complicated investment position. For example, an investor who practices arbitrage by taking one position in stocks and the opposite position in option contracts would have to unwind by the date on which the options would expire. This would entail selling the underlying stocks and covering the options.

[19] Article 448 of the FSCMA allows for charges against an employer stemming from vicarious liability for the actions of its employees.

Korean Court ordered DSK to pay a criminal fine of KRW 1.5 billion. Furthermore, the Korean Court ordered that Deutsche Bank forfeit KRW 43,695,371,124, while KRW 1,183,362,400 was ordered forfeited by DSK.[20]

LIBOR Manipulation Activities by DB Group Services

20. DB Group Services is an indirect wholly-owned subsidiary of Deutsche Bank located in the United Kingdom. On April 23, 2015, DB Group Services pled guilty in the United States District Court for the District of Connecticut to a single count of wire fraud, in violation of 18 U.S.C. 1343 (the Plea Agreement), related to the manipulation of the London Interbank Offered Rate (LIBOR) described below. In connection with the Plea Agreement with DB Group Services, the DOJ filed a Statement of Fact (the DOJ Plea Factual Statement) that details the underlying conduct that serves as the basis for the criminal charges and impending US Conviction.

21. According to the DOJ Plea Factual Statement, LIBOR is a benchmark interest rate used in financial markets around the world. Futures, options, swaps, and other derivative financial instruments traded in the over-the-counter market. The LIBOR for a given currency is derived from a calculation based upon submissions from a panel of banks for that currency (the Contributor Panel) selected by the British Bankers' Association (BBA). Each member of the Contributor Panel would submit its rates electronically. Once each Contributor Panel bank had submitted its rate, the contributed rates were ranked. The highest and lowest quartiles were excluded from the calculation, and the middle two quartiles (*i.e.,* 50% of the submissions) were averaged to formulate the LIBOR ''fix'' or ''setting'' for the given currency and maturity.

22. The DOJ Plea Factual Statement states that, from 2006 to 2011, Deutsche Bank's Global Finance and Foreign Exchange business units (GFFX) had employees in multiple entities associated with Deutsche Bank, in multiple locations around the world including London and New York. Deutsche Bank, through the GFFX unit, employed traders in both its Pool Trading groups (Pool) and its Money Market Derivatives (MMD) groups. Many of the GFFX traders based in London were employed by DB Group Services.

23. According to the DOJ Plea Factual Statement, Deutsche Bank's Pool traders engaged in, among other things, cash trading and overseeing Deutsche Bank's internal funding and liquidity. Deutsche Bank's Pool traders traded a variety of financial instruments. Deutsche Bank's Pool traders were primarily responsible for formulating and submitting Deutsche Bank's LIBOR and EURIBOR daily contributions. Deutsche Bank's MMD traders, on the other hand, were responsible for, among other things, trading a variety of financial instruments, some of which, such as interest rate swaps and forward rate agreements, were tied to LIBOR and EURIBOR. The DOJ Plea Factual Statement notes that both the Pool traders and the MMD traders worked in close proximity and reported to the same chain of command. DB Group Services employed many of Deutsche Bank's London-based Pool and MMD traders.

24. Deutsche Bank and DB Group Services's derivatives traders (the Derivatives Traders) were responsible for trading a variety of financial instruments, some of which, such as interest rate swaps and forward rate agreements, were tied to reference rates such as LIBOR and EURIBOR. According to the DOJ Plea Factual Statement, from approximately 2003 through at least 2010, the Derivatives Traders defrauded their counterparties by secretly manipulating U.S. Dollar (USD), Yen, and Pound Sterling LIBOR, as well as the EURO Interbank Offered Rate (EURIBOR, and collectively, the IBORs or IBOR). The Derivatives Traders requested that the IBOR submitters employed by Deutsche Bank and other banks send in IBORs that would benefit the Derivatives Traders' trading positions, rather than rates that complied with the definitions of the IBORs. According to the DOJ, Deutsche Bank employees engaged in this collusion through face-to-face requests, electronic communications, which included both emails and electronic chats, and telephone calls.

25. The DOJ Plea Factual Statement explains that when the Derivatives Traders' requests for favorable IBOR submissions were taken into account by the submitters, the resultant contributions affected the value and cash flows of derivatives contracts, including interest rate swap contracts. In accommodating these requests, the Derivatives Traders and submitters were engaged in a deceptive course of conduct in an effort to gain an advantage over their counterparties. As part of this effort: (1) The Deutsche Bank Pool and MMD Traders submitted materially false and misleading IBOR contributions; and (2) Derivatives Traders, after initiating and continuing their effort to manipulate IBOR contributions, entered into derivative transactions with counterparties that did not know that the Deutsche Bank personnel were often manipulating the relevant rate.

26. The DOJ Plea Factual Statement notes that from 2003 through at least 2010, DB Group Services employees regularly sought to manipulate USD LIBOR to benefit their trading positions and thereby benefit themselves and Deutsche Bank. During most of this period, traders at Deutsche Bank who traded products linked to USD LIBOR were primarily located in London and New York. DB Group Services employed almost all of the USD LIBOR traders who were located in London and involved in the misconduct. Throughout the period during which the misconduct occurred, the Deutsche Bank USD LIBOR submitters in London sat within feet of the USD LIBOR traders. This physical proximity enabled the traders and submitters to conspire to make and solicit requests for particular LIBOR submissions.

27. Pursuant to the Plea Agreement that DB Group Services entered into with the DOJ on April 23, 2015, pleading guilty to wire fraud for manipulation of LIBOR, DB Group Services also agreed: (A) To work with its parent company (Deutsche Bank) in fulfilling obligations undertaken by the Bank in connection with its own settlements; (B) to continue to fully cooperate with the DOJ and any other law enforcement or government agency designated by the DOJ in a manner consistent with applicable laws and regulations; and (C) to pay a fine of $150 million.

28. On April 23, 2015, Deutsche Bank AG entered into a deferred prosecution agreement (DPA) with the DOJ, in disposition of a 2-count criminal information charging Deutsche Bank with one count of wire fraud, in violation of Title 18, United States Code, Section 1343, and one count of price-fixing, in violation of the Sherman Act, Title 15, United States Code, Section 1. By entering into the DPA, Deutsche Bank AG agreed, among other things: (A) To continue to cooperate with the DOJ and any other law enforcement or government agency; (B) to retain an independent compliance monitor for three years, subject to extension or early termination, to be selected by the DOJ from among qualified candidates proposed by the Bank; (C) to further strengthen its internal controls as recommended by the monitor and as required by other settlements; and (D) to pay a penalty of $625 million.

[20] KRW refers to a South Korean Won.

29. On April 23, 2015, Deutsche Bank AG and Deutsche Bank AG, New York Branch (DB NY) also entered into a consent order with the New York State Department of Financial Services (NY DFS) in which Deutsche Bank AG and DB NY agreed to pay a penalty of $600 million. Furthermore, Deutsche Bank AG and DB NY engaged an independent monitor selected by the NY DFS in the exercise of the NY DFS's sole discretion, for a 2-year engagement. Finally, the NY DFS ordered that certain employees involved in the misconduct be terminated, or not be allowed to hold or assume any duties, responsibilities, or activities involving compliance, IBOR submissions, or any matter relating to U.S. or U.S. Dollar operations.

30. Furthermore, the United States Commodities Futures Trading Commission (CFTC) entered a consent order, dated April 23, 2015, requiring Deutsche Bank AG to cease and desist from certain violations of the Commodity Exchange Act, to pay a fine of $800 million, and to agree to certain undertakings.

31. The United Kingdom's Financial Conduct Authority (FCA) issued a final notice (Final Notice), dated April 23, 2015, imposing a fine of £226.8 million on Deutsche Bank AG. In its Final Notice, the FCA cited Deutsche Bank's inadequate systems and controls specific to IBOR. The FCA noted that Deutsche Bank had defective systems to support the audit and investigation of misconduct by traders; and Deutsche Bank's systems for identifying and recording traders' telephone calls and for tracing trading books to individual traders were inadequate. The FCA's Final Notice provided that Deutsche Bank took over two years to identify and produce all relevant audio recordings requested by the FCA. Furthermore, according to the Final Notice, Deutsche Bank gave the FCA misleading information about its ability to provide a report commissioned by Bundesanstalt für Finanzdienstleistungsaufsicht, Germany's Federal Financial Supervisory Authority (BaFin). In addition, the FCA notes in its Final Notice that Deutsche Bank provided it with a false attestation that stated that its systems and controls in relation to LIBOR were adequate, an attestation known to be false by the person who drafted it. The Final Notice provides that, in one instance, Deutsche Bank, in error, destroyed 482 tapes of telephone calls, despite receiving an FCA notice requiring their preservation, and provided inaccurate information to the regulator about whether other records existed.

32. Finally, BaFin set forth preliminary findings based on an audit of LIBOR related issues in a May 15, 2015, letter to Deutsche Bank. At that time, BaFin raised certain questions about the extent of certain senior managers' possible awareness of wrongdoing within Deutsche Bank.

Prior and Anticipated Convictions and Failure To Comply With Section I(g) of PTE 84–14

33. The Korean Conviction caused the DB QPAMs to violate Section I(g) of PTE 84–14. As a result, the Department granted, and later extended the effective period for, PTE 2015–15, which allows the DB QPAMs to rely on the relief provided by PTE 84–14, notwithstanding the January 25, 2016 Korean Conviction. The Department granted, and extended, PTE 2015–15 in order to protect ERISA-covered plans and IRAs from IRAs from certain costs and/or investment losses that could have occurred to the extent the DB QPAMs lost their ability to rely on PTE 84–14 as a result of the Korean Conviction. PTE 2015–15 and its extension, PTE 2016–12 (81 FR 75153, October 28, 2016) (the Extension) are subject to enhanced conditions that are protective of the rights of the participants and beneficiaries of affected ERISA-covered plans and IRAs.

34. The Applicant represents that date on which the US Conviction will be entered (the U.S. Conviction Date) is tentatively scheduled for April 3, 2017, will also cause DB QPAMs to violate Section I(g) of PTE 84–14. Therefore, Deutsche Bank requests a single, new exemption that would permit the DB QPAMs, and their ERISA-covered plan and IRA clients, to continue to utilize the relief in PTE 84–14, notwithstanding both the Korean Conviction and the US Conviction.

35. The Department is proposing a temporary exemption herein to allow the DB QPAMs to rely on PTE 84–14 notwithstanding the Korean Conviction and the US Conviction, subject to a comprehensive suite of protective conditions designed to protect the rights of the participants and beneficiaries of the ERISA-covered plans and IRAs that are managed by DB QPAMs. This proposed temporary exemption would be effective for a period of up to one year beginning on the U.S. Conviction Date; and ending on the earlier of the date that is twelve months after the U.S. Conviction Date or the effective date of a final agency action made by the Department in connection with Exemption Application No. D–11908. In this regard, elsewhere today in the **Federal Register**, the Department is proposing Exemption Application No. D–11908, a five-year proposed exemption subject to enhanced protective conditions that would provide the same exemptive relief that is described herein, but for a longer effective period.

This temporary exemption will allow the Department sufficient time to contemplate whether or not to grant the five-year exemption without risking the sudden loss of exemptive relief for the DB QPAMs upon the expiration of the relief provided by the Extension. The Extension expires upon the earlier of April 23, 2017 or the effective date of a final agency action in connection with this proposed temporary exemption (*e.g.,* the Department denies or grants this proposed temporary exemption).

36. This temporary exemption will not apply to Deutsche Bank Securities, Inc. (DBSI).[21] Section I(a) of PTE 2015–15, as well as this proposed temporary exemption, requires that ''DB QPAMs (including their officers, directors, agents other than Deutsche Bank, and employees of such DB QPAMs) did not know of, have reason to know of, or participate in the criminal conduct of DSK that is the subject of the [Korean] Conviction.'' In a letter to the Department dated July 15, 2016, Deutsche Bank raised the possibility that an individual,[22] while employed at DBSI, may have known or had reason to know of the criminal conduct of DSK that is the subject of the Korean Conviction. In a letter to the Department dated August 19, 2016, Deutsche Bank further clarified that ''there is no evidence that anyone at DBSI other than Mr. Ripley knew in advance of the trades conducted by the Absolute Strategy Group on November 11, 2010.'' Deutsche Bank states that it had previously interpreted Section I(a) of PTE 2015–15 as requiring only that ''any current director, officer or employee did not know of, have reason to know of, or participate in the conduct.'' The Department notes that Deutsche Bank did not raise any interpretive questions regarding Section I(a) of PTE 2015–15, or express any concerns regarding DBSI's possible noncompliance, during the comment period for PTE 2015–15. Nor did Deutsche Bank seek a technical

[21] The Applicant represents that DBSI has not relied on the relief provided by PTE 84–14 since the date of the Korean Conviction.

[22] The Applicant identifies the individual as Mr. John Ripley, a senior global manager in DBSI who was based in the United States and who was a functional supervisor over the employees of DSK that were prosecuted for market manipulation. Furthermore, the Applicant states that Mr. Ripley was terminated by DBSI for ''loss of confidence'' in that he could have exercised more care and been more proactive in reviewing the trades at issue.

correction or other remedy to address such concerns between the time that PTE 2015–15 was granted and the date of the Korean Conviction. The Department notes that a period of approximately nine months passed before Deutsche Bank raised an interpretive question regarding Section I(a) of PTE 2015–15. Accordingly, the Department is not proposing exemptive relief for DBSI in this temporary exemption.

This temporary exemption will also not apply with respect to Deutsche Bank AG (the parent entity) or any of its branches. The Applicant represents that neither Deutsche Bank AG nor its branches have relied on the relief provided by PTE 84–14 since the date of the Korean Conviction.

37. Finally, the Applicant represents that it currently does not have a reasonable basis to believe that any pending criminal investigation [23] of any of Deutsche Bank's affiliated corporate entities would cause a reasonable plan or IRA customer not to hire or retain the Bank's affiliated managers as a QPAM. Furthermore, this temporary exemption will not apply to any other conviction(s) of Deutsche Bank or its affiliates for crimes described in Section I(g) of PTE 84–14. The Department notes that, in such event, the Applicant and its ERISA-covered plan and IRA clients should be prepared to rely on exemptive relief other than PTE 84–14 for any prohibited transactions entered into after the date of such new conviction(s); withdraw from any arrangements that solely rely on PTE 84–14 for exemptive relief; or avoid engaging in any such prohibited transactions in the first place.

Remedial Measures To Address Criminal Conduct of DSK

38. Deutsche Bank represents that it has voluntarily disgorged its profits generated from exercising derivative positions and put options in connection with the activity associated with the Korean Conviction. DSK also suspended its proprietary trading from April 2011 to 2012, and thereafter DSK only engaged in limited proprietary trading (but not index arbitrage trading).[24] Further, in response to the actions of the Korean Prosecutors, Deutsche Bank enhanced its compliance measures and implemented additional measures in order to ensure compliance with applicable laws in Korea and Hong Kong, as well as within other jurisdictions where Deutsche Bank conducts business.

39. Deutsche Bank states that Mr. Ong and Mr. Dattas were terminated for cause by DB HK on December 6, 2011, and Mr. Lonergan was terminated on January 31, 2012. In addition, Mr. Park was suspended for six months due to Korean administrative sanctions, and remained on indefinite administrative leave, until being terminated effective January 25, 2016. John Ripley, a New York-based employee of Deutsche Bank Securities Inc. (DBSI) who was not indicted, was also terminated in October 2011.[25]

Remedial Measures To Address Criminal Conduct of DB Group Services

40. Deutsche Bank represents that it has significantly modified its compensation structure. Specifically, Deutsche Bank: Eliminated the use of ''percentage of trading profit'' contracts once held by two traders involved in the LIBOR case; extended the vesting/distribution period for deferred compensation arrangements; made compliance with its internal policies a significant determinant of bonus awards; and modified its compensation plans to facilitate forfeiture/clawback of compensation when employees are found after the fact to have engaged in wrongdoing. Deutsche Bank represents that the forfeiture/clawback provisions of its compensation plans have been altered so as to permit action against employees even when misconduct is discovered years later.

41. With respect to the LIBOR-related misconduct, Deutsche Bank represents that it has separated from or disciplined the employees responsible. With the exceptions described below, none of the employees determined to be responsible for the misconduct remains employed by Deutsche Bank. Deutsche Bank represents that, during the initial phase of its internal investigation into the LIBOR matters, it terminated the two employees most responsible for the misconduct, including the Global Head of Money Market and Derivatives Trading.

42. Deutsche Bank then terminated five benchmark submitters in its Frankfurt office, including the Head of Global Finance and Foreign Exchange in Frankfurt. Four of these employees successfully challenged their termination in a German Labor court, and one employee entered into a separation agreement with Deutsche Bank after initially indicating that he would challenge the termination decision. With respect to the four employees who challenged their termination, the Bank agreed to mediate the employee labor disputes and reached settlements with the four employees. Pursuant to the settlements, the two more senior employees remained on paid leave through the end of 2015 and then have no association with Deutsche Bank. The two more junior employees have returned to the Bank in non-risk-taking roles. They do not work for any DB QPAMs and have no involvement in the Bank's AWM business or the setting of interest rate benchmarks. Deutsche Bank represents that it also terminated four additional individuals, and another eight individuals left the bank before facing disciplinary action.

43. Deutsche Bank represents that it will take action to terminate any additional employees who are determined to have been involved in the improper benchmark manipulation conduct, as well as those who knew about it and approved it. Moreover, the Applicant states that Deutsche Bank has taken further steps, both on its own and in consultation with U.S. and foreign regulators, to discipline those whose performance fell short of DB's expectations in connection with the above-described conduct.

Statutory Findings—In the Interests of Affected Plans and IRAs

44. The Applicant represents that the proposed exemption is in the interests of affected ERISA-covered plans and IRAs. Deutsche Bank represents that the DB QPAMS provide discretionary asset management services under several business lines, including (A) Alternative and Real Assets (ARA); (B) Alternatives & Fund Solutions (AFS); (C) Active Management (AM); and (D) Wealth Management—Private Client Services and Wealth Management—Private Bank. Deutsche Bank asserts that plans will incur direct transaction costs in liquidating and reinvesting their portfolios. According to Deutsche Bank, the direct transaction costs of liquidating and reinvesting ERISA-covered plan, IRA and ERISA-like assets

[23] The Applicant references the Deutsche Bank AG Form 6–K, filed July 27, 2016, available at: *https://www.db.com/ir/en/download/6_K_Jul_2016.pdf*; and the Deutsche Bank AG Form 10–F filed March 11, 2016 and available at: *https://www.db.com/ir/en/download/Deutsche_Bank_20_F_2015.pdf*.

[24] Deutsche Bank notes that DSK was never permitted to trade on behalf of Deutsche Bank.

[25] According to the Korean prosecutors, Mr. Ripley served as a Head of Global ASG of Deutsche Bank, AG, and was a functional superior to Mr. Ong. Mr. Ripley was suspected of having advised to unwind all the KOSPI 200 index arbitrage trading for the purpose of management of the ending profits and losses of Global ASK and approved Mr. Ong's request to establish the speculative positions in the course of the unwinding. Though the Korean prosecutors named Mr. Ripley as a suspect, he was not named in the August 19, 2011, Writ of Indictment.

under the various business lines (other than core real estate) could range from 2.5 to 25 basis points, resulting in an estimated dollar cost of approximately $5–7 million. Deutsche Bank also states that an unplanned liquidation of the Alternatives and Real Assets business' direct real estate portfolios could result in portfolio discounts of 10–20% of gross asset value, in addition to transaction costs ranging from 30 to 100 basis points, for estimated total cost to plan investors of between $281 million and $723 million, depending on the liquidation period.

45. Deutsche Bank states that its managers provide discretionary asset management services, through both separately managed accounts and four pooled funds subject to ERISA, to a total of 46 ERISA-covered plan accounts, with total assets under management (AuM) of $1.1 billion. Deutsche Bank estimates that the underlying plans cover in total at least 640,000 participants. Deutsche Bank represents that its managers provide asset management services, through both separately managed accounts and pooled funds subject to ERISA, to a total of 22 governmental plan accounts, with total AuM of $7.1 billion. The underlying plans cover at least 3 million participants. With respect to church plans and rabbi trust accounts, Deutsche Bank investment managers separately manage accounts and a pooled fund subject to ERISA, to a total of 4 church plan and rabbi trust accounts, with total AuM of $318.3 million. With respect to ERISA-covered Plan, IRA, Governmental Plan and Church Plan Accounts in Non-Plan Asset Pooled Funds, Deutsche Bank represents that its asset managers manages 175 ERISA-covered plan accounts with interests totaling $4.23 billion, 178 IRAs with interests totaling $29 million, 66 governmental plan accounts with interests totaling $2.08 billion, and 14 church plan accounts with interests totaling $67.1 million.

46. Deutsche Bank contends that ERISA-covered, IRA, governmental plan and other plan investors that terminate or withdraw from their relationship with their DB QPAM manager may be harmed in several specific ways, including: The costs of searching for and evaluating a new manager; the costs of leaving a pooled fund and finding a replacement fund or investment vehicle; and the lack of a secondary market for certain investments and the costs of liquidation.[26]

47. Deutsche Bank represents that its ARA business line provides discretionary asset management services to, among others, 17 ERISA accounts and 18 governmental plan accounts. The largest account has $1.6 billion in AuM. ERISA-covered and governmental plans total $7.4 billion in AuM. Deutsche Bank estimates that the underlying plans cover at least 2.7 million participants. ARA provides these services through separately managed accounts and pooled funds subject to ERISA. ARA also provides discretionary asset management services, through a separately managed account, to one church plan with total AuM of $168.6 million and, through a pooled fund subject to ERISA, to two church plans with total AuM of $7.9 million.

Deutsche Bank argues that PTE 84–14 is the sole exemption available to ARA for investments in direct real estate for separately managed accounts.

48. Deutsche Bank represents that, as a result of terminating ARA's management, a typical plan client may incur $30,000 to $40,000 in consulting fees in searching for a new manager as well as $10,000 to $30,000 in legal fees. Furthermore, with respect to direct real estate investments, Deutsche Bank states that plan clients may face direct transaction costs of 30–100 basis points for early liquidation, or a $4.8 million to $16 million loss for its largest ARA governmental plan client; as well as a 10–20% discount for early liquidation, or a $162.5 million to $325 million loss for the largest ARA governmental plan client. With respect to non-direct real estate investments, Deutsche Bank states that plan clients may face direct transaction costs of 20–60 basis points, or $933,000 for ARA's largest ERISA client.

49. Deutsche Bank notes that ARA manages seven unregistered real estate investment trusts and other funds that currently rely on one or more exceptions to the Department's plan asset regulation. Interests in the funds are held by 131 ERISA-covered plan accounts, 63 governmental plan accounts and 14 church plan accounts. Deutsche Bank represents that the largest holding in these funds by an ERISA-covered plan account is $647.4 million. Holdings by all ERISA plan accounts in these funds total $4.21 billion. The underlying ERISA-covered plans cover at least 2 million participants. The largest holding by a governmental plan account in these funds is $286.5 million. Holdings of all governmental plan accounts in these funds total $2.07 billion. The underlying plans cover at least 6.1 million participants. The largest holding by a church plan is $16 million. Holdings of all church plans in these funds total $67.1 million.

50. Deutsche Bank represents that its AFS business line manages 28 unregistered, closed-end, private equity funds, with $2.8 billion in total assets, in which ERISA-covered, IRA and governmental plans invest. Interests in these funds are held by, among others, 44 ERISA-covered plan accounts, 178 IRAs and 3 governmental plan accounts. Holdings by all ERISA-covered plan accounts total $20.8 million. Deutsche Bank notes that the underlying plans cover at least 57,000 participants. Holdings by all IRAs total $29 million. Holdings by all governmental plans total $14.1 million. These funds invest primarily in equity interests issued by other private equity funds. The funds currently rely on the 25% benefit plan investor participation exception under the Department's plan asset regulation.

51. Deutsche Bank contends that, in the event the AFS business line cannot rely upon the exemptive relief of PTE 84–14, all plans would have to undertake the time and expense of identifying suitable transferees, accept a discounted sale price, comply with applicable transfer rules and pay the funds a transfer fee, which may run to $5,000 or more. Deutsche Bank states that, in locating a replacement fund, a typical plan could incur 6–8 months of delay, $30,000–$40,000 in consultant fees for a private manager/fund search, 25–50 hours in client time and $10,000–$30,000 in legal fees to review subscription agreements and negotiate side letters.

52. Deutsche Bank represents that its AM business line provides discretionary asset management services to separately managed plan accounts, including five ERISA-covered plan accounts and three governmental plan accounts. The largest ERISA account is $164.2 million. Total ERISA AuM is $299.2 million. The underlying ERISA-covered plans cover at least 143,000 participants. The largest governmental plan account is $164.3 million. Total governmental plan AuM is $227.9 million. The underlying plans cover at least 731,000 participants. Deutsche Bank notes that AM also provides such services to one rabbi trust with total AuM of $141.7 million.

53. Deutsche Bank represents that the AM line manages these accounts with a variety of strategies, including: (A) Equities, (B) fixed income, (C) overlay, (D) commodities, and (E) cash. These strategies involve a range of asset classes

[26] The Department notes that, if this temporary exemption is granted, compliance with the condition in Section I(j) of the exemption would require the DB QPAMs to hold their plan customers harmless for any losses attributable to, inter alia, any prohibited transactions or violations of the duty of prudence and loyalty.

and types, including: (A) U.S. and foreign fixed income (Treasuries, Agencies, corporate bonds, asset-backed securities, mortgage and commercial mortgage-backed securities, deposits); (B) U.S. and foreign mutual funds and ETFs; (C) U.S. and foreign futures, (D) currency; (E) swaps (interest rate and credit default); (F) U.S. and foreign equities; and (G) short term investment funds.

54. Deutsche Bank estimates that, in the event the AM business line cannot rely upon the exemptive relief of PTE 84–14, plan clients would typically incur $30,000 to $40,000 in consulting fees related to a new manager search, up to 5 basis points in direct transaction costs, and $15,000–$30,000 in legal costs to negotiate each new futures, cleared derivatives, swap or other trading agreements.

55. Deutsche Bank represents that its Wealth Management—Private Client Services and Wealth Management—Private Bank business lines manage $178.1 million in ERISA assets, $643.9 million in IRA assets, and $1.8 million of rabbi trust assets (Wealth Management—Private Bank). Deutsche Bank asserts that causing plan clients to change managers will lead the plans and IRAs to incur transaction costs, estimated at 2.5 basis points overall.

Statutory Findings—Protective of the Rights of Participants of Affected Plans and IRAs

56. The Applicant has proposed certain conditions it believes are protective of plans and IRAs with respect to the transactions described herein. The Department has determined to revise and supplement the proposed conditions so that it can make its required finding that the requested exemption is protective of the rights of participants and beneficiaries of affected plans and IRAs.

57. Several of the conditions underscore the Department's understanding, based on Deutsche Bank's representations, that the affected DB QPAMs were not involved in the misconduct that is the subject of the Convictions. The temporary exemption, if granted as proposed, mandates that the DB QPAMs (including their officers, directors, agents other than Deutsche Bank, and employees of such DB QPAMs) did not know of, have reason to know of, or participate in the criminal conduct of DSK and DB Group Services that is the subject of the Convictions. For purposes of this requirement, ''participate in'' includes an individual's knowing or tacit approval of the misconduct underlying the Convictions. Furthermore, the DB QPAMs (including their officers, directors, employees, and agents other than Deutsche Bank) cannot have received direct compensation, or knowingly received indirect compensation, in connection with the criminal conduct that is the subject of the Convictions.

58. The proposed temporary exemption defines the Convictions as: (1) The judgment of conviction against DB Group Services, in Case 3:15–cr–00062–RNC to be entered in the United States District Court for the District of Connecticut to a single count of wire fraud, in violation of 18 U.S.C. 1343 (the US Conviction); and (2) the judgment of conviction against DSK entered on January 25, 2016, in Seoul Central District Court, relating to charges filed against DSK under Articles 176, 443, and 448 of South Korea's Financial Investment Services and Capital Markets Act for spot/futures-linked market price manipulation (the Korean Conviction). The Department notes that the ''conduct'' of any person or entity that is the ''subject of [a] Conviction'' encompasses any conduct of Deutsche Bank and/or their personnel, that is described in the Plea Agreement (including the Factual Statement), Court judgments (including the judgment of the Seoul Central District Court), criminal complaint documents from the Financial Services Commission in Korea, and other official regulatory or judicial factual findings that are a part of this record.

59. The Department expects that DB QPAMs will rigorously ensure that the individuals associated with the misconduct will not be employed or knowingly engaged by such QPAMs. In this regard, the proposed temporary exemption mandates that the DB QPAMs will not employ or knowingly engage any of the individuals that knowingly participated in the spot/futures-linked market manipulation or LIBOR manipulation activities that led to the Convictions, respectively. For purposes of this condition, ''participated in'' includes an individual's knowing or tacit approval of the behavior that is the subject of the Convictions. Further, a DB QPAM will not use its authority or influence to direct an ''investment fund'' (as defined in Section VI(b) of PTE 84–14) that is subject to ERISA or the Code and managed by such DB QPAM to enter into any transaction with DSK or DB Group Services, nor otherwise engage DSK or DB Group Services to provide additional services to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or services may otherwise be within the scope of relief provided by an administrative or statutory exemption.

60. The DB QPAMs must comply with each condition of PTE 84–14, as amended, with the sole exceptions of the violations of Section I(g) of PTE 84–14 that are attributable to the Convictions. Further, any failure of the DB QPAMs to satisfy Section I(g) of PTE 84–14 must result solely from the US Conviction and the Korean Conviction.

61. No relief will be provided by this temporary exemption to the extent that a DB QPAM exercised its authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA) in a manner that it knew or should have known would: Further the criminal conduct that is the subject of the Convictions; or cause the QPAM, affiliates, or related parties to directly or indirectly profit from the criminal conduct that is the subject of the Convictions.

Further, no temporary relief will be provided to the extent DSK or DB Group Services provides any discretionary asset management services to ERISA-covered plans or IRAs or otherwise act as a fiduciary with respect to ERISA-covered plan or IRA assets.

62. *Policies.* The Department believes that robust policies and training are warranted where, as here, extensive criminal misconduct has occurred within a corporate organization that includes one or more QPAMs managing plan investments in reliance on PTE 84–14. Therefore, this proposed temporary exemption requires each DB QPAM to immediately develop, implement, maintain, and follow written policies and procedures (the Policies) requiring and reasonably designed to ensure that: The asset management decisions of the DB QPAM are conducted independently of the corporate management and business activities of Deutsche Bank, including DB Group Services and DSK; the DB QPAM fully complies with ERISA's fiduciary duties and ERISA and the Code's prohibited transaction provisions and does not knowingly participate in any violations of these duties and provisions with respect to ERISA-covered plans and IRAs; the DB QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs; any filings or statements made by the DB QPAM to regulators, including but not limited to, the Department of Labor, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA covered plans or IRAs are

materially accurate and complete, to the best of such QPAM's knowledge at that time; the DB QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plan and IRA clients; and the DB QPAM complies with the terms of this proposed temporary exemption. Any violation of, or failure to comply with, the Policies must be corrected promptly upon discovery, and any such violation or compliance failure not promptly corrected must be reported, upon discovering the failure to promptly correct, in writing, to appropriate corporate officers, the head of Compliance and the General Counsel of the relevant DB QPAM (or their functional equivalent), the independent auditor responsible for reviewing compliance with the Policies, and an appropriate fiduciary of any affected ERISA-covered plan or IRA that is independent of Deutsche Bank.[27] A DB QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance promptly when discovered or when it reasonably should have known of the noncompliance (whichever is earlier), and provided that it reports such instance of noncompliance as explained above.

63. *Training.* The Department has also imposed a condition that requires each DB QPAM to immediately develop and implement a program of training (the Training) for all relevant DB QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must be set forth in the Policies and at a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions) and ethical conduct, the consequences for not complying with the conditions of this proposed temporary exemption (including the loss of the exemptive relief provided herein), and prompt reporting of wrongdoing.

64. *Independent Transparent Audit.* The Department views a rigorous, transparent audit that is conducted by an independent party as essential to ensuring that the conditions for exemptive relief described herein are followed by the DB QPAMs. Therefore, Section I(i) of this proposed temporary exemption requires that each DB 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 the DB QPAM's compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies.

This proposed temporary exemption requires that the audit described herein must ''look back'' to cover the period of time beginning on the effective date of the Extension, October 24, 2016, and ending on the earlier the date that is twelve months following the U.S. Conviction Date; or the effective date of a final agency action made by the Department in connection with Exemption Application No. D–11908 (the Audit Period). The audit must be completed no later than six (6) months after the Audit Period. In order to harmonize the audit required herein with the audit required by the Extension, the audit requirement described in paragraph (i) of this temporary exemption expressly supersedes paragraph (f) of the Extension. However, in determining the DB QPAMs' compliance with the provisions of the Extension and the temporary exemption for purposes of conducting the audit, the auditor will rely on the conditions for exemptive relief as then applicable to the respective portions of the Audit Period.

The audit condition requires that, to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, and as permitted by law, each DB QPAM and, if applicable, Deutsche Bank, will grant the auditor unconditional access to its business, including, but not limited to: Its computer systems; business records; transactional data; workplace locations; training materials; and personnel.

The auditor's engagement must specifically require the auditor to determine whether each DB QPAM has complied with the Policies and Training conditions described herein, and must further require the auditor to test each DB QPAM's operational compliance with the Policies and Training. The auditor must issue a written report (the Audit Report) to Deutsche Bank and the DB QPAM to which the audit applies that describes the procedures performed by the auditor during the course of its examination. The Audit Report must include the auditor's specific determinations regarding: The adequacy of the DB QPAM's Policies and Training; the DB QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective DB QPAM's noncompliance with the written Policies and Training.

Any determination by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective DB QPAM must be promptly addressed by such DB QPAM, and any action taken by such DB QPAM to address such recommendations must be included in an addendum to the Audit Report. Any determination by the auditor that the respective DB QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that the DB QPAM has complied with the requirements under this subsection must be based on evidence that demonstrates the DB QPAM has actually implemented, maintained, and followed the Policies and Training required by this temporary exemption. Furthermore, the auditor must notify the respective DB 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.

This proposed temporary exemption requires that certain senior personnel of Deutsche Bank review the Audit Report, make certifications, and take various corrective actions. In this regard, the General Counsel, or one of the three most senior executive officers of the DB 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; addressed, corrected, or remedied any inadequacy identified in the Audit Report; and determined that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this proposed temporary exemption and with the applicable provisions of ERISA and the Code. The Risk Committee of Deutsche Bank's Board of Directors is provided a copy of each Audit Report; and a senior executive officer with a direct reporting line to the highest ranking legal compliance officer of Deutsche Bank must review the Audit Report for each DB QPAM and must certify in writing, under penalty of

[27] With respect to any ERISA-covered plan or IRA sponsored by an ''affiliate'' (as defined in Part VI(d) of PTE 84–14) of Deutsche Bank or beneficially owned by an employee of Deutsche Bank or its affiliates, such fiduciary does not need to be independent of Deutsche Bank.

perjury, that such officer has reviewed each Audit Report.

In order to create a more transparent record in the event that the proposed temporary relief is granted, each DB QPAM must provide its certified Audit Report to the Department no later than 45 days following its completion. The Audit Report will be part of the public record regarding this temporary exemption. Furthermore, each DB QPAM must make its Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of an ERISA-covered plan or IRA, the assets of which are managed by such DB QPAM. Additionally, each DB QPAM and the auditor must submit to the Department any engagement agreement(s) entered into pursuant to the engagement of the auditor under this temporary exemption; and any engagement agreement entered into with any other entity retained in connection with such QPAM's compliance with the Training or Policies conditions of this proposed temporary exemption, no later than six (6) months after the effective date of this temporary exemption (and one month after the execution of any agreement thereafter). Finally, if the temporary exemption is granted, the auditor must provide the Department, upon request, all of the workpapers created and utilized in the course of the audit, including, but not limited to: The audit plan; audit testing; identification of any instance of noncompliance by the relevant DB QPAM; and an explanation of any corrective or remedial action taken by the applicable DB QPAM.

In order to enhance oversight of the compliance with the temporary exemption, Deutsche Bank must notify the Department at least 30 days prior to any substitution of an auditor, and Deutsche Bank must demonstrate to the Department's satisfaction that any new auditor is independent of Deutsche Bank, experienced in the matters that are the subject of the temporary exemption, and capable of making the determinations required of this temporary exemption.

65. *Contractual Obligations.* This proposed temporary exemption requires DB QPAMs to enter into certain contractual obligations in connection with the provision of services to their clients. It is the Department's view that the condition in Section I(j) is essential to the Department's ability to make its findings that the proposed temporary exemption is protective of the rights of the participants and beneficiaries of ERISA-covered plan and IRA clients. In this regard, effective as of the effective date of this temporary exemption, with respect to any arrangement, agreement, or contract between a DB QPAM and an ERISA-covered plan or IRA for which a DB QPAM provides asset management or other discretionary fiduciary services, each DB QPAM agrees: To comply with ERISA and the Code, as applicable with respect to such ERISA-covered plan or IRA; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions); to comply with the standards of prudence and loyalty set forth in section 404 of ERISA with respect to each such ERISA-covered plan and IRA; and to indemnify and hold harmless the ERISA-covered plan and IRA for any damages resulting from a DB QPAM's violation of applicable laws, a DB QPAM's breach of contract, or any claim brought in connection with the failure of such DB QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Convictions. Furthermore, DB QPAMs must agree not to require (or otherwise cause) the ERISA-covered plan or IRA to waive, limit, or qualify the liability of the DB QPAM for violating ERISA or the Code or engaging in prohibited transactions; not to require the ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the DB QPAM for violating ERISA or engaging in prohibited transactions, except for violations or prohibited transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of Deutsche Bank; not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the DB QPAM (including 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 as a result of an actual lack of liquidity of the underlying assets, provided that such restrictions are applied consistently and in like manner to all such investors; not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors; and not to include exculpatory provisions disclaiming or otherwise limiting liability of the DB QPAM for a violation of such agreement's terms, except 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 Deutsche Bank.

66. Within four (4) months of the effective date of this proposed temporary exemption, each DB QPAM will provide a notice of its obligations under Section I(j) to each ERISA-covered plan and IRA client for which the DB QPAM provides asset management or other discretionary fiduciary services.

67. Each DB QPAM must maintain records necessary to demonstrate that the conditions of this proposed temporary exemption have been met, for six (6) years following the date of any transaction for which such DB QPAM relies upon the relief in the proposed temporary exemption.

68. Certain of the conditions of the temporary exemption are specifically directed at Deutsche Bank. In this regard, Deutsche Bank must have disgorged all of its profits generated by the spot/futures-linked market manipulation activities of DSK personnel that led to the Conviction against DSK entered on January 25, 2016, in Seoul Central District Court.

69. The proposed temporary exemption mandates that, during the effective period of this temporary exemption, Deutsche Bank: Must (1) immediately disclose to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) that Deutsche Bank or an affiliate enters into with the U.S Department of Justice, to the extent such DPA or NPA involves conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA; and (2) immediately provide the Department any information requested by the Department, as permitted by law, regarding the agreement and/or the conduct and allegations that led to the agreements. In this regard, any conduct that would have constituted a violation of Section I(g) of PTE 84–14 or given rise to the prohibition described under section 411 of ERISA if such conduct had resulted in a conviction, but instead was the subject of a DPA or NPA

between Deutsche Bank or any affiliate of Deutsche Bank and the U.S. Department of Justice, must be disclosed to the Department.

Statutory Findings—Administratively Feasible

70. Deutsche Bank represents that the proposed temporary exemption is administratively feasible because it does not require any monitoring by the Department but relies on an independent auditor to determine that the exemption conditions are being complied with. Furthermore, the requested temporary exemption does not require the Department's oversight because, as a condition of this proposed temporary exemption, neither DB Group Services nor DSK will provide any fiduciary or QPAM services to ERISA covered plans and IRAs.

71. Given the revised and new conditions described above, the Department has tentatively determined that the temporary relief sought by the Applicant satisfies the statutory requirements for an exemption under section 408(a) of ERISA.

Notice to Interested Persons

All written comments and/or requests for a hearing must be received by the Department within five days of the date of publication of this proposed temporary exemption in the **Federal Register**. All comments will be made available to the public. To the extent the Department publishes a proposed exemption that contains more permanent relief for the transactions described herein, the notice of proposed exemption will set forth a notice and comment period that extends at least 45 days.

All comments will be made available to the public.

Warning: If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

FOR FURTHER INFORMATION CONTACT: Scott Ness of the Department, telephone (202) 693–8561. (This is not a toll-free number.)

Citigroup, Inc. (Citigroup or the Applicant), Located in New York, New York

[Application No. D–11859]

Proposed Temporary Exemption

The Department is considering granting a temporary exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).[28]

Section I: Covered Transactions

If the proposed temporary exemption is granted, the Citigroup Affiliated QPAMs and the Citigroup Related QPAMs, as defined in Sections II(a) and II(b), respectively, will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14 or the QPAM Exemption),[29] notwithstanding the judgment of conviction against Citicorp (the Conviction, as defined in Section II(c)),[30] for engaging in a conspiracy to: (1) Fix the price of, or (2) eliminate competition in the purchase or sale of the euro/U.S. dollar currency pair exchanged in the Foreign Exchange (FX) Spot Market. This temporary exemption will be effective for a period of up to twelve (12) months beginning on the Conviction Date (as defined in Section II(d)), provided the following conditions are satisfied:

(a) Other than a single individual who worked for a non-fiduciary business within Citigroup's Markets and Securities Services business, and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, the Citigroup Affiliated QPAMs and the Citigroup Related QPAMs (including their officers, directors, agents other than Citicorp, and employees of such Citigroup QPAMs) did not know of, have reason to know of, or participate in the criminal conduct of Citicorp that is the subject of the Conviction (for purposes of this paragraph (a), ''participate in'' includes the knowing or tacit approval of the misconduct underlying the Conviction);

(b) Other than a single individual who worked for a non-fiduciary business within Citigroup's Markets and Securities Services business, and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, the Citigroup Affiliated QPAMs and the Citigroup Related QPAMs (including their officers, directors, agents other than Citicorp, and employees of such Citigroup Affiliated QPAMs), did not receive direct compensation, or knowingly receive indirect compensation in connection with the criminal conduct that is the subject of the Conviction;

(c) The Citigroup Affiliated QPAMs will not employ or knowingly engage any of the individuals that participated in the criminal conduct that is the subject of the Conviction (for purposes of this paragraph (c), ''participated in'' includes the knowing or tacit approval of the misconduct underlying the Conviction);

(d) A Citigroup Affiliated QPAM will not use its authority or influence to direct an ''investment fund'' (as defined in Section VI(b) of PTE 84–14), that is subject to ERISA or the Code and managed by such Citigroup Affiliated QPAM, to enter into any transaction with Citicorp or the Markets and Securities Services business of Citigroup, or to engage Citicorp or the Markets and Securities Services business of Citigroup, to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e) Any failure of a Citigroup Affiliated QPAM or a Citigroup Related QPAM to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction;

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

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

[29] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

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

conduct that is the subject of the Conviction;

(g) Citicorp and the Markets and Securities Services business of Citigroup will not provide discretionary asset management services to ERISA-covered plans or IRAs, nor will otherwise act as a fiduciary with respect to ERISA-covered plan and IRA assets;

(h)(1) Within four (4) months of the Conviction, each Citigroup Affiliated QPAM must develop, implement, maintain, and follow written policies and procedures (the Policies) requiring and reasonably designed to ensure that:

(i) The asset management decisions of the Citigroup Affiliated QPAM are conducted independently of the corporate management and business activities of Citigroup, including the corporate management and business activities of the Markets and Securities Services business of Citigroup;

(ii) The Citigroup Affiliated QPAM fully complies with ERISA's fiduciary duties, and with ERISA and the Code's prohibited transaction provisions, and does not knowingly participate in any violations of these duties and provisions with respect to ERISA-covered plans and IRAs;

(iii) The Citigroup Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs;

(iv) Any filings or statements made by the Citigroup Affiliated QPAM to regulators, including but not limited to, the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA-covered plans or IRAs, are materially accurate and complete, to the best of such QPAM's knowledge at that time;

(v) The Citigroup Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plans and IRA clients;

(vi) The Citigroup Affiliated QPAM complies with the terms of this temporary exemption; and

(vii) Any violation of, or failure to comply with an item in subparagraphs (ii) through (vi), is corrected promptly upon discovery, and any such violation or compliance failure not promptly corrected is reported, upon discovering the failure to promptly correct, in writing, to appropriate corporate officers, the head of compliance, and the General Counsel (or their functional equivalent) of the relevant Citigroup Affiliated QPAM, and an appropriate fiduciary of any affected ERISA-covered plan or IRA, where such fiduciary is independent of Citigroup; however, with respect to any ERISA-covered plan or IRA sponsored by an ''affiliate'' (as defined in Section VI(d) of PTE 84–14) of Citigroup or beneficially owned by an employee of Citigroup or its affiliates, such fiduciary does not need to be independent of Citigroup. A Citigroup Affiliated QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance promptly when discovered, or when it reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (vii);

(2) Within four (4) months of the date of the Conviction, each Citigroup Affiliated QPAM must develop and implement a program of training (the Training), conducted at least annually, for all relevant Citigroup Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must be set forth in the Policies and, 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 temporary exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing;

(i)(1) Effective as of the effective date of this temporary exemption, with respect to any arrangement, agreement, or contract between a Citigroup Affiliated QPAM and an ERISA-covered plan or IRA for which a Citigroup Affiliated QPAM provides asset management or other discretionary fiduciary services, each Citigroup Affiliated QPAM agrees:

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

(ii) Not to require (or otherwise cause) the ERISA covered plan or IRA to waive, limit, or qualify the liability of the Citigroup Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(iii) Not to require the ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the Citigroup Affiliated QPAM for violating ERISA or the Code, or engaging in prohibited transactions, except for violations or prohibited transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary, which is independent of Citigroup, and its affiliates;

(iv) Not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the Citigroup Affiliated QPAM (including 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 as a result of the actual lack of liquidity of the underlying assets, provided that such restrictions are applied consistently and in like manner to all such investors;

(v) Not to impose any fee, penalty, or charge 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 each such fee is applied consistently and in like manner to all such investors;

(vi) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the Citigroup Affiliated QPAM for a violation of such agreement's terms, except for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary which is independent of Citigroup, and its affiliates; and

(vii) To indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a violation of applicable laws, a breach of contract, or any claim arising out of the failure of such Citigroup Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Conviction;

(2) Within four (4) months of the date of the Conviction, each Citigroup Affiliated QPAM will provide a notice of its obligations under this Section I(i) to each ERISA-covered plan and IRA for which a Citigroup Affiliated QPAM provides asset management or other discretionary fiduciary services;

(j) The Citigroup 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 Conviction;

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

(l) During the effective period of this temporary exemption, Citigroup: (1) Immediately discloses to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) with the U.S. Department of Justice to the extent such DPA or NPA involves conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA; and

(2) Immediately provides the Department any information requested by the Department, as permitted by law, regarding the agreement and/or the conduct and allegations that led to the agreement; and

(m) A Citigroup Affiliated QPAM or a Citigroup Related QPAM will not fail to meet the terms of this temporary exemption solely because a different Citigroup Affiliated QPAM or Citigroup Related QPAM fails to satisfy a condition for relief under this temporary exemption, described in Sections I(c), (d), (h), (i), (j), and (k).

Section II: Definitions

(a) The term ''Citigroup Affiliated QPAM'' means a ''qualified professional asset manager'' (as defined in section VI(a)[31] of PTE 84–14) that relies on the relief provided by PTE 84–14 and with respect to which Citigroup is a current or future ''affiliate'' (as defined in section VI(d)(1) of PTE 84–14). The term ''Citigroup Affiliated QPAM'' excludes the parent entity, Citicorp and Citigroup's Markets and Securities Services business.

(b) The term ''Citigroup 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 Citigroup owns a direct or indirect five percent or more interest, but with respect to which Citigroup is not an ''affiliate'' (as defined in Section VI(d)(1) of PTE 84–14).

(c) The terms ''ERISA-covered plan'' and ''IRA'' mean, respectively, a plan subject to Part 4 of Title I of ERISA and a plan subject to section 4975 of the Code;

(d) The term ''Citigroup'' means Citigroup, Inc., the parent entity, and does not include any subsidiaries or other affiliates;

(e) The term ''Conviction'' means the judgment of conviction against Citigroup for violation of the Sherman Antitrust Act, 15 U.S.C. 1, which is scheduled to be entered in the District Court for the District of Connecticut (the District Court)(Case Number 3:15–cr–78–SRU), in connection with Citigroup, through one of its euro/U.S. dollar (EUR/USD) traders, entering into and engaging in a combination and conspiracy to fix, stabilize, maintain, increase or decrease the price of, and rig bids and offers for, the EUR/USD currency pair exchanged in the FX spot market by agreeing to eliminate competition in the purchase and sale of the EUR/USD currency pair in the United States and elsewhere. For all purposes under this temporary exemption, ''conduct'' of any person or entity that is the ''subject of [a] Conviction'' encompasses any conduct of Citigroup and/or their personnel, that is described in the Plea Agreement, (including the Factual Statement), and other official regulatory or judicial factual findings that are a part of this record; and

(f) The term ''Conviction Date'' means the date that a judgment of Conviction against Citicorp is entered by the District Court in connection with the Conviction.

Effective Date: This proposed temporary exemption will be effective for the period beginning on the Conviction Date until the earlier of: (1) The date that is twelve (12) months following the Conviction Date; or (2) the effective date of final agency action made by the Department in connection with an application for long-term exemptive relief for the covered transactions described herein.

Department's Comment: The Department is publishing this proposed temporary exemption in order to protect ERISA-covered plans and IRAs from certain costs and/or investment losses that may arise to the extent entities with a corporate relationship to Citigroup lose their ability to rely on PTE 84–14 as of the Conviction Date, as described below. Elsewhere today in the **Federal Register**, the Department is also proposing a five-year proposed exemption that would provide the same relief that is described herein, but for a longer effective period. The five-year proposed exemption is subject to enhanced conditions and a longer comment period. Comments received in response to this proposed temporary exemption will be considered in connection with the Department's determination whether or not to grant such five-year exemption.

The proposed exemption would provide relief from certain of the restrictions set forth in sections 406 and 407 of ERISA. No relief from a violation of any other law would be provided by this exemption, including any criminal conviction described herein.

Furthermore, the Department cautions that the relief in this proposed exemption would terminate immediately if, among other things, an entity within the Citigroup corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Conviction) during the effective period of the exemption. While such an entity could apply for a new exemption in that circumstance, the Department would not be obligated to grant the exemption. The terms of this proposed exemption have been specifically designed to permit plans to terminate their relationships in an orderly and cost effective fashion in the event of an additional conviction or a determination that it is otherwise prudent for a plan to terminate its relationship with an entity covered by the proposed exemption.

Summary of Facts and Representations[32]

Background

1. Citigroup is a global diversified financial services holding company incorporated in Delaware and headquartered in New York, New York. Citigroup and its affiliates provide consumers, corporations, governments and institutions with a broad range of financial products and services, including consumer banking and credit, corporate and investment banking, securities brokerage, trade and securities

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

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

services and wealth management. Citigroup has approximately 241,000 employees and operations in over 160 countries and jurisdictions. As of December 31, 2014, Citigroup had approximately $1.8 trillion of assets under management and held $889 billion in deposits.

2. Citigroup currently operates, for management reporting purposes, via two primary business segments which include: (a) Citigroup's Global Consumer Banking businesses (GCB); and (b) Citigroup's Institutional Clients Group (ICG).

GCB includes a global, full-service consumer franchise delivering a wide array of retail banking, commercial banking, Citi-branded credit cards and investment services through a network of local branches, offices and electronic delivery systems. GCB had 3,280 branches in 35 countries around the world. For the year ended December 31, 2014, GCB had $399 billion of average assets and $331 billion of average deposits.

ICG provides a broad range of banking and financial products and services to corporate, institutional, public sector and high-net-worth clients in approximately 100 countries. ICG transacts with clients in both cash instruments and derivatives, including fixed income, foreign currency, equity and commodity products. ICG is divided into several business lines including: (a) Citi Corporate and Investment Banking; (b) Treasury and Trade Solutions; (c) Markets and Securities Services; and (d) Citi Private Bank (CPB).

3. The Applicant represents that Citigroup has several affiliates that provide investment management services.[33] Citigroup provides investment advisory services to clients world-wide through a number of different programs offered by various businesses that are tailored to meet the needs of its diverse clientele. Within the United States, Citigroup offers its investment advisory programs primarily through the following: (a) CPB and Citigroup's Global Consumers Group (GCG), acting through Citigroup Global Markets Inc. (CGMI); and (b) Citibank, N.A. (Citibank) and Citi Private Advisory, LLC (CPA) (collectively, the Advisory Businesses). The Applicant represents that CPA and CGMI are each investment advisers, registered under the Advisers Act. The Applicant also represents that CPB, CGMI, Citibank, and CPA are QPAMs.

Within the United States, Citigroup's Advisory Businesses are conducted within CPB and GCG. Together, CPB and GCG provide services to over 44,000 customer advisory accounts with assets under management totaling over $33 billion. Of these, there are over 20,000 accounts for ERISA pension plans and individual retirement accounts (IRAs) (collectively, Retirement Accounts), with assets under management of approximately $3.8 billion.

Although each of the advisory programs offered by the Advisory Businesses is unique, most utilize independent third-party managers on a discretionary or nondiscretionary basis, as determined by the client. Other programs such as Citi Investment Management (CIM), which operates through both the CGMI and CPB business units, primarily provide advice concerning the selection of individual securities for CPB clients.

CPB, GCG, CBNA, CGMI and their affiliates provide administrative, management and/or technical services designed to implement and monitor client's investment guidelines, and in certain nondiscretionary programs, offer recommendations on investing and re-investing portfolio assets for the client's consideration. CPB provides private banking services, and offers its clients access to a broad array of products and services available through bank and non-bank affiliates of Citigroup. GCG services include U.S. and international retail banking, U.S. consumer lending, international consumer finance, and commercial finance. Citibank is a wholly-owned subsidiary of Citigroup and a national banking association which provides fiduciary advisory services.

4. CGMI is a wholly-owned subsidiary of Citigroup whose principal activities include retail and institutional private client services which include: (a) Advice with respect to financial markets; (b) the execution of securities and commodities transactions as a broker or dealer; (c) securities underwriting; (d) investment banking; (e) investment management (including fiduciary and administrative services); and (f) trading and holding securities and commodities for its own account. CGMI holds a number of registrations, including registration as an investment adviser, a securities broker-dealer, and a futures commission merchant.

CPA is also a wholly-owned subsidiary of Citigroup and provides advisory services to private investment funds that are organized to invest primarily in other private investment funds advised by third-party managers.

The Applicant represents that trading decisions and investment strategy of current Citigroup Affiliated QPAMs for their clients is not shared with Citigroup employees outside of the Advisory Business, nor do employees of the Advisory Business consult with other Citigroup affiliates prior to making investment decisions on behalf of clients.

5. On May 20, 2015, the Applicant filed an application for exemptive relief from the prohibitions of sections 406(a) and 406(b) of ERISA, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) of the Code, in connection with a conviction that would make the relief in PTE 84–14 unavailable to any current or future Citigroup-related investment managers.

The U.S. Department of Justice (Department of Justice) has conducted an investigation of certain conduct and practices of Citigroup in the FX spot market. To resolve the Department of Justice's investigation, Citicorp, a Delaware corporation that is a financial services holding company and the direct parent company of Citibank, entered into a plea agreement with the Department of Justice (the Plea Agreement), to be approved by the U.S. District Court for the District of Connecticut (the District Court), pursuant to which Citicorp has pleaded guilty to one count of an antitrust violation of the Sherman Antitrust Act, 15 U.S.C. 1 (15 U.S.C. 1). The Plea Agreement acknowledges that Citigroup has provided ''substantial assistance'' to the Department of Justice in carrying out its investigation.

As set forth in the Plea Agreement, from at least December 2007 and continuing to at least January 2013 (the Relevant Period), Citicorp, through one London-based euro/U.S. dollar (EUR/USD) trader employed by Citibank, entered into and engaged in a conspiracy to fix, stabilize, maintain, increase or decrease the price of, and rig bids and offers for, the EUR/USD currency pair exchanged in the FX spot market by agreeing to eliminate competition in the purchase and sale of the EUR/USD currency pair in the United States and elsewhere. The criminal conduct that is the subject of the Conviction included near daily

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

conversations, some of which were in code, in an exclusive electronic chat room used by certain EUR/USD traders, including the EUR/USD trader employed by Citibank. The criminal conduct that is the subject of the Conviction forms the basis for the Department of Justice's antitrust charge that Citicorp violated 15 U.S.C. 1.

Under the terms of the Plea Agreement, the Department of Justice and Citicorp have agreed that the District Court should impose a sentence requiring Citicorp to pay a criminal fine of $925 million. The Plea Agreement also provides for a three-year term of probation, with conditions to include, among other things, Citigroup's continued implementation of a compliance program designed to prevent and detect the criminal conduct that is the subject of the Conviction throughout its operations, as well as Citigroup's further strengthening of its compliance and internal controls as required by other regulatory or enforcement agencies that have addressed the criminal conduct that is the subject of the Conviction, including: (a) The U.S. Commodity Futures Trading Commission (the CFTC), pursuant to its settlement with Citibank on November 11, 2014, requiring remedial measures to strengthen the control framework governing Citigroup's FX trading business; (b) the Office of the Comptroller of the Currency, pursuant to its settlement with Citibank on November 11, 2014, requiring remedial measures to improve the control framework governing Citigroup's wholesale trading and benchmark activities; (c) the U.K. Financial Conduct Authority (FCA), pursuant to its settlement with Citibank on November 11, 2014; and (d) the U.S. Board of Governors of the Federal Reserve System (FRB), pursuant to its settlement with Citigroup entered into concurrently with the Plea Agreement with Department of Justice, requiring remedial measures to improve Citigroup's controls for FX trading and activities involving commodities and interest rate products.

6. The Applicant states that in January 2016, Nigeria's Federal Director of Public Prosecutions filed charges against a Nigerian subsidiary of Citibank and fifteen individuals (some of whom are current or former employees of that subsidiary) relating to specific credit facilities provided to a certain customer in 2000 to finance the import of goods. The Applicant represents that these charges are the latest of a series of charges that were filed and then withdrawn between 2007 and 2011. The Applicant also represents that to its best knowledge, it does not have a reasonable basis to believe that the discretionary asset management activities of any Citigroup QPAMs are subject to these charges. Further, the Applicant represents that it does not have a reasonable basis to believe that there are any pending criminal investigations involving Citigroup or any of its affiliates that would cause a reasonable plan or IRA customer not to hire or retain the institution as a QPAM.

7. Notwithstanding the aforementioned charges, once the Conviction is entered, the Citigroup Affiliated QPAMs and the Citigroup Related QPAMs, as well as their client plans that are subject to Part 4 of Title I of ERISA (ERISA-covered plans) or section 4975 of the Code (IRAs), will no longer be able to rely on PTE 84–14, pursuant to the anti-criminal rule set forth in section I(g) of the class exemption, absent an individual exemption. The Applicant is seeking an individual exemption that would permit the Citigroup Affiliated QPAMs and the Citigroup Related QPAMs, and their ERISA-covered plan and IRA clients to continue to utilize the relief in PTE 84–14, notwithstanding the anticipated Conviction, provided that such QPAMs satisfy the additional conditions imposed by the Department in the proposed temporary exemption herein.

8. The Applicant represents that the criminal conduct that is the subject of the Conviction was neither widespread nor pervasive. The Applicant states that such criminal conduct consisted of isolated acts perpetrated by a single EUR/USD trader employed in Citigroup's Markets and Securities Services business in the United Kingdom who was removed from the activities of the Citigroup Affiliated QPAMs, both geographically and organizationally. The Applicant represents that this London-based EUR/USD trader was not an officer or director of Citigroup, and did not have any involvement in, or influence over, Citigroup or any of the Citigroup Affiliated QPAMs. The Applicant states that this London-based EUR/USD trader had minimal management responsibilities, which related exclusively to Citigroup's G10 Spot FX trading business, outside of the United States. As represented by the Applicant, once senior management became aware of the criminal conduct that is the subject of the Conviction, Citibank took action to terminate the employee.

9. The Applicant represents that no current or former employee of Citigroup or of any Citigroup Affiliated QPAM who previously has been or who subsequently may be identified by Citigroup, or any U.S. or non-U.S. regulatory or enforcement agencies, as having been responsible for the criminal conduct that is the subject of the Conviction will have any involvement in providing asset management services to plans and IRAs or will be an officer, director, or employee of the Applicant or of any Citigroup Affiliated QPAM.

Citigroup's Business Separation/ Compliance/Training

10. The Applicant represents that Citigroup's Advisory Businesses are operated independently from Citigroup's Markets and Securities Services, the segment of Citigroup in which foreign exchange trading is conducted.[34] Although the Advisory Business falls under the umbrellas of ICG and GCG, it operates separately in all material respects from the sales and trading businesses that comprise that business segment. The Advisory Business maintains separate: (a) Management and reporting lines; (b) compliance programs; (c) compensation arrangements; (d) profit and loss reporting (with different comptrollers), (e) human resources and training programs, and (f) legal coverage. The Applicant represents that the Advisory Businesses maintain a separate, dedicated compliance function, and have protocols to preserve the separation between employees in the Advisory Business and those in Markets and Securities Services.

11. The Applicant represents that Citigroup's independent control functions, including Compliance, Finance, Legal and Risk, set standards according to which Citigroup and its businesses are expected to manage and oversee risks, including compliance with applicable laws, regulatory requirements, policies and standards of ethical conduct. Among other things, the independent control functions provide advice and training to Citigroup's businesses and establish tools, methodologies, processes and oversight of controls used by the businesses to foster a culture of compliance and control and to satisfy those standards.

12. The Applicant represents that compliance at Citigroup is an

[34] The Applicant represents that each of Citigroup's primary business units operates a large number of separate and independent businesses. These lines of business generally have: (a) A group of employees working solely on matters specific to its line of business, (b) separate management and reporting lines; (c) tailored compliance regimens; (d) separate compensation arrangements; (e) separate profit and loss reporting; (vi) separate human resources personnel and training, (f) dedicated risk and compliance officers and (g) dedicated legal coverage.

independent control function within Franchise Risk and Strategy that is designed to protect Citigroup not only by managing adherence to applicable laws, regulations and other standards of conduct, but also by promoting business behavior and activity that is consistent with global standards for responsible finance. The Applicant states that Citigroup has implemented company-wide initiatives designed to further embed ethics in Citigroup's culture. This includes training for more than 40,000 senior employees that fosters ethical decision-making and underscores the importance of escalating issues, a video series featuring senior leaders discussing ethical decisions, regular communications on ethics and culture, and the development of enhanced tools to support ethical decision-making.

Statutory Findings—In the Interest of Affected Plans and IRAs

13. The Applicant represents that, if the exemption is denied, the Citigroup Affiliated QPAMs may be unable to effectively manage assets subject to ERISA or the prohibited transaction provisions of the Code where PTE 84–14 is needed to avoid engaging in a prohibited transaction. The Applicant further represents that plans and participants would be harmed because they would be unnecessarily deprived of the current and future opportunity to utilize the Applicant's experience in and expertise with respect to the financial markets and investing. The Applicant anticipates that, if the exemption is denied, some of Citigroup's 20,000 existing Retirement Account clients may feel forced to terminate their advisory relationship with Citigroup, incurring expenses related to: (a) Consultant fees and other due diligence expenses for identifying new managers; (b) transaction costs associated with a change in investment manager, including the sale and purchase of portfolio investments to accommodate the investment policies and strategy of the new manager, and the cost of entering into new custodial arrangements; and (c) lost investment opportunities in connection with the change.[35]

Statutory Findings—Protective of the Rights of Participants of Affected Plans and IRAs

14. The Applicant has proposed certain conditions it believes are protective of participants and beneficiaries of ERISA-covered plans and IRAs with respect to the transactions described herein. The Department has determined to revise and supplement the proposed conditions so that it can make its required finding that the requested exemption is protective of the rights of participants and beneficiaries of affected plans and IRAs. In this regard, the Department has tentatively determined that the following conditions adequately protect the rights of participants and beneficiaries of affected plans and IRAs with respect to the transactions that would be covered by this temporary exemption.

Relief under this proposed exemption is only available to the extent: (a) Other than with respect to a single individual who worked for a non-fiduciary business within Citigroup's Markets and Securities Services business and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, Citigroup Affiliated QPAMs, including their officers, directors, agents other than Citicorp, and employees of such Citigroup Affiliated QPAMs, did not know of, have reason to know of, or participate in the criminal conduct of Citicorp that is the subject of the Conviction (For purposes of the foregoing condition, the term ''participate in'' includes the knowing or tacit approval of the misconduct underlying the Conviction.); (b) any failure of those QPAMs to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction; and (c) other than a single individual who worked for a non-fiduciary business within Citigroup's Markets and Securities Services business, and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, the Citigroup Affiliated QPAMs and the Citigroup Related QPAMs (including their officers, directors, agents other than Citicorp, and employees of such Citigroup QPAMs) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the Conviction.

15. The Department expects the Citigroup Affiliated QPAMs to rigorously ensure that the individual associated with the criminal conduct of Citicorp will not be employed or knowingly engaged by such QPAMs. In this regard, the temporary exemption, if granted as proposed, mandates that the Citigroup Affiliated QPAMs will not employ or knowingly engage any of the individuals that participated in the criminal conduct that is the subject of the Conviction. For purposes of this condition, the term ''participated in'' includes the knowing or tacit approval of the misconduct underlying the Conviction.

16. Further, the Citigroup Affiliated QPAM will not use its authority or influence to direct an ''investment fund,'' (as defined in Section VI(b) of PTE 84–14), that is subject to ERISA or the Code and managed by such Citigroup Affiliated QPAM to enter into any transaction with Citicorp or the Markets and Securities business of Citigroup, or to engage Citigroup or the Markets and Securities business of Citigroup 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.

17. The Citigroup Affiliated QPAMs and the Citigroup Related 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 Conviction. Further, any failure of the Citigroup Affiliated QPAMs or the Citigroup Related QPAMs to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction.

No relief will be provided by the temporary exemption to the extent that a Citigroup Affiliated QPAM or a Citigroup Related QPAM exercised authority over the assets of an ERISA-covered plan or IRA in a manner that it knew or should have known would: Further the criminal conduct that is the subject of the Conviction; or cause the Citigroup Affiliated QPAM or the Citigroup Related QPAM, or its affiliates or related parties to directly or indirectly profit from the criminal conduct that is the subject of the Conviction. Further, no relief will be provided to the extent Citicorp or the Markets and Securities business of Citigroup provides any discretionary asset management services to ERISA-covered plans or IRAs, or otherwise acts as a fiduciary with respect to ERISA-covered plan or IRA assets.

18. The Department believes that robust policies and training are warranted where, as here, the criminal misconduct has occurred within a corporate organization that is affiliated with one or more QPAMs managing

[35] The Department notes that, if this temporary exemption is granted, compliance with the condition in Section I(j) of the exemption would require the Citigroup Affiliated QPAMs to hold their plan customers harmless for any losses attributable to, *inter alia,* any prohibited transactions or violations of the duty of prudence and loyalty.

plan assets in reliance on PTE 84–14. Therefore, this proposed temporary exemption requires that within four (4) months of the date of the Conviction, each Citigroup Affiliated QPAM must develop, implement, maintain, and follow written policies and procedures (the Policies) requiring and reasonably designed to ensure that: The asset management decisions of the Citigroup Affiliated QPAM are conducted independently of the corporate management and business activities of Citigroup, including the Markets and Securities business of Citigroup; the Citigroup Affiliated QPAM fully complies with ERISA's fiduciary duties, and with ERISA and the Code's prohibited transaction provisions, and does not knowingly participate in any violation of these duties and provisions with respect to ERISA-covered plans and IRAs; the Citigroup Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs; any filings or statements made by the Citigroup Affiliated QPAM to regulators, including, but not limited to, the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA-covered plans or IRAs, are materially accurate and complete, to the best of such QPAM's knowledge at that time; the Citigroup Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plan and IRA clients; and the Citigroup Affiliated QPAM complies with the terms of this temporary exemption. Any violation of, or failure to comply with these items is corrected promptly upon discovery, and any such violation or compliance failure not promptly corrected is reported, upon discovering the failure to promptly correct, in writing, to appropriate corporate officers, the head of compliance, and the General Counsel (or their functional equivalent) of the relevant Citigroup Affiliated QPAM, and an appropriate fiduciary of any affected ERISA-covered plan or IRA, which fiduciary is independent of Citigroup.

19. The Department has also imposed a condition that requires each Citigroup Affiliated QPAM within four (4) months of the date of the Conviction, to develop and implement a program of training (the Training), conducted at least annually, for all relevant Citigroup Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must be set forth in the Policies and, 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 temporary exemption, (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing.

20. This temporary exemption requires the Citigroup Affiliated QPAMs to enter into certain contractual obligations in connection with the provision of services to their clients. It is the Department's view that the condition for exemptive relief requiring these contractual obligations is essential to the Department's ability to make its findings that the proposed temporary exemption is protective of the rights of the participants and beneficiaries of ERISA-covered and IRA plan clients of Citigroup Affiliated QPAMs under section 408(a) of ERISA. In this regard, Section I(i) of the proposed temporary exemption provides that, as of the effective date of this temporary exemption, with respect to any arrangement, agreement, or contract between a Citigroup Affiliated QPAM and an ERISA-covered plan or IRA for which a Citigroup Affiliated QPAM provides asset management or other discretionary fiduciary services, each Citigroup Affiliated QPAM must agree: (a) To comply with ERISA and the Code, as applicable, with respect to such ERISA-covered plan or IRA, and refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions), and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA, as applicable, with respect to each such ERISA-covered plan and IRA; (b) to indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a violation of applicable laws, a breach of contract, or any claim arising out of the failure of such Citigroup Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Conviction; (c) not to require (or otherwise cause) the ERISA-covered plan or IRA to waive, limit, or qualify the liability of the Citigroup Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions; (d) not to require the ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the Citigroup Affiliated QPAM for violating ERISA or the Code, or engaging in prohibited transactions, except for a violation or a prohibited transaction caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of Citigroup, and its affiliates; (e) not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the Citigroup Affiliated QPAM (including 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 as a result of an actual lack of liquidity of the underlying assets, provided that such restrictions are applied consistently and in like manner to all such investors; and (f) not to impose any fee, penalty, or charge 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 each such fee is applied consistently and in like manner to all such investors. Furthermore, any contract, agreement or arrangement between a Citigroup Affiliated QPAM and its ERISA-covered plan or IRA client must not contain exculpatory provisions disclaiming or otherwise limiting liability of the Citigroup Affiliated QPAM for a violation of such agreement's terms, except for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary which is independent of Citigroup, and its affiliates.

21. Within four (4) months of the date of the Conviction, each Citigroup Affiliated QPAM will provide a notice of its obligations under Section I(i) to each ERISA-covered plan and IRA for which the Citigroup Affiliated QPAM provides asset management or other discretionary fiduciary services. In addition, each Citigroup Affiliated QPAM must maintain records necessary

to demonstrate that the conditions of this temporary exemption have been met for six (6) years following the date of any transaction for which such Citigroup Affiliated QPAM relies upon the relief in the temporary exemption.

22. Furthermore, the proposed temporary exemption mandates that, during the effective period of this temporary exemption, Citigroup must immediately disclose to the Department any Deferred Prosecution Agreement (a DPA) or a Non-Prosecution Agreement (an NPA) that Citigroup or an affiliate enters into with the Department of Justice, to the extent such DPA or NPA involves conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA. In addition, Citigroup or an affiliate must immediately provide the Department any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement.

23. The proposed exemption would provide relief from certain of the restrictions set forth in Section 406 and 407 of ERISA. Such a granted exemption would not provide relief from any other violation of law. Pursuant to the terms of this proposed exemption, any criminal conviction not expressly described herein, but otherwise described in Section I(g) of PTE 84–14 and attributable to the Applicant for purposes of PTE 84–14, would result in the Applicant's loss of this exemption.

Statutory Findings—Administratively Feasible

24. The Applicant represents that the proposed temporary exemption is administratively feasible because it does not require any monitoring by the Department. In addition, the limited effective duration of the temporary exemption provides the Department with the opportunity to determine whether long-term exemptive relief is warranted, without causing sudden and potentially costly harm to ERISA-covered plans and IRAs.

Summary

25. Given the revised and new conditions described above, the Department has tentatively determined that the relief sought by the Applicant satisfies the statutory requirements for a temporary exemption under section 408(a) of ERISA.

Notice to Interested Persons

Written comments and requests for a public hearing on the proposed temporary exemption should be submitted to the Department within five (5) days from the date of publication of this **Federal Register** notice. Given the short comment period, the Department will consider comments received after such date, in connection with its consideration of more permanent relief.

Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

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

JPMorgan Chase & Co. (JPMC or the Applicant), Located in New York, New York

[Application No. D–11861]

Proposed Temporary Exemption

The Department is considering granting a temporary exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).[36]

Section I: Covered Transactions

If the proposed temporary exemption is granted, the JPMC Affiliated QPAMs and the JPMC Related QPAMs, as defined in Sections II(a) and II(b), respectively, will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14 or the QPAM Exemption),[37] notwithstanding the judgment of conviction against JPMC (the Conviction), as defined in Section II(c)),[38] for engaging in a conspiracy to: (1) Fix the price of, or (2) eliminate competition in the purchase or sale of the euro/U.S. dollar currency pair exchanged in the Foreign Exchange (FX) Spot Market. This temporary exemption will be effective for a period of up to twelve (12) months beginning on the Conviction Date (as defined in Section II(d)), provided the following conditions are satisfied:

(a) Other than a single individual who worked for a non-fiduciary business within JPMorgan Chase Bank and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, agents other than JPMC, and employees of such JPMC QPAMs) did not know of, have reason to know of, or participate in the criminal conduct of JPMC that is the subject of the Conviction (for purposes of this paragraph (a), ''participate in'' includes the knowing or tacit approval of the misconduct underlying the Conviction);

(b) Other than a single individual who worked for a non-fiduciary business within JPMorgan Chase Bank and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, agents other than JPMC, and employees of such JPMC QPAMs) did not receive direct compensation, or knowingly receive indirect compensation in connection with the criminal conduct that is the subject of the Conviction;

(c) The JPMC Affiliated QPAMs will not employ or knowingly engage any of the individuals that participated in the criminal conduct that is the subject of the Conviction (for purposes of this paragraph (c), ''participated in'' includes the knowing or tacit approval of the misconduct underlying the Conviction);

(d) A JPMC Affiliated QPAM will not use its authority or influence to direct an ''investment fund'' (as defined in Section VI(b) of PTE 84–14), that is subject to ERISA or the Code and managed by such JPMC Affiliated QPAM to enter into any transaction with JPMC or the Investment Banking Division of JPMorgan Chase Bank, or engage JPMC or the Investment Banking Division of JPMorgan Chase Bank to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e) Any failure of a JPMC Affiliated QPAM or a JPMC Related QPAM to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction;

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

[37] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

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

(f) A JPMC Affiliated QPAM or a JPMC Related QPAM did not exercise authority over plan assets in a manner that it knew or should have known would: Further the criminal conduct that is the subject of the Conviction; or cause the JPMC QPAM or its affiliates or related parties to directly or indirectly profit from the criminal conduct that is the subject of the Conviction;

(g) JPMC and the Investment Banking Division of JPMorgan Chase Bank will not provide discretionary asset management services to ERISA-covered plans or IRAs, and will not otherwise act as a fiduciary with respect to ERISA-covered plan and IRA assets;

(h)(1) Within four (4) months of the Conviction, each JPMC Affiliated QPAM must develop, implement, maintain, and follow written policies and procedures (the Policies) requiring and reasonably designed to ensure that:

(i) The asset management decisions of the JPMC Affiliated QPAM are conducted independently of the corporate management and business activities of JPMC, including the Investment Banking Division of JPMorgan Chase Bank;

(ii) The JPMC Affiliated QPAM fully complies with ERISA's fiduciary duties, and with ERISA and the Code's prohibited transaction provisions, and does not knowingly participate in any violations of these duties and provisions with respect to ERISA-covered plans and IRAs;

(iii) The JPMC Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs;

(iv) Any filings or statements made by the JPMC Affiliated QPAM to regulators, including but not limited to, the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA-covered plans or IRAs, are materially accurate and complete, to the best of such QPAM's knowledge at that time;

(v) The JPMC Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plans and IRA clients;

(vi) The JPMC Affiliated QPAM complies with the terms of this temporary exemption; and

(vii) Any violation of, or failure to comply with an item in subparagraphs (ii) through (vi), is corrected promptly upon discovery, and any such violation or compliance failure not promptly corrected is reported, upon discovering the failure to promptly correct, in writing, to appropriate corporate officers, the head of compliance, and the General Counsel (or their functional equivalent) of the relevant JPMC Affiliated QPAM, and an appropriate fiduciary of any affected ERISA-covered plan or IRA, where such fiduciary is independent of JPMC; however, with respect to any ERISA-covered plan or IRA sponsored by an ''affiliate'' (as defined in Section VI(d) of PTE 84–14) of JPMC or beneficially owned by an employee of JPMC or its affiliates, such fiduciary does not need to be independent of JPMC. A JPMC Affiliated QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance promptly when discovered, or when it reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (vii);

(2) Within four (4) months of the date of the Conviction, each JPMC Affiliated QPAM must develop and implement a program of training (the Training), conducted at least annually, for all relevant JPMC Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must be set forth in the Policies and, 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 temporary exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing;

(i)(1) Effective as of the effective date of this temporary exemption, with respect to any arrangement, agreement, or contract between a JPMC Affiliated QPAM and an ERISA-covered plan or IRA for which a JPMC Affiliated QPAM provides asset management or other discretionary fiduciary services, each JPMC Affiliated QPAM agrees:

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

(ii) Not to require (or otherwise cause) the ERISA covered plan or IRA to waive, limit, or qualify the liability of the JPMC Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(iii) Not to require the ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the JPMC Affiliated QPAM for violating ERISA or the Code, or engaging in prohibited transactions, except for violations or prohibited transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary, which is independent of JPMC and its affiliates;

(iv) Not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the JPMC Affiliated QPAM (including 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 as a result of the actual lack of liquidity of the underlying assets, provided that such restrictions are applied consistently and in like manner to all such investors;

(v) Not to impose any fee, penalty, or charge 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 each such fee is applied consistently and in like manner to all such investors;

(vi) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the JPMC Affiliated QPAM for a violation of such agreement's terms, except for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary which is independent of JPMC, and its affiliates; and

(vii) To indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a violation of applicable laws, a breach of contract, or any claim arising out of the failure of such JPMC Affiliated QPAM to qualify for the exemptive relief provided by

PTE 84–14 as a result of a violation of Section I (g) of PTE 84–14 other than the Conviction;

(2) Within four (4) months of the date of the Conviction, each JPMC Affiliated QPAM will provide a notice of its obligations under this Section I(i) to each ERISA-covered plan and IRA for which a JPMC Affiliated QPAM provides asset management or other discretionary fiduciary services;

(j) The JPMC 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 Conviction;

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

(l) During the effective period of this temporary exemption, JPMC: (1) Immediately discloses to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) with the U.S. Department of Justice to the extent such DPA or NPA involves conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA; and

(2) Immediately provides the Department any information requested by the Department, as permitted by law, regarding the agreement and/or the conduct and allegations that led to the agreement; and

(m) A JPMC Affiliated QPAM or a JPMC Related QPAM will not fail to meet the terms of this temporary exemption solely because a different JPMC Affiliated QPAM or JPMC Related QPAM fails to satisfy a condition for relief under this temporary exemption, as described in Sections I(c), (d), (h), (i), (j) and (k).

Section II: Definitions

(a) The term ''JPMC Affiliated QPAM'' means a ''qualified professional asset manager'' (as defined in Section VI(a) [39] of PTE 84–14) that relies on the relief provided by PTE 84–14 and with respect to which JPMC is a current or future ''affiliate'' (as defined in Section VI(d)(1) of PTE 84–14). The term ''JPMC Affiliated QPAM'' excludes the parent entity, JPMC, the division directly implicated by the criminal conduct that is the subject of the Conviction.

(b) The term ''JPMC 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 JPMC owns a direct or indirect five percent or more interest, but with respect to which JPMC is not an ''affiliate'' (as defined in Section VI(d)(1) of PTE 84–14).

(c) The terms ''ERISA-covered plan'' and ''IRA'' mean, respectively, a plan subject to Part 4 of Title I of ERISA and a plan subject to section 4975 of the Code;

(d) The term ''JPMC'' means JPMorgan Chase and Co., the parent entity, but does not include any subsidiaries or other affiliates;

(e) The term ''Conviction'' means the judgment of conviction against JPMC for violation of the Sherman Antitrust Act, 15 U.S.C. 1, which is scheduled to be entered in the District Court for the District of Connecticut (the District Court) (Case Number 3:15–cr–79–SRU), in connection with JPMC, through one of its euro/U.S. dollar (EUR/USD) traders, entering into and engaging in a combination and conspiracy to fix, stabilize, maintain, increase or decrease the price of, and rig bids and offers for, the EUR/USD currency pair exchanged in the FX spot market by agreeing to eliminate competition in the purchase and sale of the EUR/USD currency pair in the United States and elsewhere. For all purposes under this temporary exemption, ''conduct'' of any person or entity that is the ''subject of [a] Conviction'' encompasses any conduct of JPMC and/or their personnel, that is described in the Plea Agreement, (including the Factual Statement), and other official regulatory or judicial factual findings that are a part of this record; and

(f) The term ''Conviction Date'' means the date that a judgment of Conviction against JPMC is entered by the District Court in connection with the Conviction.

Effective Date: This proposed temporary exemption will be effective for the period beginning on the Conviction Date until the earlier of: (1) The date that is twelve (12) months following the Conviction Date; or (2) the effective date of final agency action made by the Department in connection with an application for long-term exemptive relief for the covered transactions described herein.

Department's Comment: The Department is publishing this proposed temporary exemption in order to protect ERISA-covered plans and IRAs from certain costs and/or investment losses that may arise to the extent entities with a corporate relationship to JPMC lose their ability to rely on PTE 84–14 as of the Conviction Date, as described below. Elsewhere today in the **Federal Register**, the Department is also proposing a five-year proposed exemption that would provide the same relief that is described herein, but for a longer effective period. The five-year proposed exemption is subject to enhanced conditions and a longer comment period. Comments received in response to this proposed temporary exemption will be considered in connection with the Department's determination whether or not to grant such five-year exemption.

The proposed exemption would provide relief from certain of the restrictions set forth in sections 406 and 407 of ERISA. No relief from a violation of any other law would be provided by this exemption including any criminal conviction described herein.

Furthermore, the Department cautions that the relief in this proposed exemption would terminate immediately if, among other things, an entity within the JPMC corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Conviction) during the effective period of the exemption. While such an entity could apply for a new exemption in that circumstance, the Department would not be obligated to grant the exemption. The terms of this proposed exemption have been specifically designed to permit plans to terminate their relationships in an orderly and cost effective fashion in the event of an additional conviction or a determination that it is otherwise prudent for a plan to terminate its relationship with an entity covered by the proposed exemption.

Summary of Facts and Representations [40]

Background

1. JPMC is a financial holding company and global financial services firm, incorporated in Delaware and headquartered in New York, New York, with approximately 240,000 employees and operations in over 60 countries. According to the Applicant, JPMC provides a variety of services, including investment banking, financial services for consumers and small business, commercial banking, financial transaction processing, and asset management.

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

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

The Applicant represents that JPMC's principal bank subsidiaries are: (a) JPMorgan Chase Bank, a national banking association wholly owned by JPMC, with U.S. branches in 23 states; and (b) Chase Bank USA, National Association, a national banking association that is JPMC's credit card-issuing bank. The Applicant also represents that two of JPMC's principal non-bank subsidiaries are its investment bank subsidiary, J.P. Morgan Securities LLC, and its primary investment management subsidiary, J.P. Morgan Investment Management Inc. (JPMIM). The bank and nonbank subsidiaries of JPMC operate internationally through overseas branches and subsidiaries, representative offices and subsidiary foreign banks.

The Applicant explains that entities within the JPMC's asset management line of business (Asset Management) serve institutional and retail clients worldwide through the Global Investment Management (GIM) and Global Wealth Management (GWM) businesses. The Applicant represents that JPMC's Asset Management line of business had total client assets of about $2.4 trillion and discretionary assets under management of approximately $1.7 trillion at the end of 2014.[41]

2. The Applicant represents that JPMC has several affiliates that provide investment management services.[42] JPMorgan Chase Bank and most of the U.S. registered advisers manage the assets of ERISA-covered plans and/or IRAs on a discretionary basis. They routinely rely on the QPAM Exemption to provide relief for party in interest transactions. According to the Applicant, the primary domestic bank and U.S. registered adviser affiliates in which JPMC owns a significant interest, directly or indirectly, include the following: JPMorgan Chase Bank, N.A.; JPMorgan Investment Management Inc.; J.P. Morgan Securities LLC; JF International Management Inc.; J.P. Morgan Alternative Asset Management, Inc.; Highbridge Capital Management, LLC; and Security Capital Research & Management Incorporated. These are the entities that currently would be covered by the exemption, if it is granted.

3. In addition to the QPAMs identified above, the Applicant has other affiliated managers that meet the definition of a QPAM that do not currently manage ERISA or IRA assets on a discretionary basis, but may in the future, including: J.P. Morgan Partners, LLC; Sixty Wall Street Management Company LLC; J.P. Morgan Private Investments Inc.; J.P. Morgan Asset Management (UK) Limited; JPMorgan Funds Limited; and Bear Stearns Asset Management, Inc. The Applicant requests that affiliates that manage ERISA or IRA assets be covered by the exemption. The Applicant also acquires and creates new affiliates frequently, and to the extent that these new affiliates meet the definition of a QPAM and manage ERISA-covered plans or IRAs, the Applicant requests that these entities be covered by the exemption. The Applicant represents that JPMC owns, directly or indirectly, a 5% or greater interest in certain investment managers (and may in the future own similar interests in other managers), but such managers are not affiliated in the sense that JPMC has actual control over their operations and activities. JPMC does not have the authority to exercise a controlling influence over these investment managers and is not involved with the managers' clients, strategies, or ERISA assets under management, if any.[43] The Applicant requests that these entities also be covered by the proposed temporary exemption.

4. On May 20, 2015, the Applicant filed an application for exemptive relief from the prohibitions of sections 406(a) and 406(b) of ERISA, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) of the Code, in connection with a conviction that would make the relief in PTE 84–14 unavailable to any current or future JPMC-related investment managers.

On May 20, 2015, the U.S. Department of Justice (Department of Justice) filed a criminal information in the U.S. District Court for the District of Connecticut (the District Court) against JPMC, charging JPMC with a one-count violation of the Sherman Antitrust Act, 15 U.S.C. 1 (the Information). The Information charges that, from at least as early as July 2010 until at least January 2013, JPMC, through one of its euro/U.S. dollar (EUR/USD) traders, entered into and engaged in a combination and conspiracy to fix, stabilize, maintain, increase or decrease the price of, and rig bids and offers for, the EUR/USD currency pair exchanged in the FX spot market by agreeing to eliminate competition in the purchase and sale of the EUR/USD currency pair in the United States and elsewhere. The criminal conduct that is the subject of the Conviction involved near daily conversations, some of which were in code, in an exclusive electronic chat room used by certain EUR/USD traders, including the EUR/USD trader described herein.

5. JPMC sought to resolve the charges through a Plea Agreement presented to the District Court on May 20, 2015. Under the Plea Agreement, JPMC agreed to enter a plea of guilty to the charge set out in the Information (the Plea). In addition, JPMC has made an admission of guilt to the District Court. The Applicant expects that the District Court will enter a judgment against JPMC that will require remedies that are materially the same as those set forth in the Plea Agreement.

Pursuant to the Plea Agreement, the District Court will order a term of probation and JPMC will be subject to certain conditions. First, JPMC must not commit another crime in violation of the federal laws of the United States or engage in the Conduct set forth in Paragraphs 4(g)–(i) of the Plea Agreement during the term of probation, and shall make disclosures relating to certain other sales-related practices. Second, JPMC must notify the probation officer upon learning of the commencement of any federal criminal investigation in which JPMC is a target, or of any federal criminal prosecution against it. Third, JPMC must implement and must continue to implement a compliance program designed to prevent and detect the criminal conduct that is the subject of the Conviction.

[41] In addition to its Asset Management line of business, the Applicant represents that JPMC operates three other core lines of business. They are: Consumer and Community Banking Services; Corporate and Investment Banking Services; and Commercial Banking Services.

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

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

Section VI(e) of PTE 84–14 defines the term "control" as the power to exercise a controlling influence over the management or policies of a person other than an individual.

Fourth, JPMC must further strengthen its compliance and internal controls as required by the CFTC, the Financial Conduct Authority (FCA), and any other regulatory or enforcement agencies that have addressed the criminal conduct that is the subject of the Conviction, as set forth in the factual basis section of the Plea Agreement, and report to the probation officer and the United States, upon request, regarding its remediation and implementation of any compliance program and internal controls, policies, and procedures that relate to the conduct described in the factual basis section of the Plea Agreement.

6. Pursuant to the Plea Agreement, JPMC must promptly bring to the Department of Justice Antitrust Division's attention: (a) All credible information regarding criminal violations of U.S. antitrust laws by the defendant or any of its employees as to which the JPMC's Board of Directors, management (that is, all supervisors within the bank), or legal and compliance personnel are aware; (b) all federal criminal or regulatory investigations in which the defendant is a subject or a target, and all administrative or regulatory proceedings or civil actions brought by any federal governmental authority in the United States against the defendant or its employees, to the extent that such investigations, proceedings or actions allege violations of U.S. antitrust laws.

7. Pursuant to the Plea Agreement, JPMC must promptly bring to the Department of Justice Criminal Division, Fraud Section's attention: (a) All credible information regarding criminal violations of U.S. law concerning fraud, including securities or commodities fraud by the defendant or any of its employees as to which the JPMC's Board of Directors, management (that is, all supervisors within the bank), or legal and compliance personnel are aware; and (b) all criminal or regulatory investigations in which JPMC is or may be a subject or a target, and all administrative proceedings or civil actions brought by any governmental authority in the United States against JPMC or its employees, to the extent such investigations, proceedings or actions allege violations of U.S. law concerning fraud, including securities or commodities fraud.

Pursuant to Paragraph 9(c) of the Plea Agreement, the Department of Justice agreed ''that it [would] support a motion or request by [JPMC] that sentencing in this matter be adjourned until the Department of Labor has issued a ruling on the defendant's request for an exemption . . . .'' According to the Applicant, sentencing has not yet occurred in the District Court, nor has sentencing been scheduled.

8. Along with the Department of Justice, the Board of Governors of the Federal Reserve Board (FRB), the Office of the Comptroller of the Currency (OCC), the Commodity Futures Trading Commission (CFTC), and the Financial Conduct Authority (FCA) have conducted or have been conducting investigations into the practices of JPMC and its direct and indirect subsidiaries relating to FX trading.

The FRB issued a cease and desist order on May 20, 2015, against JPMC concerning unsafe and unsound banking practices relating to JPMC's FX business and requiring JPMC to cease and desist, assessing against JPMC a civil money penalty of $342,000,000, and requiring JPMC to agree to take certain affirmative actions (FRB Order).

The OCC issued a cease and desist order on November 11, 2014, against JPMorgan Chase Bank concerning deficiencies and unsafe or unsound practices relating to JPMorgan Chase Bank's wholesale FX business and requiring JPMorgan Chase Bank to cease and desist, ordering JPMorgan Chase Bank to pay a civil money penalty of $350,000,000, and requiring JPMorgan Chase Bank to agree to take certain affirmative actions (OCC Order).

The CFTC issued a cease and desist order on November 11, 2014, against JPMorgan Chase Bank relating to certain FX trading activities and requiring JPMorgan Chase Bank to cease and desist from violating certain provisions of the Commodity Exchange Act, ordering JPMorgan Chase Bank to pay a civil monetary penalty of $310,000,000, and requiring JPMorgan Chase Bank to agree to certain conditions and undertakings (CFTC Order).

The FCA issued a warning notice on November 11, 2014, against JPMorgan Chase Bank for failing to control business practices in its G10 spot FX trading operations and caused JPMorgan Chase Bank to pay a financial penalty of £222,166,000 (FCA Order).

9. In addition to the investigations described above, relating to FX trading, the Applicant is or has been the subject of other investigations, by: (a) The Hong Kong Monetary Authority, which concluded its investigation of the Applicant on December 14, 2014, and found no evidence of collusion among the banks investigated, rigging of FX benchmarks published in Hong Kong, or market manipulation, and imposed no financial penalties on the Applicant; (b) the South Africa Reserve Bank, which released the report of its inquiry of the Applicant on October 19, 2015, and found no evidence of widespread malpractice or serious misconduct by the Applicant in the South Africa FX market, and noted that most authorized dealers have acceptable arrangements and structures in place as well as whistle-blowing policies and client complaint processes; (c) the Australian Securities & Investments Commission, (d) the Japanese Financial Services Agency, (e) the Korea Fair Trade Commission, and (f) the Swiss Competition Commission. According to the Applicant, it is cooperating with the inquiries by these organizations.

In addition, the French criminal authorities have been investigating a series of transactions involving senior managers of Wendel Investissement (Wendel) during the period 2004–2007. In 2007, the Paris branch of JPMorgan Chase Bank provided financing for the transactions to Wendel managers. The Applicant explains that JPMC is responding to and cooperating with the investigation, and to date, no decision or indictment has been made by the French court.

In addition, the Applicant represents that the Criminal Division of the Department of Justice is investigating the Applicant's compliance with the Foreign Corrupt Practices Act and other laws with respect the Applicant's hiring practices related to candidates referred by clients, potential clients, and government officials, and its engagement of consultants in the Asia Pacific region. The Applicant states that it is responding to and cooperating with this investigation.

The Applicant also represents that to its best knowledge, it does not have a reasonable basis to believe that the discretionary asset management activities of any affiliated QPAM are subject to the aforementioned investigations. Further, the Applicant represents that JPMC currently does not have a reasonable basis to believe that there are any pending criminal investigations involving JPMC or any of its affiliated companies that would cause a reasonable plan or IRA customer not to hire or retain the institution as a QPAM.

10. Once the Conviction is entered, the JPMC Affiliated QPAMs and the JPMC Related QPAMs, as well as their client plans that are subject to Part 4 of Title I of ERISA (ERISA-covered plans) or section 4975 of the Code (IRAs), will no longer be able to rely on PTE 84–14, pursuant to the anti-criminal rule set forth in section I(g) of the class exemption, absent an individual exemption. The Applicant is seeking an individual exemption that would permit the JPMC Affiliated QPAMs and the JPMC Related QPAMs, and their ERISA-

covered plan and IRA clients to continue to utilize the relief in PTE 84–14, notwithstanding the anticipated Conviction, provided that such QPAMs satisfy the additional conditions imposed by the Department in the proposed temporary exemption herein.

11. According to the Applicant, the criminal conduct giving rise to the Plea did not involve any of the JPMC Affiliated QPAMs acting in the capacity of investment manager or trustee. JPMC represents that its participation in the antitrust conspiracy described in the Plea Agreement is limited to a single EUR/USD trader in London. The Applicant represents that the criminal conduct that is the subject of the Conviction was not widespread, nor was it pervasive; rather it was isolated to a single trader. No current or former personnel from JPMC or its affiliates have been sued individually in this matter for the criminal conduct that is the subject of the Conviction, and the individual referenced in the Complaint as responsible for such criminal conduct is no longer employed by JPMC or its affiliates.[44]

The Applicant submits that the criminal conduct that is the subject of the Conviction did not involve any of JPMC's asset management staff. The Applicant represents that: (a) Other than a single individual who worked for a non-fiduciary business within JPMorgan Chase Bank and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, the JPMC Affiliated QPAMs, and the JPMC Related QPAMs (including officers, directors, agents other than JPMC, and employees of such QPAMs who had responsibility for, or exercised authority in connection with, the management of plan assets) did not know of, did not have reason to know of, and did not participate in the criminal conduct that is the subject of the Conviction; and (b) no current or former employee of JPMC or of any JPMC Affiliated QPAM who previously has been or who subsequently may be identified by JPMC, or any U.S. or non-U.S. regulatory or enforcement agencies, as having been responsible for the such criminal conduct has or will have any involvement in providing asset management services to plans and IRAs or will be an officer, director, or employee of the Applicant or of any JPMC Affiliated QPAM.[45]

12. According to the Applicant, the transactions covered by the temporary exemption include the full range of everyday investment transactions that a plan might enter into, including the purchase and sale of debt and equity securities, both foreign and domestic, both registered and sold under Rule 144A or otherwise (*e.g.,* traditional private placement), pass-through securities, asset-backed securities, the purchase and sale of commodities, futures, forwards, options, swaps, stable value wrap contracts, real estate, real estate financing and leasing, foreign repurchase agreements, foreign exchange, and other investments, and the hedging of risk through a variety of investment instruments and strategies. The Applicant states that these transactions are customary for the industry and investment managers routinely rely on the QPAM Exemption to enter into them.

13. The Applicant represents that the investment management businesses that are operated out of the JPMC Affiliated QPAMs are separated from the non-investment management businesses of the Applicant. Each of these investment management businesses, including the investment management business of JPMorgan Chase Bank (as well as the agency securities lending business of JPMorgan Chase Bank), have systems, management, dedicated risk and compliance officers and legal coverage that are separate from the foreign exchange trading activities that were the subject of the Plea Agreement.

The Applicant represents that the investment management businesses of the JPMC Affiliated QPAMs are subject to policies and procedures and JPMC Affiliated QPAM personnel engage in training designed to ensure that such businesses understand and manage their fiduciary duties in accordance with applicable law. Thus, the Applicant maintains that the management of plan assets is conducted separately from: (a) The non-investment management business activities of the Applicant, including the investment banking, treasury services and other investor services businesses of the Corporate & Investment Bank business of the Applicant (CIB); and/or (b) the criminal conduct that is the subject of the Plea Agreement. Generally, the policies and procedures create information barriers, which prevent employees of the JPMC Affiliated QPAMs from gaining access to inside information that an affiliate may have acquired or developed in connection with investment banking, treasury services or other investor services business activities. These policies and procedures apply to employees, officers, and directors of the JPMC Affiliated QPAMs. The Applicant maintains an employee hotline for employees to express any concerns of wrongdoing anonymously.

The Applicant represents that, to the best of its knowledge: (a) No JPMC employees are involved in the trading decisions or investment strategies of the JPMC Affiliated or Related QPAMs; (b) the JPMC Affiliated and Related QPAMs do not consult with JPMC employees prior to making investment decisions on behalf of plans; (c) JPMC does not control the asset management decisions of the JPMC Affiliated or Related QPAMs; (d) the JPMC Affiliated and Related QPAMs do not need JPMC's consent to make investment decisions, correct errors, or adopt policies or training for staff; and (e) there is no interaction between JPMC employees and the JPMC Affiliated or Related QPAMs in connection with the investment management activities of the JPMC Affiliated QPAMs.

Statutory Findings—In the Interest of Affected Plans and IRAs

14. The Applicant represents that, if the proposed temporary exemption is denied, the JPMC Affiliated QPAMs may be unable to manage efficiently the strategies for which they have contracted with thousands of plans and IRAs. Transactions currently dependent on the QPAM Exemption could be in default and be terminated at a significant cost to the plans. In particular, the Applicant represents that the JPMC Affiliated QPAMs have entered, and could in the future enter, into contracts on behalf of, or as investment adviser of, ERISA-covered plans, collective trusts and other funds subject to ERISA for certain outstanding transactions, including but not limited to: The purchase and sale of debt and equity securities, both foreign and domestic, both registered and sold under Rule 144A or otherwise (*e.g.,* traditional private placement); pass-through securities; asset-backed securities; and the purchase and sale of commodities, futures, options, stable value wrap contracts, real estate, foreign repurchase agreements, foreign exchange, and other investments.

The JPMC Affiliated QPAMs also have entered into, and could in the future enter into, contracts for other transactions such as swaps, forwards, and real estate financing and leasing on

[44] The Applicant has confirmed with JPMC's Human Resources Department that the individual referenced in the Complaint is no longer employed with any entity within JPMC or its affiliates.

[45] The Applicant states that counsel for JPMC confirmed that the individual responsible for the criminal conduct that is the subject of the Conviction is not currently employed by any entity that is part of JPMC. This individual's employment has been terminated and a notation has been made in his employment file to ensure he is not re-hired at any future date.

behalf of their ERISA clients. According to the Applicant, these and other strategies and investments require the JPMC Affiliated QPAMs to meet the conditions in the QPAM Exemption. The Applicant states that certain derivatives transactions and other contractual agreements automatically and immediately could be terminated without notice or action, or could become subject to termination upon notice from a counterparty, in the event the Applicant no longer qualifies for relief under the QPAM Exemption.

15. The Applicant represents that real estate transactions, for example, could be subject to significant disruption without the QPAM Exemption. Clients of the JPMC Affiliated QPAMs have over $27 billion in ERISA and public plan assets in commingled funds invested in real estate strategies, with approximately 235 holdings. Many transactions in these accounts rely on Parts I, II and III of the QPAM Exemption as a backup to the collective investment fund exemption (which may become unavailable to the extent a related group of plans has a greater than 10% interest in the collective investment fund). The Applicant estimates that there would be significant loss in value if assets had to be quickly liquidated—over a 10% bid-ask spread—in addition to substantial reinvestment costs and opportunity costs. There could also be prepayment penalties. In addition, real estate transactions are affected in funds that are not deemed to hold plan assets under applicable law. While funds may have other available exemptions for certain transactions, that fact could change in the future.

16. The JPMC Affiliated QPAMs also rely on the QPAM Exemption when buying and selling fixed income products. Stable value strategies, for example, rely on the QPAM Exemption to enter into wrappers and insurance contracts that permit the assets to be valued at book value. Many counterparties specifically require a representation that the QPAM Exemption applies, and those contracts could be in default if the requested exemption were not granted. Depending on the market value of the assets in these funds at the time of termination, such termination could result in losses to the stable value funds. The Applicant states that, while the market value currently exceeds book value, that can change at any time, and could result in market value adjustments to withdrawing plans and withdrawal delays under their contracts.

17. The Applicant submits that nearly 400 accounts managed by the JPMC Affiliated QPAMs (including commingled funds and separately managed accounts) invest in fixed income products, with a total portfolio of approximately $49.3 billion in market value of ERISA and public plan assets in commingled funds. Fixed income strategies in which those accounts are invested include investment-grade short, intermediate, and long duration bonds, as well as securitized products, and high yield and emerging market investments. If the QPAM Exemption were lost, the Applicant estimates that its clients could incur average weighted liquidation costs of approximately 65 basis points of the total market value in fixed income products, assuming normal market conditions where the holdings can be liquidated at a normal bid-offer spread without significant widening. While short and intermediate term bonds could be liquidated for between 15–50 basis points, long duration bonds may be more difficult to liquidate and costs may range from 75–100 basis points. Costs of liquidating high-yield and emerging market investments could range from 75–150 basis points. Such costs do not include reinvestment costs for transitioning to a new manager.

18. The Applicant states that, futures, options, and cleared and bilateral swaps, which certain strategies rely on to hedge risk and obtain certain exposures on an economic basis, rely on the QPAM Exemption. The Applicant further states that the QPAM Exemption is particularly important for securities and other instruments that may be traded on a principal basis, such as mortgage-backed securities, corporate debt, municipal debt, other U.S. fixed income securities, Rule 144A securities, non-US fixed income securities, non-US equity securities, U.S. and non-US over-the-counter instruments such as forwards and options, structured products and FX.

19. The Applicant represents that plans that decide to continue to employ the JPMC Affiliated QPAMs could be prohibited from engaging in certain transactions that would be beneficial to such plans, such as hedging transactions using over-the-counter options or derivatives. Counterparties to such transactions are far more comfortable with the QPAM Exemption than any other exemption, and a failure of the QPAM Exemption to be available could trigger a default or early termination by the plan or pooled trust. Even if other exemptions are available to such counterparties, the Applicant predicts that the cost of the transaction might increase to reflect any lack of comfort in transacting business using a less familiar exemption. The Applicant represents that plans may also face collateral consequences, such as missed investment opportunities, administrative delay, and the cost of investing in cash pending reinvestments.

20. The Applicant represents that, to the extent that plans and IRAs believe they need to withdraw from their arrangements, they could incur significant transaction costs, including costs associated with the liquidation of investments, finding new asset managers, and the reinvestment of plan assets.[46] The Applicant believes that the transaction costs to plans of changing managers are significant, especially for many of the strategies employed by the JPMC Affiliated QPAMs. The Applicant also represents that, depending on the strategy, the cost of liquidating assets in connection with transitioning clients to another manager could be significant.[47] The process for transitioning to a new manager typically is lengthy, and likely would involve numerous steps—each of which could last several months—including retaining a consultant, engaging in the request for proposals, negotiating contracts, and ultimately transitioning assets. In addition, securities transactions would incur transaction-related expenses.

Statutory Findings—Protective of the Rights of Participants of Affected Plans and IRAs

21. The Applicant has proposed certain conditions it believes are protective of participants and beneficiaries of ERISA-covered plans and IRAs with respect to the transactions described herein. The Department has determined that it is necessary to modify and supplement the conditions before it can tentatively determine that the requested exemption meets the statutory requirements of section 408(a) of ERISA. In this regard, the Department has tentatively determined that the following

[46] The Department notes that, if this temporary exemption is granted, compliance with the condition in Section I(i) of the exemption would require the JPMC Affiliated QPAMs to hold their plan customers harmless for any losses attributable to, inter alia, any prohibited transactions or violations of the duty of prudence and loyalty.

[47] According to the Applicant: Some investments are more liquid than others (*e.g.,* Treasury bonds generally are more liquid than foreign sovereign bonds and equities generally are more liquid than swaps); some of the strategies followed by the Applicant tend to be less liquid than certain other strategies and, thus, the cost of a transition would be significantly higher than, for example, liquidating a large cap equity portfolio; and particularly hard hit would be the real estate separate account strategies, which are illiquid and highly dependent on the QPAM Exemption.

conditions adequately protect the rights of participants and beneficiaries of affected plans and IRAs with respect to the transactions that would be covered by this temporary exemption.

The exemption, if granted as proposed, is only available to the extent: (a) Other than with respect to a single individual who worked for a non-fiduciary business within JPMorgan Chase Bank and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, the JPMC Affiliated QPAMs, including their officers, directors, agents other than JPMC, and employees of such JPMC Affiliated QPAMs, did not know of, have reason to know of, or participate in the criminal conduct of JPMC that is the subject of the Conviction (Again, for purposes of the foregoing condition, the term ''participate in'' includes the knowing or tacit approval of the misconduct underlying the Conviction.); (b) any failure of those QPAMs to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction; and (c) other than a single individual who worked for a non-fiduciary business within JPMorgan Chase Bank and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, agents other than JPMC, and employees of such JPMC QPAMs) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the Conviction.

22. The Department expects the JPMC Affiliated QPAMs to rigorously ensure that the individual associated with the criminal conduct of JPMC will not be employed or knowingly engaged by such QPAMs. In this regard, the temporary exemption, if granted as proposed, mandates that the JPMC Affiliated QPAMs will not employ or knowingly engage any of the individuals that participated in the criminal conduct that is the subject of the Conviction. For purposes of this condition, the term ''participated in'' includes the knowing or tacit approval of the misconduct underlying the Conviction.

23. Further, the JPMC Affiliated QPAM will not use its authority or influence to direct an ''investment fund,'' (as defined in Section VI(b) of PTE 84–14), that is subject to ERISA or the Code and managed by such JPMC Affiliated QPAM to enter into any transaction with JPMC or the Investment Banking Division of JPMorgan Chase Bank, or to engage JPMC or the Investment Banking Division of JPMorgan Chase Bank 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.

24. The JPMC Affiliated QPAMs and the JPMC Related 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 Conviction. Further, any failure of the JPMC Affiliated QPAMs or the JPMC Related QPAMs to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction.

No relief will be provided by the temporary exemption to the extent that a JPMC Affiliated QPAM or a JPMC Related QPAM exercised authority over plan assets in a manner that it knew or should have known would: Further the criminal conduct that is the subject of the Conviction; or cause the JPMC QPAM or its affiliates or related parties to directly or indirectly profit from the criminal conduct that is the subject of the Conviction.

Further, no relief will be provided to the extent JPMC or the Investment Banking Division of JPMorgan Chase Bank provides any discretionary asset management services to ERISA-covered plans or IRAs, or otherwise acts as a fiduciary with respect to ERISA-covered plan or IRA assets.

25. The Department believes that robust policies and training are warranted where, as here, the criminal misconduct has occurred within a corporate organization that is affiliated with one or more QPAMs managing plan assets in reliance on PTE 84–14. Therefore, this proposed temporary exemption requires that within four (4) months of the date of the Conviction, each JPMC Affiliated QPAM must develop, implement, maintain, and follow written policies and procedures (the Policies) requiring and reasonably designed to ensure that: The asset management decisions of the JPMC Affiliated QPAM are conducted independently of the corporate management and business activities of JPMC, including the Investment Banking Division of JPMorgan Chase Bank; the JPMC Affiliated QPAM fully complies with ERISA's fiduciary duties, and with ERISA and the Code's prohibited transaction provisions, and does not knowingly participate in any violation of these duties and provisions with respect to ERISA-covered plans and IRAs; the JPMC Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs; any filings or statements made by the JPMC Affiliated QPAM to regulators, including, but not limited to, the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA-covered plans or IRAs, are materially accurate and complete, to the best of such QPAM's knowledge at that time; the JPMC Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plan and IRA clients; and the JPMC Affiliated QPAM complies with the terms of this temporary exemption. Any violation of, or failure to comply with these items is corrected promptly upon discovery, and any such violation or compliance failure not promptly corrected is reported, upon discovering the failure to promptly correct, in writing, to appropriate corporate officers, the head of compliance, and the General Counsel (or their functional equivalent) of the relevant JPMC Affiliated QPAM, and an appropriate fiduciary of any affected ERISA-covered plan or IRA, which fiduciary is independent of JPMC.

26. The Department has also imposed a condition that requires each JPMC Affiliated QPAM, within four (4) months of the date of the Conviction, to develop and implement a program of training (the Training), conducted at least annually, for all relevant JPMC Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must be set forth in the Policies and, 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 temporary exemption, (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing.

27. This temporary exemption requires the JPMC Affiliated QPAMs to enter into certain contractual obligations in connection with the provision of services to their clients. It is the Department's view that the condition for exemptive relief requiring these contractual obligations is essential to the Department's ability to make its findings that the proposed temporary

exemption is protective of the rights of the participants and beneficiaries of ERISA-covered and IRA plan clients of JPMC Affiliated QPAMs under section 408(a) of ERISA.

In this regard, effective as of the effective date of this temporary exemption, with respect to any arrangement, agreement, or contract between a JPMC Affiliated QPAM and an ERISA-covered plan or IRA for which a JPMC Affiliated QPAM provides asset management or other discretionary fiduciary services, each JPMC Affiliated QPAM agrees: (a) To comply with ERISA and the Code, as applicable, with respect to such ERISA-covered plan or IRA, to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions), and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA, as applicable, with respect to each such ERISA-covered plan and IRA; (b) not to require (or otherwise cause) the ERISA covered plan or IRA to waive, limit, or qualify the liability of the JPMC Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions; (c) not to require the ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the JPMC Affiliated QPAM for violating ERISA or the Code, or engaging in prohibited transactions, except for violations or prohibited transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary, which is independent of JPMC, and its affiliates; (d) not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the JPMC Affiliated QPAM (including 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 as a result of the actual lack of liquidity of the underlying assets, provided that such restrictions are applied consistently and in like manner to all such investors; (e) not to impose any fee, penalty, or charge 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 each such fee is applied consistently and in like manner to all such investors; (f) not to include exculpatory provisions disclaiming or otherwise limiting liability of the JPMC Affiliated QPAM for a violation of such agreement's terms, except for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary which is independent of JPMC, and its affiliates; and (g) to indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a violation of applicable laws, a breach of contract, or any claim arising out of the failure of such JPMC Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I (g) of PTE 84–14 other than the Conviction.

28. Within four (4) months of the date of the Conviction, each JPMC Affiliated QPAM will provide a notice of its obligations under this Section I(i) to each ERISA-covered plan and IRA for which a JPMC Affiliated QPAM provides asset management or other discretionary fiduciary services. In addition, each JPMC Affiliated QPAM must maintain records necessary to demonstrate that the conditions of this temporary exemption have been met for six (6) years following the date of any transaction for which such JPMC Affiliated QPAM relies upon the relief in the temporary exemption.

29. Furthermore, the proposed temporary exemption mandates that, during the effective period of this temporary exemption, JPMC must immediately disclose to the Department any Deferred Prosecution Agreement (a DPA) or a Non-Prosecution Agreement (an NPA) that JPMC or an affiliate enters into with the Department of Justice, to the extent such DPA or NPA involves conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA. In addition, JPMC or an affiliate must immediately provide the Department any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement.

30. The proposed exemption would provide relief from certain of the restrictions set forth in Section 406 and 407 of ERISA. Such a granted exemption would not provide relief from any other violation of law. Pursuant to the terms of this proposed exemption, any criminal conviction not expressly described herein, but otherwise described in Section I(g) of PTE 84–14 and attributable to the Applicant for purposes of PTE 84–14, would result in the Applicant's loss of this exemption.

Statutory Findings—Administratively Feasible

31. The Applicant represents that the proposed temporary exemption is administratively feasible because it does not require any monitoring by the Department. In addition, the limited effective duration of the temporary exemption provides the Department with the opportunity to determine whether long-term exemptive relief is warranted, without causing sudden and potentially costly harm to ERISA-covered plans and IRAs.

32. Given the revised and new conditions described above, the Department has tentatively determined that the relief sought by the Applicant satisfies the statutory requirements for a temporary exemption under section 408(a) of ERISA.

Notice to Interested Persons

Written comments and requests for a public hearing on the proposed temporary exemption should be submitted to the Department within seven (7) days from the date of publication of this **Federal Register** notice. Given the short comment period, the Department will consider comments received after such date, in connection with its consideration of more permanent relief.

Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

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

Barclays Capital Inc. (BCI or the Applicant), Located in New York, New York

[Application No. D–11862]

Proposed Temporary Exemption

The Department is considering granting a temporary exemption under the authority of section 408(a) of Employee Retirement Income Security Act of 1974, as amended, (ERISA or the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).[48]

Section I: Covered Transactions

If the proposed temporary exemption is granted, the Barclays Affiliated QPAMs and the Barclays Related QPAMs, as defined in Sections II(a) and II(b), respectively, will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Exemption 84–14 (PTE 84–14 or the QPAM Exemption),[49] notwithstanding a judgment of conviction against Barclays PLC (BPLC) (the Conviction), as defined in Section II(c)),[50] for engaging in a conspiracy to: (1) Fix the price of, or (2) eliminate competition in the purchase or sale of the euro/U.S. dollar currency pair exchanged in the Foreign Exchange (FX) Spot Market. This temporary exemption will be effective for a period of up to twelve (12) months beginning on the Conviction Date (as defined in Section II(e)), provided the following conditions are satisfied:

(a) Other than certain individuals who: Worked for a non-fiduciary business within BCI; had no responsibility for, and exercised no authority in connection with, the management of plan assets; and are no longer employed by BCI, the Barclays Affiliated QPAMs (including their officers, directors, agents other than BPLC, and employees of such QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not know of, have reason to know of, or participate in the criminal conduct that is the subject of the Conviction (for purposes of this paragraph (a), ''participate in'' includes the knowing or tacit approval of the misconduct underlying the Conviction);

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

(c) The Barclays Affiliated QPAMs will not employ or knowingly engage any of the individuals that participated in the criminal conduct that is the subject of the Conviction (for purposes of this paragraph (c), ''participated in'' includes the knowing or tacit approval of the misconduct underlying the Conviction);

(d) A Barclays Affiliated QPAM will not use its authority or influence to direct an ''investment fund,'' (as defined in Section VI(b) of PTE 84–14) that is subject to ERISA or the Code and managed by such Barclays Affiliated QPAM, to enter into any transaction with BPLC or BCI, or to engage BPLC or BCI, to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e) Any failure of a Barclays Affiliated QPAM or a Barclays Related QPAM to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction;

(f) A Barclays Affiliated QPAM or a Barclays Related QPAM did exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA) in a manner that it knew or should have known would: further the criminal conduct that is the subject of the Conviction; or cause the Barclays Affiliate QPAM or the Barclays Related QPAM, or its affiliates or related parties to directly or indirectly profit from the criminal conduct that is the subject of the Conviction;

(g) BPLC and BCI will not provide discretionary asset management services to ERISA-covered plans or IRAs, nor will otherwise act as a fiduciary with respect to ERISA-covered plan and IRA assets;

(h)(1) Prior to a Barclays Affiliated QPAM's engagement by any ERISA-covered plan or IRA for discretionary asset management services, the Barclays Affiliated QPAM must develop, implement, maintain, and follow written policies and procedures (the Policies) requiring and reasonably designed to ensure that:

(i) The asset management decisions of the Barclays Affiliated QPAM are conducted independently of the corporate management and business activities of BPLC and BCI;

(ii) The Barclays Affiliated QPAM fully complies with ERISA's fiduciary duties and with ERISA and the Code's prohibited transaction provisions, and does not knowingly participate in any violations of these duties and provisions with respect to ERISA-covered plans and IRAs;

(iii) The Barclays Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs;

(iv) Any filings or statements made by the Barclays Affiliated QPAM to regulators, including but not limited to, the Department of Labor, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA-covered plans or IRAs are materially accurate and complete, to the best of such QPAM's knowledge at that time;

(v) The Barclays Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plan and IRA clients;

(vi) The Barclays Affiliated QPAM complies with the terms of this temporary exemption; and

(vii) Any violation of, or failure to comply with, an item in subparagraphs (ii) through (vi), is corrected promptly upon discovery, and any such violation or compliance failure not promptly corrected is reported, upon discovering the failure to promptly correct, in writing, to appropriate corporate officers, the head of compliance, and the General Counsel (or their functional equivalent) of the relevant Barclays Affiliated QPAM, and an appropriate fiduciary of any affected ERISA-covered plan or IRA where such fiduciary is independent of BPLC; however, with respect to any ERISA-covered plan or IRA sponsored by an ''affiliate'' (as defined in Section VI(d) of PTE 84–14) of BPLC or beneficially owned by an employee of BPLC or its affiliates, such fiduciary does not need to be independent of BPLC. A Barclays Affiliated QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance promptly when discovered or when it reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (vii);

(2) Prior to a Barclays Affiliated QPAM's engagement by any ERISA covered plan or IRA for discretionary asset management services, the Barclays

[48] For purposes of this proposed temporary exemption, references to section 406 of Title I of the Act, unless otherwise specified, refer as well to the corresponding provisions of section 4975 of the Code.

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

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

Affiliated QPAM must develop and implement a program of training (the Training), conducted at least annually, for all relevant Barclays Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must be set forth in the Policies and, 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 temporary exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing;

(i) Effective as of the effective date of this temporary exemption with respect to any arrangement, agreement, or contract between a Barclays Affiliated QPAM and an ERISA-covered plan or IRA for which such Barclays Affiliated QPAM provides asset management or other discretionary fiduciary services, each Barclays Affiliated QPAM agrees:

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

(2) Not to require (or otherwise cause) the ERISA-covered plan or IRA to waive, limit, or qualify the liability of the Barclays Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(3) Not to require the ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the Barclays Affiliated QPAM for violating ERISA or engaging in prohibited transactions, except for violations or prohibited transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of BPLC, and its affiliates;

(4) Not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the Barclays Affiliated QPAM (including 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 as a result of an actual lack of liquidity of the underlying assets, provided that such restrictions are applied consistently and in like manner to all such investors;

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

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the Barclays Affiliated QPAM for a violation of such agreement's terms, except 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 BPLC, and its affiliates; and

(7) To indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a violation of applicable laws, a breach of contract, or any claim arising out of the failure of such Barclays Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Conviction.

Within four (4) months of the date of the Conviction, each Barclays Affiliated QPAM will provide a notice of its obligations under this Section I(i) to each ERISA-covered plan and IRA for which a Barclays Affiliated QPAM provides asset management or other discretionary fiduciary services;

(j) The Barclays Affiliated QPAMs comply with each condition of PTE 84–14, as amended, with the sole exceptions of the violations of Section I(g) of PTE 84–14 that are attributable to the Conviction;

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

(l) During the effective period of this temporary exemption, BPLC: (1) Immediately discloses to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) that BPLC or an affiliate enters into with the U.S. Department of Justice, to the extent such DPA or NPA involves conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA; and

(2) Immediately provides the Department any information requested by the Department, as permitted by law, regarding the agreement and/or the conduct and allegations that led to the agreements; and

(m) A Barclays Affiliated QPAM or a Barclays Related QPAM will not fail to meet the terms of this temporary exemption solely because a different Barclays Affiliated QPAM or Barclays Related QPAM fails to satisfy a condition for relief under this temporary exemption, described in Sections I(c), (d), (h), (i), (j) and (k).

Section II: Definitions

(a) The term ''Barclays Affiliated QPAM'' means a ''qualified professional asset manager'' (as defined in Section VI(a) [51] of PTE 84–14) that relies on the relief provided by PTE 84–14 and with respect to which BPLC is a current or future ''affiliate'' (as defined in Section VI(d)(1) of PTE 84–14). The term ''Barclays Affiliated QPAM'' excludes BPLC and BCI.

(b) The term ''Barclays 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 BPLC owns a direct or indirect five percent or more interest, but with respect to which BPLC is not an ''affiliate'' (as defined in Section VI(d)(1) of PTE 84–14).

(c) The terms ''ERISA-covered plan'' and ''IRA'' mean, respectively, a plan subject to Part 4 of Title I of ERISA and a plan subject to section 4975 of the Code;

(d) The term ''BPLC'' means Barclays PLC, the parent entity, and does not include any subsidiaries or other affiliates;

(e) The term ''Conviction'' means the judgment of conviction against BPLC for violation of the Sherman Antitrust Act, 15 U.S.C. 1, which is scheduled to be entered in the District Court for the District of Connecticut (the District Court), Case Number 3:15–cr–00077–SRU–1, in connection with BPLC,

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

through certain of its euro/U.S. dollar (EUR/USD) traders, entering into and engaging in a combination and conspiracy to fix, stabilize, maintain, increase or decrease the price of, and rig bids and offers for, the EUR/USD currency pair exchanged in the FX spot market by agreeing to eliminate competition in the purchase and sale of the EUR/USD currency pair in the United States and elsewhere. For all purposes under this temporary exemption, ''conduct'' of any person or entity that is the ''subject of [a] Conviction'' encompasses any conduct of BPLC and/or their personnel, that is described in the Plea Agreement, (including the Factual Statement), and other official regulatory or judicial factual findings that are a part of this record; and

(f) The term ''Conviction Date'' means the date that a judgment of Conviction against BPLC is entered by the District Court in connection with the Conviction.

Effective Date: This proposed temporary exemption will be effective for the period beginning on the Conviction Date until the earlier of: the date that is twelve months following the Conviction Date; or the effective date of a final agency action made by the Department in connection with an application for long-term exemptive relief for the covered transactions described herein.

Department's Comment: The Department is publishing this proposed temporary exemption in order to protect ERISA-covered plans and IRAs from certain costs and/or investment losses that may arise to the extent entities with a corporate relationship to BPLC lose their ability to rely on PTE 84–14 as of the Conviction Date, as described below. Elsewhere today in the **Federal Register**, the Department is also proposing a five-year proposed exemption that would provide the same relief that is described herein, but for a longer effective period. The five-year proposed exemption is subject to enhanced conditions and a longer comment period. Comments received in response to this proposed temporary exemption will be considered in connection with the Department's determination whether or not to grant such five-year exemption.

The proposed exemption would provide relief from certain of the restrictions set forth in sections 406 and 407 of ERISA. No relief from a violation of any other law would be provided by this exemption.

Furthermore, the Department cautions that the relief in this proposed exemption would terminate immediately if, among other things, an entity within the BPLC corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Conviction) during the effective period of the exemption. While such an entity could apply for a new exemption in that circumstance, the Department would not be obligated to grant the exemption. The terms of this proposed exemption have been specifically designed to permit plans to terminate their relationships in an orderly and cost effective fashion in the event of an additional conviction or a determination that it is otherwise prudent for a plan to terminate its relationship with an entity covered by the proposed exemption.

Summary of Facts and Representations [52]

Background

1. BCI is a broker-dealer registered under the Securities Exchange Act of 1934, as amended, and was, until December 28, 2015, an investment adviser registered under the Investment Advisers Act of 1940, as amended. As a registered broker-dealer, BCI is regulated by the U.S. Securities and Exchange Commission and Financial Industry Regulatory Authority.

BCI is incorporated in the State of Connecticut and headquartered in New York, with 18 U.S. branch offices. BCI is wholly-owned by Barclays Group US Inc., a wholly-owned subsidiary of Barclays Bank PLC, which, in turn, is a wholly-owned subsidiary of BPLC, a non-operating holding company.

Barclays Bank PLC wholly owns, indirectly, one bank subsidiary in the United States—Barclays Bank Delaware, a Delaware chartered commercial bank supervised and regulated by the Federal Deposit Insurance Corporation, the Delaware Office of the State Bank Commissioner and the Consumer Financial Protection Bureau. Barclays Bank Delaware does not manage ERISA plan or IRA assets currently, but may do so in the future.

BPLC's asset management business, Barclays Wealth and Investment Management (BWIM), offers wealth management products and services for many types of clients, including individual and institutional clients. BWIM operates through over 20 offices worldwide. Prior to December 4, 2015, BWIM functioned in the United States through BCI.

On December 4, 2015, BCI consummated a sale of its U.S. operations of BWIM, including Barclays Wealth Trustees, to Stifel Financial Corp. As a result of the transaction, as of that date, neither BCI nor any of its affiliates continued to manage ERISA-covered plan or IRA assets.

2. On May 20, 2015, the Department of Justice filed a one-count criminal information (the Information) in the United States District Court for the District of Connecticut charging BPLC, an affiliate of BCI, with participating in a combination and a conspiracy to fix, stabilize, maintain, increase or decrease the price of, and rig bids and offers for, Euro/USD currency pairs exchanged in the foreign currency exchange spot market by agreeing to eliminate competition in the purchase and sale of such currency pairs in the United States and elsewhere, in violation of the Sherman Antitrust Act, 15 U.S.C. 1. For example, BPLC engaged in communications with other financial services firms in an electronic chat room limited to specific EUR/USD traders, each of whom was employed, at certain times, by one of the financial services firms engaged in the FX Spot Market.

BPLC also participated in a conspiracy to decrease competition in the purchase and sale of the EUR/USD currency pair. BPLC and other financial services firms coordinated the trading of the EUR/USD currency pair in connection with certain benchmark currency ''fixes'' which occurred at specific times each trading day. In addition, BPLC and other financial services firms refrained from certain trading behavior, by withholding bids and offers, when another firm held an open risk position, so that the price of the currency traded would not move in a direction adverse to the firm with the open risk position.

Also, on May 20, 2015, pursuant to a plea agreement (the Plea Agreement), BPLC entered a plea of guilty for the violation of Sherman Antitrust Act, 15 U.S.C. 1. Under the Plea Agreement, BPLC pled guilty to the charge set out in the Information. The judgment of Conviction has not yet been entered.

BPLC paid a criminal fine of $710 million to the Department of Justice, of which $650 million is attributable to the charge set out in the Information. The remaining $60 million is attributable to conduct covered by the non-prosecution agreement that BPLC entered into on June 26, 2012, with the Criminal Division, Fraud Section of the Department of Justice related to BPLC's submissions of benchmark interest rates, including the London InterBank Offered Rate (known as LIBOR). In addition, Barclays Bank PLC, a wholly-owned subsidiary of BPLC, entered into a settlement agreement with the U.K.

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

Financial Conduct Authority to pay a monetary penalty of £284.432 million ($440.9 million).

As part of the settlement, Barclays Bank PLC consented to the entry of an Order Instituting Proceedings Pursuant to Sections 6(c)(4)(A) and 6(d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions by the Commodity Futures Trading Commission (CFTC) imposing a civil money penalty of $400 million (the CFTC Order). In addition, Barclays Bank PLC and its New York branch consented to the entry of an Order to Cease and Desist and Order of Assessment of a Civil Money Penalty Issued Upon Consent Pursuant to the Federal Deposit Insurance Act, as Amended, by the Board of Governors of the Federal Reserve System (the Federal Reserve) imposing a civil money penalty of $342 million (the Board Order). Barclays Bank PLC and its New York branch also consented to the entry of a Consent Order under New York Bank Law 44 and 44–a by the New York Department of Financial Services (DFS) imposing a civil money penalty of $485 million [53] (the DFS Order and, together with the Plea Agreement, the CFTC Order and the Board Order, the FX Settlements).

3. In addition to the settlements described above, relating to FX trading, in July 2015, the Israeli tax authorities commenced a criminal investigation relating to the Value Added Tax returns of Barclays Bank PLC in Israel. The Applicant represents that the investigation is ongoing, and the outcome is anticipated to be a non-material financial penalty.

In addition, the Applicant represents that Barclays Italy is the subject of three separate criminal proceedings before the Tribunal of Rome, which stem from individual allegations of usury, fraud and forgery in connection with a mortgage, and embezzlement. With respect to this investigation, Applicant also anticipates the outcome will be a non-material financial penalty.

The Applicant represents that to the best of its knowledge, it does not have a reasonable basis to believe that the discretionary activities of any affiliated QPAM are the subject of the investigation or the criminal proceedings discussed above. The Applicant also represents that it does not have a reasonable basis to believe that any pending criminal investigation involving the Applicant or its affiliates would cause a reasonable plan or IRA customer not to hire or retain a QPAM affiliated with the Applicant.[54]

Failure To Comply With Section I(g) of PTE 84–14 and Proposed Relief

4. PTE 84–14 is a class exemption that permits certain transactions between a party in interest with respect to an employee benefit plan and an investment fund in which the plan has an interest and which is managed by a ''qualified professional asset manager'' (QPAM), if the conditions of the exemption are satisfied. These conditions include Section I(g), which precludes a person who may otherwise meet the definition of a QPAM from relying on the relief provided by PTE 84–14 if that person or its ''affiliate'' [55] has, within 10 years immediately preceding the transaction, been either convicted or released from imprisonment, whichever is later, as a result of certain specified criminal activity described therein.[56] The Department notes that a QPAM, and those who may be in a position to influence its policies, are expected to maintain a high standard of integrity.

5. The Applicant represents that BPLC is currently affiliated (within the meaning of Part VI(d) of PTE 84–14) with only two entities that could meet the definition of ''QPAM'' in Part VI(a) of PTE 84–14, namely Barclays Bank Delaware and Barclays Bank PLC, New York Branch, both of which are subject to its control (within the meaning of Part VI(d)(1) of PTE 84–14). The Applicant states that BPLC or a subsidiary may, in the future, invest in non-controlled, minimally related QPAMs that could constitute Barclays Related QPAMs, as defined in the proposed exemption.[57] The Applicant states that it may acquire a new affiliate at any time, and creates new affiliates frequently, in either case that could constitute Barclays Affiliated QPAMs or Barclays Related QPAMs, as defined in the proposed exemption. To the extent that these new affiliates manage ERISA-covered plans or IRAs, these future affiliates would also be covered by the exemption.

However, the exemption described herein does not extend to the convicted entity, BPLC, or BCI. Regarding BCI, according to the Applicant, the New York Department of Financial Services referred to 14 people who DFS believed should be sanctioned in some way. According to Barclays' human resources records, seven of those individuals were line managers with some supervisory authority at some point during the relevant time period. Five of those individuals were employed by both Barclays Bank PLC and BCI. Nine of the fourteen worked, at one time or another, in New York. The Department views BCI's level of involvement in the misconduct that gave rise to the Conviction as unacceptable, and is not proposing relief herein for that entity to act as a QPAM.

Remedial Actions To Address the Criminal Conduct of BPLC—Pursuant to the Plea Agreement

6. The Applicant states that the Department of Justice and BPLC negotiated a settlement reflected in the Plea Agreement, in which BPLC agreed to lawfully undertake the following pursuant to the Plea Agreement:

(a) Payment by BPLC of a total monetary penalty in the amount of $710 million;

(b) During the probation term of three years, BPLC will not commit another crime under U.S. federal law or engage

[53] On November 17, 2015, Barclays Bank PLC announced that it had reached a subsequent settlement with DFS in respect of its investigation into Barclays Bank PLC's electronic trading of FX and FX electronic trading system, that it had agreed to pay a civil money penalty of $150 million and that Barclays Bank PLC would take certain remedial steps, including submission of a proposed remediation plan concerning the underlying conduct to the independent consultant who was initially installed pursuant to a Memorandum of Understanding entered between Barclays Bank PLC and DFS, and whose engagement terminated February 19, 2016.

[54] According to the Applicant, for further information related to both criminal and civil matters involving BPLC, BPLC's most recent litigation-related disclosure can be found in note 19 (''Legal, competition and regulatory matters'') to the ''Results of Barclays PLC Group as of, and for the six months ended, 30 June 2016,'' filed as exhibit 99.1 to a Form 6–K (Report of Foreign Private Issuer Pursuant to Rule 13a-16 or 15d-16 of the Securities Exchange Act of 1934), filed by BPLC with the U.S. Securities and Exchange Commission on July 29, 2016. The Applicant also notes that this disclosure does not specifically describe certain confidential investigations resulting from BPLC's reporting of certain conduct that may be criminal to enforcement authorities but as to which BPLC would not expect to be the subject of an indictment.

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

[56] For purposes of Section I(g) of PTE 84–14, a person shall be deemed to have been ''convicted'' from the date of the judgment of the trial court, regardless of whether that judgment stands on appeal.

[57] For example, the Applicant states that BPLC may provide seed investments for new managers in exchange for minority interests. However, the Applicant points out that these managers, which had nothing to do with the conduct underlying the Conviction, would be unable to rely on PTE 84–14 for the benefit of their plan clients absent such relief.

in the conduct that gave rise to the Plea Agreement;

(c) BPLC will notify the probation officer upon learning of the commencement of any federal criminal investigation in which BPLC is a target, or federal criminal prosecution against it;

(d) During the probation term, BPLC will prominently post and maintain on its Web site and, within 30 days after BPLC pleads guilty, make best efforts to send spot FX customers and counterparties (other than customers and counterparties who BPLC can establish solely engaged in buying or selling foreign currency through its consumer bank units and not its spot FX sales or trading staff) a retrospective disclosure notice regarding certain historical conduct involving FX Spot Market transactions with customers via telephone, email and/or electronic chat;

(e) BPLC will implement a compliance program designed to prevent and detect the conduct underlying the Plea Agreement throughout its operations including those of its affiliates and subsidiaries and provide an annual progress report to the Department of Justice and the probation officer;

(f) BPLC will further strengthen its compliance and internal controls as required by the CFTC and the U.K. Financial Conduct Authority and any other regulatory or enforcement agencies that have addressed the conduct underlying the Plea Agreement, which shall include, but not be limited to, a thorough review of the activities and decision-making by employees of BPLC's legal and compliance functions with respect to the historical conduct underlying the Plea Agreement, and promptly report to the Department of Justice and the probation officer all of its remediation efforts required by these agencies, as well as remediation and implementation of any compliance program and internal controls, policies and procedures related to the criminal conduct underlying the Plea Agreement;

(g) BPLC will report to the Department of Justice all credible information regarding criminal violations of U.S. antitrust laws and of U.S. law concerning fraud, including securities or commodities fraud, by BPLC or any of its employees, as to which BPLC's Board of Directors, management (that is, all supervisors within the bank), or legal and compliance personnel are aware;

(h) BPLC will bring to the Antitrust Division's attention all federal criminal investigations in which BPLC is identified as a subject or a target, and all administrative or regulatory proceedings or civil actions brought by any federal or state governmental authority in the United States against BPLC or its employees, to the extent that such investigations, proceedings or actions allege facts that could form the basis of a criminal violation of U.S. antitrust laws, and also bring to the Criminal Division, Fraud Section's attention all federal criminal or regulatory investigations in which BPLC is identified as a subject or a target, and all administrative or regulatory proceedings or civil actions brought by any federal governmental authority in the United States against BPLC or its employees, to the extent that such investigations, proceedings or actions allege violation of U.S. law concerning fraud, including securities or commodities fraud;

(i) BPLC and all of the entities in which BPLC had, indirectly or directly, a greater than 50% ownership interest as of the date of the Plea Agreement, including Barclays Bank PLC and Barclays Capital Services Ltd. (*i.e.,* the Related Entities), will cooperate fully and truthfully with the Department of Justice in its investigation and prosecution of the conduct underlying the Plea Agreement, or any other currency pair in the FX Spot Market, or any foreign exchange forward, foreign exchange option or other foreign exchange derivative, or other financial product, to the extent such other financial product has been disclosed to the Department of Justice (excluding a certain sealed investigation). This will include producing non-privileged non-protected materials, wherever located; using its best efforts to secure continuing cooperation of the current or former directors, officers and employees of BPLC and its Related Entities; and identifying witnesses who, to BPLC's knowledge, may have material information regarding the matters under investigation;

(j) During the probation term, BPLC will cooperate fully with the Department of Justice and any other law enforcement authority or government agency designated by the Department of Justice, in a manner consistent with applicable law and regulations, with regard to a certain sealed investigation.

(k) BPLC must expeditiously seek relief from the Department by filing an application for the QPAM Exemption and will provide all information requested by the Department in a timely manner.

Remedial Actions To Address the Criminal Conduct of BPLC Subject to the Conviction—Structural Enhancements

7. The Applicant represents that BPLC and its subsidiaries and affiliates, including Barclays Bank PLC and its New York branch (collectively, the Bank) have implemented and will continue to implement policies and procedures designed to prevent the recurrence of the conduct that is the subject of the FX Settlements as required by the Plea Agreement.

Remedial Actions To Address the Criminal Conduct of BPLC Subject to the Conviction—Additional Structural Enhancements

8. The Applicant states that the Bank has made substantial investments in the independent, external review of its governance, operational model, and risk and control programs, conducted by Sir Anthony Salz, including interviews of more than 600 employees, clients, and competitors, as well as consideration of more than 9,000 responses to an internal staff survey. The Applicant represents that the Bank has taken steps to clearly articulate its policies and values and disseminate that information firm-wide through trainings.

The Applicant states that the Bank continues to develop a strong institutionalized framework of supervision and accountability running from the desk level to the top of the organization. The Applicant represents that the Bank continues to institute an enhanced global compliance and controls system, supported by substantial financial and human resources, and charged with enforcing and continually monitoring adherence to BPLC's policies.

Statutory Findings—Protective of the Rights of Participants of Affected Plans and IRAs

9. The Applicant proposed certain conditions it believes are protective of the rights of participants and beneficiaries of ERISA-covered plans and IRAs with respect to the transactions described herein. The Department has determined to revise and supplement the proposed conditions so that it can make its required finding that the requested exemption is protective of the rights of participants and beneficiaries of affected plans and IRAs. In this regard, the Department has tentatively determined that the following conditions adequately protect the rights of participants and beneficiaries of affected plans and IRAs with respect to the transactions that

would be covered by this temporary exemption.

10. Relief under this proposed exemption is only available to the extent: (a) Other than with respect to certain individuals who worked for a non-fiduciary business within BCI and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, the Barclays Affiliated QPAMs, including their officers, directors, agents other than BPLC and employees of such Barclays Affiliated QPAMs, did not know of, have reason to know of, or participate in the criminal conduct of BPLC that is the subject of the Conviction (for purposes of this condition, the term ''participated in'' includes the knowing or tacit approval of the misconduct underlying the Conviction); (b) any failure of those QPAMs to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction; and (c) the Barclays Affiliated QPAMs and the Barclays Related QPAMs (including their officers, directors, agents other than BPLC, and employees of such QPAMs) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the Conviction.

11. The Department expects the Barclays Affiliated QPAMs to rigorously ensure that the individuals associated with the criminal conduct of BPLC will not be employed or knowingly engaged by such QPAMs. In this regard, the temporary exemption, if granted as proposed, mandates that the Barclays Affiliated QPAMs will not employ or knowingly engage any of the individuals that participated in criminal conduct that is the subject of the Conviction. Again, for purposes of this condition, the term ''participated in'' includes the knowing or tacit approval of the misconduct underlying the Conviction.

Further, the Barclays Affiliated QPAM will not use its authority or influence to direct an ''investment fund,'' (as defined in Section VI(b) of PTE 84–14), that is subject to ERISA or the Code and managed by such Barclays Affiliated QPAM, to enter into any transaction with BPLC or BCI, or to engage BPLC or BCI, 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.

12. The Barclays Affiliated QPAMs and Barclays Related 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 Conviction. Further, any failure of the Barclays Affiliated QPAMs or the Barclays Related QPAMs to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction.

13. No relief will be provided by the temporary exemption to the extent that a Barclays Affiliated QPAM or a Barclays Related QPAM exercised authority over the assets of an ERISA-covered plan or IRA in a manner that it knew or should have known would: Further the criminal conduct that is the subject of the Conviction; or cause the Barclays Affiliated QPAM or the Barclays Related QPAM, affiliates, or related parties to directly or indirectly profit from the criminal conduct that is the subject of the Conviction. Further, no relief will be provided to the extent BPLC or BCI provides any discretionary asset management services to ERISA-covered plans or IRAs, or otherwise acts as a fiduciary with respect to ERISA-covered plan and IRA assets.

13. The Department believes that robust policies and training are warranted where, as here, the criminal misconduct has occurred within a corporate organization that is affiliated with one or more QPAMs managing plan or IRA assets in reliance on PTE 84–14. Therefore, this proposed temporary exemption requires that prior to a Barclays Affiliated QPAM's engagement by any ERISA-covered plan or IRA for discretionary asset management services, each Barclays Affiliated QPAM must develop, implement, maintain, and follow written policies and procedures (the Policies) requiring and reasonably designed to ensure that: The asset management decisions of the Barclays Affiliated QPAM are conducted independently of the corporate management and business activities of BPLC and BCI; the Barclays Affiliated QPAM fully complies with ERISA's fiduciary duties, and with ERISA and the Code's prohibited transaction provisions, and does not knowingly participate in any violations of these duties and provisions with respect to ERISA-covered plans and IRAs; the Barclays Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs; any filings or statements made by the Barclays Affiliated QPAM to regulators, including but not limited to, the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA-covered plans or IRAs are materially accurate and complete, to the best of such QPAM's knowledge at that time; the Barclays Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plan and IRA clients; and the Barclays Affiliated QPAM complies with the terms of this temporary exemption. Any violation of, or failure to comply with, these items is corrected promptly upon discovery, and any such violation or compliance failure not promptly corrected is reported, upon discovering the failure to promptly correct, in writing, to appropriate corporate officers, the head of compliance and the General Counsel (or their functional equivalent) of the relevant Barclays Affiliated QPAM, and an appropriate fiduciary of any affected ERISA-covered plan or IRA, where such fiduciary is independent of BPLC.

13. The Department has also imposed a condition that requires that prior to a Barclays Affiliated QPAM's engagement by any ERISA-covered plan or IRA for discretionary asset management services reliant on PTE 84–14, each Barclays Affiliated QPAM develops and implements a program of training (the Training), conducted at least annually, for all relevant Barclays Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must be set forth in the Policies and, 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 temporary exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing.

14. This temporary exemption requires the Barclays Affiliated QPAMs to enter into certain contractual obligations in connection with the provision of services to their clients. It is the Department's view that the condition for exemptive relief requiring these contractual obligations is essential to the Department's ability to make its findings that the proposed temporary exemption is protective of the rights of the participants and beneficiaries of ERISA-covered and IRA plan clients of Barclays Affiliated QPAMs under section 408(a) of ERISA. In this regard, Section I(i) of the proposed temporary exemption provides that, as of the effective date of this temporary exemption with respect to any

arrangement, agreement, or contract between a Barclays Affiliated QPAM and an ERISA-covered plan or IRA for which a Barclays Affiliated QPAM provides asset management or other discretionary fiduciary services, each Barclays Affiliated QPAM must agree: To comply with ERISA and the Code, as applicable, with respect to such ERISA-covered plan or IRA, and refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions), and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA with respect to each such ERISA-covered plan and IRA; to indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a violation of applicable laws, a breach of contract, or any claim arising out of the failure of such Barclays Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Conviction; not to require (or otherwise cause) the ERISA-covered plan or IRA to waive, limit, or qualify the liability of the Barclays Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions; not to require the ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the Barclays Affiliated QPAM for violating ERISA or engaging in prohibited transactions, except for violations or prohibited transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of BPLC, and its affiliates; not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the Barclays Affiliated QPAM (including 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 as a result of the actual lack of liquidity of the underlying assets, provided that such restrictions are applied consistently and in like manner to all such investors; and not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors. Furthermore, any contract, agreement or arrangement between a Barclays Affiliated QPAM and its ERISA-covered plan or IRA client must not contain exculpatory provisions disclaiming or otherwise limiting liability of the Barclays Affiliated QPAM for a violation of such agreement's terms, except 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 BPLC, and its affiliates, and its affiliates.

15. Within four (4) months of the date of the Conviction, each Barclays Affiliated QPAM will: Provide a notice of its obligations under Section I(i) to each ERISA-covered plan and IRA for which the Barclays Affiliated QPAM provides asset management or other discretionary fiduciary services.

16. In addition, each Barclays Affiliated QPAM must maintain records necessary to demonstrate that the conditions of this temporary exemption have been met for six (6) years following the date of any transaction for which such Barclays Affiliated QPAM relies upon the relief in the temporary exemption.

17. Furthermore, the proposed temporary exemption mandates that, during the effective period of this temporary exemption, BPLC must immediately disclose to the Department any Deferred Prosecution Agreement (a DPA) or a Non-Prosecution Agreement (an NPA) that BPLC or an affiliate enters into with the Department of Justice, to the extent such DPA or NPA involves conduct described in section I(g) of PTE 84–14 or section 411 of ERISA. In addition, BPLC or an affiliate must immediately provide the Department any information requested by the Department, as permitted by law, regarding the agreement and/or the conduct and allegations that led to the agreement.

18. The proposed exemption would provide relief from certain of the restrictions set forth in Section 406 and 407 of ERISA. Such a granted exemption would not provide relief from any other violation of law. Pursuant to the terms of this proposed exemption, any criminal conviction not expressly described herein, but otherwise described in Section I(g) of PTE 84–14 and attributable to the Applicant for purposes of PTE 84–14, would result in the Applicant's loss of this exemption.

Statutory Findings—Administratively Feasible

19. The Applicant represents that the proposed temporary exemption is administratively feasible because it does not require any monitoring by the Department. In addition, the limited effective duration of the temporary exemption provides the Department with the opportunity to determine whether long-term exemptive relief is warranted, without causing sudden and potentially costly harm to ERISA-covered plans and IRAs.

Summary

20. Given the revised and new conditions described above, the Department has tentatively determined that the relief sought by the Applicant satisfies the statutory requirements for an exemption under section 408(a) of ERISA.

Notice to Interested Persons

Written comments and requests for a public hearing on the proposed temporary exemption should be submitted to the Department within five (5) days from the date of publication of this **Federal Register** Notice. Given the short comment period, the Department will consider comments received after such date, in connection with its consideration of more permanent relief.

Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

FOR FURTHER INFORMATION CONTACT: Ms. Anna Mpras Vaughan of the Department, telephone (202) 693–8565. (This is not a toll-free number.)

JPMorgan Chase & Co. (JPMC or the Applicant), Located in New York, New York

[Application No. D–11906]

Proposed Five Year Exemption

The Department is considering granting a five-year exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).[58]

[58] For purposes of this proposed five-year exemption, references to section 406 of Title I of the

Section I: Covered Transactions

If the proposed five-year exemption is granted, certain asset managers with specified relationships to JPMC (the JPMC Affiliated QPAMs and the JPMC Related QPAMs, as defined further in Sections II(a) and II(b), respectively) will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14 or the QPAM Exemption),[59] notwithstanding the judgment of conviction against JPMC (the Conviction), as defined in Section II(c)),[60] for engaging in a conspiracy to: (1) Fix the price of, or (2) eliminate competition in the purchase or sale of the euro/U.S. dollar currency pair exchanged in the Foreign Exchange (FX) Spot Market, for a period of five years beginning on the date the exemption is granted, provided the following conditions are satisfied:

(a) Other than a single individual who worked for a non-fiduciary business within JPMorgan Chase Bank and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, agents other than JPMC, and employees of such QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not know of, did not have reason to know of, or participate in the criminal conduct that is the subject of the Conviction. For purposes of this paragraph (a), ''participate in'' includes the knowing or tacit approval of the misconduct underlying the Conviction;

(b) Other than a single individual who worked for a non-fiduciary business within JPMorgan Chase Bank and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, and agents other than JPMC, and employees of such JPMC QPAMs) did not receive direct compensation, or knowingly receive indirect compensation in connection with the criminal conduct that is the subject of the Conviction;

(c) The JPMC Affiliated QPAMs will not employ or knowingly engage any of the individuals that participated in the criminal conduct that is the subject of the Conviction For the purposes of this paragraph (c), ''participated in'' includes the knowing or tacit approval of the misconduct underlying Conviction;

(d) A JPMC Affiliated QPAM will not use its authority or influence to direct an ''investment fund'' (as defined in Section VI(b) of PTE 84–14), that is subject to ERISA or the Code and managed by such JPMC Affiliated QPAM, to enter into any transaction with JPMC or the Investment Banking Division of JPMorgan Chase Bank, or engage JPMC or the Investment Banking Division of JPMorgan Chase Bank to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e) Any failure of a JPMC Affiliated QPAM or a JPMC Related QPAM to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction;

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

(g) JPMC and the Investment Banking Division of JPMorgan Chase Bank will not provide discretionary asset management services to ERISA-covered plans or IRAs, and will not otherwise act as a fiduciary with respect to ERISA-covered plan or IRA assets;

(h)(1) Within four (4) months of the Conviction, each JPMC Affiliated QPAM must develop, implement, maintain, and follow written policies and procedures (the Policies) requiring and reasonably designed to ensure that:

(i) The asset management decisions of the JPMC Affiliated QPAM are conducted independently of JPMC's management and business activities, including the corporate management and business activities of the Investment Banking Division of JPMorgan Chase Bank;

(ii) The JPMC Affiliated QPAM fully complies with ERISA's fiduciary duties, and with ERISA and the Code's prohibited transaction provisions, and does not knowingly participate in any violation of these duties and provisions with respect to ERISA-covered plans and IRAs;

(iii) The JPMC Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs;

(iv) Any filings or statements made by the JPMC Affiliated QPAM to regulators, including, but not limited to, the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA-covered plans or IRAs, are materially accurate and complete, to the best of such QPAM's knowledge at that time;

(v) The JPMC Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plans and IRA clients;

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

(vii) Any violation of, or failure to comply with an item in subparagraphs (ii) through (vi), is corrected promptly upon discovery, and any such violation or compliance failure not promptly corrected is reported, upon the discovery of such failure to promptly correct, in writing, to appropriate corporate officers, the head of compliance, and the General Counsel (or their functional equivalent) of the relevant JPMC Affiliated QPAM, the independent auditor responsible for reviewing compliance with the Policies, and an appropriate fiduciary of any affected ERISA-covered plan or IRA that is independent of JPMC; however, with respect to any ERISA-covered plan or IRA sponsored by an ''affiliate'' (as defined in Section VI(d) of PTE 84–14) of JPMC or beneficially owned by an employee of JPMC or its affiliates, such fiduciary does not need to be independent of JPMC. A JPMC Affiliated QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance promptly when discovered, or when it reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (vii);

Act, unless otherwise specified, should be read to refer as well to the corresponding provisions of section 4975 of the Code.

[59] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

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

(2) Within four (4) months of the date of the Conviction, each JPMC Affiliated QPAM must develop and implement a program of training (the Training), conducted at least annually, for all relevant JPMC Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must:

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

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

(i)(1) Each JPMC Affiliated QPAM submits to an audit conducted annually by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and the JPMC Affiliated QPAM's compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. Each annual audit must cover a consecutive twelve month period starting with the twelve month period that begins on the effective date of the five-year exemption, and each annual audit must be completed no later than six (6) months after the period to which the audit applies;

(2) 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 as permitted by law, each JPMC Affiliated QPAM and, if applicable, JPMC, will grant the auditor unconditional access to its business, including, but not limited to: Its computer systems; business records; transactional data; workplace locations; training materials; and personnel;

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

(4) The auditor's engagement must specifically require the auditor to test each JPMC Affiliated QPAM's operational compliance with the Policies and Training. In this regard, the auditor must test a sample of each QPAM's transactions involving ERISA-covered plans and IRAs sufficient in size and nature to afford the auditor a reasonable basis to determine the operational compliance with the Policies and Training;

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

(i) The adequacy of the JPMC Affiliated QPAM's Policies and Training; the JPMC 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 JPMC Affiliated QPAM's noncompliance with the written Policies and Training described in Section I(h) above. Any determination by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective JPMC Affiliated QPAM must be promptly addressed by such JPMC Affiliated QPAM, and any action taken by such JPMC Affiliated QPAM to address such recommendations must be included in an addendum to the Audit Report (which addendum is completed prior to the certification described in Section I(i)(7) below). Any determination by the auditor that the respective JPMC Affiliated QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that the JPMC Affiliated QPAM has complied with the requirements under this subsection must be based on evidence that demonstrates the JPMC Affiliated QPAM has actually implemented, maintained, and followed the Policies and Training required by this five-year exemption. Furthermore, the auditor must not rely on the Annual Report created by the compliance officer (the Compliance Officer) as described in Section I(m) below in lieu of independent determinations and testing performed by the auditor as required by Section I(i)(3) and (4) above; and

(ii) The adequacy of the Annual Review described in Section I(m) and the resources provided to the Compliance Officer in connection with such Annual Review;

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

(7) With respect to each Audit Report, the General Counsel, or one of the three most senior executive officers of the JPMC 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; addressed, corrected, or remedied any inadequacy identified in the Audit Report; and determined that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this proposed five-year exemption, and with the applicable provisions of ERISA and the Code;

(8) The Risk Committee of JPMC's Board of Directors is provided a copy of each Audit Report; and a senior executive officer with a direct reporting line to the highest ranking legal compliance officer of JPMC must review the Audit Report for each JPMC Affiliated QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report;

(9) *Each JPMC Affiliated QPAM provides its certified Audit Report, by regular mail to:* The Department's Office of Exemption Determinations (OED), 200 Constitution Avenue NW., Suite 400, Washington, DC 20210, or by private carrier to: 122 C Street NW., Suite 400, Washington, DC 20001–2109, no later than 30 days following its completion. The Audit Report will be part of the public record regarding this five-year exemption. Furthermore, each JPMC Affiliated QPAM must make its Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of an ERISA-covered plan or IRA, the assets of which are managed by such JPMC Affiliated QPAM;

(10) *Each JPMC Affiliated QPAM and the auditor must submit to OED:* (A) Any engagement agreement(s) entered into pursuant to the engagement of the auditor under this five-year exemption; and (B) any engagement agreement entered into with any other entity retained in connection with such QPAM's compliance with the Training or Policies conditions of this five-year

exemption, no later than six (6) months after the Conviction Date (and one month after the execution of any agreement thereafter);

(11) *The auditor must provide OED, upon request, all of the workpapers created and utilized in the course of the audit, including, but not limited to:* The audit plan; audit testing; identification of any instance of noncompliance by the relevant JPMC Affiliated QPAM; and an explanation of any corrective or remedial action taken by the applicable JPMC Affiliated QPAM; and

(12) JPMC must notify the Department at least 30 days prior to any substitution of an auditor, except that no such replacement will meet the requirements of this paragraph unless and until JPMC demonstrates to the Department's satisfaction that such new auditor is independent of JPMC, experienced in the matters that are the subject of the exemption, and capable of making the determinations required of this exemption;

(j) Effective as of the effective date of this five-year exemption, with respect to any arrangement, agreement, or contract between a JPMC Affiliated QPAM and an ERISA-covered plan or IRA for which a JPMC Affiliated QPAM provides asset management or other discretionary fiduciary services, each JPMC Affiliated QPAM agrees and warrants:

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

(2) To indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a JPMC Affiliated QPAM's violation of applicable laws, a JPMC Affiliated QPAM's breach of contract, or any claim brought in connection with the failure of such JPMC Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Conviction;

(3) Not to require (or otherwise cause) the ERISA-covered plan or IRA to waive, limit, or qualify the liability of the JPMC Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(4) Not to require the ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the JPMC Affiliated QPAM for violating ERISA or engaging in prohibited transactions, except for violations or prohibited transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of JPMC, and its affiliates;

(5) Not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the JPMC Affiliated QPAM (including 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 as a result of an actual lack of liquidity of the underlying assets, provided that such restrictions are applied consistently and in like manner to all such investors;

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

(7) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the JPMC Affiliated QPAM for a violation of such agreement's terms, except 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 JPMC, and its affiliates;

(8) Within four (4) months of the date of the Conviction, each JPMC Affiliated QPAM must provide a notice of its obligations under this Section I(j) to each ERISA-covered plan and IRA for which an JPMC Affiliated QPAM provides asset management or other discretionary fiduciary services. For all other prospective ERISA-covered plan and IRA clients for which a JPMC Affiliated QPAM provides asset management or other discretionary services, the JPMC Affiliated QPAM will agree in writing to its obligations under this Section I(j) in an updated investment management agreement between the JPMC Affiliated QPAM and such clients or other written contractual agreement;

(k)(1) *Notice to ERISA-covered plan and IRA clients.* Within thirty (30) days of the publication of this proposed five-year exemption in the **Federal Register**, each JPMC Affiliated QPAM will provide a notice of the proposed five-year exemption, along with a separate summary describing the facts that led to the Conviction (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that the Conviction results in a failure to meet a condition in PTE 84–14, to each sponsor of an ERISA-covered plan and each beneficial owner of an IRA for which a JPMC Affiliated QPAM provides asset management or other discretionary services, or the sponsor of an investment fund in any case where a JPMC Affiliated QPAM acts only as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests. In the event that this proposed five-year exemption is granted, the **Federal Register** copy of the notice of final five-year exemption must be delivered to such clients within sixty (60) days of its publication in the **Federal Register**, and may be delivered electronically (including by an email that has a link to the exemption). Any prospective clients for which a JPMC Affiliated QPAM provides asset management or other discretionary services must receive the proposed and final five-year exemptions with the Summary and the Statement prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the JPMC Affiliated QPAM; and

(2) *Notice to Non-Plan Clients.* Each JPMC Affiliated QPAM will provide a **Federal Register** copy of the proposed five-year exemption, a **Federal Register** copy of the final five-year exemption; the Summary; and the Statement to each: (A) Current Non-Plan Client within four (4) months of the effective date, if any, of a final five-year exemption; and (B) Future Non-Plan Client prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the JPMC Affiliated QPAM. For purposes of this subparagraph (2), a Current Non-Plan Client means a client of a JPMC Affiliated QPAM that: Is neither an ERISA-covered plan nor an IRA; has assets managed by the JPMC Affiliated QPAM as of the effective date, if any, of a final five-year exemption; and has received a written representation (qualified or otherwise) from the JPMC Affiliated QPAM that such JPMC Affiliated QPAM qualifies as a QPAM or

qualifies for the relief provided by PTE 84–14. For purposes of this subparagraph (2), a Future Non-Plan Client means a client of a JPMC Affiliated QPAM that is neither an ERISA-covered plan nor an IRA that, has assets managed by the JPMC Affiliated QPAM as of the effective date, if any, of a final five-year exemption, and has received a written representation (qualified or otherwise) from the JPMC Affiliated QPAM that such JPMC Affiliated QPAM is a QPAM, or qualifies for the relief provided by PTE 84–14;

(l) The JPMC 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 Conviction;

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

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

(ii) The Compliance Officer must have a direct reporting line to the highest-ranking corporate officer in charge of legal compliance that is independent of JPMC's other business lines;

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

(i) The Annual Review includes a review of: Any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the compliance and risk control function (or its equivalent) during the previous year; any material change in the business activities of the JPMC 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 JPMC Affiliated QPAMs;

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

(iii) In each Annual Report, the Compliance Officer must certify in writing that to his or her knowledge: (A) The report is accurate; (B) the Policies and Training are working in a manner which is reasonably designed to ensure that the Policies and Training requirements described herein are met; (C) any known instance of noncompliance during the preceding year and any related correction taken to date have been identified in the Annual Report; (D) the JPMC Affiliated QPAMs have complied with the Policies and Training in all respects, and/or corrected any instances of noncompliance in accordance with Section I(h) above; and (E) JPMC has provided the Compliance Officer with adequate resources, including, but not limited to, adequate staffing;

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

(v) Each Annual Review, including the Compliance Officer's written Annual Report, must be completed at least three (3) months in advance of the date on which each audit described in Section I(i) is scheduled to be completed;

(n) Each JPMC 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 such JPMC Affiliated QPAM relies upon the relief in the exemption;

(o) During the effective period of the five-year exemption JPMC: (1) Immediately discloses to the Department any Deferred Prosecution Agreement (a DPA) or a Non-Prosecution Agreement (an NPA) with the U.S. Department of Justice, entered into by JPMC or any of its affiliates in connection with conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA; and

(2) Immediately provides the Department any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement. After review of the information, the Department may require JPMC, its affiliates, or related parties, as specified by the Department, to submit a new application for the continued availability of relief as a condition of continuing to rely on this exemption. If the Department denies the relief requested in the new application, or does not grant such relief within twelve months of application, the relief described herein is revoked as of the date of denial or as of the expiration of the twelve month period, whichever date is earlier;

(p) Each JPMC Affiliated QPAM, in its agreements with ERISA-covered plan and IRA clients, or in other written disclosures provided to ERISA-covered plan and IRA clients, within 60 days prior to the initial transaction upon which relief hereunder is relied, and then at least once annually, will clearly and prominently: Inform the ERISA-covered plan and IRA client that the client has the right to obtain copies of the QPAM's written Policies adopted in accordance with the exemption; and

(q) A JPMC Affiliated QPAM or a JPMC Related QPAM will not fail to meet the terms of this exemption solely because a different JPMC Affiliated QPAM or JPMC Related QPAM fails to satisfy a condition for relief described in Sections I(c), (d), (h), (i), (j), (k), (l), (n) and (p).

Section II: Definitions

(a) The term ''JPMC Affiliated QPAM'' means a ''qualified professional asset manager'' (as defined in Section VI(a)[61] of PTE 84–14) that relies on the relief provided by PTE 84–14 and with respect to which JPMC is a current or future ''affiliate'' (as defined in Section VI(d)(1) of PTE 84–14). The term ''JPMC Affiliated QPAM'' excludes the parent entity, JPMC, the division implicated in the criminal conduct that is the subject of the Conviction.

(b) The term ''JPMC 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 JPMC owns a direct or indirect five percent or more interest, but with respect to which JPMC

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

is not an ''affiliate'' (as defined in Section VI(d)(1) of PTE 84–14).

(c) The terms ''ERISA-covered plan'' and ''IRA'' mean, respectively, a plan subject to Part 4 of Title I of ERISA and a plan subject to section 4975 of the Code.

(d) The term ''JPMC'' means JPMorgan Chase and Co., the parent entity, but does not include any subsidiaries or other affiliates;

(e) The term ''Conviction'' means the judgment of conviction against JPMC for violation of the Sherman Antitrust Act, 15 U.S.C. 1, which is scheduled to be entered in the District Court for the District of Connecticut (the District Court) (Case Number 3:15–cr–79–SRU), in connection with JPMC, through one of its euro/U.S. dollar (EUR/USD) traders, entering into and engaging in a combination and conspiracy to fix, stabilize, maintain, increase or decrease the price of, and rig bids and offers for, the EUR/USD currency pair exchanged in the FX spot market by agreeing to eliminate competition in the purchase and sale of the EUR/USD currency pair in the United States and elsewhere. For all purposes under this exemption, ''conduct'' of any person or entity that is the ''subject of [a] Conviction'' encompasses any conduct of JPMC and/or their personnel, that is described in the Plea Agreement, (including the Factual Statement), and other official regulatory or judicial factual findings that are a part of this record; and

(f) The term ''Conviction Date'' means the date that a judgment of Conviction against JPMC is entered by the District Court in connection with the Conviction.

Effective Date: This proposed five-year exemption will be effective beginning on the date of publication of such grant in the **Federal Register** and ending on the date that is five years thereafter. Should the Applicant wish to extend the effective period of exemptive relief provided by this proposed five-year exemption, the Applicant must submit another application for an exemption. In this regard, the Department expects that, in connection with such application, the Applicant should be prepared to demonstrate compliance with the conditions for this exemption and that the JPMC Affiliated QPAMs, and those who may be in a position to influence their policies, have maintained the high standard of integrity required by PTE 84–14.

Department's Comment: Concurrently with this proposed five-year exemption, the Department is publishing a proposed one-year exemption for JPMC Affiliated QPAMs to continue to rely on PTE 84–14. That one-year exemption is intended to allow the Department sufficient time, including a longer comment period, to determine whether to grant this five-year exemption. The proposed one-year exemption is designed to protect ERISA-covered plans and IRAs from the potential costs and losses, described below, that would be incurred if such JPMC Affiliated QPAMs were to suddenly lose their ability to rely on PTE 84–14 as of the Conviction date.

The proposed five-year exemption would provide relief from certain of the restrictions set forth in sections 406 and 407 of ERISA. No relief from a violation of any other law would be provided by this exemption including any criminal conviction described herein.

The Department cautions that the relief in this proposed five-year exemption would terminate immediately if, among other things, an entity within the JPMC corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Conviction) during the effective period of the exemption. While such an entity could apply for a new exemption in that circumstance, the Department would not be obligated to grant the exemption. The terms of this proposed five-year exemption have been specifically designed to permit plans to terminate their relationships in an orderly and cost effective fashion in the event of an additional conviction or a determination that it is otherwise prudent for a plan to terminate its relationship with an entity covered by the proposed exemption.

Summary of Facts and Representations [62]

Background

1. JPMC is a financial holding company and global financial services firm, incorporated in Delaware and headquartered in New York, New York, with approximately 240,000 employees and operations in over 60 countries. According to the Applicant, JPMC provides a variety of services, including investment banking, financial services for consumers and small business, commercial banking, financial transaction processing, and asset management.

The Applicant represents that JPMC's principal bank subsidiaries are: (a) JPMorgan Chase Bank, a national banking association wholly owned by JPMC, with U.S. branches in 23 states; and (b) Chase Bank USA, National Association, a national banking association that is JPMC's credit card-issuing bank. The Applicant also represents that two of JPMC's principal non-bank subsidiaries are its investment bank subsidiary, J.P. Morgan Securities LLC, and its primary investment management subsidiary, J.P. Morgan Investment Management Inc. (JPMIM). The bank and nonbank subsidiaries of JPMC operate internationally through overseas branches and subsidiaries, representative offices and subsidiary foreign banks.

The Applicant explains that entities within the JPMC's asset management line of business (Asset Management) serve institutional and retail clients worldwide through the Global Investment Management (GIM) and Global Wealth Management (GWM) businesses. The Applicant represents that JPMC's Asset Management line of business had total client assets of about $2.4 trillion and discretionary assets under management of approximately $1.7 trillion at the end of 2014.[63]

2. The Applicant represents that JPMC has several affiliates that provide investment management services.[64] JPMorgan Chase Bank and most of the U.S. registered advisers manage the assets of ERISA-covered plans and/or IRAs on a discretionary basis. They routinely rely on the QPAM Exemption to provide relief for party in interest transactions. According to the Applicant, the primary domestic bank and U.S. registered adviser affiliates in which JPMC owns a significant interest, directly or indirectly, include the following: JPMorgan Chase Bank, N.A.; JPMorgan Investment Management Inc.; J.P. Morgan Securities LLC; JF International Management Inc.; J.P. Morgan Alternative Asset Management, Inc.; Highbridge Capital Management, LLC; and Security Capital Research & Management Incorporated. These are the entities that currently would be

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

[63] In addition to its Asset Management line of business, the Applicant represents that JPMC operates three other core lines of business. They are: Consumer and Community Banking Services; Corporate and Investment Banking Services; and Commercial Banking Services.

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

covered by the exemption, if it is granted.

3. In addition to the QPAMs identified above, the Applicant has other affiliated managers that meet the definition of a QPAM that do not currently manage ERISA or IRA assets on a discretionary basis, but may in the future, including: J.P. Morgan Partners, LLC; Sixty Wall Street Management Company LLC; J.P. Morgan Private Investments Inc.; J.P. Morgan Asset Management (UK) Limited; JPMorgan Funds Limited; and Bear Stearns Asset Management, Inc. The Applicant requests that affiliates that manage ERISA or IRA assets be covered by the five-year exemption. The Applicant also acquires and creates new affiliates frequently, and to the extent that these new affiliates meet the definition of a QPAM and manage ERISA-covered plans or IRAs, the Applicant requests that these entities be covered by the five-year exemption. The Applicant represents that JPMC owns, directly or indirectly, a 5% or greater interest in certain investment managers (and may in the future own similar interests in other managers), but such managers are not affiliated in the sense that JPMC has actual control over their operations and activities. JPMC does not have the authority to exercise a controlling influence over these investment managers and is not involved with the managers' clients, strategies, or ERISA assets under management, if any.[65] The Applicant requests that these entities also be covered by the five-year exemption.

4. On May 20, 2015, the Applicant filed an application for exemptive relief from the prohibitions of sections 406(a) and 406(b) of ERISA, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) of the Code, in connection with a conviction that would make the relief in PTE 84–14 unavailable to any current or future JPMC-related investment managers.

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

Section VI(e) of PTE 84–14 defines the term ''control'' as the power to exercise a controlling influence over the management or policies of a person other than an individual.

On May 20, 2015, the U.S. Department of Justice (Department of Justice) filed a criminal information in the U.S. District Court for the District of Connecticut (the District Court) against JPMC, charging JPMC with a one-count violation of the Sherman Antitrust Act, 15 U.S.C. 1 (the Information). The Information charges that, from at least as early as July 2010 until at least January 2013, JPMC, through one of its euro/U.S. dollar (EUR/USD) traders, entered into and engaged in a combination and conspiracy to fix, stabilize, maintain, increase or decrease the price of, and rig bids and offers for, the EUR/USD currency pair exchanged in the FX spot market by agreeing to eliminate competition in the purchase and sale of the EUR/USD currency pair in the United States and elsewhere. The criminal conduct that is the subject of the Conviction involved near daily conversations, some of which were in code, in an exclusive electronic chat room used by certain EUR/USD traders, including the EUR/USD trader described herein.

5. JPMC sought to resolve the charges through a Plea Agreement presented to the District Court on May 20, 2015. Under the Plea Agreement, JPMC agreed to enter a plea of guilty to the charge set out in the Information (the Plea). In addition, JPMC has made an admission of guilt to the District Court. The Applicant expects that the District Court will enter a judgment against JPMC that will require remedies that are materially the same as those set forth in the Plea Agreement.

Pursuant to the Plea Agreement, the District Court will order a term of probation and JPMC will be subject to certain conditions. First, JPMC must not commit another crime in violation of the federal laws of the United States or engage in the Conduct set forth in Paragraphs 4(g)–(i) of the Plea Agreement during the term of probation, and shall make disclosures relating to certain other sales-related practices. Second, JPMC must notify the probation officer upon learning of the commencement of any federal criminal investigation in which JPMC is a target, or federal criminal prosecution against it. Third, JPMC must implement and must continue to implement a compliance program designed to prevent and detect the criminal conduct that is the subject of the Conviction. Fourth, JPMC must further strengthen its compliance and internal controls as required by the CFTC, the Financial Conduct Authority (FCA), and any other regulatory or enforcement agencies that have addressed the criminal conduct that is the subject of the Conviction, as set forth in the factual basis section of the Plea Agreement, and report to the probation officer and the United States, upon request, regarding its remediation and implementation of any compliance program and internal controls, policies, and procedures that relate to the conduct described in the factual basis section of the Plea Agreement.

6. Pursuant to the Plea Agreement, JPMC must promptly bring to the Department of Justice Antitrust Division's attention: (a) All credible information regarding criminal violations of U.S. antitrust laws by the defendant or any of its employees as to which the JPMC's Board of Directors, management (that is, all supervisors within the bank), or legal and compliance personnel are aware; (b) all federal criminal or regulatory investigations in which the defendant is a subject or a target, and all administrative or regulatory proceedings or civil actions brought by any federal governmental authority in the United States against the defendant or its employees, to the extent that such investigations, proceedings or actions allege violations of U.S. antitrust laws.

7. Pursuant to the Plea Agreement, JPMC must promptly bring to the Department of Justice Criminal Division, Fraud Section's attention: (a) All credible information regarding criminal violations of U.S. law concerning fraud, including securities or commodities fraud by the defendant or any of its employees as to which the JPMC's Board of Directors, management (that is, all supervisors within the bank), or legal and compliance personnel are aware; and (b) all criminal or regulatory investigations in which JPMC is or may be a subject or a target, and all administrative proceedings or civil actions brought by any governmental authority in the United States against JPMC or its employees, to the extent such investigations, proceedings or actions allege violations of U.S. law concerning fraud, including securities or commodities fraud.

Pursuant to Paragraph 9(c) of the Plea Agreement, the Department of Justice agreed ''that it [would] support a motion or request by [JPMC] that sentencing in this matter be adjourned until the Department of Labor has issued a ruling on the defendant's request for an exemption. . . .'' According to the Applicant, sentencing has not yet occurred in the District Court, nor has sentencing been scheduled.

8. Along with the Department of Justice, the Board of Governors of the Federal Reserve Board (FRB), the Office of the Comptroller of the Currency (OCC), the Commodity Futures Trading

Commission (CFTC), and the Financial Conduct Authority (FCA) have conducted or have been conducting investigations into the practices of JPMC and its direct and indirect subsidiaries relating to FX trading.

The FRB issued a cease and desist order on May 20, 2015, against JPMC concerning unsafe and unsound banking practices relating to JPMC's FX business and requiring JPMC to cease and desist, assessing against JPMC a civil money penalty of $342,000,000, and requiring JPMC to agree to take certain affirmative actions (FRB Order).

The OCC issued a cease and desist order on November 11, 2014, against JPMorgan Chase Bank concerning deficiencies and unsafe or unsound practices relating to JPMorgan Chase Bank's wholesale FX business and requiring JPMorgan Chase Bank to cease and desist, ordering JPMorgan Chase Bank to pay a civil money penalty of $350,000,000, and requiring JPMorgan Chase Bank to agree to take certain affirmative actions (OCC Order).

The CFTC issued a cease and desist order on November 11, 2014, against JPMorgan Chase Bank relating to certain FX trading activities and requiring JPMorgan Chase Bank to cease and desist from violating certain provisions of the Commodity Exchange Act, ordering JPMorgan Chase Bank to pay a civil monetary penalty of $310,000,000, and requiring JPMorgan Chase Bank to agree to certain conditions and undertakings (CFTC Order).

The FCA issued a warning notice on November 11, 2014, against JPMorgan Chase Bank for failing to control business practices in its G10 spot FX trading operations and caused JPMorgan Chase Bank to pay a financial penalty of £222,166,000 (FCA Order).

9. In addition to the investigations described above, relating to FX trading, the Applicant is or has been the subject of other investigations, by: (a) The Hong Kong Monetary Authority, which concluded its investigation of the Applicant on December 14, 2014, and found no evidence of collusion among the banks investigated, rigging of FX benchmarks published in Hong Kong, or market manipulation, and imposed no financial penalties on the Applicant; (b) the South Africa Reserve Bank, which released the report of its inquiry of the Applicant on October 19, 2015, and found no evidence of widespread malpractice or serious misconduct by the Applicant in the South Africa FX market, and noted that most authorized dealers have acceptable arrangements and structures in place as well as whistle-blowing policies and client complaint processes; (c) the Australian Securities & Investments Commission, (d) the Japanese Financial Services Agency, (e) the Korea Fair Trade Commission, and (f) the Swiss Competition Commission. According to the Applicant, it is cooperating with the inquiries by these organizations.

In addition, the French criminal authorities have been investigating a series of transactions entered into by senior managers of Wendel Investissement (Wendel) during the period 2004–2007. In 2007, the Paris branch of JPMorgan Chase Bank provided financing for the transactions to a number of Wendel managers. The Applicant explains that JPMC is responding to and cooperating with the investigation, and to date, no decision or indictment has been made by the French court.

In addition, the Applicant represents that the Criminal Division of the Department of Justice is investigating the Applicant's compliance with the Foreign Corrupt Practices Act and other laws with respect the Applicant's hiring practices related to candidates referred by clients, potential clients, and government officials, and its engagement of consultants in the Asia Pacific region. The Applicant states that it is responding to, and cooperating with, this investigation.

The Applicant also represents that to its best knowledge, it does not have a reasonable basis to believe that the discretionary asset management activities of any affiliated QPAM are subject to the aforementioned investigations. Further, the Applicant represents that JPMC currently does not have a reasonable basis to believe that there are any pending criminal investigations involving JPMC or any of its affiliated companies that would cause a reasonable plan or IRA customer not to hire or retain the institution as a QPAM.

10. Once the Conviction is entered, the JPMC Affiliated QPAMs and the JPMC Related QPAMs, as well as their client plans that are subject to Part 4 of Title I of ERISA (ERISA-covered plans) or section 4975 of the Code (IRAs), will no longer be able to rely on PTE 84–14, pursuant to the anti-criminal rule set forth in section I(g) of the class exemption, absent an individual exemption. The Applicant is seeking an individual exemption that would permit the JPMC Affiliated QPAMs and the JPMC Related QPAMs, and their ERISA-covered plan and IRA clients to continue to utilize the relief in PTE 84–14, notwithstanding the anticipated Conviction, provided that such QPAMs satisfy the additional conditions imposed by the Department in the proposed five-year exemption herein.

11. According to the Applicant, the criminal conduct giving rise to the Plea did not involve any of the JPMC Affiliated QPAMs acting in the capacity of investment manager or trustee. JPMC's participation in the antitrust conspiracy described in the Plea Agreement is limited to a single EUR/USD trader in London. The Applicant represents that the criminal conduct that is the subject of the Conviction was not widespread, nor was it pervasive; rather it was isolated to a single trader. No current or former personnel from JPMC or its affiliates have been sued individually in this matter for the criminal conduct that is the subject of the Conviction, and the individual referenced in the Complaint as responsible for such criminal conduct is no longer employed by JPMC or its affiliates.[66]

The Applicant submits that the criminal conduct that is the subject of the Conviction did not involve any of JPMC's asset management staff. The Applicant represents that: (a) Other than a single individual who worked for a non-fiduciary business within JPMorgan Chase Bank and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, the JPMC Affiliated QPAMs, and the JPMC Related QPAMs (including officers, directors, agents other than JPMC, and employees of such QPAMs who had responsibility for, or exercised authority in connection with, the management of plan assets) did not know of, did not have reason to know of, and did not participate in the criminal conduct that is the subject of the Conviction; and (b) no current or former employee of JPMC or of any JPMC Affiliated QPAM who previously has been or who subsequently may be identified by JPMC, or any U.S. or non-U.S. regulatory or enforcement agencies, as having been responsible for the such criminal conduct has or will have any involvement in providing asset management services to plans and IRAs or will be an officer, director, or employee of the Applicant or of any JPMC Affiliated QPAM.[67]

[66] The Applicant has confirmed with JPMC's Human Resources Department that the individual referenced in the Complaint is no longer employed with any entity within JPMC or its affiliates.

[67] The Applicant states that counsel for JPMC confirmed that the individual responsible for the criminal conduct that is the subject of the Conviction is not currently employed by any entity that is part of JPMC. This individual's employment has been terminated and a notation has been made

Continued

12. According to the Applicant, the transactions covered by this five-year exemption include the full range of everyday investment transactions that a plan might enter into, including the purchase and sale of debt and equity securities, both foreign and domestic, both registered and sold under Rule 144A or otherwise (*e.g.,* traditional private placement), pass-through securities, asset-backed securities, the purchase and sale of commodities, futures, forwards, options, swaps, stable value wrap contracts, real estate, real estate financing and leasing, foreign repurchase agreements, foreign exchange, and other investments, and the hedging of risk through a variety of investment instruments and strategies. The Applicant states that all of these transactions are customary for the industry and investment managers routinely rely on the QPAM Exemption to enter into them.

13. The Applicant represents that the investment management businesses that are operated out of the JPMC Affiliated QPAMs are separated from the non-investment management businesses of the Applicant. Each of these investment management businesses, including the investment management business of JPMorgan Chase Bank (as well as the agency securities lending business of JPMorgan Chase Bank), have systems, management, dedicated risk and compliance officers and legal coverage that are separate from the foreign exchange trading activities that were the subject of the Plea Agreement.

The Applicant represents that the investment management businesses of the JPMC Affiliated QPAMs are subject to policies and procedures and JPMC Affiliated QPAM personnel engage in training designed to ensure that such businesses understand and manage their fiduciary duties in accordance with applicable law. Thus, the Applicant maintains that the management of plan assets is conducted separately from: (a) The non-investment management business activities of the Applicant, including the investment banking, treasury services and other investor services businesses of the Corporate & Investment Bank business of the Applicant (CIB); and/or (b) the criminal conduct that is the subject of the Plea Agreement. Generally, the policies and procedures create information barriers, which prevent employees of the JPMC Affiliated QPAMs from gaining access to inside information that an affiliate may have acquired or developed in connection with the investment banking, treasury services or other investor services business activities. These policies and procedures apply to employees, officers, and directors of the JPMC Affiliated QPAMs. The Applicant maintains an employee hotline for employees to express any concerns of wrongdoing anonymously.

The Applicant represents that, to the best of its knowledge: (a) No JPMC employees are involved in the trading decisions or investment strategies of the JPMC Affiliated or Related QPAMs; (b) the JPMC Affiliated and Related QPAMs do not consult with JPMC employees prior to making investment decisions on behalf of plans; (c) JPMC does not control the asset management decisions of the JPMC Affiliated or Related QPAMs; (d) the JPMC Affiliated and Related QPAMs do not need JPMC's consent to make investment decisions, correct errors, or adopt policies or training for staff; and (e) there is no interaction between JPMC employees and the JPMC Affiliated or Related QPAMs in connection with the investment management activities of the JPMC Affiliated QPAMs.

Statutory Findings—In the Interest of Affected Plans and IRAs

14. The Applicant states that, if the proposed five-year exemption is denied, the JPMC Affiliated QPAMs may be unable to manage efficiently the strategies for which they have contracted with thousands of plans and IRAs. Transactions currently dependent on the QPAM Exemption could be in default and be terminated at a significant cost to the plans. In particular, the Applicant represents that the JPMC Affiliated QPAMs have entered, and could in the future enter, into contracts on behalf of, or as investment adviser of, ERISA-covered plans, collective trusts and other funds subject to ERISA for certain outstanding transactions, including but not limited to: The purchase and sale of debt and equity securities, both foreign and domestic, both registered and sold under Rule 144A or otherwise (*e.g.,* traditional private placement); pass-through securities; asset-backed securities; and the purchase and sale of commodities, futures, options, stable value wrap contracts, real estate, foreign repurchase agreements, foreign exchange, and other investments.

The JPMC Affiliated QPAMs also have entered into, and could in the future enter into, contracts for other transactions such as swaps, forwards, and real estate financing and leasing on behalf of their ERISA clients. According to the Applicant, these and other strategies and investments require the JPMC Affiliated QPAMs to meet the conditions in the QPAM Exemption. The Applicant states that certain derivatives transactions and other contractual agreements automatically and immediately could be terminated without notice or action, or could become subject to termination upon notice from a counterparty, in the event the Applicant no longer qualifies for relief under the QPAM Exemption.

15. The Applicant represents that real estate transactions, for example, could be subject to significant disruption without the QPAM Exemption. Clients of the JPMC Affiliated QPAMs have over $27 billion in ERISA and public plan assets in commingled funds invested in real estate strategies, with approximately 235 holdings. Many transactions in these accounts rely on Parts I, II and III of the QPAM Exemption as a backup to the collective investment fund exemption (which may become unavailable to the extent a related group of plans has a greater than 10% interest in the collective investment fund). The Applicant estimates that there would be significant loss in value if assets had to be quickly liquidated—over a 10% bid-ask spread—in addition to substantial reinvestment costs and opportunity costs. There could also be prepayment penalties. In addition, real estate transactions are affected in funds that are not deemed to hold plan assets under applicable law. While funds may have other available exemptions for certain transactions, that fact could change in the future.

16. The JPMC Affiliated QPAMs also rely on the QPAM Exemption when buying and selling fixed income products. Stable value strategies, for example, rely on the QPAM Exemption to enter into wrappers and insurance contracts that permit the assets to be valued at book value. Many counterparties specifically require a representation that the QPAM Exemption applies, and those contracts could be in default if the requested exemption were not granted. Depending on the market value of the assets in these funds at the time of termination, such termination could result in losses to the stable value funds. The Applicant states that, while the market value currently exceeds book value, that can change at any time, and could result in market value adjustments to withdrawing plans and withdrawal delays under their contracts.

17. The Applicant submits that nearly 400 accounts managed by the JPMC Affiliated QPAMs (including commingled funds and separately managed accounts) invest in fixed

in his employment file to ensure he is not re-hired at any future date.

income products, with a total portfolio of approximately $49.3 billion in market value of ERISA and public plan assets in commingled funds. Fixed income strategies in which those accounts are invested include investment-grade short, intermediate, and long duration bonds, as well as securitized products, and high yield and emerging market investments. If the QPAM Exemption were lost, the Applicant estimates that its clients could incur average weighted liquidation costs of approximately 65 basis points of the total market value in fixed income products, assuming normal market conditions where the holdings can be liquidated at a normal bid-offer spread without significant widening. While short and intermediate term bonds could be liquidated for between 15–50 basis points, long duration bonds may be more difficult to liquidate and costs may range from 75–100 basis points. Costs of liquidating high-yield and emerging market investments could range from 75–150 basis points. Such costs do not include reinvestment costs for transitioning to a new manager.

18. The Applicant states that, futures, options, and cleared and bilateral swaps, which certain strategies rely on to hedge risk and obtain certain exposures on an economic basis, rely on the QPAM Exemption. The Applicant further states that the QPAM Exemption is particularly important for securities and other instruments that may be traded on a principal basis, such as mortgage-backed securities, corporate debt, municipal debt, other US fixed income securities, Rule 144A securities, non-US fixed income securities, non-US equity securities, US and non-US over-the-counter instruments such as forwards and options, structured products and FX.

19. The Applicant represents that plans that decide to continue to employ the JPMC Affiliated QPAMs could be prohibited from engaging in certain transactions that would be beneficial to such plans, such as hedging transactions using over-the-counter options or derivatives. Counterparties to such transactions are far more comfortable with the QPAM Exemption than any other exemption, and a failure of the QPAM Exemption to be available could trigger a default or early termination by the plan or pooled trust. Even if other exemptions were acceptable to such counterparties, the Applicant predicts that the cost of the transaction might increase to reflect any lack of comfort in transacting business using a less familiar exemption. The Applicant represents that plans may also face collateral consequences, such as missed investment opportunities, administrative delay, and the cost of investing in cash pending reinvestments.

20. The Applicant represents that, to the extent that plans and IRAs believe they need to withdraw from their arrangements, they could incur significant transaction costs, including costs associated with the liquidation of investments, finding new asset managers, and the reinvestment of plan assets.[68] The Applicant believes that the transaction costs to plans of changing managers are significant, especially for many of the strategies employed by the JPMC Affiliated QPAMs. The Applicant also believes that, depending on the strategy, the cost of liquidating assets in connection with transitioning clients to another manager could be significant.[69] The process for transitioning to a new manager typically is lengthy, and likely would involve numerous steps—each of which could last several months—including retaining a consultant, engaging in the request for proposals, negotiating contracts, and ultimately transitioning assets. In addition, securities transactions would incur transaction-related expenses.

Statutory Findings—Protective of the Rights of Participants of Affected Plans and IRAs

21. The Applicant has proposed certain conditions it believes are protective of participants and beneficiaries of ERISA-covered plans and IRAs with respect to the transactions described herein. The Department has determined that it is necessary to modify and supplement the conditions before it can tentatively determine that the requested exemption meets the statutory requirements of section 408(a) of ERISA. In this regard, the Department has tentatively determined that the following conditions adequately protect the rights of participants and beneficiaries of affected plans and IRAs with respect to the transactions that would be covered by this proposed five-year exemption.

The five-year exemption, if granted as proposed, is only available to the extent: (a) Other than with respect to a single individual who worked for a non-fiduciary business within JPMorgan Chase Bank and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, JPMC Affiliated QPAMs, including their officers, directors, agents other than JPMC, and employees, did not know of, have reason to know of, or participate in the criminal conduct of JPMC that is the subject of the Conviction (for purposes of this requirement, ‘‘participate in’’ includes an individual's knowing or tacit approval of the misconduct underlying the Conviction); (b) any failure of those QPAMs to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction; and (c) other than a single individual who worked for a non-fiduciary business within JPMorgan Chase Bank and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, agents other than JPMC, and employees of such JPMC QPAMs) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the Conviction.

22. The Department expects the JPMC Affiliated QPAMs will rigorously ensure that the individual associated with the misconduct will not be employed or knowingly engaged by such QPAMs. In this regard, the five-year exemption mandates that the JPMC Affiliated QPAMs will not employ or knowingly engage any of the individuals that participated in the FX manipulation that is the subject of the Conviction. For purposes of this condition, ‘‘participated in’’ includes an individual's knowing or tacit approval of the behavior that is the subject of the Conviction.

23. Further, the JPMC Affiliated QPAM will not use its authority or influence to direct an ‘‘investment fund,’’ (as defined in Section VI(b) of PTE 84–14), that is subject to ERISA or the Code and managed by such JPMC Affiliated QPAM to enter into any transaction with JPMC or the Investment Banking Division of JPMorgan Chase Bank, or to engage JPMC or the Investment Banking Division of JPMorgan Chase Bank to provide any service to such investment fund, for a direct or indirect fee borne by such

[68] The Department notes that, if this temporary exemption is granted, compliance with the condition in Section I(j) of the exemption would require the JPMC Affiliated QPAMs to hold their plan customers harmless for any losses attributable to, inter alia, any prohibited transactions or violations of the duty of prudence and loyalty.

[69] Some investments are more liquid than others (*e.g.,* Treasury bonds generally are more liquid than foreign sovereign bonds and equities generally are more liquid than swaps). Some of the strategies followed by the Applicant tend to be less liquid than certain other strategies and, thus, the cost of a transition would be significantly higher than, for example, liquidating a large cap equity portfolio. Particularly hard hit would be the real estate separate account strategies, which are illiquid and highly dependent on the QPAM Exemption.

investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption.

24. The JPMC Affiliated QPAMs and the JPMC Related 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 Conviction. Further, any failure of the JPMC Affiliated QPAMs or the JPMC Related QPAMs to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction.

No relief will be provided by this five-year exemption if a JPMC Affiliated QPAM or a JPMC Related QPAM exercised authority over plan assets in a manner that it knew or should have known would: Further the criminal conduct that is the subject of the Conviction; or cause the JPMC QPAM or its affiliates or related parties to directly or indirectly profit from the criminal conduct that is the subject of the Conviction. Also, no relief will be provided by this five-year exemption to the extent JPMC or the Investment Banking Division of JPMorgan Chase Bank: Provides any discretionary asset management services to ERISA-covered plans or IRAs; or otherwise acts as a fiduciary with respect to ERISA-covered plan or IRA assets.

25. The Department believes that robust policies and training are warranted where, as here, the criminal misconduct has occurred within a corporate organization that is affiliated with one or more QPAMs managing plan or IRA assets. Therefore, this proposed five-year exemption requires that within four (4) months of the Conviction, each JPMC Affiliated QPAM must develop, implement, maintain, and follow written policies (the Policies) requiring and reasonably designed to ensure that: The asset management decisions of the JPMC Affiliated QPAM are conducted independently of the corporate management and business activities of JPMC, including the management and business activities of the Investment Banking Division of JPMorgan Chase Bank; the JPMC Affiliated QPAM fully complies with ERISA's fiduciary duties, and with ERISA and the Code's prohibited transaction provisions, and does not knowingly participate in any violation of these duties and provisions with respect to ERISA-covered plans and IRAs; the JPMC Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs; any filings or statements made by the JPMC Affiliated QPAM to regulators, including, but not limited to, the Department of Labor, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA-covered plans or IRAs, are materially accurate and complete, to the best of such QPAM's knowledge at that time; the JPMC Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plan and IRA clients; and the JPMC Affiliated QPAM complies with the terms of this five-year exemption. Any violation of, or failure to comply with these Policies must be corrected promptly upon discovery, and any such violation or compliance failure not promptly corrected is reported, upon discovering the failure to promptly correct, in writing, to appropriate corporate officers, the head of compliance, and the General Counsel (or their functional equivalent) of the relevant JPMC Affiliated QPAM, the independent auditor responsible for reviewing compliance with the Policies, and an appropriate fiduciary of any affected ERISA-covered plan or IRA, which fiduciary is independent of JPMC. A JPMC Affiliated QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance promptly when discovered or when it reasonably should have known of the noncompliance (whichever is earlier), and provided that it reports such instance of noncompliance as explained above.

26. The Department has also imposed a condition that requires each JPMC Affiliated QPAM, within four (4) months of the date of the Conviction, to develop and implement a program of training (the Training), conducted at least annually, for all relevant JPMC Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must be set forth in the Policies and, at a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this five-year exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing. Further, the Training must be conducted by an independent professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code.

27. *Independent Transparent Audit.* The Department views a rigorous and transparent audit that is conducted annually by an independent party, as essential to ensuring that the conditions for exemptive relief described herein are followed by the JPMC Affiliated QPAMs. Therefore, Section I(i) of this proposed five-year exemption requires that each JPMC Affiliated QPAM submits to an audit, conducted annually by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and the JPMC Affiliated QPAM's compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. In addition, each annual audit must cover a consecutive twelve (12) month period starting with the twelve (12) month period that begins on the effective date of the five-year exemption. Each annual audit must be completed no later than six (6) months after the period to which the audit applies.

28. Among other things, the audit condition requires that, to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, and as permitted by law, each JPMC Affiliated QPAM and, if applicable, JPMC, will grant the auditor unconditional access to its business, including, but not limited to: Its computer systems; business records; transactional data; workplace locations; training materials; and personnel.

In addition, the auditor's engagement must specifically require the auditor to determine whether each JPMC Affiliated QPAM has complied with the Policies and Training conditions described herein, and must further require the auditor to test each JPMC Affiliated QPAM's operational compliance with the Policies and Training. The auditor must issue a written report (the Audit Report) to JPMC and the JPMC Affiliated QPAM to which the audit applies that describes the procedures performed by the auditor during the course of its examination. The Audit Report must include the auditor's specific determinations regarding: The adequacy of the JPMC Affiliated QPAM's Policies and Training; the JPMC 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 JPMC

Affiliated QPAM's noncompliance with the written Policies and Training.

Any determination by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective JPMC Affiliated QPAM must be promptly addressed by such JPMC Affiliated QPAM, and any action taken by such JPMC Affiliated QPAM to address such recommendations must be included in an addendum to the Audit Report. Further, any determination by the auditor that the respective JPMC Affiliated QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that the JPMC Affiliated QPAM has complied with the requirements, as described above, must be based on evidence that demonstrates the JPMC Affiliated QPAM has actually implemented, maintained, and followed the Policies and Training required by this five-year exemption. Finally, the Audit Report must address the adequacy of the Annual Review required under this exemption and the resources provided to the Compliance Officer in connection with such Annual Review. Moreover, the auditor must notify the respective JPMC 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.

29. This exemption requires that certain senior personnel of JPMC review the Audit Report and make certain certifications and take various corrective actions. In this regard, the General Counsel, or one of the three most senior executive officers of the JPMC Affiliate 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 five-year exemption; addressed, corrected, or remedied an inadequacy identified in the Audit Report; and determined that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this proposed five-year exemption and with the applicable provisions of ERISA and the Code. The Risk Committee of JPMC's Board of Directors is provided a copy of each Audit Report; and a senior executive officer with a direct reporting line to the highest ranking legal compliance officer of JPMC must review the Audit Report for each JPMC Affiliated QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report.

30. In order to create a more transparent record in the event that the proposed relief is granted, each JPMC Affiliated QPAM must provide its certified Audit Report to the Department no later than thirty (30) days following its completion. The Audit Report will be part of the public record regarding this five-year exemption.

Further, each JPMC Affiliated QPAM must make its Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of an ERISA-covered plan or IRA, the assets of which are managed by such JPMC Affiliated QPAM. Additionally, each JPMC Affiliated QPAM and the auditor must submit to the Department any engagement agreement(s) entered into pursuant to the engagement of the auditor under this five-year exemption. Also, they must submit to the Department any engagement agreement entered into with any other entity retained in connection with such QPAM's compliance with the Training or Policies conditions of this proposed five-year exemption no later than six (6) months after the Conviction Date (and one month after the execution of any agreement thereafter).

Finally, if the exemption is granted, the auditor must provide the Department, upon request, all of the workpapers created and utilized in the course of the audit, including, but not limited to: The audit plan; audit testing; identification of any instance of noncompliance by the relevant JPMC Affiliated QPAM; and an explanation of any corrective or remedial action taken by the applicable JPMC Affiliated QPAM.

In order to enhance oversight of the compliance with the exemption, JPMC must notify the Department at least thirty (30) days prior to any substitution of an auditor, and JPMC must demonstrate to the Department's satisfaction that any new auditor is independent of JPMC, experienced in the matters that are the subject of the exemption, and capable of making the determinations required of this five-year exemption.

31. *Contractual Obligations.* This five-year exemption requires the JPMC Affiliated QPAMs to enter into certain contractual obligations in connection with the provision of services to their clients. It is the Department's view that the condition in Section I(j) is essential to the Department's ability to make its findings that the proposed five-year exemption is protective of the rights of the participants and beneficiaries of ERISA-covered and IRA plan clients of JPMC Affiliated QPAMs under section 408(a) of ERISA.

In this regard, effective as of the effective date of this five-year exemption, with respect to any arrangement, agreement, or contract between a JPMC Affiliated QPAM and an ERISA-covered plan or IRA for which a JPMC Affiliated QPAM provides asset management or other discretionary fiduciary services, each JPMC Affiliated QPAM agrees and warrants: (a) To comply with ERISA and the Code, as applicable with respect to such ERISA-covered plan or IRA, to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions), and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA, as applicable, with respect to each such ERISA-covered plan and IRA; (b) to indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a JPMC Affiliated QPAM's violation of applicable laws, a JPMC Affiliated QPAM's breach of contract, or any claim brought in connection with the failure of such JPMC Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Conviction; (c) not to require (or otherwise cause) the ERISA-covered plan or IRA to waive, limit, or qualify the liability of the JPMC Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions; (d) not to require the ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the JPMC Affiliated QPAM for violating ERISA or engaging in prohibited transactions, except for violations or prohibited transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of JPMC, and its affiliates; (e) not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the JPMC Affiliated QPAM (including 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 as a result of an actual lack of liquidity of the underlying assets, provided that such restrictions are applied consistently and in like manner to all such investors; (f) not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors; and (g) not to include exculpatory provisions disclaiming or otherwise limiting liability of the JPMC Affiliated QPAM for a violation of such agreement's terms, except 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 JPMC, and its affiliates.

32. Further, within four (4) months of the date of the Conviction, each JPMC Affiliated QPAM must provide a notice of its obligations under Section I(j) to each ERISA-covered plan and IRA for which an JPMC Affiliated QPAM provides asset management or other discretionary fiduciary services. For all other prospective ERISA-covered plan and IRA clients for which a JPMC Affiliated QPAM provides asset management or other discretionary services, the JPMC Affiliated QPAM will agree in writing to its obligations under Section I(j) in an updated investment management agreement between the JPMC Affiliated QPAM and such clients or other written contractual agreement.

33. *Notice Requirements.* The proposed exemption contains extensive notice requirements, some of which extend not only to ERISA-covered plan and IRA clients of JPMC Affiliated QPAMs, but which also go to non-Plan clients of JPMC Affiliated QPAMs. In this regard, the Department understands that many firms may promote their ''QPAM'' designation in order to earn asset management business, including from non-ERISA plans. Therefore, in order to fully inform any clients that may have retained JPMC Affiliated QPAMs as asset managers because such JPMC Affiliated QPAMs have represented themselves as able to rely on PTE 84–14, the Department has determined to condition exemptive relief upon the following notice requirements.

Within fifteen (15) days of the publication of this proposed five-year exemption in the **Federal Register**, each JPMC Affiliated QPAM will provide a notice of the proposed five-year exemption, along with a separate summary describing the facts that led to the Conviction (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that the Conviction results in the failure to meet a condition in PTE 84–14, to each sponsor of an ERISA-covered plan and each beneficial owner of an IRA for which a JPMC Affiliated QPAM provides asset management or other discretionary services, or the sponsor of an investment fund in any case where a JPMC Affiliated QPAM acts only as a sub-adviser to the investment fund in which such ERISA-covered plan and IRA invests. In the event that this proposed five-year exemption is granted, the **Federal Register** copy of the notice of final five-year exemption must be delivered to such clients within sixty (60) days of its publication in the **Federal Register**, and may be delivered electronically (including by an email that has a link to the exemption). Any prospective clients for which a JPMC Affiliated QPAM provides asset management or other discretionary services must receive the proposed and final five-year exemptions with the Summary and the Statement prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the JPMC Affiliated QPAM.

In addition, each JPMC Affiliated QPAM will provide a **Federal Register** copy of the proposed five-year exemption, a **Federal Register** copy of the final five-year exemption; the Summary; and the Statement to each: (A) Current Non-Plan Client within four (4) months of the effective date, if any, of a final five-year exemption; and (B) Future Non-Plan Client prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the JPMC Affiliated QPAM. A ''Current Non-Plan Client'' is a client of a JPMC Affiliated QPAM that: Is neither an ERISA-covered plan nor an IRA; has assets managed by the JPMC Affiliated QPAM as of the effective date, if any, of a final five-year exemption; and has received a written representation (qualified or otherwise) from the JPMC Affiliated QPAM that such JPMC Affiliated QPAM qualifies as a QPAM or qualifies for the relief provided by PTE 84–14. A ''Future Non-Plan Client'' is a client of a JPMC Affiliated QPAM that is neither an ERISA-covered plan nor an IRA that has assets managed by the JPMC Affiliated QPAM after the effective date, if any, of a final five-year exemption, and has received a written representation (qualified or otherwise) from the JPMC Affiliated QPAM that such JPMC Affiliated QPAM is a QPAM, or qualifies for the relief provided by PTE 84–14.

34. This proposed five-year exemption also requires JPMC to designate a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. The Compliance Officer will have several obligations that it must comply with, as described in Section I(m) above. These include conducting an annual review (the Annual Review) to determine the adequacy and effectiveness of the implementation of the Policies and Training; the preparation of a written report for each Annual Review (each, an Annual Report) that, among other things, summarizes his or her material activities during the preceding year; and sets forth any instance of noncompliance discovered during the preceding year, and any related corrective action. Each Annual Report must be provided to appropriate corporate officers of JPMC and each JPMC Affiliated QPAM to which such report relates; the head of compliance and the General Counsel (or their functional equivalent) of the relevant JPMC Affiliated QPAM; and must be made unconditionally available to the independent auditor described above.

35. Each JPMC Affiliated QPAM must maintain records necessary to demonstrate that the conditions of this exemption have been met for six (6) years following the date of any transaction for which such JPMC Affiliated QPAM relies upon the relief in the proposed five-year exemption.

36. The proposed five-year exemption mandates that, during the effective period of this five-year exemption JPMC must immediately disclose to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) that JPMC or an affiliate enters into with the U.S. Department of Justice, to the extent such DPA or NPA involved conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA. In addition, JPMC must immediately provide the Department any information requested by the Department, as permitted by law, regarding the agreement and/or the conduct and allegations that led to the agreement. The Department may,

following its review of that information, require JPMC or a party specified by the Department, to submit a new application for the continued availability of relief as a condition of continuing to rely on this exemption. In this regard, the QPAM (or other party submitting the application) will have the burden of justifying the relief sought in the application. If the Department denies the relief requested in that application, or does not grant such relief within twelve months of the application, the relief described herein would be revoked as of the date of denial or as of the expiration of the twelve month period, whichever date is earlier.

37. Finally, each JPMC Affiliated QPAM, in its agreements with ERISA-covered plan and IRA clients, or in other written disclosures provided to ERISA-covered plan and IRA clients, within sixty (60) days prior to the initial transaction upon which relief hereunder is relied, will clearly and prominently: Inform the ERISA-covered plan or IRA client that the client has the right to obtain copies of the QPAM's written Policies adopted in accordance with this five-year exemption.

Statutory Findings—Administratively Feasible

38. The Applicant represents that the proposed exemption is administratively feasible because it does not require any monitoring by the Department. Furthermore, the requested five-year exemption does not require the Department's oversight because, as a condition of this proposed five-year exemption, neither JPMC nor the Investment Banking Division of JPMorgan Chase Bank will provide any fiduciary or QPAM services to ERISA-covered plans and IRAs.

Summary

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

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons within 30 days of the publication of the notice of proposed five-year exemption in the **Federal Register**. The notice will be provided to all interested persons in the manner described in Section I(k)(1) of this proposed five-year exemption and will contain the documents described therein and a supplemental statement, as required pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on and to request a hearing with respect to the pending exemption. All written comments and/or requests for a hearing must be received by the Department within sixty (60) days of the date of publication of this proposed exemption in the **Federal Register**. All comments will be made available to the public.

Warning: If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as a Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

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

UBS Assets Management (Americas) Inc.; UBS Realty Investors LLC; UBS Hedge Fund Solutions LLC; UBS O'Connor LLC; and Certain Future Affiliates in UBS's Asset Management and Wealth Management Americas Divisions (Collectively, the Applicants or the UBS QPAMs), Located in Chicago, Illinois; Hartford, Connecticut; New York, New York; and Chicago, Illinois, Respectively

[Exemption Application No. D–11907]

Proposed Five Year Exemption

The Department is considering granting a five-year exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act), and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).[70]

Section I: Covered Transactions

If the proposed five-year exemption is granted, certain asset managers with specified relationships to UBS, AG (hereinafter, the UBS QPAMs, as further defined in Section II(b)) will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Exemption 84–14 (PTE 84–14),[71] notwithstanding the ''2013 Conviction'' against UBS Securities Japan Co., Ltd. entered on September 18, 2013 and the ''2016 Conviction'' against UBS AG scheduled to be entered on November 29, 2016 (collectively the Convictions, as further defined in Section II(a)),[72] for a period of five years beginning on the date on which a grant notice is published in the **Federal Register**, provided that the following conditions are satisfied:

(a) The UBS QPAMs (including their officers, directors, agents other than UBS, and employees of such UBS QPAMs) did not know of, have reason to know of, or participate in: (1) The FX Misconduct; or (2) the criminal conduct that is the subject of the Convictions (for the purposes of this Section I(a), ''participate in'' includes the knowing or tacit approval of the FX Misconduct or the misconduct that is the subject of the Convictions);

(b) The UBS QPAMs (including their officers, directors, agents other than UBS, and employees of such UBS QPAMs) did not receive direct compensation, or knowingly receive indirect compensation, in connection with: (1) The FX Misconduct; or (2) the criminal conduct that is the subject of the Convictions;

(c) The UBS QPAMs will not employ or knowingly engage any of the individuals that participated in: (1) The FX Misconduct or (2) the criminal conduct that is the subject of the Convictions (for the purposes of this Section I(c), ''participated in'' includes the knowing or tacit approval of the FX Misconduct or the misconduct that is the subject of the Convictions);

(d) A UBS QPAM will not use its authority or influence to direct an ''investment fund'' (as defined in Section VI(b) of PTE 84–14) that is subject to ERISA or the Code and managed by such UBS QPAM, to enter into any transaction with UBS or UBS Securities Japan or engage UBS or UBS Securities Japan to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such

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

[71] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

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

transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e) Any failure of the UBS QPAMs to satisfy Section I(g) of PTE 84–14 arose solely from the Convictions;

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

(g) UBS and UBS Securities Japan will not provide discretionary asset management services to ERISA-covered plans or IRAs, nor will otherwise act as a fiduciary with respect to ERISA-covered plan or IRA assets;

(h)(1) Each UBS QPAM must immediately develop, implement, maintain, and follow written policies and procedures (the Policies) requiring and reasonably designed to ensure that:

(i) The asset management decisions of the UBS QPAM are conducted independently of UBS's corporate management and business activities, including the corporate management and business activities of the Investment Bank division and UBS Securities Japan;

(ii) The UBS QPAM fully complies with ERISA's fiduciary duties, and with ERISA and the Code's prohibited transaction provisions, and does not knowingly participate in any violation of these duties and provisions with respect to ERISA-covered plans and IRAs;

(iii) The UBS QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs;

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

(v) The UBS QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plan and IRA clients;

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

(vii) Any violation of, or failure to comply with, an item in subparagraphs (ii) through (vi), is corrected promptly upon discovery, and any such violation or compliance failure not promptly corrected is reported, upon discovery of such failure to promptly correct, in writing, to appropriate corporate officers, the head of compliance and the General Counsel (or their functional equivalent) of the relevant UBS QPAM, the independent auditor responsible for reviewing compliance with the Policies, and an appropriate fiduciary of any affected ERISA-covered plan or IRA that is independent of UBS; however, with respect to any ERISA-covered plan or IRA sponsored by an ''affiliate'' (as defined in Section VI(d) of PTE 84–14) of UBS or beneficially owned by an employee of UBS or its affiliates, such fiduciary does not need to be independent of UBS. A UBS QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance promptly when discovered, or when it reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (vii);

(2) Each UBS QPAM must immediately develop and implement a program of training (the Training), conducted at least annually, for all relevant UBS QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must:

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

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

(i)(1) Each UBS QPAM submits to an audit conducted annually by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and the UBS QPAM's compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. Each annual audit must cover a consecutive twelve month period starting with the twelve month period that begins on the date of the Conviction Date (the Initial Audit Period). If this proposed five-year exemption is granted within one year of the effective date of the proposed temporary exemption for UBS QPAMs (Exemption Application No. D–11863),[73] then the Initial Audit Period will cover the period of time during which such temporary exemption is effective and a portion of the time during which this proposed five-year exemption is effective. In such event, the audit terms contained in this Section I(i) will supersede the terms of Section I(i) of the proposed temporary exemption. Additionally, in determining compliance with the conditions for relief in the proposed temporary exemption and this proposed five-year exemption, including the Policies and Training requirements, for purposes of conducting the audit, the auditor will rely on the conditions for exemptive relief as then applicable to the respective periods under audit. For time periods prior to the Conviction Date and covered under PTE 2013–09, the audit requirements in Section (g) of PTE 2013–09 will remain in effect. Each annual audit must be completed no later than six (6) months after the period to which the audit applies;

(2) 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 as permitted by law, each UBS QPAM and, if applicable, UBS, will grant the auditor unconditional access to its business, including, but not limited to: Its computer systems; business records; transactional data; workplace locations; training materials; and personnel;

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

(4) The auditor's engagement must specifically require the auditor to test

[73] A proposed temporary exemption in respect of Exemption Application No. D–11863 for UBS QPAMs to rely on the exemptive relief provided by PTE 84–14, notwithstanding the Convictions, for up to twelve months from the date of the U.S. Conviction, is being published elsewhere in the **Federal Register**.

each UBS QPAM's operational compliance with the Policies and Training. In this regard, the auditor must test a sample of each QPAM's transactions involving ERISA-covered plans and IRAs sufficient in size and nature to afford the auditor a reasonable basis to determine the operational compliance with the Policies and Training;

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

(i) The adequacy of the UBS QPAM's Policies and Training; the UBS QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective UBS QPAM's noncompliance with the written Policies and Training described in Section I(h) above. Any determination by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective UBS QPAM must be promptly addressed by such UBS QPAM, and any action taken by such UBS QPAM to address such recommendations must be included in an addendum to the Audit Report (which addendum is completed prior to the certification described in Section I(i)(7) below). Any determination by the auditor that the respective UBS QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that the UBS QPAM has complied with the requirements under this subsection must be based on evidence that demonstrates the UBS QPAM has actually implemented, maintained, and followed the Policies and Training required by this five-year exemption. Furthermore, the auditor must not rely on the Annual Report created by the Compliance Officer as described in Section I(m) below in lieu of independent determinations and testing performed by the auditor as required by Section I(i)(3) and (4) above; and

(ii) The adequacy of the Annual Review described in Section I(m) and the resources provided to the Compliance officer in connection with such Annual Review;

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

(7) With respect to each Audit Report, the General Counsel, or one of the three most senior executive officers of the UBS QPAM to which the Audit Report applies, must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this five-year exemption; addressed, corrected, or remedied any inadequacy identified in the Audit Report; and determined that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this proposed five-year exemption and with the applicable provisions of ERISA and the Code;

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

(9) Each UBS QPAM must provide its certified Audit Report, by regular mail to: the Department's Office of Exemption Determinations (OED), 200 Constitution Avenue NW., Suite 400, Washington DC 20210, or by private carrier to: 122 C Street NW., Suite 400, Washington, DC 20001–2109, no later than 45 days following its completion. The Audit Report will be part of the public record regarding this five-year exemption. Furthermore, each UBS QPAM must make its Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of an ERISA-covered plan or IRA, the assets of which are managed by such UBS QPAM;

(10) Each UBS QPAM and the auditor must submit to OED: (A) Any engagement agreement entered into pursuant to the engagement of the auditor under this five-year exemption; and (B) any engagement agreement entered into with any other entity retained in connection with such QPAM's compliance with the Training or Policies conditions of this proposed five-year exemption no later than six (6) months after the effective date of this five-year exemption (and one month after the execution of any agreement thereafter);

(11) The auditor must provide OED, upon request, all of the workpapers created and utilized in the course of the audit, including, but not limited to: The audit plan; audit testing; identification of any instance of noncompliance by the relevant UBS QPAM; and an explanation of any corrective or remedial action taken by the applicable UBS QPAM; and

(12) UBS must notify the Department at least 30 days prior to any substitution of an auditor, except that no such replacement will meet the requirements of this paragraph unless and until UBS demonstrates to the Department's satisfaction that such new auditor is independent of UBS, experienced in the matters that are the subject of the five-year exemption and capable of making the determinations required of this five-year exemption;

(j) Effective as of the effective date of this five-year exemption, with respect to any arrangement, agreement, or contract between a UBS QPAM and an ERISA-covered plan or IRA for which such UBS QPAM provides asset management or other discretionary fiduciary services, each UBS QPAM agrees and warrants:

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

(2) Not to require (or otherwise cause) the ERISA-covered plan or IRA to waive, limit, or qualify the liability of the UBS QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(3) Not to require the ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the UBS QPAM for violating ERISA or engaging in prohibited transactions, except for violations or prohibited transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of UBS;

(4) Not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the UBS QPAM (including 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 as a result of an actual lack of liquidity of the underlying assets, provided that such restrictions are applied consistently and in like manner to all such investors;

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

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the UBS QPAM for a violation of such agreement's terms, except for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of UBS and its affiliates; and

(7) To indemnify and hold harmless the ERISA-covered plan and IRA for any damages resulting from a violation of applicable laws, a UBS QPAM's breach of contract, or any claim arising out of the failure of such UBS QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Convictions;

(8) Within four (4) months of the effective date of this proposed five-year exemption, each UBS QPAM must provide a notice of its obligations under this Section I(j) to each ERISA-covered plan and IRA for which the UBS QPAM provides asset management or other discretionary fiduciary services. For all other prospective ERISA-covered plan and IRA clients for which a UBS QPAM provides asset management or other discretionary fiduciary services, the UBS QPAM will agree in writing to its obligations under this Section I(j) in an updated investment management agreement or advisory agreement between the UBS QPAM and such clients or other written contractual agreement;

(k)(1) *Notice to ERISA-covered plan and IRA clients.* Within fifteen (15) days of the publication of this proposed five-year exemption in the **Federal Register**, each UBS QPAM will provide a notice of the proposed five-year exemption, along with a separate summary describing the facts that led to the Convictions (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that each Conviction separately results in a failure to meet a condition in PTE 84–14, to each sponsor of an ERISA-covered plan and each beneficial owner of an IRA for which a UBS QPAM provides asset management or other discretionary fiduciary services, or the sponsor of an investment fund in any case where a UBS QPAM acts only as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests. In the event that this proposed five-year exemption is granted, the **Federal Register** copy of the notice of final five-year exemption must be delivered to such clients within sixty (60) days of its publication in the **Federal Register**, and may be delivered electronically (including by an email that has a link to the five-year exemption). Any prospective clients for which a UBS QPAM provides asset management or other discretionary fiduciary services must receive the proposed and final five-year exemptions with the Summary and the Statement prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the UBS QPAM; and

(2) *Notice to Non-Plan Clients.* Each UBS QPAM will provide a **Federal Register** copy of the proposed five-year exemption, a **Federal Register** copy of the final five-year exemption; the Summary; and the Statement to each: (A) Current Non-Plan Client within four (4) months of the effective date, if any, of a final five-year exemption; and (B) Future Non-Plan Client prior to, or contemporaneously with, the client's receipt of a written asset management agreement, or other written contractual agreement, from the UBS QPAM. For purposes of this subparagraph (2), a Current Non-Plan Client means a client of a UBS QPAM that: Is neither an ERISA-covered plan nor an IRA; has assets managed by the UBS QPAM as of the effective date, if any, of a final five-year exemption; and has received a written representation (qualified or otherwise) from the UBS QPAM that such UBS QPAM qualifies as a QPAM or qualifies for the relief provided by PTE 84–14. For purposes of this subparagraph (2), a Future Non-Plan Client means a prospective client of a UBS QPAM that: Is neither an ERISA-covered plan nor an IRA; has assets managed by the UBS QPAM after (but not as of) the effective date, if any, of a final five-year exemption; and has received a written representation (qualified or otherwise) from the UBS QPAM that such UBS QPAM qualifies as a QPAM or qualifies for the relief provided by PTE 84–14;

(l) The UBS QPAMs must comply with each condition of PTE 84–14, as amended, with the sole exceptions of the violations of Section I(g) of PTE 84–14 that are attributable to the Convictions;

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

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

(ii) The Compliance Officer has a dual-reporting line within UBS's Compliance and Operational Risk Control (C&ORC) function: (A) A divisional reporting line to the Head of Compliance and Operational Risk Control, Asset Management, and (B) a regional reporting line to the Head of Americas Compliance and Operational Risk Control. The C&ORC function will be organizationally independent of UBS's business divisions—including Asset Management and the Investment Bank—and is led by the Global Head of C&ORC, who will report directly to UBS's Chief Risk Officer;

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

(i) The Annual Review includes a review of: Any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the Compliance and Operational Risk Control function during the previous year; any material change in the business activities of the UBS QPAMs; and any change to ERISA, the Code, or regulations related to fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of the UBS QPAMs;

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

(iii) In each Annual Report, the Compliance Officer must certify in writing that to his or her knowledge: (A) The report is accurate; (B) the Policies and Training are working in a manner which is reasonably designed to ensure that the Policies and Training requirements described herein are met; (C) any known instance of noncompliance during the preceding year and any related correction taken to date have been identified in the Annual Report; (D) the UBS QPAMs have complied with the Policies and Training in all respects, and/or corrected any instances of noncompliance in accordance with Section I(h) above; and (E) UBS has provided the Compliance Officer with adequate resources, including, but not limited to, adequate staffing;

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

(v) Each Annual Review, including the Compliance Officer's written Annual Report, must be completed at least three (3) months in advance of the date on which each audit described in Section I(i) is scheduled to be completed;

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

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

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

(q) During the effective period of this five-year exemption UBS: (1) Immediately discloses to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) that UBS or an affiliate enters into with the U.S Department of Justice, to the extent such DPA or NPA involves conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA; and (2) immediately provides the Department any information requested by the Department, as permitted by law, regarding the agreement and/or the conduct and allegations that led to the agreement;

After review of the information, the Department may require UBS, its affiliates, or related parties, as specified by the Department, to submit a new application for the continued availability of relief as a condition of continuing to rely on this exemption. If the Department denies the relief requested in the new application, or does not grant such relief within twelve months of application, the relief described herein is revoked as of the date of denial or as of the expiration of the twelve month period, whichever date is earlier;

(r) Each UBS QPAM, in its agreements with ERISA-covered plan and IRA clients, or in other written disclosures provided to ERISA-covered plan and IRA clients, within 60 days prior to the initial transaction upon which relief hereunder is relied, and then at least once annually, will clearly and prominently: Inform the ERISA-covered plan or IRA client that the client has the right to obtain copies of the QPAM's written Policies adopted in accordance with this five-year exemption; and

(s) A UBS QPAM will not fail to meet the terms of this five-year exemption, solely because a different UBS QPAM fails to satisfy a condition for relief under this five-year exemption described in Sections I(c), (d), (h), (i), (j), (k), (l), (p), and (r).

Section II: Definitions

(a) The term ''Convictions'' means the 2013 Conviction and the 2016 Conviction. The term ''2013 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 for the District of Connecticut for one count of wire fraud in violation of Title 18, United Sates Code, sections 1343 and 2 in connection with submission of YEN London Interbank Offered Rates and other benchmark interest rates. The term ''2016 Conviction'' means the anticipated judgment of conviction against UBS AG in Case Number 3:15–cr–00076–RNC in the U.S. District Court for the District of Connecticut for one count of wire fraud in violation of Title 18, United States Code, Sections 1343 and 2 in connection with UBS's submission of Yen London Interbank Offered Rates and other benchmark interest rates between 2001 and 2010. For all purposes under this proposed five-year exemption, ''conduct'' of any person or entity that is the ''subject of [a] Conviction'' encompasses any conduct of UBS and/or their personnel, that is described in the Plea Agreement, (including Exhibits 1 and 3 attached thereto), and other official regulatory or judicial factual findings that are a part of this record.

(b) The term ''UBS QPAM'' means UBS Asset Management (Americas) Inc., UBS Realty Investors LLC, UBS Hedge Fund Solutions LLC, UBS O'Connor LLC, and any future entity within the Asset Management or the Wealth Management Americas divisions of UBS AG that qualifies as a ''qualified professional asset manager'' (as defined in Section VI(a)[74] of PTE 84–14) and that relies on the relief provided by PTE 84–14 and with respect to which UBS AG is an ''affiliate'' (as defined in Part VI(d) of PTE 84–14). The term ''UBS QPAM'' excludes the parent entity, UBS AG and UBS Securities Japan.

(c) The term ''UBS'' means UBS AG.

(d) The term ''Conviction Date'' means the date that a judgment of conviction against UBS is entered in the 2016 Conviction.

(e) 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 AG and the Department of Justice Criminal Division, on May 20, 2015 in connection with Case Number 3:15–cr–00076–RNC filed in the U.S. District Court for the District of Connecticut.

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

(g) The term ''Plea Agreement'' means the Plea Agreement (including Exhibits 1 and 3 attached thereto) entered into between UBS AG and the Department of Justice Criminal Division, on May 20,

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

2015 in connection with Case Number 3:15–cr–00076–RNC filed in the US District Court for the District of Connecticut.

Effective Date: This proposed five-year exemption will be effective beginning on the date of publication of such grant in the **Federal Register** and ending on the date that is five years thereafter. Should the Applicants wish to extend the effective period of exemptive relief provided by this proposed five-year exemption, the Applicants must submit another application for an exemption. In this regard, the Department expects that, in connection with such application, the Applicants should be prepared to demonstrate compliance with the conditions for this exemption and that the UBS QPAMs, and those who may be in a position to influence their policies, have maintained the high standard of integrity required by PTE 84–14.

Department's Comment: As described in further detail below, on September 13, 2013, the Department published PTE 2013–09, which is an exemption that permits certain UBS asset managers to continue to rely on PTE 84–14, notwithstanding the 2013 Conviction. The impending 2016 Conviction will constitute a violation of the conditions of PTE 2013–09 and PTE 84–14. As a result, the UBS QPAMs will not be able to rely on PTE 84–14 for exemptive relief as of the Conviction Date.

Elsewhere in the **Federal Register**, in connection with Exemption Application D–11863, the Department is publishing a proposed temporary exemption for the UBS QPAMs to continue to rely on PTE 84–14 notwithstanding the Convictions, for a period of up to twelve months. That temporary exemption is intended to allow the Department sufficient time, including a longer comment period, to determine whether or not to grant this five-year exemption. The proposed temporary exemption is designed to protect ERISA-covered plans and IRAs from the potential costs and losses, described below, that would be incurred if such UBS QPAMs were to suddenly lose their ability to rely on PTE 84–14 as of the Conviction date.

The five-year exemption proposed herein would permit certain asset managers affiliated with UBS and its affiliates to continue to rely on PTE 84–14 for a period of five years from its effective date. Upon the effective date of the proposed five-year exemption, the Temporary Exemption, if still effective, would expire.

The proposed five-year exemption would provide relief from certain of the restrictions set forth in sections 406 and 407 of ERISA. If granted, no relief or waiver of a violation of any other law would be provided by this five-year exemption.

Furthermore, the Department cautions that the relief in this proposed five-year exemption would terminate immediately if, among other things, an entity within the UBS corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Convictions) during the effective period of the five-year exemption. While such an entity could apply for a new exemption in that circumstance, the Department would not be obligated to grant the exemption. The terms of this proposed five-year exemption have been specifically designed to permit plans to terminate their relationships in an orderly and cost effective fashion in the event of an additional conviction or a determination that it is otherwise prudent for a plan to terminate its relationship with an entity covered by the proposed five-year exemption.

Summary of Facts and Representations [75]

The Applicants

1. UBS AG (UBS) is a Swiss-based global financial services company organized under the laws of Switzerland. UBS has banking divisions and subsidiaries throughout the world, with its United States headquarters located in New York, New York and Stamford, Connecticut. UBS and its affiliates employ approximately 20,000 people in the United States.

2. The operational structure of UBS and its affiliates (collectively, the UBS Group) consists of a Corporate Center function and five business divisions: Wealth Management; Wealth Management Americas; Retail & Corporate; Asset Management; and the Investment Bank.

3. *LIBOR NPA.* On December 18, 2012, UBS and the United States Department of Justice (DOJ) entered into a Non-Prosecution Agreement (the LIBOR NPA) related to UBS's misconduct and involving its submission of Yen London Interbank Offer Rate (Yen LIBOR) rates and other benchmark rates between 2001 and 2010. In exchange for UBS promising, among other things, not to commit any crime in violation of U.S. laws for a period of two years from the date of the LIBOR NPA, DOJ agreed that it would not prosecute UBS for any crimes related to the submission of Yen LIBOR rates and other benchmark rates. For its part, UBS agreed to, among other things: (i) Pay a monetary penalty of $500,000,000; and (ii) take steps to further strengthen its internal controls, as required by certain other U.S. and non-U.S. regulatory agencies that had addressed the misconduct described in the LIBOR NPA. Such requirements include those imposed by the United States Commodity Futures Trading Commission's (CFTC) order dated December 19, 2012 (the CFTC Order) which requires UBS to comply with significant auditing and monitoring conditions that set standards for submissions related to interest rate benchmarks such as LIBOR, qualifications of submitters and supervisors, documentation, training, and firewalls. Under the CFTC Order, UBS must maintain monitoring systems or electronic exception reporting systems that identify possible improper or unsubstantiated submissions. The CFTC Order requires UBS to conduct internal audits of reasonable and random samples of its submissions every six months. Additionally, UBS must retain an independent, third-party auditor to conduct a yearly audit of the submission process for five years and a copy of the report must be provided to the CFTC. Furthermore, the Japanese Financial Service Authority's (JFSA) Business Improvement Order dated December 16, 2011 requires UBS Securities Japan to (i) develop a plan to ensure compliance with its legal and regulatory obligations and to establish a control framework that is designed to prevent recurrences of the fraudulent submissions for benchmark interest rates; and (ii) provide periodic written reports to the JFSA regarding UBS Securities Japan's implementation of the measures required by the order.

4. *2013 Conviction.* Although UBS, the parent entity, was not criminally charged in connection with the submission of benchmark rates when it entered into the LIBOR NPA, UBS Securities Japan Co. Ltd. (UBS Securities Japan), a wholly-owned subsidiary of UBS incorporated under the laws of Japan, pled guilty on December 19, 2012, to one count of wire fraud in violation of Title 18, United Sates Code, sections 1343 and 2. UBS Securities Japan's guilty plea arose out of its fraudulent submission of Yen LIBOR rates between 2006 and 2009,[76]

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

[76] Section 1343 generally imposes criminal liability for fraud, including fines and/or imprisonment, when a person utilizes wire, radio, or television communication in interstate or foreign commerce. Section 2 generally imposes criminal liability on a person as a principal if that person aids, counsels, commands, induces, or willfully

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, namely Yen LIBOR and the Euroyen Tokyo InterBank Offered Rate (EuroYen TIBOR), to which the profitability of those trades was tied. On September 18, 2013 (the 2013 Conviction Date), UBS Securities Japan was sentenced by the United States District Court for the District of Connecticut (the 2013 Conviction).[77]

5. *FX Misconduct and Breach of LIBOR NPA.* At approximately the same time, the DOJ was conducting an investigation of several multi-national banks, including UBS, in connection with the reported manipulation of the foreign exchange (FX) markets. The DOJ determined, among other things, that UBS had engaged in deceptive currency trading and sales practices in conducting certain FX market transactions, as well as collusive conduct in certain FX markets. The DOJ did not file separate charges in connection with the FX-related misconduct, but instead determined that the LIBOR NPA had been breached. The DOJ terminated the LIBOR NPA and filed a one-count criminal information (the Information), Case Number 3:15–cr–00076–RNC, in the U.S. District Court for the District of Connecticut. The Information charged that, on or about June 29, 2009, in furtherance of a scheme to defraud counterparties to interest rate derivatives transactions UBS transmitted or caused the transmission of electronic communications in interstate and foreign commerce, in violation of Title 18, United States Code, Sections 1343 and 2.

6. *2016 Conviction.* UBS entered into a Plea Agreement with the DOJ dated May 20, 2015 (the Plea Agreement), pleading guilty to the charges in the Information, and agreeing to pay a $203,000,000 criminal penalty.[78] In addition, UBS agreed not to commit another federal crime during a three year probation period; to continue implement a compliance program designed to prevent and detect, or otherwise remedy, conduct that led to the LIBOR NPA; and to provide annual reports to the probation officer and the DOJ on its progress in implementing the program. UBS also agreed to continue to strengthen its compliance program and internal controls as required by: The U.S. Commodity Futures Trading Commission (CFTC); the United Kingdom's Financial Conduct Authority (UK FCA); the Swiss Financial Market Supervisory Authority (FINMA); and any other regulatory enforcement agency, in connection with resolutions involving conduct in FX markets or conduct related to benchmark rates. UBS must provide information regarding its compliance programs to the probation officer, upon request. A judgment of conviction (the 2016 Conviction) against UBS in Case Number 3:15–cr–00076–RNC is scheduled to be entered in the U.S. District Court for the District of Connecticut on or about November 29, 2016.

PTE 84–14

7. The Department notes that the rules set forth in section 406 of the Employee Retirement Income Security Act of 1974, as amended (ERISA) and section 4975(c) of the Internal Revenue Code of 1986, as amended (the Code) proscribe certain ''prohibited transactions'' between plans and related parties with respect to those plans, known as ''parties in interest.''[79] Under section 3(14) of ERISA, parties in interest with respect to a plan include, among others, the plan fiduciary, a sponsoring employer of the plan, a union whose members are covered by the plan, service providers with respect to the plan, and certain of their affiliates. The prohibited transaction provisions under section 406(a) of ERISA prohibit, in relevant part, sales, leases, loans or the provision of services between a party in interest and a plan (or an entity whose assets are deemed to constitute the assets of a plan), as well as the use of plan assets by or for the benefit of, or a transfer of plan assets to, a party in interest.[80] Under the authority of section 408(a) of ERISA and section 4975(c)(2) of the Code, the Department has the authority to grant exemptions from such ''prohibited transactions'' in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).

8. Prohibited Transaction Exemption 84–14 (PTE 84–14)[81] exempts certain prohibited transactions between a party in interest and an ''investment fund'' (as defined in Section VI(b) of PTE 84–14)[82] in which a plan has an interest, if the investment manager satisfies the definition of ''qualified professional asset manager'' (QPAM) and satisfies additional conditions for the exemption. In this regard, PTE 84–14 was developed and granted based on the essential premise that broad relief could be afforded for all types of transactions in which a plan engages only if the commitments and the investments of plan assets and the negotiations leading thereto are the sole responsibility of an independent, discretionary, manager.[83]

9. However, Section I(g) of PTE 84–14 prevents an entity that may otherwise meet the definition of QPAM from utilizing the exemptive relief provided by PTE 84–14, for itself and its client plans, if that entity or an ''affiliate''[84] thereof or any owner, direct or indirect, of a 5 percent or more interest in the QPAM has, within 10 years immediately preceding the transaction, been either convicted or released from imprisonment, whichever is later, as a result of certain specified criminal activity described in that section. The Department notes that Section I(g) was included in PTE 84–14, in part, based on the expectation that a QPAM, and those who may be in a position to influence its policies, maintain a high standard of integrity.[85] Accordingly, as a result of the Convictions, QPAMs with certain corporate relationships to UBS and UBS Securities Japan, as well as their client plans that are subject to Part 4 of Title I of ERISA (ERISA-covered plans) or section 4975 of the Code (IRAs), will no longer be able to rely on

causes another person to engage in criminal activity.

[77] *United States of America* v. *UBS Securities Japan Limited,* Case Number 3:12–cr–00268–RNC.

[78] *United States of America* v. *UBS*, Case Number 3:15–cr–00076–RNC.

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

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

[81] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

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

[83] See 75 FR 38837, 38839 (July 6, 2010).

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

[85] See 47 FR 56945, 56947 (December 21, 1982).

PTE 84–14 without an individual exemption issued by the Department.

The UBS QPAMs

10. UBS Asset Management (Americas) Inc., UBS Realty Investors LLC, UBS Hedge Fund Solutions LLC, and UBS O'Connor LLC are affiliates of UBS, AG (UBS)[86] within UBS's Asset Management division, and may rely on PTE 84–14. Such entities, along with future entities in UBS's Assets Management and Wealth Management Americas divisions that qualify as ''qualified professional asset managers'' (as defined in Part VI(a) of PTE 84–14) and rely on the relief provided by PTE 84–14 and with respect to which UBS AG is an ''affiliate'' (as defined in Part VI(d) of PTE 84–14) are hereinafter referred to as the ''UBS QPAMs''. The Applicants represent that currently, the Asset Management division is the only division that has entities functioning as QPAMs and that UBS itself does not provide investment management services to client plans that are subject to Part 4 of Title I of ERISA (ERISA plans) or section 4975 of the Code (IRAs), or otherwise exercise discretionary control over ERISA assets.

11. The Applicants represent further that the UBS QPAMs provide investment management services to 36 ERISA plan and IRA clients through separately-managed accounts and pooled funds. These ERISA plan clients are all large plans and several have more than 500,000 participants and beneficiaries. Collectively, the UBS QPAMs currently manage approximately $22.1 billion of ERISA Plan and IRA assets (excluding ERISA Plan and IRA assets invested in pooled funds that are not plan asset funds). Several types of investment strategies are used by the UBS QPAMs to invest ERISA plan and IRA assets. These strategies include investments of approximately $3.3 billion in alternative investments/hedge funds, $835 million in equity investments, $8.6 billion in fixed income, $2.2 billion in multi-asset investments, $5.8 billion in derivative investments and $1.4 billion in real estate investments.

UBS's FX Misconduct

12. The DOJ determined that, prior to and after UBS signed the LIBOR NPA on December 18, 2012, certain employees of UBS engaged in fraudulent and deceptive currency trading and sales practices in conducting certain FX market transactions via telephone, email and/or electronic chat, to the detriment of UBS's customers.[87] These employees also engaged in collusion with other participants in certain FX markets (such conduct, as further detailed below, is hereinafter referred to as the ''FX Misconduct'').

13. According to the Factual Basis for Breach, the FX Misconduct included the addition of undisclosed markups to certain FX transactions. In that regard, sales staff misrepresented to customers on certain transactions that markups were not being added, when in fact they were.

14. The Factual Basis for Breach explains that for certain limit orders, UBS personnel would use a price level different from the one specified by the customers, without the customers' knowledge, to ''track'' certain limit orders. This practice was done to obtain an undisclosed markup on the trade for UBS if the market hit both the customer's limit price and UBS's altered tracking price. Additionally, the practice also subjected customers to the potential that their limit orders would be delayed or not filled when the market hit the customer's limit price but not UBS's altered tracking price.

15. The Factual Basis for Breach also details how certain customers obtaining quotes and placing trades over the phone would, on occasion, request an ''open-line'' so they could hear the conversation regarding price quotes between the UBS trader and salesperson. Certain of these customers had an expectation the price they heard from the trader did not include a sales markup for their transaction currency. While on certain ''open-line'' phone calls, UBS traders and salespeople used hand signals to fraudulently conceal markups from these customers.

16. The Factual Basis for Breach describes how, from about October 2011 to at least January 2013, a UBS FX trader conspired with other financial services firms acting as dealers in the FX spot market, by agreeing to restrain competition in the purchase and sale of the Euro/U.S. dollar currency pair. To achieve this, among other things, the conspirators: (i) Coordinated the trading of the Euro/U.S. dollar currency pair in connection with the European Central Bank and the World Markets/Reuters benchmark currency ''fixes;'' and (ii) refrained from certain trading behavior by withholding offers and bids when one conspirator held an open risk position. They did this so that the price of the currency traded would not move in a direction adverse to the conspirator with an open risk position.

17. The Factual Basis for Breach explains that in determining that UBS was in breach of the LIBOR NPA, the DOJ considered UBS's FX Misconduct described above in light of UBS's obligation under the LIBOR NPA to commit no further crimes. The DOJ also took into account UBS's three recent prior criminal resolutions[88] and multiple civil and regulatory resolutions. In addition, the DOJ also considered that the compliance programs and remedial efforts put in place by UBS following the LIBOR NPA failed to detect the collusive and deceptive conduct in the FX markets until an article was published pointing to potential misconduct in the FX markets.

UBS's LIBOR Misconduct

18. The Statement of Facts (SOF) in Exhibit 3 of the Plea Agreement describes the circumstances of UBS's scheme to defraud counterparties to interest rate derivatives transactions, by secretly manipulating benchmark interest rates to which the profitability of those transactions was tied. According to the SOF, LIBOR is a benchmark interest rate used in financial markets worldwide, namely on exchanges and in over-the-counter markets, to settle trades for futures, options, swaps, and other derivative financial instruments. In addition, LIBOR is often used as a reference rate for mortgages, credit cards, student loans, and other consumer lending products. LIBOR and the other benchmark interest rates play a fundamentally important role in financial markets throughout the world due their widespread use.

19. Each business day the LIBOR average benchmark interest rates are calculated and published by Thomson Reuters, acting as agent for the British Bankers' Association (BBA), for ten currencies (including the United States Dollar, the British Pound Sterling, and

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

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

[88] In addition to the 2012 LIBOR NPA described above, in February 2009, UBS entered into a deferred prosecution agreement with the DOJ's Tax Division for conspiring to defraud the United States of tax revenue through secret Swiss bank accounts for United States tax payers. In connection therewith, UBS agreed to pay $780 million. In May of 2011, UBS entered into a non-prosecution agreement with the DOJ's Antitrust Division to resolve allegations of bid-rigging in the municipal bond derivatives market, and agreed to pay $160 million.

the Japanese Yen) and for various maturities (ranging from overnight to twelve months). The calculation for a given currency is based upon rate submissions from a panel of banks for that currency (the Contributor Panel). In general terms, LIBOR is the rate at which the Contributor Panel member could borrow funds. According to the BBA, the Contributor Bank Panel must submit the rate considered by the bank's cash management staff, and not the bank's personnel responsible for derivative trading, as the rate the bank could borrow unsecured inter-bank funds in the London money market, without reference to rates contributed by other Contributor Panel banks. Additionally, a Contributor Panel bank may not contribute a rate based on the pricing of any derivative financial instrument. Once each Contributor Panel bank has submitted its rate, the contributed rates are ranked and averaged, discarding the highest and lowest 25%, to formulate the LIBOR ''Fix'' for that particular currency and maturity. Since 2005, UBS has been a member of the Contributor Panels for the Dollar LIBOR, Yen LIBOR, Euro LIBOR, Swiss Franc LIBOR, and Pound Sterling LIBOR.

20. UBS has also been a member of the Contributor Panel for the Euro Interbank Offered Rate (Euribor) since 2005. The European Banking Federation (EBF) oversees the Euribor reference rate which is the rate expected to be offered by one prime bank to another for Euro interbank term deposits within the Euro zone. The Euribor Contributor Panel bank rate submissions are ranked, and the highest and lowest 15% of all the submissions are excluded from the calculation. The Euribor fix is then formulated using the average of the remaining rate submissions.

21. In addition, UBS was also a member of the Contributor Panel for the Euroyen TIBOR from at least 2005 until 2012. The Japanese Bankers Association (JBA) oversees the TIBOR reference rate. Yen deposits maintained in accounts outside of Japan are referred to as ''Euroyen'' and the prevailing lending market rates between prime banks in the Japan Offshore Market is Euroyen TIBOR. Euroyen TIBOR is calculated by averaging the rate submissions of Contributor Panel members after discarding the two highest and lowest rate submissions. The Euroyen TIBOR rates and the Contributor Panel members' rate submissions are made available worldwide.

22. The SOF also describes the wide-ranging and systematic efforts, practiced nearly on a daily basis, by several UBS employees to manipulate YEN LIBOR in order to benefit UBS's trading positions through internal manipulation within UBS, by using cash brokers to influence other Contributor Panel banks' Yen LIBOR submissions, and by colluding directly with employees at other Contributor Panel banks to influence those banks' Yen LIBOR submissions.

23. The SOF provides that, at various times from at least 2001 through June 2010, certain UBS derivatives traders manipulated submissions for various interest rate benchmarks, and colluded with employees at other banks and cash brokers to influence certain benchmark rates to benefit their trading positions. The SOF explains that the UBS derivatives traders directly and indirectly exercised improper influence over UBS's submissions for LIBOR, Euroyen TIBOR and Euribor. In this regard, those UBS derivatives traders requested, and sometimes directed, that certain UBS benchmark interest submitters submit a particular benchmark interest rate contribution or a higher, lower, or unchanged rate for LIBOR, Euroyen TIBOR, and Euribor that would be beneficial to the traders. These UBS traders' requests for favorable benchmark rates submissions were regularly accommodated by the UBS submitters.[89]

24. The SOF also details how cash brokers [90] were used by certain UBS Yen derivatives traders to distribute misinformation to other Contributor Panel banks regarding Yen LIBOR in order to manipulate Yen LIBOR submissions to the benefit of UBS. The SOF details further how the UBS traders, submitters, supervisors and certain UBS managers, continued to encourage, allow, or participate in the conduct even though they were aware that manipulation of LIBOR submissions was inappropriate and they attempted to conceal the manipulation and obstruct the LIBOR investigation.

25. UBS acknowledges that the SOF is true and correct and that the wrongful acts taken by the participating employees in furtherance of the misconduct set forth above were within the scope of their employment at UBS. Furthermore, UBS acknowledges that the participating employees intended, at least in part, to benefit UBS through the actions described above.

Prior and Anticipated Convictions and Failure To Comply With Section I(g) of PTE 84–14

26. The 2013 Conviction caused the UBS QPAMs to violate Section I(g) of PTE 84–14. On September 13, 2013, the Department granted PTE 2013–09, which allows the UBS QPAMs to rely on the relief provided in PTE 84–14, notwithstanding the 2013 Conviction of UBS Securities Japan.[91] Under PTE 2013–09, the UBS QPAMs must comply with a number of conditions, including the condition in Section I(h) which provides that, ''Notwithstanding the [2013 Conviction], UBS complies with each condition of PTE 84–14, as amended.'' [92] As a result of this requirement, if UBS or one of its affiliates is convicted of another crime (besides the 2013 Conviction) described in Section I(g) of PTE 84–14, then the relief provided by PTE 2013–09 would be unavailable.

27. The 2016 Conviction will cause the UBS QPAMs to violate Section I(g) of PTE 84–14, once a judgment of conviction is entered by the District Court. As a consequence, the UBS QPAMs will not be able to rely upon the exemptive relief provided by PTE 84–14 for a period of ten years as of the 2016 Conviction Date. Furthermore, the 2016 Conviction will also cause Section I(h) of PTE 2013–09 to be violated, as of the 2016 Conviction Date. UBS QPAMs will become ineligible for the relief provided by PTE 84–14 as a result of both the 2013 Conviction and 2016 Conviction. Therefore, the Applicants request a single, new exemption that provides relief for the UBS QPAMs to rely on PTE 84–14 notwithstanding the 2013 Conviction and the 2016 Conviction, effective as of the 2016 Conviction Date.

28. The Department is proposing a five-year exemption herein to allow the UBS QPAMs to rely on PTE 84–14 notwithstanding the Convictions, subject to a comprehensive suite of protective conditions that are designed to protect the rights of the participants and beneficiaries of the ERISA-covered plans and IRAs that are managed by UBS QPAMs.

Elsewhere in the **Federal Register**, the Department is publishing a proposed temporary exemption for UBS QPAMs to rely on PTE 84–14 notwithstanding the Convictions, for a period of up to one year. The temporary exemption will allow the Department to determine whether to grant this proposed five-year exemption, and will protect ERISA-covered plans and IRAs from potential

[89] According to the SOF, UBS personnel on occasion also engaged in the internal manipulation of UBS's interest rate submissions in connection with the Swiss Franc LIBOR, the British Pound Sterling LIBOR, the Euribor, and the U.S. Dollar LIBOR.

[90] Bids and offers for cash are tracked in the market by cash brokers. These cash brokers also act as intermediaries by assisting derivatives and money market traders in arranging transactions between financial institutions.

[91] 78 FR 56740 (September 13, 2013).

[92] Section I(h) of PTE 2013–09, at 78 FR 56741 (September 18, 2013).

losses if such UBS QPAMs suddenly lose their ability to rely on PTE 84–14 with respect to such plans and IRAs. The temporary exemption will be effective from the Conviction Date until the earlier of twelve months from such Conviction Date or until the effective date of a final agency action made by the Department in connection with this proposed five-year exemption. The proposed five-year exemption would supplant the exemptive relief set forth in a temporary exemption, effective as of the date of grant.

29. Finally, excluding the Convictions and the FX Misconduct, UBS represents that it currently does not have a reasonable basis to believe there are any pending criminal investigations involving the Applicants or any of their affiliated companies that would cause a reasonable plan or IRA customer not to hire or retain the institution as a QPAM.

Furthermore, this proposed five-year exemption will not apply to any other conviction(s) of UBS or its affiliates for crimes described in Section I(g) of PTE 84–14. The Department notes that, in such event, the Applicants and their ERISA-covered plan and IRA clients should be prepared to rely on exemptive relief other than PTE 84–14 for any prohibited transactions entered into after the date of such conviction(s), withdraw from any arrangements that solely rely on PTE 84–14 for exemptive relief; or avoid engaging in any such prohibited transactions in the first place.

Remedial Measures Taken by UBS To Address the LIBOR Conduct and FX Misconduct

30. The Applicants represent that UBS took extensive remedial actions and implemented internal control procedures before, during, and after the LIBOR investigations and FX Misconduct, in order to reform its compliance structure and strengthen its corporate culture. UBS represents that it undertook the following structural reforms and compliance enhancements:

Corporate Culture. UBS represents that it has significantly revised and strengthened its Code of Business Conduct and Ethics from approximately 2008 through 2011, and instituted a ''Principles of Behavior'' program from approximately late 2013 through the present. In 2013, UBS adopted a firm-wide definition of ''conduct risk,'' and defined the roles and responsibilities of UBS's business divisions with respect to such conduct risk. In 2013 UBS also enhanced employee supervision policies.

Annual Risk Assessments. Beginning in approximately 2008, UBS instituted annual business and operational risk assessments for each UBS sub-division and for particular risks across the firm, such as fraud risk and market risk.

Coordination of High-Risk Matters and Compliance Reorganization. During 2011 through 2013, UBS established the cross-functional Investigation Sounding Board (ISB) chaired by UBS's Global Head of Litigation and Investigations, which oversees and coordinates all investigations of high risk issues. In 2013, UBS integrated its compliance function and operational risk control functions to avoid gaps in risk coverage.

Transactional and Employee Monitoring. In 2013, UBS adopted and began to implement an automated system to monitor transactions covering all asset classes. UBS enhanced the monitoring of all email and group messaging, and implemented a system to monitor audio communications including land lines and cell phones. UBS implemented a trader surveillance system, and developed and implemented a tool to monitor and assess employee behavioral indicators. UBS also expanded cross border monitoring, and improved the processes associated with the UBS Group's whistleblowing policy.

Compensation Reformation. From approximately 2008 through 2011, UBS reformed its compensation and incentives structure, including longer deferred compensation periods, greater claw-back and forfeiture provisions. UBS enhanced processes to ensure that disciplinary sanctions and compliance related violations (such as failure to complete training) are considered when determining employee compensation and in an individual's performance review.

Corporate Reforms. In October 2012, UBS announced a transformation of the Investment Bank—where the LIBOR and FX Misconduct occurred—by reducing the size and complexity of the Investment Bank to ensure it can operate within strict risk and financial resource limitations.

Benchmark Interest Rate Submissions. From 2011 through 2013, UBS created a dedicated, independent benchmark submissions team and index group segregated from the for-profit activities of the bank. UBS also imposed appropriate communications firewalls between those functions of the bank, and implemented strict controls and procedures for determining benchmark submissions. UBS enhanced supervisory oversight of benchmark and indices submissions, and implemented appropriate monitoring systems to identify unsubstantiated submissions.

Risk Management and Control. In 2013, UBS adopted or strengthened firm-wide policies that set forth and established: Standards for market conduct; a ''zero tolerance'' approach to fraud; standard approaches for fraud risk management and issue escalation across the firm; a firm-wide approach to identifying, managing, and escalating actual and potential conflicts of interest; and key principles to ensure that UBS complies with all applicable competition laws.

Front Office Processes. UBS invested approximately $100 million to address the FX business conduct and control deficiencies identified during the FX investigation, including initiating continuous transaction monitoring and detailed time stamping of orders and implementing controls, principles and systems similar to those required by the regulated markets for its FX business. UBS states that it has: Standardized the FX fixing order process; updated chatroom standards and controls; prohibited the use of mobile phones on trading floors; implemented new requirements for client and market conduct, behavior, and communications; established enhanced supervisory procedures; and required all Investment Bank personnel to take market conduct training.

31. Furthermore, the Applicants represent that UBS took disciplinary action against forty-four individuals in connection with the LIBOR misconduct, and against sixteen individuals in connection with the FX Misconduct. The individuals involved in the disciplinary actions included traders, benchmark submitters, compliance personnel, salespeople and managers. The disciplinary actions encompassed the termination or separation of thirty employees and also included financial consequences, such as forfeiture of deferred compensation, loss of bonuses and bonus reductions.

Statutory Findings—In the Interest of Affected ERISA Plans and IRAs

32. The Applicants represent that the requested exemption is in the interest of affected plans and their participants and beneficiaries because it will enable ERISA plan and IRA clients to have the opportunity to enter into transactions that are beneficial to the plan and may otherwise be prohibited or more costly. The Applicants maintain that if the exemption request is denied, the UBS QPAMs will be unable to cause ERISA-covered plan clients to engage in many routine and standard transactions that occur across many asset classes. According to the Applicants, these

transactions encompass the following asset classes:

Real Estate. UBS QPAMs manage approximately $1.4 billion of real estate assets in a separate account as an ERISA section 3(38) investment manager for a large multiemployer pension plan with many participating employers (and therefore, numerous parties in interest). The investments constitute equity and debt investments in operating real properties, including apartments, office buildings, retail centers, and industrial buildings. The Applicants represent that they rely on PTE 84–14 for the acquisitions of properties in the separate account, as well as mortgage loans entered into in connection with the purchases of the properties; leases of space in commercial properties and residential leases in apartment properties; property management agreements and agreements with vendors providing services at the properties (*e.g.* janitorial services); and sales to potential buyers of the properties.

Alternative Investments. The UBS QPAMs manage three hedge funds of funds that hold assets deemed to constitute ''plan assets'' under ERISA, with approximately $825 million under management. The Applicants state that they rely on PTE 84–14 to enter into and manage the credit facilities totaling approximately $56 million entered into by the funds.

Derivatives. The UBS QPAMs manage approximately $8.3 billion of assets for ERISA plan separate account clients and plan assets funds whose investment guidelines permit or require investment in derivatives contracts documented through International Swaps and Derivatives Association, Inc. (ISDA) agreements or cleared swap agreements. According to the Applicants, approximately 12 ERISA plan separate account clients and 23 plan asset funds are counterparties to ISDA umbrella agreements and cleared swaps account agreements, and the UBS QPAMs currently manage approximately 350 separate trading lines on behalf of those clients and funds. According to the Applicants, PTE 84–14 is primarily relied upon for these transactions, and the counterparties to these agreements almost always require representations to such effect to be included in the agreements.

Fixed Income. The Applicants state that, as a result of regulatory proposals by the Financial Regulatory Authority (FINRA) and the Federal Reserve of New York Treasury Markers Practice Group, Master Securities Forward Transaction Agreements (MSFTAs) are beginning to be required to be in place in order to enter into several broad categories of agency mortgage-backed securities transactions. According to the Applicants, similar to ISDAs, the counterparties to MSFTAs universally require UBS QPAMs to represent that they can rely on PTE 84–14, making it impossible for the UBS QPAMs to execute such transactions on behalf of their ERISA plan and IRA clients. The UBS QPAMs manage approximately $5.3 billion of assets for ERISA separate account clients and plan asset funds whose investment guidelines permit these types of transactions, of which approximately $25 million has been invested in these types of fixed income transactions.

Equity Investments. The Applicants state that, although direct investments in equities typically do not require reliance on PTE 84–14, certain related transactions do, such as futures contracts. Moreover, according to the Applicants, even when another exemption is available for equity investments, ERISA plan and IRA clients may not want to retain an investment manager that cannot rely on PTE 84–14 for the reasons discussed above.

OCIO Services. The Applicants explain that in addition to providing investment management services, the UBS QPAMs also provide outsourced chief investment officer (OCIO) services to a number of ERISA plan clients, one of which, to the Applicants knowledge, is the largest ERISA plan to enter into an OCIO arrangement. According to the Applicants, OCIO services generally provide that UBS has the authority to manage a plan's entire investment portfolio, including selecting and negotiating contracts with other investment managers, allocating assets, developing investment policies, assisting with regulatory reporting, and advising plan fiduciaries. The Applicants represent that PTE 84–14 is the only exemption the UBS QPAMs can rely on for the large OCIO ERISA plan client because no other exemptions are available for transactions involving futures, derivatives, and other investments that are not widely-traded.

33. The Applicants represent that, if the exemption request is denied, and ERISA plan and IRA clients leave the UBS QPAMs, these clients would typically incur transition costs associated with identifying appropriate replacement investment managers and liquidating and re-investing the assets currently managed by the UBS QPAMs. The Applicants estimate that the aggregate transition costs for liquidating and re-investing of each asset class for UBS's ERISA plan and IRA clients would be approximately $280 million.[93] These cost estimates are described below:

Real Estate. The Applicants estimate transition costs of 1,152 basis points for the $1.4 billion of ERISA plan and IRA real estate assets under UBS QPAMs' management. These costs include the losses incurred from selling properties for 90 cents on the dollar, closing costs of 1.5 percent of the sale price and mortgage prepayment fees of one percent of the outstanding mortgages. This would result in a total estimated cost of $160 million for the real estate assets, all of which would be absorbed by one ERISA plan client.

Alternative Investments. UBS states that, combined with early redemption penalties,[94] the cost of liquidating the alternative investments managed by UBS QPAMs on behalf of ERISA-covered plans and IRAs would be 212 basis points of the NAV for a total cost of about $69 million (of which approximately $58 million would be to one ERISA plan client).

Fixed Income. According to the Applicants, the approximate transition costs for liquidating domestic and international fixed income investments is estimated by the Applicants to be $48 million. The Applicants explain that they estimated the costs of liquidating domestic and international bonds using Barclays Capital's ''liquidity cost score'' methodology (LCS), which reflects the percentage of a bond's price that is estimated to be incurred in transaction costs in a standard institutional transaction. The Applicants note that the LCS is primarily driven by the liquidity of the market, but is also impacted by other factors, including the time to maturity for the bond. Using LCS, the Applicants state that liquidating and re-investing fixed income products, emerging market debt securities, and fixed income funds would result in transition costs,

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[93] The Applicants state that the estimates that UBS developed do not assume a ''fire sale'' of any assets; rather, they assume that assets would be liquidated quickly as reasonably possible consistent with the UBS QPAMs' fiduciary obligations to their ERISA plan clients.

[94] The Department notes that, if this exemption and the related temporary exemption were granted, compliance with the condition in Section I(j) would require the UBS QPAMs to clearly demonstrate that any ''early redemption penalties'' 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 . . . .'' In addition, under Section I(j), the UBS QPAMs would have to hold their plan customers harmless for any losses attributable to, inter alia, any prohibited transactions or violations of the duties of prudence and loyalty.

respectively, of 94, 91, and 97 basis points.[95]

Equities. The Applicants state that UBS' investment professionals conducted trading simulations to determine the impact of selling the aggregate block of each class of equity securities currently held by the UBS QPAMs on behalf of their clients. According to the Applicants, the trading simulations yielded transition cost assumptions of 32 basis points for U.S. large-cap equities; 79 basis points for U.S. small-cap equities; 19 basis points for global equities; 40 basis points for emerging market equities; and 17 basis points for equity funds. The Applicants represent that the total estimated costs for liquidating equities held by UBS QPAMs' ERISA plan and IRA clients would be approximately $2.5 million.

Derivatives. Lastly, the Applicants estimate the transition costs for derivative investments such as swaps, forwards, futures, and options would be approximately $2.3 million. The Applicants also used the LCS methodology to arrive at a transition cost assumption of 10 basis points for credit default swaps; 6 basis points for interest rate swaps; 35 basis points for total return swaps; and 4 basis points for fixed income futures. Transition costs for equities futures were assumed to be 6 basis points given the liquidity of the indices underlying those transactions. Finally, the Applicants note that, because of the liquidity associated with currency forwards and the relatively small amount of the UBS QPAMs' investments in equity and fixed income options, UBS assumed that the costs of liquidating and re-investing those assets would be negligible.

OCIO Relationship. In the absence of granted relief, the Applicants estimate that it would take this large OCIO ERISA plan client 18 to 24 months to find providers to replicate all the OCIO services provided by the UBS QPAMs. UBS represents that this estimate is consistent with the following projections for the steps this plan client would need to take to secure and fully implement replacement OCIO services: (i) 6–9 months to issue a Request for Proposals, receive and evaluate proposals, and select a new service provider(s); (ii) 3–6 months to negotiate a contract and complete other necessary transition tasks (*e.g.,* establishing custodial accounts) with the new service provider(s); and (iii) 9–12 months for the new service provider(s) to implement its own investment program, which would include evaluating the client's existing investments and performing due diligence on existing sub-managers. The Applicants note that the estimate is also consistent with the amount of time it took UBS to establish the current OCIO relationship with this client. The Applicants represent in addition to these transition costs, the ERISA plan client would pay substantially more in fees than it is currently paying if it had to obtain all these services from a variety of different providers.

Statutory Findings—Protective of the Rights of Participants of Affected Plans and IRAs

34. The Applicants have proposed certain conditions it believes are protective of ERISA-covered plans and IRAs with respect to the transactions described herein. The Department has determined to revise and supplement the proposed conditions so that it can make its required finding that the requested five-year exemption is protective of the rights of participants and beneficiaries of affected plans and IRAs.

35. Several of these conditions underscore the Department's understanding, based on the Applicant's representations, that the affected UBS QPAMs were not involved in the FX Misconduct or the misconduct that is the subject of the Convictions. For example, the five-year exemption, if granted as proposed, mandates that the UBS QPAMs (including their officers, directors, agents other than UBS, and employees of such UBS QPAMs) did not know of, have reason to know of, or participate in: (1) The FX Misconduct; or (2) the criminal conduct that is the subject of the Convictions (for purposes of this requirement, ''participate in'' includes an individual's knowing or tacit approval of the FX Misconduct and the misconduct that is the subject of the Convictions). Under this the proposed five-year exemption, the term ''Convictions'' includes the 2013 Conviction and the 2016 Conviction. The term ''2013 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 for the District of Connecticut for one count of wire fraud in violation of Title 18, United Sates Code, sections 1343 and 2 in connection with submission of YEN London Interbank Offered Rates and other benchmark interest rates. The term ''2016 Conviction'' means the anticipated judgment of conviction against UBS AG 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. Furthermore, for all purposes under the proposed five-year exemption, ''conduct'' of any person or entity that is the ''subject of [a] Conviction'' encompasses any conduct of UBS and/or their personnel, that is described in the Plea Agreement, (including Exhibits 1 and 3 attached thereto), 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 (and attachments thereto), and other official regulatory or judicial factual findings that are a part of this record. The proposed five-year exemption defines the FX Misconduct as the conduct engaged in by UBS personnel described in Exhibit 1 of the Plea Agreement entered into between UBS AG 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.

36. Further, the UBS QPAMs (including their officers, directors, agents other than UBS, and employees of such UBS QPAMs) may not have received direct compensation, or knowingly have received indirect compensation, in connection with: (1) The FX Misconduct; or (2) the criminal conduct that is the subject of the Convictions.

37. The Department expects that UBS QPAMs will rigorously ensure that the individuals associated with the UBS misconduct will not be employed or knowingly engaged by such QPAMs. In this regard, the proposed five-year exemption mandates that the UBS QPAMs will not employ or knowingly engage any of the individuals that participated in: (1) The FX Misconduct or (2) the criminal conduct that is the subject of the Convictions. For purposes of this condition, ''participated in'' includes an individual's knowing or tacit approval of the FX Misconduct or the conduct that is the subject of Convictions. Further, a UBS QPAM will not use its authority or influence to direct an ''investment fund,'' (as defined in Section VI(b) of PTE 84–14) that is subject to ERISA or the Code and managed by such UBS QPAM, to enter into any transaction with UBS or UBS Securities Japan, nor otherwise engage UBS or UBS Securities Japan to provide

[95] The Applicants assume that the costs of liquidating and re-investing cash equivalent and currency holdings would be negligible, given the liquidity associated with those assets.

additional services to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or services may otherwise be within the scope of relief provided by an administrative or statutory exemption.

38. The UBS QPAMs must comply with each condition of PTE 84–14, as amended, with the sole exceptions of the violations of Section I(g) of PTE 84–14 that are attributable to the Convictions. Further, any failure of the UBS QPAMs to satisfy Section I(g) of PTE 84–14 must result solely from the Convictions.

39. No relief will be provided by this five-year exemption to the extent a UBS QPAM exercised authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA) in a manner that it knew or should have known would: Further the FX Misconduct or the criminal conduct that is the subject of the Convictions; or cause the UBS QPAM, its affiliates or related parties to directly or indirectly profit from the FX Misconduct or the criminal conduct that is the subject of the Convictions. The conduct that is the subject of the Convictions includes that which is described in the Plea Agreement (including Exhibits 1 and 3 attached thereto) and 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 (and attachments thereto). The FX Misconduct engaged in by UBS personnel includes that which is described in Exhibit 1 of the Plea Agreement (Factual Basis for Breach) entered into between UBS AG 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. Further, no five-year relief will be provided to the extent UBS, or UBS Securities Japan, provides any discretionary asset management services to ERISA-covered plans or IRAs or otherwise act as a fiduciary with respect to ERISA-covered plan or IRA assets.

40. *Policies.* The Department believes that robust policies and training are warranted where, as here, extensive criminal misconduct has occurred within a corporate organization that includes one or more QPAMs managing plan investments in reliance on PTE 84–14. Therefore, this proposed five-year exemption requires that each UBS QPAM must immediately develop, implement, maintain, and follow written policies and procedures (the Policies) requiring and reasonably designed to ensure that: The asset management decisions of the UBS QPAM are conducted independently of UBS's corporate management and business activities, including the corporate management and business activities of the Investment Bank division and UBS Securities Japan; the UBS QPAM fully complies with ERISA's fiduciary duties and ERISA and the Code's prohibited transaction provisions and does not knowingly participate in any violations of these duties and provisions with respect to ERISA-covered plans and IRAs; the UBS QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs; any filings or statements made by the UBS QPAM to regulators, including but not limited to, the Department of Labor, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA-covered plans or IRAs are materially accurate and complete, to the best of such QPAM's knowledge at that time; the UBS QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plan and IRA clients; and the UBS QPAM complies with the terms of this proposed five-year exemption. Any violation of, or failure to comply with, the Policies must be corrected promptly upon discovery, and any such violation or compliance failure not promptly corrected must be reported, upon the discovery of such failure to promptly correct, in writing, to appropriate corporate officers, the head of Compliance and the General Counsel of the relevant UBS QPAM (or their functional equivalent), the independent auditor responsible for reviewing compliance with the Policies, and an appropriate fiduciary of any affected ERISA-covered plan or IRA that is independent of UBS.[96] A UBS QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance promptly when discovered or when it reasonably should have known of the noncompliance (whichever is earlier), and provided that it reports such instance of noncompliance as explained above.

41. *Training.* The Department has also imposed a condition that requires each UBS QPAM to immediately develop and implement a program of training (the Training), conducted at least annually, for all relevant UBS QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must be set forth in the Policies and at a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions) and ethical conduct, the consequences for not complying with the conditions of this proposed five-year exemption (including the loss of the exemptive relief provided herein), and prompt reporting of wrongdoing. Furthermore, the Training must be conducted by an independent professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code.

42. *Independent Transparent Audit.* The Department views a rigorous, transparent audit that is conducted by an independent party as essential to ensuring that the conditions for exemptive relief described herein are followed by the UBS QPAMs. Therefore, Section I(i) of this proposed five-year exemption requires that each UBS QPAM submits to an audit conducted annually by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and the UBS QPAM's compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. Each annual audit must cover a consecutive twelve month period starting with the twelve month period that begins on the date of the 2016 Conviction (the Initial Audit Period). If this proposed five-year exemption is granted within one year of the effective date of the proposed temporary exemption for UBS QPAMs (Exemption Application No. D–11863), then the Initial Audit Period will cover the period of time during which such temporary exemption is effective and a portion of the time during which this proposed five-year exemption is effective. In such event, the audit terms contained in Section I(i) of this five-year exemption will supersede the terms of Section I(i) of the temporary exemption. Additionally, in determining compliance with the conditions for relief in the temporary exemption and this five-year exemption including the

[96] With respect to any ERISA-covered plan or IRA sponsored by an ''affiliate'' (as defined in Part VI(d) of PTE 84–14) of UBS or beneficially owned by an employee of UBS or its affiliates, such fiduciary does not need to be independent of UBS.

Policies and Training requirements, for purposes of conducting the audit, the auditor will rely on the conditions for exemptive relief as then applicable to the respective periods under audit. For time periods prior to the Conviction Date and covered under PTE 2013–09, the audit requirements in Section (g) of PTE 2013–09 will remain in effect such for time periods. Each annual audit must be completed no later than six (6) months after the period to which the audit applies.

43. The audit condition requires that, to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, and as permitted by law, each UBS QPAM and, if applicable, UBS, will grant the auditor unconditional access to its business, including, but not limited to: Its computer systems; business records; transactional data; workplace locations; training materials; and personnel.

44. The auditor's engagement must specifically require the auditor to determine whether each UBS QPAM has complied with the Policies and Training conditions described herein, and must further require the auditor to test each UBS QPAM's operational compliance with the Policies and Training.

45. On or before the end of the relevant period described in Section I(i)(1) for completing the audit, the auditor must issue a written report (the Audit Report) to UBS and the UBS QPAM to which the audit applies that describes the procedures performed by the auditor during the course of its examination. The Audit Report must include the auditor's specific determinations regarding: The adequacy of the UBS QPAM's Policies and Training; the UBS QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective UBS QPAM's noncompliance with the written Policies and Training.

Any determination by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective UBS QPAM must be promptly addressed by such UBS QPAM, and any action taken by such UBS QPAM to address such recommendations must be included in an addendum to the Audit Report. Any determination by the auditor that the respective UBS QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that the UBS QPAM has complied with the requirements under this subsection must be based on evidence that demonstrates the UBS QPAM has actually implemented, maintained, and followed the Policies and Training required by this proposed five-year exemption. Finally, the Audit Report must address the adequacy of the Annual Review required under this exemption and the resources provided to the Compliance Officer in connection with such Annual Review.

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

This proposed five-year exemption requires that certain senior personnel of UBS review the Audit Report, make certain certifications, and take various corrective actions. In this regard, the General Counsel, or one of the three most senior executive officers of the UBS QPAM to which the Audit Report applies, must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this proposed five-year exemption; addressed, corrected, or remedied any inadequacy identified in the Audit Report; and determined that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this proposed five-year exemption and with the applicable provisions of ERISA and the Code.

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

In order to create a more transparent record in the event that the proposed relief is granted, each UBS QPAM must provide its certified Audit Report to the Department no later than 45 days following its completion. The Audit Report will be part of the public record regarding this proposed five-year exemption. Furthermore, each UBS QPAM must make its Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of an ERISA-covered plan or IRA, the assets of which are managed by such UBS QPAM.

48. Additionally, each UBS QPAM and the auditor must submit to the Department any engagement agreement entered into pursuant to the engagement of the auditor under this proposed five-year exemption; and any engagement agreement entered into with any other entity retained in connection with such QPAM's compliance with the Training or Policies conditions of this proposed five-year exemption no later than six (6) months after the effective date of this five-year exemption (and one month after the execution of any agreement thereafter). Finally, if the five-year exemption is granted, the auditor must provide the Department, upon request, all of the workpapers created and utilized in the course of the audit, including, but not limited to: The audit plan; audit testing; identification of any instance of noncompliance by the relevant UBS QPAM; and an explanation of any corrective or remedial action taken by the applicable UBS QPAM.

In order to enhance oversight of the compliance with the exemption, UBS must notify the Department at least 30 days prior to any substitution of an auditor, and UBS must demonstrate to the Department's satisfaction that any new auditor is independent of UBS, experienced in the matters that are the subject of the five-year exemption, and capable of making the determinations required of this five-year exemption.

49. *Contractual Obligations.* This five-year exemption requires UBS QPAMs to enter into certain contractual obligations in connection with the provision of services to their clients. It is the Department's view that the condition in Section I(j) is essential to the Department's ability to make its findings that the proposed five-year exemption is protective of the rights of the participants and beneficiaries of ERISA-covered plan and IRA clients. In this regard, effective as of the effective date of this five-year exemption with respect to any arrangement, agreement, or contract between a UBS QPAM and an ERISA-covered plan or IRA for which a UBS QPAM provides asset management or other discretionary fiduciary services, each UBS QPAM agrees and warrants: To comply with ERISA and the Code, as applicable with respect to such ERISA-covered plan or IRA; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions); to comply with the standards of prudence and loyalty set forth in section 404 of ERISA, as applicable; and to indemnify and hold

harmless the ERISA-covered plan or IRA for any damages resulting from a UBS QPAM's violation of applicable laws, a UBS QPAM's breach of contract, or any claim brought in connection with the failure of such UBS QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Convictions. Furthermore, UBS QPAMs must agree not to require (or otherwise cause) the ERISA-covered plan or IRA to waive, limit, or qualify the liability of the UBS QPAM for violating ERISA or the Code or engaging in prohibited transactions; not to require the ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the UBS QPAM for violating ERISA or engaging in prohibited transactions, except for violations or prohibited transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of UBS; not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the UBS QPAM (including 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 as a result of an actual lack of liquidity of the underlying assets, provided that such restrictions are applied consistently and in like manner to all such investors; not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors; and not to include exculpatory provisions disclaiming or otherwise limiting liability of the UBS QPAMs for a violation of such agreement's terms, except 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.

50. Within four (4) months of the effective date of this proposed five-year exemption each UBS QPAM will provide a notice of its obligations under this Section I(j) to each ERISA-covered plan and IRA for which a UBS QPAM provides asset management or other discretionary fiduciary services. For all other prospective ERISA-covered plan and IRA clients for which a UBS QPAM provides asset management or other discretionary fiduciary services, the UBS QPAM will agree in writing to its obligations under this Section I(j) in an updated investment management agreement or advisory agreement between the UBS QPAM and such clients or other written contractual agreement.

51. *Notice Requirements.* The proposed five-year exemption contains extensive notice requirements, some of which extend not only to ERISA-covered plan and IRA clients of UBS QPAMs, but which also apply to the non-Plan clients of UBS QPAMs. In this regard, the Department understands that many firms may promote their ''QPAM'' designation in order to earn asset management business, including business from non-ERISA plans. Therefore, in order to fully inform any clients that may have retained UBS QPAMs as asset managers because such UBS QPAMs have represented themselves as able to rely on PTE 84–14, the Department has determined to condition exemptive relief upon the following notice requirements.

Within fifteen (15) days of the publication of this proposed five-year exemption in the **Federal Register**, each UBS QPAM must provide a notice of the proposed five-year exemption, along with a separate summary describing the facts that led to the Convictions (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that each Conviction separately results in a failure to meet a condition in PTE 84–14, to each sponsor of an ERISA-covered plan and each beneficial owner of an IRA for which a UBS QPAM provides asset management or other discretionary fiduciary services, or the sponsor of an investment fund in any case where a UBS QPAM acts only as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests. In the event that this proposed five-year exemption is granted, the **Federal Register** copy of the notice of final five-year exemption must be delivered to such clients within sixty (60) days of its publication in the **Federal Register**, and may be delivered electronically (including by an email that has a link to the exemption). Any prospective clients for which a UBS QPAM provides asset management or other discretionary fiduciary services must receive the proposed and final five-year exemptions with the Summary and the Statement prior to, or contemporaneously with, the client's receipt of a written asset management agreement or other contractual agreement from the UBS QPAM.

In addition, each UBS QPAM will provide a **Federal Register** copy of the proposed five-year exemption, a **Federal Register** copy of the final five-year exemption; the Summary; and the Statement to each: (A) Current Non-Plan Client within four (4) months of the effective date, if any, of a final five-year exemption; and (B) Future Non-Plan Client prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the UBS QPAM. A ''Current Non-Plan Client'' is a client of a UBS QPAM that: Is neither an ERISA-covered plan nor an IRA; has assets managed by the UBS QPAM as of the effective date, if any, of a final five-year exemption; and has received a written representation (qualified or otherwise) from the UBS QPAM that such UBS QPAM qualifies as a QPAM or qualifies for the relief provided by PTE 84–14. A ''Future Non-Plan Client'' is a prospective client of a UBS QPAM that: Is neither an ERISA-covered plan nor an IRA; has assets managed by the UBS QPAM after (but not as of) the effective date, if any, of a final five-year exemption; and has received a written representation (qualified or otherwise) from the UBS QPAM that such UBS QPAM qualifies as a QPAM, or qualifies for the relief provided by PTE 84–14.

52. This proposed five-year exemption also requires UBS to designate a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. The Compliance Officer will have several obligations that it must comply with, as described in Section I(m) above. These include conducting an annual review (the Annual Review) to determine the adequacy and effectiveness of the implementation of the Policies and Training; preparing a written report for each Annual Review (each, an Annual Report) that, among other things, summarizes his or her material activities during the preceding year; and sets forth any instance of noncompliance discovered during the preceding year, and any related corrective action. Each Annual Report must be provided to appropriate corporate officers of UBS and each UBS QPAM to which such

report relates; the head of Compliance and the General Counsel (or their functional equivalent) of the relevant UBS QPAM; and must be made unconditionally available to the independent auditor described above.

53. Each UBS QPAM must maintain records necessary to demonstrate that the conditions of this proposed five-year exemption have been met, for six (6) years following the date of any transaction for which such UBS QPAM relies upon the relief in the five-year exemption.

54. Certain conditions of the proposed five-year exemption are directed UBS and UBS Securities Japan. These requirements were included in PTE 2013–09 as conditions to providing exemptive relief and have been included in this proposed five-year exemption. In this regard, UBS must impose internal procedures, controls, and protocols on UBS Securities Japan to: (1) Reduce the likelihood of any recurrence of conduct that that is the subject of the 2013 Conviction, and (2) comply in all material respects with the Business Improvement Order, dated December 16, 2011, issued by the Japanese Financial Services Authority. Additionally, UBS must comply in all material respects with the audit and monitoring procedures imposed on UBS by the United States Commodity Futures Trading Commission Order, dated December 19, 2012.

55. The proposed five-year exemption requires that, during the effective period of this proposed five-year exemption UBS: (1) Immediately discloses to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) that UBS or an affiliate enters into with the U.S. Department of Justice, to the extent such DPA or NPA involves conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA; and (2) immediately provides the Department any information requested by the Department, as permitted by law, regarding the agreement and/or the conduct and allegations that led to the agreement. After review of the information, the Department may require UBS, its affiliates, or related parties, as specified by the Department, to submit a new application for the continued availability of relief as a condition of continuing to rely on this exemption. In this regard, the UBS QPAM (or other party submitting the application) will have the burden of justifying the relief sought in the application. If the Department denies the relief requested in the new application, or does not grant such relief within twelve months of application, the relief described herein is revoked as of the date of denial or as of the expiration of the twelve-month period, whichever date is earlier.

56. Finally, each UBS QPAM, in its agreements with ERISA-covered plan and IRA clients, or in other written disclosures provided to ERISA-covered plan and IRA clients, within 60 days prior to the initial transaction upon which relief hereunder is relied, will clearly and prominently inform the ERISA-covered plan or IRA client that the client has the right to obtain copies of the QPAM's written Policies adopted in accordance with this five-year exemption.

Statutory Findings—Administratively Feasible

57. The Applicants represents that the proposed five-year exemption, is administratively feasible because it does not require any monitoring by the Department but relies on an independent auditor to determine that the exemption conditions are being complied with. Furthermore, the requested five-year exemption does not require the Department's oversight because, as a condition of this proposed five-year exemption, neither UBS nor UBS Securities Japan will provide any fiduciary or QPAM services to ERISA-covered plans and IRAs.

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

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons within fifteen (15) days of the publication of the notice of proposed five-year exemption in the **Federal Register**. The notice will be provided to all interested persons in the manner described in Section I(k)(1) of this proposed five-year exemption and will contain the documents described therein and a supplemental statement, as required pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on and to request a hearing with respect to the pending exemption. All written comments and/or requests for a hearing must be received by the Department within forty five (45) days of the date of publication of this proposed five-year exemption in the **Federal Register**. All comments will be made available to the public.

Warning: If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Mica of the Department, telephone (202) 693–8402. (This is not a toll-free number.)

Deutsche Investment Management Americas Inc. (DIMA) and Certain Current and Future Asset Management Affiliates of Deutsche Bank AG (Collectively, the Applicant or the DB QPAMs), Located in New York, New York

[Exemption Application No. D–11908]

Proposed Five-Year Exemption

The Department is considering granting a five-year exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).[97]

Section I: Covered Transactions

If the proposed five-year exemption is granted, certain asset managers with specified relationships to Deutsche Bank AG (hereinafter, the DB QPAMs, as further defined in Section II(b)) will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Exemption 84–14 (PTE 84–14),[98] notwithstanding: (1) The ''Korean Conviction'' against Deutsche Securities Korea Co., a South Korean affiliate of Deutsche Bank AG (hereinafter, DSK, as further defined in Section II(f)), entered on January 23, 2016; and (2) the ''US Conviction'' against DB Group Services UK Limited, an affiliate of Deutsche Bank based in the United Kingdom (hereinafter, DB Group Services, as

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

[98] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

further defined in Section II(e)), scheduled to be entered on April 3, 2017 (collectively, the Convictions, as further defined in Section II(a)),[99] for a period of five years beginning on the later of: The U.S. Conviction Date (as further defined in Section II(d)); or the date on which a grant notice is published in the **Federal Register**, provided that the following conditions are satisfied:

(a) The DB QPAMs (including their officers, directors, agents other than Deutsche Bank, and employees of such DB QPAMs) did not know of, have reason to know of, or participate in the criminal conduct of DSK and DB Group Services that is the subject of the Convictions (for purposes of this Section I(a), ''participate in'' includes the knowing or tacit approval of the misconduct underlying the Convictions);

(b) The DB QPAMs (including their officers, directors, agents other than Deutsche Bank, and employees of such DB QPAMs) did not receive direct compensation, or knowingly receive indirect compensation in connection with the criminal conduct that is the subject of the Convictions;

(c) The DB QPAMs will not employ or knowingly engage any of the individuals that participated in the criminal conduct that is the subject of the Convictions (for the purposes of this Section I(c), ''participated in'' includes the knowing or tacit approval of the misconduct underlying the Convictions);

(d) A DB QPAM will not use its authority or influence to direct an ''investment fund'' (as defined in Section VI(b) of PTE 84–14) that is subject to ERISA or the Code and managed by such DB QPAM to enter into any transaction with DSK or DB Group Services, or engage DSK or DB Group Services to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e) Any failure of the DB QPAMs to satisfy Section I(g) of PTE 84–14 arose solely from the Convictions;

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

(g) DSK and DB Group Services will not provide discretionary asset management services to ERISA-covered plans or IRAs, nor will otherwise act as a fiduciary with respect to ERISA-covered plan or IRA assets;

(h)(1) Each DB QPAM must immediately develop, implement, maintain, and follow written policies and procedures (the Policies) requiring and reasonably designed to ensure that:

(i) The asset management decisions of the DB QPAM are conducted independently of Deutsche Bank's corporate management and business activities, including the corporate management and business activities of DB Group Services and DSK;

(ii) The DB QPAM fully complies with ERISA's fiduciary duties and with ERISA and the Code's prohibited transaction provisions, and does not knowingly participate in any violation of these duties and provisions with respect to ERISA-covered plans and IRAs;

(iii) The DB QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs;

(iv) Any filings or statements made by the DB 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 ERISA-covered plans or IRAs are materially accurate and complete, to the best of such QPAM's knowledge at that time;

(v) The DB QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plan and IRA clients;

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

(vii) Any violation of, or failure to comply with, an item in subparagraphs (ii) through (vi), is corrected promptly upon discovery, and any such violation or compliance failure not promptly corrected is reported, upon the discovery of such failure to promptly correct, in writing, to appropriate corporate officers, the head of compliance and the General Counsel (or their functional equivalent) of the relevant DB QPAM, the independent auditor responsible for reviewing compliance with the Policies, and an appropriate fiduciary of any affected ERISA-covered plan or IRA that is independent of Deutsche Bank; however, with respect to any ERISA-covered plan or IRA sponsored by an ''affiliate'' (as defined in Section VI(d) of PTE 84–14) of Deutsche Bank or beneficially owned by an employee of Deutsche Bank or its affiliates, such fiduciary does not need to be independent of Deutsche Bank. A DB QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance promptly when discovered, or when it reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (vii);

(2) Each DB QPAM must immediately develop and implement a program of training (the Training), conducted at least annually, for all relevant DB QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must:

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

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

(i)(1) Each DB QPAM submits to an audit conducted annually by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and the DB QPAM's compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. Each annual audit must cover a consecutive twelve month period beginning on the effective date of this five-year exemption and must be completed no later than six (6) months after the period to which the audit applies;

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

(2) 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 as permitted by law, each DB QPAM and, if applicable, Deutsche Bank, will grant the auditor unconditional access to its business, including, but not limited to: Its computer systems; business records; transactional data; workplace locations; training materials; and personnel;

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

(4) The auditor's engagement must specifically require the auditor to test each DB QPAM's operational compliance with the Policies and Training. In this regard, the auditor must test a sample of each QPAM's transactions involving ERISA-covered plans and IRAs sufficient in size and nature to afford the auditor a reasonable basis to determine the operational compliance with the Policies and Training;

(5) For each audit, on or before the end of the relevant period described in Section I(i)(1) for completing the audit, the auditor must issue a written report (the Audit Report) to Deutsche Bank and the DB QPAM to which the audit applies that describes the procedures performed by the auditor during the course of its examination. The Audit Report must include the auditor's specific determinations regarding:

(i) The adequacy of the DB QPAM's Policies and Training; the DB QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective DB QPAM's noncompliance with the written Policies and Training described in Section I(h) above. Any determination by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective DB QPAM must be promptly addressed by such DB QPAM, and any action taken by such DB QPAM to address such recommendations must be included in an addendum to the Audit Report (which addendum is completed prior to the certification described in Section I(i)(7) below). Any determination by the auditor that the respective DB QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that the DB QPAM has complied with the requirements under this subsection must be based on evidence that demonstrates the DB QPAM has actually implemented, maintained, and followed the Policies and Training required by this five-year exemption. Furthermore, the auditor must not rely on the Annual Report created by the Compliance Officer as described in Section I(m) below in lieu of independent determinations and testing performed by the auditor as required by Section I(i)(3) and (4) above; and

(ii) The adequacy of the Annual Review described in Section I(m) and the resources provided to the Compliance officer in connection with such Annual Review;

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

(7) With respect to each Audit Report, the General Counsel, or one of the three most senior executive officers of the DB 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; addressed, corrected, or remedied any inadequacy identified in the Audit Report; and determined that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this proposed five-year exemption and with the applicable provisions of ERISA and the Code;

(8) The Risk Committee of Deutsche Bank's Board of Directors is provided a copy of each Audit Report; and a senior executive officer with a direct reporting line to the highest ranking legal compliance officer of Deutsche Bank must review the Audit Report for each DB QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report;

(9) Each DB QPAM provides its certified Audit Report, by regular mail to: The Department's Office of Exemption Determinations (OED), 200 Constitution Avenue NW., Suite 400, Washington, DC 20210, or by private carrier to: 122 C Street NW., Suite 400, Washington, DC 20001–2109, no later than 45 days following its completion. The Audit Report will be part of the public record regarding this five-year exemption. Furthermore, each DB QPAM must make its Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of an ERISA-covered plan or IRA, the assets of which are managed by such DB QPAM;

(10) Each DB QPAM and the auditor must submit to OED: (A) Any engagement agreement(s) entered into pursuant to the engagement of the auditor under this exemption; and (B) any engagement agreement entered into with any other entity retained in connection with such QPAM's compliance with the Training or Policies conditions of this proposed exemption, no later than six (6) months after the effective date of this five-year exemption (and one month after the execution of any agreement thereafter);

(11) The auditor must provide OED, upon request, all of the workpapers created and utilized in the course of the audit, including, but not limited to: The audit plan; audit testing; identification of any instance of noncompliance by the relevant DB QPAM; and an explanation of any corrective or remedial action taken by the applicable DB QPAM; and

(12) Deutsche Bank must notify the Department at least 30 days prior to any substitution of an auditor, except that no such replacement will meet the requirements of this paragraph unless and until Deutsche Bank demonstrates to the Department's satisfaction that such new auditor is independent of Deutsche Bank, experienced in the matters that are the subject of the exemption and capable of making the determinations required of this exemption;

(j) Effective as of the effective date of this five-year exemption, with respect to any arrangement, agreement, or contract between a DB QPAM and an ERISA-covered plan or IRA for which a DB QPAM provides asset management or other discretionary fiduciary services, each DB QPAM agrees and warrants:

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

(2) Not to require (or otherwise cause) the ERISA-covered plan or IRA to waive, limit, or qualify the liability of the DB QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(3) Not to require the ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the DB QPAM for violating ERISA or engaging in prohibited transactions, except for violations or prohibited transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of Deutsche Bank;

(4) Not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the DB QPAM (including 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 as a result of an actual lack of liquidity of the underlying assets, provided that such restrictions are applied consistently and in like manner to all such investors;

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

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the DB QPAM for a violation of such agreement's terms, except 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 Deutsche Bank and its affiliates; and

(7) To indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a violation of applicable laws, a breach of contract, or any claim arising out of the failure of such DB QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Convictions;

(8) Within four (4) months of the effective date of this proposed five-year exemption, each DB QPAM must provide a notice of its obligations under this Section I(j) to each ERISA-covered plan and IRA for which the DB QPAM provides asset management or other discretionary fiduciary services. For all other prospective ERISA-covered plan and IRA clients for which a DB QPAM provides asset management or other discretionary fiduciary services, the DB QPAM must agree in writing to its obligations under this Section I(j) in an updated investment management agreement or advisory agreement between the DB QPAM and such clients or other written contractual agreement;

(k)(1) *Notice to ERISA-covered plan and IRA clients.* Within fifteen (15) days of the publication of this proposed five-year exemption in the **Federal Register**, each DB QPAM will provide a notice of the proposed five-year exemption, along with a separate summary describing the facts that led to the Convictions (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that each Conviction separately results in a failure to meet a condition in PTE 84–14, to each sponsor of an ERISA-covered plan and each beneficial owner of an IRA for which a DB QPAM provides asset management or other discretionary fiduciary services, or the sponsor of an investment fund in any case where a DB QPAM acts only as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests. In the event that this proposed five-year exemption is granted, the **Federal Register** copy of the notice of final five-year exemption must be delivered to such clients within sixty (60) days of its publication in the **Federal Register**, and may be delivered electronically (including by an email that has a link to the exemption). Any prospective clients for which a DB QPAM provides asset management or other discretionary fiduciary services must receive the proposed and final five-year exemptions with the Summary and the Statement prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the DB QPAM; and

(2) *Notice to Non-Plan Clients.* Each DB QPAM will provide a **Federal Register** copy of the proposed five-year exemption, a **Federal Register** copy of the final five-year exemption; the Summary; and the Statement to each: (A) Current Non-Plan Client within four (4) months of the effective date, if any, of a final five-year exemption; and (B) Future Non-Plan Client prior to, or contemporaneously with, the client's receipt of a written asset management agreement, or other written contractual agreement, from the DB QPAM. For purposes of this subparagraph (2), a Current Non-Plan Client means a client of a DB QPAM that: Is neither an ERISA-covered plan nor an IRA; has assets managed by the DB QPAM as of the effective date, if any, of a final five-year exemption; and has received a written representation (qualified or otherwise) from the DB QPAM that such DB QPAM qualifies as a QPAM or qualifies for the relief provided by PTE 84–14. For purposes of this subparagraph (2), a Future Non-Plan Client means a prospective client of a DB QPAM that: Is neither an ERISA-covered plan nor an IRA; has assets managed by the DB QPAM after the effective date, if any, of a final five-year exemption; and has received a written representation (qualified or otherwise) from the DB QPAM that such DB QPAM qualifies as a QPAM or qualifies for the relief provided by PTE 84–14;

(l) The DB QPAMs must comply with each condition of PTE 84–14, as amended, with the sole exceptions of the violations of Section I(g) of PTE 84–14 that are attributable to the Convictions;

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

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

(ii) The Compliance Officer must have a direct reporting line to the highest-ranking corporate officer in charge of legal compliance that is independent of Deutsche Bank's other business lines;

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

(i) The Annual Review includes a review of: Any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the compliance and risk control function (or its equivalent) during the previous year; any material change in the business activities of the DB 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 DB QPAMs;

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

(iii) In each Annual Report, the Compliance Officer must certify in writing that to his or her knowledge: (A) The report is accurate; (B) the Policies and Training are working in a manner which is reasonably designed to ensure that the Policies and Training requirements described herein are met; (C) any known instance of noncompliance during the preceding year and any related correction taken to date have been identified in the Annual Report; (D) the DB QPAMs have complied with the Policies and Training in all respects, and/or corrected any instances of noncompliance in accordance with Section I(h) above; and (E) Deutsche Bank has provided the Compliance Officer with adequate resources, including, but not limited to, adequate staffing;

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

(v) Each Annual Review, including the Compliance Officer's written Annual Report, must be completed at least three (3) months in advance of the date on which each audit described in Section I(i) is scheduled to be completed;

(n) Deutsche Bank disgorged all of its profits generated by the spot/futures-linked market manipulation activities of DSK personnel that led to the Conviction against DSK entered on January 25, 2016, in Seoul Central District Court;

(o) Each DB 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 such DB QPAM relies upon the relief in the exemption;

(p)(1) During the effective period of this five-year exemption, Deutsche Bank immediately discloses to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) entered into by Deutsche Bank or any of its affiliates with the U.S Department of Justice, in connection with conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA; and (2) Immediately provides the Department any information requested by the Department, as permitted by law, regarding such agreement and/or conduct and allegations that led to the agreement. After review of the information, the Department may require Deutsche Bank or its affiliates, as specified by the Department, to submit a new application for the continued availability of relief as a condition of continuing to rely on this exemption. If the Department denies the relief requested in the new application, or does not grant such relief within twelve (12) months of the application, the relief described herein is revoked as of the date of denial or as of the expiration of the twelve month period, whichever date is earlier;

(q) Each DB QPAM, in its agreements with ERISA-covered plan and IRA clients, or in other written disclosures provided to ERISA-covered plan and IRA clients, within 60 days prior to the initial transaction upon which relief hereunder is relied, and then at least once annually, will clearly and prominently inform the ERISA-covered plan and IRA client that the client has the right to obtain copies of the QPAM's written Policies adopted in accordance with this five-year exemption; and

(r) A DB QPAM will not fail to meet the terms of this exemption, solely because a different DB QPAM fails to satisfy a condition for relief under this exemption described in Sections I(c), (d), (h), (i), (j), (k), (l), (o), and (q).

Section II: Definitions

(a) The term ''Convictions'' means (1) the judgment of conviction against DB Group Services, in Case 3:15–cr–00062–RNC to be entered in the United States District Court for the District of Connecticut to a single count of wire fraud, in violation of 18 U.S.C. 1343, and (2) the judgment of conviction against DSK entered on January 25, 2016, in Seoul Central District Court, relating to charges filed against DSK under Articles 176, 443, and 448 of South Korea's Financial Investment Services and Capital Markets Act for spot/futures-linked market price manipulation. For all purposes under this exemption, ''conduct'' of any person or entity that is the ''subject of [a] Conviction'' encompasses any conduct of Deutsche Bank and/or their personnel, that is described in the Plea Agreement (including the Factual Statement thereto), Court judgments (including the judgment of the Seoul Central District Court), criminal complaint documents from the Financial Services Commission in Korea, and other official regulatory or judicial factual findings that are a part of this record;

(b) The term ''DB QPAM'' means a ''qualified professional asset manager'' (as defined in Section VI(a) [100] of PTE 84–14) that relies on the relief provided by PTE 84–14 and with respect to which DSK or DK Group Services is a current or future ''affiliate'' (as defined in Section VI(d) of PTE 84–14). For purposes of this exemption, Deutsche Bank Securities, Inc. (DBSI), including all entities over which it exercises control; and Deutsche Bank AG, including all of its branches, are excluded from the definition of a DB QPAM;

(c) The term ''Deutsche Bank'' means Deutsche Bank AG but, unless indicated otherwise, does not include its subsidiaries or affiliates;

(d) The term ''U.S. Conviction Date'' means the date that a judgment of conviction against DB Group Services, in Case 3:15–cr–00062–RNC, is entered in the United States District Court for the District of Connecticut;

(e) The term ''DB Group Services'' means DB Group Services UK Limited, an ''affiliate'' of Deutsche Bank (as defined in Section VI(c) of PTE 84–14) based in the United Kingdom;

(f) The term ''DSK'' means Deutsche Securities Korea Co., a South Korean ''affiliate'' of Deutsche Bank (as defined in Section VI(c) of PTE 84–14); and

(g) The term ''Plea Agreement'' means the Plea Agreement (including the Factual Statement thereto), dated April 23, 2015, between the Antitrust Division and Fraud Section of the Criminal Division of the U.S. Department of Justice (the DOJ) and DB Group Services resolving the actions brought by the DOJ in Case 3:15–cr–00062–RNC against DB Group Services for wire fraud in violation of Title 18, United States Code, Section 1343 related to the manipulation of the London Interbank Offered Rate (LIBOR).

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

Effective Date: This proposed five-year exemption will be effective beginning on the later of: The U.S. Conviction Date; or the date of publication of the grant notice in the **Federal Register** and ending on the date that is five years thereafter. Should the Applicant wish to extend the effective period of exemptive relief provided by this proposed five-year exemption, the Applicant must submit another application for an exemption. In this regard, the Department expects that, in connection with such application, the Applicant should be prepared to demonstrate compliance with the conditions for this exemption and that the DB QPAMs, and those who may be in a position to influence their policies, have maintained the high standard of integrity required by PTE 84–14.

Department's Comment: As described in further detail below, on September 4, 2015, the Department published PTE 2015–15, which is a nine-month exemption that permits certain Deutsche Bank asset managers to continue to rely on PTE 84–14, notwithstanding the conviction of an affiliate in Korea. The effective period for PTE 2015–15 expired on October 24, 2016. On October 28, 2016, the Department issued PTE 2016–12,[101] a limited extension of PTE 2015–15 (the Extension), which extends the exemptive relief of PTE 2015–15 to the earlier of April 23, 2017 or the effective date of a final agency action by the Department in connection with Exemption Application No. D–11856. Exemption Application No. D–11856 is a proposed temporary one-year exemption (the temporary exemption), being published today elsewhere in the **Federal Register**, that allows DB QPAMs to continue to rely on PTE 84–14 notwithstanding the Korean Conviction and the U.S. Conviction, for a period of up to twelve months beginning on the date of the U.S. Conviction.

The five-year exemption proposed herein would permit certain asset managers affiliated with Deutsche Bank and its affiliates to continue to rely on PTE 84–14 for a period of five years from its effective date. Upon the effective date of the proposed five-year exemption, the Temporary Exemption, if still effective, would expire.

The proposed exemption would provide relief from certain of the restrictions set forth in sections 406 and 407 of ERISA. If granted, no relief from a violation of any other law would be provided by this exemption.

Furthermore, the Department cautions that the relief in this proposed five-year exemption would terminate immediately if, among other things, an entity within the Deutsche Bank corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Convictions) during the effective period of the five-year exemption. While such an entity could apply for a new exemption in that circumstance, the Department would not be obligated to grant the exemption. The terms of this proposed five-year exemption have been specifically designed to permit plans to terminate their relationships in an orderly and cost effective fashion in the event of an additional conviction or a determination that it is otherwise prudent for a plan to terminate its relationship with an entity covered by the proposed five-year exemption.

Summary of Facts and Representations[102]

Background

1. Deutsche Bank AG (together with its current and future affiliates, Deutsche Bank) is a German banking corporation and a commercial bank. Deutsche Bank, with and through its affiliates, subsidiaries and branches, provides a wide range of banking, fiduciary, recordkeeping, custodial, brokerage and investment services to, among others, corporations, institutions, governments, employee benefit plans, government retirement plans and private investors. Deutsche Bank had €68.4 billion in total shareholders' equity and €1,709 billion in total assets as of December 31, 2014.[103]

2. Deutsche Investment Management Americas Inc. (DIMA) is an investment adviser registered with the SEC under the Investment Advisers Act of 1940, as amended. DIMA and other wholly-owned subsidiaries of Deutsche Bank provide discretionary asset-management services to employee benefit plans and IRAs. Such entities include: (A) DIMA; (B) Deutsche Bank Securities Inc., which is a dual-registrant with the SEC under the Advisers Act as an investment adviser and broker-dealer; (C) RREEF America L.L.C., a Delaware limited liability company and investment adviser registered with the SEC under the Advisers Act; (D) Deutsche Bank Trust Company Americas, a corporation organized under the laws of the State of New York and supervised by the New York State Department of Financial Services, a member of the Federal Reserve and an FDIC-insured bank; (E) Deutsche Bank National Trust Company, a national banking association, organized under the laws of the United States and supervised by the Office of the Comptroller of the Currency, and a member of the Federal Reserve; (F) Deutsche Bank Trust Company, NA, a national banking association, organized under the laws of the United States and supervised by the OCC; (G) Deutsche Alternative Asset Management (Global) Limited, a London-based investment adviser registered with the SEC under the Advisers Act; (H) Deutsche Investments Australia Limited, a Sydney, Australia-based investment adviser registered with the SEC under the Advisers Act; (I) DeAWM Trust Company (DTC), a limited purpose trust company organized under the laws of New Hampshire and subject to supervision of the New Hampshire Banking Department; and the four following entities which currently do not rely on PTE 84–14 for the management of any ERISA-covered plan or IRA assets, but may in the future: (J) Deutsche Asset Management (Hong Kong) Ltd.; (K) Deutsche Asset Management International GmbH; (L) DB Investment Managers, Inc.; and (M) Deutsche Bank AG, New York Branch.

3. *Korean Conviction.* On January 25, 2016, Deutsche Securities Korea, Co. (DSK), an indirectly held, wholly-owned subsidiary of Deutsche Bank, was convicted in Seoul Central District Court (the Korean Court) of violations of certain provisions of Articles 176, 443, and 448 of the Korean Financial Investment Services and Capital Markets Act (FSCMA) (the Korean Conviction) for spot/futures linked market manipulation in connection with the unwind of an arbitrage position which in turn caused a decline on the Korean market. Charges under Article 448 of the FSCMA stemmed from vicarious liability assigned to DSK for the actions of its employee, who was convicted of violations of certain provisions of Articles 176 and 443 of the FCMA. Upon conviction, the Korean Court sentenced DSK to pay a criminal fine of 1.5 billion South Korean Won (KRW). Furthermore, the Korean Court ordered that Deutsche Bank forfeit KRW 43,695,371,124, while KRW 1,183,362,400 was ordered forfeited by DSK.

4. *US Conviction.* On April 23, 2015, the Antitrust Division and Fraud Section of the Criminal Division of the U.S. Department of Justice (collectively,

[101] PTE 2016–12 is published in the **Federal Register** at 81 FR 75153 (October 28, 2016).

[102] The Summary of Facts and Representations is based on Deutsche Bank and DIMA's representations, unless indicated otherwise.

[103] Deutsche Bank represents that its audited financial statements are expressed in Euros and are not converted to dollars.

the DOJ) filed a one-count criminal information (the Criminal Information) in Case 3:15–cr–00062–RNC in the District Court for the District of Connecticut (the District Court) against DB Group Services UK Limited (DB Group Services). The Criminal Information charged DB Group Services with wire fraud in violation of Title 18, United States Code, Section 1343 related to the manipulation of the London Interbank Offered Rate (LIBOR) for the purpose of creating favorable trading positions for Deutsche Bank traders. DB Group Services agreed to resolve the actions brought by the DOJ through a plea agreement, dated April 23, 2015 (the Plea Agreement), which is expected to result in the District Court issuing a judgment of conviction (the US Conviction and together with the Korean Conviction, the Convictions). Under the terms of the Plea Agreement, DB Group Services plead guilty to the charges set out in the Criminal Information and forfeited $150,000,000 to the United States. Furthermore, Deutsche Bank AG and the DOJ entered into a deferred prosecution agreement, dated April 23, 2015 (the DPA). Pursuant to the terms of the DPA, Deutsche Bank agreed to pay a penalty of $625,000,000.

PTE 84–14

5. The Department notes that the rules set forth in section 406 of the Employee Retirement Income Security Act of 1974, as amended (ERISA) and section 4975(c) of the Internal Revenue Code of 1986, as amended (the Code) proscribe certain ''prohibited transactions'' between plans and related parties with respect to those plans, known as ''parties in interest.'' [104] Under section 3(14) of ERISA, parties in interest with respect to a plan include, among others, the plan fiduciary, a sponsoring employer of the plan, a union whose members are covered by the plan, service providers with respect to the plan, and certain of their affiliates. The prohibited transaction provisions under section 406(a) of ERISA prohibit, in relevant part, sales, leases, loans or the provision of services between a party in interest and a plan (or an entity whose assets are deemed to constitute the assets of a plan), as well as the use of plan assets by or for the benefit of, or a transfer of plan assets to, a party in interest.[105]

6. Under the authority of section 408(a) of ERISA and section 4975(c)(2) of the Code, the Department has the authority to grant exemptions from such ''prohibited transactions'' in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).

7. Class Prohibited Transaction Exemption 84–14 (PTE 84–14) [106] exempts certain prohibited transactions between a party in interest and an ''investment fund'' (as defined in Section VI(b)) [107] in which a plan has an interest, if the investment manager satisfies the definition of ''qualified professional asset manager'' (QPAM) and satisfies additional conditions for the exemption. In this regard, PTE 84–14 was developed and granted based on the essential premise that broad relief could be afforded for all types of transactions in which a plan engages only if the commitments and the investments of plan assets and the negotiations leading thereto are the sole responsibility of an independent, discretionary, manager.[108] Deutsche Bank has corporate relationships with a wide range of entities that may act as QPAMs and utilize the exemptive relief provided in Class Prohibited Transaction Exemption 84–14 (PTE 84–14).

8. However, Section I(g) of PTE 84–14 prevents an entity that may otherwise meet the definition of QPAM from utilizing the exemptive relief provided by PTE 84–14, for itself and its client plans, if that entity or an affiliate thereof or any owner, direct or indirect, of a 5 percent or more interest in the QPAM has, within 10 years immediately preceding the transaction, been either convicted or released from imprisonment, whichever is later, as a result of certain specified criminal activity described in that section. The Department notes that Section I(g) was included in PTE 84–14, in part, based on the expectation that a QPAM, and those who may be in a position to influence its policies, maintain a high standard of integrity.[109] Accordingly, as a result of the Korean Conviction and the US Conviction, QPAMs with certain corporate relationships to DSK and DB Group Services, as well as their client plans that are subject to Part 4 of Title I of ERISA (ERISA-covered plans) or section 4975 of the Code (IRAs), will no longer be able to rely on PTE 84–14 without an individual exemption issued by the Department.

The DB QPAMs

9. Deutsche Bank represents that certain current and future ''affiliates'' of DSK and DB Group Services, as that term is defined in section VI(d) of PTE 84–14, may act as QPAMs in reliance on the relief provided in PTE 84–14 (these entities are collectively referred to as the ''DB QPAMs'' or the ''Applicant''). The DB QPAMs are currently comprised of several wholly-owned direct and indirect subsidiaries of Deutsche Bank including: (A) DIMA; (B) Deutsche Bank Securities Inc., which is a dual-registrant with the SEC under the Advisers Act as an investment adviser and broker-dealer; (C) RREEF America L.L.C., a Delaware limited liability company and investment adviser registered with the SEC under the Advisers Act; (D) Deutsche Bank Trust Company Americas, a corporation organized under the laws of the State of New York and supervised by the New York State Department of Financial Services, a member of the Federal Reserve and an FDIC-insured bank; (E) Deutsche Bank National Trust Company, a national banking association, organized under the laws of the United States and supervised by the Office of the Comptroller of the Currency, and a member of the Federal Reserve; (F) Deutsche Bank Trust Company, NA, a national banking association, organized under the laws of the United States and supervised by the OCC; (G) Deutsche Alternative Asset Management (Global) Limited, a London-based investment adviser registered with the SEC under the Advisers Act; (H) Deutsche Investments Australia Limited, a Sydney, Australia-based investment adviser registered with the SEC under the Advisers Act; (I) DeAWM Trust Company (DTC), a limited purpose trust company organized under the laws of New Hampshire and subject to supervision of the New Hampshire Banking Department; and the four following entities which currently do not rely on PTE 84–14 for the management of any ERISA-covered plan or IRA assets, but may in the future: (J) Deutsche Asset Management (Hong Kong) Ltd.; (K) Deutsche Asset Management International GmbH; (L) DB Investment

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

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

[106] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

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

[108] See 75 FR 38837, 38839 (July 6, 2010).

[109] See 47 FR 56945, 56947 (December 21, 1982).

Managers, Inc.; and (M) Deutsche Bank AG, New York Branch.[110]

10. The Applicant notes that discretionary asset management services are provided to ERISA-covered plans, IRAs and others under the following Asset & Wealth Management (AWM) business lines, each of which may be served by one or more of the DB QPAMs: (A) Wealth Management—Private Client Services and Wealth Management—Private Bank ($178.1 million in ERISA assets, $643.9 million in IRA assets and $1.8 million in rabbi trust assets); (B) Active Management ($299 million in ERISA assets, $227.9 million in governmental plan assets, and $141.7 million in rabbi trust assets); (C) Alternative and Real Assets ($7.4 billion in ERISA-covered and governmental plan assets);[111] (D) Alternatives & Fund Solutions ($20.8 million in ERISA accounts, $29 million in IRA holdings and $14.1 million in governmental plan holdings); and (E) Passive Management (no current ERISA or IRA assets).[112] Finally, DTC manages the DWS Stock Index Fund, a collective investment trust with $192 million in assets as of March 31, 2015.

11. The Applicant represents that the AWM business is separate from Group Services. The DB QPAMs that serve the AWM business have their own boards of directors. The Applicant represents that the AWM business has its own legal and compliance teams. The Applicant further notes that the DB QPAMs are subject to certain policies and procedures that are designed to, among other things, ensure that asset management decisions are made without inappropriate outside influence, applicable law and governing documents are followed, personnel act with professionalism and in the best interests of clients, clients are treated fairly, confidential information is protected, conflicts of interest are avoided, errors are reported and a high degree of integrity is maintained.

Market Manipulation Activities of DSK[113]

12. Deutsche Securities Korea Co. (DSK), an indirect wholly-owned subsidiary of Deutsche Bank, is a broker-dealer organized in Korea and supervised by the Financial Supervisory Service in Korea. The Absolute Strategy Group (ASG) of Deutsche Bank's Hong Kong Branch (DB HK) conducts index arbitrage trading for proprietary accounts in Asian markets, including Korea. On January 25, 2016, DSK was convicted in Seoul Central District Court (the Korean Court), under Articles 176, 443, and 448 of South Korea's Financial Investment Services and Capital Markets Act (FSCMA) for spot/futures-linked market price manipulation. The Korean Court issued a written decision (the Korean Decision) in connection with the Korean Conviction.

13. Deutsche Bank represents that index arbitrage trading is a trading strategy through which an investor such as Deutsche Bank seeks to earn a return by identifying and exploiting a difference between the value of futures contracts in respect of a relevant equity index and the spot value of the index, as determined by the current market price of the constituent stocks. For instance, where the futures contracts are deemed to be overpriced by reference to the spot value of the index (*i.e.,* if the premium is sufficiently large), then an index arbitrageur will short sell the relevant futures contracts (either the exchange-traded contracts or the put and call option contracts which together synthetically replicate the exchange-traded futures contracts) and purchase the underlying stocks. The short and long positions offset each other in order to be hedged (although the positions may not always be perfectly hedged).

14. Deutsche Bank represents that ASG pursued an index arbitrage trading strategy in various Asian markets, including Korea. In Korea, the index arbitrage position involved the Korean Composite Stock Price Index (KOSPI 200 Index), which reflects stocks commonly traded on the Korea Exchange (KRX). Deutsche Bank represents that, while ASG tried to track the KOSPI 200 Index as closely as possible, there is a limit on foreign ownership for certain shares such as telecommunication companies. Thus, once ASG's cash position reached this limitation, DSK carried the remainder; and ASG's book, combined with DSK's book for Korea telecommunication companies, reflected ASG's overall KOSPI 200 index arbitrage position.

15. On November 11, 2010, ASG unwound an arbitrage position on the KOSPI 200 Index through DSK. The "unwind" included a sale of $2.1 billion worth of stocks in the KRX during the final 10 minutes of trading (*i.e.,* the closing auction period) and comprised 88% of the volume of stock traded during this period. This large volume sale contributed to a drop of the KOSPI 200 Index by 2.7%.

16. Prior to the unwinding, but after the decision to unwind was made, ASG had taken certain derivative positions, including put options on the KOSPI 200 Index. Thus, ASG earned a profit when the KOSPI 200 Index declined as a result of the unwind trades (the derivative positions and unwind trades cumulatively referred to as the Trades). DSK had also purchased put options on that day that resulted in it earning a profit as a result of the drop of the KOSPI 200 Index. The aggregate amount of profit earned from such Trades was approximately $40 million.

17. The Seoul Central District Prosecutor's Office (the Korean Prosecutors) alleged that the Trades constitute spot/futures linked market manipulation, a criminal violation under Korean securities law. In this regard, the Korean Prosecutors alleged that ASG unwound its cash position of certain securities listed on the KRX (spot) through DSK, and caused a fluctuation in the market price of securities related to exchange-traded derivatives (the put options) for the purpose of gaining unfair profit from such exchange-traded derivatives. On August 19, 2011, the Korean Prosecutors indicted DSK and four individuals on charges of stock market manipulation to gain unfair profits. Two of the individuals, Derek Ong and Bertrand Dattas, worked for ASG at DB HK. Mr. Ong was a Managing Director and head of ASG, with power and authority with respect to the KOSPI 200 Index arbitrage trading conducted by Deutsche Bank. Mr. Dattas served as a Director of ASG and was responsible for the direct operations of the KOSPI 200 Index arbitrage trading. Philip Lonergan, the third individual, was employed by Deutsche Bank Services (Jersey) Limited. At the time of the transaction, Mr. Lonergan was seconded to DB HK and served as Head of Global Market Equity, Trading and Risk. Mr. Lonergan

[110] For reasons described below, exemptive relief is not being proposed for DBSI and the branches of Deutsche Bank AG (including the NY Branch), and as such, these entities are excluded from the definition of "DB QPAM" for purposes of the operative language of this proposed five-year exemption.

[111] The Alternatives and Real Assets business line also provides discretionary asset management services, through a separately managed account, to one church plan with total assets under management of $168.6 million and, through a pooled fund subject to ERISA, to two church plans with total assets under management of $7.9 million. According to Deutsche Bank, with respect to governmental plan assets, most management agreements are contractually subject to ERISA standards.

[112] With the exception of Passive Management, the statistics for each of the individual business lines listed here have been updated by Deutsche Bank and are current as of June 30, 2015, to the best of Deutsche Bank's knowledge.

[113] The Department has incorporated the facts related to the circumstances leading to the Korean Conviction as represented by Deutsche Bank in Application No. D–11696 and included in the **Federal Register** in the notice of proposed exemption for the aforementioned application at 80 FR 51314 (August 24, 2015).

served as Mr. Ong's regional superior and was in charge of risk management for his team. The fourth individual charged, Do-Joon Park, was employed by DSK, serving as a Managing Director of Global Equity Derivatives (GED) at DSK and was in charge of the index arbitrage trading using DSK's book that had been integrated into and managed by ASG. Mr. Park was also a de facto chief officer of equity and derivative product operations of DSK.

18. The Korean Prosecutors' case against DSK was based on Korea's criminal vicarious liability provision, under which DSK may be held vicariously liable for an act of its employee (*i.e.,* Mr. Park) if it failed to exercise due care in the appointment and supervision of its employees.[114]

19. The trial commenced in January 2012 in the Korean Court. The Korean Court convicted both DSK and Mr. Park on January 25, 2016. The Korean Court sentenced Mr. Park to five years imprisonment. Upon conviction, the Korean Court ordered DSK to pay a criminal fine of KRW 1.5 billion. Furthermore, the Korean Court ordered that Deutsche Bank forfeit KRW 43,695,371,124, while KRW 1,183,362,400 was ordered forfeited by DSK.[115]

LIBOR Manipulation Activities by DB Group Services

20. DB Group Services is an indirect wholly-owned subsidiary of Deutsche Bank located in the United Kingdom. On April 23, 2015, DB Group Services pled guilty in the United States District Court for the District of Connecticut to a single count of wire fraud, in violation of 18 U.S.C. 1343 (the Plea Agreement), related to the manipulation of the London Interbank Offered Rate (LIBOR) described below. In connection with the Plea Agreement with DB Group Services, the DOJ filed a Statement of Fact (the DOJ Plea Factual Statement) that details the underlying conduct that serves as the basis for the criminal charges and impending US Conviction.

21. According to the DOJ Plea Factual Statement, LIBOR is a benchmark interest rate used in financial markets around the world. Futures, options, swaps, and other derivative financial instruments traded in the over-the-counter market. The LIBOR for a given currency is derived from a calculation based upon submissions from a panel of banks for that currency (the Contributor Panel) selected by the British Bankers' Association (BBA). Each member of the Contributor Panel would submit its rates electronically. Once each Contributor Panel bank had submitted its rate, the contributed rates were ranked. The highest and lowest quartiles were excluded from the calculation, and the middle two quartiles (*i.e.,* 50% of the submissions) were averaged to formulate the LIBOR ''fix'' or ''setting'' for the given currency and maturity.

22. The DOJ Plea Factual Statement states that, from 2006 to 2011, Deutsche Bank's Global Finance and Foreign Exchange business units (GFFX) had employees in multiple entities associated with Deutsche Bank, in multiple locations around the world including London and New York. Deutsche Bank, through the GFFX unit, employed traders in both its Pool Trading groups (Pool) and its Money Market Derivatives (MMD) groups. Many of the GFFX traders based in London were employed by DB Group Services.

23. According to the DOJ Plea Factual Statement, Deutsche Bank's Pool traders engaged in, among other things, cash trading and overseeing Deutsche Bank's internal funding and liquidity. Deutsche Bank's Pool traders traded a variety of financial instruments. Deutsche Bank's Pool traders were primarily responsible for formulating and submitting Deutsche Bank's LIBOR and EURIBOR daily contributions. Deutsche Bank's MMD traders, on the other hand, were responsible for, among other things, trading a variety of financial instruments, some of which, such as interest rate swaps and forward rate agreements, were tied to LIBOR and EURIBOR. The DOJ Plea Factual Statement notes that both the Pool traders and the MMD traders worked in close proximity and reported to the same chain of command. DB Group Services employed many of Deutsche Bank's London-based Pool and MMD traders.

24. Deutsche Bank and DB Group Services's derivatives traders (the Derivatives Traders) were responsible for trading a variety of financial instruments, some of which, such as interest rate swaps and forward rate agreements, were tied to reference rates such as LIBOR and EURIBOR. According to the DOJ Plea Factual Statement, from approximately 2003 through at least 2010, the Derivatives Traders defrauded their counterparties by secretly manipulating U.S. Dollar (USD), Yen, and Pound Sterling LIBOR, as well as the EURO Interbank Offered Rate (EURIBOR, and collectively, the IBORs or IBOR). The Derivatives Traders requested that the IBOR submitters employed by Deutsche Bank and other banks send in IBORs that would benefit the Derivatives Traders' trading positions, rather than rates that complied with the definitions of the IBORs. According to the DOJ, Deutsche Bank employees engaged in this collusion through face-to-face requests, electronic communications, which included both emails and electronic chats, and telephone calls.

25. The DOJ Plea Factual Statement explains that when the Derivatives Traders' requests for favorable IBOR submissions were taken into account by the submitters, the resultant contributions affected the value and cash flows of derivatives contracts, including interest rate swap contracts. In accommodating these requests, the Derivatives Traders and submitters were engaged in a deceptive course of conduct in an effort to gain an advantage over their counterparties. As part of this effort: (1) The Deutsche Bank Pool and MMD Traders submitted materially false and misleading IBOR contributions; and (2) Derivatives Traders, after initiating and continuing their effort to manipulate IBOR contributions, entered into derivative transactions with counterparties that did not know that the Deutsche Bank personnel were often manipulating the relevant rate.

26. The DOJ Plea Factual Statement notes that from 2003 through at least 2010, DB Group Services employees regularly sought to manipulate USD LIBOR to benefit their trading positions and thereby benefit themselves and Deutsche Bank. During most of this period, traders at Deutsche Bank who traded products linked to USD LIBOR were primarily located in London and New York. DB Group Services employed almost all of the USD LIBOR traders who were located in London and involved in the misconduct. Throughout the period during which the misconduct occurred, the Deutsche Bank USD LIBOR submitters in London sat within feet of the USD LIBOR traders. This physical proximity enabled the traders and submitters to conspire to make and solicit requests for particular LIBOR submissions.

27. Pursuant to the Plea Agreement that DB Group Services entered into with the DOJ on April 23, 2015, pleading guilty to wire fraud for manipulation of LIBOR, DB Group Services also agreed: (A) To work with its parent company (Deutsche Bank) in fulfilling obligations undertaken by the Bank in connection with its own settlements; (B) to continue to fully cooperate with the DOJ and any other law enforcement or government agency

[114] Article 448 of the FSCMA allows for charges against an employer stemming from vicarious liability for the actions of its employees.

[115] KRW refers to a South Korean Won.

designated by the DOJ in a manner consistent with applicable laws and regulations; and (C) to pay a fine of $150 million.

28. On April 23, 2015, Deutsche Bank AG entered into a deferred prosecution agreement (DPA) with the DOJ, as a disposition for a 2-count criminal information charging Deutsche Bank with one count of wire fraud, in violation of Title 18, United States Code, Section 1343, and one count of price-fixing, in violation of the Sherman Act, Title 15, United States Code, Section 1. By entering into the DPA, Deutsche Bank AG agreed, among other things: (A) To continue to cooperate with the DOJ and any other law enforcement or government agency; (B) to retain an independent compliance monitor for three years, subject to extension or early termination, to be selected by the DOJ from among qualified candidates proposed by the Bank; (C) to further strengthen its internal controls as recommended by the monitor and as required by other settlements; and (D) to pay a penalty of $625 million.

29. On April 23, 2015, Deutsche Bank AG and Deutsche Bank AG, New York Branch (DB NY) also entered into a consent order with the New York State Department of Financial Services (NY DFS) in which Deutsche Bank AG and DB NY agreed to pay a penalty of $600 million. Furthermore, Deutsche Bank AG and DB NY engaged an independent monitor selected by the NY DFS in the exercise of the NY DFS's sole discretion, for a 2-year engagement. Finally, the NY DFS ordered that certain employees involved in the misconduct be terminated, or not be allowed to hold or assume any duties, responsibilities, or activities involving compliance, IBOR submissions, or any matter relating to U.S. or U.S. Dollar operations.

30. Furthermore, the United States Commodities Futures Trading Commission (CFTC) entered a consent order, dated April 23, 2015, requiring Deutsche Bank AG to cease and desist from certain violations of the Commodity Exchange Act, to pay a fine of $800 million, and to agree to certain undertakings.

31. The United Kingdom's Financial Conduct Authority (FCA) issued a final notice (Final Notice), dated April 23, 2015, imposing a fine of £226.8 million on Deutsche Bank AG. In its Final Notice, the FCA cited Deutsche Bank's inadequate systems and controls specific to IBOR. The FCA noted that Deutsche Bank had defective systems to support the audit and investigation of misconduct by traders; and Deutsche Bank's systems for identifying and recording traders' telephone calls and for tracing trading books to individual traders were inadequate. The FCA's Final Notice provided that Deutsche Bank took over two years to identify and produce all relevant audio recordings requested by the FCA. Furthermore, according to the Final Notice, Deutsche Bank gave the FCA misleading information about its ability to provide a report commissioned by Bundesanstalt für Finanzdienstleistungsaufsicht, Germany's Federal Financial Supervisory Authority (BaFin). In addition, the FCA notes in its Final Notice that Deutsche Bank provided it with a false attestation that stated that its systems and controls in relation to LIBOR were adequate, an attestation known to be false by the person who drafted it. The Final Notice provides that, in one instance, Deutsche Bank, in error, destroyed 482 tapes of telephone calls, despite receiving an FCA notice requiring their preservation, and provided inaccurate information to the regulator about whether other records existed.

32. Finally, BaFin set forth preliminary findings based on an audit of LIBOR related issues in a May 15, 2015, letter to Deutsche Bank. At that time, BaFin raised certain questions about the extent of certain senior managers' possible awareness of wrongdoing within Deutsche Bank.

Prior and Anticipated Convictions and Failure To Comply With Section I(g) of PTE 84–14

33. The Korean Conviction caused the DB QPAMs to violate Section I(g) of PTE 84–14. As a result, the Department granted PTE 2015–15, which allows the DB QPAMs to rely on the relief provided by PTE 84–14, notwithstanding the January 25, 2016 Korean Conviction. The Department granted PTE 2015–15 in order to protect ERISA-covered plans and IRAs from certain costs and/or investment losses that could have occurred to the extent the DB QPAMs lost their ability to rely on PTE 84–14 as a result of the Korean Conviction. On October 28, 2016, the Department published in the **Federal Register** PTE 2016–12 (81 FR 75153, October 28, 2016) (the Extension), extending the effective period of 2015–15, which was about to expire. PTE 2015–15 and the Extension are subject to enhanced conditions that are protective of the rights of the participants and beneficiaries of affected ERISA-covered plans and IRAs.

34. The Applicant represents that the US Conviction, tentatively scheduled for April 3, 2017, will also cause DB QPAMs to violate Section I(g) of PTE 84–14. Therefore, Deutsche Bank requests a single, new exemption that would permit the DB QPAMs, and their ERISA-covered plan and IRA clients, to continue to utilize the relief in PTE 84–14, notwithstanding both the Korean Conviction and the US Conviction.

35. The Department is proposing the five-year exemption herein to allow the DB QPAMs to rely on PTE 84–14 notwithstanding the Korean Conviction and the US Conviction, subject to a comprehensive suite of protective conditions designed to protect the rights of the participants and beneficiaries of the ERISA-covered plans and IRAs that are managed by DB QPAMs.

36. Concurrently with this proposed five-year exemption, elsewhere in the **Federal Register**, the Department is publishing a proposed temporary exemption for DB QPAMs to rely on PTE 84–14 notwithstanding the Korean Conviction and the US Conviction, for a period of up to one year (the Temporary Exemption). The Temporary Exemption will allow the Department to determine whether to grant this five-year exemption, and will protect ERISA-covered plans and IRAs from potential losses if such DB QPAMs suddenly lose their ability to rely on PTE 84–14 with respect to such plans and IRAs. The Temporary Exemption will be effective from the date of the US Conviction until the earlier of twelve months from such date or until the effective date of a final agency action made by the Department in connection with this proposed five-year exemption. The exemptive relief set forth in the Temporary Exemption would be replaced by that in the proposed five-year exemption.

37. This five-year exemption will not apply to Deutsche Bank Securities, Inc. (DBSI).[116] Section I(a) of PTE 2015–15 and the Extension, requires that ''DB QPAMs (including their officers, directors, agents other than Deutsche Bank, and employees of such DB QPAMs) did not know of, have reason to know of, or participate in the criminal conduct of DSK that is the subject of the Korean Conviction.'' In a letter to the Department dated July 15, 2016, Deutsche Bank raised the possibility that an individual,[117] while

[116] The Applicant represents that DBSI has not relied on the relief provided by PTE 84–14 since the date of the Korean Conviction.

[117] The Applicant identifies the individual as Mr. John Ripley, a senior global manager in DBSI who was based in the United States and who was a functional supervisor over the employees of DSK that were prosecuted for market manipulation. Furthermore, the Applicant states that Mr. Ripley was terminated by DBSI for ''loss of confidence'' in that he could have exercised more care and been more proactive in reviewing the trades at issue.

employed at DBSI, may have known or had reason to know of the criminal conduct of DSK that is the subject of the Korean Conviction. In a letter to the Department dated August 19, 2016, Deutsche Bank further clarified that ''there is no evidence that anyone at DBSI other than Mr. Ripley knew in advance of the trades conducted by the Absolute Strategy Group on November 11, 2010.'' Deutsche Bank states that it had previously interpreted Section I(a) of PTE 2015–15 as requiring only that ''any current director, officer or employee did not know of, have reason to know of, or participate in the conduct.'' The Department notes that Deutsche Bank did not raise any interpretive questions regarding Section I(a) of PTE 2015–15, or express any concerns regarding DBSI's possible noncompliance, during the comment period for PTE 2015–15. Nor did Deutsche Bank seek a technical correction or other remedy to address such concerns between the time that PTE 2015–15 was granted and the date of the Korean Conviction. The Department notes that a period of approximately nine months passed before Deutsche Bank raised an interpretive question regarding Section I(a) of PTE 2015–15. Accordingly, the Department is not proposing exemptive relief for DBSI in this five-year exemption.

The five-year exemption will also not apply with respect to Deutsche Bank AG (the parent entity) or any of its branches. The Applicant represents that neither Deutsche Bank AG nor its branches have relied on the relief provided by PTE 84–14 since the date of the Korean Conviction.

38. Finally, the Applicant represents that it currently does not have a reasonable basis to believe that any pending criminal investigation [118] of any of Deutsche Bank's affiliated corporate entities would cause a reasonable plan or IRA customer not to hire or retain the Bank's affiliated managers as a QPAM. Furthermore, this five-year exemption will not apply to any other conviction(s) of Deutsche Bank or its affiliates for crimes described in Section I(g) of PTE 84–14. The Department notes that, in such event, the Applicant and its ERISA-covered plan and IRA clients should be prepared to rely on exemptive relief other than PTE 84–14 for any prohibited transactions entered into after the date of such new conviction(s); withdraw from any arrangements that solely rely on PTE 84–14 for exemptive relief; or avoid engaging in any such prohibited transactions in the first place.

Remedial Measures To Address Criminal Conduct of DSK

39. Deutsche Bank represents that it has voluntarily disgorged its profits generated from exercising derivative positions and put options in connection with the activity associated with the Korean Conviction. DSK also suspended its proprietary trading from April 2011 to 2012, and thereafter DSK only engaged in limited proprietary trading (but not index arbitrage trading).[119] Further, in response to the actions of the Korean Prosecutors, Deutsche Bank enhanced its compliance measures and implemented additional measures in order to ensure compliance with applicable laws in Korea and Hong Kong, as well as within other jurisdictions where Deutsche Bank conducts business.

40. Deutsche Bank states that Mr. Ong and Mr. Dattas were terminated for cause by DB HK on December 6, 2011, and Mr. Lonergan was terminated on January 31, 2012. In addition, Mr. Park was suspended for six months due to Korean administrative sanctions, and remained on indefinite administrative leave, until being terminated effective January 25, 2016. John Ripley, a New York-based employee of Deutsche Bank Securities Inc. (DBSI) who was not indicted, was also terminated in October 2011.[120]

Remedial Measures To Address Criminal Conduct of DB Group Services

41. Deutsche Bank represents that it has significantly modified its compensation structure. Specifically, Deutsche Bank: Eliminated the use of ''percentage of trading profit'' contracts once held by two traders involved in the LIBOR case; extended the vesting/distribution period for deferred compensation arrangements; made compliance with its internal policies a significant determinant of bonus awards; and modified its compensation plans to facilitate forfeiture/clawback of compensation when employees are found after the fact to have engaged in wrongdoing. Deutsche Bank represents that the forfeiture/clawback provisions of its compensation plans have been altered so as to permit action against employees even when misconduct is discovered years later.

42. With respect to the LIBOR-related misconduct, Deutsche Bank represents that it has separated from or disciplined the employees responsible. With the exceptions described below, none of the employees determined to be responsible for the misconduct remains employed by Deutsche Bank. Deutsche Bank represents that, during the initial phase of its internal investigation into the LIBOR matters, it terminated the two employees most responsible for the misconduct, including the Global Head of Money Market and Derivatives Trading.

43. Deutsche Bank then terminated five benchmark submitters in its Frankfurt office, including the Head of Global Finance and Foreign Exchange in Frankfurt. Four of these employees successfully challenged their termination in a German Labor court, and one employee entered into a separation agreement with Deutsche Bank after initially indicating that he would challenge the termination decision. With respect to the four employees who challenged their termination, the Bank agreed to mediate the employee labor disputes and reached settlements with the four employees. Pursuant to the settlements, the two more senior employees remained on paid leave through the end of 2015 and then have no association with Deutsche Bank. The two more junior employees have returned to the Bank in non-risk-taking roles. They do not work for any DB QPAMs and have no involvement in the Bank's AWM business or the setting of interest rate benchmarks. Deutsche Bank represents that it also terminated four additional individuals, and another eight individuals left the bank before facing disciplinary action.

44. Deutsche Bank represents that it will take action to terminate any additional employees who are determined to have been involved in the improper benchmark manipulation conduct, as well as those who knew about it and approved it. Moreover, the Applicant states that Deutsche Bank has taken further steps, both on its own and in consultation with U.S. and foreign regulators, to discipline those whose performance fell short of DB's

[118] The Applicant references the Deutsche Bank AG Form 6–K, filed July 27, 2016, available at: *https://www.db.com/ir/en/download/6_K_Jul_2016.pdf*; and the Deutsche Bank AG Form 10–F filed March 11, 2016 and available at: *https://www.db.com/ir/en/download/Deutsche_Bank_20_F_2015.pdf*.

[119] Deutsche Bank notes that DSK was never permitted to trade on behalf of Deutsche Bank.

[120] According to the Korean prosecutors, Mr. Ripley served as a Head of Global ASG of Deutsche Bank, AG, and was a functional superior to Mr. Ong. Mr. Ripley was suspected of having advised to unwind all the KOSPI 200 index arbitrage trading for the purpose of management of the ending profits and losses of Global ASK and approved Mr. Ong's request to establish the speculative positions in the course of the unwinding. Though the Korean prosecutors named Mr. Ripley as a suspect, he was not named in the August 19, 2011, Writ of Indictment.

expectations in connection with the above-described conduct.

Statutory Findings—In the Interests of Affected Plans and IRAs

45. The Applicant represents that the proposed exemption is in the interests of affected ERISA-covered plans and IRAs. Deutsche Bank represents that the DB QPAMS provide discretionary asset management services under several business lines, including (A) Alternative and Real Assets (ARA); (B) Alternatives & Fund Solutions (AFS); (C) Active Management (AM); and (D) Wealth Management—Private Client Services and Wealth Management—Private Bank. Deutsche Bank asserts that plans will incur direct transaction costs in liquidating and reinvesting their portfolios. According to Deutsche Bank, the direct transaction costs of liquidating and reinvesting ERISA-covered plan, IRA and ERISA-like assets under the various business lines (other than core real estate) could range from 2.5 to 25 basis points, resulting in an estimated dollar cost of approximately $5–7 million. Deutsche Bank also states that an unplanned liquidation of the Alternatives and Real Assets business' direct real estate portfolios could result in portfolio discounts of 10–20% of gross asset value, in addition to transaction costs ranging from 30 to 100 basis points, for estimated total cost to plan investors of between $281 million and $723 million, depending on the liquidation period.

46. Deutsche Bank states that its managers provide discretionary asset management services, through both separately managed accounts and four pooled funds subject to ERISA, to a total of 46 ERISA-covered plan accounts, with total assets under management (AuM) of $1.1 billion. Deutsche Bank estimates that the underlying plans cover in total at least 640,000 participants. Deutsche Bank represents that its managers provide asset management services, through both separately managed accounts and pooled funds subject to ERISA, to a total of 22 governmental plan accounts, with total AuM of $7.1 billion. The underlying plans cover at least 3 million participants. With respect to church plans and rabbi trust accounts, Deutsche Bank investment managers separately manage accounts and a pooled fund subject to ERISA, to a total of 4 church plan and rabbi trust accounts, with total AuM of $318.3 million. With respect to ERISA-covered Plan, IRA, Governmental Plan and Church Plan Accounts in Non-Plan Asset Pooled Funds, Deutsche Bank represents that its asset managers manages 175 ERISA-covered plan accounts with interests totaling $4.23 billion, 178 IRAs with interests totaling $29 million, 66 governmental plan accounts with interests totaling $2.08 billion, and 14 church plan accounts with interests totaling $67.1 million.

47. Deutsche Bank contends that ERISA-covered, IRA, governmental plan and other plan investors that terminate or withdraw from their relationship with their DB QPAM manager may be harmed in several specific ways, including: The costs of searching for and evaluating a new manager; the costs of leaving a pooled fund and finding a replacement fund or investment vehicle; and the lack of a secondary market for certain investments and the costs of liquidation.[121]

48. Deutsche Bank represents that its ARA business line provides discretionary asset management services to, among others, 17 ERISA accounts and 18 governmental plan accounts. The largest account has $1.6 billion in AuM. ERISA-covered and governmental plans total $7.4 billion in AuM. Deutsche Bank estimates that the underlying plans cover at least 2.7 million participants. ARA provides these services through separately managed accounts and pooled funds subject to ERISA. ARA also provides discretionary asset management services, through a separately managed account, to one church plan with total AuM of $168.6 million and, through a pooled fund subject to ERISA, to two church plans with total AuM of $7.9 million.

49. Deutsche Bank argues that PTE 84–14 is the sole exemption available to ARA for investments in direct real estate for separately managed accounts. Deutsche Bank represents that, as a result of terminating ARA's management, a typical plan client may incur $30,000 to $40,000 in consulting fees in searching for a new manager as well as $10,000 to $30,000 in legal fees. Furthermore, with respect to direct real estate investments, Deutsche Bank states that plan clients may face direct transaction costs of 30–100 basis points for early liquidation, or a $4.8 million to $16 million loss for its largest ARA governmental plan client; as well as a 10–20% discount for early liquidation, or a $162.5 million to $325 million loss for the largest ARA governmental plan client. With respect to non-direct real estate investments, Deutsche Bank states that plan clients may face direct transaction costs of 20–60 basis points, or $933,000 for ARA's largest ERISA client.

50. Deutsche Bank notes that ARA manages seven unregistered real estate investment trusts and other funds that currently rely on one or more exceptions to the Department's plan asset regulation. Interests in the funds are held by 131 ERISA-covered plan accounts, 63 governmental plan accounts and 14 church plan accounts. Deutsche Bank represents that the largest holding in these funds by an ERISA-covered plan account is $647.4 million. Holdings by all ERISA plan accounts in these funds total $4.21 billion. The underlying ERISA-covered plans cover at least 2 million participants. The largest holding by a governmental plan account in these funds is $286.5 million. Holdings of all governmental plan accounts in these funds total $2.07 billion. The underlying plans cover at least 6.1 million participants. The largest holding by a church plan is $16 million. Holdings of all church plans in these funds total $67.1 million.

51. Deutsche Bank represents that its AFS business line manages 28 unregistered, closed-end, private equity funds, with $2.8 billion in total assets, in which ERISA-covered, IRA and governmental plans invest. Interests in these funds are held by, among others, 44 ERISA-covered plan accounts, 178 IRAs and 3 governmental plan accounts. Holdings by all ERISA-covered plan accounts total $20.8 million. Deutsche Bank notes that the underlying plans cover at least 57,000 participants. Holdings by all IRAs total $29 million. Holdings by all governmental plans total $14.1 million. These funds invest primarily in equity interests issued by other private equity funds. The funds currently rely on the 25% benefit plan investor participation exception under the Department's plan asset regulation.

52. Deutsche Bank contends that, in the event the AFS business line cannot rely upon the exemptive relief of PTE 84–14, all plans would have to undertake the time and expense of identifying suitable transferees, accept a discounted sale price, comply with applicable transfer rules and pay the funds a transfer fee, which may run to $5,000 or more. Deutsche Bank states that, in locating a replacement fund, a typical plan could incur 6–8 months of delay, $30,000–$40,000 in consultant fees for a private manager/fund search, 25–50 hours in client time and $10,000–$30,000 in legal fees to review subscription agreements and negotiate side letters.

[121] The Department notes that, if this temporary exemption is granted, compliance with the condition in Section I(j) of the exemption would require the DB QPAMs to hold their plan customers harmless for any losses attributable to, inter alia, any prohibited transactions or violations of the duty of prudence and loyalty.

53. Deutsche Bank represents that its AM business line provides discretionary asset management services to separately managed plan accounts, including five ERISA-covered plan accounts and three governmental plan accounts. The largest ERISA account is $164.2 million. Total ERISA AuM is $299.2 million. The underlying ERISA-covered plans cover at least 143,000 participants. The largest governmental plan account is $164.3 million. Total governmental plan AuM is $227.9 million. The underlying plans cover at least 731,000 participants. Deutsche Bank notes that AM also provides such services to one rabbi trust with total AuM of $141.7 million.

54. Deutsche Bank represents that the AM line manages these accounts with a variety of strategies, including: (A) Equities, (B) fixed income, (C) overlay, (D) commodities, and (E) cash. These strategies involve a range of asset classes and types, including: (A) U.S. and foreign fixed income (Treasuries, Agencies, corporate bonds, asset-backed securities, mortgage and commercial mortgage-backed securities, deposits); (B) US and foreign mutual funds and ETFs; (C) US and foreign futures, (D) currency; (E) swaps (interest rate and credit default); (F) US and foreign equities; and (G) short term investment funds.

55. Deutsche Bank estimates that, in the event the AM business line cannot rely upon the exemptive relief of PTE 84–14, plan clients would typically incur $30,000 to $40,000 in consulting fees related to a new manager search, up to 5 basis points in direct transaction costs, and $15,000–$30,000 in legal costs to negotiate each new futures, cleared derivatives, swap or other trading agreements.

56. Deutsche Bank represents that its Wealth Management—Private Client Services and Wealth Management—Private Bank business lines manage $178.1 million in ERISA assets, $643.9 million in IRA assets, and $1.8 million of rabbi trust assets (Wealth Management—Private Bank). Deutsche Bank asserts that causing plan clients to change managers will lead the plans and IRAs to incur transaction costs, estimated at 2.5 basis points overall.

Statutory Findings—Protective of the Rights of Participants of Affected Plans and IRAs

57. The Applicant has proposed certain conditions it believes are protective of plans and IRAs with respect to the transactions described herein. The Department has determined to revise and supplement the proposed conditions so that it can make its required finding that the requested exemption is protective of the rights of participants and beneficiaries of affected plans and IRAs.

58. Several of the conditions underscore the Department's understanding, based on Deutsche Bank's representations, that the affected DB QPAMs were not involved in the misconduct that is the subject of the Convictions. The five-year exemption, if granted as proposed, mandates that the DB QPAMs (including their officers, directors, agents other than Deutsche Bank, and employees of such DB QPAMs) did not know of, have reason to know of, or participate in the criminal conduct of DSK and DB Group Services that is the subject of the Convictions (for purposes of this requirement, ''participate in'' includes an individual's knowing or tacit approval of the misconduct underlying the Convictions). Furthermore, the DB QPAMs (including their officers, directors, employees, and agents other than Deutsche Bank) cannot have received direct compensation, or knowingly received indirect compensation, in connection with the criminal conduct that is the subject of the Convictions.

59. The proposed five-year exemption defines the Convictions as: (1) The judgment of conviction against DB Group Services, in Case 3:15–cr–00062–RNC to be entered in the United States District Court for the District of Connecticut to a single count of wire fraud, in violation of 18 U.S.C. 1343 (the US Conviction); and (2) the judgment of conviction against DSK entered on January 25, 2016, in Seoul Central District Court, relating to charges filed against DSK under Articles 176, 443, and 448 of South Korea's Financial Investment Services and Capital Markets Act for spot/futures-linked market price manipulation (the Korean Conviction). The Department notes that the ''conduct'' of any person or entity that is the ''subject of [a] Conviction'' encompasses any conduct of Deutsche Bank and/or their personnel, that is described in the Plea Agreement (including the Factual Statement), Court judgments (including the judgment of the Seoul Central District Court), criminal complaint documents from the Financial Services Commission in Korea, and other official regulatory or judicial factual findings that are a part of this record.

60. The Department expects that DB QPAMs will rigorously ensure that the individuals associated with the misconduct will not be employed or knowingly engaged by such QPAMs. In this regard, the five-year exemption mandates that the DB QPAMs will not employ or knowingly engage any of the individuals that participated in the spot/futures-linked market manipulation or LIBOR manipulation activities that led to the Convictions, respectively. For purposes of this condition, ''participated in'' includes an individual's knowing or tacit approval of the misconduct that is the subject of the Convictions. Further, a DB QPAM will not use its authority or influence to direct an ''investment fund,'' (as defined in Section VI(b) of PTE 84–14) that is subject to ERISA or the Code and managed by such DB QPAM, to enter into any transaction with DSK or DB Group Services, nor otherwise engage DSK or DB Group Services to provide additional services to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or services may otherwise be within the scope of relief provided by an administrative or statutory exemption.

61. The DB QPAMs must comply with each condition of PTE 84–14, as amended, with the sole exceptions of the violations of Section I(g) of PTE 84–14 that are attributable to the Convictions. Further, any failure of the DB QPAMs to satisfy Section I(g) of PTE 84–14 must result solely from the LIBOR Conviction and the Korean Conviction.

62. No relief will be provided by this five-year exemption to the extent that a DB QPAM exercised authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA) in a manner that it knew or should have known would: Further the criminal conduct that is the subject of the Convictions; or cause the QPAM, affiliates, or related parties to directly or indirectly profit from the criminal conduct that is the subject of the Convictions. The conduct that is the subject of the Convictions includes that which is described in the plea agreement with the U.S. Department of Justice, dated April 23, 2015 (the Plea Agreement), which is expected to result in the District Court issuing the US Conviction; the deferred prosecution agreement between Deutsche Bank AG and the DOJ, dated April 23, 2015 (the DPA); and in connection with the January 25, 2016 conviction (the Korean Conviction) of DSK, in Seoul Central District Court (the Korean Court) for spot/futures linked market manipulation. Further, no five-year relief will be provided to the extent DSK or DB Group Services provide any discretionary asset management services to ERISA-covered plans or IRAs or

otherwise act as a fiduciary with respect to ERISA-covered plan or IRA assets.

63. *Policies.* The Department believes that robust policies and training are warranted where, as here, extensive criminal misconduct has occurred within a corporate organization that includes one or more QPAMs managing plan investments in reliance on PTE 84–14. Therefore, this proposed five-year exemption requires each DB QPAM to immediately develop, implement, maintain, and follow written policies and procedures (the Policies) requiring and reasonably designed to ensure that: The asset management decisions of the DB QPAM are conducted independently of Deutsche Bank's corporate management and business activities, including the corporate management and business activities of DB Group Services and DSK; the DB QPAM fully complies with ERISA's fiduciary duties and ERISA and the Code's prohibited transaction provisions and does not knowingly participate in any violations of these duties and provisions with respect to ERISA-covered plans and IRAs; the DB QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs; any filings or statements made by the DB 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 ERISA-covered plans or IRAs are materially accurate and complete, to the best of such QPAM's knowledge at that time; the DB QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plan and IRA clients; and the DB QPAM complies with the terms of this proposed exemption. Any violation of, or failure to comply with, the Policies must be corrected promptly upon discovery, and any such violation or compliance failure not promptly corrected must be reported, upon the discovery of such failure to promptly correct, in writing, to appropriate corporate officers, the head of Compliance and the General Counsel of the relevant DB QPAM (or their functional equivalent), the independent auditor responsible for reviewing compliance with the Policies, and an appropriate fiduciary of any affected ERISA-covered plan or IRA that is independent of Deutsche Bank.[122] A DB QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance promptly when discovered or when it reasonably should have known of the noncompliance (whichever is earlier), and provided that it reports such instance of noncompliance as explained above.

64. *Training.* The Department has also imposed a condition that requires each DB QPAM to immediately develop and implement a program of training (the Training) for all relevant DB QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must be set forth in the Policies and at a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions) and ethical conduct, the consequences for not complying with the conditions of this proposed exemption (including the loss of the exemptive relief provided herein), and prompt reporting of wrongdoing. Furthermore, the Training must be conducted by an independent professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code.

65. *Independent Transparent Audit.* The Department views a rigorous, transparent audit that is conducted by an independent party as essential to ensuring that the conditions for exemptive relief described herein are followed by the DB QPAMs. Therefore, Section I(i) of this proposed exemption requires that each DB QPAM submits to an audit conducted annually by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and the DB QPAM's compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. Each annual audit must cover a consecutive twelve month period and must be completed no later than six (6) months after the period to which the audit applies. The first twelve-month audit period hereunder begins on the effective date of this proposed five-year exemption.

The audit condition requires that, to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, and as permitted by law, each DB QPAM and, if applicable, Deutsche Bank, will grant the auditor unconditional access to its business, including, but not limited to: Its computer systems; business records; transactional data; workplace locations; training materials; and personnel. The auditor's engagement must specifically require the auditor to determine whether each DB QPAM has complied with the Policies and Training conditions described herein, and must further require the auditor to test each DB QPAM's operational compliance with the Policies and Training. On or before the end of the relevant period described in Section I(i)(1) for completing the audit, the auditor must issue a written report (the Audit Report) to Deutsche Bank and the DB QPAM to which the audit applies that describes the procedures performed by the auditor during the course of its examination. The Audit Report must include the auditor's specific determinations regarding: The adequacy of the DB QPAM's Policies and Training; the DB QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective DB QPAM's noncompliance with the written Policies and Training.

Any determination by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective DB QPAM must be promptly addressed by such DB QPAM, and any action taken by such DB QPAM to address such recommendations must be included in an addendum to the Audit Report. Any determination by the auditor that the respective DB QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that the DB QPAM has complied with the requirements under this subsection must be based on evidence that demonstrates the DB QPAM has actually implemented, maintained, and followed the Policies and Training required by this five-year exemption. Finally, the Audit Report must address the adequacy of the Annual Review required under this exemption and the resources provided to the Compliance officer in connection with such Annual Review. Furthermore, the auditor must notify the respective DB QPAM of any

[122] With respect to any ERISA-covered plan or IRA sponsored by an ''affiliate'' (as defined in Part VI(d) of PTE 84–14) of Deutsche Bank or beneficially owned by an employee of Deutsche Bank or its affiliates, such fiduciary does not need to be independent of Deutsche Bank.

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.

This five-year exemption requires that certain senior personnel of Deutsche Bank review the Audit Report, make certifications, and take various corrective actions. In this regard, the General Counsel, or one of the three most senior executive officers of the DB 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; addressed, corrected, or remedied any inadequacy identified in the Audit Report; and determined that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this proposed five-year exemption and with the applicable provisions of ERISA and the Code. The Risk Committee of Deutsche Bank's Board of Directors is provided a copy of each Audit Report; and a senior executive officer with a direct reporting line to the highest ranking legal compliance officer of Deutsche Bank must review the Audit Report for each DB QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report.

In order to create a more transparent record in the event that the proposed relief is granted, each DB QPAM must provide its certified Audit Report to the Department no later than 45 days following its completion. The Audit Report will be part of the public record regarding this five-year exemption. Furthermore, each DB QPAM must make its Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of an ERISA-covered plan or IRA, the assets of which are managed by such DB QPAM. Additionally, each DB QPAM and the auditor must submit to the Department any engagement agreement(s) entered into pursuant to the engagement of the auditor under this exemption; and any engagement agreement entered into with any other entity retained in connection with such QPAM's compliance with the Training or Policies conditions of this proposed exemption, no later than six (6) months after the effective date of this five-year exemption (and one month after the execution of any agreement thereafter). Finally, if the exemption is granted, the auditor must provide the Department, upon request, all of the workpapers created and utilized in the course of the audit, including, but not limited to: The audit plan; audit testing; identification of any instance of noncompliance by the relevant DB QPAM; and an explanation of any corrective or remedial action taken by the applicable DB QPAM.

In order to enhance oversight of the compliance with the exemption, Deutsche Bank must notify the Department at least 30 days prior to any substitution of an auditor, and Deutsche Bank must demonstrate to the Department's satisfaction that any new auditor is independent of Deutsche Bank, experienced in the matters that are the subject of the exemption, and capable of making the determinations required of this exemption.

66. *Contractual Obligations.* This five-year exemption requires DB QPAMs to enter into certain contractual obligations in connection with the provision of services to their clients. It is the Department's view that the condition in Section I(j) is essential to the Department's ability to make its findings that the proposed five-year exemption is protective of the rights of the participants and beneficiaries of ERISA-covered plan and IRA clients. In this regard, effective as of the effective date of this five-year exemption with respect to any arrangement, agreement, or contract between a DB QPAM and an ERISA-covered plan or IRA for which a DB QPAM provides asset management or other discretionary fiduciary services, each DB QPAM agrees and warrants: To comply with ERISA and the Code, as applicable with respect to such ERISA-covered plan or IRA; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions); to comply with the standards of prudence and loyalty set forth in section 404 of ERISA with respect to each such ERISA-covered plan and IRA; and to indemnify and hold harmless the ERISA-covered plan and IRA for any damages resulting from a DB QPAM's violation of applicable laws, a DB QPAM's breach of contract, or any claim brought in connection with the failure of such DB QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Convictions. Furthermore, DB QPAMs must agree not to require (or otherwise cause) the ERISA-covered plan or IRA to waive, limit, or qualify the liability of the DB QPAM for violating ERISA or the Code or engaging in prohibited transactions; not to require the ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the DB QPAM for violating ERISA or engaging in prohibited transactions, except for violations or prohibited transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of Deutsche Bank; not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the DB QPAM (including 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 as a result of an actual lack of liquidity of the underlying assets, provided that such restrictions are applied consistently and in like manner to all such investors; not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors; and not to include exculpatory provisions disclaiming or otherwise limiting liability of the DB QPAM for a violation of such agreement's terms, except 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 Deutsche Bank.

Within four (4) months of the effective date of this proposed five-year exemption, each DB QPAM will provide a notice of its obligations under this Section I(j) to each ERISA-covered plan and IRA for which a DB QPAM provides asset management or other discretionary fiduciary services. For all other prospective ERISA-covered plan and IRA clients for which a DB QPAM provides asset management or discretionary other fiduciary services, the DB QPAM will agree in writing to its obligations under this Section I(j) in an updated investment management agreement or advisory agreement between the DB QPAM and such clients or other written contractual agreement.

67. *Notice Requirements.* The proposed exemption contains extensive notice requirements, some of which

extend not only to ERISA-covered plan and IRA clients of DB QPAMs, but which also apply to the non-Plan clients of DB QPAMs. In this regard, the Department understands that many firms may promote their ''QPAM'' designation in order to earn asset management business, including business from non-ERISA plans. Therefore, in order to fully inform any clients that may have retained DB QPAMs as asset managers because such DB QPAMs have represented themselves as able to rely on PTE 84–14, the Department has determined to condition exemptive relief upon the following notice requirements.

Within fifteen (15) days of the publication of this proposed five-year exemption in the **Federal Register**, each DB QPAM will provide a notice of the proposed five-year exemption, along with a separate summary describing the facts that led to the Convictions (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that each Conviction separately results in a failure to meet a condition in PTE 84–14, to each sponsor of an ERISA-covered plan and each beneficial owner of an IRA for which a DB QPAM provides asset management or other discretionary fiduciary services, or the sponsor of an investment fund in any case where a DB QPAM acts only as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests. In the event that this proposed five-year exemption is granted, the **Federal Register** copy of the notice of final five-year exemption must be delivered to such clients within sixty (60) days of its publication in the **Federal Register**, and may be delivered electronically (including by an email that has a link to the exemption). Any prospective clients for which a DB QPAM provides asset management or other discretionary fiduciary services must receive the proposed and final five-year exemptions with the Summary and the Statement prior to, or contemporaneously with, the client's receipt of a written asset management agreement or other contractual agreement from the DB QPAM.

In addition, each DB QPAM will provide a **Federal Register** copy of the proposed five-year exemption, a **Federal Register** copy of the final five-year exemption; the Summary; and the Statement to each: (A) Current Non-Plan Client within four (4) months of the effective date, if any, of a final five-year exemption; and (B) Future Non-Plan Client prior to, or contemporaneously with, the client's receipt of a written asset management agreement or other contractual agreement from the DB QPAM. A ''Current Non-Plan Client'' is a client of a DB QPAM that: Is neither an ERISA-covered plan nor an IRA; has assets managed by the DB QPAM as of the effective date, if any, of a final five-year exemption; and has received a written representation (qualified or otherwise) from the DB QPAM that such DB QPAM qualifies as a QPAM or qualifies for the relief provided by PTE 84–14. A ''Future Non-Plan Client'' is a prospective client of a DB QPAM that is neither an ERISA-covered plan nor an IRA that has assets managed by the DB QPAM after the effective date, if any, of a final five-year exemption, and has received a written representation (qualified or otherwise) from the DB QPAM that such DB QPAM is a QPAM, or qualifies for the relief provided by PTE 84–14.

68. This proposed five-year exemption also requires Deutsche Bank to designate a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. The Compliance Officer will have several obligations that it must comply with, as described in Section I(m) above. These include conducting an annual review (the Annual Review) to determine the adequacy and effectiveness of the implementation of the Policies and Training; and preparing a written report for each Annual Review (each, an Annual Report) that, among other things, summarizes his or her material activities during the preceding year and sets forth any instance of noncompliance discovered during the preceding year, and any related corrective action. Each Annual Report must be provided to appropriate corporate officers of Deutsche Bank and each DB QPAM to which such report relates; the head of Compliance and the General Counsel (or their functional equivalent) of the relevant DB QPAM; and must be made unconditionally available to the independent auditor described above.

69. Each DB QPAM must maintain records necessary to demonstrate that the conditions of this proposed five-year exemption have been met, for six (6) years following the date of any transaction for which such DB QPAM relies upon the relief in the five-year exemption.

70. In order for DB QPAMs to rely on the exemption provided herein, Deutsche Bank must have disgorged all of its profits generated by the spot/futures-linked market manipulation activities of DSK personnel that led to the Conviction against DSK entered on January 25, 2016, in Seoul Central District Court.

71. The proposed five-year exemption mandates that, during the effective period of this five-year exemption, Deutsche Bank discloses to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) entered into by Deutsche Bank or any of its affiliates with the U.S Department of Justice, in connection with conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA. Furthermore, Deutsche Bank must immediately provide the Department any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement. After review of the information, the Department may require Deutsche Bank or its affiliates, as specified by the Department, to submit a new application for the continued availability of relief as a condition of continuing to rely on this exemption. In this regard, the QPAM (or other party submitting the application) will have the burden of justifying the relief sought in the application. If the Department denies the relief requested in the new application, or does not grant such relief within twelve (12) months of the application, the relief described herein is revoked as of the date of denial or as of the expiration of the twelve month period, whichever date is earlier.

72. Finally, each DB QPAM, in its agreements with ERISA-covered plan and IRA clients, or in other written disclosures provided to ERISA-covered plan and IRA clients, within 60 days prior to the initial transaction upon which relief hereunder is relied, will clearly and prominently inform the ERISA-covered plan or IRA client that the client has the right to obtain copies of the QPAM's written Policies adopted in accordance with this five-year exemption.

Statutory Findings—Administratively Feasible

73. Deutsche Bank represents that the proposed five-year exemption is administratively feasible because it does not require any monitoring by the Department but relies on an independent auditor to determine that the exemption conditions are being complied with. Furthermore, the requested five-year exemption does not require the Department's oversight because, as a condition of this proposed five-year exemption, neither DB Group Services nor DSK will provide any fiduciary or QPAM services to ERISA-covered plans and IRAs.

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

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons within 15 days of the publication of the notice of proposed five-year exemption in the **Federal Register**. The notice will be provided to all interested persons in the manner described in Section I(k)(1) of this proposed exemption and will contain the documents described therein and a supplemental statement, as required pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on and to request a hearing with respect to the pending exemption. All written comments and/or requests for a hearing must be received by the Department within forty five (45) days of the date of publication of this proposed exemption in the **Federal Register**. All comments will be made available to the public.

All comments will be made available to the public. *Warning:* If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

FOR FURTHER INFORMATION CONTACT: Scott Ness of the Department, telephone (202) 693–8561. (This is not a toll-free number.)

Citigroup, Inc. (Citigroup or the Applicant), Located in New York, New York

[Application No. D–11909]

Proposed Five Year Exemption

The Department is considering granting a five-year exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).[123]

Section I: Covered Transactions

If the proposed five-year exemption is granted, certain asset managers with specified relationships to Citigroup (the Citigroup Affiliated QPAMs and the Citigroup Related QPAMs, as defined further in Sections II(a) and II(b), respectively) will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14 or the QPAM Exemption),[124] notwithstanding the judgment of conviction against Citicorp (the Conviction), as defined in Section II(c)),[125] for engaging in a conspiracy to: (1) Fix the price of, or (2) eliminate competition in the purchase or sale of the euro/U.S. dollar currency pair exchanged in the Foreign Exchange (FX) Spot Market, for a period of five years beginning on the date the exemption is granted, provided the following conditions are satisfied:

(a) Other than a single individual who worked for a non-fiduciary business within Citigroup's Markets and Securities Services business, and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, the Citigroup Affiliated QPAMs and the Citigroup Related QPAMs (including their officers, directors, agents other than Citicorp, and employees of such QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not know of, did not have reason to know of, or participate in the criminal conduct that is the subject of the Conviction (for purposes of this paragraph (a), ''participate in'' includes the knowing or tacit approval of the misconduct underlying the Conviction);

(b) Other than a single individual who worked for a non-fiduciary business within Citigroup's Markets and Securities Services business, and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, the Citigroup Affiliated QPAMs and the Citigroup Related QPAMs (including their officers, directors, and agents other than Citigroup, and employees of such Citigroup QPAMs) did not receive direct compensation, or knowingly receive indirect compensation in connection with the criminal conduct that is the subject of the Conviction;

(c) The Citigroup Affiliated QPAMs will not employ or knowingly engage any of the individuals that participated in the criminal conduct that is the subject of the Conviction (for the purposes of this paragraph (c), ''participated in'' includes the knowing or tacit approval of the misconduct underlying Conviction);

(d) A Citigroup Affiliated QPAM will not use its authority or influence to direct an ''investment fund'' (as defined in Section VI(b) of PTE 84–14), that is subject to ERISA or the Code and managed by such Citigroup Affiliated QPAM, to enter into any transaction with Citicorp or the Markets and Securities Services business of Citigroup, or to engage Citicorp or the Markets and Securities Services business of Citigroup, to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e) Any failure of a Citigroup Affiliated QPAM or a Citigroup Related QPAM to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction;

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

(g) Citicorp and the Markets and Securities Services business of Citigroup will not provide discretionary asset management services to ERISA-covered plans or IRAs, or otherwise act as a fiduciary with respect to ERISA-covered plan or IRA assets;

(h)(1) Within four (4) months of the Conviction, each Citigroup Affiliated QPAM must develop, implement, maintain, and follow written policies and procedures (the Policies) requiring and reasonably designed to ensure that:

(i) The asset management decisions of the Citigroup Affiliated QPAM are

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

[124] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

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

conducted independently of the corporate management and business activities, including the corporate management and business activities of the Markets and Securities Services business of Citigroup;

(ii) The Citigroup Affiliated QPAM fully complies with ERISA's fiduciary duties, and with ERISA and the Code's prohibited transaction provisions, and does not knowingly participate in any violation of these duties and provisions with respect to ERISA-covered plans and IRAs;

(iii) The Citigroup Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs;

(iv) Any filings or statements made by the Citigroup Affiliated QPAM to regulators, including, but not limited to, the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA-covered plans or IRAs, are materially accurate and complete, to the best of such QPAM's knowledge at that time;

(v) The Citigroup Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plans and IRA clients;

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

(vii) Any violation of, or failure to comply with an item in subparagraphs (ii) through (vi), is corrected promptly upon discovery, and any such violation or compliance failure not promptly corrected is reported, upon the discovery of such failure to promptly correct, in writing, to appropriate corporate officers, the head of compliance, and the General Counsel (or their functional equivalent) of the relevant Citigroup Affiliated QPAM, the independent auditor responsible for reviewing compliance with the Policies, and an appropriate fiduciary of any affected ERISA-covered plan or IRA that is independent of Citigroup; however, with respect to any ERISA-covered plan or IRA sponsored by an ''affiliate'' (as defined in Section VI(d) of PTE 84–14) of Citigroup or beneficially owned by an employee of Citigroup or its affiliates, such fiduciary does not need to be independent of Citigroup. A Citigroup Affiliated QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance promptly when discovered, or when it reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (vii);

(2) Within four (4) months of the date of the Conviction, each Citigroup Affiliated QPAM must develop and implement a program of training (the Training), conducted at least annually, for all relevant Citigroup Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must:

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

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

(i)(1) Each Citigroup Affiliated QPAM submits to an audit conducted annually by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and the Citigroup Affiliated QPAM's compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. Each annual audit must cover a consecutive twelve (12) month period starting with the twelve (12) month period that begins on the effective date of the five-year exemption, and each annual audit must be completed no later than six (6) months after the period to which the audit applies;

(2) 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 as permitted by law, each Citigroup Affiliated QPAM and, if applicable, Citigroup, will grant the auditor unconditional access to its business, including, but not limited to: Its computer systems; business records; transactional data; workplace locations; training materials; and personnel;

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

(4) The auditor's engagement must specifically require the auditor to test each Citigroup Affiliated QPAM's operational compliance with the Policies and Training. In this regard, the auditor must test a sample of each QPAM's transactions involving ERISA-covered plans and IRAs sufficient in size and nature to afford the auditor a reasonable basis to determine the operational compliance with the Policies and Training;

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

(i) The adequacy of the Citigroup Affiliated QPAM's Policies and Training; the Citigroup 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 Citigroup Affiliated QPAM's noncompliance with the written Policies and Training described in Section I(h) above. Any determination by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective Citigroup Affiliated QPAM must be promptly addressed by such Citigroup Affiliated QPAM, and any action taken by such Citigroup Affiliated QPAM to address such recommendations must be included in an addendum to the Audit Report (which addendum is completed prior to the certification described in Section I(i)(7) below). Any determination by the auditor that the respective Citigroup Affiliated QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that the Citigroup Affiliated QPAM has complied with the requirements under this subsection must be based on evidence that demonstrates the Citigroup Affiliated QPAM has actually implemented, maintained, and followed the Policies and Training required by this five-year exemption. Furthermore, the auditor must not rely on the Annual

Report created by the compliance officer (the Compliance Officer) as described in Section I(m) below in lieu of independent determinations and testing performed by the auditor as required by Section I(i)(3) and (4) above; and

(ii) The adequacy of the Annual Review described in Section I(m) and the resources provided to the Compliance Officer in connection with such Annual Review;

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

(7) With respect to each Audit Report, the General Counsel, or one of the three most senior executive officers of the Citigroup 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; addressed, corrected, or remedied any inadequacy identified in the Audit Report; and determined that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this proposed five-year exemption, and with the applicable provisions of ERISA and the Code;

(8) The Risk Committee of Citigroup's Board of Directors is provided a copy of each Audit Report; and a senior executive officer with a direct reporting line to the highest ranking legal compliance officer of Citigroup must review the Audit Report for each Citigroup Affiliated QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report;

(9) Each Citigroup Affiliated QPAM provides its certified Audit Report, by regular mail to: The Department's Office of Exemption Determinations (OED), 200 Constitution Avenue NW., Suite 400, Washington, DC 20210, or by private carrier to: 122 C Street NW., Suite 400, Washington, DC 20001–2109, no later than 30 days following its completion. The Audit Report will be part of the public record regarding this five-year exemption. Furthermore, each Citigroup Affiliated QPAM must make its Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of an ERISA-covered plan or IRA, the assets of which are managed by such Citigroup Affiliated QPAM;

(10) Each Citigroup Affiliated QPAM and the auditor must submit to OED: (A) Any engagement agreement(s) entered into pursuant to the engagement of the auditor under this five-year exemption; and (B) any engagement agreement entered into with any other entity retained in connection with such QPAM's compliance with the Training or Policies conditions of this five-year exemption, no later than six (6) months after the Conviction Date (and one month after the execution of any agreement thereafter);

(11) The auditor must provide OED, upon request, all of the workpapers created and utilized in the course of the audit, including, but not limited to: The audit plan; audit testing; identification of any instance of noncompliance by the relevant Citigroup Affiliated QPAM; and an explanation of any corrective or remedial action taken by the applicable Citigroup Affiliated QPAM; and

(12) Citigroup must notify the Department at least thirty (30) days prior to any substitution of an auditor, except that no such replacement will meet the requirements of this paragraph unless and until Citigroup demonstrates to the Department's satisfaction that such new auditor is independent of Citigroup, experienced in the matters that are the subject of the exemption, and capable of making the determinations required of this exemption;

(j) Effective as of the effective date of this five-year exemption, with respect to any arrangement, agreement, or contract between a Citigroup Affiliated QPAM and an ERISA-covered plan or IRA for which a Citigroup Affiliated QPAM provides asset management or other discretionary fiduciary services, each Citigroup Affiliated QPAM agrees and warrants:

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

(2) To indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a Citigroup Affiliated QPAM's violation of applicable laws, a Citigroup Affiliated QPAM's breach of contract, or any claim brought in conection with the failure of such Citigroup Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Conviction;

(3) Not to require (or otherwise cause) the ERISA-covered plan or IRA to waive, limit, or qualify the liability of the Citigroup Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(4) Not to require the ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the Citigroup Affiliated QPAM for violating ERISA or engaging in prohibited transactions, except for violations or prohibited transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of Citigroup, and its affiliates;

(5) Not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the Citigroup Affiliated QPAM (including 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 as a result of an actual lack of liquidity of the underlying assets, provided that such restrictions are applied consistently and in like manner to all such investors;

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

(7) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the Citigroup Affiliated QPAM for a violation of such agreement's terms, except for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary which is independent of Citigroup, and its affiliates; and

(8) Within four (4) months of the date of the Conviction, each Citigroup Affiliated QPAM must provide a notice of its obligations under this Section I(j) to each ERISA-covered plan and IRA for which a Citigroup Affiliated QPAM

provides asset management or other discretionary fiduciary services. For all other prospective ERISA-covered plan and IRA clients for which a Citigroup Affiliated QPAM provides asset management or other discretionary services, the Citigroup Affiliated QPAM will agree in writing to its obligations under this Section I(j) in an updated investment management agreement between the Citigroup Affiliated QPAM and such clients or other written contractual agreement;

(k)(1) *Notice to ERISA-covered plan and IRA clients.* Within fifteen (15) days of the publication of this proposed five-year exemption in the **Federal Register**, each Citigroup Affiliated QPAM will provide a notice of the proposed five-year exemption, along with a separate summary describing the facts that led to the Conviction (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that the Conviction results in a failure to meet a condition in PTE 84–14, to each sponsor of an ERISA-covered plan and each beneficial owner of an IRA for which a Citigroup Affiliated QPAM provides asset management or other discretionary services, or the sponsor of an investment fund in any case where a Citigroup Affiliated QPAM acts only as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests. In the event that this proposed five-year exemption is granted, the **Federal Register** copy of the notice of final five-year exemption must be delivered to such clients within sixty (60) days of its publication in the **Federal Register**, and may be delivered electronically (including by an email that has a link to the exemption). Any prospective clients for which a Citigroup Affiliated QPAM provides asset management or other discretionary services must receive the proposed and final five-year exemptions with the Summary and the Statement prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the Citigroup Affiliated QPAM; and

(2) *Notice to Non-Plan Clients.* Each Citigroup Affiliated QPAM will provide a **Federal Register** copy of the proposed five-year exemption, a **Federal Register** copy of the final five-year exemption; the Summary; and the Statement to each: (A) Current Non-Plan Client within four (4) months of the effective date, if any, of a final five-year exemption; and (B) Future Non-Plan Client prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the Citigroup Affiliated QPAM. For purposes of this subparagraph (2), a Current Non-Plan Client means a client of a Citigroup Affiliated QPAM that: Is neither an ERISA-covered plan nor an IRA; has assets managed by the Citigroup Affiliated QPAM as of the effective date, if any, of a final five-year exemption; and has received a written representation (qualified or otherwise) from the Citigroup Affiliated QPAM that such Citigroup Affiliated QPAM qualifies as a QPAM or qualifies for the relief provided by PTE 84–14. For purposes of this subparagraph (2), a Future Non-Plan Client means a client of a Citigroup Affiliated QPAM that is neither an ERISA-covered plan nor an IRA that, has assets managed by the Citigroup Affiliated QPAM as of the effective date, if any, of a final five-year exemption, and has received a written representation (qualified or otherwise) from the Citigroup Affiliated QPAM that such Citigroup Affiliated QPAM is a QPAM, or qualifies for the relief provided by PTE 84–14;

(l) The Citigroup 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 Conviction;

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

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

(ii) The Compliance Officer must have a direct reporting line to the highest-ranking corporate officer in charge of legal compliance that is independent of Citigroup's other business lines;

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

(i) The Annual Review includes a review of: Any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the compliance and risk control function (or its equivalent) during the previous year; any material change in the business activities of the Citigroup 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 Citigroup Affiliated QPAMs;

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

(iii) In each Annual Report, the Compliance Officer must certify in writing that to his or her knowledge: (A) The report is accurate; (B) the Policies and Training are working in a manner which is reasonably designed to ensure that the Policies and Training requirements described herein are met; (C) any known instance of noncompliance during the preceding year and any related correction taken to date have been identified in the Annual Report; (D) the Citigroup Affiliated QPAMs have complied with the Policies and Training in all respects, and/or corrected any instances of noncompliance in accordance with Section I(h) above; and (E) Citigroup has provided the Compliance Officer with adequate resources, including, but not limited to, adequate staffing;

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

(v) Each Annual Review, including the Compliance Officer's written Annual Report, must be completed at least three (3) months in advance of the date on which each audit described in Section I(i) is scheduled to be completed;

(n) Each Citigroup 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 such Citigroup Affiliated QPAM relies upon the relief in the exemption;

(o) During the effective period of the five-year exemption, Citigroup: (1) Immediately discloses to the Department any Deferred Prosecution Agreement (a DPA) or a Non-Prosecution Agreement (an NPA) with the U.S. Department of Justice, entered into by Citigroup or any of its affiliates in connection with conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA; and

(2) Immediately provides the Department any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement. The Department may, following its review of that information, require Citigroup or a party specified by the Department, to submit a new application for the continued availability of relief as a condition of continuing to rely on this exemption. If the Department denies the relief requested in that application, or does not grant such relief within twelve (12) months of the application, the relief described herein would be revoked as of the date of denial or as of the expiration of the twelve month period, whichever date is earlier;

(p) Each Citigroup Affiliated QPAM, in its agreements with ERISA-covered plan and IRA clients, or in other written disclosures provided to ERISA-covered plan and IRA clients, within 60 days prior to the initial transaction upon which relief hereunder is relied, and then at least once annually, will clearly and prominently: Inform the ERISA-covered plan and IRA client that the client has the right to obtain copies of the QPAM's written Policies adopted in accordance with the exemption; and

(q) A Citigroup Affiliated QPAM or a Citigroup Related QPAM will not fail to meet the terms of this exemption, solely because a different Citigroup Affiliated QPAM or Citigroup Related QPAM fails to satisfy a condition for relief described in Sections I(c), (d), (h), (i), (j), (k), (l), (n) and (p).

Section II: Definitions

(a) The term ''Citigroup Affiliated QPAM'' means a ''qualified professional asset manager'' (as defined in section VI(a) [126] of PTE 84–14) that relies on the relief provided by PTE 84–14 and with respect to which Citigroup is a current or future ''affiliate'' (as defined in section VI(d)(1) of PTE 84–14). The term ''Citigroup Affiliated QPAM'' excludes the parent entity, Citigroup and Citigroup's Banking Division.

(b) The term ''Citigroup 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 Citigroup owns a direct or indirect five percent or more interest, but with respect to which Citigroup is not an ''affiliate'' (as defined in Section VI(d)(1) of PTE 84–14).

(c) The terms ''ERISA-covered plan'' and ''IRA'' mean, respectively, a plan subject to Part 4 of Title I of ERISA and a plan subject to section 4975 of the Code;

(d) The term ''Citicorp'' means Citicorp, Inc., the parent entity, but does not include any subsidiaries or other affiliates;

(e) The term ''Conviction'' means the judgment of conviction against Citigroup for violation of the Sherman Antitrust Act, 15 U.S.C. 1, which is scheduled to be entered in the District Court for the District of Connecticut (the District Court) (Case Number 3:15–cr–78–SRU), in connection with Citigroup, through one of its euro/U.S. dollar (EUR/USD) traders, entering into and engaging in a combination and conspiracy to fix, stabilize, maintain, increase or decrease the price of, and rig bids and offers for, the EUR/USD currency pair exchanged in the FX spot market by agreeing to eliminate competition in the purchase and sale of the EUR/USD currency pair in the United States and elsewhere. For all purposes under this five-year, ''conduct'' of any person or entity that is the ''subject of [a] Conviction'' encompasses any conduct of Citigroup and/or their personnel, that is described in the Plea Agreement, (including the Factual Statement), and other official regulatory or judicial factual findings that are a part of this record; and

(f) The term ''Conviction Date'' means the date that a judgment of Conviction against Citicorp is entered by the District Court in connection with the Conviction.

Effective Date: This proposed five-year exemption, will be effective beginning on the date of publication of such grant in the **Federal Register** and ending on the date that is five years thereafter. Should the Applicant wish to extend the effective period of exemptive relief provided by this proposed five-year exemption, the Applicant must submit another application for an exemption. In this regard, the Department expects that, in connection with such application, the Applicant should be prepared to demonstrate compliance with the conditions for this exemption and that the Citigroup Affiliated QPAMs, and those who may be in a position to influence their policies, have maintained the high standard of integrity required by PTE 84–14.

Department's Comment: Concurrently with this proposed five-year exemption, the Department is publishing a proposed one-year exemption for Citigroup Affiliated QPAMs to continue to rely on PTE 84–14. That one-year exemption is intended to allow the Department sufficient time, including a longer comment period, to determine whether to grant this five-year exemption. The proposed one-year exemption is designed to protect ERISA-covered plans and IRAs from the potential costs and losses, described below, that would be incurred if such Citigroup Affiliated QPAMs were to suddenly lose their ability to rely on PTE 84–14 as of the Conviction date.

The proposed five-year exemption would provide relief from certain of the restrictions set forth in sections 406 and 407 of ERISA. No relief from a violation of any other law would be provided by this exemption, including any criminal conviction described herein.

The Department cautions that the relief in this proposed five-year exemption would terminate immediately if, among other things, an entity within the Citigroup corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Conviction) during the effective period of the exemption. While such an entity could apply for a new exemption in that circumstance, the Department would not be obligated to grant the exemption. The terms of this proposed five-year exemption have been specifically designed to permit plans to terminate their relationships in an orderly and cost effective fashion in the event of an additional conviction or a determination that it is otherwise prudent for a plan to terminate its relationship with an entity covered by the proposed exemption.

Summary of Facts and Representations [127]

Background

1. Citigroup is a global diversified financial services holding company incorporated in Delaware and headquartered in New York, New York. Citigroup and its affiliates provide

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

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

consumers, corporations, governments and institutions with a broad range of financial products and services, including consumer banking and credit, corporate and investment banking, securities brokerage, trade and securities services and wealth management. Citigroup has approximately 241,000 employees and operations in over 160 countries and jurisdictions. As of December 31, 2014, Citigroup had approximately $1.8 trillion of assets under management and held $889 billion in deposits.

2. Citigroup currently operates, for management reporting purposes, via two primary business segments which include: (a) Citigroup's Global Consumer Banking businesses (GCB); and (b) Citigroup's Institutional Clients Group (ICG).

GCB includes a global, full-service consumer franchise delivering a wide array of retail banking, commercial banking, Citi-branded credit cards and investment services through a network of local branches, offices and electronic delivery systems. GCB had 3,280 branches in 35 countries around the world. For the year ended December 31, 2014, GCB had $399 billion of average assets and $331 billion of average deposits.

ICG provides a broad range of banking and financial products and services to corporate, institutional, public sector and high-net-worth clients in approximately 100 countries. ICG transacts with clients in both cash instruments and derivatives, including fixed income, foreign currency, equity and commodity products. ICG is divided into several business lines including: (a) Citi Corporate and Investment Banking; (b) Treasury and Trade Solutions; (c) Markets and Securities Services; and (d) Citi Private Bank (CPB).

3. The Applicant represents that Citigroup has several affiliates that provide investment management services.[128] Citigroup provides investment advisory services to clients world-wide through a number of different programs offered by various businesses that are tailored to meet the needs of its diverse clientele. Within the United States, Citigroup offers its investment advisory programs primarily through the following: (a) CPB and Citigroup's Global Consumers Group (GCG), acting through Citigroup Global Markets Inc. (CGMI); and (b) Citibank, N.A. (Citibank) and Citi Private Advisory, LLC (CPA) (collectively, the Advisory Businesses). The Applicant represents that CPA and CGMI are each investment advisers, registered under the Advisers Act. The Applicant also represents that CPB, CGMI, Citibank, and CPA are QPAMs.

Within the United States, Citigroup's Advisory Businesses are conducted within CPB and GCG. Together, CPB and GCG provide services to over 44,000 customer advisory accounts with assets under management totaling over $33 billion. Of these, there are over 20,000 accounts for ERISA pension plans and individual retirement accounts (IRAs) (collectively, Retirement Accounts), with assets under management of approximately $3.8 billion.

Although each of the advisory programs offered by the Advisory Businesses is unique, most utilize independent third-party managers on a discretionary or nondiscretionary basis, as determined by the client. Other programs such as Citi Investment Management (CIM), which operates through both the CGMI and CPB business units, primarily provide advice concerning the selection of individual securities for CPB clients.

CPB, GCG, CBNA, CGMI and their affiliates provide administrative, management and/or technical services designed to implement and monitor client's investment guidelines, and in certain nondiscretionary programs, offer recommendations on investing and re-investing portfolio assets for the client's consideration. CPB provides private banking services, and offers its clients access to a broad array of products and services available through bank and non-bank affiliates of Citigroup. GCG services include U.S. and international retail banking, U.S. consumer lending, international consumer finance, and commercial finance. Citibank is a wholly-owned subsidiary of Citigroup and a national banking association which provides fiduciary advisory services.

4. CGMI is a wholly-owned subsidiary of Citigroup whose principal activities include retail and institutional private client services which include: (a) Advice with respect to financial markets; (b) the execution of securities and commodities transactions as a broker or dealer; (c) securities underwriting; (d) investment banking; (e) investment management (including fiduciary and administrative services); and (f) trading and holding securities and commodities for its own account. CGMI holds a number of registrations, including registration as an investment adviser, a securities broker-dealer, and a futures commission merchant.

CPA is also a wholly-owned subsidiary of Citigroup and provides advisory services to private investment funds that are organized to invest primarily in other private investment funds advised by third-party managers.

The Applicant represents that trading decisions and investment strategy of current Citigroup Affiliated QPAMs for their clients is not shared with Citigroup employees outside of the Advisory Business, nor do employees of the Advisory Business consult with other Citigroup affiliates prior to making investment decisions on behalf of clients.

5. On May 20, 2015, the Applicant filed an application for exemptive relief in connection with a conviction that would make the relief in PTE 84–14 unavailable to any current or future Citigroup-related investment managers. In this regard, the U.S. Department of Justice (Department of Justice) conducted an investigation of certain conduct and practices of Citigroup in the FX spot market. Thereafter, Citicorp, a Delaware corporation that is a financial services holding company and the direct parent company of Citibank, entered into a plea agreement with the Department of Justice (the Plea Agreement), to be approved by the U.S. District Court for the District of Connecticut (the District Court), pursuant to which Citicorp has pleaded guilty to one count of an antitrust violation of the Sherman Antitrust Act, 15 U.S.C. 1 (15 U.S.C. 1).

As set forth in the Plea Agreement, from at least December 2007 and continuing to at least January 2013 (the Relevant Period), Citicorp, through one London-based euro/U.S. dollar (EUR/USD) trader employed by Citibank, entered into and engaged in a conspiracy to fix, stabilize, maintain, increase or decrease the price of, and rig bids and offers for, the EUR/USD currency pair exchanged in the FX spot market by agreeing to eliminate competition in the purchase and sale of the EUR/USD currency pair in the United States and elsewhere. The criminal conduct that is the subject of the Conviction included near daily conversations, some of which were in code, in an exclusive electronic chat room used by certain EUR/USD traders, including the EUR/USD trader

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

employed by Citibank. The criminal conduct that is the subject of the Conviction forms the basis for the Department of Justice's antitrust charge that Citicorp violated 15 U.S.C. 1.

Under the terms of the Plea Agreement, the Department of Justice and Citicorp have agreed that the District Court should impose a sentence requiring Citicorp to pay a criminal fine of $925 million. The Plea Agreement also provides for a three-year term of probation, with conditions to include, among other things, Citigroup's continued implementation of a compliance program designed to prevent and detect the criminal conduct that is the subject of the Conviction throughout its operations, as well as Citigroup's further strengthening of its compliance and internal controls as required by other regulatory or enforcement agencies that have addressed the criminal conduct that is the subject of the Conviction, including: (a) The U.S. Commodity Futures Trading Commission (the CFTC), pursuant to its settlement with Citibank on November 11, 2014, requiring remedial measures to strengthen the control framework governing Citigroup's FX trading business; (b) the Office of the Comptroller of the Currency, pursuant to its settlement with Citibank on November 11, 2014, requiring remedial measures to improve the control framework governing Citigroup's wholesale trading and benchmark activities; (c) the U.K. Financial Conduct Authority (FCA), pursuant to its settlement with Citibank on November 11, 2014; and (d) the U.S. Board of Governors of the Federal Reserve System (FRB), pursuant to its settlement with Citigroup entered into concurrently with the Plea Agreement with Department of Justice, requiring remedial measures to improve Citigroup's controls for FX trading and activities involving commodities and interest rate products.

6. The Applicant states that in January 2016, Nigeria's Federal Director of Public Prosecutions filed charges against a Nigerian subsidiary of Citibank and fifteen individuals (some of whom are current or former employees of that subsidiary) relating to specific credit facilities provided to a certain customer in 2000 to finance the import of goods. The Applicant represents that these charges are the latest of a series of charges that were filed and then withdrawn between 2007 and 2011. The Applicant also represents that to its best knowledge, it does not have a reasonable basis to believe that the discretionary asset management activities of any Citigroup QPAMs are subject to these charges. Further, the Applicant represents that it does not have a reasonable basis to believe that there are any pending criminal investigations involving Citigroup or any of its affiliates that would cause a reasonable plan or IRA customer not to hire or retain the institution as a QPAM.

7. Notwithstanding the aforementioned charges, once the Conviction is entered, the Citigroup Affiliated QPAMs and the Citigroup Related QPAMs, as well as their client plans that are subject to Part 4 of Title I of ERISA (ERISA-covered plans) or section 4975 of the Code (IRAs), will no longer be able to rely on PTE 84–14, pursuant to the anti-criminal rule set forth in section I(g) of the class exemption, absent an individual exemption. The Applicant is seeking an individual exemption that would permit the Citigroup Affiliated QPAMs and the Citigroup Related QPAMs, and their ERISA-covered plan and IRA clients to continue to utilize the relief in PTE 84–14, notwithstanding the anticipated Conviction, provided that such QPAMs satisfy the additional conditions imposed by the Department in the proposed five-year exemption herein.

8. The Applicant represents that the criminal conduct that is the subject of the Conviction was neither widespread nor pervasive. The Applicant states that such criminal conduct consisted of isolated acts perpetrated by a single EUR/USD trader employed in Citigroup's Markets and Securities Services business in the United Kingdom who was removed from the activities of the Citigroup Affiliated QPAMs, both geographically and organizationally. The Applicant represents that this London-based EUR/USD trader was not an officer or director of Citigroup, and did not have any involvement in, or influence over, Citigroup or any of the Citigroup Affiliated QPAMs. The Applicant states that this London-based EUR/USD trader had minimal management responsibilities, which related exclusively to Citigroup's G10 Spot FX trading business, outside of the United States. As represented by the Applicant, once senior management became aware of the criminal conduct that is the subject of the Conviction, Citibank took action to terminate the employee.

9. The Applicant represents that the Citigroup Affiliated QPAMs, did not know of, did not have reason to know of, and did not participate in the criminal conduct that is the subject of the Conviction. The Applicant also represents that no current or former employee of Citigroup or of any Citigroup Affiliated QPAM who previously has been or who subsequently may be identified by Citigroup, or any U.S. or non-U.S. regulatory or enforcement agencies, as having been responsible for the criminal conduct that is the subject of the Conviction will have any involvement in providing asset management services to plans and IRAs or will be an officer, director, or employee of the Applicant or of any Citigroup Affiliated QPAM.

Citigroup's Business Separation/Compliance/Training

10. The Applicant represents that Citigroup's Advisory Businesses are operated independently from Citigroup's Markets and Securities Services, the segment of Citigroup in which foreign exchange trading is conducted.[129] Although the Advisory Business falls under the umbrellas of ICG and GCG, it operates separately in all material respects from the sales and trading businesses that comprise that business segment. The Advisory Business maintains separate: (a) Management and reporting lines; (b) compliance programs; (c) compensation arrangements; (d) profit and loss reporting (with different comptrollers), (e) human resources and training programs, and (f) legal coverage. The Applicant represents that the Advisory Businesses maintain a separate, dedicated compliance function, and have protocols to preserve the separation between employees in the Advisory Business and those in Markets and Securities Services.

11. The Applicant represents that Citigroup's independent control functions, including Compliance, Finance, Legal and Risk, set standards according to which Citigroup and its businesses are expected to manage and oversee risks, including compliance with applicable laws, regulatory requirements, policies and standards of ethical conduct. Among other things, the independent control functions provide advice and training to Citigroup's businesses and establish tools, methodologies, processes and oversight of controls used by the businesses to foster a culture of compliance and control and to satisfy those standards.

[129] The Applicant represents that each of Citigroup's primary business units operates a large number of separate and independent businesses. These lines of business generally have: (a) A group of employees working solely on matters specific to its line of business, (b) separate management and reporting lines; (c) tailored compliance regimens; (d) separate compensation arrangements; (e) separate profit and loss reporting; (vi) separate human resources personnel and training, (f) dedicated risk and compliance officers and (g) dedicated legal coverage.

12. The Applicant represents that compliance at Citigroup is an independent control function within Franchise Risk and Strategy that is designed to protect Citigroup not only by managing adherence to applicable laws, regulations and other standards of conduct, but also by promoting business behavior and activity that is consistent with global standards for responsible finance. The Applicant states that Citigroup has implemented company-wide initiatives designed to further embed ethics in Citigroup's culture. This includes training for more than 40,000 senior employees that fosters ethical decision-making and underscores the importance of escalating issues, a video series featuring senior leaders discussing ethical decisions, regular communications on ethics and culture, and the development of enhanced tools to support ethical decision-making.

Statutory Findings—In the Interest of Affected Plans and IRAs

13. The Applicant represents that, if the exemption is denied, the Citigroup Affiliated QPAMs may be unable to effectively manage assets subject to ERISA or the prohibited transaction provisions of the Code where PTE 84–14 is needed to avoid engaging in a prohibited transaction. The Applicant further represents that plans and participants would be harmed because they would be unnecessarily deprived of the current and future opportunity to utilize the Applicant's experience in and expertise with respect to the financial markets and investing. The Applicant anticipates that, if the exemption is denied, some of Citigroup's 20,000 existing Retirement Account clients may feel forced to terminate their advisory relationship with Citigroup, incurring expenses related to: (a) Consultant fees and other due diligence expenses for identifying new managers; (b) transaction costs associated with a change in investment manager, including the sale and purchase of portfolio investments to accommodate the investment policies and strategy of the new manager, and the cost of entering into new custodial arrangements; and (c) lost investment opportunities in connection with the change.[130]

[130] The Department notes that, if this five-year exemption is granted, compliance with the condition in Section I(j) of the exemption would require the Citigroup Affiliated QPAMs to hold their plan customers harmless for any losses attributable to, inter alia, any prohibited transactions or violations of the duty of prudence and loyalty.

Statutory Findings—Protective of the Rights of Participants of Affected Plans and IRAs

14. The Applicant has proposed certain conditions it believes are protective of participants and beneficiaries of ERISA-covered plans and IRAs with respect to the transactions described herein. The Department has determined that it is necessary to modify and supplement the conditions before it can tentatively determine that the requested exemption meets the statutory requirements of section 408(a) of ERISA. In this regard, the Department has tentatively determined that the following conditions adequately protect the rights of participants and beneficiaries of affected plans and IRAs with respect to the transactions that would be covered by this proposed five-year exemption.

The five-year exemption, if granted as proposed, is only available to the extent: (a) Other than with respect to a single individual who worked for a non-fiduciary business within Citigroup's Markets and Securities Services business and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, Citigroup Affiliated QPAMs, including their officers, directors, agents other than Citigroup, and employees, did not know of, have reason to know of, or participate in the criminal conduct of Citigroup that is the subject of the Conviction (for purposes of this requirement, the term ''participate in'' includes an individual's knowing or tacit approval of the misconduct underlying the Conviction); (b) any failure of those QPAMs to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction; and (c) other than a single individual who worked for a non-fiduciary business within Citigroup's Markets and Securities Services business, and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, the Citigroup Affiliated QPAMs and the Citigroup Related QPAMs (including their officers, directors, agents other than Citigroup, and employees of such Citigroup QPAMs) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the Conviction.

15. The Department expects the Citigroup Affiliated QPAMs will rigorously ensure that the individual associated with the misconduct will not be employed or knowingly engaged by such QPAMs. In this regard, the five-year exemption mandates that the Citigroup Affiliated QPAMs will not employ or knowingly engage any of the individuals that participated in the FX manipulation that is the subject of the Conviction. For purposes of this condition, the term ''participated in'' includes an individual's knowing or tacit approval of the behavior that is the subject of the Conviction.

16. Further, the Citigroup Affiliated QPAM will not use its authority or influence to direct an ''investment fund,'' (as defined in Section VI(b) of PTE 84–14), that is subject to ERISA or the Code and managed by such Citigroup Affiliated QPAM to enter into any transaction with Citigroup or the Markets and Securities Services business of Citigroup, or to engage Citigroup or the Markets and Securities Services business of Citigroup 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.

17. The Citigroup Affiliated QPAMs and the Citigroup Related 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 Conviction. Further, any failure of the Citigroup Affiliated QPAMs or the Citigroup Related QPAMs to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction.

No relief will be provided by this five-year exemption, if a Citigroup Affiliated QPAM or a Citigroup Related QPAM exercised authority over plan assets in a manner that it knew or should have known would: Further the criminal conduct that is the subject of the Conviction; or cause the Citigroup Affiliated QPAM or the Citigroup Related QPAM or its affiliates or related parties to directly or indirectly profit from the criminal conduct that is the subject of the Conviction. Also, no relief will be provided by this five-year exemption to the extent Citigroup or the Markets and Securities Services business of Citigroup provides any discretionary asset management services to ERISA-covered plans or IRAs, or otherwise acts as a fiduciary with respect to ERISA-covered plan or IRA assets.

18. The Department believes that robust policies and training are warranted where, as here, the criminal misconduct has occurred within a corporate organization that is affiliated with one or more QPAMs managing plan or IRA assets. Therefore, this proposed five-year exemption requires

that within four (4) months of the Conviction, each Citigroup Affiliated QPAM must develop, implement, maintain, and follow written policies (the Policies) requiring and reasonably designed to ensure that: The asset management decisions of the Citigroup Affiliated QPAM are conducted independently of the management and business activities of Citigroup, including the management and business activities of the Markets and Securities business of Citigroup; the Citigroup Affiliated QPAM fully complies with ERISA's fiduciary duties, and with ERISA and the Code's prohibited transaction provisions, and does not knowingly participate in any violation of these duties and provisions with respect to ERISA-covered plans and IRAs; the Citigroup Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs; any filings or statements made by the Citigroup Affiliated QPAM to regulators, including, but not limited to, the Department of Labor, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA-covered plans or IRAs, are materially accurate and complete, to the best of such QPAM's knowledge at that time; the Citigroup Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plan and IRA clients; and the Citigroup Affiliated QPAM complies with the terms of this five-year exemption.

Any violation of, or failure to comply with these Policies must be corrected promptly upon discovery, and any such violation or compliance failure not promptly corrected is reported, upon discovering the failure to promptly correct, in writing, to appropriate corporate officers, the head of compliance, and the General Counsel (or their functional equivalent) of the relevant Citigroup Affiliated QPAM, the independent auditor responsible for reviewing compliance with the Policies, and an appropriate fiduciary of any affected ERISA-covered plan or IRA, which such fiduciary is independent of Citigroup. A Citigroup Affiliated QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance promptly when discovered or when it reasonably should have known of the noncompliance (whichever is earlier), and provided that it reports such instance of noncompliance as explained above.

19. The Department has also imposed a condition that requires each Citigroup Affiliated QPAM, within four (4) months of the date of the Conviction, to develop and implement a program of training (the Training), conducted at least annually, for all relevant Citigroup Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must be set forth in the Policies and, at a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this five-year exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing. Further, the Training must be conducted by an independent professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code.

20. *Independent Transparent Audit.* The Department views a rigorous and transparent audit that is conducted annually by an independent party, as essential to ensuring that the conditions for exemptive relief described herein are followed by the Citigroup Affiliated QPAMs. Therefore, Section I(i) of this proposed five-year exemption requires that each Citigroup Affiliated QPAM submits to an audit, conducted annually by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and the Citigroup Affiliated QPAM's compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. In addition, each annual audit must cover a consecutive twelve (12) month period starting with the twelve (12) month period that begins on the effective date of the five-year exemption. Each annual audit must be completed no later than six (6) months after the period to which the audit applies.

21. Among other things, the audit condition requires that, to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, and as permitted by law, each Citigroup Affiliated QPAM and, if applicable, Citigroup, will grant the auditor unconditional access to its business, including, but not limited to: Its computer systems; business records; transactional data; workplace locations; training materials; and personnel.

In addition, the auditor's engagement must specifically require the auditor to determine whether each Citigroup Affiliated QPAM has complied with the Policies and Training conditions described herein, and must further require the auditor to test each Citigroup Affiliated QPAM's operational compliance with the Policies and Training. The auditor must issue a written report (the Audit Report) to Citigroup and the Citigroup Affiliated QPAM to which the audit applies that describes the procedures performed by the auditor during the course of its examination. The Audit Report must include the auditor's specific determinations regarding: The adequacy of the Citigroup Affiliated QPAM's Policies and Training; the Citigroup 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 Citigroup Affiliated QPAM's noncompliance with the written Policies and Training.

Any determination by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective Citigroup Affiliated QPAM must be promptly addressed by such Citigroup Affiliated QPAM, and any action taken by such Citigroup Affiliated QPAM to address such recommendations must be included in an addendum to the Audit Report. Further, any determination by the auditor that the respective Citigroup Affiliated QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that the Citigroup Affiliated QPAM has complied with the requirements, as described above, must be based on evidence that demonstrates the Citigroup Affiliated QPAM has actually implemented, maintained, and followed the Policies and Training required by this five-year exemption. Finally, the Audit Report must address the adequacy of the Annual Review required under this exemption and the resources provided to the Compliance Officer in connection with such Annual Review. Moreover, the auditor must notify the respective Citigroup 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.

22. This exemption requires that certain senior personnel of Citigroup review the Audit Report and make certain certifications and take various corrective actions. In this regard, the General Counsel, or one of the three most senior executive officers of the Citigroup 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 five-year exemption; addressed, corrected, or remedied an inadequacy identified in the Audit Report; and determined that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this proposed five-year exemption and with the applicable provisions of ERISA and the Code. The Risk Committee of Citigroup's Board of Directors is provided a copy of each Audit Report; and a senior executive officer with a direct reporting line to the highest ranking legal compliance officer of Citigroup must review the Audit Report for each Citigroup Affiliated QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report.

23. In order to create a more transparent record in the event that the proposed relief is granted, each Citigroup Affiliated QPAM must provide its certified Audit Report to the Department no later than thirty (30) days following its completion. The Audit Report will be part of the public record regarding this five-year exemption.

Further, each Citigroup Affiliated QPAM must make its Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of an ERISA-covered plan or IRA, the assets of which are managed by such Citigroup Affiliated QPAM. Additionally, each Citigroup Affiliated QPAM and the auditor must submit to the Department any engagement agreement(s) entered into pursuant to the engagement of the auditor under this five-year exemption. Also, they must submit to the Department any engagement agreement entered into with any other entity retained in connection with such QPAM's compliance with the Training or Policies conditions of this proposed five-year exemption, no later than six (6) months after the Conviction Date (and one month after the execution of any agreement thereafter).

Finally, if the exemption is granted, the auditor must provide the Department, upon request, all of the workpapers created and utilized in the course of the audit, including, but not limited to: The audit plan; audit testing; identification of any instance of noncompliance by the relevant Citigroup Affiliated QPAM; and an explanation of any corrective or remedial action taken by the applicable Citigroup Affiliated QPAM.

In order to enhance oversight of the compliance with the exemption, Citigroup must notify the Department at least thirty (30) days prior to any substitution of an auditor, and Citigroup must demonstrate to the Department's satisfaction that any new auditor is independent of Citigroup, experienced in the matters that are the subject of the exemption, and capable of making the determinations required of this five-year exemption.

24. *Contractual Obligations.* This five-year exemption requires the Citigroup Affiliated QPAMs to enter into certain contractual obligations in connection with the provision of services to their clients. It is the Department's view that the condition in Section I(j) is essential to the Department's ability to make its findings that the proposed five-year exemption is protective of the rights of the participants and beneficiaries of ERISA-covered and IRA plan clients of Citigroup Affiliated QPAMs under section 408(a) of ERISA. In this regard, effective as of the effective date of this five-year exemption, with respect to any arrangement, agreement, or contract between a Citigroup Affiliated QPAM and an ERISA-covered plan or IRA for which a Citigroup Affiliated QPAM provides asset management or other discretionary fiduciary services, each Citigroup Affiliated QPAM must agree and warrant: (a) To comply with ERISA and the Code, as applicable, with respect to such ERISA-covered plan or IRA, and refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions), and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA, as applicable, with respect to each such ERISA-covered plan and IRA; (b) to indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a violation of applicable laws, a breach of contract, or any claim arising out of the failure of such Citigroup Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Conviction; (c) not to require (or otherwise cause) the ERISA-covered plan or IRA to waive, limit, or qualify the liability of the Citigroup Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions; (d) not to require the ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the Citigroup Affiliated QPAM for violating ERISA or the Code, or engaging in prohibited transactions, except for a violation or a prohibited transaction caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary which is independent of Citigroup, and its affiliates; (e) not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the Citigroup Affiliated QPAM (including 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 as a result of the actual lack of liquidity of the underlying assets, provided that such restrictions are applied consistently and in like manner to all such investors; and (f) not to impose any fee, penalty, or charge 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 each such fee is applied consistently and in like manner to all such investors. Furthermore, any contract, agreement or arrangement between a Citigroup Affiliated QPAM and its ERISA-covered plan or IRA client must not contain exculpatory provisions disclaiming or otherwise limiting liability of the Citigroup Affiliated QPAM for a violation of such agreement's terms, except for liability caused by error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary which is independent of Citigroup, and its affiliates.

30. With respect to current ERISA-covered plan and IRA clients for which

a Citigroup Affiliated QPAM provides asset management or other discretionary fiduciary services, within four (4) months of the date of publication of this notice of five-year exemption in the **Federal Register**, the Citigroup Affiliated QPAM will provide a notice of its obligations under Section I(j) to each such ERISA-covered plan and IRA client. For all other prospective ERISA-covered plan and IRA clients for which a Citigroup Affiliated QPAM provides asset management or other discretionary services, the Citigroup Affiliated QPAM will agree in writing to its obligations under this Section I(j) in an updated investment management agreement between the Citigroup Affiliated QPAM and such clients or other written contractual agreement.

31. *Notice Requirements.* The proposed exemption contains extensive notice requirements, some of which extend not only to ERISA-covered plan and IRA clients of Citigroup Affiliated QPAMs, but which also go to non-Plan clients of Citigroup Affiliated QPAMs. In this regard, the Department understands that many firms may promote their ''QPAM'' designation in order to earn asset management business, including from non-ERISA plans. Therefore, in order to fully inform any clients that may have retained Citigroup Affiliated QPAMs as asset managers because such Citigroup Affiliated QPAMs have represented themselves as able to rely on PTE 84–14, the Department has determined to condition exemptive relief upon the following notice requirements.

Within fifteen (15) days of the publication of this proposed five-year exemption in the **Federal Register**, each Citigroup Affiliated QPAM will provide a notice of the proposed five-year exemption, along with a separate summary describing the facts that led to the Conviction (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that the Conviction results in the failure to meet a condition in PTE 84–14, to each sponsor of an ERISA-covered plan and each beneficial owner of an IRA for which a Citigroup Affiliated QPAM provides asset management or other discretionary services, or the sponsor of an investment fund in any case where a Citigroup Affiliated QPAM acts only as a sub-adviser to the investment fund in which such ERISA-covered plan and IRA invests. In the event that this proposed five-year exemption is granted, the **Federal Register** copy of the notice of final five-year exemption must be delivered to such clients within sixty (60) days of its publication in the **Federal Register**, and may be delivered electronically (including by an email that has a link to the exemption). Any prospective clients for which a Citigroup Affiliated QPAM provides asset management or other discretionary services must receive the proposed and final five-year exemptions with the Summary and the Statement prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the Citigroup Affiliated QPAM.

In addition, each Citigroup Affiliated QPAM will provide a **Federal Register** copy of the proposed five-year exemption, a **Federal Register** copy of the final five-year exemption; the Summary; and the Statement to each: (A) Current Non-Plan Client within four (4) months of the effective date, if any, of a final five-year exemption; and (B) Future Non-Plan Client prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the Citigroup Affiliated QPAM. A ''Current Non-Plan Client'' is a client of a Citigroup Affiliated QPAM that: Is neither an ERISA-covered plan nor an IRA; has assets managed by the Citigroup Affiliated QPAM after the effective date, if any, of a final five-year exemption; and has received a written representation (qualified or otherwise) from the Citigroup Affiliated QPAM that such Citigroup Affiliated QPAM qualifies as a QPAM or qualifies for the relief provided by PTE 84–14. A ''Future Non-Plan Client'' is a client of a Citigroup Affiliated QPAM that is neither an ERISA-covered plan nor an IRA that has assets managed by the Citigroup Affiliated QPAM after the effective date, if any, of a final five-year exemption, and has received a written representation (qualified or otherwise) from the Citigroup Affiliated QPAM that such Citigroup Affiliated QPAM is a QPAM, or qualifies for the relief provided by PTE 84–14.

32. This proposed five-year exemption also requires Citigroup to designate a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. The Compliance Officer will have several obligations that it must comply with, as described in Section I(m) above. These include conducting an annual review (the Annual Review) to determine the adequacy and effectiveness of the implementation of the Policies and Training; the preparation of a written report for each Annual Review (each, an Annual Report) that, among other things, summarizes his or her material activities during the preceding year; and sets forth any instance of noncompliance discovered during the preceding year, and any related corrective action. Each Annual Report must be provided to appropriate corporate officers of Citigroup and each Citigroup Affiliated QPAM to which such report relates; the head of compliance and the General Counsel (or their functional equivalent) of the relevant Citigroup Affiliated QPAM; and must be made unconditionally available to the independent auditor described above.

33. Each Citigroup Affiliated QPAM must maintain records necessary to demonstrate that the conditions of this exemption have been met for six (6) years following the date of any transaction for which such Citigroup Affiliated QPAM relies upon the relief in the proposed five-year exemption.

34. The proposed five-year exemption mandates that, during the effective period of this five-year exemption, Citigroup must immediately disclose to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) that Citigroup or an affiliate enters into with the Department of Justice, to the extent such DPA or NPA involved conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA. In addition, Citigroup must immediately provide the Department any information requested by the Department, as permitted by law, regarding the agreement and/or the conduct and allegations that led to the agreement. The Department may, following its review of that information, require Citigroup or a party specified by the Department, to submit a new application for the continued availability of relief as a condition of continuing to rely on this exemption. In this regard, the QPAM (or other party submitting the application) will have the burden of justifying the relief sought in the application. If the Department denies the relief requested in that application, or does not grant such relief within twelve (12) months of the application, the relief described herein would be revoked as of the date of denial or as of the expiration of the twelve (12) month period, whichever date is earlier.

35. Finally, each Citigroup Affiliated QPAM, in its agreements with ERISA-covered plan and IRA clients, or in other written disclosures provided to ERISA-covered plan and IRA clients, within sixty (60) days prior to the initial transaction upon which relief hereunder is relied, will clearly and prominently: Inform the ERISA-covered plan or IRA client that the client has the right to obtain copies of the QPAM's written

Policies adopted in accordance with this five-year exemption.

Statutory Findings—Administratively Feasible

36. The Applicant represents that the proposed exemption is administratively feasible because it does not require any monitoring by the Department. Furthermore, the requested five-year exemption does not require the Department's oversight because, as a condition of this proposed five-year exemption, neither Citigroup nor the Markets and Securities Services business of Citigroup will provide any fiduciary or QPAM services to ERISA-covered plans and IRAs.

Summary

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

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons within 15 days of the publication of the notice of proposed five-year exemption in the **Federal Register**. The notice will be provided to all interested persons in the manner described in Section I(k)(1) of this proposed five-year exemption and will contain the documents described therein and a supplemental statement, as required pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on and to request a hearing with respect to the pending exemption. All written comments and/or requests for a hearing must be received by the Department within forty five (45) days of the date of publication of this proposed exemption in the **Federal Register**. All comments will be made available to the public.

Warning: If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as a Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

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

Barclays Capital Inc. (BCI or the Applicant), Located in New York, New York

[Application No. D–11910]

Proposed Five Year Exemption

The Department is considering granting a five-year exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).[131]

Section I: Covered Transactions

If the proposed five-year exemption is granted, certain asset managers with specified relationships to Barclays PLC (BPLC) (the Barclays Affiliated QPAMs and the Barclays Related QPAMs, as defined further in Sections II(a) and II(b), respectively) will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14 or the QPAM Exemption),[132] notwithstanding the judgment of conviction against BPLC (the Conviction), as defined in Section II(c)),[133] for engaging in a conspiracy to: (1) Fix the price of, or (2) eliminate competition in the purchase or sale of the euro/U.S. dollar currency pair exchanged in the Foreign Exchange (FX) Spot Market, for a period of five years beginning on the date the exemption is granted, provided the following conditions are satisfied:

(a) Other than certain individuals who: Worked for a non-fiduciary business within BCI; had no responsibility for, and exercised no authority in connection with, the management of plan assets; and are no longer employed by BPLC, the Barclays Affiliated QPAMs and the Barclays Related QPAMs (including their officers, directors, agents other than BPLC, and employees of such QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not know of, did not have reason to know of, or participate in the criminal conduct that is the subject of the Conviction (for purposes of this paragraph (a), ''participate in'' includes the knowing or tacit approval of the misconduct underlying the Conviction);

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

(c) A Barclays Affiliated QPAM will not employ or knowingly engage any of the individuals that participated in the criminal conduct that is the subject of the Conviction (for purposes of this paragraph (c), ''participated in'' includes the knowing or tacit approval of the misconduct underlying the Conviction);

(d) A Barclays Affiliated QPAM will not use its authority or influence to direct an ''investment fund,'' (as defined in Section VI(b) of PTE 84–14) that is subject to ERISA or the Code and managed by such Barclays Affiliated QPAM to enter into any transaction with BPLC or BCI, or engage BPLC to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e) Any failure of a Barclays Affiliated QPAM or a Barclays Related QPAM to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction;

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

(g) BPLC and BCI will not provide discretionary asset management services to ERISA-covered plans or IRAs, nor will otherwise act as a fiduciary with respect to ERISA-covered plan or IRA assets;

[131] For purposes of this proposed exemption, references to section 406 of the Act should be read to refer as well to the corresponding provisions of section 4975 of the Code.

[132] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

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

(h)(1) Prior to a Barclays Affiliated QPAM's engagement by any ERISA-covered plan or IRA for discretionary asset management services, where the QPAM represents that it qualifies as a QPAM, the Barclays Affiliated QPAM must develop, implement, maintain, and follow written policies and procedures (the Policies) requiring and reasonably designed to ensure that:

(i) The asset management decisions of the Barclays Affiliated QPAM are conducted independently of the corporate management and business activities of BPLC and BCI;

(ii) The Barclays Affiliated QPAM fully complies with ERISA's fiduciary duties and with ERISA and the Code's prohibited transaction provisions, and does not knowingly participate in any violation of these duties and provisions with respect to ERISA-covered plans and IRAs;

(iii) The Barclays Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs;

(iv) Any filings or statements made by the Barclays Affiliated QPAM to regulators, including, but not limited to, the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA-covered plans or IRAs, are materially accurate and complete, to the best of such QPAM's knowledge at that time;

(v) The Barclays Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plans and IRA clients;

(vi) The Barclays Affiliated QPAM complies with the terms of this five-year exemption, if granted; and

(vii) Any violation of, or failure to comply with, an item in subparagraphs (ii) through (vi), is corrected promptly upon discovery, and any such violation or compliance failure not promptly corrected is reported, upon the discovery of such failure to promptly correct, in writing, to appropriate corporate officers, the head of compliance, and the General Counsel (or their functional equivalent) of the relevant Barclays Affiliated QPAM, the independent auditor responsible for reviewing compliance with the Policies, and an appropriate fiduciary of any affected ERISA-covered plan or IRA that is independent of BPLC; however, with respect to any ERISA-covered plan or IRA sponsored by an ''affiliate'' (as defined in Section VI(d) of PTE 84–14) of BPLC or beneficially owned by an employee of BPLC or its affiliates, such fiduciary does not need to be independent of BPLC. A Barclays Affiliated QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance promptly when discovered, or when it reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (vii);

(2) Prior to a Barclays Affiliated QPAM's engagement by any ERISA covered plan or IRA for discretionary asset management services, the Barclays Affiliated QPAM must develop and implement a program of training (the Training), conducted at least annually, for all relevant Barclays Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must:

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

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

(i)(1) Each Barclays Affiliated QPAM submits to an audit conducted annually by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and the Barclays Affiliated QPAM's compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. Each annual audit must cover a consecutive twelve (12) month period starting with the twelve (12) month period that begins on the date that a Barclays Affiliated QPAM is first engaged by any ERISA-covered plan or IRA for discretionary asset management services reliant on PTE 84–14, and each annual audit must be completed no later than six (6) months after the period to which the audit applies;

(2) 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 as permitted by law, each Barclays Affiliated QPAM and, if applicable, BPLC, will grant the auditor unconditional access to its business, including, but not limited to: Its computer systems; business records; transactional data; workplace locations; training materials; and personnel;

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

(4) The auditor's engagement must specifically require the auditor to test each Barclays Affiliated QPAM's operational compliance with the Policies and Training. In this regard, the auditor must test a sample of each QPAM's transactions involving ERISA-covered plans and IRAs sufficient in size and nature to afford the auditor a reasonable basis to determine the operational compliance with the Policies and Training;

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

(i) The adequacy of the Barclays Affiliated QPAM's Policies and Training; the Barclays 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 Barclays Affiliated QPAM's noncompliance with the written Policies and Training described in Section I(h) above. Any determination by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective Barclays Affiliated QPAM must be promptly addressed by such Barclays Affiliated QPAM, and any action taken by such Barclays Affiliated QPAM to address such recommendations must be included in an addendum to the Audit Report (which addendum is completed prior to the certification described in Section I(i)(7) below). Any determination by the auditor that the respective Barclays Affiliated QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that the Barclays Affiliated QPAM has complied with the requirements under this subsection must be based on evidence that demonstrates the Barclays Affiliated QPAM has actually implemented, maintained, and followed the Policies and Training required by this five-year exemption. Furthermore, the auditor must not rely on the Annual Report created by the compliance officer (the Compliance Officer) as described in Section I(m) below in lieu of independent determinations and testing performed by the auditor as required by Section I(i)(3) and (4) above; and

(ii) The adequacy of the Annual Review described in Section I(m) and the resources provided to the Compliance Officer in connection with such Annual Review;

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

(7) With respect to each Audit Report, the General Counsel or one of the three most senior executive officers of the Barclays Affiliated QPAM to which the Audit Report applies, must certify in writing, under penalty of perjury, that the officer has: reviewed the Audit Report and this exemption, if granted; addressed, corrected, or remedied any inadequacy identified in the Audit Report; and determined that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this proposed five-year exemption, if granted, and with the applicable provisions of ERISA and the Code;

(8) The Risk Committee of BPLC's Board of Directors is provided a copy of each Audit Report; and a senior executive officer with a direct reporting line to the highest ranking legal compliance officer of BPLC must review the Audit Report for each Barclays Affiliated QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report;

(9) Each Barclays Affiliated QPAM provides its certified Audit Report by regular mail to: The Department's Office of Exemption Determinations (OED), 200 Constitution Avenue NW., Suite 400, Washington, DC 20210, or by private carrier to: 122 C Street NW., Suite 400, Washington, DC 20001–2109, no later than 30 days following its completion. The Audit Report will be part of the public record regarding this five-year exemption, if granted. Furthermore, each Barclays Affiliated QPAM must make its Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of an ERISA-covered plan or IRA, the assets of which are managed by such Barclays Affiliated QPAM;

(10) Each Barclays Affiliated QPAM and the auditor must submit to OED: (A) Any engagement agreement(s) entered into pursuant to the engagement of the auditor under this five-year exemption, if granted; and (B) any engagement agreement entered into with any other entity retained in connection with such QPAM's compliance with the Training or Policies conditions of this five-year exemption, if granted, no later than six (6) months after the Conviction Date (and one month after the execution of any agreement thereafter);

(11) The auditor must provide OED, upon request, all of the workpapers created and utilized in the course of the audit, including, but not limited to: The audit plan; audit testing; identification of any instance of noncompliance by the relevant Barclays Affiliated QPAM; and an explanation of any corrective or remedial action taken by the applicable Barclays Affiliated QPAM; and

(12) BPLC must notify the Department at least thirty (30) days prior to any substitution of an auditor, except that no such replacement will meet the requirements of this paragraph unless and until BPLC demonstrates to the Department's satisfaction that such new auditor is independent of BPLC, experienced in the matters that are the subject of the exemption, if granted, and capable of making the determinations required of this exemption, if granted;

(j) Effective as of the effective date of this five-year exemption, if granted, with respect to any arrangement, agreement, or contract between a Barclays Affiliated QPAM and an ERISA-covered plan or IRA for which a Barclays Affiliated QPAM provides asset management or other discretionary fiduciary services, each Barclays Affiliated QPAM agrees and warrants:

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

(2) To indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a Barclays Affiliated QPAM's violation of applicable laws, a Barclays Affiliated QPAM's breach of contract, or any claim brought in connection with the failure of such Barclays Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Conviction;

(3) Not to require (or otherwise cause) the ERISA covered plan or IRA to waive, limit, or qualify the liability of the Barclays Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(4) Not to require the ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the Barclays Affiliated QPAM for violating ERISA or engaging in prohibited transactions, except for violations or prohibited transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of BPLC, and its affiliates;

(5) Not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the Barclays Affiliated QPAM (including 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 as a result of an actual lack of liquidity of the underlying assets, provided that such restrictions are applied consistently and in like manner to all such investors;

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

(7) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the Barclays Affiliated QPAM for a violation of such agreement's terms, except for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary which is independent of BPLC; and

(8) Within four (4) months of the date of the Conviction, each Barclays Affiliated QPAM must provide a notice of its obligations under this Section I(j) to each ERISA-covered plan and IRA for which a Barclays Affiliated QPAM provides asset management or other discretionary fiduciary services. For all other prospective ERISA-covered plan and IRA clients for which a Barclays Affiliated QPAM provides asset management or other discretionary services, the Barclays Affiliated QPAM will agree in writing to its obligations under this Section I(j) in an updated investment management agreement between the Barclays Affiliated QPAM and such clients or other written contractual agreement;

(k) *Notice to Future Covered Clients.* Each BPLC affiliated asset manager provides each Future Covered Client with a **Federal Register** copy of the proposed five-year exemption, along with a separate summary describing the facts that led to the Conviction (the Summary), which have been submitted to the Department, and a prominently displayed statement that the Conviction resulted in a failure to meet a condition of PTE 84–14. The provision of these documents must occur prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the BPLC affiliated asset manager. For purposes of this paragraph, a ''Future Covered Client'' means a client of the BPLC affiliated asset manager that, beginning after the date, if any, that a final exemption is published in the **Federal Register**, has assets managed by such asset manager, and has received a representation from the asset manager that the asset manager is a QPAM, or qualifies for the relief provided by PTE 84–14; [134]

(l) The Barclays 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 Conviction;

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

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

(ii) The Compliance Officer must have a direct reporting line to the highest-ranking corporate officer in charge of legal compliance that is independent of BPLC's other business lines;

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

(i) The Annual Review includes a review of: Any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the compliance and risk control function (or its equivalent) during the previous year; any material change in the business activities of the Barclays 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 Barclays Affiliated QPAMs;

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

(iii) In each Annual Report, the Compliance Officer must certify in writing that to his or her knowledge: (A) The report is accurate; (B) the Policies and Training are working in a manner which is reasonably designed to ensure that the Policies and Training requirements described herein are met; (C) any known instance of noncompliance during the preceding year and any related correction taken to date have been identified in the Annual Report; (D) the Barclays Affiliated QPAMs have complied with the Policies and Training in all respects, and/or corrected any instances of noncompliance in accordance with Section I(h) above; and (E) Barclays has provided the Compliance Officer with adequate resources, including, but not limited to, adequate staffing;

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

(v) Each Annual Review, including the Compliance Officer's written Annual Report, must be completed at least three (3) months in advance of the date on which each audit described in Section I(i) is scheduled to be completed;

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

(o) During the effective period of this five-year exemption, if granted, BPLC: (1) Immediately discloses to the Department any Deferred Prosecution Agreement (a DPA) or a Non-Prosecution Agreement (an NPA) entered into by BPLC or any of its affiliates with the U.S. Department of Justice, in connection with conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA; and

(2) Immediately provides the Department any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement. After review of the information, the Department may require BPLC, its affiliates, or related parties, as specified by the Department, to submit a new application for the continued availability of relief as a condition of continuing to rely on this exemption. If the Department denies the relief requested in the new application, or does not grant such relief within twelve (12) months of application, the relief described herein is revoked as of the date of denial or as of the expiration of the twelve (12) month period, whichever date is earlier;

(p) Each Barclays Affiliated QPAM, in its agreements with ERISA-covered plan

[134] The Applicant states that there are no pooled funds subject to ERISA or section 4975 of the Code with respect to which the QPAM cannot identify plan and IRA investors. However, the Applicant states that if, at the time of the publication of the proposed exemption there are such funds, the Applicant will send a copy of the notice of the proposed exemption to each distribution agent for such fund, requesting that such agent forward the Notice to Interested Persons to its clients.

and IRA clients, or in other written disclosures provided to ERISA-covered plan and IRA clients, within 60 days prior to the initial transaction upon which relief hereunder is relied, and then at least once annually, will clearly and prominently: Inform the ERISA-covered plan and IRA client that the client has the right to obtain copies of the QPAM's written Policies adopted in accordance with this exemption, if granted; and

(q) A Barclays Affiliated QPAM or a Barclays Related QPAM will not fail to meet the terms of this exemption, if granted, solely because a different Barclays Affiliated QPAM or a Barclays Related QPAM fails to satisfy a condition for relief described in Sections I(c), (d), (h), (i), (j), (k), (n) and (p).

Section II: Definitions

(a) The term ''Barclays Affiliated QPAM'' means a ''qualified professional asset manager'' (as defined in Section VI(a) [135] of PTE 84–14) that relies on the relief provided by PTE 84–14 and with respect to which BPLC is a current or future ''affiliate'' (as defined in Section VI(d)(1) of PTE 84–14). The term ''Barclays Affiliated QPAM'' excludes the parent entity, BPLC and BCI's Investment Bank division.

(b) The term ''Barclays 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 BPLC owns a direct or indirect five percent or more interest, but with respect to which BPLC is not an ''affiliate'' (as defined in Section VI(d)(1) of PTE 84–14).

(c) The term ''BPLC'' means Barclays PLC, the parent entity, and does not include any subsidiaries or other affiliates.

(d) The terms ''ERISA-covered plan'' and ''IRA'' mean, respectively, a plan subject to Part 4 of Title I of ERISA and a plan subject to section 4975 of the Code.

(e) The term ''Conviction'' means the judgment of conviction against BPLC in the United States District Court for the District of Connecticut (the Court), Case No. 3:15–cr–00077–SRU–1, for participating in a combination and conspiracy to fix, stabilize, maintain, increase or decrease the price of, and rig bids and offers for, euro/U.S. dollar currency pairs exchanged in the foreign currency exchange spot market by agreeing to eliminate competition in the purchase and sale of such currency pairs in the United States and elsewhere, in violation of the Sherman Antitrust Act, 15 U.S.C. 1.

(f) The term ''Conviction Date'' means the date that a judgment of conviction against BCI is entered by the Court in connection with the Conviction.

Effective Date: This proposed five-year exemption, if granted, will be effective beginning on the date of publication of such grant in the **Federal Register** and ending on the date that is five years thereafter. Should the Applicant wish to extend the effective period of exemptive relief provided by this proposed five-year exemption, the Applicant must submit another application for an exemption. In this regard, the Department expects that, in connection with such application, the Applicant should be prepared to demonstrate compliance with the conditions for this exemption and that the Barclays Affiliated QPAMs, and those who may be in a position to influence their policies, have maintained the high standard of integrity required by PTE 84–14.

Department's Comment: Concurrently with this proposed five-year exemption, the Department is publishing a proposed one-year exemption for Barclays Affiliated QPAMs to continue to rely on PTE 84–14. That one-year exemption, if granted, is intended to allow the Department sufficient time, including a longer comment period, to determine whether to grant this five-year exemption. The proposed one-year exemption, if granted, is designed to protect ERISA-covered plans and IRAs from the potential costs and losses, described below, that would be incurred if such Barclays Affiliated QPAMs were to suddenly lose their ability to rely on PTE 84–14 as of the Conviction date.

The proposed five-year exemption, if granted, would provide relief from certain of the restrictions set forth in sections 406 and 407 of ERISA. No relief from a violation of any other law would be provided by this exemption, if granted, including any criminal conviction described herein.

The Department cautions that the relief in this proposed five-year exemption, if granted, would terminate immediately if, among other things, an entity within the BPLC corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Conviction) during the effective period of the exemption. While such an entity could apply for a new exemption in that circumstance, the Department would not be obligated to grant the exemption. The terms of this proposed five-year exemption have been specifically designed to permit plans to terminate their relationships in an orderly and cost effective fashion in the event of an additional conviction or a determination that it is otherwise prudent for a plan to terminate its relationship with an entity covered by the proposed exemption.

Summary of Facts and Representations [136]

Background

1. BCI is a broker-dealer registered under the Securities Exchange Act of 1934, as amended, and was, until December 28, 2015, an investment adviser registered under the Investment Advisers Act of 1940, as amended. As a registered broker-dealer, BCI is regulated by the U.S. Securities and Exchange Commission and Financial Industry Regulatory Authority.

BCI is incorporated in the State of Connecticut and headquartered in New York, with 18 U.S. branch offices. BCI is wholly-owned by Barclays Group US Inc., a wholly-owned subsidiary of Barclays Bank PLC, which, in turn, is a wholly-owned subsidiary of BPLC, a non-operating holding company.

Barclays Bank PLC wholly owns, indirectly, one bank subsidiary in the United States—Barclays Bank Delaware, a Delaware chartered commercial bank supervised and regulated by the Federal Deposit Insurance Corporation, the Delaware Office of the State Bank Commissioner and the Consumer Financial Protection Bureau. Barclays Bank Delaware does not manage ERISA plan or IRA assets currently, but may do so in the future.

BPLC's asset management business, Barclays Wealth and Investment Management (BWIM), offers wealth management products and services for many types of clients, including individual and institutional clients. BWIM operates through over 20 offices worldwide. Prior to December 4, 2015, BWIM functioned in the United States through BCI.

On December 4, 2015, BCI consummated a sale of its U.S. operations of BWIM, including Barclays Wealth Trustees, to Stifel Financial Corp. As a result of the transaction, as of that date, neither BCI nor any of its affiliates continued to manage ERISA-covered plan or IRA assets. However,

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

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

BCI or its current or future affiliates could manage such assets in the future.

2. On May 20, 2015, the Department of Justice filed a one-count criminal information (the Information) in the United States District Court for the District of Connecticut charging BPLC, an affiliate of BCI, with participating in a combination and a conspiracy to fix, stabilize, maintain, increase or decrease the price of, and rig bids and offers for, Euro/USD currency pairs exchanged in the foreign currency exchange spot market by agreeing to eliminate competition in the purchase and sale of such currency pairs in the United States and elsewhere, in violation of the Sherman Antitrust Act, 15 U.S.C. 1. For example, BPLC engaged in communications with other financial services firms in an electronic chat room limited to specific EUR/USD traders, each of whom was employed, at certain times, by one of the financial services firms engaged in the FX Spot Market.

BPLC also participated in a conspiracy to decrease competition in the purchase and sale of the EUR/USD currency pair. BPLC and other financial services firms coordinated the trading of the EUR/USD currency pair in connection with certain benchmark currency ''fixes'' which occurred at specific times each trading day. In addition, BPLC and other financial services firms refrained from certain trading behavior, by withholding bids and offers, when another firm held an open risk position, so that the price of the currency traded would not move in a direction adverse to the firm with the open risk position.

Also, on May 20, 2015, pursuant to a plea agreement (the Plea Agreement), BPLC entered a plea of guilty for the violation of Sherman Antitrust Act, 15 U.S.C. 1. Under the Plea Agreement, BPLC pled guilty to the charge set out in the Information. The judgment of Conviction has not yet been entered.

BPLC agreed to pay a criminal fine of $710 million to the Department of Justice, of which $650 million is attributable to the charge set out in the Information. The remaining $60 million is attributable to conduct covered by the non-prosecution agreement that BPLC entered into on June 26, 2012, with the Criminal Division, Fraud Section of the Department of Justice related to BPLC's submissions of benchmark interest rates, including the London InterBank Offered Rate (known as LIBOR). In addition, Barclays Bank PLC, a wholly-owned subsidiary of BPLC, entered into a settlement agreement with the U.K. Financial Conduct Authority to pay a monetary penalty of £284.432 million ($440.9 million).

As part of the settlement, Barclays Bank PLC consented to the entry of an Order Instituting Proceedings Pursuant to Sections 6(c)(4)(A) and 6(d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions by the Commodity Futures Trading Commission (CFTC) imposing a civil money penalty of $400 million (the CFTC Order). In addition, Barclays Bank PLC and its New York branch consented to the entry of an Order to Cease and Desist and Order of Assessment of a Civil Money Penalty Issued Upon Consent Pursuant to the Federal Deposit Insurance Act, as Amended, by the Board of Governors of the Federal Reserve System (the Federal Reserve) imposing a civil money penalty of $342 million (the Board Order). Barclays Bank PLC and its New York branch also consented to the entry of a Consent Order under New York Bank Law 44 and 44–a by the New York Department of Financial Services (DFS) imposing a civil money penalty of $485 million [137] (the DFS Order and, together with the Plea Agreement, the CFTC Order and the Board Order, the FX Settlements).

Failure To Comply With Section I(g) of PTE 84–14 and Proposed Relief

3. PTE 84–14 is a class exemption that permits certain transactions between a party in interest with respect to an employee benefit plan and an investment fund in which the plan has an interest and which is managed by a ''qualified professional asset manager'' (QPAM), if the conditions of the exemption are satisfied. These conditions include Section I(g), which precludes a person who may otherwise meet the definition of a QPAM from relying on the relief provided by PTE 84–14 if that person or its ''affiliate'' [138] has, within 10 years immediately preceding the transaction, been either convicted or released from imprisonment, whichever is later, as a result of certain specified criminal activity described therein.[139] The Department notes that a QPAM, and those who may be in a position to influence its policies, are expected to maintain a high standard of integrity.

4. The Applicant represents that BPLC is currently affiliated (within the meaning of Part VI(d) of PTE 84–14) with only two entities that could meet the definition of ''QPAM'' in Part VI(a) of PTE 84–14, namely Barclays Bank Delaware and Barclays Bank PLC, New York Branch, both of which are subject to its control (within the meaning of Part VI(d)(1) of PTE 84–14). The Applicant states that BPLC or a subsidiary may, in the future, invest in non-controlled, minimally related QPAMs that could constitute Barclays Related QPAMs, as defined in the proposed exemption.[140] The Applicant states that it may acquire a new affiliate at any time, and creates new affiliates frequently, in either case that could constitute Barclays Affiliated QPAMs or Barclays Related QPAMs, as defined in the proposed exemption. To the extent that these new affiliates manage ERISA-covered plans or IRAs, these future affiliates would also be covered by the exemption, if granted.

Remedial Actions To Address the Misconduct of BPLC—Pursuant to the Plea Agreement

5. The Applicant states that the Department of Justice and BPLC negotiated a settlement reflected in the Plea Agreement, in which BPLC agreed to lawfully undertake the following pursuant to the Plea Agreement:

(a) Pay a total monetary penalty in the amount of $710 million;

(b) Not commit another crime under U.S. federal law or engage in the conduct that gave rise to the Plea Agreement, during a probation term of three years;

(c) Notify the probation officer upon learning of the commencement of any

[137] On November 17, 2015, Barclays Bank PLC (BBPLC) announced that it had reached a subsequent settlement with DFS in respect of its investigation into BBPLC's electronic trading of FX and FX electronic trading system, that it had agreed to pay a civil money penalty of $150 million and that BBPLC would take certain remedial steps, including submission of a proposed remediation plan concerning the underlying conduct to the independent consultant who was initially installed pursuant to a Memorandum of Understanding entered between BBPLC and DFS, and whose engagement terminated February 19, 2016.

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

[139] For purposes of Section I(g) of PTE 84–14, a person shall be deemed to have been ''convicted'' from the date of the judgment of the trial court, regardless of whether that judgment stands on appeal.

[140] For example, the Applicant states that BPLC may provide seed investments for new managers in exchange for minority interests. However, the Applicant points out that these managers, which had nothing to do with the conduct underlying the Conviction, would be unable to rely on PTE 84–14 for the benefit of their plan clients absent such relief.

federal criminal investigation in which BPLC is a target, or federal criminal prosecution against it;

(d) Prominently post and maintain on its Web site and, within 30 days after pleading guilty, make best efforts to send spot FX customers and counterparties (other than customers and counterparties who BPLC can establish solely engaged in buying or selling foreign currency through its consumer bank units and not its spot FX sales or trading staff) a retrospective disclosure notice regarding certain historical conduct involving FX Spot Market transactions with customers via telephone, email and/or electronic chat, during the probation term;

(e) Implement a compliance program designed to prevent and detect the conduct underlying the Plea Agreement throughout its operations including those of its affiliates and subsidiaries and provide an annual progress report to the Department of Justice and the probation officer;

(f) Further strengthen its compliance and internal controls as required by the CFTC and the U.K. Financial Conduct Authority and any other regulatory or enforcement agencies that have addressed the conduct underlying the Plea Agreement, which shall include, but not be limited to, a thorough review of the activities and decision-making by employees of BPLC's legal and compliance functions with respect to the historical conduct underlying he Plea Agreement, and promptly report to the Department of Justice and the probation officer all of its remediation efforts required by these agencies, as well as remediation and implementation of any compliance program and internal controls, policies and procedures related to the misconduct underlying he Plea Agreement;

(g) Report to the Department of Justice all credible information regarding criminal violations of U.S. antitrust laws and of U.S. law concerning fraud, including securities or commodities fraud, by BPLC or any of its employees, as to which BPLC's Board of Directors, management (that is, all supervisors within the bank), or legal and compliance personnel are aware;

(h) Bring to the Antitrust Division's attention all federal criminal investigations in which BPLC is identified as a subject or a target, and all administrative or regulatory proceedings or civil actions brought by any federal or state governmental authority in the United States against BPLC or its employees, to the extent that such investigations, proceedings or actions allege facts that could form the basis of a criminal violation of U.S. antitrust laws, and also bring to the Criminal Division, Fraud Section's attention all federal criminal or regulatory investigations in which BPLC is identified as a subject or a target, and all administrative or regulatory proceedings or civil actions brought by any federal governmental authority in the United States against BPLC or its employees, to the extent that such investigations, proceedings or actions allege violation of U.S. law concerning fraud, including securities or commodities fraud;

(i) Cooperate fully and truthfully (along with certain related entities in which it had, indirectly or directly, a greater than 50% ownership interest as of the date of the Plea Agreement) with the Department of Justice in its investigation and prosecution of the conduct underlying the Plea Agreement, or any other currency pair in the FX Spot Market, or any foreign exchange forward, foreign exchange option or other foreign exchange derivative, or other financial product, to the extent such other financial product has been disclosed to the Department of Justice (excluding a certain sealed investigation). This would include producing non-privileged non-protected materials, wherever located; using its best efforts to secure continuing cooperation of the current or former directors, officers and employees of BPLC and its Related Entities; and identifying witnesses who, to BPLC's knowledge, may have material information regarding the matters under investigation;

(j) Cooperate fully with the Department of Justice and any other law enforcement authority or government agency designated by the Department of Justice, in a manner consistent with applicable law and regulations, with regard to a certain sealed investigation; and

(k) Expeditiously seek relief from the Department by filing an application for the QPAM Exemption and will provide all information requested by the Department in a timely manner.

Remedial Actions To Address the Misconduct of BPLC—Structural Enhancements

6. The Applicant represents that BPLC and its subsidiaries and affiliates, including Barclays Bank PLC and its New York branch (collectively, the Bank) have implemented and will continue to implement policies and procedures designed to prevent the recurrence of the conduct that is the subject of the FX Settlements as required by the Plea Agreement. The Applicant states that the Bank's efforts in this regard are recognized in the Plea Agreement itself, which acknowledges ''the substantial improvements to [BPLC's] compliance and remediation program to prevent recurrence of the charged offense.''

The Applicant states that the Bank's efforts in this regard also have been recognized by the CFTC, the Federal Reserve, the DFS and the U.K. Financial Conduct Authority. For example, the Applicant states that the Board Order notes that the Bank recently completed a number of initiatives aimed at strengthening its governance and controls framework to control and monitor risk in the FX business, and that the Federal Reserve Bank of New York concluded that the current design of the Bank's FX governance and controls framework is generally sound. The Applicant further states that the DFS Order notes that the Bank has implemented remedial measures to address the conduct identified in the Order.

The Applicant also states that the U.K. Financial Conduct Authority, in its settlement agreement, also acknowledges that the Bank has undertaken and is continuing to undertake remedial action and recognizes that the Bank has committed significant resources to improving the business practices and associated controls relating to its FX operations.

The Applicant states that the CFTC Order notes the Bank's review of its business practices and systems and controls, which included remedial efforts across the Bank at the Group, Compliance and Front Office levels. The Applicant represents that at the Group level, an independent review of the Bank's business practices was conducted, which, among other things, led to the introduction of a new code of conduct which sets out the ethical and professional behaviors expected of employees. The Applicant states that at the Group level and with respect to its investment banking operations, the Bank has undertaken significant work to strengthen the role of Compliance. The Applicant represents that the work has included increasing Compliance's visibility on board and management committees, developing a process and reporting framework to support monitoring and verification activity undertaken by Compliance, holding standardized and structured monthly business line meetings between Compliance and the Global Head of the business they cover, formalizing a breach review process to ensure consistent and effective treatment of Compliance policy breaches, enhancing and transitioning to a centralized model for trade surveillance and e-communications surveillance, and increasing Compliance's budget for staff and training.

Remedial Actions To Address the Misconduct of BPLC—Additional Structural Enhancements

7. The Applicant states that the Bank has made substantial investments in the independent, external review of its governance, operational model, and risk and control programs, conducted by Sir Anthony Salz, including interviews of more than 600 employees, clients, and competitors, as well as consideration of more than 9,000 responses to an internal staff survey.

The Applicant represents that the Bank has taken steps to clearly articulate its policies and values and disseminate that information firm-wide through trainings.

The Applicant states that the Bank continues to develop a strong institutionalized framework of supervision and accountability running from the desk level to the top of the organization. For example, the Applicant states that Barclays established in 2013 a dedicated Board-level committee, the Board Conduct, Operational and Reputation Risk Committee, that is responsible for ensuring, on behalf of the Board, the efficiency of the processes for identification and management of conduct risk, reputation risk and operational risk. This committee reports to the BPLC's Board of Directors. In addition, the Applicant states that the Bank has established numerous business-specific committees—comprising senior business personnel and regional executives, among others—that are responsible for considering the principal risks as they relate to the associated businesses. The Applicant represents that each of these committees meets on a quarterly basis, and all report up to the Board Conduct, Operational and Reputation Risk Committee.

The Applicant represents that the Bank continues to institute an enhanced global compliance and controls system, supported by substantial financial and human resources, and charged with enforcing and continually monitoring adherence to BPLC's policies. The Applicant states that Junior Compliance employees receive approximately 600 hours of Compliance-related training over a two-year period. The Applicant states that more senior Compliance personnel receive additional training.

Statutory Findings—Protective of the Rights of Participants of Affected Plans and IRAs

8. The Applicant has proposed certain conditions it believes are protective of participants and beneficiaries of ERISA-covered plans and IRAs with respect to the transactions described herein. The Department has determined that it is necessary to modify and supplement the conditions before it can tentatively determine that the requested exemption meets the statutory requirements of section 408(a) of ERISA. In this regard, the Department has tentatively determined that the following conditions adequately protect the rights of participants and beneficiaries of affected plans and IRAs with respect to the transactions that would be covered by this proposed five-year exemption, if granted.

The five-year exemption, if granted, as proposed, is only available to the extent that, (a) other than certain individuals who: (i) Worked for a non-fiduciary business within BCI; (ii) had no responsibility for, and exercised no authority in connection with, the management of plan assets; and (iii) are no longer employed by BPLC, the Barclays Affiliated QPAMs and the Barclays Related QPAMs (including their officers, directors, agents other than BPLC, and employees of such QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not know of, did not have reason to know of, or participate in the criminal conduct of BPLC that is the subject of the Conviction (for purposes of this requirement, the term ''participate in'' includes the knowing or tacit approval of the misconduct underlying the Conviction); (b) any failure of the Barclays Affiliated QPAM or a Barclays Related QPAM to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction; and (c) the Barclays Affiliated QPAMs and (including their officers, directors, agents other than BPLC, and employees of such Barclays QPAMs) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the Conviction.

9. The Department expects the Barclays Affiliated QPAMs will rigorously ensure that the individuals associated with the misconduct will not be employed or knowingly engaged by such QPAMs. In this regard, the five-year exemption, if granted, mandates that the Barclays Affiliated QPAMs will not employ or knowingly engage any of the individuals that participated in the FX manipulation that is the subject of the Conviction. For purposes of this condition, the term ''participated in'' includes an individual's knowing or tacit approval of the behavior that is the subject of the Conviction.

10. Further, a Barclays Affiliated QPAM will not use its authority or influence to direct an ''investment fund,'' (as defined in Section VI(b) of PTE 84–14) that is subject to ERISA or the Code and managed by such Barclays Affiliated QPAM to enter into any transaction with BPLC or BCI or engage BPLC or BCI 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.

11. The Barclays Affiliated QPAMs and the Barclays Related 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 Conviction. Further, any failure of a Barclays Affiliated QPAM or a Barclays Related QPAM to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction.

No relief will be provided by this five-year exemption, if granted, if a Barclays Affiliated QPAM or a Barclays Related QPAM exercised authority over the assets of an ERISA-covered plan or an IRA in a manner that it knew or should have known would: Further the criminal conduct that is the subject of the Conviction; or cause the Barclays Affiliated QPAM or the Barclays Related QPAM, or its affiliates or related parties to directly or indirectly profit from the criminal conduct that is the subject of the Conviction. Also, no relief will be provided by this five-year exemption, if granted, to the extent BPLC or BCI provides any discretionary asset management services to ERISA-covered plans or IRAs, or otherwise acts as a fiduciary with respect to ERISA-covered plan or IRA assets.

12. The Department believes that robust policies and training are warranted where, as here, the criminal misconduct has occurred within a corporate organization that is affiliated with one or more QPAMs managing plan or IRA assets. Therefore, this proposed five-year exemption, if granted, requires that prior to a Barclays Affiliated QPAM's engagement by any ERISA-covered plan or IRA for discretionary asset management services, where the QPAM represents that it qualifies as a QPAM, the Barclays Affiliated QPAM must develop,

implement, maintain, and follow written policies and procedures (the Policies) requiring and reasonably designed to ensure that: The asset management decisions of the Barclays Affiliated QPAM are conducted independently of the corporate management and business activities of BPLC, including the management and business activities of BCI; the Barclays Affiliated QPAM fully complies with ERISA's fiduciary duties and with ERISA and the Code's prohibited transaction provisions, and does not knowingly participate in any violation of these duties and provisions with respect to ERISA-covered plans and IRAs; the Barclays Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs; any filings or statements made by the Barclays Affiliated QPAM to regulators, including, but not limited to, the Department of Labor, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA-covered plans or IRAs, are materially accurate and complete, to the best of such QPAM's knowledge at that time; the Barclays Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plan and IRA clients; and the Barclays Affiliated QPAM complies with the terms of this five-year exemption, if granted.

13. Any violation of, or failure to comply with, these Policies must be corrected promptly upon discovery, and any such violation or compliance failure not promptly corrected is reported, upon discovering the failure to promptly correct, in writing, to appropriate corporate officers, the head of compliance, and the General Counsel (or their functional equivalent) of the relevant Barclays Affiliated QPAM, the independent auditor responsible for reviewing compliance with the Policies, and an appropriate fiduciary of any affected ERISA-covered plan or IRA, which fiduciary is independent of BPLC. A Barclays Affiliated QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance promptly when discovered, or when it reasonably should have known of the noncompliance (whichever is earlier), and provided that it reports such instance of noncompliance as explained above.

14. The Department has also imposed a condition that requires each Barclays Affiliated QPAM, prior to its engagement by any ERISA covered plan or IRA, to develop and implement a Training program, conducted at least annually, for all relevant Barclays Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must be set forth in the Policies and, at a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this five-year exemption, if granted, (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing. Further, the Training must be conducted by an independent professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code.

15. *Independent Transparent Audit.* The Department views a rigorous and transparent audit that is conducted annually by an independent party, as essential to ensuring that the conditions for exemptive relief described herein are followed by the Barclays Affiliated QPAMs. Therefore, Section I(i) of this proposed five-year exemption, if granted, requires that each Barclays Affiliated QPAM submits to an audit, conducted annually by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and the Barclays Affiliated QPAM's compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. In addition, each annual audit must cover a consecutive twelve (12) month period starting with the twelve (12) month period that begins on the date that a Barclays Affiliated QPAM is first engaged by any ERISA-covered plan or IRA for discretionary asset management services reliant on PTE 84–14 and each annual audit must be completed no later than six (6) months after the period to which the audit applies.

16. Among other things, the audit condition requires that, to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, and as permitted by law, each Barclays Affiliated QPAM and, if applicable, BPLC, will grant the auditor unconditional access to its business, including, but not limited to: Its computer systems, business records, transactional data, workplace locations, training materials, and personnel.

In addition, the auditor's engagement must specifically require the auditor to determine whether each Barclays Affiliated QPAM has complied with the Policies and Training conditions described herein, and must further require the auditor to test each Barclays Affiliated QPAM's operational compliance with the Policies and Training. The auditor must issue a written report (the Audit Report) to BPLC and the Barclays Affiliated QPAM to which the audit applies that describes the procedures performed by the auditor during the course of its examination. The Audit Report must include the auditor's specific determinations regarding: The adequacy of the Barclays Affiliated QPAM's Policies and Training; the Barclays 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 Barclays Affiliated QPAM's noncompliance with the written Policies and Training.

17. Any determination by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective Barclays Affiliated QPAM must be promptly addressed by such Barclays Affiliated QPAM, and any action taken by such Barclays Affiliated QPAM to address such recommendations must be included in an addendum to the Audit Report. Further, any determination by the auditor that the respective Barclays Affiliated QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that the Barclays Affiliated QPAM has complied with the requirements, as described above, must be based on evidence that demonstrates the Barclays Affiliated QPAM has actually implemented, maintained, and followed the Policies and Training required by this five-year exemption. Finally, the Audit Report must address the adequacy of the Annual Review required under this exemption and the resources provided to the Compliance Officer in connection with such Annual Review. Moreover, the auditor must notify the respective Barclays 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.

18. This exemption, if granted, requires that certain senior personnel of BPLC review the Audit Report and make certain certifications and take various corrective actions. In this regard, the General Counsel or one of the three most senior executive officers of the Barclays 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 five-year exemption, if granted; addressed, corrected, or remedied an inadequacy identified in the Audit Report; and determined that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this proposed five-year exemption, if granted, and with the applicable provisions of ERISA and the Code. The Risk Committee of BPLC's Board of Directors is provided a copy of each Audit Report; and a senior executive officer with a direct reporting line to the highest ranking legal compliance officer of BPLC must review the Audit Report for each Barclays Affiliated QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report.

19. In order to create a more transparent record in the event that the proposed relief is granted, each Barclays Affiliated QPAM must provide its certified Audit Report to the Department no later than thirty (30) days following its completion. The Audit Report will be part of the public record regarding this five-year exemption, if granted. Further, each Barclays Affiliated QPAM must make its Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of an ERISA-covered plan or IRA, the assets of which are managed by such Barclays Affiliated QPAM. Additionally, each Barclays Affiliated QPAM and the auditor must submit to the Department any engagement agreement(s) entered into pursuant to the engagement of the auditor under this five-year exemption, if granted. Also, they must submit to the Department any engagement agreement entered into with any other entity retained in connection with such QPAM's compliance with the Training or Policies conditions of this proposed five-year exemption, if granted, no later than six (6) months after the Barclays Affiliated QPAM is first engaged by any ERISA covered plan or IRA for discretionary asset management services reliant on PTE 84–14 (and one month after the execution of any agreement thereafter).

Finally, if the exemption is granted, the auditor must provide the Department, upon request, all of the workpapers created and utilized in the course of the audit, including, but not limited to: The audit plan; audit testing; identification of any instance of noncompliance by the relevant Barclays Affiliated QPAM; and an explanation of any corrective or remedial action taken by the applicable Barclays Affiliated QPAM.

In order to enhance oversight of the compliance with the exemption, if granted, BPLC must notify the Department at least thirty (30) days prior to any substitution of an auditor, and BPLC must demonstrate to the Department's satisfaction that any new auditor is independent of BPLC, experienced in the matters that are the subject of the exemption, if granted, and capable of making the determinations required of this five-year exemption, if granted.

20. *Contractual Obligations.* This five-year exemption, if granted, requires the Barclays Affiliated QPAMs to enter into certain contractual obligations in connection with the provision of services to their clients. It is the Department's view that the condition in Section I(j) is essential to the Department's ability to make its findings that the proposed five-year exemption is protective of the rights of the participants and beneficiaries of ERISA-covered and IRA plan clients of Barclays Affiliated QPAMs under section 408(a) of ERISA. In this regard, effective as of the effective date of this five-year exemption, if granted, with respect to any arrangement, agreement, or contract between a Barclays Affiliated QPAM and an ERISA-covered plan or IRA for which a Barclays Affiliated QPAM provides asset management or other discretionary fiduciary services, each Barclays Affiliated QPAM must agree: (a) To comply with ERISA and the Code, as applicable, with respect to such ERISA-covered plan or IRA, and to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions), and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA with respect to each such ERISA-covered plan and IRA; (b) to indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a violation of applicable laws, a breach of contract, or any claim arising out of the failure of such Barclays Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Conviction; (c) not to require (or otherwise cause) the ERISA-covered plan or IRA to waive, limit, or qualify the liability of the Barclays Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions; (d) not to require the ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the Barclays Affiliated QPAM for violating ERISA or the Code, or engaging in prohibited transactions, except for a violation or a prohibited transaction caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary which is independent of BPLC, and its affiliates; (e) not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the Barclays Affiliated QPAM (including 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 as a result of the actual lack of liquidity of the underlying assets, provided that such restrictions are applied consistently and in like manner to all such investors; and (f) 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 practice, or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors. Furthermore, any contract, agreement or arrangement between a Barclays Affiliated QPAM and its ERISA-covered plan or IRA client must not contain exculpatory provisions disclaiming or otherwise limiting liability of the Barclays Affiliated QPAM for a violation of such agreement's terms, except for liability caused by error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary which

is independent of BPLC and its affiliates.

21. Within four (4) months of the date of the Conviction, each Barclays Affiliated QPAM must provide a notice of its obligations under this Section I(j) to each ERISA-covered plan and IRA for which a Barclays Affiliated QPAM provides asset management or other discretionary fiduciary services. For all other prospective ERISA-covered plan and IRA clients for which a Barclays Affiliated QPAM provides asset management or other discretionary services, the Barclays Affiliated QPAM will agree in writing to its obligations under this Section I(j) in an updated investment management agreement between the Barclays Affiliated QPAM and such clients or other written contractual agreement. In no event may any of these obligations be waived, qualified, or limited by any other agreement, side letter, or investment term.

22. *Notice Requirements.* The proposed exemption contains extensive notice requirements, some of which extend not only to ERISA-covered plan and IRA clients of Barclays Affiliated QPAMs, but which also go to non-Plan clients of Barclays Affiliated QPAMs. In this regard, the Department understands that many firms may promote their ''QPAM'' designation in order to earn asset management business, including from non-ERISA plans. Therefore, each BPLC affiliated asset manager will provide each Future Covered Client with a **Federal Register** copy of the proposed five-year exemption, along with a separate summary describing the facts that led to the Conviction (the Summary), which have been submitted to the Department, and a prominently displayed statement that the Conviction resulted in a failure to meet a condition of PTE 84–14. The provision of these documents must occur prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the BPLC affiliated asset manager. For purposes of this paragraph, a ''Future Covered Client'' means a client of the BPLC affiliated asset manager that, beginning after the date, if any, that a final exemption is published in the **Federal Register**, has assets managed by such asset manager, and has received a representation from the asset manager that the asset manager is a QPAM, or qualifies for the relief provided by PTE 84–14.

23. This proposed five-year exemption, if granted, also requires BPLC to designate a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. The Compliance Officer will have several obligations that it must comply with, as described in Section I(m) above. These include conducting an annual review (the Annual Review) to determine the adequacy and effectiveness of the implementation of the Policies and Training; the preparation of a written report for each Annual Review (each, an Annual Report) that, among other things, summarizes his or her material activities during the preceding year; and sets forth any instance of noncompliance discovered during the preceding year, and any related corrective action. Each Annual Report must be provided to appropriate corporate officers of BPLC and each Barclays Affiliated QPAM to which such report relates; the head of compliance and the General Counsel (or their functional equivalent) of the relevant Barclays Affiliated QPAM; and must be made unconditionally available to the independent auditor described above.

24. Each Barclays Affiliated QPAM must maintain records necessary to demonstrate that the conditions of this exemption, if granted, have been met, for six (6) years following the date of any transaction for which such Barclays Affiliated QPAM relies upon the relief in the proposed five-year exemption, if granted.

25. The Department stresses that it is proposing this five-year exemption based on representations from BCI that it has changed and improved its corporate culture and compliance capabilities. Consistent with this, the proposed five-year exemption mandates that, during the effective period, BPLC must immediately disclose to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) that BPLC or an affiliate enters into with the U.S. Department of Justice, to the extent such DPA or NPA involved conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA. In addition, BPLC must immediately provide the Department any information requested by the Department, as permitted by law, regarding the agreement and/or the conduct and allegations that led to the agreement.

The Department may, following its review of that information, require BPLC or a party specified by the Department, to submit a new application for the continued availability of relief as a condition of continuing to rely on this exemption. In this regard, the QPAM (or other party submitting the application) will have the burden of justifying the relief sought in the application. If the Department denies the relief requested in that application, or does not grant such relief within twelve (12) months of the application, the relief described herein would be revoked as of the date of denial or as of the expiration of the twelve (12) month period, whichever date is earlier.

26. Finally, each Barclays Affiliated QPAM, in its agreements with ERISA-covered plan and IRA clients, or in other written disclosures provided to ERISA-covered plan and IRA clients, within sixty (60) days prior to the initial transaction upon which relief hereunder is relied, will clearly and prominently: Inform the ERISA-covered plan or IRA client that the client has the right to obtain copies of the QPAM's written Policies adopted in accordance with this five-year exemption, if granted.

Statutory Findings—Administratively Feasible

27. The Applicant represents that the proposed exemption, if granted, is administratively feasible because it does not require any ongoing monitoring by the Department. Furthermore, the requested five-year does not require the Department's oversight because, as a condition of this proposed five-year exemption, neither BPLC nor BCI may provide any fiduciary or QPAM services to ERISA-covered plan or IRAs.

Summary

28. Given the revised and new conditions described above, the Department has tentatively determined that the relief sought by the Applicant satisfies the statutory requirements for an exemption under section 408(a) of ERISA.

Notice to Interested Persons

As BCI ceased acting as a discretionary asset manager as of December 4, 2015, notice of the proposed exemption (the Notice) will be given solely by publication of the Notice in the **Federal Register**. All written comments and/or requests for a hearing must be received by the Department within thirty (30) days of the publication of the Notice in the **Federal Register**.

All comments will be made available to the public. *Warning:* Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

FOR FURTHER INFORMATION CONTACT: Ms. Anna Mpras Vaughan of the Department at (202) 693–8565. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 10th day of November 2016.

Lyssa E. Hall,

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

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