4510-29-P

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-11640, Wells Fargo Bank, N.A. (the Applicant or the Bank); D-11772, UBS AG (UBS or the Applicant); and D-11739, D-11740, & D-11741, Sears Holdings Savings Plan (the Savings Plan), Sears Holdings Puerto Rico Savings Plan (the PR Plan) and The Lands' End, Inc. Retirement Plan (the Lands' End Plan).**

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, Room N-5700, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 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 e-mail or FAX. Any such comments or requests should be sent either by e-mail to: moffitt.betty@dol.gov, or by FAX to (202) 219-0204 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-1513, 200 Constitution Avenue, N.W., Washington, D.C. 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.

[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).

Wells Fargo Bank, N.A. (the Applicant or the Bank)

Located in Sioux Falls, South Dakota

[Application No. D-11640]

PROPOSED EXEMPTION

The Department is considering granting an 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 (55 FR 32836, 32847, August 10, 1990). If the proposed exemption is granted, the restrictions of sections 406(a)(1)(A), 406(a)(1)(D), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (D), and (E) of the Code, shall not apply, effective September 8, 2009, to the cash sale by four employee benefit plans (the Plans), whose assets were invested in the Bank's collateral pools (the Collateral Pools), of certain interests (the Interests) in two medium-term notes (the Notes), for the aggregate purchase price (the Purchase Price) of $375,182, to the Bank, a party in interest with respect to the Plans, provided that the following conditions were met:

(a) The sale was a one-time transaction for cash;

(b) Each Plan received an amount which was equal to the greater of either: (1) the current cost of its Interests in the Notes (i.e., the original purchase price less distributions received by the Plan through the purchase date (the Purchase Date)); or (2) the fair market value of its Interests in the Notes, as determined by a valuation of the underlying assets performed by Stone Tower Debt Advisors LLC (the Enforcement Manager), an unrelated party, there being no market for the Notes at the time of sale;

(c) The Plans did not pay any commissions or other expenses in connection with the sale;

(d) The Bank, in its capacity as securities lending agent and manager of the Collateral Pools, determined that the sale of the Plans' Interests in the Notes was appropriate for and in the interests of the Plans at the time of the transaction;

(e) The Bank took all appropriate actions necessary to safeguard the interests of the Plans in connection with the transaction, given that the Plans were not eligible to participate in an exchange offer (the Exchange Offer) and the Purchase Price was substantially higher than the fair market value of the Plans' Interests in the Notes;

(f) If the exercise of any of the Bank's rights, claims or causes of action in connection with its ownership of the Notes

(including the notes received in the Exchange Offer) results in the Bank recovering from Stanfield Victoria Finance Ltd., the issuer of the Notes (Stanfield Victoria), or any third party, an aggregate amount that is more than the sum of:

(1) The Purchase Price paid by the Bank to the Plans for the Interests in the Notes; and

(2) The interest that would have been payable on the Notes from and after the date the Bank purchased the Plans' Interests in the Notes, at the rate specified in the Notes, the Bank will refund such excess amounts promptly to the Plans (after deducting all reasonable expenses incurred in connection with the recovery);

(g) The Bank and its affiliates, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of any covered transaction such records as are necessary to enable the persons described below in paragraph (h)(i), to determine whether the conditions of this exemption have been met, except that --

(1) No party in interest with respect to a Plan which engages in the covered transactions, other than the Bank and its affiliates, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained,

or not available for examination, as required, below, by paragraph (h)(i); and

(2) A separate prohibited transaction shall not be considered to have occurred solely because, due to circumstances beyond the control of the Bank or its affiliate, as applicable, such records are lost or destroyed prior to the end of the six-year period.

(h)(1) Except as provided, below, in paragraph (h)(2), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to, above, in paragraph (g) are unconditionally available at their customary location for examination during normal business hours by --

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the Securities Exchange Commission; or

(B) Any fiduciary of any plan that engages in the covered transactions, or any duly authorized employee or representative of such fiduciary; or

(C) Any employer of participants and beneficiaries and any employee organization whose members are covered by a plan that engages in the covered transactions, or any authorized employee or representative of these entities; or

(D) Any participant or beneficiary of a plan that engages in the covered transactions, or duly authorized employee or representative of such participant or beneficiary;

(ii) None of the persons described above, in paragraph (h)(1)(B) - (D) shall be authorized to examine trade secrets of the Bank and its affiliates, as applicable, or commercial or financial information which is privileged or confidential; and

(E) Should the Bank and its affiliates, as applicable, refuse to disclose information on the basis that such information is exempt from disclosure, the Bank and its affiliates, as applicable, shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

EFFECTIVE DATE: If granted, this exemption will be effective as of September 8, 2009.

SUMMARY OF FACTS AND REPRESENTATIONS

1. The Bank is a national bank subsidiary of Wells Fargo & Company, a diversified financial services company. Headquartered in Sioux Falls, South Dakota, the Bank is subject to regulation

by the Comptroller of Currency. As of December 31, 2012, the Bank served as securities lending agent, custodian or directed trustee to approximately 35 clients, including certain ERISA-covered plans. Also as of December 31, 2012, the Bank's total fiduciary assets under management were $159,716,000,000. Of that total, $23,223,000,000 represented employee benefit and retirement-related trust and agency accounts.

2. The Bank's securities lending program involves the lending of securities held by certain of its clients, including the Plans referred to herein, and the investment of collateral received from the borrowers in Collateral Pools maintained on behalf of each client pursuant to securities lending agreements with such clients.[2] The Bank has discretionary investment management responsibility over the Collateral Pools. The Collateral Pools are generally invested in a diversified portfolio of investment grade short-term debt instruments, including, without limitation, commercial paper (including paper

[2] Prior to September 22, 2008, the Bank invested securities lending collateral it received on behalf of its clients in a commingled fund. At that time, each client received a pro rata interest in the assets held by the commingled fund, including the Notes. On and after September 22, 2008, a Collateral Pool was established by the Bank for each securities lending client to hold a direct, pro rata interest in the Notes and other securities maintained by the Bank. The percentage of all of the Collateral Pools attributable to the Plans was approximately 11.1964%, as of September 22, 2008.

issued under Section 3(a)(3), Section 4(2) and Rule 144A of the Securities Act of 1933), notes, repurchase agreements and other evidences of indebtedness which are payable on demand or which have a maturity date not exceeding 36 months from the date of purchase.

Neither the Bank nor its affiliates served as fiduciaries with respect to each affected Plan's decision to participate in the Bank's securities lending program. Instead, unrelated Plan fiduciaries were responsible for making such decisions. The disclosures provided by the Bank to its securities lending customers, including the Plans, explained the risks associated with the securities lending program, including the risk of loss relating to the investment of collateral received from borrowers under the program, and the Bank's obligation to return the collateral to such borrowers upon the termination of the loan of securities.

3. The Notes comprising the Collateral Pools were corporate bonds that were issued by Stanfield Victoria, an unrelated party. The Notes were purchased by the Bank on behalf of the Collateral Pools for a total purchase price of $848,859. The Notes included two CUSIP numbers: 85431AGX9 (CUSIP 1) purchased on September 6, 2006, with a maturity date of March 6, 2008, and 85431AHY6 (CUSIP 2) purchased on November 3, 2006, with

a maturity date of November 3, 2008. A total of 67 investors invested in the Notes. Among the investors were the Plans, none of which were sponsored by the Bank or its affiliates. The Plans' Collateral Pools acquired the Interests in CUSIP 1 for $303,449 and in CUSIP 2 for $202,359, for a total amount of $505,808. Interest on the Notes was payable quarterly at a variable rate which was reset each quarter based upon the three-month London Interbank Offered Rate.

4. Stanfield Victoria, a structured investment vehicle, raised capital primarily by issuing various types and classes of notes, including the Notes and commercial paper. The capital raised was then utilized by Stanfield Victoria to purchase various financial assets, including other asset-backed securities and mortgage-backed securities. The assets acquired by Stanfield Victoria were pledged to secure payment of certain of the debt instruments issued by Stanfield Victoria, including the Notes, pursuant to a security agreement with an independent bank, Deutsche Bank Trust Company Americas, serving as collateral agent (the Collateral Agent). This security agreement provided that, as a general rule, upon the occurrence of an "Enforcement Event," as defined in the agreement (the Enforcement Event), the Collateral Agent was required to sell all of Stanfield Victoria's assets and distribute the proceeds thereof.

5. The decision to invest Collateral Pool assets in the Notes was made by the Bank in its capacity as securities lending agent. Prior to the investment, the Bank conducted an investigation of the potential investment, examining and considering the economic and other terms of the Notes. The Bank represents that the Plans' investments in the Notes were consistent with the investment policies and objectives of the Collateral Pools when made. At the time the Plans acquired their Interests in the Notes, the Notes were rated "AAA" by Standard & Poor's Corporation (S&P) and "Aaa" by Moody's Investor Services, Inc. (Moody's).

Based on its consideration of the relevant facts and circumstances, the Bank states that it was prudent and appropriate for the Plans to acquire their Interests in the Notes.[3]

[3] The Department is expressing no opinion in this proposed exemption regarding whether the acquisition and holding by the Plans of Interests in the Notes through the Collateral Pools violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act. In this regard, the Department notes that section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan. Section 404(a) of the Act also states that a plan fiduciary should diversify the investments of a plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

6. On November 7, 2007, S&P placed a "negative watch" on the Notes. On December 21, 2007, Moody's downgraded the rating of the Notes to "Baa3." On January 7, 2008, S&P downgraded the rating of the Notes to "B-." Responding to these events, the Bank, on behalf of the Plans, (together with the majority of other investors in the Notes) consented to the execution of an amendment to the security agreement governing the Notes on January 7, 2008. Pursuant to this amendment, by providing notice (Election Notice) on or before January 17, 2008, the Bank could elect to have the pro rata share of the collateral assets (i.e., the assets then held by Stanfield Victoria as collateral supporting the Notes) allocable to Interests in the Notes held by

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Moreover, the Department is not providing any opinion as to whether a particular category of investments or investment strategy would be considered prudent or in the best interests of a plan as required by section 404 of the Act. The determination of the prudence of a particular investment or investment course of action must be made by a plan fiduciary after appropriate consideration of those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular investment or investment course of action involved, including a plan's potential exposure to losses and the role the investment or investment course of action plays in that portion of the plan's portfolio with respect to which the fiduciary has investment duties (see 29 CFR 2550.404a-1). The Department also notes that in order to act prudently in making investment decisions, a plan fiduciary must consider, among other factors, the availability, risks and potential return of alternative investments for the plan. Thus, a particular investment by a plan, which is selected in preference to other alternative investments, would generally not be prudent if such investment involves a greater risk to the security of a plan's assets than other comparable investments offering a similar return or result.

the Collateral Pools maintained on behalf of the Plans excluded from any asset sale by the Collateral Agent that would otherwise occur immediately upon the occurrence of an Enforcement Event.

7. On January 8, 2008, as a result of the foregoing ratings downgrades, an Enforcement Event occurred. On January 10, 2008, Stanfield Victoria did not repay certain notes maturing on that date. On January 14, 2008, the Bank submitted an Election Notice to the Collateral Agent instructing the Collateral Agent to exclude its securities lending clients' pro rata share of Stanfield Victoria's assets from the asset sale triggered by the occurrence of the Enforcement Event on January 8, 2008.

The Bank's election was based on its determination that the market for the collateral assets securing the Notes was severely distressed and that the intrinsic value of such assets was substantially greater than the price that could have been obtained if such assets were then sold by the Collateral Agent. Accordingly, the Bank determined that it was in the best interest of its securities lending clients, including the Plans, to exclude such assets from a current sale. On January 15, 2008, Moody's further downgraded its rating of the Notes to "B2." On January 17, 2008, S&P further downgraded its rating of the Notes to "D."

8. Stanfield Victoria was placed under the control of the Enforcement Manager on January 8, 2008. At that time, all payments of principal and interest to holders of its Notes and commercial paper were immediately suspended. However, income and principal payments on many of Stanfield Victoria's underlying securities continued to accrue through December 2008, at which point the Collateral Agent determined to pay the accumulated cash solely to the senior creditors of Stanfield Victoria, which included the Plans. The first such payment was made on December 23, 2008. In March 2009, the Collateral Agent began making monthly payments to the senior creditors. Through September 1, 2009, these payments on the Notes totaled approximately 26% of the initial purchase price paid by the Bank's securities lending customers. In the case of the Plans, the total payments received with respect to the Notes was $130,626 ($79,204 for CUSIP 1 and $51,422 for CUSIP 2).

9. During this period, an unrelated group created "NewCo," a private entity formed to acquire the Notes of Stanfield Victoria in exchange for notes issued by NewCo. NewCo intended to use all Notes that it acquired in the Exchange Offer as the basis for a credit bid in the anticipated foreclosure auction of Stanfield Victoria's assets to be conducted by the Enforcement Manager.

Through the credit bid process, NewCo received a pro rata share of the underlying assets of Stanfield Victoria based on the Notes it acquired through the Exchange Offer. Stanfield Victoria's senior creditor committee, an informal committee comprised of holders of Stanfield Victoria's senior securities, determined that it would be in the senior creditors' best interests to accept the Exchange Offer. The NewCo exchange period commenced on August 13, 2009 and closed on September 11, 2009 (the Exchange Period). The Bank was required by September 8, 2009 to elect, on behalf of each of its securities lending clients, whether to accept the Exchange Offer for the Notes.[4]

Shortly before the beginning of the Exchange Period, however, NewCo's organizers concluded that it would not register interests in NewCo under either the Securities Act of 1933 (the 1933 Act) or the Investment Company Act of 1940 (the 1940 Act). As a result, participation in NewCo was limited to those institutional investors who were both "accredited investors," as that term is defined in Rule 501 of Regulation D (see 17 C.F.R.

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[4] The Bank states that the Exchange Offer expired on September 11, 2009. However, to ensure that its election to accept the offer would clear the election process established by NewCo in a timely way, the Bank established its own deadline of September 8, 2009 to submit any acceptance of the Exchange Offer.

Section 230.501(a)) promulgated under the 1933 Act and "qualified purchasers," as defined in Section 2(a)(51) of the 1940 Act.

Participation in the exchange with NewCo was further restricted by establishment of a minimum denomination size of $100,000. NewCo would not issue notes in an amount below that minimum size to any investors. Those holders of the Notes who did not accept the NewCo Exchange Offer were to receive directly a pro rata distribution of each of Stanfield Victoria's underlying assets, which comprised more than 370 separate securities. The small pro rata interests in the underlying securities generally would be below the minimum denomination size necessary to permit sales to other purchasers or transfers of any kind. Thus, any such investors would be required to hold each of the underlying securities until their maturity or redemption.

In addition, investors who took distributions of these nontransferable assets would be subject to substantial administrative charges imposed by the custodian (unrelated to the Bank) so long as any nontransferable asset remained outstanding. Accordingly, the Bank elected on behalf of each eligible securities lending client (that is, each securities lending client that was a "qualified purchaser" holding at least $100,000 in Stanfield Victoria) to accept the NewCo Exchange Offer.

10. Some of the Bank's securities lending customers

were ineligible to hold interests in NewCo (the Ineligible Clients) because they were not "qualified purchasers" or they held Interests[5] of less than $100,000 in Stanfield Victoria, or both. These investors included the four Plans and five other investors, which were institutional investors, such as non-ERISA employee benefit plans and private foundations. Therefore, the Bank determined that it would be appropriate and in the best interests of the Plans to purchase the Interests in the Notes for their current cost (calculated as the original purchase price less distributions that were treated as distributions of principal through the date of sale). However, to avoid a pro rata distribution of more than 370 illiquid securities, any such sale would be required to be made prior to the expiration of the Exchange Period.

The Bank decided to purchase the Interests in the Notes that were held by the Ineligible Clients for cash in order to participate in the Exchange Offer with respect to any Interests in the Notes that the Ineligible Clients chose to sell to the Bank. Moreover, the Bank determined that its purchase of the Interests held by the Ineligible Clients would be permissible

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[5] Unless the context suggests otherwise, the term "the Interests" is meant to include the interests in the Notes that were held by the Ineligible Clients that were not plans.

under applicable banking law.

11. The current cost of the Notes was substantially higher than the fair market value of the Notes. Because there was essentially no market for the Notes, they could be valued only by valuing the underlying assets of Stanfield Victoria. The Enforcement Manager was required to provide monthly mark-to-market valuations of those assets, which, due to the complexity of the valuation process for the underlying assets at a time of substantial market disruption, was generally provided approximately one month in arrears. The Bank states that, as of the close of the Exchange Period, the most recent valuation provided by the Enforcement Manager to investors, which was made as of July 31, 2009, reported that Stanfield Victoria's assets were believed to have an aggregate value equal to 46% of Stanfield Victoria's outstanding senior debt (i.e., 46 percent of the outstanding principal balance).[6]

[6] The Applicant states that the percentage provided by the Enforcement Manager to the investors was an estimate applied to each of the Notes, separately. In addition, the Applicant states that the Bank's Capital Markets Group performed its own intrinsic value analysis and estimated the intrinsic value of the Notes as of July 31, 2009 at 47% of their remaining principal balance. Furthermore, the Applicant notes that Wells Capital Management, an affiliated investment advisor, stated that the trading price for the Notes was substantially below their assessment of the intrinsic value of the underlying assets.

12. On September 3, 2009, the Bank notified a representative of each of the Ineligible Clients of its proposal to purchase their Interests in the Notes. In addition, the Bank provided a written description of its proposal to each Ineligible Client by letter (the Proposal Letter) dated September 8, 2009. In its Proposal Letter, the Bank informed each Ineligible Client that, unless directed differently by 12 Noon on Wednesday, September 9, 2009, the Bank would be transferring the payment for the purchase of the Ineligible Clients' Interests in the Notes to such Ineligible Clients' segregated Collateral Pool on Thursday, September 10, 2009. The Bank obtained confirmation from each Ineligible Client, via negative consent by the close of business on September 9, 2009, that it wished to participate in the Bank's proposed purchase.[7] Accordingly, the Bank purchased each Ineligible Client's Interest in the Notes for a total cash payment of $628,952 on September 10, 2009 (the Purchase Date).[8]

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[7] The Applicant represents that the Proposal Letter generally confirmed information communicated via telephone with the representative of each Ineligible Client prior to the time the Bank acted on the negative consent.

[8] To address the possibility that the election made on September 8, 2009 by the Bank (to participate in the Exchange Offer on behalf of eligible clients and to make a corresponding election to participate in the Exchange Offer with respect to Notes held by Ineligible Clients who accepted the Bank's purchase) may be deemed to raise prohibited transaction issues,

This sum represented the current cost of the Notes (i.e., the purchase price of the Notes less distributions treated as distributions of principal received by the Plans as of the Purchase Date). The price was determined on the same basis for each Plan as it was for the other Ineligible Clients. On the basis of the information it had obtained regarding the market for the Notes and the intrinsic value of Stanfield Victoria's underlying assets, the Bank determined that the purchase price paid by the Bank to the Ineligible Clients substantially exceeded (by approximately $392,300) the aggregate fair market value of the Ineligible Clients' Interests in the Notes as of the Purchase Date.

13. As for the Plans, the current price for CUSIP 1 was $224,245 ($303,449 purchase price minus $79,204 repayment of principal), and its estimated fair market value as of September 10, 2009 was $105,396. With respect to CUSIP 2, the current price was $150,937 ($202,359 purchase price minus $51,422 repayment of principal) and its fair market value was $70,940 as of September 10, 2009.

Accordingly, the total Purchase Price paid by the Bank for the Plans' Interests in the Notes was $375,182. The Purchase

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the Bank has requested an effective date for the exemption of September 8, 2009.

Price was allocated among the Plans pro rata based on their respective percentage Interests in the Notes.

14. The Bank, in its capacity as securities lending agent, believes that the sale of the Plans' Interests in the Notes was in the interests and protective of the Plans at the time of the transaction because the sale protected the Plans from holding illiquid securities and incurring burdensome holding costs, and, secondarily, from potential investment losses. The Bank also represents that any sale of the Plans' Interests in the Notes or pro rata interests in Stanfield Victoria's underlying assets on the open market, if possible at all, would have produced significant losses for the Plans. However, the Purchase Price paid by the Bank substantially exceeded the aggregate fair market value of the Plans' Interests in the Notes. Furthermore, the transaction was a one-time sale for cash and the Plans did not bear any brokerage commissions, fees, or other expenses in connection with the transaction. Finally, the Bank represents that it took all appropriate actions necessary to safeguard the interests of the Plans in connection with the sale of their Interests in the Notes.

15. The Bank represents that its purchase of the Plans' Interests in the Notes resulted in an assignment of all of the Plans' rights, claims, and causes of action against Stanfield

Victoria or any third party arising in connection with or out of the issuance of the Notes. The Bank states that, if the exercise of any of the foregoing rights, claims or causes of action results in the Bank recovering from Stanfield Victoria or any third party an aggregate amount that is more than the sum of (a) the Purchase Price paid for the Plans' Interests in the Notes by the Bank and (b) the interest that would have been due on the Notes (in the absence of the exchange) from and after the Purchase Date at the rate specified in the Notes, the Bank will refund such excess amounts promptly to the Plans (after deducting all reasonable expenses incurred in connection with the recovery).

16. In summary, the Bank represents that the transaction satisfied the statutory criteria for an exemption under section 408(a) of the Act because: (a) the sale of the Plans' Interests in the Notes was a one-time transaction for cash; (b) the Plans received an amount equal to the current cost of their Interests in the Notes at the time of sale, which was greater than the aggregate fair market value of their Interests in the Notes as determined by a valuation provided by the Enforcement Manager; (c) the Plans did not pay any commissions or other expenses with respect to the sale; (d) the Bank, as securities lending agent, determined that the sale of the Plans' Interests in the Notes was

in the interests of the Plans; (e) the Bank took all appropriate actions necessary to safeguard the interests of the Plans in connection with the transaction; and (f) the Bank will promptly refund to the Plans any amounts recovered from Stanfield Victoria or any third party in connection with its exercise of any rights, claims or causes of action as a result of its ownership of the Notes (including the notes received in the NewCo Exchange Offer), if such amounts are in excess of the sum of (1) the Purchase Price paid for the Plans' Interests in the Notes by the Bank, and (2) the interest that would have been due on the Plans' Interests in the Notes from and after the Purchase Date at the rate specified in the Notes.

NOTICE TO INTERESTED PERSONS

It is represented that the Bank shall provide notification of the publication of the Notice of Proposed Exemption (the Notice) in the FEDERAL REGISTER to a representative (the Representative) of each of the four Plans by personal or express delivery to each such Representative. Such notification will contain a copy of the Notice, as it appears in the FEDERAL REGISTER on the date of publication, plus a copy of the Supplemental Statement, as required pursuant to 29 CFR 2570.43(a)(2), which will advise the Representatives of their

right to comment and/or to request a hearing. The Bank will provide such notification to the Representatives within five (5) days of the date of publication of the Notice in the FEDERAL REGISTER. All written comments and/or requests for a hearing must be received by the Department from the Representatives no later than 35 days after 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: Anna Mpras Vaughan of the Department at (202) 693-8565. (This is not a toll-free number).

UBS AG (UBS or the Applicant)

Located in Zurich, Switzerland

Exemption Application No. D-11772

PROPOSED EXEMPTION

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended, (ERISA) 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).9

If the proposed exemption is granted, entities within UBS's Global Asset Management and Wealth Management Americas divisions that function as "qualified professional asset managers" (QPAMs), shall not be precluded from relying on the relief provided by Prohibited Transaction Exemption 84-14 (PTE 84-14),10 solely due to the failure to satisfy the condition in section I(g) of PTE 84-14 as a result of their affiliation with UBS Securities Japan

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9 For purposes of this proposed exemption, references to section 406 of ERISA should be read to refer as well to the corresponding provisions of section 4975 of the Code.

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).

Co. Ltd. (UBS Securities Japan), against whom a judgment of conviction for one count of wire fraud (the Conviction) is scheduled to be entered in the District Court of Connecticut in Case Number 3:12-cr-00268-RNC, provided the following conditions are satisfied:

(a) No ERISA-covered assets were involved in, or directly affected by, the conduct of UBS Securities Japan that is the subject of the Conviction. For purposes of this paragraph, ERISA-covered assets are not considered directly affected solely because an ERISA plan held an economic interest in a security or investment product, the value of which was tied to one of the benchmark interest rates manipulated in connection with conduct by certain UBS personnel;

(b) The entities acting as QPAMs within UBS's Global Asset Management and Wealth Management Americas divisions (UBS QPAMs) did not know of, have reason to know of, participate in, or directly receive compensation in connection with, the conduct by certain UBS personnel that gave rise to the manipulation of certain benchmark interest rates;

(c) UBS Securities Japan did not provide any fiduciary services to, or act as a QPAM for, ERISA plans or otherwise exercise any discretionary control over ERISA-covered assets;

(d) UBS Securities Japan will not enter into any

transactions with funds managed by UBS QPAMs or provide any services to UBS QPAMs;

(e) UBS QPAMs were insulated from UBS Securities Japan due to: (1) the independent business operations of the Wealth Management Americas and Global Asset Management divisions from UBS's other divisions, and (2) written policies and procedures which created information barriers that were in place to ensure that the UBS QPAMs, and the ERISA-covered assets they manage, were not affected by the business activities of UBS affiliates within the Investment Bank division, such as UBS Securities Japan;

(f) UBS maintains and follows written policies and procedures that create information barriers designed to ensure UBS QPAMs, and the ERISA-covered assets they manage, are not affected by the business activities of UBS affiliates within the Investment Bank division, such as UBS Securities Japan. UBS also develops and implements a program of training for UBS personnel regarding such written policies and procedures;

(g) UBS submits to an annual audit which meets the following requirements:

(1) An independent auditor, who has appropriate technical training and proficiency with Title I of ERISA, shall conduct an annual written audit;

(2) The audit shall specifically require the auditor to determine whether UBS has continued to maintain and follow, and developed and implemented a training program with respect to, written policies and procedures that create information barriers designed to ensure that the UBS QPAMs, and the ERISA-covered assets they manage, are not improperly influenced or affected by the business activities of UBS affiliates within the Investment Bank division, such as UBS Securities Japan;

(3) The audit shall test operational compliance with the training requirements and written policies and procedures requirements described in paragraph (f);

(4) The auditor shall issue a written report (the Audit Report) describing the steps performed by the auditor during the course of its examination. The Audit Report shall include the auditor's specific determinations regarding the adequacy of the training requirements and written policies and procedures requirements described in paragraph (f), the auditor's recommendations (if any) with respect to strengthening such training requirements and policies and procedures, and any instances of UBS's noncompliance with developing and implementing such training requirements and policies and procedures. Any determinations made by the auditor as a result of the audit regarding the adequacy of the training requirements and written

policies and procedures requirements described in paragraph (f) and the auditor's recommendations (if any) with respect to strengthening such training requirements and policies and procedures shall be promptly addressed by UBS, and any actions taken by UBS to address such recommendations should be included in an addendum to the Audit Report. Any determinations by the auditor that UBS has developed and maintained sufficient written policies and procedures, and developed and maintained a training program regarding such policies and procedures, shall not be based solely or in substantial part on an absence of evidence indicating noncompliance;

(5) UBS shall provide notice to the Department's Office of Exemption Determinations (OED) of any instances of UBS's noncompliance reviewed by the auditor within ten (10) business days after such noncompliance is determined by the auditor, regardless of whether the audit has been completed as of that date. Upon request, the auditor shall provide OED with all of the relevant workpapers reflecting the instances of noncompliance. The workpapers should identity whether and to what extent the assets of ERISA plans were involved in the instance(s) of noncompliance and an explanation of any corrective actions taken by UBS;

(6) The yearly Audit Report will be provided to OED no later

than 90 days following the 12-month period to which it relates and will be unconditionally available for examination by any duly authorized employee or representative of the Department, Internal Revenue Service, U.S. Commodity Futures Trading Commission, U.S. Department of Justice, Japanese Financial Services Authority, other relevant regulators, and any fiduciary of an ERISA plan the assets of which plan are managed by a UBS QPAM;

(7) This audit requirement in paragraph (g) herein shall continue to be applicable for five (5) years from the date of Conviction;

(h) Notwithstanding the Conviction, UBS complies with each condition of PTE 84-14, as amended;

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

(j) 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;

(k) UBS maintains records necessary to demonstrate that the

conditions of this exemption have been met for six (6) years following the completion date of the last audit conducted in accordance with paragraph (g); and

(l) Each sponsor of an ERISA plan the assets of which plan are managed by a UBS QPAM receives: notice of the proposed exemption with a copy of the summary of facts that led to the Conviction, which was submitted to the Department; and a prominently displayed statement that the Conviction results in a failure to meet a condition in PTE 84-14.

Effective Date: This proposed exemption, if granted, will be effective as of the date a judgment of conviction against UBS Securities Japan for wire fraud is entered in the District Court of Connecticut in Case Number 3:12-cr-00268-RNC.

SUMMARY OF FACTS AND REPRESENTATIONS

Background

1. UBS AG (UBS or the Applicant) is a financial services corporation with headquarters located in Zurich, Switzerland. UBS has banking divisions and subsidiaries around the world, including in the United States, with its United States headquarters located in New York, New York and Stamford, Connecticut. The operational structure of UBS consists of the

Corporate Center and four business divisions: Wealth Management, Wealth Management Americas, Global Asset Management and the Investment Bank. Discretionary investment management services and investment consulting services utilized by ERISA plan clients are provided primarily through UBS's Global Asset Management and Wealth Management Americas divisions. According to UBS, Global Asset Management and Wealth Management Americas provide investment management services to ERISA plan clients through separately managed accounts and pooled funds that invest in most of the investable markets worldwide.11 UBS notes that as of September 30, 2012, Global Asset Management's invested assets totaled approximately $671 billion worldwide, and Wealth Management Americas' invested assets totaled approximately $841 billion.

2. On December 19, 2012, the Fraud section of the Criminal Division of the United States Department of Justice filed a one-count criminal information (the Information) in the District Court of Connecticut (the District Court)12 charging UBS

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11 This includes the purchase and sale of equity and fixed income securities, derivative contracts involving exposure to such securities, financial indices, commodity interests and currencies, mutual funds, hedge funds, real estate, infrastructure and private equity funds, fund of funds and manager of managers programs.

12 United States of America v. UBS Securities Japan Co., Ltd., Case Number 3:12-cr-00268-RNC.

Securities Japan Co. Ltd. (UBS Securities Japan), a wholly-owned subsidiary of UBS incorporated under the laws of Japan, with wire fraud in violation of Title 18, United States Code, sections 1343 and 2.13 The Information accuses UBS Securities Japan, between approximately 2006 and at least 2009, of engaging in a scheme to defraud counterparties to interest rate derivatives trades executed on its behalf by secretly manipulating certain benchmark interest rates (Yen LIBOR and Euroyen TIBOR), to which the profitability of those trades was tied.14 Pursuant to a plea agreement (together with its attachments, the Plea Agreement), UBS Securities Japan entered a plea of guilty to the Information on December 19, 2012. UBS represents that it expects the District Court to enter a judgment of conviction (the Conviction) against UBS Securities Japan that will require remedies that are

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13 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, abets, counsels, commands, induces, or willfully causes another person to engage in criminal activity.

14 Specifically, the Information charges that on or about February 25, 2009, in furtherance of such scheme, UBS Securities Japan caused the transmission of: (i) an electronic chat between a derivatives trader employed by UBS Securities Japan and a broker employed at an interdealer brokerage firm, (ii) a subsequent submission for the Yen LIBOR to Thomson Reuters, and (iii) a subsequent publication of a Yen LIBOR rate through international and interstate wires, at least one of which passed through servers located in Stamford, Connecticut.

materially the same as set forth in the Plea Agreement. The Conviction is scheduled to be entered on or after June 27, 2013.

3. According to the Information, UBS Securities Japan's fraudulent conduct was made possible by the manner in which the benchmark interest rates were calculated. Each business day, an average benchmark interest rate (the Fix) is calculated for various maturities, ranging from one day to 12 months. Each Fix is based on submissions from banks that sit on a Contributor Panel (omitting the top and bottom 25% of submissions for Yen LIBOR and the two highest and two lowest submissions for Euroyen TIBOR).15 The submissions for the benchmark interest rates generally represent the rate at which an individual Contributor Panel bank could borrow funds, were it to do so by asking for and then accepting inter-bank offers in a reasonable market size. UBS sits on the Contributor Panel for the Yen LIBOR and Euroyen TIBOR. Submissions from Contributor Panel members are ranked and averaged to determine each Fix. Each Fix is then published by information providers, such as Thomson Reuters.

4. According to the Plea Agreement, UBS Securities Japan employed derivatives traders who submitted rates which did not

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15 As of the date of this proposal, thirteen banks sat on the Yen LIBOR Contributor panel and seventeen banks sat on the Euroyen TIBOR Contributor panel.

reflect UBS's honest assessment of what its submissions should have been and who influenced the submissions of other Contributor Panel banks. The UBS derivatives traders were able to accomplish this by applying pressure or bribing individuals in charge of UBS's submissions to make submissions favorable to the traders' outstanding transactions. The derivatives traders would also persuade outside brokers to spread false information to other banks in order to influence those banks' submissions, causing a more dramatic shift in a particular Fix. The derivative traders engaged in this conduct in order to benefit their trading positions by maximizing profits and minimizing their losses. These derivative traders understood that they could only achieve those goals at the expense of their counterparties, whose trading positions would be affected to the same extent but in the opposite direction. Because of the large monetary value of the derivatives trades, even a small shift in a given Fix could result in a substantial profit to UBS, which would harm the counterparties. The Applicant represents that none of the counterparties were ERISA plans or funds containing ERISA-covered assets.

Failure to Comply with section I(g) of PTE 84-14 and Proposed Relief

5. PTE 84-1416 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.17 The Applicant represents that certain entities within its Global Asset Management and Wealth Management Americas divisions satisfy the definition of QPAM in PTE 84-14 (UBS QPAMs) and may rely on the relief provided therein. However, PTE 84-14 precludes a person who may otherwise meet the definition of QPAM from relying on the relief provided therein if that person or its affiliate 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 under section I(g) of PTE 84-14.

6. UBS represents that the Conviction falls within the scope of section I(g) of PTE 84-14 and, therefore, following the Conviction, UBS QPAMs will no longer qualify for the relief

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16 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).

17 Relief under the exemption is based, in part, on the expectation that a QPAM, and those who may be in a position to influence its policies, maintain a high standard of integrity. 47 FR 56945, 56947 (December 21, 1982).

provided by PTE 84-14. This exemption, if granted, will enable entities within UBS's Global Asset Management and Wealth Management Americas divisions to qualify for the relief in PTE 84-14 despite the failure to satisfy section I(g) of PTE 84-14 as a result of the Conviction, set to occur on or after June 27, 2013.18 This proposed exemption, if granted, will not apply to any other convictions of UBS or its affiliates for crimes described in section I(g) of PTE 84-14.

Merits of the Proposed Exemption

7. The Applicant states that in exchange for its cooperation with the investigation, the Department of Justice (the DOJ) entered into a non-prosecution agreement (NPA) with UBS, dated December 18, 2012, relating to UBS's submissions for the Yen LIBOR and other benchmark interest rates. Incorporated into the NPA is a Statement of Facts (SOF) which describes in more detail the efforts by certain UBS personnel to manipulate submissions for various interest rate benchmarks and to collude with employees at other banks and cash brokers to influence

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18 The Department notes that the Applicant has requested relief for UBS and its current and future affiliates. However, based on the record provided by the Applicant, the Department has been able to make its findings only with regards to the Global Asset Management and Wealth Management Americas divisions. Therefore, this proposed exemption, if granted, extends relief only to entities within those two divisions.

certain benchmark rates, including Yen LIBOR, to benefit their trading positions. The SOF also explains that certain UBS managers and senior managers gave directions to influence UBS's submissions to avoid negative media attention and, relatedly, to avoid creating an impression that it was having difficulty obtaining funds. UBS acknowledged that the SOF was 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 acknowledged that the participating employees intended, at least in part, to benefit UBS through the actions described above.

8. Pursuant to the NPA, UBS agreed to certain undertakings, including payment of a monetary penalty of $500,000,000 and strengthening its internal controls, as required by certain other U.S. and non-U.S. regulatory agencies with direct supervisory authority to regulate the conduct that gave rise to the Conviction.19 A summary of the compliance conditions imposed by these regulators (of which several have already been implemented) are set forth as follows:

The United States Commodity Futures Trading Commission

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19 These regulatory agencies include the U.S. Commodity Futures Trading Commission (CFTC), the United Kingdom Financial Services Authority (UKFSA), the Swiss Financial Market

Order, dated December 19, 2012, (the CFTC Order) requires UBS to comply with significant audit 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. UBS states that FINMA also adopted the compliance undertakings in the CFTC Order as their own;

The Business Improvement Order, dated December 16, 2011, issued by the JFSA 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

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Supervisory Authority (FINMA), and the Japanese Financial Services Authority (JFSA).

implementation of the measures required by the order.

9. According to the NPA, under UBS's new senior management, UBS has made substantial and positive changes in its compliance, training, and overall approach to ensuring its adherence to the law. The NPA provides further that UBS has implemented a modified and significantly enhanced control framework for its LIBOR submission process and has expanded that program to encompass all other benchmark interest rate submissions. UBS states that it has also implemented significant remedial measures against manipulation of benchmark interest rates. UBS represents that the DOJ has received favorable reports from FINMA and the JFSA describing, respectively, (1) the positive progress that UBS has made in its approach to compliance and enforcement, and (2) UBS Securities Japan's effective implementation of the remedial measures previously imposed by the JFSA.

10. Finally, UBS notes that, in light of the active investigations by the various regulators of the conduct identified in the NPA, and the role that such regulators will continue to play in reviewing UBS's compliance standards, the DOJ determined that adequate compliance measures regarding submissions for benchmark interest rates have been and will be established. For that reason, the DOJ did not include any additional compliance conditions in the NPA.

11. The Applicant maintains that no ERISA plans managed by UBS QPAMs were directly affected by the acts that form the basis for the Conviction. Furthermore, UBS states that no ERISA plan or any fund the assets of which constitute ERISA-covered assets was a party to a transaction that was the subject of the Conviction. Notwithstanding this, UBS acknowledges that ERISA plans may have held economic interests tied to one of the benchmark interest rates affected by UBS Securities Japan's criminal conduct.

12. According to the Applicant, as an affiliate of UBS, UBS Securities Japan engages in the purchase and sale of securities, acts as an intermediary in the purchase and sale of securities and underwrites securities in Japan, advises on mergers and acquisitions, and advises on private placements of debt and equity capital. However, the Applicant states that UBS Securities Japan does not provide investment management services to ERISA plans or otherwise exercise discretionary control over ERISA-covered assets. In this regard, the Applicant states that UBS Securities Japan has occasionally provided non-discretionary cash equity services (i.e., short-term stock trading designed to generate profits from changing stock market prices) to ERISA

plans managed by UBS QPAMs, in reliance on PTE 86-128.20 The Applicant explains that UBS QPAMs, on behalf of their ERISA plan clients, may on occasion purchase Japanese securities through UBS Securities Japan, but the conduct that forms the basis for the Plea Agreement and the facts that form the basis of the NPA did not relate to the cash equity services provided by UBS Securities Japan.21 Furthermore, the Applicant states that none of the individuals involved in the misconduct assisted in providing cash equity services to UBS QPAMs. Finally, according to the Applicant, UBS Securities Japan provided no other services to ERISA plans managed by UBS or its affiliates during the time period covered by the NPA, Information, and Plea Agreement.

13. The Applicant represents that UBS QPAMs were not involved in, and did not have knowledge of, the facts that form the basis of the NPA, Information, and Plea Agreement. UBS states that this is a result of policies and procedures that create information barriers that are, and have been, in place

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20 51 FR 41686 (November 18, 1986) as amended at 67 FR 64137 (October 17, 2002).

21 UBS affirms that commissions generated from the equity trades do not directly impact the compensation of employees of UBS QPAMs, but instead compensate the UBS Securities Japan brokers for the execution and settlement of the trades, in accordance with PTE 86-128. The Department is expressing no view as to whether UBS has complied with the conditions for relief under PTE 86-128.

between UBS's four business groups to ensure compliance with applicable legal requirements and to minimize potential conflicts of interest. The Applicant explains that, for example, UBS QPAMs are part of the Global Asset Management and Wealth Management Americas divisions whereas UBS Securities Japan acts for the Investment Bank division. Furthermore, UBS notes that members of the Global Asset Management and Wealth Management Americas divisions maintain separate registrations, books and records, and accounts from the Investment Bank affiliates. Therefore, according to UBS, the Global Asset Management and Wealth Management Americas divisions operate independently of the Investment Bank division. The Applicant explains further that, generally, the policies and procedures that create information barriers prevent employees of UBS QPAMs from gaining access to insider information that an affiliate may have acquired or developed in connection with investment banking activities of the Investment Bank division. According to UBS, the policies and procedures that create information barriers apply to all employees, officers, and directors at the UBS QPAMs and were in effect during the time frame covered by the facts that form the basis of the Plea Agreement. Finally, UBS represents that business contacts between Global Asset Management and Wealth Management Americas personnel and anyone engaged in investment

banking or related activities for an affiliate are prohibited, except with the prior approval of UBS's Legal and Compliance Department.

14. The proposed exemption, if granted, will require an independent auditor, who has appropriate technical training and proficiency with Title I of ERISA, to conduct an annual audit. The auditor shall determine whether UBS has developed and implemented training for, and continued to maintain and follow, written policies and procedures that create information barriers designed to ensure that the UBS QPAMs, and the ERISA assets they manage, are not improperly influenced or affected by the business activities of other UBS affiliates, such as those within the Investment Bank division. The auditor shall also determine whether UBS is operationally compliant with such training and policies and procedures and whether such measures are adequate to maintain information barriers and deter improper influences. The auditor shall issue a written report (the Audit Report) describing the steps performed by the auditor during the course of the auditor's examination. The Audit Report will be provided to the Department no later than 90 days following the 12-month period to which it relates and will be unconditionally available for examination by any duly authorized employee or representative of the Department, Internal Revenue Service, CFTC, DOJ, JFSA,

other relevant regulators, and any fiduciary of an ERISA plan, the assets of which plan are managed in whole or part by UBS QPAMs. The audit requirement shall continue to be applicable for five years from the date of Conviction.

Statutory Findings

15. The proposed exemption, if granted, is expected to be administratively feasible because the Department will have minimal involvement in ensuring UBS complies with this exemption. In this regard, the proposed exemption, if granted, will require an auditor to perform an audit of UBS's training and policies and procedures that create information barriers.

16. UBS represents that the requested exemption is in the interest of affected plans and their participants and beneficiaries because it will enable the plans to continue their current investment strategy with their current manager. Moreover, UBS notes that if the Department denies the requested exemption, UBS will be effectively eliminated as a viable investment manager. UBS suggests that any ERISA plan that decides to move to a new manager could incur transition costs including costs associated with identifying an appropriate manager. Additionally, according to the Applicant, ERISA plans that remain with UBS would be prohibited from engaging in certain

transactions beneficial to such plans, such as the purchase and sale from a party in interest of a security without a readily ascertainable fair market value. Finally, according to the Applicant, UBS has entered into contracts on behalf of ERISA plans for certain outstanding transactions, including swaps, which require UBS to maintain its eligibility for the relief in PTE 84-14. UBS asserts that counterparties to those transactions could seek to terminate their contracts, resulting in significant losses to their ERISA plan clients. Moreover, certain derivatives transactions will automatically and immediately be terminated without notice or action in the event UBS no longer qualifies for the relief in PTE 84-14.

17. UBS maintains that the requested exemption is protective of the rights of participants and beneficiaries of affected ERISA plans because: (i) UBS Securities Japan has not been, and for the duration of this exemption, will not be involved in the provision of discretionary investment management services to ERISA plans, and (ii) there have been, and will be, in place policies and procedures that create information barriers between UBS's business groups to ensure compliance with applicable legal requirements and to minimize potential conflicts of interest. UBS will also be subject to the audit requirement, described above, to ensure that the policies and procedures effectively

insulate UBS QPAMs from improper influence of other UBS affiliates.

18. In addition, UBS stresses that it has implemented and will maintain internal control procedures to prevent further improper activities regarding the setting of benchmark interest rates, and has complied (and will continue to comply) with all applicable requirements specified in the NPA, the CFTC Order, the Business Improvement Order issued by the JFSA, and any other agreements entered into by UBS with other domestic and foreign regulatory agencies in connection with the criminal conduct described above. Finally, UBS notes that all of the conditions that make PTE 84-14 protective of the rights of participants and beneficiaries of ERISA plans will be incorporated into this exemption, if granted.

Summary

19. In summary, UBS represents that the covered transactions satisfy the statutory requirements for an exemption under section 408(a) of ERISA because:

(a) No ERISA-covered assets were involved in, or directly affected by, the conduct of UBS Securities Japan that is the subject of the Conviction;

(b) The UBS QPAMs did not know of, have reason to know of,

participate in, or directly receive compensation in connection with, the conduct that gave rise to the manipulation of certain benchmark interest rates;

(c) UBS Securities Japan did not provide any fiduciary services to, or act as a QPAM for, ERISA plans or otherwise exercise any discretionary control over ERISA-covered assets;

(d) UBS Securities Japan will not enter into any transactions with funds managed by UBS QPAMs or provide any services to UBS QPAMs;

(e) UBS QPAMs were insulated from UBS Securities Japan due to: (1) the independent business operations of the Wealth Management Americas and Global Asset Management divisions from UBS's other divisions, and (2) written policies and procedures which created information barriers that were in place to ensure that the UBS QPAMs, and the ERISA-covered assets they manage, were not affected by the business activities of UBS affiliates within the Investment Bank division, such as UBS Securities Japan;

(f) UBS will maintain written policies and procedures that create information barriers designed to ensure UBS QPAMs, and the ERISA-covered assets they manage, are not affected by the business activities of UBS affiliates within the Investment Bank division, such as UBS Securities Japan. UBS will also develop and

maintain a program of training for UBS personnel regarding such written policies and procedures;

(g) UBS will submit to an annual audit in accordance with paragraph (g) of the proposed exemption;

(h) Notwithstanding the Conviction, UBS will comply with each condition of PTE 84-14, as amended;

(i) UBS will impose its internal procedures, controls, and protocols on UBS Securities Japan to: (1) reduce the likelihood of any recurrence of conduct that is the subject of the Conviction, and (2) comply in all material respects with the Business Improvement Order issued by the JFSA;

(j) UBS will comply with the audit and monitoring procedures imposed on UBS by the CFTC Order;

(k) UBS will maintain records necessary to demonstrate that the conditions of the exemption have been met for six years following the completion date of the last audit conducted in accordance with paragraph (g) of the proposed exemption; and

(l) Each sponsor of an ERISA plan the assets of which plan are managed by a UBS QPAM will receive, along with the notice of the proposed exemption, a copy of the summary of facts that led to the Conviction, which was submitted to the Department; and a prominently displayed statement that the Conviction results in a failure to meet a condition in PTE 84-14.

NOTICE TO INTERESTED PERSONS

Notice of the proposed exemption will be provided to all interested persons in the manner agreed upon by the Applicant and the Department within 3 days of the date of publication in the Federal Register. Such notice will contain a copy of the notice of proposed exemption, as published in the Federal Register, 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. Written comments and hearing requests are due within 33 days of the publication of the notice of proposed exemption in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Mr. Erin S. Hesse of the Department, telephone (202) 693-8546. (This is not a toll-free number.)

Sears Holdings Savings Plan (the Savings Plan),

Sears Holdings Puerto Rico Savings Plan (the PR Plan), and The Lands' End, Inc. Retirement Plan (the Lands' End Plan)

(collectively, the Plans)

Located in Hoffman Estates, IL and Dodgeville, WI

[Application Nos. D-11739, D-11740, D-11741]

PROPOSED EXEMPTION

The Department is considering granting an exemption under the authority of section 408(a) of the Act 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).

SECTION I. TRANSACTIONS

If the proposed exemption is granted, effective for the period beginning September 7, 2012 and ending October 8, 2012:

(a) The restrictions of sections 406(a)(1)(A), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) and 4975(c)(1)(E) of

the Code,[22] shall not apply:

(1) To the acquisition of certain subscription right(s) (the Right or Rights) by the Savings Plan and the Lands' End Plan from Sears Holdings Corporation (Holdings) in connection with an offering (the Offering) by Holdings of shares of common stock (SHO Stock) in Sears Hometown and Outlet Stores, Inc. (SHO); and

(2) To the holding of the Rights by the Savings Plan and the Lands' End Plan during the subscription period of the Offering; provided that the conditions as set forth, below, in Section II of this proposed exemption were satisfied for the duration of the acquisition and holding.

(b) The restrictions of sections 406(a)(1)(A), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act[23] shall not apply:

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[22] For purposes of this proposed exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[23] It is represented that the fiduciaries of the PR Plan have not made an election under section 1022(i)(2) of the Act, whereby such plan would be treated as a trust created and organized in the United States for purposes of tax qualification under section 401(a) of the Code. Further, it is represented that jurisdiction under Title II of the Act does not apply to the PR Plan. Accordingly, the Department, herein, is not providing any relief for the prohibitions, as set forth in Title II of the Act, for the acquisition and holding of the Rights by the PR Plan.

(1) To the acquisition of the Rights by the PR Plan from Holdings in connection with the Offering by Holdings of the SHO Stock; and

(2) To the holding of the Rights by the PR Plan during the subscription period of the Offering; provided that the conditions as set forth, below, in Section II of this proposed exemption were satisfied for the duration of the acquisition and holding.

SECTION II. CONDITIONS

The relief provided in this proposed exemption is conditioned upon adherence to the material facts and representations set forth in the application file, and upon compliance with the conditions set forth herein.

(a) The receipt of the Rights by the Plans occurred in connection with the Offering in which all shareholders of the common stock of Holdings (Holdings Stock), including the Plans, were treated in the same manner;

(b) The acquisition of the Rights by the Plans resulted solely from an independent act of Holdings, as a corporate entity;

(c) Each shareholder of Holdings Stock, including each of the Plans, received the same proportionate number of Rights based

on the number of shares of Holdings Stock held by each such shareholder;

(d) All decisions with regard to the holding and disposition of the Rights by the Plans were made by an independent qualified fiduciary (the I/F);

(e) The I/F determined that it would be in the interest of the Plans to sell all of the Rights received in the Offering by the Plans in blind transactions on the NASDAQ Capital Market; and

(f) No brokerage fees, commissions, subscription fees, or other charges: were paid by the Plans with respect to the acquisition and holding of the Rights; or were paid to any broker affiliated with the I/F, Holdings, or SHO in connection with the sale of the Rights.

EFFECTIVE DATE: This proposed exemption, if granted, will be effective for the Offering period, beginning September 7, 2012 and ending October 8, 2012.

SUMMARY OF FACTS AND REPRESENTATIONS

Plan Structure

1. Employees of Holdings and its affiliates participate in the Plans. The Plans consist of the Savings Plan, the PR Plan and the Lands' End Plan. The Plans are defined contribution,

eligible individual account plans that are designed and operated to comply with the requirements of section 404(c) of the Act. The Plans allow participants to purchase units in certain stock funds which invest in Holdings Stock. In this regard, the Savings Plan and the PR Plan share a single stock fund (the Stock Fund) within the Sears Holdings 401(k) Savings Plan Master Trust (the Master Trust)[24] to hold shares of Holdings Stock. Similarly, the Lands' End Plan utilizes a separate stock fund (the Lands' End Trust Stock Fund) within the Lands' End Inc. Retirement Trust (the Lands' End Trust) to hold shares of Holding Stock.[25]

2. Sears, Roebuck and Co. (Sears Roebuck) and all of its wholly-owned (direct and indirect) subsidiaries (except Lands' End Inc. (Lands' End)) and Sears Holdings Management Corporation, with respect to certain employees, have adopted the Savings Plan and are employers under such plan.

As of September 7, 2012, (the Record Date), there were 25,015

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[24] As of December 31, 2011, the Master Trust had $3 billion in total assets. State Street Bank and Trust Company serves as the master trustee and custodian for the Master Trust. As of September 12, 2012, (the Ex-Dividend Date), the Stock Fund within the Master Trust held 1,512,678 shares of Holdings Stock with a fair market value of $92,122,090.20.

[25] The Stock Fund and the Lands' End Trust Stock Fund are, herein, collectively, referred to as the "Stock Funds."

participants in the Savings Plan, and the Savings Plan's share of the total assets of the Master Trust was $3,030,105,605. Also, as of the Record Date, the Savings Plan's allocable portion of Holdings Stock held in the Stock Fund under the Master Trust was 1,485,107 shares, and the approximate percentage of the fair market value of the total assets of the Savings Plan invested in Holdings Stock was 2.85 percent (2.85%), which amount constituted approximately 1.4 percent (1.4%) of the 106 million shares of Holdings Stock issued and outstanding.

The Savings Plan is administered by the Sears Holding Corporation Administrative Committee (the Administrative Committee), whose members are employees of Holdings. The Sears Holdings Corporation Investment Committee (the Investment Committee), whose members are officers and/or employees of Holdings and/or its subsidiaries, has authority over decisions relating to the investment of the Savings Plan's assets.

3. The PR Plan was established by Holdings for employees of Sears Roebuck de Puerto Rico Inc. (Sears Roebuck de Puerto Rico) who reside in the Commonwealth of Puerto Rico. According to Holdings, the PR Plan has not made an election under section 1022(i)(2)of the Act and is not covered by Title II of the Act. (See footnote reference regarding jurisdiction in the operative language of this proposed exemption.)

As of the Record Date, there were 935 participants in the PR Plan, and the PR Plan's share of the total assets of the Master Trust was $17,417,486. Also, as of the Record Date, the PR Plan's allocable portion of Holdings Stock held in the Stock Fund under the Master Trust was 35,584 shares, and the approximate percentage of the fair market value of the total assets of the PR Plan invested in Holdings Stock was 11.89 percent (11.89%), which amount constituted approximately 1.4 percent (1.4%) of the 106 million shares of Holdings Stock issued and outstanding.

The PR Plan is administered by the Administrative Committee, and the Investment Committee makes investment decisions for such plan. Banco Popular de Puerto Rico serves as the PR Plan trustee.

4. The Lands' End Plan is maintained by Lands' End, a retailer and a wholly owned subsidiary of Holdings. As of the Record Date, there were 242 participants in the Lands' End Plan, and the plan had total assets of $253,821,233. Also, as of the Record Date, the Lands' End Plan held through the Lands' End Trust Stock Fund 5,869 shares of Holdings Stock, representing approximately 0.1383 percent (0.1383%) of such plan, which amount constituted approximately 0.0055 percent (0.0055%) of the 106 million shares of Holdings Stock issued and outstanding. The Lands' End Plan is administered by the Lands' End, Inc.

Retirement Plan Committee. Wells Fargo Bank, N.A. (Wells Fargo) is the trustee of the plan.

Holdings

5. Holdings, the sponsor of each of the Plans, is a retail merchant with full-line and specialty retail stores in the United States, Guam, Puerto Rico, the U.S. Virgin Islands, and Canada. Holdings was incorporated in the State of Delaware in 2005 in connection with the merger of Kmart Holding Company and Sears Roebuck. Holdings is the parent company of Kmart Holding Company and Sears Roebuck. The principal executive office of Holdings is located in Hoffman Estates, Illinois. According to the Form 10-(K), as of 2012 and 2011, respectively, Holdings and its subsidiaries had total assets of $21,381,000,000 and $24,360,000,000. As of January 28, 2012, subsidiaries of Holdings had approximately 264,000 employees in the United States and U.S. territories, and approximately 29,000 employees in Canada, including part-time employees.

Holdings Stock

6. Holdings Stock, par value $0.01 per share, is publicly-traded on the NASDAQ Global Select Market under the symbol, "SHLD." There were 15,492 shareholders of record, as of February

29, 2012. As of the Record Date, there were 106,444,571 shares of Holdings Stock issued and outstanding.

ESL Investments, Inc. and its affiliates, (ESL), including Edward S. Lampert (Mr. Lampert) owned approximately 62 percent (62%) of Holdings Stock, issued and outstanding, as of September 10, 2012. Mr. Lampert is the Chairman of the Board of Directors of Holdings and of its Finance Committee. He is also the Chairman and CEO of ESL.

SHO

7. SHO, with corporate offices located in Hoffmann Estates, Illinois, is a national retail merchant with 11,238 stores located in all 50 states, Puerto Rico, Guam, and Bermuda. SHO operates the Sears Hometown Stores and the Sears Hardware Stores. SHO also operates the Sears Home Appliance Show Rooms and the Sears Outlet Stores.

SHO was incorporated in Delaware on April 23, 2012, as a wholly-owned subsidiary of Holdings. In such capacity, SHO did not conduct business as a separate company and had no material assets or liabilities, prior to the Offering. Holdings owned 100 percent (100%) of SHO Stock at the commencement of the Offering and continued to own 100 percent (100%) of such stock until the closing of the Offering on October 8, 2012. No public

market for SHO Stock existed prior to the Offering.

The Offering

8. On February 23, 2012, Holdings announced its intention to separate from SHO. On August 31, 2012, Holdings contributed certain assets, liabilities, business, and employees to SHO. On September 6, 2012, Holdings issued the final prospectus whereby shareholders of record, including the Plans, as of the Record Date received the Rights.

Holdings communicated generally with employees regarding the separation of Holdings from SHO upon the effective date of the spin-off. Holdings also communicated through public releases at www.searsholdings.com. Participants in the Plans, who invested in Holdings Stock as of the Record Date, received a notification regarding the Offering, the engagement of the I/F, the fact that the Rights would be held in the Stock Funds, that the I/F would determine whether the Rights should be exercised or sold, and the means a participant could use to obtain more information.

Under the terms of the Offering, all shareholders of Holdings Stock automatically received the Rights, at no charge. The Rights entitled shareholders of Holdings Stock to purchase, through the exercise of such Rights, SHO Stock from Holdings in connection with the Offering. Under the terms of the Offering,

one (1) Right was issued for each whole share of Holdings Stock held by each shareholder, including the Plans, on the Record Date.

9. Each Right permitted the holder thereof to purchase 0.218091 shares of SHO Stock at a subscription price of $15.00 per whole share. Each right also contained an over-subscription privilege to subscribe for additional shares of SHO Stock, up to the number of shares of SHO Stock that were not subscribed for by the other holders of the Rights, pursuant to such holder's basic Rights. The Plans were not eligible to participate in the over-subscription privilege because the I/F sold the Rights received by the Plans, as discussed more fully below.

10. All shareholders of Holdings Stock held the Rights until such Rights expired, were exercised, or were sold. With regard to the exercise of the Rights, it is represented that the Rights could only be exercised in whole numbers. Each shareholder of Holdings Stock needed to have at least five (5) Rights to purchase a share of SHO Stock, because only whole shares could be purchased by the exercise of the Rights. Fractional shares or cash in lieu of fractional shares were not issued in connection with the Offering. Fractional shares of SHO Stock resulting from the exercise of basic Rights, as to any holder of such Rights were rounded down to the nearest whole

number.

A shareholder had the right to exercise some, all, or none of its Rights. However, the election had to be received by October 8, 2012, by the subscription agent, Computershare Inc. The election to exercise any of the Rights was irrevocable.

11. With regard to the sale of the Rights, it is represented that the Rights were transferable. Further, it is represented that the Rights were traded on the NASDAQ Capital Market under the symbol, "SHOSR." The allocation of the Rights to shareholders was handled by Depository Trust Company (DTC). DTC established an interim tracing period for the Rights from September 12, 2012 to September 16, 2012 and allocated the Rights on September 18, 2012. It is represented that the Rights began to trade on the first business day following the distribution of the Rights, and continued to trade until 4 P.M. New York City time on October 2, 2012, the fourth business day prior to the close of the Offering. It is represented that this deadline applied uniformly to all holders of the Rights.

12. The Offering closed at 5 P.M. New York City time on October 8, 2012. It is represented that 23,100,000 shares of SHO Stock were subscribed for by shareholders at a price of $15 per whole share of SHO Stock. It is further represented that holders of the Rights exercised 101,603,307 of the 105,919,060 Rights

issued while the remaining 4,315,753 Rights were allowed to expire. The SHO Stock began trading in the NASDAQ Capital Market on a "right to receive basis" under the symbol, "SHOS" on Friday, October 12, 2012, and on that date opened at $30.00 and closed at $30.68 per share.

Pursuant to the Offering, Holdings disposed of all of its shares of SHO Stock through the exercise of the Rights. Accordingly, following the closing of the Offering: (a) SHO became a publicly traded company independent of Holdings; and (b) Holdings did not retain any ownership interest in SHO.

13. It is represented that Holdings conducted the Offering to obtain additional liquidity and to enhance the ability of Holdings to focus on its core business. In this regard, all of the gross proceeds (approximately $346.5 million) from the sale of the SHO Stock through the exercise of the Rights, net of any selling expenses was payable to and received by Holdings. In the opinion of Holdings, the Offering gave shareholders of Holdings Stock the ability to avoid dilution by retaining each such shareholder's ownership percentage in Holdings and in SHO.

14. It is represented that based on the ratio of one (1) Right for each share of Holdings Stock held, the Master Trust and the Land's End Trust (collectively, the Trusts) acquired, respectively, 1,512,678 and 5,874 Rights, as a result of the

Offering. It is represented that the number of Rights received by the Trusts was slightly lower than the number of shares of Holdings Stock held by the Trusts on the Record Date, even though one (1) Right was issued for each share of Holdings Stock. This small difference is explained by the relationship between the Record Date and the Ex-Dividend Date. If a share of Holdings Stock was sold between the Record Date and the Ex-Dividend Date, the right to the dividend (in this case the Rights) transferred with the Holdings Stock. Here, the Trusts sold a small number of Holdings Stock between the Record Date and the Ex-Dividend Date for the Rights. As a result, the associated Right transferred with the sold Holdings Stock.

Role of the I/F

15. Evercore Trust Company (Evercore) was retained by Holdings, the Investment Committee, and by the Lands' End Committee, pursuant to an agreement (the Agreement), dated July 26, 2012, to act as the I/F on behalf of the Plans, in connection with the Offering and with the application for exemption submitted to the Department. Pursuant to the terms of the Agreement, Evercore's responsibilities were to determine when to exercise or sell each of the Plans' Rights received in the Rights Offering.

It is represented that Evercore is qualified to serve as the I/F for the Plans in connection with the Offering in that Evercore is a nationally chartered trust bank and subsidiary of Evercore Partners, Inc. Since 1987, Evercore or its successor has provided specialized investment management, independent fiduciary, and trustee services to employee benefit plans.

Evercore represents and warrants that it is independent and unrelated to Holdings. It is further represented that Evercore did not directly or indirectly receive any compensation or other consideration for its own account in connection with the Offering, except compensation from Holdings for performing services described in the Agreement. The percentage of Evercore's current revenue that is derived from any party in interest involved in the subject transaction or its affiliates is less than one percent (1%).

Evercore has represented that it understands and acknowledges its duties and responsibilities under the Act in acting as a fiduciary on behalf of the Plans in connection with the Offering.

It is represented that Evercore conducted a due diligence process in evaluating the Offering on behalf of the Plans. In addition to numerous discussions with representatives of Holdings, the Investment Committee, and the Lands' End Committee,

Holdings' and representatives of the Plans' trustees, Evercore reviewed information provided by Holdings, the exemption application, various press releases, various financial and market data related to the Plans, Holdings, the Rights, and the Holdings Stock, as well as other publicly available information.

With regard to the Offering, Evercore considered four (4) options on behalf of the Plans: (a) continue holding the Rights within the Stock Funds; (b) exercising all of the Rights and acquiring SHO Stock; (c) selling a portion of the Rights and using the proceeds to exercise the remaining Rights to acquire SHO Stock; or (d) selling all of the Rights on the NASDAQ Capital Market at the prevailing market price. Evercore, acting as the I/F on behalf of the Plans, selected option (d).

In determining to sell all of the Plans' Rights, Evercore represented that the proceeds from the sale would be invested in Holdings Stock, as per the governing documents of the Stock Funds. Evercore noted that the key risk inherent in such prompt sale was insufficient market volume to dispose of the Rights in a timely manner. However, Evercore did not view this risk as excessive, given that the Plans only received 1.4% of all Rights issued. According to Evercore, prompt sale of the Rights would allow the Stock Funds to quickly invest the proceeds in Holdings Stock and provide an opportunity to lock in a certain price for

the Rights in the event the market price of the Rights fell over the course of the Offering period. Although the Plans would incur some transaction costs by selling the Rights (estimated to run from $0.0125 to $0.02 per Right traded, plus a similar expense in connection with the reinvestment of the proceeds from the sale of the Rights in shares of Holdings Stock), the Plans also realized the benefits of the Rights in a timely manner.

16. As a result of the Rights sale, the total net proceeds generated for the Savings Plan and the PR Plan was $3,490,606.15. The total net proceeds generated for the Lands' End Plan was $14,919.62. The proceeds from the sale of the Rights were credited to each of the Stock Funds and the unit value of each participant's account balance reflected the addition of assets credited to such funds.

The trading period for the sale of the Rights ended on October 2, 2012. Over the fifteen-day period that the Rights were traded on the NASDAQ Capital Market, the volume-weighted average price for the 56,461,050 Rights traded was $2.17 according to FactSet. Evercore noted that the disposition of the Plans' 1,518,552 Rights in blind transactions on the NASDAQ Capital Market resulted in the Plans realizing an average selling price of $2.32 per Right.

In the opinion of Evercore the actions outlined above

engaged in by Evercore on behalf of the Plans were in the interest of the Plans and the Plans' participants and beneficiaries and were protective of such participants and beneficiaries of the Plans.

17. No brokerage fees, commissions, subscription fees, or other charges were paid by the Plans with respect to the acquisition and holding of the Rights, or were paid to any broker affiliated with Evercore, Holdings, or SHO in connection with the sale of the Rights. In this regard, it is represented that Evercore selected ConvergEx Group as the broker for the sale of the Rights issued to the Master Trust, based on Evercore's confidence in that broker's execution ability and an attractive fee schedule of 1.25 cents per Right traded. In connection with the sale of the Rights, the Master Trust paid $18,908.48 in commissions and $778.63 in SEC fees.[26]

Wells Fargo, trustee for the Lands' End Plan, informed Evercore that it could not accommodate an outside broker and

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[26] It is represented that these services and receipt of fees are exempt under section 408(b)(2) of the Act. The Department, herein, is not providing any relief for the receipt of any commissions, fees, or expenses in connection with the sale of the Rights in blind transactions to unrelated third parties on the NASDAQ Capital Market, beyond that provided pursuant to section 408(b)(2) of the Act. In this regard, the Department is not opining as to whether the conditions as set forth in section 408(b)(2)of the Act and the Department's regulations, pursuant to 29 CFR 2550.408(b)(2) have been satisfied.

would, at the direction of Evercore, handle trading of the Rights internally as per its standard arrangement with Holdings for the management and trading of the Lands' End Trust Stock Fund held at Wells Fargo. At 2 cents per Right traded, this fee was higher than ConvergEx Group's fee, but was reasonable in the opinion of Evercore, given the assessment of Wells Fargo's trading capabilities. In connection with the sale of the Rights, the Lands' End Trust paid $117.48 in commissions and $0.34 for SEC fees.**27**

Requested Relief

18. The application was filed by Holdings on behalf of itself and its affiliates including Lands' End. In this regard, Holdings has requested an exemption: (a) for the acquisition of the Rights by the Plans from Holdings in connection with the Offering of Rights by Holdings of SHO Stock in SHO; and (b) for the holding of the Rights by the Plans during the subscription period of the Offering.

It is represented that the Rights acquired by the Plans satisfy the definition of "employer securities," pursuant to section 407(d)(1) of the Act. However, as the Rights were not

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27 **See**, footnote above.

stock or a marketable obligation, such Rights do not meet the definition of "qualifying employer securities," as set forth in section 407(d)(5) of the Act. Accordingly, the subject transactions constitute an acquisition and holding by the Plans, of employer securities which are not qualifying employer securities, in violation of section 407(a) of the Act, for which Holdings has requested relief from sections 406(a)(1)(A), 406(a)(1)(E), 406(a)(2), and 407(a)(1)(A) of the Act.

The subject transactions also raise conflict of interest issues by fiduciaries of the Plans. Accordingly, Holdings has requested relief from the prohibitions of section 406(b)(1) and 406(b)(2) of the Act.

19. It is represented that the subject transactions have already been consummated. In this regard, the Plans acquired the Rights pursuant to the Offering, and held such Rights until such Rights were sold. As there was insufficient time between the dates when the Plans acquired the Rights and when such Rights were sold, to apply for and be granted an exemption, Holdings is seeking a retroactive exemption to be granted, effective as of September 7, 2012, the Record Date.

Merits of the Transactions

20. Holdings represents that the proposed exemption is administratively feasible. In this regard, Holdings explained that the acquisition and holding of the Rights by the Plans were one-time transactions that involved an automatic distribution of the Rights to all shareholders. In addition, Holdings states that it is customary for many corporations to make a rights offering available to all shareholders.

Holdings also represents that the subject transactions were in the interest of the Plans, because such transactions represented a valuable opportunity for such Plans to sell the Rights on the market. Holdings further represents that the proposed exemption provides sufficient safeguards for the protection of the participants and beneficiaries of the Plans. According to Holdings, participation in the Offering protected the Plans from having each such participant's interest in Holdings and in SHO diluted as a result of the Offering.

It is also represented that the interests of the Plans were adequately protected in that such Plans acquired and held the Rights automatically as a result of the Offering. In this regard, Holdings made the Rights available on the same terms to all shareholders of Holdings Stock, including the Plans. Holdings states that each shareholder of Holdings Stock, including the Plans, received the same proportionate number of

Rights based on the number of shares of Holdings Stock held by each such shareholder. Finally, Holdings notes that the Plans were protected in that Evercore, acting as the I/F on behalf of the Plans, determined to sell the Rights in blind transactions on the NASDAQ Capital Market.

Summary

21. In summary, Holdings represents that the subject transactions satisfy the statutory criteria for an exemption under of section 408(a) of the Act because:

(a) The receipt of the Rights by the Plans occurred in connection with the Offering in which all shareholders of the Holdings Stock, including the Plans, were treated in the same manner;

(b) The acquisition of the Rights by the Plans resulted solely from an independent act of Holdings, as a corporate entity;

(c) Each shareholder of Holdings Stock, including each of the Plans, received the same proportionate number of Rights based on the number of shares of Holdings Stock held by each such shareholder;

(d) All decisions with regard to the holding and disposition of the Rights by the Plans were made by Evercore, acting as the

independent, qualified fiduciary on behalf of the Plans;

(e) Evercore determined that it would be in the interest of the Plans to sell all of the Rights received in the Offering by the Plans in blind transactions on the NASDAQ Capital Market;

(f) No brokerage fees, commissions, subscription fees, or other charges: were paid by the Plans with respect to the acquisition and holding of the Rights; or were paid to any broker affiliated with Evercore, Holdings, or SHO in connection with the sale of the Rights; and

(g) The acquisition of the Rights by the Plans occurred on the same terms made available to other shareholders of Holdings Stock.

NOTICE TO INTERESTED PERSONS

The persons who may be interested in the publication in the FEDERAL REGISTER of the Notice of Proposed Exemption (the Notice) include all participants whose accounts in the Plans were invested on the Record Date through the Trusts in the Stock Funds which held the Holdings Stock.

It is represented that all such interested persons will be notified of the publication of the Notice by first class mail, to each such interested person's last known address within fifteen (15) days of publication of the Notice in the FEDERAL REGISTER.

Such mailing will contain a copy of the Notice, as it appears in the FEDERAL REGISTER on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(a)(2), which will advise all interested persons of their right to comment and to request a hearing. A11 written comments and/or requests for a hearing must be received by the Department from interested persons within 45 days of the publication of this proposed exemption 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. Angelena C. Le Blanc of the Department, telephone (202) 693-8551. (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 2nd day of July, 2013.

Lyssa E. Hall, Director
Office of Exemption
Determinations
Employee Benefits Security
Administration
U.S. DEPARTMENT OF LABOR

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