



4510-29-P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption **2015-14**;

Application No. D-11837]

Notice of Exemption involving Credit Suisse AG

(hereinafter, either Credit Suisse AG or the Applicant)

Located in Zurich, Switzerland

AGENCY: Employee Benefits Security Administration, U.S.
Department of Labor.

ACTION: Notice of Exemption

SUMMARY: This document contains a notice of exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act), and the Internal Revenue Code of 1986, as amended (the Code). The exemption affects the ability of certain entities with specified relationships to Credit Suisse AG to continue to rely upon the relief provided by

Prohibited Transaction Class Exemption 84-14 (PTE 84-14).¹

EFFECTIVE DATE: This exemption is effective from November 18, 2015 (the first date following the last day of relief provided by PTE 2014-11) through: November 20, 2019 (the date that is five years from the date of the Conviction, described below) with respect to Credit Suisse Affiliated QPAMs; and November 20, 2024 (the date that is ten years from the date of the Conviction) with respect to Credit Suisse Related QPAMs.

FOR FURTHER INFORMATION CONTACT: Scott Ness, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693-8561. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

GENERAL INFORMATION REGARDING THE QPAM CLASS
EXEMPTION:

A QPAM is a "Qualified Professional Asset Manager."
By definition, QPAMs are large regulated banks, savings and

¹ 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).

loan associations, insurance companies or federally registered investment advisors that meet certain standards of size and independence. PTE 84-14 permits these independent asset managers to engage in a variety of arm's length transactions with parties in interest with respect to the plans they manage that would otherwise be prohibited. The scope of Part I of the class exemption is limited, such that QPAMs cannot: engage in self-dealing transactions; act in their own interest or the interest of their affiliates; and/or engage in transactions with parties that are in a position to affect their independent judgment, such as persons with ownership interests in the QPAM.

PTE 84-14 primarily permits QPAMs to engage in various arm's length transactions with parties in interest, and obviates the need to undertake time-consuming compliance checks for parties-in-interest, forego investment opportunities, or seek an individual exemption from the Department for each transaction. The conditions in the exemption were designed to ensure that the transactions covered therein are protective of, and in the interest of, affected plans.

The scope of the anti-criminal provision set forth in section I(g) of PTE 84-14 is very broad and covers entities

with various relationships to a convicted entity. When one of these entities is convicted of specified crimes, the related QPAMs lose the ability to rely on the class exemption for 10 years following the date of the conviction, absent an individual exemption.

THE FIRST PROPOSED EXEMPTION: On September 3, 2014, the Department of Labor (the Department) published a proposed exemption in connection with Application No. D-11819, at 79 FR 52365 (the First Proposed Exemption), for certain entities with specified relationships to Credit Suisse AG, to continue to rely upon the relief provided by PTE 84-14, notwithstanding that a judgment of conviction (the Conviction) against Credit Suisse AG for one count of conspiracy to violate section 7206(2) of the Internal Revenue Code in violation of Title 18, United States Code, section 371, was pending in the District Court for the Eastern District of Virginia in Case Number 1:14-cr-188-RBS. The Department received ten comments and four requests for a hearing regarding that notice.

In anticipation that the judgment of conviction would be entered on November 21, 2014 (the Conviction Date), and recognizing that additional relevant information could be provided at the hearing, the Department issued three notices in the Federal Register, on November 18, 2014: a

temporary final exemption notice (the Temporary Final Exemption (79 FR 68716)), a second proposed exemption notice (the Second Proposed Exemption (79 FR 68712)), and a hearing notice (the Hearing Notice (79 FR 68711)).

THE TEMPORARY FINAL EXEMPTION: The Temporary Final Exemption became effective on the Conviction Date and will last approximately one year. Among other things, the exemption allowed Credit Suisse QPAMs to continue to engage in transactions covered by the QPAM Class Exemption, subject to enhanced conditions, while the Department considered the testimony and additional information provided at, and subsequent to, the hearing.

THE SECOND PROPOSED EXEMPTION: The Second Proposed Exemption, which correlates to this notice, described relief that was similar to the Temporary Final Exemption, but with a longer duration. The Department issued the Second Proposed Exemption after concluding that it would be beneficial to the Department's review to obtain further information regarding the concerns raised by commenters to the First Proposed Exemption.

THE HEARING: The Hearing Notice informed interested persons that the Department would hold a hearing on January 15, 2015, to discuss issues raised by commenters following publication of the First Proposed Exemption. The hearing

was intended to solicit additional information regarding whether the Second Proposed Exemption was in the interest of, and protective of, plans and IRAs, and administratively feasible.

THIS NOTICE (THE SECOND FINAL EXEMPTION and THE REVOCATION): This document sets forth the Second Final Exemption, which relates to the Second Proposed Exemption. The record for this exemption includes the hearing transcript and hearing-related submissions, as well as comments received in connection with the Second Proposed Exemption. As commenters at the hearing raised issues related to the First Proposed Exemption, the record for this Notice also incorporates comments with respect to such exemption.

This Second Final Exemption covers the same transactions as those described in the Temporary Exemption, but contains enhanced conditions for the protection of plans and their participants and beneficiaries.

WRITTEN COMMENTS, HEARING TESTIMONY, AND SUPPLEMENTS:

The record for this notice includes testimony and supplemental materials from the hearing, comments received in connection with the First Proposed Exemption, as well as comments received in connection with the publication of the

Second Proposed Exemption. The testimony at the hearing and supplemental materials were mixed, with some speakers expressing support for granting an exemption and others expressing opposition. The hearing produced approximately 218 pages of testimony by 18 speakers, as well as supplemental materials.

The Department received six written comments with respect to the Second Proposed Exemption.² Four of the comments supported the Second Proposed Exemption. Included in the six comments is the Applicant's written comment, which requested certain changes and clarifications with respect to the operative language of the exemption, and which provided additional information in support of the requested changes and in response to issues raised during the public hearing. The Applicant previously submitted a comment with respect to the First Proposed Exemption that the Department considered in the preamble to the Temporary Final Exemption, published in the Federal Register at 79 FR 68716 on November 18, 2014. That comment was reflected,

² The commenters include the American Benefits Council, the Securities Industry and Financial Markets Association (SIFMA), two members of the general public (one of whom was anonymous), the Applicant, and the independent auditor.

where appropriate, in the Temporary Final Exemption and the Second Proposed Exemption. The discussion of the Applicant's comment to the First Proposed Exemption, and the Department's response thereto, will not be repeated herein.

The sixth and final comment is a statement from the independent auditor that sought certain clarifications with respect to the operative language of the exemption. The comments received in connection with the hearing, the First Proposed Exemption, and the Second Proposed Exemption are described below. The Department has not reproduced the comments in their entirety, but has summarized the information. Complete copies of the transcript from the hearing and supplemental submissions can be found at www.regulations.gov or by visiting EBSA's Public Disclosure Room.

COMMENTS RELATING TO THE FIRST PROPOSED EXEMPTION AND THE HEARING

1. Exemption Standards for Relief.

A. Several commenters sought a denial of the requested exemption on the grounds that a denial would punish Credit Suisse AG and/or deter future criminal behavior by Credit Suisse AG.

DEPARTMENT'S RESPONSE: The Department notes that relief under this exemption is contingent upon Credit Suisse AG having not provided any fiduciary services to ERISA-covered plans or IRAs, except in connection with securities lending services of the New York Branch of Credit Suisse AG, or acting as a QPAM for ERISA-covered plans or IRAs. Further, the exemption is structured to insulate the Credit Suisse QPAMs from Credit Suisse AG. In this regard, the exemption requires that each Credit Suisse Affiliated QPAM immediately develop, implement, maintain, and follow written policies (the Policies) requiring and reasonably designed to ensure that, among other things: the asset management decisions of the Credit Suisse Affiliated QPAM are conducted independently of Credit Suisse AG's management and business activities; and the Credit Suisse Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs.

Furthermore, the Department notes that the record upon which exemptive relief was proposed and is herein granted suggests that neither the Credit Suisse Affiliated QPAMs nor the Credit Suisse Related QPAMs were involved in the conduct underlying the Conviction. The record also supports a finding that the Credit Suisse Affiliated QPAMs

and the Credit Suisse Related QPAMs (the Credit Suisse QPAMs) operate separately and independently of Credit Suisse AG with respect to their asset management decisions. Based on the facts of this case, the beneficial nature of the covered transactions, and the conditions imposed by the exemption, the Department believes that a full denial of exemptive relief is not warranted. The exemption requires plans with assets managed by Credit Suisse Affiliated QPAMs to be alerted to the Conviction. In this regard, the Credit Suisse Affiliated QPAMs must provide a notice of the proposed exemption along with a separate summary describing the facts that led to the Conviction, which has been submitted to the Department, and a prominently displayed statement that the Conviction results in a failure to meet a condition in PTE 84-14 to: (1) each sponsor of an ERISA-covered plan and each beneficial owner of an IRA invested in an investment fund managed by a Credit Suisse Affiliated QPAM, or the sponsor of an investment fund in any case where a Credit Suisse Affiliated QPAM acts only as a sub-advisor to the investment fund; (2) each entity that may be a Credit Suisse Related QPAM; and (3) each ERISA-covered plan for which the New York Branch of Credit Suisse AG provides fiduciary securities lending services.

The exemption also facilitates the ability of such plans to transfer assets managed by a Credit Suisse Affiliated QPAM to non-Credit Suisse asset managers, without the imposition of an additional fee, penalty or charge, with only very narrow exceptions designed to prevent abusive investment practices and protect all investors in pooled funds in which such plans invest. In addition, each Credit Suisse Affiliated QPAM must agree not to waive, limit, or qualify the liability of the Credit Suisse Affiliated QPAM, or otherwise require indemnification of the QPAM, for violating ERISA or the Code or engaging in prohibited transactions.

The Department stresses that the act of selecting and retaining an investment manager service provider is a fiduciary act; and that a plan fiduciary is under a continuing duty to monitor the service provider's performance at reasonable intervals. Fiduciaries (including investment managers) should be reviewed by the appointing fiduciaries in such a manner as may be reasonably expected to ensure that their performance has been in compliance with the terms of the plan and statutory standards (e.g., prudence, exclusive benefit, and

prohibited transactions rules).³ In this regard, the Department has endeavored to craft a set of conditions that should reduce concern about the criminal activities that gave rise to the Conviction. However, a recurrence of such activities would certainly be cause for a prudent fiduciary to reconsider the prudence of employing the Credit Suisse Affiliated QPAMs as service providers to ERISA-covered plans.

B. Another commenter suggested that the Department should require that the Credit Suisse QPAMs demonstrate a track record of legal compliance before an exemption is issued.

DEPARTMENT'S RESPONSE: Credit Suisse AG, and not the Credit Suisse QPAMs, was subject to the Conviction. Importantly, as discussed above, the record contains no evidence that the Credit Suisse QPAMs were involved in the criminal activities that gave rise to the Conviction. In addition, the Department is not aware of any evidence that the investment management activities of the Credit Suisse QPAMs were affected by Credit Suisse AG's criminal

³ See 29 C.F.R. Section 2509.75-8.

activities. The Department has also shortened the duration of this exemption to five years with respect to the Credit Suisse Affiliated QPAMs, as discussed below, such that the Credit Suisse Affiliated QPAMs must be prepared to demonstrate, among other things, compliance with the terms of this exemption, prior to receiving a further extension of exemptive relief for transactions described in PTE 84-14.

The exemption is focused on ensuring each QPAM's continued legal compliance. In this regard, the exemption requires that an annual exemption audit be performed by an independent fiduciary who is experienced in ERISA and the transactions covered by the exemption. The auditor must annually determine whether each Credit Suisse Affiliated QPAM has developed, implemented, maintained, and followed Policies requiring and reasonably designed to ensure that, among other things: the Credit Suisse Affiliated QPAM fully complies with ERISA's fiduciary duties and ERISA and the Code's prohibited transaction provisions and does not knowingly participate in any violations of these duties and provisions with respect to ERISA-covered plans and IRAs; (ii) the Credit Suisse Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs; (iii)

any filings or statements made by the Credit Suisse Affiliated QPAM to regulators, including but not limited to, the Department of Labor, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA-covered plans or IRAs are materially accurate and complete, to the best of such QPAM's knowledge at that time; (iv) the Credit Suisse Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plan and IRA clients; (v) the Credit Suisse Affiliated QPAM complies with the terms of this exemption; and (vi) violations of, or failure to comply with the terms above, are corrected promptly upon discovery and any such violations or compliance failures not promptly corrected are reported, upon discovering the failure to promptly correct, in writing to appropriate corporate officers, the head of Compliance and the General Counsel of the relevant Credit Suisse Affiliated QPAM, the independent auditor responsible for reviewing compliance with the Policies, and a fiduciary of any affected ERISA-covered plan or IRA where such fiduciary is independent of Credit Suisse AG.

Further, each year, the auditor must determine whether each Credit Suisse Affiliated QPAM has developed and implemented a program of training (the Training), conducted at least annually for relevant Credit Suisse Affiliated QPAM asset management, legal, compliance, and internal audit personnel. The Training must be set forth in the Policies and, at a minimum, covers the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions) and ethical conduct, the consequences for not complying with the conditions of this exemption, (including the loss of the exemptive relief provided herein), and prompt reporting of wrongdoing.

C. One other commenter suggested that the Department take a stronger role in its position as a regulator by declining Credit Suisse's exemption request.

DEPARTMENT'S RESPONSE: The failure of the Credit Suisse Affiliated QPAMs to meet the conditions of PTE 84-14 and subsequent need to request an individual administrative exemption from the Department provides the Department with the opportunity to enhance the safeguards for plans and their participants and beneficiaries by imposing stringent conditions on the operations of the QPAMs for the next ten years, which would not otherwise exist. As a regulator,

the Department will proactively investigate the operations of the Credit Suisse QPAMs, will review each exemption audit submitted by the independent auditor, and take whatever action it deems necessary to ensure that affected plans and IRAs are adequately protected. Finally, this exemption is unavailable to the extent Credit Suisse AG or the Credit Suisse QPAMs have made a material misrepresentation, or to the extent the Credit Suisse QPAMs fail to satisfy the terms herein. Moreover, the Department may take steps to revoke this (or any) exemption if, once the exemption takes effect, changes in circumstances, including changes in law or policy, occur which call into question the continuing validity of the Department's original findings concerning the exemption.⁴

2. Adequacy of Safeguards.

A. Some commenters to the First Proposed Exemption and at the hearing stated that the First Proposed Exemption did not contain adequate safeguards to protect the rights of participants and beneficiaries of plans. For instance, one commenter suggested that the audit should be extended

⁴ See DOL Reg. Sec. 2570.50.

to other controversial aspects of the financial industry, such as CEO awards and incentives. Other commenters suggested that no set of conditions would be adequate to protect plans and their participants and beneficiaries due to past deficiencies within the Credit Suisse organization, the severity of problems within the Credit Suisse organization, and the lack of isolation of the Credit Suisse QPAMs from the rest of the Credit Suisse organization.

DEPARTMENT'S RESPONSE: As noted above, Credit Suisse AG, and not the Credit Suisse QPAMs, was subject to the Conviction. The Department is not aware of any evidence that the investment management activities of the Credit Suisse QPAMs were affected by Credit Suisse's criminal activities. As described above, the relief set forth in the exemption is contingent upon an auditor's determination that the investment and compliance operations of each Credit Suisse Affiliated QPAM is isolated from Credit Suisse AG. The audit is designed to preserve the integrity of each Credit Suisse Affiliated QPAM, by ensuring that the appropriate Credit Suisse Affiliated QPAM personnel annually receive rigorous training on fiduciary duties and ethical conduct. In addition, each Credit Suisse Affiliated QPAM is generally required to permit plans to

transfer their assets to another asset manager without the imposition on the plan of an additional fee, penalty or charge. Also, the QPAMs may not require the plan to insulate the QPAM from liability for violating ERISA or the Code or engaging in prohibited transactions.

3. Compliance Culture.

A. Commenters additionally described a longstanding and pervasive culture of wrongdoing within the Credit Suisse organization, including knowledge of corporate wrongdoing by senior executives. Commenters further suggested that the criminal behavior of Credit Suisse AG indicates that any assurances of legal compliance by the Credit Suisse Affiliated QPAMs given to the Department lacked credibility. Commenters brought to the Department's attention the participation of Credit Suisse Asset Management Limited, United Kingdom (CSAM UK) in knowingly violating federal sanctions laws by facilitating money laundering. Finally, commenters also identified several civil controversies involving the Credit Suisse QPAMs, including specifically Credit Suisse's involvement in certain real estate financing transactions related to residential and resort planned communities in various

locations around the country.⁵

DEPARTMENT'S RESPONSE: The Department believes that the record associated with this exemption supports a finding that the Credit Suisse QPAMs may continue to engage in transactions that are in the interests of plans and IRAs under enhanced scrutiny from the Department and pursuant to additional conditions imposed under the exemption, as discussed above and below. Additionally, the Department intends to monitor the Credit Suisse QPAMs' compliance with the conditions for this exemption, and has limited the duration of the exemption to five years, with respect to the Credit Suisse Affiliated QPAMs.⁶ This five-year limitation is intended to reinforce the central importance

⁵ See, e.g., *Claymore Holdings LLC v. Credit Suisse AG, Cayman Islands Branch and Credit Suisse Securities (USA) LLC*, case No. DC-13-07858, in the 134th Judicial District Court of Dallas County, Texas; *Credit Suisse Loan Funding LLC and Credit Suisse AG, Cayman Islands Branch v. Highland Crusader Offshore Partners LP, et al.*, case No. 652492/2013 in the Supreme Court of the State of New York, County of New York; and *Timothy L. Blixseth v. Credit Suisse AG, Credit Suisse Group AG, Credit Suisse Securities (USA) LLC, Credit Suisse AG, Cayman Islands Branch, et. al.*, case No. 12-CV-00393-PAB-KLM in the U.S. District Court, District of Colorado.

⁶ The Department has determined not to limit relief in this manner to the Credit Suisse Related QPAMs because these QPAMs are not, in general terms, controlled by Credit Suisse.

of compliance with both the letter and spirit of the exemption's conditions, particularly including the mandated policies and procedures. Although the Department is currently satisfied that the Credit Suisse Affiliated QPAMs are insulated from Credit Suisse, the Department believes plans and IRAs will be further protected to the extent the Department re-evaluates Credit Suisse's compliance with the exemption as part of any consideration as to whether to grant more permanent relief for the Credit Suisse Affiliated QPAMs.

The Department does not currently view the private controversies described above, as grounds to deny the requested exemption. However, the fiduciary of a plan or IRA should consider the involvement of the Credit Suisse QPAMs in a private controversy (as well as a criminal investigation) in its determination as to whether to hire and/or retain a Credit Suisse QPAM as a service provider.

4. Importance of Enforcing Penalties.

A. Some commenters argued that Section I(g) of PTE 84-14 clearly states that a conviction will bar an entity from serving as a QPAM. Accordingly, they contend that it is important to enforce mandatory penalties in order to deter future misconduct.

DEPARTMENT'S RESPONSE: Section I(g) of PTE 84-14 does not bar an applicant from seeking an individual exemption for an asset manager to continue to act as a QPAM following the criminal conviction of its affiliate. The stated purpose of Section I(g) of the QPAM Class Exemption is set forth in the original proposal for PTE 84-14 which states, "A QPAM, and those who may be in a position to influence its policies, are expected to maintain a high standard of integrity."⁷ The Department is of the view that, based on the record, the Credit Suisse QPAMs are capable of maintaining a high standard of integrity; and the conditions of this exemption are sufficient for the Department and other independent parties to verify that this high standard of integrity is met.

B. Commenters also considered the approximately \$2.6 billion in penalties paid in connection with the Conviction to be insufficient and found it problematic that the party ultimately responsible for paying such penalties is the shareholders, rather than the individuals involved in the criminal conduct.

⁷ See 47 FR 56945, 56947 (December 21, 1982).

DEPARTMENT'S RESPONSE: The Department had no role in determining the appropriateness or amount of the penalties assessed in connection with the conviction of Credit Suisse. The Plea Agreement between Credit Suisse AG and the Office of the U.S. Attorney for the Eastern District of Virginia and the Tax Division of the Department of Justice states that the sentence imposed, which comprised a \$2,000,000,000 resolution with the Department of Justice, was the "appropriate disposition of the Information"⁸ and was comprised of: A criminal fine in the amount of \$1,333,500,000;⁹ restitution to the Internal Revenue Service of \$666,500,000, representing estimated pecuniary losses from the criminal offense; and a mandatory special assessment of \$400, which was to be paid to the Clerk of

⁸ According to the Plea Agreement between the Department of Justice and Credit Suisse AG, applicable sentencing guidelines called for a range of \$1,333,000,000 to \$2,666,000,000, based on, among other things, the size of the financial loss to the U.S. Treasury, the size of Credit Suisse, and the participation of high level personnel in the conduct.

⁹ This amount included \$196,511,014 in fines already paid by Credit Suisse pursuant to the Order Instituting Administrative and Cease and Desist Proceedings with the SEC, dated February 21, 2014 (the SEC Order). The SEC Order required payments by Credit Suisse of \$82,170,990 in disgorgement of fees, \$64,340,024 in prejudgment interest, and a \$50,000,000 penalty.

Court. In addition, Credit Suisse also paid \$715,000,000 and \$100,000,000 in civil penalties, respectively, to the New York Department of Financial Services and the U.S. Federal Reserve Board.

C. Additionally, some commenters suggested that a permanent exemption would indicate the Department's tolerance of cutting corners and criminal wrongdoing by powerful financial institutions at the expense of consumers and the law.

DEPARTMENT'S RESPONSE: The entities that may engage in the transactions permitted by this exemption did not participate in the criminal activity that is the subject of the Conviction. Moreover, the entity that did engage in the criminal conduct, Credit Suisse AG, has been subject to substantial penalties, including \$2.6 billion paid in connection with the Conviction.

However, after reviewing the entire record, the Department believes that plans would be further protected to the extent the relief set forth herein extends no longer than November 17, 2019, with respect to any Credit Suisse Affiliated QPAM. If a Credit Suisse Affiliated seeks to engage in a transaction described in PTE 84-14 beyond that date, the Applicant must re-apply for exemptive relief in a

timely fashion. The Department notes that, in re-applying for exemptive relief, the Applicant should be prepared to demonstrate that the conditions of this exemption have been met. The Department's review of any such application may also extend to Credit Suisse AG's compliance with relevant laws and regulations throughout the duration of this exemption.

D. Finally, some commenters suggested the Department has a role to play in enforcing criminal penalties for wrongdoing.

DEPARTMENT'S RESPONSE: To the Department's knowledge, the criminal penalties imposed on Credit Suisse were appropriate and have been enforced. The Department's responsibility is to ensure that the conditions required for granting an exemption have been satisfied. In particular, prior to granting this exemption, the Department had to find that the exemption is in the interest of and protective of, affected plans and the participants of such plans, and administratively feasible. The Department has made these findings.

5. Impact on Plans & Beneficiaries.

A. Some of the commenters suggested that the

Department should deny the exemption and force Credit Suisse to pay for any related costs to plans of moving to a new asset manager. Other commenters stated that the cost to plans would not be significant if the Department denied Credit Suisse's exemption application.

DEPARTMENT'S RESPONSE: The Department does not view the costs identified by the Credit Suisse QPAMs, for affected plans and IRAs to locate and hire a new asset manager, as a sole compelling reason to grant this exemption. The Department does not believe, however, that the evidence supports a finding that plan fiduciaries should be compelled to move their business away from the Credit Suisse QPAMs if they choose not to do so. Instead, the Department has concluded that the best approach is to facilitate the plans' ability to withdraw their business should they choose to do so, while enhancing their protections should they choose to continue their business relationship with the Credit Suisse QPAMs. Accordingly, the exemption enables plan fiduciaries to terminate their investment management agreements with a Credit Suisse Affiliated QPAM without penalty.

B. Two commenters suggested that the exemption would permit plans to enter into exotic or complex transactions that would otherwise not be customary for such plans or

which would serve to harm the broader economy as well as Credit Suisse QPAMs' retiree clients.

DEPARTMENT'S RESPONSE: The exemption permits a wide range of transactions between a plan and a party in interest, and does not identify the specific types of transactions that may be covered by the exemption. The exemption expressly does not relieve a fiduciary or other party in interest 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.

6. Factual Issues.

During the hearing, commenters also identified topics that they felt were not fully developed in the First Proposed Exemption. For instance, commenters questioned whether the Applicant identified all of the QPAMs that would be covered by this exemption. Commenters also questioned why Credit Suisse plan clients did not submit

comments for the public record.

DEPARTMENT'S RESPONSE: The Applicant was required to provide a list of all entities that were currently acting as Credit Suisse Affiliated QPAMs, as well as a list of the entities that might fall into the category of Credit Suisse Related QPAMs. Such information was available and known by the Department before it published the First Proposed Exemption in the Federal Register at 79 FR 52365 on September 3, 2014.

The Applicant was also required to, and did, notify all affected plans and Credit Suisse Related QPAMs of the First Proposed Exemption (Application No. D-11819), published in the Federal Register at 79 FR 52365 on September 3, 2014, and of the Second Proposed Exemption (Application No. D-11837), published in the Federal Register at 79 FR 68712 on November 18, 2014. The Applicant was further required to, and did, notify such plans and Related QPAMs of the public hearing held on January, 15, 2015. No plan clients submitted information in connection with any such notices, or filed objections to either the First Proposed Exemption or the Second Proposed Exemption.

7. Auditor Independence.

Some commenters were concerned that the auditor required as a condition of this exemption would not be truly independent. One commenter additionally proposed that the auditor be chosen by the Department.

DEPARTMENT'S RESPONSE: The Department imposes strict standards and requirements to ensure that an auditor is qualified and independent. Furthermore, if an applicant chooses an auditor that does not meet such requirements, the Department will require an applicant to select an appropriately independent and qualified auditor. With respect to this exemption, in order to strengthen the auditor's independence, the Department added new subsection I(i)(12), which is described below.

8. Credit Suisse QPAMs' Capacity to Act as Fiduciary.

A. Some commenters argued that Swiss bank secrecy laws undermine the integrity of the financial markets and would allow Credit Suisse QPAMs to continue to hide behind walls of secrecy if such QPAMs were accused of misusing plan assets.

DEPARTMENT'S RESPONSE: The Department believes the scope of the audit ensures that the Credit Suisse QPAMs will not be able to hide behind Swiss bank secrecy laws. In particular, the granted exemption now requires that the

Credit Suisse Affiliated QPAM grant the auditor unconditional access to its business, including, but not limited to: its computer systems, business records, transactional data, workplace locations, training materials, and personnel.

B. Some commenters presented testimony and written submissions arguing that Credit Suisse failed to exercise its fiduciary responsibilities with respect to Swiss bank accounts opened during the period around World War II in that many accounts were unilaterally closed by Credit Suisse. Another commenter argued that Credit Suisse's transgressions with respect to non-plan and IRA investors is analogous to plans and IRAs, so Credit Suisse should not be trusted with plan and IRA assets.

DEPARTMENT'S RESPONSE: As noted above, under the terms of this exemption, Credit Suisse AG may not act as a QPAM on behalf of plans and IRAs. The commenters did not otherwise provide the Department any factual information with respect to transgressions by Credit Suisse QPAMs involving ERISA or IRA assets.

COMMENTS RELATING TO THE SECOND PROPOSED EXEMPTION

Credit Suisse AG's Comment

In its comment to the Second Proposed Exemption, the Applicant requests certain confirmations and/or clarifications regarding: (1) the scope of the condition found in Section I(f) of the Second Proposed Exemption prohibiting the Credit Suisse Affiliated QPAMs from entering into transactions with Credit Suisse AG or engaging Credit Suisse AG to provide certain services with respect to investment funds managed by such QPAMs; (2) the interaction between the Policies and Training requirements found in Section I(h) of the Second Proposed Exemption; (3) the scope of the audit requirement found in Section I(i) of the Second Proposed Exemption; (4) the scope of the requirements of Section I(k); and (5) the identity of the ERISA-covered plans and IRAs required to receive the notice described in Section I(m) of the Second Proposed Exemption. The Applicant's requests and the Department's responses are described below, in addition to a description of certain modifications to the Second Proposed Exemption made by the Department which are related to the Applicant's comment regarding the audit requirement.

9. Section I(f).

Section I(f) of the Second Proposed Exemption provides "[a] Credit Suisse Affiliated QPAM will not use its

authority or influence to direct an 'investment fund'... that is subject to ERISA and managed by such Credit Suisse Affiliated QPAM to enter into any transaction with Credit Suisse AG or engage Credit Suisse AG to provide additional services to such investment fund, for a direct or indirect fee borne by such investment fund regardless of whether such transactions or services may otherwise be within the scope of relief provided by an administrative or statutory exemption." The Applicant requests confirmation that Section I(f) would not disallow a Credit Suisse Affiliated QPAM from trading in markets where Credit Suisse AG provides local subcustody services to an unaffiliated global custodian, where the Credit Suisse Affiliated QPAM has no control over the global custodian's selection of the local subcustodian. According to the Applicant, the unaffiliated global custodian engaged by a plan's named fiduciary, not the Credit Suisse Affiliated QPAM, selects and hires local subcustodians. However, the Applicant states that in some markets, Credit Suisse AG may be the only subcustodian available. According to the Applicant, to the extent that a Credit Suisse Affiliated QPAM enters into a transaction in a market where Credit Suisse AG has been selected as the local subcustodian, Credit Suisse AG might receive additional compensation from the global

custodian.

The Department declines to provide the confirmation requested above. In this regard, the Department is concerned about the potential for self-dealing inasmuch as, depending on the facts and circumstances, a Credit Suisse Affiliated QPAM might effectively use its "authority or influence to direct" an investment fund to "enter into" a "transaction with" Credit Suisse AG or "provide additional services, for a fee borne by" the investment fund.

10. Section I(h)(2).

Section I(h)(2) of the Second Proposed Exemption requires each Credit Suisse Affiliated QPAM to develop and implement Training described therein, that is "set forth in the Policies and, at a minimum, covers the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions) and ethical conduct, the consequences for not complying with the conditions of this exemption, (including the loss of the exemptive relief provided herein), and prompt reporting of wrongdoing." The Applicant requests that the Department confirm that this condition requires the Policies to expressly provide for the Training, but that the actual

Training materials may be separate from the Policies and need not be duplicated verbatim within the Policies.

The Department stresses that although the actual Training materials need not be duplicated within the Policies, the Policies must provide for, and incorporate, the Training requirement and provide specific details regarding the Training materials, including the identification of the particular training program and the primary training materials, the effective date(s) of any training manuals, and a brief outline of any information on the topics covered within the materials.

11. Section I(i)(1).

Section I(i)(1) of the Second Proposed Exemption requires that the Credit Suisse Affiliated QPAMs submit to an annual audit conducted by an independent auditor. The condition requires that "the first of the audits must be completed no later than twelve (12) months after the date of Conviction and must cover the first six-month period that begins on the date of Conviction; all subsequent audits must cover the following corresponding twelve-month periods and be completed no later than six (6) months after the period to which [the audit] applies." The Applicant requests confirmation that the final audit need only cover

the last six months of the disqualifying period under Section I(g) of PTE 84-14.

The Department acknowledges that the timing of the audits required by the Second Proposed Exemption differs from the timing of the first two audits required by PTE 2014-11, which may cause confusion regarding compliance with the audit condition for this exemption. In this regard, the two audits required by PTE 2014-11, together, cover the twelve month period ending on November 20, 2015. The Department has modified the language in Section I(i)(1) of the Second Proposed Exemption, such that the initial audit required by this exemption will cover the twelve month period beginning on November 21, 2015, and ending on November 20, 2016. Each subsequent audit will also start on November 21, and end on the following November 20. For consistency with PTE 2014-11, the Department has changed the effective date of this exemption, to November 18, 2015, which is the first day following the expiration of relief set forth in that exemption. Furthermore, the Department has modified Section I(i)(1) to provide that "the audit requirement must be incorporated in the Policies..."

12. Additional Modifications to Section I(i)

The Department notes that a robust, transparent audit conducted by a sophisticated independent auditor, for the entire period covered by this exemption, is an important condition for relief under this exemption. Therefore, the Department has modified the Second Proposed Exemption in order to ensure the independence and rigor of the audit, bolster the public record and ensure transparency,¹⁰ and enhance its ability to exercise oversight, if necessary. Therefore, the Department has added new Sections I(i)(2), (10), (11), and (12), and made certain clarifying changes to Section I(i)(4) (renumbered as Section I(i)(5)), as described below.

The Department added new Section I(i)(2), in part, in order to ensure that the auditor would have access to all the information necessary to satisfy the requirements under this exemption, and to assist in achieving full transparency with regard to the Credit Suisse Affiliated QPAMs' Policies and Training and to their attempts to comply with this exemption. The Department's changes to

¹⁰ The Department notes that, once it receives the information specified in Section I(i), including the additional information described below, such information will become a part of the administrative record and will be available to the public through the Department's Public Disclosure Room.

Section I(i) described herein also reflect the assertions made by Credit Suisse at the public hearing on January 15, 2015, that the auditor(s) would have full, unfettered access. In this regard, the Department notes that the Applicant's assertions that the auditor would have unfettered access as of the date of the hearing constitute an essential part of the record, without which the Department would not have been able to make its required findings under section 408(a) of the Act. Newly added Section I(i)(2) provides that, "[t]o the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, each Credit Suisse Affiliated QPAM and, if applicable, Credit Suisse AG, will grant the auditor unconditional access to its business, including, but not limited to: its computer systems, business records, transactional data, workplace locations, training materials, and personnel."

The Department has added new Section I(i)(10) to the exemption, in order to provide additional transparency and to allow the Department the opportunity to verify the independence of any auditor or other entity engaged by a Credit Suisse Affiliated QPAM in its efforts to comply with the requirements of this exemption. Specifically, new Section I(i)(10) provides that "[e]ach Credit Suisse

Affiliated QPAM and the auditor will submit to OED (A) any engagement agreement(s) entered into pursuant to the engagement of the auditor under this exemption, and (B) any engagement agreement entered into with any other entities retained in connection with such QPAM's compliance with the Training or Policies conditions of this exemption, no later than twelve (12) months after the date of the Conviction (and one month after the execution of any agreement thereafter)."

The Department has added new Section I(i)(11), in order to provide the Department with additional oversight of, and to ensure the transparency of, the audit process. Section I(i)(11), as added, provides that "[t]he auditor shall provide OED, upon request, all of the workpapers created and utilized in the course of the audit, including, but not limited to: the audit plan, audit testing, identification of any instances of noncompliance by the relevant Credit Suisse Affiliated QPAM, and an explanation of any corrective or remedial actions taken by the applicable Credit Suisse Affiliated QPAM." In connection with this addition, the Department has struck the last two sentences from Section I(i)(5) of the Second Proposed Exemption as such sentences are now subsumed in new Section I(i)(11).

The Department has added new Section I(i)(12) in order to provide the Department with additional oversight in the selection of any replacement auditor and the ability to verify such replacement auditor's independence and qualifications. Newly added Section I(i)(12) provides that, in the event that the Applicant contemplates replacing the current auditor, "Credit Suisse AG must notify the Department at least 30 days prior to any substitution of an auditor, except that no such replacement will meet the requirements of this paragraph unless and until Credit Suisse AG demonstrates to the Department's satisfaction that such new auditor is independent of Credit Suisse AG, experienced in the matters that are the subject of the exemption, and capable of making the determinations required of this exemption."

The Department also made certain clarifying modifications to Section I(i)(4) of the Second Proposed Exemption to more accurately describe the information required in the Audit Report and to reinforce the requirement that the auditor must test for the Credit Suisse Affiliated QPAM's operational compliance with the Policies and Training requirements. Accordingly, the Department has modified the first sentence of Section I(i)(4) of the Second Proposed Exemption by substituting

the word "procedures" for "steps," and the second sentence by adding the phrase "and compliance with" to describe the auditor's determinations with regard to the Policies and Training.

Finally, the Department has updated OED's mailing address for each Credit Suisse Affiliated QPAM's Audit Report found in Section I(i)(8) of the proposed exemption, and renumbered Sections I(i)(2) through I(i)(8) of the Second Proposed Exemption to reflect the addition of new Section I(i)(2) described above.

13. Section I(k).

Section I(k) of the Second Proposed Exemption provides that, with respect to each ERISA-covered plan or IRA for which a Credit Suisse Affiliated QPAM provides asset management or other discretionary fiduciary services, each Credit Suisse Affiliated QPAM agrees, to certain undertakings, including among other things, "(4) not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the Credit Suisse Affiliated QPAM; and (5) not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to

prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors."

The Department has become aware that there is some confusion about whether the exception to the restrictions in subparagraph (5) (i.e., for reasonable fees designed to prevent abusive investment practices or ensure equitable treatment to pooled fund investors) applies to subparagraph (4) as well, given that the rationale for the exception may apply to both. The Department takes the view that the rationale for applying the exception to the restriction in Section I(k)(5) applies to Section I(k)(4) inasmuch as the protection of investors in a pooled fund is concerned. Therefore, to resolve the confusion, the Department has modified Section I(k)(4) of the Second Proposed Exemption to provide that each Credit Suisse Affiliated QPAM agrees.. "(4) not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the Credit Suisse Affiliated QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable

treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such restrictions are applied consistently and in like manner to all such investors."

Furthermore, Section I(k) of the Second Proposed Exemption provides that each Credit Suisse Affiliated QPAM will provide a notice to each ERISA-covered plan or IRA for which a Credit Suisse Affiliated QPAM provides asset management or other discretionary fiduciary services, within six (6) months of the date of publication of this notice of exemption in the Federal Register, of its required undertakings under Section I(k). The Department notes that the notification required by Section I(k), if already provided to an ERISA-covered plan or IRA in connection with the Temporary Final Exemption, need not be re-delivered, but any ERISA-covered plan or IRA that has not received a notice pursuant to Section I(k) must receive such notification within six (6) months of the date of publication of this exemption in the Federal Register and/or receive a new, fully executed, investment management agreement containing the covenants required by Section I(k).

14. Section I(m).

Pursuant to Section I(m) of the Second Proposed Exemption, the Credit Suisse Affiliated QPAMs were required to provide certain disclosures to "(1) each sponsor of an ERISA-covered plan and each beneficial owner of an IRA invested in an investment fund managed by a Credit Suisse Affiliated QPAM, or the sponsor of an investment fund in any case where a Credit Suisse Affiliated QPAM acts only as a sub-advisor to the investment fund; (2) each entity that may be a Credit Suisse Related QPAM; and (3) each ERISA-covered plan for which the New York Branch of Credit Suisse AG provides fiduciary securities lending services." In its comment, the Applicant notes that notices were sent to interested persons, as agreed upon with the Department, and in accordance with Section I(m) of the Second Proposed Exemption. However, the Applicant requests confirmation that the ERISA-covered plans and IRAs referred to in Sections I(m)(1) and (2) are those (A) with respect to which PTE 84-14 may be used; and (B) that were clients of Credit Suisse Affiliated QPAMs or Credit Suisse AG as of the date that the Second Proposed Exemption was published in the Federal Register.

The Department concurs with the Applicant's requested confirmation.

The Auditor's Statement

The auditor requests confirmations and/or clarifications concerning: (1) the method which the auditor contemplates testing each Credit Suisse Affiliated QPAM's compliance with such QPAM's Policies in accordance with Section I(i)(3) of the Second Proposed Exemption; (2) the required determinations to be made by the auditor in the Audit Report in Section I(i)(4) of the Second Proposed Exemption; (3) the timing of the first and second audit reports and of the second audit specified by Section I(i)(1) of the Second Proposed Exemption; and (4) the scope of the audit as it relates to the requirement in Section (h)(1) of the Second Proposed Exemption for the Credit Suisse Affiliated QPAMs to develop, implement, maintain, and follow the Policies described therein.

15. Section I(i)(3).

The auditor sought the Department's views regarding the auditor's audit plan, as it relates to Section I(i)(3) of the Second Proposed Exemption, which requires that the auditor "test each Credit Suisse Affiliated QPAM's operational compliance with the Policies..." Further, Section I(h)(1) of the Second Proposed Exemption requires

that each Credit Suisse Affiliated QPAM "immediately develops, implements, maintains, and follows the Policies requiring and reasonably designed to ensure that... (ii) the Credit Suisse Affiliated QPAM fully complies with ERISA's fiduciary duties and ERISA and the Code's prohibited transaction provisions and does not knowingly participate in any violations of these duties and provisions with respect to ERISA-covered plans and IRAs."

The auditor states that, assuming that the Policies are deemed to be adequate, it plans to test each Credit Suisse Affiliated QPAM's operational compliance with the Policies, including its compliance with ERISA's fiduciary duties and ERISA and the Code's prohibited transaction provisions, by interviewing relevant personnel, gathering related documentation and evaluating a representative sample of transactions conducted by each Credit Suisse Affiliated QPAM for ERISA-covered plans and IRAs over the covered period. Furthermore, the auditor states that each review would test each Credit Suisse Affiliated QPAM's compliance with the Policies' requirements related to: (a) compliance with ERISA, including the Act's fiduciary, prohibited transaction, and reporting provisions; (b) ERISA corrections; (c) on-boarding ERISA client portfolios (e.g. required documentation, coding); and (d) ongoing ERISA

compliance requirements for client portfolios, including: (i) indicia of ownership, (ii) gifts and entertainment, (iii) fidelity bonding, (iv) plan client reporting (e.g. Credit Suisse disclosures), (v) pooled investment funds, (vi) filings and statements to regulators, (vii) information barriers, and (viii) ERISA training.

The Department notes that the contemplated testing and review described above is consistent with the Department's expectations concerning the auditor's responsibilities under Section I(i) of the exemption. However, the Department is not, at this time, taking a view herein whether the auditor's contemplated testing and review described above will be sufficient to satisfy its responsibilities under the exemption. The Department anticipates that the auditor's final audit plan and its actual audit testing and review may be different than that described above, depending on the facts and circumstances and actual conditions as they develop, in order to ensure the relevant requirements of this exemption have been met.

16. Section I(i)(4).

Section I(i)(4) of the Second Proposed Exemption provides, in relevant part, that "[a]ny determinations by

the auditor that the respective Credit Suisse Affiliated QPAM has implemented, maintained, and followed sufficient Policies and Training shall not be based solely or in substantial part on an absence of evidence indicating noncompliance." The auditor requests confirmation that this sentence requires the auditor's determinations to be based on the independent compliance review that the auditor conducts itself and not simply upon representations made by Credit Suisse Affiliated QPAMs with respect to compliance with the Policies and Training requirements over the covered period.

The Department confirms, in part, the auditor's request, as the determinations to be made under the exemption require the auditor to do its own independent compliance review and not simply rely upon the representations made by the Credit Suisse Affiliated QPAM. The Department also notes that Section I(i)(4) of the Second Proposed Exemption requires that any finding that the Credit Suisse Affiliated QPAM has complied with the requirements under Section I(h) be based on evidence that demonstrates the Credit Suisse Affiliated QPAM has actually implemented, maintained, and followed sufficient Policies and Training, as opposed to, for example, a finding that the Credit Suisse Affiliated QPAM has not violated ERISA,

and therefore the Policies and Training in place to prevent such violations are deemed sufficient.

17. Section I(i)(1).

The auditor requests a clarification regarding the timing of the first audit report, since the audit requirement under PTE 2014-11 and the Second Proposed Exemption both cover the same time period but provide different due dates for the audit report. Furthermore, the auditor requests that the Department clarify whether the first full year annual audit specified in the Second Proposed Exemption obviates the need for the second six month audit period under PTE 2014-11. The Department believes that the clarifications described above address the auditor's requests.

18. Section I(h)(1).

Section I(h)(1) of the Second Proposed Exemption requires that "[e]ach Credit Suisse Affiliated QPAM immediately develops, implements, maintains, and follows written policies (the Policies) requiring and reasonably designed to ensure that... (v) the Credit Suisse Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such

regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plan and IRA clients." The auditor requests a confirmation that, in connection with testing each Credit Suisse Affiliated QPAM's operational compliance with its Policies, the audit will only relate to "communications" in the form of written documents.

The Department did not intend that the audit be restricted only to written documents. The Department expects that if the auditor is privy to relevant oral or other non-written communications, the auditor will also consider those communications in connection with performing the audit. Accordingly, in the Department's view, the auditor's responsibilities extend to any communications, written or otherwise, that exist in reviewable form, including notes of meetings, audio and video recordings, powerpoints, computer files, and any other media, provided that such information can reasonably be assumed to have been used in any communications referred to in Section I(h) (1) of the exemption.

Provision of Notice of Final Exemption

Given that substantial changes have been made to the

proposed exemption, as reflected in this final exemption, the Department is requiring that ERISA-covered plans and IRAs with assets managed by Credit Suisse Affiliated QPAMs in reliance of PTE 84-14 receive a copy of this final exemption no later than 90 days following the date of publication in the Federal Register. Notice to a plan or IRA may be provided electronically (including by an email that has a link to the exemption).

After giving full consideration to the entire record, including the written comments, subject to the Department's responses thereto, the Department has decided to grant the exemption. The complete application file, with copies of the comments, is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1515, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the First Proposed Exemption, published in the Federal Register on September 3, 2014, at 79 FR 52365; the Temporary Final Exemption, published in the Federal Register on November 18, 2014, at

79 FR 68716; and the Second Proposed Exemption published in the Federal Register on November 18, 2014, at 79 FR 68712.

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 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) In accordance with section 408(a) of ERISA and section 4975(c)(2) of the Code, the Department makes the

following determinations: the exemption is administratively feasible, the exemption is in the interests of affected plans and of their participants and beneficiaries, and the exemption is protective of the rights of participants and beneficiaries of such plans;

(3) The exemption is supplemental to, and not in derogation of, any other provisions of ERISA, 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 availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describe all material terms of the transaction which is the subject of the exemption.

Accordingly, the following exemption is granted under the authority of section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011):

EXEMPTION**11**

Section I: Covered Transactions

The Credit Suisse Affiliated QPAMs and the Credit Suisse Related QPAMs shall not be precluded from relying on the relief provided by Prohibited Transaction Class Exemption (PTE) 84-14**12** notwithstanding the Conviction (as defined in Section II(c)),**13** provided the following conditions are satisfied:

(a) Any failure of the Credit Suisse Affiliated QPAMs or the Credit Suisse Related QPAMs to satisfy Section I(g) of PTE 84-14 arose solely from the Conviction;

(b) The Credit Suisse Affiliated QPAMs and the Credit Suisse Related QPAMs (including officers, directors, agents

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

12 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).

13 Section I(g) generally provides that “[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of” certain felonies including income tax evasion and conspiracy or attempt to commit income tax evasion.

other than Credit Suisse AG, and employees of such QPAMs) did not participate in the criminal conduct of Credit Suisse AG that is the subject of the Conviction;

(c) The Credit Suisse Affiliated QPAMs and the Credit Suisse Related QPAMs did not directly receive compensation in connection with the criminal conduct of Credit Suisse AG that is the subject of the Conviction;

(d) The criminal conduct of Credit Suisse AG that is the subject of the Conviction did not directly or indirectly involve the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA);

(e) Credit Suisse AG did not provide any fiduciary services to ERISA-covered plans or IRAs, except in connection with securities lending services of the New York Branch of Credit Suisse AG, or act as a QPAM for ERISA-covered plans or IRAs;

(f) A Credit Suisse Affiliated QPAM will not use its authority or influence to direct an "investment fund" (as defined in Section VI(b) of PTE 84-14) that is subject to ERISA and managed by such Credit Suisse Affiliated QPAM to enter into any transaction with Credit Suisse AG or engage Credit Suisse AG to provide additional services to such investment fund, for a direct or indirect fee borne by such

investment fund regardless of whether such transactions or services may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(g) Each Credit Suisse Affiliated QPAM will ensure that it does not engage or employ any person involved in the criminal conduct that underlies the Conviction in connections with transactions involving any "investment fund" (as defined in Section VI(b) of PTE 84-14) subject to ERISA and managed by such Credit Suisse Affiliated QPAMs;

(h) (1) Each Credit Suisse Affiliated QPAM immediately develops, implements, maintains, and follows written policies (the Policies) requiring and reasonably designed to ensure that: (i) the asset management decisions of the Credit Suisse Affiliated QPAM are conducted independently of Credit Suisse AG's management and business activities; (ii) the Credit Suisse Affiliated QPAM fully complies with ERISA's fiduciary duties and ERISA and the Code's prohibited transaction provisions and does not knowingly participate in any violations of these duties and provisions with respect to ERISA-covered plans and IRAs; (iii) the Credit Suisse Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs; (iv) any filings or statements made by the Credit

Suisse Affiliated QPAM to regulators, including but not limited to, the Department of Labor, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA-covered plans or IRAs are materially accurate and complete, to the best of such QPAM's knowledge at that time; (v) the Credit Suisse Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plan and IRA clients; (vi) the Credit Suisse Affiliated QPAM complies with the terms of this exemption; and (vii) any violations of or failure to comply with items (ii) through (vi) are corrected promptly upon discovery and any such violations or compliance failures not promptly corrected are reported, upon discovering the failure to promptly correct, in writing to appropriate corporate officers, the head of Compliance and the General Counsel of the relevant Credit Suisse Affiliated QPAM, the independent auditor responsible for reviewing compliance with the Policies, and a fiduciary of any affected ERISA-covered plan or IRA where such fiduciary is independent of Credit Suisse AG; however, with respect to any ERISA-covered plan

or IRA sponsored by an "affiliate" (as defined in Section VI(d) of PTE 84-14) of Credit Suisse AG or beneficially owned by an employee of Credit Suisse AG or its affiliates, such fiduciary does not need to be independent of Credit Suisse AG; Credit Suisse Affiliated QPAMs will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that they correct any instances of noncompliance promptly when discovered or when they reasonably should have known of the noncompliance (whichever is earlier), and provided that they adhere to the reporting requirements set forth in this item (vii);

(2) Each Credit Suisse Affiliated QPAM immediately develops and implements a program of training (the Training), conducted at least annually for relevant Credit Suisse Affiliated QPAM asset management, legal, compliance, and internal audit personnel; the Training shall be set forth in the Policies and, at a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions) and ethical conduct, the consequences for not complying with the conditions of this exemption, (including the loss of the exemptive relief provided herein), and prompt reporting of wrongdoing;

(i) (1) Each Credit Suisse Affiliated QPAM submits to

an audit conducted annually by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA to evaluate the adequacy of, and compliance with, the Policies and Training described herein; the audit requirement must be incorporated in the Policies. Each audit must cover a twelve month period that begins on November 21 and ends on the following November 20, and be completed no later than six (6) months after the period to which the audit applies;

(2) To the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, each Credit Suisse Affiliated QPAM and, if applicable, Credit Suisse AG, will grant the auditor unconditional access to its business, including, but not limited to: its computer systems, business records, transactional data, workplace locations, training materials, and personnel;

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

(4) The auditor's engagement shall specifically

require the auditor to test each Credit Suisse Affiliated QPAM's operational compliance with the Policies and Training;

(5) For each audit, the auditor shall issue a written report (the Audit Report) to Credit Suisse AG and the Credit Suisse Affiliated QPAM to which the audit applies that describes the procedures performed by the auditor during the course of its examination. The Audit Report shall include the auditor's specific determinations regarding the adequacy of, and compliance with, the Policies and Training; the auditor's recommendations (if any) with respect to strengthening such Policies and Training; and any instances of the respective Credit Suisse Affiliated QPAM's noncompliance with the written Policies and Training described in paragraph (h) above. Any determinations made by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective Credit Suisse Affiliated QPAM shall be promptly addressed by such Credit Suisse Affiliated QPAM, and any actions taken by such Credit Suisse Affiliated QPAM to address such recommendations shall be included in an addendum to the Audit Report. Any determinations by the auditor that the

respective Credit Suisse Affiliated QPAM has implemented, maintained, and followed sufficient Policies and Training shall not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that the Credit Suisse Affiliated QPAM has complied with the requirements under this subsection must be based on evidence that demonstrates the Credit Suisse Affiliated QPAM has actually implemented, maintained, and followed the Policies and Training required by this exemption, and not solely on evidence that demonstrates that the Credit Suisse Affiliated QPAM has not violated ERISA;

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

(7) With respect to each Audit Report, the General Counsel or one of the three most senior executive officers of the Credit Suisse Affiliated QPAM to which the Audit Report applies certifies in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption; addressed, corrected, or remediated any

inadequacies identified in the Audit Report; and determined that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code;

(8) An executive officer of Credit Suisse AG reviews the Audit Report for each Credit Suisse Affiliated QPAM and certifies in writing, under penalty of perjury, that such officer has reviewed each Audit Report;

(9) Each Credit Suisse Affiliated QPAM provides its certified Audit Report to the Department's Office of Exemption Determinations (OED), 200 Constitution Avenue, NW, Suite 400, Washington DC 20210, no later than 30 days following its completion, and each Credit Suisse Affiliated QPAM makes its Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of an ERISA-covered plan or IRA, the assets of which are managed by such Credit Suisse Affiliated QPAM;

(10) Each Credit Suisse Affiliated QPAM and the auditor will submit to OED (A) any engagement agreement(s) entered into pursuant to the engagement of the auditor under this exemption, and (B) any engagement agreement

entered into with any other entities retained in connection with such QPAM's compliance with the Training or Policies conditions of this exemption, no later than twelve (12) months after the date of the Conviction (and one month after the execution of any agreement thereafter);

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

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

(j) The Credit Suisse Affiliated QPAMs comply with each condition of PTE 84-14, as amended, with the sole exception of the violation of Section I(g) that is

attributable to the Conviction;

(k) Effective from the date of publication of this exemption notice in the Federal Register, with respect to each ERISA-covered plan or IRA for which a Credit Suisse Affiliated QPAM provides asset management or other discretionary fiduciary services, each Credit Suisse Affiliated QPAM agrees: (1) to comply with ERISA and the Code, as applicable with respect to such ERISA-covered plan or IRA, and refrain from engaging in prohibited transactions that are not otherwise exempt; (2) not to waive, limit, or qualify the liability of the Credit Suisse Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions; (3) not to require the ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the Credit Suisse Affiliated QPAM for violating ERISA or engaging in prohibited transactions, except for violations or prohibited transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of Credit Suisse AG; (4) not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the Credit Suisse Affiliated QPAM, with the exception of reasonable restrictions,

appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such restrictions are applied consistently and in like manner to all such investors; and (5) not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors. Within six (6) months of the date of publication of this notice of exemption in the Federal Register, each Credit Suisse Affiliated QPAM will provide a notice to such effect to each ERISA-covered plan or IRA for which a Credit Suisse Affiliated QPAM provides asset management or other discretionary fiduciary services;

(1) Each Credit Suisse Affiliated QPAM will maintain records necessary to demonstrate that the conditions of this exemption have been met for six (6) years following

the date of any transaction for which such Credit Suisse Affiliated QPAM relies upon the relief in the exemption;

(m) The Credit Suisse Affiliated QPAMs provided a notice of the proposed exemption along with a separate summary describing the facts that led to the Conviction, which has been submitted to the Department, and a prominently displayed statement that the Conviction results in a failure to meet a condition in PTE 84-14 to: (1) each sponsor of an ERISA-covered plan and each beneficial owner of an IRA invested in an investment fund managed by a Credit Suisse Affiliated QPAM, or the sponsor of an investment fund in any case where a Credit Suisse Affiliated QPAM acts only as a sub-advisor to the investment fund; (2) each entity that may be a Credit Suisse Related QPAM; and (3) each ERISA-covered plan for which the New York Branch of Credit Suisse AG provides fiduciary securities lending services; and

(n) A Credit Suisse Affiliated QPAM will not fail to meet the terms of this exemption solely because a Credit Suisse Related QPAM or a different Credit Suisse Affiliated QPAM fails to satisfy a condition for relief under this exemption. A Credit Suisse Related QPAM will not fail to meet the terms of this exemption solely because Credit Suisse AG, a Credit Suisse Affiliated QPAM, or a different

Credit Suisse Related QPAM fails to satisfy a condition for relief under this exemption;

(o) ERISA-covered plans and IRAs with assets managed by Credit Suisse Affiliated QPAMs in reliance of PTE 84-14 must receive a copy of this final exemption no later than 90 days following the date of publication in the Federal Register. Notice to a plan or IRA may be provided electronically (including by an email that has a link to the exemption).

Section II: Definitions

(a) The term "Credit Suisse Affiliated QPAM" means a "qualified professional asset manager" (as defined in section VI(a)**14** of PTE 84-14) that relies on the relief provided by PTE 84-14 and with respect to which Credit Suisse AG is a current or future "affiliate" (as defined in section VI(d) of PTE 84-14). The term "Credit Suisse Affiliated QPAM" excludes the parent entity, Credit Suisse AG.

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

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

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

Signed at Washington, DC, this 25th day of September, 2015.

Lyssa Hall,
Director of Exemption
Determinations,
Employee Benefits Security
Administration,
U.S. Department of Labor.

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