



**DEPARTMENT OF LABOR**

Employee Benefits Security Administration

[Application No. D-11863]

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

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

**ACTION:** Notice of Proposed Temporary Exemption

**SUMMARY:** This document contains a notice of pendency before the Department of Labor (the Department) of a proposed temporary individual exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and the Internal Revenue Code of 1986, as amended (the Code). The proposed temporary exemption, if granted, would affect the ability of certain entities with specified relationships to UBS AG (UBS) to continue to rely upon

the relief provided by Prohibited Transaction Class Exemption 84-14.

**DATES:** This proposed temporary exemption will be effective for the period beginning on the Conviction Date, and ending on the earlier of: the date that is twelve months following the Conviction Date; or the effective date of a final agency action made by the Department in connection with Exemption Application No. D-11907, an application for long-term exemptive relief for the covered transactions described herein.

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

**ADDRESSES:** Comments should state the nature of the person's interest in the proposed exemption and the manner in which the person would be adversely affected by the exemption, if granted. A request for a hearing can be requested by any interested person who may be adversely affected by an exemption. A request for a hearing must state: (1) the name, address, telephone

number, and email address of the person making the request; (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; and (3) a statement of the issues to be addressed and a general description of the evidence to be presented at the hearing. The Department will grant a request for a hearing made in accordance with the requirements above where a hearing is necessary to fully explore material factual issues identified by the person requesting the hearing. A notice of such hearing shall be published by the Department in the Federal Register. The Department may decline to hold a hearing where: (1) the request for the hearing does not meet the requirements above; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the factual issues identified can be fully explored through the submission of evidence in written (including electronic) form.

All written comments and requests for a public hearing concerning the proposed exemption should be directed to the following addresses: Office of Exemption Determinations, Employee Benefits Security Administration, Suite 400, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington DC 20210, Attention: Application No. D-11863. Interested persons may also submit comments and/or hearing requests to EBSA via email to *moffitt.betty@dol.gov*, by FAX to (202) 219-0204, or

online through <http://www.regulations.gov>. Any such comments or requests should be sent by the end of the scheduled comment period. The application for exemption and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1515, 200 Constitution Avenue NW, Washington, DC 20210.

**WARNING:** All comments and hearing requests received will be included in the public record without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be confidential or other information whose disclosure is restricted by statute. If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. However, if EBSA cannot read your comment due to technical difficulties and cannot contact you for clarification, EBSA might not be able to consider your comment. Additionally, the <http://www.regulations.gov> web site is an "anonymous access"

system, which means EBSA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EBSA without going through <http://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the Internet.

**FOR FURTHER INFORMATION CONTACT:** Mr. Brian Mica of the Department, telephone (202) 693-8402. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** The Department is publishing this proposed temporary exemption in order to protect ERISA-covered plans and IRAs from certain costs and/or investment losses for up to one year, that may arise to the extent entities with a corporate relationship to UBS lose their ability to rely on PTE 84-14 as of the Conviction Date, as described below. Elsewhere in the Federal Register, the Department is also proposing a five-year proposed exemption, Exemption Application No. D-11907 that would provide the same relief that is described herein, but for a longer effective period. The five-year proposed exemption is subject to enhanced conditions and a longer comment period. Comments received in response to this proposed temporary

exemption will be considered in connection with the Department's determination whether or not to grant such five-year exemption.

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

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

The proposed temporary exemption has been requested by the Applicants pursuant to 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). Effective December 31, 1978, section 102 of the Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor. Accordingly, this notice of proposed exemption is being issued solely by the Department.

## SUMMARY OF FACTS AND REPRESENTATIONS<sup>1</sup>

### *The Applicants*

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

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

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<sup>1</sup> The Summary of Facts and Representations is based on the Applicants' representations, unless indicated otherwise.

3. LIBOR NPA. On December 18, 2012, UBS and the United States Department of Justice (DOJ) entered into a Non-Prosecution Agreement (the LIBOR NPA) related to UBS's misconduct and involving its submission of Yen London Interbank Offer Rate (Yen LIBOR) rates and other benchmark rates between 2001 and 2010. In exchange for UBS promising, among other things, not to commit any crime in violation of U.S. laws for a period of two years from the date of the LIBOR NPA, DOJ agreed that it would not prosecute UBS for any crimes related to the submission of Yen LIBOR rates and other benchmark rates. For its part, UBS agreed to, among other things: (i) pay a monetary penalty of \$500,000,000; and (ii) take steps to further strengthen its internal controls, as required by certain other U.S. and non-U.S. regulatory agencies that had addressed the misconduct described in the LIBOR NPA. Such requirements include those imposed by the United States Commodity Futures Trading Commission's (CFTC) order dated December 19, 2012 (the CFTC Order) which requires UBS to comply with significant auditing and monitoring conditions that set standards for submissions related to interest rate benchmarks such as LIBOR, qualifications of submitters and supervisors, documentation, training, and firewalls. Under the CFTC Order, UBS must maintain monitoring systems or electronic exception reporting systems that identify possible improper or unsubstantiated submissions.

The CFTC Order requires UBS to conduct internal audits of reasonable and random samples of its submissions every six months. Additionally, UBS must retain an independent, third-party auditor to conduct a yearly audit of the submission process for five years and a copy of the report must be provided to the CFTC. Furthermore, the Japanese Financial Service Authority's (JFSA) Business Improvement Order dated December 16, 2011 requires UBS Securities Japan to (i) develop a plan to ensure compliance with its legal and regulatory obligations and to establish a control framework that is designed to prevent recurrences of the fraudulent submissions for benchmark interest rates; and (ii) provide periodic written reports to the JFSA regarding UBS Securities Japan's implementation of the measures required by the order.

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

submission of Yen LIBOR rates between 2006 and 2009,<sup>2</sup> and its participation in a scheme to defraud counterparties to interest rate derivatives trades executed on its behalf, by secretly manipulating certain benchmark interest rates, namely Yen LIBOR and the Euroyen Tokyo InterBank Offered Rate (EuroYen TIBOR), to which the profitability of those trades was tied. On September 18, 2013 (the 2013 Conviction Date), UBS Securities Japan was sentenced by the United States District Court for the District of Connecticut (the 2013 Conviction).<sup>3</sup>

5. FX Misconduct and Breach of LIBOR NPA. At approximately the same time, the DOJ was conducting an investigation of several multi-national banks, including UBS, in connection with the reported manipulation of the foreign exchange (FX) markets. The DOJ determined, among other things, that UBS had engaged in deceptive currency trading and sales practices in conducting certain FX market transactions, as well as collusive conduct in certain FX markets. The DOJ did not file separate charges in

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<sup>2</sup> Section 1343 generally imposes criminal liability for fraud, including fines and/or imprisonment, when a person utilizes wire, radio, or television communication in interstate or foreign commerce. Section 2 generally imposes criminal liability on a person as a principal if that person aids, counsels, commands, induces, or willfully causes another person to engage in criminal activity.

<sup>3</sup> United States of America v. UBS Securities Japan Limited, Case Number 3:12-cr-00268-RNC.

connection with the FX-related misconduct, but instead determined that the LIBOR NPA had been breached. The DOJ terminated the LIBOR NPA and filed a one-count criminal information (the Information), Case Number 3:15-cr-00076-RNC, in the U.S. District Court for the District of Connecticut. The Information charged that, on or about June 29, 2009, in furtherance of a scheme to defraud counterparties to interest rate derivatives transactions UBS transmitted or caused the transmission of electronic communications in interstate and foreign commerce, in violation of Title 18, United States Code, Sections 1343 and 2.

6. 2016 Conviction. UBS entered into a Plea Agreement with the DOJ dated May 20, 2015 (the Plea Agreement), pleading guilty to the charges in the Information, and agreeing to pay a \$203,000,000 criminal penalty.<sup>4</sup> In addition, UBS agreed not to commit another federal crime during a three year probation period; to continue to implement a compliance program designed to prevent and detect, or otherwise remedy, conduct that led to the LIBOR NPA; and to provide annual reports to the probation officer and the DOJ on its progress in implementing the program. UBS also agreed to continue to strengthen its compliance program

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<sup>4</sup> United States of America vs. UBS, Case Number 3:15-cr-00076-RNC.

and internal controls as required by: the U.S. Commodity Futures Trading Commission (CFTC); the United Kingdom's Financial Conduct Authority (UK FCA); the Swiss Financial Market Supervisory Authority (FINMA); and any other regulatory enforcement agency, in connection with resolutions involving conduct in FX markets or conduct related to benchmark rates. UBS must provide information regarding its compliance programs to the probation officer, upon request. A judgment of conviction (the 2016 Conviction) against UBS in Case Number 3:15-cr-00076-RNC is scheduled to be entered in the U.S. District Court for the District of Connecticut on or about November 29, 2016.

*PTE 84-14*

7. The Department notes that the rules set forth in section 406 of the Employee Retirement Income Security Act of 1974, as amended (ERISA) and section 4975(c) of the Internal Revenue Code of 1986, as amended (the Code) proscribe certain "prohibited transactions" between plans and related parties with respect to those plans, known as "parties in interest."<sup>5</sup> Under section

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<sup>5</sup> For purposes of the Summary of Facts and Representations, references to specific provisions of Title I of ERISA, unless otherwise specified, refer also to the corresponding provisions of the Code.

3(14) of ERISA, parties in interest with respect to a plan include, among others, the plan fiduciary, a sponsoring employer of the plan, a union whose members are covered by the plan, service providers with respect to the plan, and certain of their affiliates. The prohibited transaction provisions under section 406(a) of ERISA prohibit, in relevant part, sales, leases, loans or the provision of services between a party in interest and a plan (or an entity whose assets are deemed to constitute the assets of a plan), as well as the use of plan assets by or for the benefit of, or a transfer of plan assets to, a party in interest.<sup>6</sup> Under the authority of section 408(a) of ERISA and section 4975(c)(2) of the Code, the Department has the authority to grant exemptions from such "prohibited transactions" in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011).

8. Prohibited Transaction Exemption 84-14 (PTE 84-14)<sup>7</sup> exempts certain prohibited transactions between a party in interest and an "investment fund" (as defined in Section VI (b)

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<sup>6</sup> The prohibited transaction provisions also include certain fiduciary prohibited transactions under section 406(b) of ERISA. These include transactions involving fiduciary self-dealing; fiduciary conflicts of interest, and kickbacks to fiduciaries.

<sup>7</sup> 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).

of PTE 84-14)<sup>8</sup> in which a plan has an interest, if the investment manager satisfies the definition of "qualified professional asset manager" (QPAM) and satisfies additional conditions for the exemption. In this regard, PTE 84-14 was developed and granted based on the essential premise that broad relief could be afforded for all types of transactions in which a plan engages only if the commitments and the investments of plan assets and the negotiations leading thereto are the sole responsibility of an independent, discretionary, manager.<sup>9</sup>

9. However, Section I(g) of PTE 84-14 prevents an entity that may otherwise meet the definition of QPAM from utilizing the exemptive relief provided by PTE 84-14, for itself and its client plans, if that entity or an "affiliate"<sup>10</sup> thereof or any

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<sup>8</sup> An "investment fund" includes single customer and pooled separate accounts maintained by an insurance company, individual trusts and common, collective or group trusts maintained by a bank, and any other account or fund to the extent that the disposition of its assets (whether or not in the custody of the QPAM) is subject to the discretionary authority of the QPAM.

<sup>9</sup> See 75 FR 38837, 38839 (July 6, 2010).

<sup>10</sup> Section VI(d) of PTE 84-14 defines the term "affiliate" for purposes of Section I(g) as "(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person, (2) Any director of, relative of, or partner in, any such person, (3) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, or a 5 percent or more partner or owner, and (4) Any employee or officer of the

owner, direct or indirect, of a 5 percent or more interest in the QPAM has, within 10 years immediately preceding the transaction, been either convicted or released from imprisonment, whichever is later, as a result of certain specified criminal activity described in that section. The Department notes that Section I(g) was included in PTE 84-14, in part, based on the expectation that a QPAM, and those who may be in a position to influence its policies, maintain a high standard of integrity.<sup>11</sup> Accordingly, as a result of the Convictions, QPAMs with certain corporate relationships to UBS and UBS Securities Japan, as well as their client plans that are subject to Part 4 of Title I of ERISA (ERISA-covered plans) or section 4975 of the Code (IRAs), will no longer be able to rely on PTE 84-14 without an individual exemption issued by the Department.

*The UBS QPAMs*

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person who- (A) Is a highly compensated employee (as defined in Section 4975(e)(2)(H) of the Code) or officer (earning 10 percent or more of the yearly wages of such person), or (B) Has direct or indirect authority, responsibility or control regarding the custody, management or disposition of plan assets."

<sup>11</sup> See 47 FR 56945, 56947 (December 21, 1982).

10. UBS Asset Management (Americas) Inc., UBS Realty Investors LLC, UBS Hedge Fund Solutions LLC, and UBS O'Connor LLC are affiliates of UBS, AG (UBS)<sup>12</sup> within UBS's Asset Management division, and may rely on PTE 84-14. Such entities, along with future entities in UBS's Assets Management and Wealth Management Americas divisions that qualify as "qualified professional asset managers" (as defined in Part VI(a) of PTE 84-14) and rely on the relief provided by PTE 84-14 and with respect to which UBS AG is an "affiliate" (as defined in Part VI(d) of PTE 84-14) are hereinafter referred to as the "UBS QPAMs". The Applicants represent that currently, the Asset Management division is the only division that has entities functioning as QPAMs and that UBS itself does not provide investment management services to client plans that are subject to Part 4 of Title I of ERISA (ERISA plans) or section 4975 of the Code (IRAs), or otherwise exercise discretionary control over ERISA assets.

11. The Applicants represent further that the UBS QPAMs provide investment management services to 36 ERISA plan and IRA

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<sup>12</sup> UBS Asset Management (Americas) Inc. and UBS Realty Investors LLC are wholly owned by UBS Americas, Inc., a wholly-owned subsidiary of UBS AG. UBS Hedge Fund Solutions LLC (formerly UBS Alternative and Quantitative Investments, LLC) and UBS O'Connor LLC are wholly owned by UBS Americas Holding LLC, a wholly subsidiary of UBS AG.

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

#### *UBS's FX Misconduct*

12. The DOJ determined that, prior to and after UBS signed the LIBOR NPA on December 18, 2012, certain employees of UBS engaged in fraudulent and deceptive currency trading and sales practices in conducting certain FX market transactions via telephone, email and/or electronic chat, to the detriment of UBS's customers.<sup>13</sup> These employees also engaged in collusion

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<sup>13</sup> The circumstances of UBS's violation of the terms of the LIBOR NPA are described in Exhibit 1 to the Plea Agreement, entitled

with other participants in certain FX markets (such conduct, as further detailed below, is hereinafter referred to as the "FX Misconduct").

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

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

15. The Factual Basis for Breach also details how certain customers obtaining quotes and placing trades over the phone would, on occasion, request an "open-line" so they could hear

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"The Factual Basis for Breach of the Non-Prosecution Agreement" (the Factual Basis for Breach).

the conversation regarding price quotes between the UBS trader and salesperson. Certain of these customers had an expectation the price they heard from the trader did not include a sales markup for their transaction currency. While on certain "open-line" conversations, UBS traders and salespeople used hand signals to fraudulently conceal markups from these customers.

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

17. The Factual Basis for Breach explains that in determining that UBS was in breach of the LIBOR NPA, the DOJ considered UBS's FX Misconduct described above in light of UBS's obligation under the LIBOR NPA to commit no further crimes. The DOJ also took into account UBS's three recent prior criminal

resolutions<sup>14</sup> and multiple civil and regulatory resolutions. In addition, the DOJ also considered that the compliance programs and remedial efforts put in place by UBS following the LIBOR NPA failed to detect the collusive and deceptive conduct in the FX markets until an article was published pointing to potential misconduct in the FX markets.

*UBS's LIBOR Misconduct*

18. The Statement of Facts (SOF) in Exhibit 3 of the Plea Agreement describes the circumstances of UBS's scheme to defraud counterparties to interest rate derivatives transactions, by secretly manipulating benchmark interest rates to which the profitability of those transactions was tied. According to the SOF, LIBOR is a benchmark interest rate used in financial markets worldwide, namely on exchanges and in over-the-counter markets, to settle trades for futures, options, swaps, and other derivative financial instruments. In addition, LIBOR is often

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<sup>14</sup> In addition to the 2012 LIBOR NPA described above, in February 2009, UBS entered into a deferred prosecution agreement with the DOJ's Tax Division for conspiring to defraud the United States of tax revenue through secret Swiss bank accounts for United States tax payers. In connection therewith, UBS agreed to pay \$780 million. In May of 2011, UBS entered into a non-prosecution agreement with the DOJ's Antitrust Division to resolve allegations of bid-rigging in the municipal bond derivatives market, and agreed to pay \$160 million.

used as a reference rate for mortgages, credit cards, student loans, and other consumer lending products. LIBOR and the other benchmark interest rates play a fundamentally important role in financial markets throughout the world due their widespread use.

19. Each business day the LIBOR average benchmark interest rates are calculated and published by Thomson Reuters, acting as agent for the British Bankers' Association (BBA), for ten currencies (including the United States Dollar, the British Pound Sterling, and the Japanese Yen) and for various maturities (ranging from overnight to twelve months). The calculation for a given currency is based upon rate submissions from a panel of banks for that currency (the Contributor Panel). In general terms, LIBOR is the rate at which the Contributor Panel member could borrow funds. According to the BBA, the Contributor Bank Panel must submit the rate considered by the bank's cash management staff, and not the bank's personnel responsible for derivative trading, as the rate the bank could borrow unsecured inter-bank funds in the London money market, without reference to rates contributed by other Contributor Panel banks. Additionally, a Contributor Panel bank may not contribute a rate based on the pricing of any derivative financial instrument. Once each Contributor Panel bank has submitted its rate, the contributed rates are ranked and averaged, discarding the highest and lowest 25%, to formulate the LIBOR "Fix" for that

particular currency and maturity. Since 2005, UBS has been a member of the Contributor Panels for the Dollar LIBOR, Yen LIBOR, Euro LIBOR, Swiss Franc LIBOR, and Pound Sterling LIBOR.

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

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

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

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

requests for favorable benchmark rates submissions were regularly accommodated by the UBS submitters.<sup>15</sup>

24. The SOF also details how cash brokers<sup>16</sup> were used by certain UBS Yen derivatives traders to distribute misinformation to other Contributor Panel banks regarding Yen LIBOR in order to manipulate Yen LIBOR submissions to the benefit of UBS. The SOF details further how the UBS traders, submitters, supervisors and certain UBS managers, continued to encourage, allow, or participate in the conduct even though they were aware that manipulation of LIBOR submissions was inappropriate and they attempted to conceal the manipulation and obstruct the LIBOR investigation.

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

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<sup>15</sup> According to the SOF, UBS personnel on occasion also engaged in the internal manipulation of UBS's interest rate submissions in connection with the Swiss Franc LIBOR, the British Pound Sterling LIBOR, the Euribor, and the U.S. Dollar LIBOR.

<sup>16</sup> Bids and offers for cash are tracked in the market by cash brokers. These cash brokers also act as intermediaries by assisting derivatives and money market traders in arranging transactions between financial institutions.

that the participating employees intended, at least in part, to benefit UBS through the actions described above.

*Prior and Anticipated Convictions and Failure to Comply with Section I(g) of PTE 84-14*

26. The 2013 Conviction caused the UBS QPAMs to violate Section I(g) of PTE 84-14. On September 13, 2013, the Department granted PTE 2013-09, which allows the UBS QPAMs to rely on the relief provided in PTE 84-14, notwithstanding the 2013 Conviction of UBS Securities Japan.<sup>17</sup> Under PTE 2013-09, the UBS QPAMs must comply with a number of conditions, including the condition in Section I(h) which provides that, "Notwithstanding the [2013 Conviction], UBS complies with each condition of PTE 84-14, as amended."<sup>18</sup> As a result of this requirement, if UBS or one of its affiliates is convicted of another crime (besides the 2013 Conviction) described in Section I(g) of PTE 84-14, then the relief provided by PTE 2013-09 would be unavailable.

27. The 2016 Conviction will cause the UBS QPAMs to violate Section I(g) of PTE 84-14, once a judgment of conviction is entered by the District Court. As a consequence, the UBS

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<sup>17</sup> 78 FR 56740 (September 13, 2013).

<sup>18</sup> Section I(h) of PTE 2013-09, at 78 FR 56741 (September 18, 2013).

QPAMs will not be able to rely upon the exemptive relief provided by PTE 84-14 for a period of ten years as of the 2016 Conviction Date. Furthermore, the 2016 Conviction will also cause Section I(h) of PTE 2013-09 to be violated, as of the 2016 Conviction Date. UBS QPAMs will become ineligible for the relief provided by PTE 84-14 as a result of both the 2013 Conviction and 2016 Conviction. Therefore, the Applicants request a single, new exemption that provides relief for the UBS QPAMs to rely on PTE 84-14 notwithstanding the 2013 Conviction and the 2016 Conviction, effective as of the 2016 Conviction Date.

28. The Department is proposing a temporary exemption herein to allow the UBS QPAMs to rely on PTE 84-14 notwithstanding the Convictions, subject to a comprehensive suite of protective conditions designed to protect the rights of the participants and beneficiaries of the ERISA-covered plans and IRAs that are managed by UBS QPAMs. This proposed temporary exemption would be effective for twelve months beginning on the 2016 Conviction Date and ending on the earlier of twelve months after such effective date or until the effective date of a final agency action made by the Department in connection with Exemption Application No. D-11907. In this regard, elsewhere in the Federal Register, the Department is proposing Exemption Application No. D-11907, a five-year proposed exemption subject

to enhanced protective conditions that would provide the same exemptive relief that is described herein, but for a longer effective period.

This proposed temporary exemption will allow the Department sufficient time to contemplate whether or not to grant the five-year exemption without risking the sudden loss of exemptive relief for the UBS QPAMs upon entry of a judgment of conviction in Case Number 3:15-00076-RNC.

29. Finally, excluding the Convictions and the FX Misconduct, UBS represents that it currently does not have a reasonable basis to believe there are any pending criminal investigations involving the Applicants or any of their affiliated companies that would cause a reasonable plan or IRA customer not to hire or retain the institution as a QPAM. Furthermore, this proposed temporary exemption will not apply to any other conviction(s) of UBS or its affiliates for crimes described in Section I(g) of PTE 84-14. The Department notes that, in such event, the Applicants and their ERISA-covered plan and IRA clients should be prepared to rely on exemptive relief other than PTE 84-14 for any prohibited transactions entered into after the date of such conviction(s), withdraw from any arrangements that solely rely on PTE 84-14 for exemptive relief; or avoid engaging in any such prohibited transactions in the first place.

*Remedial Measures Taken by UBS to Address the LIBOR Conduct and FX Misconduct*

30. The Applicants represent that UBS took extensive remedial actions and implemented internal control procedures before, during, and after the LIBOR investigations and FX Misconduct, in order to reform its compliance structure and strengthen its corporate culture. UBS represents that it undertook the following structural reforms and compliance enhancements:

Corporate Culture. UBS represents that it has significantly revised and strengthened its Code of Business Conduct and Ethics from approximately 2008 through 2011, and instituted a "Principles of Behavior" program from approximately late 2013 through the present. In 2013, UBS adopted a firm-wide definition of "conduct risk," and defined the roles and responsibilities of UBS's business divisions with respect to such conduct risk. In 2013 UBS also enhanced employee supervision policies.

Annual Risk Assessments. Beginning in approximately 2008, UBS instituted annual business and operational risk assessments for each UBS sub-division and for particular risks across the firm, such as fraud risk and market risk.

### Coordination of High-Risk Matters and Compliance

Reorganization. During 2011 through 2013, UBS established the cross-functional Investigation Sounding Board (ISB) chaired by UBS's Global Head of Litigation and Investigations, which oversees and coordinates all investigations of high risk issues. In 2013, UBS integrated its compliance function and operational risk control functions to avoid gaps in risk coverage.

Transactional and Employee Monitoring. In 2013, UBS adopted and began to implement an automated system to monitor transactions covering all asset classes. UBS enhanced the monitoring of all e-mail and group messaging, and implemented a system to monitor audio communications including land lines and cell phones. UBS implemented a trader surveillance system, and developed and implemented a tool to monitor and assess employee behavioral indicators. UBS also expanded cross border monitoring, and improved the processes associated with the UBS Group's whistleblowing policy.

Compensation Reformation. From approximately 2008 through 2011, UBS reformed its compensation and incentives structure, including longer deferred compensation periods, greater claw-back and forfeiture provisions. UBS enhanced processes to ensure that disciplinary sanctions and compliance related violations (such as failure to complete training) are considered

when determining employee compensation and in an individual's performance review.

Corporate Reforms. In October 2012, UBS announced a transformation of the Investment Bank - where the LIBOR and FX Misconduct occurred - by reducing the size and complexity of the Investment Bank to ensure it can operate within strict risk and financial resource limitations.

Benchmark Interest Rate Submissions. From 2011 through 2013, UBS created a dedicated, independent benchmark submissions team and index group segregated from the for-profit activities of the bank. UBS also imposed appropriate communications firewalls between those functions of the bank, and implemented strict controls and procedures for determining benchmark submissions. UBS enhanced supervisory oversight of benchmark and indices submissions, and implemented appropriate monitoring systems to identify unsubstantiated submissions.

Risk Management and Control. In 2013, UBS adopted or strengthened firm-wide policies that set forth and established: standards for market conduct; a "zero tolerance" approach to fraud; standard approaches for fraud risk management and issue escalation across the firm; a firm-wide approach to identifying, managing, and escalating actual and potential conflicts of interest; and key principles to ensure that UBS complies with all applicable competition laws.

Front Office Processes. UBS invested approximately \$100 million to address the FX business conduct and control deficiencies identified during the FX investigation, including initiating continuous transaction monitoring and detailed time stamping of orders and implementing controls, principles and systems similar to those required by the regulated markets for its FX business. UBS states that it has: standardized the FX fixing order process; updated chatroom standards and controls; prohibited the use of mobile phones on trading floors; implemented new requirements for client and market conduct, behavior, and communications; established enhanced supervisory procedures; and required all Investment Bank personnel to take market conduct training.

31. Furthermore, the Applicants represent that UBS took disciplinary action against forty-four individuals in connection with the LIBOR misconduct, and against sixteen individuals in connection with the FX Misconduct. The individuals involved in the disciplinary actions included traders, benchmark submitters, compliance personnel, salespeople and managers. The disciplinary actions encompassed the termination or separation of thirty employees and also included financial consequences, such as forfeiture of deferred compensation, loss of bonuses and bonus reductions.

*Statutory Findings - In the Interest of Affected ERISA Plans and IRAs*

32. The Applicants represent that the requested exemption is in the interest of affected plans and their participants and beneficiaries because it will enable ERISA plan and IRA clients to have the opportunity to enter into transactions that are beneficial to the plan and may otherwise be prohibited or more costly. The Applicants maintain that if the exemption request is denied, the UBS QPAMs will be unable to cause ERISA-covered plan clients to engage in many routine and standard transactions that occur across many asset classes. According to the Applicants, these transactions encompass the following asset classes:

Real Estate. UBS QPAMs manage approximately \$1.4 billion of real estate assets in a separate account as an ERISA section 3(38) investment manager for a large multiemployer pension plan with many participating employers (and therefore, numerous parties in interest). The investments constitute equity and debt investments in operating real properties, including apartments, office buildings, retail centers, and industrial buildings. The Applicants represent that they rely on PTE 84-14 for the acquisitions of properties in the separate account, as well as mortgage loans entered into in connection with the purchases of the properties; leases of space in commercial

properties and residential leases in apartment properties; property management agreements and agreements with vendors providing services at the properties (e.g. janitorial services); and sales to potential buyers of the properties.

Alternative Investments. The UBS QPAMs manage three hedge funds of funds that hold assets deemed to constitute "plan assets" under ERISA, with approximately \$825 million under management. The Applicants state that they rely on PTE 84-14 to enter into and manage the credit facilities totaling approximately \$56 million entered into by the funds.

Derivatives. The UBS QPAMs manage approximately \$8.3 billion of assets for ERISA plan separate account clients and plan assets funds whose investment guidelines permit or require investment in derivatives contracts documented through International Swaps and Derivatives Association, Inc. (ISDA) agreements or cleared swap agreements. According to the Applicants, approximately 12 ERISA plan separate account clients and 23 plan asset funds are counterparties to ISDA umbrella agreements and cleared swaps account agreements, and the UBS QPAMs currently manage approximately 350 separate trading lines on behalf of those clients and funds. According to the Applicants, PTE 84-14 is primarily relied upon for these transactions, and the counterparties to these agreements almost

always require representations to such effect to be included in the agreements.

Fixed Income. The Applicants state that, as a result of regulatory proposals by the Financial Regulatory Authority (FINRA) and the Federal Reserve of New York Treasury Markets Practice Group, Master Securities Forward Transaction Agreements (MSFTAs) are beginning to be required to be in place in order to enter into several broad categories of agency mortgage-backed securities transactions. According to the Applicants, similar to ISDAs, the counterparties to MSFTAs universally require UBS QPAMs to represent that they can rely on PTE 84-14, making it impossible for the UBS QPAMs to execute such transactions on behalf of their ERISA plan and IRA clients. The UBS QPAMs manage approximately \$5.3 billion of assets for ERISA separate account clients and plan asset funds whose investment guidelines permit these types of transactions, of which approximately \$25 million has been invested in these types of fixed income transactions.

Equity Investments. The Applicants state that, although direct investments in equities typically do not require reliance on PTE 84-14, certain related transactions do, such as futures contracts. Moreover, according to the Applicants, even when another exemption is available for equity investments, ERISA plan and IRA clients may not want to retain an investment

manager that cannot rely on PTE 84-14 for the reasons discussed above.

OCIO Services. The Applicants explain that in addition to providing investment management services, the UBS QPAMs also provide outsourced chief investment officer (OCIO) services to a number of ERISA plan clients, one of which, to the Applicants knowledge, is the largest ERISA plan to enter into an OCIO arrangement. According to the Applicants, OCIO services generally provide that UBS has the authority to manage a plan's entire investment portfolio, including selecting and negotiating contracts with other investment managers, allocating assets, developing investment policies, assisting with regulatory reporting, and advising plan fiduciaries. The Applicants represent that PTE 84-14 is the only exemption the UBS QPAMs can rely on for the large OCIO ERISA plan client because no other exemptions are available for transactions involving futures, derivatives, and other investments that are not widely-traded.

33. The Applicants represent that, if the exemption request is denied, and ERISA plan and IRA clients leave the UBS QPAMs, these clients would typically incur transition costs associated with identifying appropriate replacement investment managers and liquidating and re-investing the assets currently managed by the UBS QPAMs. The Applicants estimate that the aggregate transition costs for liquidating and re-investing of

each asset class for UBS's ERISA plan and IRA clients would be approximately \$280 million.<sup>19</sup> These cost estimates are described below:

Real Estate. The Applicants estimate transition costs of 1,152 basis points for the \$1.4 billion of ERISA plan and IRA real estate assets under UBS QPAMs' management. These costs include the losses incurred from selling properties for 90 cents on the dollar, closing costs of 1.5 percent of the sale price and mortgage prepayment fees of one percent of the outstanding mortgages. This would result in a total estimated cost of \$160 million for the real estate assets, all of which would be absorbed by one ERISA plan client.

Alternative Investments. UBS states that, combined with early redemption penalties,<sup>20</sup> the cost of liquidating the

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<sup>19</sup> The Applicants state that the estimates that UBS developed do not assume a "fire sale" of any assets; rather, they assume that assets would be liquidated quickly as reasonably possible consistent with the UBS QPAMs' fiduciary obligations to their ERISA plan clients.

<sup>20</sup> The Department notes that, if this temporary exemption is granted, compliance with the condition in Section I(j) of the exemption would require the UBS QPAMs to clearly demonstrate that any "early redemption penalties" are "specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors...." In addition, under Section I(j), the UBS QPAMs would have to hold their plan customers harmless for any losses

alternative investments managed by UBS QPAMs on behalf of ERISA-covered plans and IRAs would be 212 basis points of the NAV for a total cost of about \$69 million (of which approximately \$58 million would be to one ERISA plan client).

Fixed Income. According to the Applicants, the approximate transition costs for liquidating domestic and international fixed income investments is estimated by the Applicants to be \$48 million. The Applicants explain that they estimated the costs of liquidating domestic and international bonds using Barclays Capital's "liquidity cost score" methodology (LCS), which reflects the percentage of a bond's price that is estimated to be incurred in transaction costs in a standard institutional transaction. The Applicants note that the LCS is primarily driven by the liquidity of the market, but is also impacted by other factors, including the time to maturity for the bond. Using LCS, the Applicants state that liquidating and re-investing fixed income products, emerging market debt securities, and fixed income funds would result in transition costs, respectively, of 94, 91, and 97 basis points.<sup>21</sup>

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attributable to, inter alia, any prohibited transactions or violations of the duty of prudence and loyalty.

<sup>21</sup> The Applicants assume that the costs of liquidating and re-investing cash equivalent and currency holdings would be negligible, given the liquidity associated with those assets.

Equities. The Applicants state that UBS' investment professionals conducted trading simulations to determine the impact of selling the aggregate block of each class of equity securities currently held by the UBS QPAMs on behalf of their clients. According to the Applicants, the trading simulations yielded transition cost assumptions of 32 basis points for U.S. large-cap equities; 79 basis points for U.S. small-cap equities; 19 basis points for global equities; 40 basis points for emerging market equities; and 17 basis points for equity funds. The Applicants represent that the total estimated costs for liquidating equities held by UBS QPAMs' ERISA plan and IRA clients would be approximately \$2.5 million.

Derivatives. Lastly, the Applicants estimate the transition costs for derivative investments such as swaps, forwards, futures, and options would be approximately \$2.3 million. The Applicants also used the LCS methodology to arrive at a transition cost assumption of 10 basis points for credit default swaps; 6 basis points for interest rate swaps; 35 basis points for total return swaps; and 4 basis points for fixed income futures. Transition costs for equities futures were assumed to be 6 basis points given the liquidity of the indices underlying those transactions. Finally, the Applicants note that, because of the liquidity associated with currency forwards and the relatively small amount of the UBS QPAMs' investments in equity

and fixed income options, UBS assumed that the costs of liquidating and re-investing those assets would be negligible.

OCIO Relationship. In the absence of granted relief, the Applicants estimate that it would take this large OCIO ERISA plan client 18 to 24 months to find providers to replicate all the OCIO services provided by the UBS QPAMs. UBS represents that this estimate is consistent with the following projections for the steps this plan client would need to take to secure and fully implement replacement OCIO services: (i) 6-9 months to issue a Request for Proposals, receive and evaluate proposals, and select a new service provider(s); (ii) 3-6 months to negotiate a contract and complete other necessary transition tasks (e.g., establishing custodial accounts) with the new service provider(s); and (iii) 9-12 months for the new service provider(s) to implement its own investment program, which would include evaluating the client's existing investments and performing due diligence on existing sub-managers. The Applicants note that the estimate is also consistent with the amount of time it took UBS to establish the current OCIO relationship with this client.

The Applicants represents in addition to these transition costs, the ERISA plan client would pay substantially more in fees than it is currently paying if it had to obtain all these

services from a variety of different providers.

*Statutory Findings - Protective of the Rights of Participants of Affected Plans and IRAs*

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

35. Several of these conditions underscore the Department's understanding, based on the Applicants' representations, that the affected UBS QPAMs were not involved in the FX Misconduct or the misconduct that is the subject of the Convictions. For example, the temporary exemption, if granted as proposed, mandates that the UBS QPAMs (including their officers, directors, agents other than UBS, and employees of such UBS QPAMs) did not know of, have reason to know of, or participate in: (1) the FX Misconduct; or (2) the criminal conduct that is the subject of the Convictions. For purposes of this requirement, "participate in" includes an individual's knowing or tacit approval of the FX Misconduct and the misconduct that is the subject of the Convictions. Under this the proposed

temporary exemption, the term "Convictions" includes the 2013 Conviction and the 2016 Conviction. The term "2013 Conviction" means the judgment of conviction against UBS Securities Japan Co. Ltd. in Case Number 3:12-cr-00268-RNC in the U.S. District Court for the District of Connecticut for one count of wire fraud in violation of Title 18, United States Code, sections 1343 and 2 in connection with submission of YEN London Interbank Offered Rates and other benchmark interest rates. The term "2016 Conviction" means the anticipated judgment of conviction against UBS AG in Case Number 3:15-cr-00076-RNC in the U.S. District Court for the District of Connecticut for one count of wire fraud in violation of Title 18, United States Code, Sections 1343 and 2 in connection with UBS's submission of Yen London Interbank Offered Rates and other benchmark interest rates between 2001 and 2010. Furthermore, for all purposes under the proposed temporary exemption, "conduct" of any person or entity that is the "subject of [a] Conviction" encompasses any conduct of UBS and/or their personnel, that is described in the Plea Agreement, (including Exhibits 1 and 3 attached thereto), the plea agreement entered into between UBS Securities Japan and the Department of Justice Criminal Division, on December 19, 2012, in connection with Case Number 3:12-cr-00268-RNC the December 19, 2012 (and attachments thereto), and other official regulatory or judicial factual findings that are a part

of this record. The proposed temporary exemption defines the FX Misconduct as the conduct engaged in by UBS personnel described in Exhibit 1 of the Plea Agreement entered into between UBS AG and the Department of Justice Criminal Division, on May 20, 2015 in connection with Case Number 3:15-cr-00076-RNC filed in the US District Court for the District of Connecticut.

36. Further, the UBS QPAMs (including their officers, directors, agents other than UBS, and employees of such UBS QPAMs) may not have received direct compensation, or knowingly have received indirect compensation, in connection with: (1) the FX Misconduct; or (2) the criminal conduct that is the subject of the Convictions.

37. The Department expects the UBS QPAMs to rigorously ensure that the individuals associated with the misconduct will not be employed or knowingly engaged by such QPAMs. In this regard, the proposed temporary exemption mandates that the UBS QPAMs will not employ or knowingly engage any of the individuals that participated in: (1) the FX Misconduct or (2) the criminal conduct that is the subject of the Convictions. For purposes of this condition, "participated in" includes an individual's knowing or tacit approval of the behavior that is the subject of the FX Misconduct or the Convictions. Further, a UBS QPAM will not use its authority or influence to direct an "investment fund" (as defined in Section VI(b) of PTE 84-14) that is subject

to ERISA or the Code and managed by such UBS QPAM to enter into any transaction with UBS or UBS Securities Japan, nor otherwise engage UBS or UBS Securities Japan to provide additional services to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or services may otherwise be within the scope of relief provided by an administrative or statutory exemption.

38. The UBS QPAMs must comply with each condition of PTE 84-14, as amended, with the sole exceptions of the violations of Section I(g) of PTE 84-14 that are attributable to the Convictions. Further, any failure of the UBS QPAMs to satisfy Section I(g) of PTE 84-14 must result solely from the Convictions.

39. No relief will be provided by this proposed temporary exemption to the extent a UBS QPAM exercised its authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA) in a manner that it knew or should have known would: further the FX Misconduct or the criminal conduct that is the subject of the Convictions; or cause the UBS QPAM, its affiliates or related parties to directly or indirectly profit from the FX Misconduct or the criminal conduct that is the subject of the Convictions. The conduct that is the subject of the Convictions includes that which is described in the Plea Agreement (including Exhibits 1

and 3 attached thereto) and the plea agreement entered into between UBS Securities Japan and the Department of Justice Criminal Division, on December 19, 2012, in connection with Case Number 3:12-cr-00268-RNC (and attachments thereto). The FX Misconduct engaged in by UBS personnel includes that which is described in Exhibit 1 of the Plea Agreement (Factual Basis for Breach) entered into between UBS AG and the Department of Justice Criminal Division, on May 20, 2015 in connection with Case Number 3:15-cr-00076-RNC filed in the US District Court for the District of Connecticut. Further, no relief will be provided to the extent UBS, or UBS Securities Japan, provides any discretionary asset management services to ERISA-covered plans or IRAs or otherwise act as a fiduciary with respect to ERISA-covered plan or IRA assets.

40. Policies. The Department believes that robust policies and training are warranted where, as here, extensive criminal misconduct has occurred within a corporate organization that includes one or more QPAMs managing plan investments in reliance on PTE 84-14. Therefore, this proposed temporary exemption requires that each UBS QPAM must immediately develop, implement, maintain, and follow written policies and procedures (the Policies) requiring and reasonably designed to ensure that: the asset management decisions of the UBS QPAM are conducted independently of the management and business activities of UBS,

including the Investment Bank division and UBS Securities Japan; the UBS QPAM fully complies with ERISA's fiduciary duties and ERISA and the Code's prohibited transaction provisions and does not knowingly participate in any violations of these duties and provisions with respect to ERISA-covered plans and IRAs; the UBS QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs; any filings or statements made by the UBS QPAM to regulators, including but not limited to, the Department of Labor, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA-covered plans or IRAs are materially accurate and complete, to the best of such QPAM's knowledge at that time; the UBS QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plan and IRA clients; and the UBS QPAM complies with the terms of this proposed temporary exemption. Any violation of, or failure to comply with, the Policies must be corrected promptly upon discovery, and any such violation or compliance failure not promptly corrected must be reported, upon discovering the failure to promptly correct, in writing, to appropriate corporate officers, the head of

Compliance and the General Counsel of the relevant UBS QPAM (or their functional equivalent), the independent auditor responsible for reviewing compliance with the Policies, and an appropriate fiduciary of any affected ERISA-covered plan or IRA that is independent of UBS.<sup>22</sup> A UBS QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance promptly when discovered or when it reasonably should have known of the noncompliance (whichever is earlier), and provided that it reports such instance of noncompliance as explained above.

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

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<sup>22</sup> With respect to any ERISA-covered plan or IRA sponsored by an "affiliate" (as defined in Part VI(d) of PTE 84-14) of UBS or beneficially owned by an employee of UBS or its affiliates, such fiduciary does not need to be independent of UBS.

proposed temporary exemption (including the loss of the exemptive relief provided herein), and prompt reporting of wrongdoing. Furthermore, the Training must be conducted by an independent professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code.

42. Independent Transparent Audit. The Department views a rigorous, transparent audit that is conducted by an independent party as essential to ensuring that the conditions for exemptive relief described herein are followed by the UBS QPAMs. Therefore, Section I(i) of this proposed temporary exemption requires that each UBS QPAM submits to an audit conducted by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and the UBS QPAM's compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. The audit must cover the twelve month period which begins on the date of the 2016 Conviction, and must be completed no later than six (6) months after the end of the twelve (12) month period. For time periods prior to the Conviction Date and covered under PTE 2013-09, the audit requirements in Section (g) of PTE 2013-09 will remain in effect.

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

44. The auditor's engagement must specifically require the auditor to determine whether each UBS QPAM has complied with the Policies and Training conditions described herein, and must further require the auditor to test each UBS QPAM's operational compliance with the Policies and Training.

45. On or before the end of the relevant period described in Section I(i)(1) for completing the audit, the auditor must issue a written report (the Audit Report) to UBS and the UBS QPAM to which the audit applies that describes the procedures performed by the auditor during the course of its examination. The Audit Report must include the auditor's specific determinations regarding: the adequacy of the UBS QPAM's Policies and Training; the UBS QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective UBS QPAM's noncompliance with the written Policies and Training.

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

46. Furthermore, the auditor must notify the respective UBS QPAM of any instance of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date. This proposed temporary exemption requires that certain senior personnel of UBS review the Audit Report, make certain certifications, and take various corrective actions. In this regard, the General Counsel, or one of the three most senior executive officers of the UBS QPAM to

which the Audit Report applies, must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this proposed temporary exemption; addressed, corrected, or remedied any inadequacy identified in the Audit Report; and determined that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this proposed temporary exemption and with the applicable provisions of ERISA and the Code.

47. The Risk Committee, the Audit Committee, and the Corporate Culture and Responsibility Committee of UBS's Board of Directors are provided a copy of each Audit Report; and a senior executive officer of UBS's Compliance and Operational Risk Control function must review the Audit Report for each UBS QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report. In order to create a more transparent record in the event that the proposed temporary relief is granted, each UBS QPAM must provide its certified Audit Report to the Department no later than 45 days following its completion. The Audit Report will be part of the public record regarding this proposed temporary exemption. Furthermore, each UBS QPAM must make its Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, other relevant

regulators, and any fiduciary of an ERISA-covered plan or IRA, the assets of which are managed by such UBS QPAM.

48. Additionally, each UBS QPAM and the auditor must submit to the Department any engagement agreement entered into pursuant to the engagement of the auditor under this proposed temporary exemption; and any engagement agreement entered into with any other entity retained in connection with such QPAM's compliance with the Training or Policies conditions of this proposed temporary exemption no later than six (6) months after the date of the Conviction Date (and one month after the execution of any agreement thereafter). Finally, if the temporary exemption is granted, the auditor must provide the Department, upon request, all of the workpapers created and utilized in the course of the audit, including, but not limited to: the audit plan; audit testing; identification of any instance of noncompliance by the relevant UBS QPAM; and an explanation of any corrective or remedial action taken by the applicable UBS QPAM.

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

of making the determinations required of this proposed temporary exemption.

49. Contractual Obligations. This proposed temporary exemption requires UBS QPAMs to enter into certain contractual obligations in connection with the provision of services to their clients. It is the Department's view that the condition in Section I(j) is essential to the Department's ability to make its findings that the proposed temporary exemption is protective of the rights of the participants and beneficiaries of ERISA-covered plan and IRA clients. In this regard, effective as of the Conviction Date, with respect to any arrangement, agreement, or contract between a UBS QPAM and an ERISA-covered plan or IRA for which a UBS QPAM provides asset management or other discretionary fiduciary services, each UBS QPAM agrees: to comply with ERISA and the Code, as applicable with respect to such ERISA-covered plan or IRA; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions); to comply with the standards of prudence and loyalty set forth in section 404, as applicable; and to indemnify and hold harmless the ERISA-covered plan and IRA for any damages resulting from a UBS QPAM's violation of applicable laws, a UBS QPAM's breach of contract, or any claim brought in connection with the failure of such UBS QPAM to qualify for the exemptive relief provided by

PTE 84-14 as a result of a violation of Section I(g) of PTE 84-14 other than the Convictions. Furthermore, UBS QPAMs must agree not to require (or otherwise cause) the ERISA-covered plan or IRA to waive, limit, or qualify the liability of the UBS QPAM for violating ERISA or the Code or engaging in prohibited transactions; not to require the ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the UBS QPAM for violating ERISA or engaging in prohibited transactions, except for violations or prohibited transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of UBS; not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the UBS QPAM (including any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM), with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors as a result of an actual lack of liquidity of the underlying assets, provided that such restrictions are applied consistently and in like manner to all such investors; not to impose any fees, penalties, or charges for such termination or

withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors; and not to include exculpatory provisions disclaiming or otherwise limiting liability of the UBS QPAMs for a violation of such agreement's terms, except for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of UBS.

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

51. Certain conditions of the proposed temporary exemption are directed UBS and UBS Securities Japan. In this regard, UBS must impose internal procedures, controls, and protocols on UBS Securities Japan to: (1) reduce the likelihood of any recurrence of conduct that that is the subject of the 2013 Conviction, and (2) comply in all material respects with the Business

Improvement Order, dated December 16, 2011, issued by the Japanese Financial Services Authority. Additionally, UBS must comply in all material respects with the audit and monitoring procedures imposed on UBS by the United States Commodity Futures Trading Commission Order, dated December 19, 2012.

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

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

*Statutory Findings—Administratively Feasible*

54. The Applicants represents that the proposed temporary exemption is administratively feasible because it does not

require any monitoring by the Department but relies on an independent auditor to determine that the exemption conditions are being complied with. Furthermore, the requested temporary exemption does not require the Department's oversight because, as a condition of this proposed temporary exemption, neither UBS nor UBS Securities Japan will provide any fiduciary or QPAM services to ERISA covered plans and IRAs.

#### NOTICE TO INTERESTED PERSONS

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

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

#### 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 temporary exemption 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 temporary exemption will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction which is the subject of the exemption.

#### PROPOSED TEMPORARY EXEMPTION

The Department is considering granting a temporary exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act), and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011).<sup>23</sup>

#### Section I: Covered Transactions

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<sup>23</sup> For purposes of this proposed temporary exemption, references to section 406 of Title I of the Act, unless otherwise specified, should be read to refer as well to the corresponding provisions of section 4975 of the Code.

If the proposed temporary exemption is granted, certain entities with specified relationships to UBS, AG (hereinafter, the UBS QPAMs as further defined in Section II(b)) shall not be precluded from relying on the exemptive relief provided by Prohibited Transaction Exemption 84-14 (PTE 84-14),<sup>24</sup> notwithstanding the "2013 Conviction" against UBS Securities Japan Co., Ltd. entered on September 18, 2013 and the "2016 Conviction" against UBS AG scheduled to be entered on November 29, 2016 (collectively the Convictions, as further defined in Section II(a)),<sup>25</sup> for a period of up to twelve months beginning on the Conviction Date (as defined in Section II(d)), provided that the following conditions are satisfied:

(a) The UBS QPAMs (including their officers, directors, agents other than UBS, and employees of such UBS QPAMs) did not know of, have reason to know of, or participate in: (1) the FX Misconduct; or (2) the criminal conduct that is the subject of

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<sup>24</sup> 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).

<sup>25</sup> Section I(g) of PTE 84-14 generally provides that "[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of" certain criminal activity therein described.

the Convictions (for the purposes of this Section I(a), "participate in" includes the knowing or tacit approval of the FX Misconduct or the misconduct that is the subject of the Convictions);

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

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

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

scope of relief provided by an administrative or statutory exemption;

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

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

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

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

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

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

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

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

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

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

(vii) Any violation of, or failure to comply with, an item in subparagraph (ii) through (vi), is corrected promptly upon discovery, and any such violation or compliance failure not

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

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

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

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

(i) (1) Each UBS QPAM submits to an audit conducted by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and the UBS QPAM's compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. The audit must cover the twelve month period that begins on the Conviction Date, and must be completed no later than six (6) months after the twelve month period. For time periods prior to the Conviction Date and covered under PTE 2013-09, the audit requirements in Section (g) of PTE 2013-09 will remain in effect;

(2) To the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions

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

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

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

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

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

(6) The auditor must notify the respective UBS QPAM of any instance of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the

auditor, regardless of whether the audit has been completed as of that date;

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

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

(9) Each UBS QPAM must provide its certified Audit Report, by regular mail to: the Department's Office of Exemption Determinations (OED), 200 Constitution Avenue NW, Suite 400, Washington DC 20210, or by private carrier to: 122 C Street, NW, Suite 400, Washington, DC 20001-2109, no later than 45 days

following its completion. The Audit Report will be part of the public record regarding this temporary exemption. Furthermore, each UBS QPAM must make its Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of an ERISA-covered plan or IRA, the assets of which are managed by such UBS QPAM;

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

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

(12) UBS must notify the Department at least 30 days prior to any substitution of an auditor, except that no such replacement will meet the requirements of this paragraph unless

and until UBS demonstrates to the Department's satisfaction that such new auditor is independent of UBS, experienced in the matters that are the subject of the temporary exemption and capable of making the determinations required of this temporary exemption;

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

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

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

(3) Not to require the ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the UBS QPAM for violating ERISA or engaging in prohibited transactions, except for violations or prohibited

transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of UBS;

(4) Not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the UBS QPAM (including any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM), with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors as a result of an actual lack of liquidity of the underlying assets, provided that such restrictions are applied consistently and in like manner to all such investors;

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

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

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

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

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

(l) UBS imposes its internal procedures, controls, and protocols on UBS Securities Japan to: (1) reduce the likelihood of any recurrence of conduct that that is the subject of the

2013 Conviction, and (2) comply in all material respects with the Business Improvement Order, dated December 16, 2011, issued by the Japanese Financial Services Authority;

(m) 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;

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

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

(p) A UBS QPAM will not fail to meet the terms of this proposed temporary exemption solely because a different UBS QPAM

fails to satisfy a condition for relief under this proposed temporary exemption described in Sections I(c), (d), (h), (i), (j), (k), and (n).

## Section II: Definitions

(a) The term "Convictions" means the 2013 Conviction and the 2016 Conviction. The term "2013 Conviction" means the judgment of conviction against UBS Securities Japan Co. Ltd. in Case Number 3:12-cr-00268-RNC in the U.S. District Court for the District of Connecticut for one count of wire fraud in violation of Title 18, United States Code, sections 1343 and 2 in connection with submission of YEN London Interbank Offered Rates and other benchmark interest rates. The term "2016 Conviction" means the anticipated judgment of conviction against UBS AG in Case Number 3:15-cr-00076-RNC in the U.S. District Court for the District of Connecticut for one count of wire fraud in violation of Title 18, United States Code, Sections 1343 and 2 in connection with UBS's submission of Yen London Interbank Offered Rates and other benchmark interest rates between 2001 and 2010. For all purposes under this proposed temporary exemption, "conduct" of any person or entity that is the "subject of [a] Conviction" encompasses any conduct of UBS and/or their personnel, that is described in the Plea Agreement, (including Exhibits 1 and 3 attached thereto), and other official

regulatory or judicial factual findings that are a part of this record

(b) The term "UBS QPAM" means UBS Asset Management (Americas) Inc., UBS Realty Investors LLC, UBS Hedge Fund Solutions LLC, UBS O'Connor LLC, and any future entity within the Asset Management or the Wealth Management Americas divisions of UBS AG that qualifies as a "qualified professional asset manager" (as defined in Section VI(a)<sup>26</sup> of PTE 84-14) and that relies on the relief provided by PTE 84-14 and with respect to which UBS AG is an "affiliate" (as defined in Part VI(d) of PTE 84-14). The term "UBS QPAM" excludes the parent entity, UBS AG and UBS Securities Japan.

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

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

(e) The term "FX Misconduct" means the conduct engaged in by UBS personnel described in Exhibit 1 of the Plea Agreement (Factual Basis for Breach) entered into between UBS AG and the

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<sup>26</sup> 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.

Department of Justice Criminal Division, on May 20, 2015 in connection with Case Number 3:15-cr-00076-RNC filed in the US District Court for the District of Connecticut.(f) The term "UBS Securities Japan" means UBS Securities Japan Co. Ltd, a wholly-owned subsidiary of UBS incorporated under the laws of Japan.

(g) The term "Plea Agreement" means the Plea Agreement (including Exhibits 1 and 3 attached thereto) entered into between UBS AG and the Department of Justice Criminal Division, on May 20, 2015 in connection with Case Number 3:15-cr-00076-RNC filed in the US District Court for the District of Connecticut.

Signed at Washington, DC, this 10th day of November, 2016.

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

[FR Doc. 2016-27564 Filed: 11/16/2016 8:45 am; Publication Date: 11/17/2016]