



DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Exemption Application No. D-11988]

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 Global Wealth Management U.S. 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, Labor

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains notice of pendency before the Department of Labor (the Department) of a proposed temporary one-year individual exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). If this proposed exemption is granted, certain entities with specified relationships to UBS will not be precluded from

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

DATES: If there is a judgment in the French First Instance Court against UBS and/or UBS France and that judgment constitutes a conviction under Section I(g) of PTE 84-14, this exemption will be in effect for one year from the date of that judgment.

Written comments and requests for a public hearing on the proposed exemption should be submitted to the Department by [insert date three days after date of publication in Federal Register].

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 hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, U.S. Department of Labor, 200 Constitution Avenue, N.W., Suite 400, Washington, D.C. 20210. Attention: Application No. D-11988. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: e-OED@dol.gov, or by FAX to (202) 693-8474 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 Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1515, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Warning: All comments 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> website 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 at (202) 693-8402. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In March 2017, UBS and UBS France were charged with offenses under French law arising out of their cross-border banking business. A trial was held in 2018, and the French court announced that it would issue a judgment on February 20, 2019. This judgment (the Potential 2019 French Judgment Against UBS/UBS France) may be adverse to UBS and/or UBS France. UBS recently requested that the Department issue an advisory opinion that an adverse judgment from the French court would not disqualify UBS asset managers from acting as QPAMs under PTE 84-14 (described below) pursuant to the criminal disqualification set forth in Section I(g) of PTE 84-14. UBS requested that, if the Department was not prepared to issue the opinion, the Department issue a temporary exemption. The Department may not issue an Advisory Opinion before

possible conviction and is proposing this temporary exemption.

Certain UBS affiliates are acting as QPAMs pursuant to an individual exemption granted on December 29, 2017, which addresses prior convictions.¹ This proposal uses the term "Potential 2019 French Judgment Against UBS/UBS France" to describe an adverse judgment issued by a French court regarding case Number 1105592033. The Department is proposing this exemption to protect plans and IRAs that use UBS asset managers, from the costs and expenses that may arise in that instance, as represented by the Applicant. The temporary nature of this exemption gives the Department the opportunity to determine whether a longer term exemption is necessary and/or appropriate, including whether additional conditions are warranted.

Comments received in response to this proposed one year temporary exemption will also be considered in connection with the Department's determination whether or not to grant any subsequent exemption. No relief from a violation of any other law would be provided by this exemption. Furthermore, the Department cautions that the relief in this exemption would terminate immediately if,

¹ See PTE 2017-07, 82 FR 61916 (December 29, 2017).

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 2013 Conviction, 2018 Conviction, and the Potential 2019 French Judgment Against UBS/UBS France) or is convicted in a foreign jurisdiction for a crime described in Section I(g) of PTE 84-14, during the Exemption Period.

While an entity could apply for a new exemption in that circumstance, the Department would not be obligated to grant the exemption. The terms of this proposed exemption have been specifically designed to permit Covered Plans, defined below, 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 Covered Plan to terminate its relationship with an entity covered by the proposed exemption.

SUMMARY OF FACTS AND REPRESENTATIONS²

1. UBS AG (UBS) is a Swiss-based global financial services company organized under the laws of Switzerland.

² The Summary of Facts and Representations is based on the Applicants' representations, unless indicated otherwise.

UBS has banking divisions and subsidiaries throughout the world, with its United States headquarters located in New York, New York and Stamford, Connecticut. 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. All ERISA assets are managed by U.S. affiliates of UBS.

2. UBS Asset Management (Americas) Inc., UBS Realty Investors LLC, UBS Hedge Fund Solutions LLC, and UBS O'Connor LLC³ are currently the four UBS affiliates that rely on PTE 84-14. Collectively, these UBS QPAMs have total ERISA assets under management of approximately \$11.5 billion as of June 30, 2018, excluding ERISA assets invested in pooled funds that are not plan asset funds.

3. UBS Securities Japan was previously convicted of a crime that violated PTE 84-14's Section I(g), the anti-criminal provision.⁴ This crime was described in detail

³ UBS Asset Management (Americas) Inc. and UBS Realty Investors LLC are wholly owned by UBS Americas, Inc., a wholly-owned subsidiary of UBS AG. UBS Hedge Fund Solutions LLC (formerly UBS Alternative and Quantitative Investments, LLC) and UBS O'Connor LLC are wholly owned by UBS Americas Holding LLC, a wholly owned subsidiary of UBS AG.

⁴ Section I(g) of PTE 84-14 generally provides that "[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years

in PTE 2013-09 (September 13, 2013). UBS itself was previously convicted of a crime that violated PTE 84-14's Section I(g). That crime was described in detail in PTE 2017-07 (December 29, 2017). Those individual exemptions allowed UBS QPAMs to continue to rely on PTE 84-14, notwithstanding the convictions, as long as a number of conditions were met.

immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of" certain criminal activity therein described.

One of those conditions requires that UBS or any of its affiliates may not be further convicted of a crime described in Section I(g) of PTE 84-14.⁵ In the event of such a conviction, the Applicants would no longer be able to rely on PTE 2017-07, which permits them to avail themselves of PTE 84-14. This exemption, if granted, would provide relief for the UBS QPAMS to rely on PTE 84-14, notwithstanding the 2013 Conviction, the 2018 Conviction, and the Potential 2019 French Judgment Against UBS/UBS France for a one-year period while the Department decides what, if any, additional action is appropriate.

4. Potential 2019 French Judgment Against UBS/UBS France. In 2013, France opened an investigation into UBS, UBS France, and certain former employees of UBS France S.A. The investigation centered on the maintenance of foreign ("cross-border") UBS bank accounts held for private citizens. The investigating judges closed the investigation in February 2016. UBS and UBS France received the National Financial Prosecutor's recommendation ("requisitoire") in July 2016 that charges be filed. The

⁵The 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.

investigating judges issued the trial order ("Ordonnance de renvoi") in March 2017 that set out the precise charges against UBS, UBS France, and the individual former employees. UBS was charged with (1) "illicit solicitation," based on the alleged solicitation of French clients within French territory from 2004-2011 by Swiss-based UBS client advisors without authorization to conduct such business in France; and (2) money laundering, based on UBS's alleged assistance from 2004 to 2012 to French taxpayers in opening bank accounts outside of France to conceal their identities from relevant authorities for the purposes of alleged tax evasion. UBS disputes the charges.

5. The UBS QPAMs represent they are separate entities from the entities involved in alleged misconduct that may lead to the Potential 2019 French Judgment Against UBS/UBS France and none of the UBS QPAMs (including their officers, directors, agents other than UBS, and employees) knew of, had reason to know of, or participated in the alleged conduct that is the subject of the French charges. The UBS QPAMs represent that no UBS QPAMs (including their officers, directors, agents other than UBS, and employees) received direct compensation, or knowingly received indirect compensation, in connection with the alleged

conduct underlying the Potential 2019 French Judgment Against UBS/UBS France. Additionally, the UBS QPAMs represent that no UBS QPAM exercised authority over the assets of any plan in a manner that it knew or should have known would further the alleged conduct underlying the French charges or otherwise cause any UBS QPAMs, their affiliates, or related parties to directly or indirectly profit from the alleged conduct underlying the French charges.

6. The Department notes that the rules set forth in section 406 of ERISA and section 4975(c) of the Code proscribe certain "prohibited transactions" between plans and related parties with respect to those plans, known as "parties in interest."⁶ Under section 3(14) of ERISA, parties in interest with respect to a plan include, among others, the plan fiduciary, a sponsoring employer of the plan, 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

⁶ 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.

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.⁷ Under section 408(a) of ERISA and section 4975(c)(2) of the Code, the Department has the authority to grant exemptions from such "prohibited transactions" in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011).

7. PTE 84-14⁸ exempts certain prohibited transactions between a party in interest and an "investment fund" (as defined in Section VI (b) of PTE 84-14)⁹ 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. PTE 84-14 was developed and granted based on the essential

⁷ 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.

⁸ 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).

⁹ 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.

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.¹⁰ 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, such as felonies arising out of the conduct of the business of a broker, dealer, investment adviser or bank, or income tax evasion.

¹⁰ See 75 FR 38837, 38839 (July 6, 2010).

8. Section 408(a) of ERISA provides, in part, that the Department may not grant an exemption unless the Department finds that such exemption is administratively feasible, in the interest of affected plans and of their participants and beneficiaries, and protective of the rights of such participants and beneficiaries.

9. In the interest of. The Department has tentatively determined that the proposed exemption is in the interests of the participants and beneficiaries of each affected ERISA plan and IRA. It is the Department's understanding, based on representations from the UBS QPAMs, that if the requested exemption were denied, the UBS QPAMs may be unable to effectively manage plan assets subject to ERISA or the prohibited transaction provisions of the Code. The UBS QPAMs state that this would cause client ERISA plans to question the prudence of retaining the UBS QPAMs as a manager of choice and client ERISA plans who otherwise want to retain the UBS QPAMs could feel compelled to find other managers who could manage their assets without having to either forgo transactions or rely on other more complex prohibited transaction exemptions.

The UBS QPAMs have represented that if client ERISA plans were to move to new asset managers they could incur

transition costs including the costs associated with identifying an asset manager (such as the costs and management time required in a Request for Proposal process, consultant fees and other due diligence expenses), brokerage and other transaction costs associated with the sale of portfolio investments to accommodate the investment policies and strategy of the new asset manager, the opportunity costs of holding cash pending investment by the new asset manager, and lost investment opportunities in connection with a change of asset managers. The UBS QPAMs claim that losing the ability to use PTE 84-14 would make it difficult, costly, and impracticable to enter into many transactions that are in the best interests of client plans, reducing plan choices, especially among large institutional financial banks.

The UBS QPAMs represent further that if the requested exemption is not granted, ERISA plan clients may be effectively prohibited from entering into certain transactions, either because no other exemption is available or the counterparty is not willing to enter into the transaction without the protections provided by PTE 84-14. The UBS QPAMs state that these transactions would include those not covered by other exemptions such as a

purchase or sale from a party in interest of a security without a readily ascertainable fair market value. The UBS QPAMs claim that the loss of the ability to utilize PTE 84-14 could significantly delay or even make impossible transactions that would be beneficial for the ERISA plans because other statutory and class prohibited transaction exemptions are not broad enough to cover such routine transactions entered at the direction of the UBS QPAMs. The UBS QPAMs also represent that counterparties could seek to terminate contracts for certain outstanding transactions (including swaps) that require the UBS QPAMs to represent that they are QPAMs and/or utilize PTE 84-14 and additionally, pursuant to these contracts, swap transactions with certain counterparties could automatically and immediately be terminated without any notice or action of such counterparties, even if other prohibited transaction exemptions are available. The UBS QPAMs further claim that such a termination could result in significant losses for the client ERISA plans that would be avoided if the exemption were granted.

10. Protective of. The Department has tentatively determined that the exemption, as proposed, will be protective of the rights of participants and beneficiaries

of affected plans. The proposal is for one year, and has essentially the same conditions as PTE 2017-07.¹¹ However, the Department has determined to revise certain of those conditions so that it can make its required finding that the proposed one-year exemption will be protective of the rights of participants and beneficiaries of affected plans and IRAs and are sufficient to protect plans subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or plans subject to section 4975 of the Code (an IRA), in each case, with respect to which a UBS QPAM relies on PTE 84-14, or with respect to which a UBS QPAM (or any UBS affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84-14) (Covered Plans).¹²

This proposed exemption, if granted, is effective for period of one year from a judgment, if any, against UBS or UBS France by the French First Instance Court in case Number 1105592033. As noted above, relief is necessary to the extent the judgment in the French First Instance Court

¹¹ If longer term relief is warranted, the exemption may contain additional conditions.

¹² For purposes of this exemption, a Covered Plan does not include an ERISA-covered plan or IRA to the extent the UBS QPAM has expressly disclaimed reliance on QPAM status or PTE 84-14 in entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA.

constitutes a conviction under Section I(g) of PTE 84-14. If the Applicant submits an exemption request for longer term relief, and the Department subsequently determines that longer term relief is warranted, the effective period of this exemption will end on the earlier of one year from the date of judgment by the French First Instance Court or the effective date of the subsequent exemption. Several of the conditions are aimed at ensuring that the UBS QPAMs were not involved in the conduct that gave rise to any of the Convictions and the Potential 2019 French Judgment Against UBS/UBS France. Accordingly, the proposal generally precludes relief to the extent the UBS QPAMs and any other party engaged on behalf of such QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets, were aware of, participated in, approved of, furthered, benefitted, or profited from, FX misconduct, the misconduct that is the subject of the 2013 and 2018 Convictions and the Potential 2019 French Judgment Against UBS/UBS France.¹³ Further, the UBS QPAMs may not employ or knowingly engage any of the individuals that participated in the conduct attributable

¹³ For clarity, references to the UBS QPAMs include any individual employed by or engaged to work on behalf of these QPAMs during or after the period of misconduct.

to the Convictions or the Potential 2019 French Judgment Against UBS/UBS France.

The proposal further provides that no UBS QPAM will use its authority or influence to direct an "investment fund" that is subject to ERISA or the Code and managed by such UBS QPAM with respect to one of more Covered Plans, to enter into any transaction with UBS, UBS Securities Japan, or UBS France, or engage UBS, UBS Securities Japan, or UBS France 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.

If granted, the exemption will terminate if UBS or any of its affiliates are convicted of any additional crimes described in Section I(g) of PTE 84-14, or if any of the other conditions of PTE 84-14 have not been met. Also, with very limited exceptions, UBS, UBS Securities Japan, and UBS France may not act as a fiduciary within the meaning of section 3(21)(A)(i) or (iii) of ERISA, or section 4975(e)(3)(A) and (C) of the Code, with respect to ERISA-covered plan and IRA assets.

The proposal requires each UBS QPAM to update,

implement and follow certain written policies and procedures (the Policies). These Policies are similar to the policies and procedures mandated by PTE 2017-07. In general terms, the Policies must require, and must be reasonably designed to ensure that, among other things: the asset management decisions of the UBS QPAMs are conducted independently of the corporate management and business activities of UBS, UBS Securities Japan, and UBS France; the UBS QPAMs fully comply with ERISA's fiduciary duties, and with ERISA and the Code's prohibited transaction provisions; the UBS QPAMs do not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans; any filings or statements made by the UBS QPAMs to regulators, on behalf of or in relation to Covered Plans, are materially accurate and complete; the UBS QPAMs do not make material misrepresentations or omit material information in its communications with such regulators with respect to Covered Plans; or make material misrepresentations or omit material information in its communications with Covered Plans; the UBS QPAMs comply with the terms of this exemption; and any violation of, or failure to comply with any of these items, is corrected as soon as reasonably possible upon discovery, or as soon

after the UBS QPAM reasonably should have known of the noncompliance (whichever is earlier). Any such violation or compliance failure not so corrected must be reported, upon the discovery of such failure to so correct, in writing, to appropriate corporate officers, the head of compliance and the General Counsel (or their functional equivalent), and the independent auditor responsible for reviewing compliance with the Policies and a fiduciary of any affected Covered Plan where such fiduciary is independent of UBS.

This proposal mandates training (Training), which is similar to the training required under PTE 2017-07. In this regard, all relevant UBS QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel must be trained during the Exemption Period. Among other things, the Training must, at a minimum, cover the Policies, ERISA and Code compliance, ethical conduct, the consequences for not complying with the conditions of this exemption (including any loss of exemptive relief provided herein), and the requirement for prompt reporting of wrongdoing. The Training must be conducted by a professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA

and the Code.

Under this proposal, as in PTE 2017-07, each UBS QPAM must submit to an audit conducted by an independent auditor.¹⁴ Among other things, the auditor must test a sample of each UBS QPAM's transactions involving Covered Plans, sufficient in size and nature to afford the auditor a reasonable basis to determine such QPAM's operational compliance with the Policies and Training. The auditor's conclusions cannot be based solely on the Exemption Report created by the Compliance Officer, described below, in lieu of independent determinations and testing performed by the auditor.

The Audit Report must be certified by the General Counsel or one of the three most senior executive officers of the UBS QPAM to which the Audit Report applies. A copy of the Audit Report must be provided to the Risk Committee of UBS's Board of Directors. Among other things, UBS must submit to the Office of Exemption Determinations (OED), any

¹⁴ Audits covering time periods prior to the date of a judgment, if any, against UBS or UBS France by the French First Instance Court must be completed in accordance with the requirements of PTE 2017-07, as applicable. Accordingly, the last audit performed pursuant to PTE 2017-07 will cover the period beginning January 10, 2018 and ending on the date a judgment, if any, is issued against UBS or UBS France by the French First Instance Court. The corresponding Audit Report must be completed within six months of the date of any such judgment and submitted to the Department within 45 days of completion.

engagement agreement with an auditor to perform the audit required under the terms of this exemption that is entered subsequent to the Potential 2019 French Judgment Against UBS/UBS France, no later than two (2) months after the execution of such agreement;

This proposal requires that, as of the date of a judgment, if any, against UBS or UBS France by the French First Instance Court, and throughout the Exemption Period, with respect to any arrangement, agreement, or contract between a UBS QPAM and a Covered Plan, the UBS QPAM must agree and warrant: (i) to comply with ERISA and the Code, as applicable with respect to such Covered Plan; and (ii) to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions). The UBS QPAMs must further agree and warrant to comply with the standards of prudence and loyalty set forth in section 404 of ERISA with respect to each such ERISA-covered plan. Each UBS QPAM must also agree and warrant to indemnify and hold harmless such Covered Plan for any actual losses resulting directly from any of the following: (a) a UBS QPAM's violation of ERISA's fiduciary duties, as applicable, and/or the prohibited transaction provisions of ERISA and the Code, as

applicable; (b) a breach of contract by the UBS QPAM; or (c) 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 Conviction. This condition applies only to actual losses caused by the UBS QPAM. As noted above, the Applicant has identified a wide range of potential harm and costs that may be incurred by plans and IRAs if the UBS QPAMs were no longer able to rely on PTE 84-14. The Department views actual losses arising from unwinding transactions with third parties, and from transitioning Covered Plan assets to third parties, to be "direct" results of violating the terms of this provision.

This exemption contains specific notice requirements. In this regard, by 60 days after the date of a judgment, if any, against UBS or UBS France by the French First Instance Court, each UBS QPAM will provide a notice of the exemption, along with a separate summary describing the facts that led to the Conviction (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) (collectively, Initial Notice) that the Convictions and the Potential 2019 French Judgment Against UBS/UBS France each separately result in a

failure to meet a condition in PTE 84-14 and/or PTE 2017-07, to each sponsor and beneficial owner of a Covered Plan, or the sponsor of an investment fund in any case where a UBS QPAM acts as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests. All prospective Covered Plans that enter into a written asset or investment management agreement with a UBS QPAM on or after the date of the Initial Notice must receive a copy of the exemption, the Summary, and the Statement prior to, or contemporaneously with, the Covered Plan's receipt of a written asset management agreement from the UBS QPAM. The notice requirements shall operate in tandem to ensure that all Covered Plan clients receive either the Initial Notice or a subsequent notice. Disclosures may be delivered electronically.

The proposal requires that each UBS QPAM maintain records necessary to demonstrate that the conditions of this exemption have been met, for six (6) years following the date of any transaction for which such UBS QPAM relies upon the relief in the exemption. The proposal mandates that UBS continue to designate a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements

described herein. The Compliance Officer must conduct an exemption review (the Exemption Review) for the period beginning on the date of a judgment, if any, against UBS or UBS France by the French First Instance Court¹⁵ to determine the adequacy and effectiveness of the implementation of the Policies and Training. The Compliance Officer must be a professional with extensive relevant experience with a reporting line within UBS's Compliance and Operational Risk Control function to the Head of Compliance and Operational Risk Control, Asset Management. At a minimum, the Exemption Review must include review of the following items: (i) any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer during the previous year; (ii) any material change in the relevant business activities of the UBS QPAMs; and (iii) any change to ERISA, the Code, or regulations that may be applicable to the activities of the UBS QPAMs.

¹⁵ Pursuant to PTE 2017-07 the Compliance Officer must conduct and exemption review (annual review) for each period corresponding to the audit periods set forth in Section I(i)(1) of PTE 2017-07 and the Compliance officer's written report submitted to the Department within three (3) months of the end of the period to which it relates. Accordingly, the final exemption review pursuant to PTE 2017-07 must cover the period January 10, 2018 through the date of a judgment, if any, against UBS or UBS France by the French First Instance Court, and the corresponding Compliance Officer's written report must be submitted within three (3) months of the date of such a judgment.

The Compliance Officer must prepare a written report (an Exemption Report) that summarizes his or her material activities during the Exemption Period and sets forth any instance of noncompliance discovered during the Exemption Period, and any related corrective action. In each Exemption Report, the Compliance Officer must certify in writing that to his or her knowledge the report is accurate and the UBS QPAMs have complied with the Policies and Training, and/or corrected (or are correcting) any instances of noncompliance.

The Exemption Report must be provided to the appropriate corporate officers of UBS and each UBS QPAM to which such report relates and to the head of compliance and the General Counsel (or their functional equivalent) of the relevant UBS QPAM. The Exemption Report must be made unconditionally available to the independent auditor. The Exemption Review, including the Compliance Officer's written Exemption Report, must be completed within three (3) months following the end of the period to which it relates.

UBS must also immediately disclose to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) with the U.S. Department of

Justice, entered into by UBS or any of its affiliates (as defined in Section VI(d) of PTE 84-14) in connection with conduct described in Section I(g) of PTE 84-14 or section 411 of ERISA. UBS must also immediately provide the Department with any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement.

The proposal mandates that, among other things, each UBS QPAM clearly and prominently informs Covered Plan clients of their right to obtain a copy of the Policies or a description (Summary Policies) which accurately summarizes key components of the UBS QPAM's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within six (6) months following the end of the calendar year during which the Policies were changed.¹⁶ With respect to this requirement, the description may be continuously maintained on a website, provided that such website link to the Policies or Summary Policies is clearly and prominently disclosed to

¹⁶ In the event Applicant meets this disclosure requirement through Summary Policies, changes to the Policies shall not result in the requirement for a new disclosure unless the Summary Policies are no longer accurate because of the changes.

each Covered Plan.

The proposal requires that UBS QPAMs must comply with each condition of PTE 84-14, as amended, with the sole exception of the violations of Section I(g) of PTE 84-14 that are attributable to the Convictions and the Potential 2019 French Judgment Against UBS/UBS France. If, during the Exemption Period, an entity within the UBS corporate structure is convicted of a crime described in Section I(g) of PTE 84-14, (other than the 2013 Conviction, 2018 Conviction, and the Potential 2019 French Judgment Against UBS/UBS France), or is convicted in a foreign jurisdiction for a crime described in Section I(g) of PTE 84-14, relief in this proposed exemption would terminate immediately.

11. Administratively Feasible. The Department has tentatively determined that the proposal is administratively feasible since, among other things, a qualified independent auditor will be required to perform an in-depth audit covering, among other things, each UBS QPAM's compliance with the exemption, and a corresponding written audit report will be provided to the Department and available to the public.

NOTICE TO INTERESTED PERSONS

Notice to interested persons is by publication of

this notice of proposed temporary one-year exemption in the Federal Register. All written comments and/or requests for a hearing must be received by the Department within three days of the date of publication of this proposed exemption in the Federal Register.

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

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 exemption, if granted, will be

supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

PROPOSED EXEMPTION

The Department is considering granting a one-year temporary exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Internal Revenue Code (or Code), and in accordance with the

procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).¹⁷ Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of proposed exemption is issued solely by the Department.

SECTION I. COVERED TRANSACTIONS

If the proposed one year temporary exemption is granted, certain entities with specified relationships to UBS (hereinafter, the UBS QPAMs, as defined in Sections II(e)) will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84-14 (PTE 84-14 or the QPAM Exemption),¹⁸ notwithstanding the 2013 Conviction of UBS Securities Japan Co., Ltd., the 2018 Conviction of UBS (collectively the Convictions, as defined in Section II(a)), and the Potential 2019 French

¹⁷ For purposes of this proposed one year 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.

¹⁸ 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), hereinafter referred to as "PTE 84-14" or the "QPAM Exemption."

Judgment Against UBS/UBS France (as defined in Section II(b)) during the Exemption Period, provided that the following conditions are satisfied:¹⁹

(a) The UBS QPAMs (including their officers, directors, agents other than UBS, UBS Securities Japan, and UBS France), and employees of such UBS QPAMs and any other party engaged on behalf of such UBS QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not know of, did not have reason to know of, or participate in: (1) the FX Misconduct; (2) the criminal conduct of UBS Securities Japan and UBS that is the subject of the Convictions; or (3) the alleged criminal conduct of UBS and UBS France that is the subject of the Potential 2019 French Judgment Against UBS/UBS France. For purposes of this exemption, "participate in" refers not only to active participation in the FX Misconduct, the misconduct underlying the Convictions, and the alleged misconduct underlying the Potential 2019 French Judgment Against UBS/UBS France, but also to knowing approval of that misconduct, or knowledge

¹⁹Section 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.

of such misconduct without taking active steps to prohibit such conduct, such as reporting the conduct to supervisors, including the Board of Directors;

(b) The UBS QPAMs (including their officers, directors, agents other than UBS, UBS Securities Japan, and UBS France, and employees of such UBS QPAMs and any other parties engaged on behalf of such UBS QPAMs) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the (1) the FX Misconduct; (2) the criminal conduct of UBS Securities Japan and UBS that is the subject of the Convictions; or (3) the alleged criminal conduct of UBS and UBS France that is the subject of the Potential 2019 French Judgment Against UBS/UBS France;

(c) The UBS QPAMs will not employ or knowingly engage any of the individuals that participated in: (1) the FX Misconduct; (2) the criminal conduct of UBS Securities Japan and UBS that is the subject of the Convictions; or (3) the alleged criminal conduct of UBS and UBS France that is the subject of the Potential 2019 French Judgment Against UBS/UBS France;

(d) At all times during the Exemption Period, no UBS QPAM will use its authority or influence to direct an

"investment fund" (as defined in Section VI(b) of PTE 84-14) that is subject to ERISA or the Code and managed by such UBS QPAM with respect to one or more Covered Plans (as defined in Section II(c)) to enter into any transaction with UBS, UBS Securities Japan, or UBS France or to engage UBS, UBS Securities Japan, or UBS France 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 and the Potential 2019 French Judgment Against UBS/UBS France;

(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, the criminal conduct that is the subject of the Convictions, or the alleged criminal conduct that is the subject of the Potential 2019 French Judgment Against UBS/UBS France; or cause the UBS QPAM or its affiliates to directly or indirectly profit from the FX

Misconduct, the criminal conduct that is the subject of the Convictions, or the alleged criminal conduct that is the subject of the Potential 2019 French Judgment Against UBS/UBS France;

(g) Other than with respect to employee benefit plans maintained or sponsored for its own employees or the employees of an affiliate, UBS, UBS Securities Japan, and UBS France will not act as fiduciaries within the meaning of section 3(21)(A)(i) or (iii) of ERISA, or section 4975(e)(3)(A) and (C) of the Code, with respect to ERISA-covered plan and IRA assets; provided, however, that UBS, UBS Securities Japan, and UBS France will not be treated as violating the conditions of this exemption solely because it acted as an investment advice fiduciary within the meaning of section 3(21)(A)(ii) of ERISA or section 4975(e)(3)(B) of the Code;

(h)(1) Each UBS QPAM must continue to maintain, adjust (to the extent necessary), implement, and follow written policies and procedures (the Policies). The Policies must require, and must be 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, UBS Securities Japan, and UBS France; this condition does not preclude a UBS QPAM from receiving publicly available research and other widely available information from a UBS affiliate;

(ii) The UBS QPAM fully complies with ERISA's fiduciary duties, and with ERISA and the Code's prohibited transaction provisions, in each case as applicable with respect to each Covered Plan, and does not knowingly participate in any violation of these duties and provisions with respect to Covered Plans;

(iii) The UBS QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans;

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

(v) To the best of the UBS 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 Covered Plans, or make material misrepresentations or omit material information in its communications with Covered Plans;

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

(2) Any violation of, or failure to comply with an item in subparagraphs (h)(1)(ii) through (h)(1)(vi), is corrected as soon as reasonably possible upon discovery, or as soon after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and any such violation or compliance failure not so corrected is reported, upon the discovery of such failure to so correct, in writing. Such report shall be made to the head of compliance and the General Counsel (or their functional equivalent) of the relevant UBS QPAM that engaged in the violation or failure, and, the independent auditor responsible for reviewing compliance with the Policies, and a fiduciary of any affected Covered Plan where such fiduciary is independent of UBS. Notwithstanding the foregoing, with respect to any Covered Plan 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 as soon as reasonably possible upon discovery, or as soon as reasonably possible after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (vii);

(3) Each UBS QPAM will maintain, adjust (to the extent necessary) and implement a program of training during the Exemption Period, to be conducted during the Exemption Period, for all relevant UBS QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must:

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

(ii) Be conducted by a 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 each 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 Exemption Period and must be completed no later than six (6) months after the end of the exemption period. For time periods ending prior to a judgment, if any, against UBS or UBS France by the French First Instance Court and covered by the audit required pursuant to PTE 2017-07,²⁰ the audit requirements in Section I(i) of PTE 2017-07 will remain in effect. The audit under PTE 2017-07 covering the time period from January 10, 2018 until the date of a judgment, if any, against UBS or UBS France by the French First Instance Court must be completed within six (6) months of the date of any such judgment, and the corresponding certified Audit Report must be submitted to the Department no later than 45 days following the completion of such

²⁰ 82 FR 61903 (December 29, 2017). PTE 2017-07 is an exemption that permits UBS QPAMs to rely on the exemptive relief provided by PTE 84-14, notwithstanding the 2013 and 2018 Convictions.

audit;²¹

(2) Within the scope of the audit and to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, and only to the extent such disclosure is not prevented by state or federal statute, or involves communications subject to attorney client privilege, each 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. Such access is limited to information relevant to the auditor's objectives as specified by the terms of this exemption;

(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

²¹ Pursuant to PTE 2017-07, the initial audit period begins on January 10, 2018 and ends on March 9, 2019, and the corresponding Audit Report must be completed by September 9, 2019 and the Audit Report submitted to the Department within 45 days after completion. Accordingly, the last audit performed pursuant to PTE 2017-07 will cover the period beginning January 10, 2018 and ending on the date of judgment, if any, against UBS or UBS France by the French First Instance Court. The corresponding Audit Report must be completed within six months of any such judgment and submitted to the Department within 45 days of completion.

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, for each UBS QPAM, a sample of such UBS QPAM's transactions involving Covered Plans, sufficient in size and nature to afford the auditor a reasonable basis to determine such UBS QPAM's operational compliance with the Policies and Training;

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

(i) The adequacy of each UBS QPAM's Policies and Training; each 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. The UBS QPAM must promptly address any noncompliance. The UBS QPAM must promptly address or prepare a written plan of action to address any determination as to the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective UBS QPAM. Any action taken or the plan of action to be taken by the respective UBS QPAM must be included in an addendum to the Audit Report (such addendum must be completed prior to the certification described in Section I(i)(7) below). In the event such a plan of action to address the auditor's recommendation regarding the adequacy of the Policies and Training is not completed by the time of submission of the Audit Report, the following period's Audit Report must state whether the plan was satisfactorily completed. Any determination by the auditor that a 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 a UBS QPAM has complied with the requirements under this subparagraph must be based on evidence that the particular

UBS QPAM has actually implemented, maintained, and followed the Policies and Training required by this exemption.

Furthermore, the auditor must not solely rely on the Exemption Report created by the compliance officer (the Compliance Officer), as described in Section I(m) below, as the basis for the auditor's conclusions in lieu of independent determinations and testing performed by the auditor as required by Section I(i) (3) and (4) above; and

(ii) The adequacy of the Exemption Review described in Section I(m);

(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 the 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 exemption; that, to the best of such officer's knowledge at the time, such UBS QPAM has addressed, corrected, remedied any noncompliance and inadequacy or has an appropriate written

plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. Such certification must also include the signatory's determination, that, to the best of such officer's knowledge at the time, the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code;

(8) The Risk Committee of UBS's Board of Directors is provided a copy of the 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 the Audit Report;

(9) Each UBS QPAM provides its certified Audit Report, by regular mail to: 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. This delivery must take place no later than 45 days following completion of the Audit Report. The Audit Report will be made part of the public record regarding this exemption. Furthermore, each UBS QPAM must make its Audit Report

unconditionally available, electronically or otherwise, for examination upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan;

(10) Any engagement agreement with an auditor to perform the audit required under the terms of this exemption that is entered subsequent to the date of a judgment, if any, against UBS or UBS France by the French First Instance Court must be submitted to OED no later than two (2) months after the execution of such agreement;

(11) The auditor must provide the Department, upon request, for inspection and review, access to all the workpapers created and utilized in connection with the audit, provided such access and inspection is otherwise permitted by law; and

(12) UBS must notify the Department of a change in the independent auditor no later than two (2) months after the engagement of a substitute or subsequent auditor and must provide an explanation for the substitution or change including a description of any material disputes between the terminated auditor and UBS;

(j) As of the date of a judgment, if any, against UBS or UBS France by the French First Instance and throughout

the Exemption Period, with respect to any arrangement, agreement, or contract between a UBS QPAM and a Covered Plan, the UBS QPAM agrees and warrants to Covered Plans:

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

(2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from: a UBS QPAM's violation of ERISA's fiduciary duties, as applicable, and of the prohibited transaction provisions of ERISA and the Code, as applicable; a breach of contract by the QPAM; 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 and the Potential 2019 French Judgment Against UBS/UBS France. This condition applies only to actual losses caused by the UBS QPAM's violations.

(3) Not to require (or otherwise cause) the Covered

Plan to waive, limit, or qualify the liability of the UBS QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(4) Not to restrict the ability of such Covered Plan to terminate or withdraw from its arrangement with the UBS QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any such arrangements involving investments in pooled funds subject to ERISA entered into after the effective date of PTE 2017-07, the adverse consequences must relate to a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming an ERISA-covered plan's or IRA's investment, and such restrictions must be applicable to all such investors and be effective no longer than reasonably necessary to avoid the adverse consequences;

(5) Not to impose any fees, penalties, or charges for

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

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the UBS QPAM for a violation of such agreement's terms. To the extent consistent with Section 410 of ERISA, however, this provision does not prohibit disclaimers for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of UBS and its affiliates, or damages arising from acts outside the control of the UBS QPAM;

(7) Within six months of the date of a judgment, if any, against UBS or UBS France by the French First Instance Court, each UBS QPAM must provide a notice of its obligations under this Section I(j) to each Covered Plan. For prospective Covered Plans that enter into a written

asset or investment management agreement with a UBS QPAM on or after the date of such a judgment, the UBS QPAM will agree to its obligations under this Section I(j) in an updated investment management agreement between the UBS QPAM and such clients or other written contractual agreement. This condition will be deemed met for each Covered Plan that received a notice pursuant to PTE 2016-17 and/or PTE 2017-07 that meets the terms of this condition. Notwithstanding the above, a UBS QPAM will not violate the condition solely because a Plan or IRA refuses to sign an updated investment management agreement.

(k) Within 60 days of a judgment, if any, against UBS or UBS France by the French First Instance Court, each UBS QPAM will provide a notice of the exemption, along with a separate summary describing the facts that led to the Convictions and the Potential 2019 French Judgment Against UBS/UBS France (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) (collectively, Initial Notice) that the Convictions and the Potential 2019 French Judgment Against UBS/UBS France, each separately result in a failure to meet a condition in PTE 84-14 and PTE 2017-07, to each sponsor and beneficial owner of a Covered Plan, or the sponsor of

an investment fund in any case where a UBS QPAM acts as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests. Effective as of the date that is 60 days after the Potential 2019 French Judgment Against UBS/UBS France Date, all Covered Plan clients that enter into a written asset or investment management agreement with a UBS QPAM after that date must receive a copy of the exemption, the Summary, and the Statement prior to, or contemporaneously with, the Covered Plan's receipt of a written asset management agreement from the UBS QPAM. Disclosures may be delivered electronically;

(1) The UBS QPAMs must comply with each condition of PTE 84-14, as amended, with the sole exception of the violations of Section I(g) of PTE 84-14 that are attributable to the Convictions and the Potential 2019 French Judgment Against UBS/UBS France. If, during the Exemption Period, an entity within the UBS corporate structure is convicted of a crime described in Section I(g) of PTE 84-14, (other than the 2013 Conviction, 2018 Conviction, and the Potential 2019 French Judgment Against UBS/UBS France), or is convicted in a foreign jurisdiction for a crime described in Section I(g) of PTE 84-14, relief in this proposed exemption would terminate immediately;

(m) (1) UBS continues to designate a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. The Compliance Officer must conduct a review for the Exemption Period (the Exemption Review),²² to determine the adequacy and effectiveness of the implementation of the Policies and Training. With respect to the Compliance Officer, the following conditions must be met:

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

(ii) The Compliance Officer must have a reporting line within UBS's Compliance and Operational Risk Control (C&ORC) function to the Head of Compliance and Operational Risk Control, Asset Management. The C&ORC function is organizationally independent of UBS's business divisions-

²² Pursuant to PTE 2017-07 the Compliance Officer must conduct an exemption review (annual review) for each period corresponding to the audit periods set forth in Section I(i)(1) of PTE 2017-07 and the Compliance officer's written report submitted to the Department within three (3) months of the end of the period to which it relates. Accordingly, the final exemption review pursuant to PTE 2017-07 must cover the period January 10, 2018 through the date of a judgment, if any, against UBS or UBS France by the French First Instance Court, and the corresponding Compliance Officer's written report must be submitted within three (3) months of any such judgment.

including Asset Management, the Investment Bank, and Global Wealth Management-and is led by the Global Head of C&ORC, who will report directly to UBS's Chief Risk Officer, the head of Group Compliance, Regulatory and Governance, or another appropriate member of the Group Executive Board;

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

(i) The Exemption Review includes a review of the UBS QPAMs' compliance with and effectiveness of the Policies and Training and of the following: any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the C&ORC function during the previous year; the most recent Audit Report issued pursuant to this exemption or PTE 2017-07; any material change in the relevant business activities of the UBS QPAMs; and any change to ERISA, the Code, or regulations related to fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of the UBS QPAMs;

(ii) The Compliance Officer prepares a written report for the Exemption Review (an Exemption Report) that (A) summarizes his or her material activities during the Exemption Period; (B) sets forth any instance of

noncompliance discovered during the Exemption Period, and any related corrective action; (C) details any change to the Policies or Training to guard against any similar instance of noncompliance occurring again; and (D) makes recommendations, as necessary, for additional training, procedures, monitoring, or additional and/or changed processes or systems, and management's actions on such recommendations;

(iii) In the Exemption Report, the Compliance Officer must certify in writing that to the best of his or her knowledge at the time: (A) the report is accurate; (B) the Policies and Training are working in a manner which is reasonably designed to ensure that the Policies and Training requirements described herein are met; (C) any known instance of noncompliance during the Exemption Period and any related correction taken to date have been identified in the Exemption Report; and (D) the UBS QPAMs have complied with the Policies and Training, and/or corrected (or are correcting) any known instances of noncompliance in accordance with Section I(h) above;

(iv) The Exemption Report must be provided to appropriate corporate officers of UBS and each UBS QPAM to which such report relates, and to the head of compliance

and the General Counsel (or their functional equivalent) of the relevant UBS QPAM; and the report must be made unconditionally available to the independent auditor described in Section I(i) above;

(v) The Exemption Review, including the Compliance Officer's written Exemption Report, must be completed within three (3) months following the end of the period to which it relates;

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

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

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

in the exemption;

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

(r) Within six months from the date of a judgment, if any, against UBS or UBS France by the French First Instance Court, each UBS QPAM, in its agreements with, or in other written disclosures provided to Covered Plans, will clearly and prominently inform Covered Plan clients of their right to obtain a copy of the Policies or a description (Summary Policies) which accurately summarizes key components of the UBS QPAM's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within six (6) months following the end of the calendar

year during which the Policies were changed.²³ With respect to this requirement, the description may be continuously maintained on a website, provided that such website link to the Policies or Summary Policies is clearly and prominently disclosed to each Covered Plan; and

(s) A UBS QPAM will not fail to meet the terms of this exemption, solely because a different UBS QPAM fails to satisfy a condition for relief described in Sections I(c), (d), (h), (i), (j), (k), (l), (p), or (r); or if the independent auditor described in Section I(i) fails a provision of the exemption other than the requirement described in Section I(i)(11), provided that such failure did not result from any actions or inactions of UBS or its affiliates.

SECTION II. DEFINITIONS

(a) The term "Convictions" means the 2013 Conviction and the 2017 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

²³ In the event the Applicant meets this disclosure requirement through Summary Policies, changes to the Policies shall not result in the requirement for a new disclosure unless, as a result of changes to the Policies, the Summary Policies are no longer accurate.

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 "2018 Conviction" means the judgment of conviction against UBS in case number 3:15-cr-00076-RNC in the U.S. District Court for the District of Connecticut for one count of wire fraud in violation of Title 18, United States Code, Sections 1343 and 2 in connection with UBS's submission of Yen London Interbank Offered Rates and other benchmark interest rates between 2001 and 2010. For all purposes under this exemption, "conduct" of any person or entity that is the "subject of the Convictions" encompasses any conduct of UBS and/or their personnel, that is described in (i) Exhibit 3 to the Plea Agreement entered into between UBS and the Department of Justice Criminal Division, on May 20, 2015, in connection with case number 3:15-cr-00076-RNC, and (ii) Exhibits 3 and 4 to the Plea Agreement entered into between UBS Securities Japan and the Department of Justice Criminal Division, on December 19, 2012, in connection with case number 3:12-cr-00268-RNC;

(b) The term "Potential 2019 French Judgment Against UBS/UBS France" includes any adverse judgment against UBS

or UBS France regarding case Number 1105592033. For all purposes under this exemption, "conduct" of any person or entity that is the "subject of the alleged criminal conduct that may be the subject of the Potential 2019 French Judgment Against UBS/UBS France" encompasses any conduct of UBS, its affiliates, or UBS France and/or their personnel that is described in any such judgment.

(c) The term "Covered Plan" means a plan subject to Part IV of Title I of ERISA (an "ERISA-covered plan") or a plan subject to section 4975 of the Code (an "IRA"), in each case, with respect to which a UBS QPAM relies on PTE 84-14, or with respect to which a UBS QPAM (or any UBS affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84-14). A Covered Plan does not include an ERISA-covered plan or IRA to the extent the UBS QPAM has expressly disclaimed reliance on QPAM status or PTE 84-14 in entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA.

(d) The term "FX Misconduct" means the conduct engaged in by UBS personnel described in Exhibit 1 of the Plea Agreement (Factual Basis for Breach) entered into between UBS and the Department of Justice Criminal Division, on May

20, 2015 in connection with Case Number 3:15-cr-00076-RNC filed in the US District Court for the District of Connecticut.

(e) 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 Global Wealth Management Americas U.S. divisions of UBS that qualifies as a "qualified professional asset manager" (as defined in Section VI(a) of PTE 84-14)²⁴ and that relies on the relief provided by PTE 84-14, and with respect to which UBS is an "affiliate" (as defined in Part VI(d) of PTE 84-14). The term "UBS QPAM" excludes UBS securities Japan, the entity implicated in the criminal conduct that is the subject of the 2013 Conviction, UBS, the entity implicated in the criminal conduct that is the subject of the 2018 Conviction and implicated in the alleged criminal conduct that is the subject of the Potential 2019 French Judgment Against UBS/UBS France, and UBS France, the entity implicated in

²⁴ 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.

the alleged criminal conduct that is the subject of the Potential 2019 French Judgment Against UBS/UBS France.

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

(g) The term "UBS France" means "UBS (France) S.A.," a wholly-owned subsidiary of UBS incorporated under the laws of France.

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

(i) All references to "the date of a judgment, if any, by the French First Instance Court" refer to any judgment against UBS or UBS France in case number 1105592033;

(j) The term "Exemption Period" means one year beginning on the date an adverse French judgment against UBS or UBS France regarding case Number 1105592033;

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

Effective Date: If granted, the exemption discussed in this

notice will be effective for one year from the date of judgment, if any, against UBS or UBS France by the French First Instance Court in case Number 1105592033.

Signed at Washington, DC, this 8th day of February, 2019.

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

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