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Dated: May 25, 2023.

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## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

[Prohibited Transaction Exemption 2023-14; Exemption Application No. D-12089]

#### Exemption From Certain Prohibited Transaction Restrictions Involving UBS AG (UBS) and Credit Suisse Asset Management, LLC (CSAM), Located in Zurich, Switzerland

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Notice of exemption.

**SUMMARY:** The Labor Department previously issued several temporary individual prohibited transaction exemptions (PTEs) that allow certain Qualified Professional Asset Managers (QPAMs) related to UBS and Credit Suisse Group AG (CSAG) (the UBS QPAMs, CS Affiliated QPAMs, and the CS Related QPAMs, as further defined below) to continue to rely on the exemptive relief provided by Prohibited Transaction Class Exemption (PTE) 84-14, notwithstanding five judgments of convictions involving entities within the UBS and CSAG corporate umbrellas, as described below (the Convictions). The most recent individual exemptions are PTE 2020-01 (for UBS) and PTE 2022-01 (for CSAG). Those individual exemptions will no longer be available following the upcoming merger between CSAG and UBS (the Merger), solely as a result of the Merger. This exemption allows the UBS QPAMs, CS Affiliated QPAMs, and the CS Related QPAMs to continue to rely on PTE 84-14 as of the closing date of the Merger, if certain conditions are met. This individual exemption is necessary to preserve the ability of the QPAMs to engage in the transactions permitted by PTE 84-14, which would be lost solely due to the impending merger of UBS and Credit Suisse (and not because of a new conviction for either UBS or Credit

Suisse or their affiliates, or due to any other disqualifying reason). This exemption will be effective for one year beginning on the closing date of the Merger. The limited duration of this exemption reflects the lack of information UBS and Credit Suisse Asset Management, LLC (CSAM) submitted to the Department regarding the effects the Merger will have on Covered Plans with assets managed by the UBS QPAMs and CS Affiliated and Related QPAMs.

**DATES:** The exemption will be in effect for a period of one year beginning on the closing date of the Merger.

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

**SUPPLEMENTARY INFORMATION:** On May 12, 2023, the Department published a notice of proposed exemption in the **Federal Register**<sup>1</sup> permitting the UBS QPAMs, CS Affiliated QPAMs, and the CS Related QPAMs to continue to rely on the exemptive relief provided by Prohibited Transaction Class Exemption (PTE) 84-14. The Department is granting this exemption to ensure that the participants and beneficiaries of ERISA-covered Plans and IRAs managed by the UBS QPAMs, CS Affiliated QPAMs, and the CS Related QPAMs (together, Covered Plans) are protected. This exemption provides only the relief specified in the text of the exemption and does not provide relief from violations of any law other than the prohibited transaction provisions of Title I of ERISA and the Code expressly stated herein.

The Department intends for the terms of this exemption to promote adherence by the UBS QPAMs, CS Affiliated QPAMs, and the CS Related QPAMs to basic fiduciary standards under Title I of ERISA and the Code. Most importantly, the Department's primary objective in granting this time-limited exemption is to ensure that Covered Plans can terminate their relationships with one of these QPAMs in an orderly and cost-effective fashion in the event the fiduciary of a Covered Plan determines that it is prudent to do so.

Based on UBS and CSAM's (the Applicants') adherence to all the conditions of the exemption, the Department makes the requisite findings under ERISA Section 408(a) that the exemption is: (1) administratively feasible, (2) in the interest of Covered Plans and their participants and beneficiaries, and (3) protective of the rights of the participants and

beneficiaries of Covered Plans. Accordingly, affected parties should be aware that the conditions incorporated in this exemption are, individually and taken as a whole, necessary for the Department to grant the relief requested by the Applicants. Absent these or similar conditions, the Department would not have granted this exemption. Further, non-compliance with any of these conditions will result in loss of the availability of this exemption.

### Background

1. Credit Suisse Group AG (CSG) is currently a publicly traded corporation headquartered in Zurich, Switzerland that owns a 100% interest in Credit Suisse AG (CSAG). Currently, two Credit Suisse asset management affiliates, Credit Suisse Asset Management, LLC (CSAM LLC) and Credit Suisse Asset Management Limited (CSAM Ltd.) (together, the CS Affiliated QPAMs) manage the assets of Covered Plans on a discretionary basis. CSAG also owns a five percent or more interest in certain other entities that may provide investment management services to plans but that are not affiliates of CSAG (the CS Related QPAMs).

2. UBS AG (UBS) is a Swiss-based global financial services company organized under the laws of Switzerland. UBS Asset Management (Americas) Inc., UBS Realty Investors LLC, UBS Hedge Fund Solutions LLC, and UBS O'Connor LLC are currently the four UBS affiliates that rely on PTE 84-14 (the UBS QPAMs).

#### PTE 84-14

3. PTE 84-14 reflects the Department's conclusion that it could provide broad relief from the prohibited transaction provisions of ERISA Section 406(a) and Code Section 4975(c)(1) only if the commitments and the investments of plan assets and the negotiations leading thereto are the sole responsibility of an independent discretionary manager that meets the exemption's conditions, known as a QPAM.

4. Section I(g) of PTE 84-14 prevents an entity that may otherwise meet the definition of a QPAM from utilizing the exemptive relief provided by PTE 84-14 for itself and its client plans, if that entity or an "affiliate" thereof<sup>2</sup> or any

<sup>2</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

<sup>1</sup> 88 FR 30785 (May 12, 2023).

direct or indirect owner 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 criminal activity described in that section.

5. The inclusion of Section I(g) in PTE 84–14 is, in part, based on an expectation that QPAMs will maintain a high standard of integrity. This expectation extends not only to the QPAM itself, but also to those who may be in a position to influence the QPAM's policies.

6. Since 2014, various entities within the corporate umbrellas of UBS and CSAG have been collectively convicted of five disqualifying crimes described in Section I(g) of PTE 84–14 (the Convictions). To protect Covered Plans from the costs and harms that could arise if the UBS QPAMs and the CS Affiliated and CS Related QPAMs suddenly lost their ability to engage in potentially beneficial transactions under PTE 84–14 due to these Convictions, the Department issued a number of temporary individual exemptions.<sup>3</sup>

7. On April 17, 2023, UBS and CSAM (and their affiliated QPAMs) submitted an application with the Department requesting modifications to their existing exemptions. In their request, UBS and CSAM stated that, following the Merger, “it is important that the combined bank be able to continue the asset management businesses that the two banks currently maintain independently, including their subsidiaries’ QPAM services.” UBS and CSAM requested “separate somewhat harmonized, exemptions because at this time it is not clear when, and how, the Credit Suisse QPAMs will be restructured within the UBS structure after closing.” Essentially, in the application, UBS and CSAM sought the Department’s approval to allow the affected QPAMs to continue relying on

unincorporated enterprise of which such person is an officer, director, or a 5 percent or more partner or owner, and (4) Any employee or officer of the person who—(A) Is a highly compensated employee (as defined in Section 4975(e)(2)(H) of the Code) or officer (earning 10 percent or more of the yearly wages of such person), or (B) Has direct or indirect authority, responsibility or control regarding the custody, management or disposition of plan assets.”

<sup>3</sup> In connection with the Credit Suisse-related convictions, the Department issued the following exemptions: PTE 2022–01 (87 FR 1186 (Jan. 10, 2022)); PTE 2019–07 (84 FR 61928 (Nov. 14, 2019)); PTE 2015–14 (80 FR 59817 (Oct. 2, 2015)); PTE 2014–11 (79 FR 68716 (Nov. 18, 2014)). In connection with the UBS-related convictions, the Department issued: PTE 2020–01 (85 FR 8020 (Feb. 12, 2020)); PTE 2019–01 (84 FR 6163 (Feb. 26, 2019)); PTE 2017–07 (82 FR 61903 (Dec. 29, 2017)); PTE 2016–17 (81 FR 94049 (Dec. 22, 2016)); PTE 2013–09 (78 FR 56740 (Sep. 13, 2013)).

the terms and conditions of their existing exemptions.

#### *Harm to Covered Plans in the Absence of QPAM Relief*<sup>4</sup>

8. CSAM represents that if the CS Affiliated and Related QPAMs lose the ability to rely upon PTE 84–14, the Covered Plan clients of those QPAMs would suffer the time and expense of finding replacement asset managers where they otherwise might not choose to do so. Further, transactions currently dependent on the QPAM Exemption would be in default, and counterparties may provide less advantageous pricing, or not bid at all, because the plan’s investment manager is not a QPAM. CSAM submits that Covered Plans that choose to remain with CSAM following CSAM’s loss of QPAM relief would have a circumscribed set of transactions available to them, or their transactions could be more expensive because of the preference that counterparties have for transacting business with QPAMs.

9. In its request for modifications to its existing exemption, UBS states that the requested modifications will help ensure that the QPAMs continue to operate without disruption to their plan clients, which in turn is necessary for UBS and CSAM to successfully complete the Merger.

#### **Written Comments**

In the proposed exemption, the Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption by May 18, 2023. The Department received one written comment from the Applicants and no requests for a public hearing.

#### *I. Comments From the Applicants*

##### **Comment 1: Modify the Existing UBS AG and CSAM Exemptions**

In their comment letter, the Applicants state that the modifications to the separate existing exemptions for UBS and Credit Suisse that the banks requested in their application are sufficiently protective of affected

<sup>4</sup> CSAM submitted these representations to the Department on March 16, 2023, in connection with an exemption application submitted by CSAM (the CSAM Application), for the CS Affiliated and Related QPAMs to continue to rely upon PTE 84–14 beyond the one-year term of their current individual exemption (PTE 2022–01), which expires on the earlier of July 21, 2023, or the closing date of the Merger. The CSAM Application was submitted to the Department before the Merger was announced. The Department closed the CSAM Application upon receipt of the CSAM and UBS modification request discussed herein. The CSAM Application and supporting documents are available to the public through EBSA’s Public Disclosure Office, by referencing D–12089.

Covered Plans and are carefully tailored to the circumstances presented. They assert that:

- A new, unified exemption with the additional terms proposed by the Department is not necessary;
- Modifying the existing exemptions would better account for the time needed to integrate two large financial institutions, and the imposition of new and expanded conditions—some of which are vaguely worded—immediately upon the Merger is unnecessarily punitive and burdensome; and
- The past misconduct of certain Credit Suisse affiliates does not mean additional conditions are required for the UBS QPAMs (and vice versa).

*Department’s Response:* The Department declines to make the Applicants’ requested change to the proposal. The consolidated exemption proposed by the Department contains important conditions that were not included in the previous exemptions that separately cover UBS and Credit Suisse QPAMs. Importantly, this exemption requires cross-institutional accountability. In this regard, no individuals who participated in or profited from the criminal misconduct underlying any of the five Convictions will be employed by any QPAM in the post-merger consolidated entity. This exemption also adds the Merger Report requirement. These added protections are essential to protect Covered Plans considering the uncertainties surrounding the Merger due to the lack of information the Applicants submitted to the Department regarding the Merger.

#### **Comment 2: Extend the Exemption Period To Align With UBS’s Current Exemption**

The Applicants state that the Department should not shorten the UBS exemption period but rather extend the exemption period for CSAM and its current and future asset management affiliates (which expires on July 21, 2023) to align it with the expiration of UBS’s current exemption in February 2025. Alternatively, if the Department is unwilling to extend the exemption period for CSAM to more than a year after the Merger closing dates, at a minimum the Department should leave in place the current duration of UBS’s existing exemption. The Applicants’ rationale is that:

- UBS did not seek out a merger with Credit Suisse; UBS was asked to buy Credit Suisse by the Swiss government to avoid a global financial crisis that would result if Credit Suisse failed;
- Shortening the exemption period does not provide any additional

protection to plan clients, participants, and beneficiaries. If anything, the Department's proposed reduction in UBS's exemption period and certain other statements in the Department's proposal unjustifiably and unnecessarily inject uncertainty regarding the longer-term viability of an important business line to UBS, which undermines the purpose of UBS's rescue of Credit Suisse;

- Most of the “underlying conduct” at issue was committed a number of years ago by non-QPAM entities, and it involved personnel who no longer are at UBS or Credit Suisse. Further, one of the convictions in issue will fall outside the QPAM disqualification period during the one-year exemption period the Department has proposed, and another a few months later; and

- The primary regulators of UBS and Credit Suisse have determined that the merger is in the interest of banking customers and clients and of the financial services industry.

*Department's Response:* The Department declines to extend the term of this exemption. As stated above, to date, the Department has received very limited information from the Applicants regarding the Merger. Further, the proposed exemption had only a six-day comment period. If UBS believes that additional exemptive relief is warranted, it should submit an additional application, which would allow the Department to develop a more complete administrative record, including through a longer comment period.

#### Comment 3: Merger Report

The Applicants state that UBS should not be required to submit a Merger Report to the Department every 120 days; nor should UBS be required to provide that report to Covered Plan fiduciaries. The Applicants state that the addition of multiple reports is burdensome, unrelated to the protection of plans, and would unnecessarily distract UBS from the operation of its own business lines and the task of evaluating and integrating Credit Suisse's businesses. In particular, the Applicants ask the Department to remove the requirement that, in the Merger Report, UBS provide “detailed information regarding the costs to ERISA-covered Plans and IRAs . . . that would arise if this one-year exemption is not renewed.” The Applicants view this information as the most burdensome part of an application to prepare and state that requiring it several times within one year is unnecessarily burdensome. They maintain that these additional periodic

reports also risk confusing and distracting plan clients. UBS already would be required to send two notices to plan clients under the Department's proposal.<sup>5</sup>

Alternatively, if the Department retains the requirement for this new report, the Applicants request that they should be required to provide the Merger Report only once, halfway through the exemption period. For example, if the exemption period remains one year, the Applicants would send the report within 180 days after the exemption's effective date.

*Department's Response:* The Department declines to make the Applicants' requested changes, in part. First, the Department declines to remove the Merger Report requirement. The Department views the Merger Report as an essential component of this exemption due to the fact that the Applicants submitted almost no detail regarding the specifics of how Credit Suisse will be integrated into UBS post-merger. Thus, the Merger Report is an important supplement to the record and will inform the Department regarding post-merger integration developments that potentially impact Covered Plans.

However, the Department agrees that the first Merger Report required under this exemption should be due within six months after the exemption's effective date. A second Merger Report will be due 12 months after the exemption's effective date. While the Department agrees that the Merger Report does not need to include “detailed information regarding the costs to ERISA-covered Plans and IRAs that would arise if this one-year exemption is not renewed,” this information must be included in any future request by UBS to extend this exemption and will be part of the record attributable to that exemption request. The Department also notes that the Board of Governors of the Federal Reserve will require UBS Group AG to submit an Implementation Plan within three months of the closing of the Merger. The Department believes that there will be at least some content overlap between the Implementation Report and the Merger Report and that some of the information prepared for inclusion in the Implementation Report can be also used in the Merger Report.

#### Comment 4: Best Knowledge

The Applicants request the removal of the proposed new definition of “best

knowledge,” “to the best of one's knowledge,” “best knowledge at that time,” in Section I(i) of the proposed exemption. The Applicants state that such terms are defined to include matters that are known to the applicable individual or should be known to such individual upon the exercise of such individual's due diligence required under the circumstances, and, with respect to an entity other than a natural person, such term includes matters that are known to the directors and officers of the entity or should be known to such individuals upon the exercise of such individuals' due diligence required under the circumstances.

The Applicants state that Credit Suisse's current exemption does not define the term “best knowledge” while UBS's current exemption does not even have a “best knowledge” requirement. The Applicant submits that the new definition converts an actual knowledge standard into a “seeming negligence” standard, introducing unnecessary uncertainty into the standards for compliance with the exemption.

*Department's Response:* The Department declines to make the requested change.<sup>6</sup> The Department notes that the current exemptions relied on by UBS and Credit Suisse-related QPAMs fail to describe the “best knowledge” standard. The inclusion of language defining “best knowledge” adds clarity and consistency and removes the uncertainty surrounding what knowledge is expected from the entity or an individual.

#### Comment 5: Material Changes

The Applicants request the Department to delete footnote 2 from the proposed exemption, which states that the exemption would “cease to apply” “if there is any material change in a transaction covered by the exemption, or in a material fact or representation that is part of the record attributable to D-12089.”<sup>7</sup> The Applicants maintain that the plain language of the reference in the footnote to “a transaction covered by the exemption” would suggest that a change in a transaction that relies on PTE 84-14 would render PTE 84-14 unavailable. The Applicants presume that this is not the Department's intended meaning, since a loan relying on a QPAM exemption, for example,

<sup>6</sup> Contrary to UBS's assertion, both the previous UBS and Credit Suisse exemptions contain the “best knowledge” requirement in certain conditions. In its comment on [the proposed version of] PTE 2017-07, UBS requested the addition of “best knowledge” language in certain conditions of that exemption.

<sup>7</sup> See 88 FR at 30786.

<sup>5</sup> UBS is required to send two notices to Covered Plans: (1) a notice of its obligations under Section III(k)(7); and (2) a copy of the exemption along with a summary under Section III(l). The Merger Report would represent the third notice that UBS is required to send to Covered Plans.

may be revised at any time in the best interest of plans.

*Department's Response:* The Department is revising footnote 2, so that that the referenced language refers to a material change in the Merger or to the record attributable to D-12089, and not to a transaction that relies on PTE 84-14.

Comment 6: Finalize and Publish the Exemption by May 24, 2023

The Applicants request that exemptive relief be in place by May 24, 2023 to ensure that there is time for other required disclosures in advance of the anticipated May 31, 2023 closing.

*Department's Response:* The Department was unable to publish this final exemption by May 24, 2023, due to the short amount of time between the Merger's announcement and planned closing date and the Applicants' submission of their application on April 17, 2023.

Comment 7: Audit Periods Pre-Dating the Merger

The Applicants request clarification that audit reports for time periods preceding the Merger are governed by the UBS and Credit Suisse exemptions currently in effect prior to the Merger.

*Department's Response:* The Department confirms that audit reports for time periods before the Merger closing date (and the effective date of this exemption) are governed by the UBS and Credit Suisse exemptions that were in effect during those time periods (and that precede the effective date of this exemption).

Comment 8: Audit Report Review

The Applicants request a revision to Section III(j)(8) of the proposed exemption, which would require the audit report for each UBS QPAM to be (1) provided to the Risk Committee of UBS Group AG, not the Risk Committee of UBS AG, and (2) reviewed and certified by a senior executive officer of UBS Group AG. The Applicants state that it would be more protective and consistent with UBS's current practice for the audit report to be provided to the Risk Committee of UBS Group AG, which is the parent of UBS AG.

*Department's Response:* The Department agrees with the Applicants' requested revision and has modified Section III(j)(8) accordingly.

Comment 9: Audit Report Review

Sections III(i) and III(j) of the proposed exemption imposes separate audit report requirements for the CS Affiliated QPAMs and the UBS Affiliated QPAMs, respectively. This

means that the CS QPAMs and UBS QPAMs need to continue to undergo separate audits during the term of this exemption. Further, proposed subsections III(i)(8) and III(j)(8) require (a) CSAG's Board of Directors and a Credit Suisse officer to review and certify the CS Affiliated QPAM audits, and (b) UBS's Board and a UBS officer review and to certify the UBS Affiliated QPAM audits.

The Applicants submit that aligning the recipients of the audit reports would simplify compliance and request that both the CS Affiliated QPAM audits and the UBS Affiliated QPAM audits be submitted to and certified by UBS's Board and a UBS officer.

*Department's Response:* The Department agrees with the Applicants and has revised Section III(i)(8) accordingly to align with Section III(j)(8).

Comment 10: Recipients of Notice

Section III(l) of the proposed exemption requires the Affiliated QPAMs to provide notice of the proposed and final exemption as published in the **Federal Register**, along with a summary describing the facts that led to the Convictions and a prominently displayed statement that the Convictions result in a failure to meet a condition in PTE 84-14 to "each sponsor and beneficial owner of a Covered Plan," and "the sponsor of an investment fund in any case where an Affiliated QPAM acts as a sub-adviser to the investment fund in which such ERISA-covered plan and IRA invests."

The Applicants request that the Department revise Section III(l) so that the Affiliated QPAMs do not have to send these notices to ERISA-covered Plans and IRAs for whom UBS neither relies on the QPAM exemption nor has represented to clients that it is relying on the QPAM exemption. The Applicants submit that requiring notice to be provided to "the sponsor of an investment fund in any case where an Affiliated QPAM acts as a sub-adviser to the investment fund in which such ERISA-covered plan and IRA invests" could be interpreted as requiring the Affiliated QPAMs to provide notice to all ERISA-covered plans and IRAs, rather than only to plans for which UBS relies on the QPAM exemption or has represented that it is relying on the QPAM exemption.

*Department's Response:* The Department disagrees with the Applicants' concerns with the notice requirement. However, the Department has revised proposed condition (III)(l) to expressly require UBS to only to send the required notices to Covered Plans

and not to accounts for which UBS neither relies on the QPAM exemption nor has represented that it is relying on the QPAM exemption.

Comment 11: Exemption Report Recipients

The Applicants request the Department to revise proposed Section III(n)(2)(iv) to clarify that the Exemption Report required by the exemption only must be provided to officers of either CSAG or UBS AG, but not both.

*Department's Response:* The Department declines to make the Applicants' requested change. Cross-institutional accountability is an important aspect of this exemption given the uncertainty surrounding the Merger. Section III(n)(2)(iv) requires the Exemption Report to be provided to the appropriate officers of CSAG or UBS AG, and the Department believes this is a minimal burden that adds protection for Covered Plans.

Comment 12: Imposing Internal Procedures

Section (o) of the proposed exemption states: "UBS Group AG imposes its internal procedures, controls, and protocols on each Misconduct Entity to reduce the likelihood of any recurrence of conduct that is the subject of the Convictions." The Applicants request the Department to revise Section III(o) to refer to UBS Group AG instead of UBS AG because the Credit Suisse QPAMs might not report to UBS AG after the Merger.

*Department's Response:* The Department agrees with the Applicants' requested change and has modified Section III(o) accordingly.

Comment 13: Deferred Prosecution Agreements (DPAs) or Non-Prosecution Agreements (NPAs)

The Applicants request that the Department revise Section III(r) to clarify that UBS only needs to disclose a DPA or NPA that is entered into during the exemption period, to avoid any suggestion that UBS must redisclose pre-existing DPAs or NPAs.

*Department's Response:* The Department agrees with the Applicants' requested revision and confirms that UBS does not need to redisclose pre-existing DPAs or NPAs, provided that such pre-existing DPAs or NPAs were previously disclosed to the Department. However, the Department notes that all such pre-existing DPAs and NPAs must be included as part of any request by UBS to extend this exemption.

#### Comment 14: Alternative Non-QPAM-Based Exemption

The Applicants state that the Department should not proceed with an alternative, non-QPAM-based individual exemption. The Department invited comments on whether to “develop[ ] an individual exemption on its own motion that would protect affected Covered Plans by permitting some, but not all, of the transactions covered by PTE 84–14.” The Department stated that, if it “took that approach, the UBS/CSAG affiliated entities would no longer rely on or reference PTE 84–14 for relief, but rather would rely on the new individual exemption for any relief, which would not be based on their status as QPAMs status under PTE 84–14.” The Applicants oppose such an alternative. They maintain that the current QPAMs have existing contracts that expressly rely on the QPAM exemption or represent that the asset manager is a QPAM, and state that those contracts do not account for an alternative such as the Department describes. Moreover, the Applicants assert that the QPAM exemption is widely accepted and understood by sophisticated clients; it cannot suddenly be replaced, and withdrawing its availability from a particular asset manager would put that firm at a competitive disadvantage. Applicants claim that this is directly contrary to the purposes of financial strength and stability that regulators intended to be achieved by UBS-Credit Suisse merger. Applicants state that if the Department is interested in creating an alternative to the QPAM exemption, it should make the alternative available to all asset managers concurrently with the QPAM exemption, so that the alternative can gain broad market adoption and any such alternative would need to be clearly delineated and published for notice and comment.

**Department’s Response:** The Department appreciates the Applicants’ response to the request for information on the idea of a non-QPAM-linked exemption and will take the response into account in any future considerations on this issue. Any decision to develop a non-QPAM-linked individual exemption will be subject to a full notice and comment period.

#### Comment 15: Miscellaneous Other Requested Revisions From the Applicants

Applicants also requested several other miscellaneous revisions to the proposed exemptions, as follows:

A. Remove references to Credit Suisse Asset Management Limited because it is

no longer acting as a QPAM.

Specifically, strike Section I(a)(3), and remove references to Credit Suisse Asset Management Limited from Sections I(a)(4) and I(b)(1).

B. Revise Section I(c)(2) which read, “(2) the judgment of conviction against CSSEL in Case Number 1:21–cr–00520–WFK (the ‘CSSEL Conviction’);” to more fully describe the conviction as: “(2) the judgment of conviction against CSSEL for one count of conspiracy to commit wire fraud (18 U.S.C. 1349) that was entered in the District Court for the Eastern District of New York on July 22, 2022, in Case Number 1:21–cr–00520–WFK (the ‘CSSEL Conviction’).”

C. Revise Section I(c)(5) to include the italicized regarding the appellate court decision upholding the conviction: “the judgment of conviction on February 20, 2019, against UBS and UBS France in case Number 1105592033 in the French First Instance Court *and a decision upholding the February 20, 2019 judgment of the French First Instance Court* (the ‘2019 French Conviction’).”

D. Correct the presiding judge’s initials in the case number in Sections I(c)(4), I(f), and III(a)(i) to: “3:15–cr–00076–SRU.”

E. In Section I(e), correctly identify UBS and Credit Suisse entities that are engaging in the upcoming merger transaction, as follows: “The term ‘Exemption Period’ means the one-year period that begins on the closing date of the acquisition of CSG by UBS Group AG (hereinafter, the Merger).”

F. In Section I(h), revise “CS” to “CSAG.”

**Department’s Response:** The Department accepts the Applicants’ requested revisions and has made the corresponding changes.

#### Publicly Available Information

The complete application file (D–12089) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. For a more complete statement of the facts and representations supporting the Department’s decision to grant this exemption, please refer to the notice of proposed exemption published on May 12, 2023, at 88 FR 30785.

#### 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 ERISA Section 408(a) does not relieve a fiduciary or other party in interest from certain requirements of other ERISA

provisions, including but not limited to any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA Section 404, which, among other things, require a fiduciary to discharge their duties respecting the plan solely in the interest of the plan’s participants and beneficiaries and in a prudent fashion in accordance with ERISA Section 404(a)(1)(B).

(2) As required by ERISA Section 408(a), the Department hereby finds that the exemption is: (a) administratively feasible; (b) in the interests of Covered Plans and their participants and beneficiaries; and (c) protective of the rights of the Covered Plan’s participants and beneficiaries.

(3) This exemption is supplemental to, and not in derogation of, any other ERISA provisions, 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 for determining whether the transaction is in fact a prohibited transaction.

(4) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describe all material terms of the transactions that are the subject of the exemption and are true at all times.

Accordingly, after considering the entire record developed in connection with the Applicants’ exemption application, the Department has determined to grant the following exemption under the authority of ERISA Section 408(a) in accordance with the Department’s exemption procedures set forth in 29 CFR part 2570, subpart B:<sup>8</sup>

#### Exemption

##### Section I. Definitions

(a) Names of Certain Corporate Entities:

(1) The term “CSG” means Credit Suisse Group AG, a publicly traded corporation organized under the laws of Switzerland.

(2) The term “CSAG” means Credit Suisse AG and is 100% owned by CSG.

(3) The term “CSSAM LLC” or CSAM means Credit Suisse Asset Management, LLC which is a Credit Suisse asset management affiliate.

(4) The term “CSSEL” means Credit Suisse Securities (Europe) Limited and is headquartered in London, United Kingdom and indirectly a wholly owned subsidiary of CSG.

<sup>8</sup> 76 FR 66637, 66644 (October 27, 2011).

(5) The term “UBS” means UBS AG, a publicly traded corporation organized under the laws of Switzerland.

(6) The term “UBS Americas” means UBS Asset Management (Americas) Inc. and is one of the four UBS affiliates and is wholly owned by UBS Americas, Inc., a wholly owned subsidiary of UBS AG.

(7) The term “UBS France” means UBS (France) S.A. and is a wholly owned subsidiary of UBS incorporated under the laws of France.

(8) The term “UBS Hedge Fund Solutions LLC” was formerly known as UBS Alternative and Quantitative Investments, LLC is one of four UBS affiliates and is wholly owned by UBS Americas Holding LLC, a wholly owned subsidiary of UBS AG.

(9) The term “UBS O’Connor LLC” is one of four UBS affiliates and is wholly owned by UBS Americas Holding LLC, a wholly owned subsidiary of UBS AG.

(10) The term “UBS Realty Investors LLC” is one of the four UBS affiliates and is wholly owned by UBS Americas, Inc., a wholly owned subsidiary of UBS AG.

(11) The term “UBS Securities Japan” means UBS Securities Japan Co. Ltd, a wholly owned subsidiary of UBS incorporated under the laws of Japan.

(b) The term “Affiliated QPAM” means (1) the “CS Affiliated QPAM,” which is Credit Suisse Asset Management, LLC (“CSAM LLC”); and (2) the “UBS QPAMs,” which are 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) 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 Affiliated QPAM excludes a Misconduct Entity.

(c) The term “Convictions” means (1) the judgment of conviction against CSAG for one count of conspiracy to violate section 7206(2) of the Internal Revenue Code in violation of Title 18, United States Code, Section 371, that was entered in the District Court for the Eastern District of Virginia in Case Number 1:14-cr-188-RBS, on November 21, 2014 (the “CSAG Conviction”); (2) the judgment of conviction against CSSEL for one count of conspiracy to commit wire fraud (18 U.S.C. 1349) that was entered in the District Court for the Eastern District of New York on July 22, 2022, in Case Number 1:21-cr-00520-WFK (the “CSSEL Conviction”); (3) 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; (4) the judgment of conviction against UBS in case number 3:15-cr-00076-SRU 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; and (5) the judgment of conviction on February 20, 2019, against UBS and UBS France in case Number 1105592033 in the French First Instance Court and a decision upholding the February 20, 2019 judgment of the French First Instance Court (the 2019 French Conviction).

(d) 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 Code section 4975 (an “IRA”), in each case, with respect to which an Affiliated QPAM relies on PTE 84–14, or with respect to which an Affiliated QPAM (or any CSAG or UBS affiliate) has expressly represented that the manager qualifies as a QPAM or relies on PTE 84–14. A Covered Plan does not include an ERISA-covered plan or IRA to the extent the Affiliated 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. Notwithstanding the above, an Affiliated QPAM may disclaim reliance on QPAM status or PTE 84–14 in a written modification of a contract, arrangement, or agreement with an ERISA-covered plan or IRA, where the modification is made in a bilateral document signed by the client; the client’s attention is specifically directed toward the disclaimer; and the client is advised in writing that, with respect to any transaction involving the client’s assets, the Affiliated QPAM will not represent that it is a QPAM, and will not rely on the relief described in PTE 84–14.

(e) The term “Exemption Period” means the one-year period that begins on the closing date of the acquisition of CSG by UBS Group AG (hereinafter, the Merger).

(f) 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-SRU filed in the US District Court for the District of Connecticut.

(g) The term “Misconduct Entity” means an entity subject to one of the Convictions described above, *i.e.*, UBS, UBS Securities Japan, UBS France, CSAG and CSSEL.

(h) The term “Related QPAM” means any current or future “qualified professional asset manager” (as defined in Section VI(a) of PTE 84–14) that relies on the relief provided by PTE 84–14, and with respect to which CSAG or UBS owns a direct or indirect five (5) percent or more interest, but with respect to which a Misconduct Entity is not an “affiliate” (as defined in section VI(d)(1) of PTE 84–14). The term “Related QPAM” excludes a Misconduct Entity.

(i) The term “best knowledge,” “to the best of one’s knowledge,” “best knowledge at that time,” and other similar “best knowledge” terms shall include matters that are known to the applicable individual or should be known to such individual upon the exercise of such individual’s due diligence required under the circumstances, and, with respect to an entity other than a natural person, such term includes matters that are known to the directors and officers of the entity or should be known to such individuals upon the exercise of such individuals’ due diligence required under the circumstances.

## Section II. Covered Transactions

Under this exemption, the Affiliated QPAMs and the Related QPAMs would not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14)<sup>9</sup> during the Exemption Period, notwithstanding the “Convictions,” provided that the definitions in Section I and the conditions in Section III are satisfied.

## Section III. Conditions

(a) The Affiliated QPAMs and the Related QPAMs (including their officers, directors, agents other than the Misconduct Entities, employees of such QPAMs, and employees of Misconduct Entities that do work for Affiliated or Related QPAMs described in subparagraph (d) below) did not know or did not have reason to know of and did not participate in the conduct underlying the Convictions and the FX

<sup>9</sup> 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (Oct. 10, 1985), as amended at 70 FR 49305 (Aug. 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

Misconduct. Further, any other party engaged on behalf of the Affiliated QPAMs and the Related QPAMs who had responsibility for, or exercised authority in connection with, the management of plan assets did not know or have reason to know of and did not participate in the criminal conduct underlying the Convictions described in Section I(c)(1) and (2) and the 2019 French Conviction.

For all purposes of this exemption, the “conduct” of any person or entity that is the “subject of the Convictions” encompasses any misconduct of CSAG, CSSEL, UBS, UBS France, UBS Securities Japan, and/or their personnel: (i) that is described in 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-SRU; (ii) that is described in 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; (iii) that is the basis of the 2019 French Conviction; and (iv) that is the subject of the CSAG and CSSEL convictions described in Section I(c)(1) and (c)(2); and for purposes of the exemption as well as the avoidance of doubt, the term “participate in” (as included paragraph (c) below), refers not only to active participation in the criminal conduct but includes an individual or entity’s knowledge or approval of the criminal conduct, without taking active steps to prohibit such conduct, such as reporting the conduct to the individual’s supervisors, and to the Board of Directors.

(b) The Affiliated QPAMs and the Related QPAMs (including their officers, directors, agents other than the Misconduct Entities, employees of such QPAMs, and CSAG employees described in subparagraph (d)(3) below) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct of that is the subject of the Convictions and the UBS FX Misconduct. Further, any other party engaged on behalf of the Affiliated QPAMs and the Related QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct of that is the subject of the Convictions;

(c) The Affiliated QPAMs do not currently and will not in the future

employ or knowingly engage any of the individuals who participated in the criminal conduct underlying the Convictions;

(d) At all times during the Exemption Period, no Affiliated 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 Affiliated QPAM with respect to one or more Covered Plans, to enter into any transaction with a Misconduct Entity or to engage a Misconduct Entity 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. An Affiliated QPAM will not fail this condition solely because:

(1) A CSAG (or successor) affiliate serves as a local sub-custodian that is selected by an unaffiliated global custodian that, in turn, is selected by someone other than an Affiliated QPAM or Related QPAM;

(2) CSAG (or a successor) provides only necessary, non-investment related, non-fiduciary services that support the operations of an Affiliated QPAM, at an Affiliated QPAM’s own expense, and the Covered Plan is not required to pay any additional fee beyond its agreed-to asset management fee. This exception does not permit CSAG or its branches (or a successor) to provide any service to an investment fund managed by an Affiliated QPAM or Related QPAM; or

(3) CSAG (or successor) employees are double-hatted, seconded, supervised, or subject to the control of an Affiliated QPAM;

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

(f) An Affiliated QPAM or a Related QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an “ERISA-covered plan”) or Code section 4975 (an “IRA”) in a manner that it knew or should have known would further the criminal conduct underlying the Convictions; or cause the Affiliated QPAM or Related QPAM or its affiliates to directly or indirectly profit from the criminal conduct underlying the Convictions;

(g) No Misconduct Entity will act as a fiduciary within the meaning of ERISA section 3(21)(A)(i) or (iii) or Code section 4975(e)(3)(A) and (C) with respect to ERISA-covered Plan and IRA assets, except that each may act as such a fiduciary (1) with respect to employee benefit plans sponsored for its own

employees or employees of an affiliate; or (2) in connection with securities lending services of the New York Branch of CSAG. No Misconduct Entity will be treated as violating the conditions of the exemption solely because it acted as an investment advice fiduciary within the meaning of ERISA section 3(21)(A)(ii) or Code section 4975(e)(3)(B);

(h)(1) Each Affiliated QPAM must maintain, adjust (to the extent necessary), implement, and follow the written policies and procedures described below (Policies).<sup>10</sup> The Policies must require and be reasonably designed to ensure that:

(i) The asset management decisions of the QPAM are conducted independently of the corporate and management and business activities of each Misconduct Entity, and without considering any fee a related local sub-custodian may receive from those decisions. This condition does not preclude an Affiliated QPAM, as defined in Section I(b)(1), from receiving publicly available research and other widely available information from a CSAM affiliate, other than CSSEL, or from a UBS affiliate;

(ii) The 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 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 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 its knowledge at that time, the 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; and

(vi) The QPAM complies with the terms of this one-year exemption, and

<sup>10</sup> This exemption does not preclude the UBS QPAMs and CS Affiliated QPAM from maintaining separate Policies provided that the Policies comply with this exemption.



CSAG complies with the terms of Section III(d)(2);

(2) Any violation of, or failure to comply with an item in subparagraphs (h)(1)(ii) through (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. This report must be made to the head of compliance and the general counsel (or their functional equivalent) of the relevant QPAM that engaged in the violation or failure, and the independent auditor responsible for reviewing compliance with the Policies. A QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, if 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 (2);

(3) Each Affiliated QPAM must maintain, adjust (to the extent necessary), and implement or continue a program of training during the Exemption Period (the Training) that is conducted at least annually for all relevant Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel.<sup>11</sup> 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 the requirement for 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 to perform the tasks required by this exemption; and

(iii) Be conducted in-person, electronically, or via a website;

(i)(1) Each CS Affiliated QPAM (as defined in Section I(b)(1) submits to an audit 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 CS Affiliated QPAM's compliance with, the Policies and Training described above in Section III(h). The audit requirement must be incorporated in the Policies. The audit must cover the Exemption Period and must be completed no later than 180 days after the Exemption Period. The prior exemption audits required pursuant to PTE 2019–07 and PTE 2022–01 must be completed in accordance with the audit requirements of these prior exemptions for the prior period of November 21, 2021, through the beginning date of the Exemption Period of this one-year exemption within 180 days of the beginning of the Exemption Period of this one-year exemption. These prior exemption audits and coinciding audit reports can be combined into one audit and report for the prior exemption audits. The prior exemption audit report(s) must be submitted in accordance with section III(i)(9) below;

(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 CS Affiliated QPAM and, if applicable, CSAM, 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 CS Affiliated QPAM has developed, implemented, maintained, and followed the Policies in accordance with the conditions of this one-year exemption, and has developed and implemented the Training, as required herein;

(4) The auditor's engagement must specifically require the auditor to test each CS Affiliated QPAM's operational compliance with the Policies and Training. In this regard, the auditor must test, for each CS Affiliated QPAM, a sample of such: (1) CS Affiliated QPAM's transactions involving Covered Plans; (2) each CS Affiliated QPAM's transactions involving CSAM affiliates that serve as a local sub-custodian. The samples must be sufficient in size and nature to afford the auditor a reasonable basis to determine such CS Affiliated QPAM's operational compliance with the Policies and Training;

(5) For each audit, on or before the end of the relevant period described in Section III(i)(1) for completing the audits, the auditor must issue a written report (the Audit Report) to CSAM and the CS Affiliated 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 CS Affiliated QPAMs. The Audit Report must include the auditor's specific determinations regarding:

(i) The adequacy of each CS Affiliated QPAM's Policies and Training; each CS Affiliated QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective CS Affiliated QPAM's noncompliance with the written Policies and Training described in Section III(h) above. The CS Affiliated QPAM must promptly address any noncompliance. The CS Affiliated 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 CS Affiliated QPAM. Any action taken or the plan of action to be taken by the respective CS Affiliated QPAM must be included in an addendum to the Audit Report (such addendum must be completed before to the certification described in Section III(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 CS Affiliated QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that a CS Affiliated QPAM has complied with the requirements under this subparagraph must be based on evidence that the particular CS Affiliated QPAM has actually implemented, maintained, and followed the Policies and Training required by this exemption. Furthermore, the auditor must not solely rely on the Annual Exemption Report created by the Compliance Officer, as described in Section III(o) below, as the basis for the auditor's conclusions in lieu of

<sup>11</sup> This exemption does not preclude an Affiliated QPAM from maintaining separate training programs provided each training program complies with this exemption.



independent determinations and testing performed by the auditor as required by Section III(i)(3) and (4) above; and

(ii) The adequacy of the Exemption Review described in Section III(n);

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

(7) With respect to the Audit Report, the general counsel, or one of the three most senior executive officers of the CS Affiliated QPAM or successor 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, the CS Affiliated QPAM has addressed, corrected, and 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. This certification must also include the signatory's determination that, to the best of the 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. Notwithstanding the above, no person, including any person referenced in the CSAG or CSSEL Statement of Facts that gave rise to the CSAG or CSSEL Plea Agreement, who knew of, or should have known of, or participated in, any misconduct described in the CSAG or CSSEL Statement of Facts, by any party, may provide the certification required by this exemption, unless the person took active documented steps to stop the misconduct.

(8) The Risk Committee of UBS Group AG's Board of Directors is provided a copy of the Audit Report and a senior executive officer of UBS Group AG's Compliance and Operational Risk Control function must review the Audit Report for each CS Affiliated QPAM and must certify in writing, under penalty of perjury, that such person has reviewed each Audit Report. The Audit Report under this section III(i) must comply with the delivery and certification requirements in section III(j)(8) below;

(9) Each CS Affiliated QPAM provides its certified Audit Report to the Department by regular mail addressed to: Office of Exemption Determinations (OED), 200 Constitution Avenue NW, Washington, DC 20001, or via email to *e-OED@dol.gov*. The 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 one-year exemption. Furthermore, each CS Affiliated QPAM must make its Audit Reports 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 by this exemption 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 used in connection with the audit, provided such access, inspection, and review is otherwise permitted by law; and

(12) CSAM and/or the CS Affiliated QPAM 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 involving the terminated auditor and CSAM and/or the CS Affiliated QPAMs;

(j)(1) Each UBS QPAM (as defined in Section I(b)(2)) 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 above in Section (h). The audit requirement must be incorporated in the Policies. The audit must cover the Exemption Period and it must be completed no later than 180 days after the end of the Exemption Period. The prior exemption audits required pursuant to PTE 2020–01 must be completed in accordance with the audit requirement of PTE 2020–01 for the prior periods of: (1) March 20, 2022 through March 19, 2023; and (2) March 20, 2023 through the beginning date of the Exemption Period for this one-year exemption, and each audit must be provided within 180 days of the beginning of the Exemption Period. The prior exemption audits and coinciding audit reports can be combined into one audit and report for the prior exemption audits. The prior exemption audit report(s) must be submitted in accordance with section III(j)(9) below;

(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 one-year exemption, and has developed and implemented the Training, as required herein;

(4) The auditor's engagement must specifically require the auditor to test each 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(k)(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 III(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 III(j)(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 each UBS QPAM has 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, 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 III(j)(3) and (4) above; and

(ii) The adequacy of the Exemption Review described in Section III(n);

(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, and 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 Group AG's Board of Directors is provided a copy of the Audit Report; and a senior executive officer of UBS Group AG'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, Washington, DC 20001; or via email to *e-OED@dol.gov*. This delivery must take place no later than 45 days following completion of the Audit Report. The Audit Reports will be made part of the public record regarding this one-year exemption. Furthermore, each UBS QPAM must make its Audit Reports 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 by this exemption that is entered into subsequent to the effective date of this exemption must be submitted to OED no later than two 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 used 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 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;

(k) As of the effective date of this one-year exemption, with respect to any arrangement, agreement, or contract between an Affiliated QPAM and a Covered Plan, the 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 prohibited transactions); and to comply with the standards of prudence and loyalty set forth in ERISA

Section 404 with respect to each such ERISA-covered plan and IRA to the extent that ERISA Section 404 is applicable;

(2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from the 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 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 a Conviction covered under this exemption. This condition applies only to actual losses caused by the QPAM's violations. The term Actual Losses includes, but is not limited to, losses and related costs arising from unwinding transactions with third parties and from transitioning Plan assets to an alternative asset manager as well as costs associated with any exposure to excise taxes under Code section 4975 as a result of a QPAM's inability to rely upon the relief in the QPAM Exemption;

(3) Not to require (or otherwise cause) the Covered Plan to waive, limit, or qualify the liability of the QPAM for violating ERISA or the Code for engaging in prohibited transactions;

(4) Not to restrict the ability of the Covered Plan to terminate or withdraw from its arrangement with the 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 arrangement involving investments in pooled funds subject to ERISA entered into after the effective date of this exemption, 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 a like manner to all such investors;

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the QPAM for a violation of such agreement's terms. To the extent consistent with ERISA Section 410, 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 affiliates) or CSAM (and affiliates), or damages arising from acts outside the control of the Affiliated QPAM; and

(7) Within 120 days after the effective date of this one-year exemption, each QPAM must provide a notice of its obligations under this Section III(k) to each Covered Plan. For prospective Covered Plans that enter into a written asset or investment management agreement with a QPAM on or after a date that is 120 days after the effective date of this exemption, the QPAM must agree to its obligations under this Section III(k) in an updated investment management agreement between the QPAM and such clients or other written contractual agreement. Notwithstanding the above, a QPAM will not violate the condition solely because a Covered Plan refuses to sign an updated investment management agreement. For new Covered Plans that were provided an investment management agreement prior to the effective date of this exemption, returning it within 120 days after the effective date of this exemption, and that signed investment management agreement requires amendment to meet the terms of the exemption, the QPAM may provide the new Covered Plan with amendments that need not be signed with any documents required by this subsection (k) within ten (10) business days after receipt of the signed agreement.

(l) Within 60 days after the effective date of this one-year exemption, each Affiliated QPAM provides notice of the proposed and final exemption as published in the **Federal Register**, along with a summary describing the facts that led to the Convictions (the Summary), which has been submitted to the Department, and a prominently displayed statement (the Statement) that the Convictions result in a failure to meet a condition in PTE 84–14, to each

sponsor and beneficial owner of a Covered Plan that has entered into a written asset or investment management agreement with an Affiliated QPAM, or the sponsor of an investment fund in any case where an Affiliated QPAM acts as a sub-adviser to the investment fund in which such ERISA-covered plan and IRA invests. All prospective Covered Plan clients that enter into a written asset or investment management agreement with an Affiliated QPAM after a date that is 60 days after the effective date of this exemption must receive a copy of the notice of the exemption, the Summary, and the Statement before, or contemporaneously with, the Covered Plan's receipt of a written asset or investment management agreement from the CS Affiliated QPAM or the UBS Affiliated QPAM. The notices may be delivered electronically (including by an email that has a link to the one-year exemption). An Affiliated QPAM does not need to send the required notices to plans for which an Affiliated QPAM neither relies on QPAM nor has represented that it is relying on QPAM.

(m) The Affiliated QPAMs must comply with each condition of PTE 84–14, as amended, with the sole exception of the violation of Section I(g) of PTE 84–14 that is attributable to the Convictions. If, during the Exemption Period, an entity within the CSAM or UBS corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Convictions), relief in this exemption would terminate immediately;

(n)(1) Within 60 days after the effective date of this exemption, each QPAM must designate a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. For purposes of this condition (n), each relevant line of business within a CS Affiliated QPAM or UBS Affiliated QPAM may designate its own Compliance Officer(s). Notwithstanding the above, the appointed Compliance Officer may not be a person who: (i) participated in the criminal conduct underlying the Convictions, or knew of, or (ii) had reason to know of, the criminal conduct without taking active documented steps to stop the misconduct;

The Compliance Officer must conduct a review of each twelve-month period of the Exemption Period (the Exemption Review), to determine the adequacy and effectiveness of the implementation of

the Policies and Training.<sup>12</sup> 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 direct reporting line to the highest-ranking corporate officer in charge of compliance for the applicable Affiliated QPAM.

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

(i) The Annual Exemption Review includes a review of the Affiliated QPAM's 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 compliance and risk control function (or its equivalent) during the time period; the most recent Audit Report issued pursuant to this exemption or PTE 2020–01 or PTE 2022–01; any material change in the relevant business activities of the Affiliated QPAMs; and any change to ERISA, the Code, or regulations related to fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of the Affiliated QPAMs;

(ii) The Compliance Officer prepares a written report for the Exemption Review (an Exemption Report) that (A) summarizes their material activities during the prior year; (B) sets forth any instance of noncompliance discovered during the prior year, and any related corrective action; (C) details any change to the Policies or Training to guard against any similar instance of noncompliance occurring again; and (D) makes recommendations, as necessary, for additional training, procedures, monitoring, or additional and/or

<sup>12</sup> Pursuant to PTE 2020–01 and PTE 2022–01 the Compliance Officer must conduct an exemption review (annual review) for each period corresponding to the audit periods set forth in those exemptions 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 2020–01 must cover the period March 19, 2022 through the beginning date of the Exemption Period of this one-year exemption and must be completed within three (3) months from the end of the period to which it relates. Also, the final exemption review pursuant to PTE 2022–01 must cover the period November 21, 2022 through the beginning date of the Exemption Period of this one-year exemption and must be completed within three (3) months from the end of the period to which it relates.

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 prior year and any related correction taken to date have been identified in the Exemption Report; and (D) the Affiliated QPAMs have complied with the Policies and Training, and/or corrected (or are correcting) any known instances of noncompliance in accordance with Section III(h) above;

(iv) The Exemption Report must be provided to appropriate corporate officers of CSAM and UBS and to each Affiliated QPAM to which such report relates, and to the head of compliance and the general counsel (or their functional equivalent) of CSAM, UBS, the relevant Affiliated QPAM. The Exemption Report must be made unconditionally available to the independent auditor described in Section III(i) above;

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

(o) UBS Group AG imposes its internal procedures, controls, and protocols on each Misconduct Entity to reduce the likelihood of any recurrence of conduct that is the subject of the Convictions;

(p) Relief in this exemption will terminate on the date that is six months following the date that a U.S. regulatory authority makes a final decision that UBS or CSAM or an affiliate of either failed to comply in all material respects with any requirement imposed by such regulatory authority in connection with the Convictions;

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

(r) 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 CSAM or any of their affiliates (as defined in Section VI(d) of PTE 84–14) during the Exemption Period in connection with conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA; and (2) immediately provide the Department with any information requested by the Department during the Exemption period, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement. UBS does not need to redisclose pre-existing DPAs or NPAs, provided that such pre-existing DPAs or NPAs were previously disclosed to the Department. However, the Department notes that all such pre-existing DPAs and NPAs must be included as part of any request by UBS to extend this exemption;

(s) Within 60 days after the effective date of this exemption, each Affiliated 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 of the Policies (Summary Policies) that accurately summarizes key components of the 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.<sup>13</sup> 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;

(t) An Affiliated QPAM will not fail to meet the terms of this one-year exemption solely because a different Affiliated QPAM fails to satisfy a condition for relief described in Section III(c), (d), (h), (i), (j), (k), (l), (m), (s) or (u); or if the independent auditor described in Section III(i) or (j) fails to comply with a provision of the exemption other than the requirement described in Section III(i)(11) and (j)(11), provided that such failure did not result from any actions or inactions of CSAM or UBS or its affiliates;

(u) All the material facts and representations set forth in the

Summary of Facts and Representations are true and accurate; and

(v) Every six months following the merger of UBS and CSAG, UBS must submit a written report to the Department that updates the progress of the Merger. This report must also be provided to Covered Plan fiduciaries (including via an electronic link). Additionally, in its first report to the Department, UBS must: (1) identify the QPAMs using this exemption as the date of the Report; (2) provide details regarding the extent to which the CS Affiliated QPAMs have been integrated into UBS's operations and any other relevant changes with respect to any QPAMs that are using this exemption; and (3) any other changes, whether operational or otherwise, that impact any requirements under this exemption;

*Applicability Date:* The exemption will be in effect for a period of one year beginning on the closing date of the Merger.

Signed at Washington, DC, this 31st day of May 2023.

**George Christopher Cosby,**

*Director, Office of Exemption Determinations,  
Employee Benefits Security Administration,  
U.S. Department of Labor.*

[FR Doc. 2023–11864 Filed 6–1–23; 8:45 am]

**BILLING CODE 4510–29–P**

## **NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**[Document Number NASA–22–060; Docket Number–NASA–2022–0002]**

### **National Environmental Policy Act; Mars Sample Return Campaign; Correction**

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice; correction.

**SUMMARY:** NASA published a document in the **Federal Register** of May 25, 2023 concerning the availability of the Mars Sample Return (MSR) Campaign Final Programmatic Environmental Impact Statement (PEIS). The document was published one week early, which created incorrect information in the **DATES** caption.

**FOR FURTHER INFORMATION CONTACT:** Mr. Steve Slaten, NASA Jet Propulsion Laboratory, by electronic mail at [Mars-sample-return-nepa@lists.nasa.gov](mailto:Mars-sample-return-nepa@lists.nasa.gov) or by telephone at 202–358–0016. For questions regarding viewing the Docket, please call Docket Operations, telephone: 202–366–9317 or 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

<sup>13</sup> If 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.