

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Notice of Exemption involving Credit Suisse AG

(hereinafter, either CSAG or the Applicant)

Located in Zurich, Switzerland

[Prohibited Transaction Exemption 2014-11;

Application No. D-11819]

AGENCY: Employee Benefits Security Administration, U.S.

Department of Labor.

ACTION: Notice of Temporary Exemption

SUMMARY: This document contains a notice of temporary exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act), and the Internal Revenue Code of 1986, as amended (the Code). The exemption would affect the ability of certain entities with specified relationships to CSAG to continue to rely upon the relief provided by Prohibited Transaction Class Exemption 84-14 for a period of one year from the date of publication of this notice.

EFFECTIVE DATE: This temporary exemption will be effective as of the date a 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 is entered in the District Court for the Eastern District of Virginia in Case Number 1:14-cr-188-RBS and will expire one year from the date of publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Erin S. Hesse, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693-8546. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: On September 3, 2014, the Department of Labor (the Department) published a notice of proposed exemption in the Federal Register at 79 FR 52365, proposing that certain entities with specified relationships to CSAG could continue to rely upon the relief provided by Prohibited Transaction Class Exemption (PTE) 84-14 (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)), notwithstanding a 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, to be entered in the District Court for the Eastern District of Virginia in Case Number 1:14-cr-188-RBS. The proposed exemption described a set of additional conditions, designed to protect ERISA-covered plans and IRAs, that the entities with specified relationships to CSAG must satisfy in order to rely upon the relief in PTE 84-14. The exemption was requested by CSAG pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011). Effective December 31, 1978, section 102 of the Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

WRITTEN COMMENTS

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

published in the Federal Register on September 3, 2014, at 79 FR 52365 on or before October 10, 2014. During the comment period, the Department received no telephone inquiries and ten written comments on the proposed exemption. The commenters include eight members of the general public, members of the U.S. House of Representatives (the Representatives), and the Applicant. Other than the Applicant, the commenters generally opposed granting an exemption to CSAG because of its pending criminal conviction or raised issues outside the scope of the exemption. The comment from the Applicant requested certain changes to the operative language of the exemption and provided additional information in support of the requested changes.

The Department also received four hearing requests during the comment period from individuals, including the Representatives. The Department has decided to hold a hearing, consistent with its authority under 29 CFR § 2570.47, in order to more fully explore the issues raised by the commenters. A separate notice of hearing will be published elsewhere in this issue of the Federal Register.

A discussion of the comments, the Applicants' responses, and the Applicant's comment follows below. Any capitalized terms used herein that are not otherwise

defined have the meanings ascribed to them in the Summary of Facts and Representations in the notice of proposed exemption published in the Federal Register on September 3, 2014 at 79 FR 52365.

Public Comments and Applicant's Response

1. Rollins, Lang, Rose, Johnson, and Blixseth Letters

The Rollins Letter expressed concern that grant of the proposed exemption would undermine the public interest in enforcing criminal sanctions for corporate misconduct and deterring future wrongdoing. The Lang letter asserted that fines alone were inadequate sanctions for the Applicant's misconduct and, accordingly, that the Department should deny the exemption. The Rose letter suggested that grant of an exemption would warrant presidential impeachment. The Johnson letter commented that approval of the exemption would send a message that large or politically powerful banks could ignore federal laws. The Johnson Letter also stressed that the federal government has an obligation to ensure the integrity of all companies dealing with pension funds. According to the letter, the cost to pension plans of moving funds away from asset managers affiliated with CSAG would be negligible if pension plans were given 30 days to relocate their accounts. The letter also suggested

that grant of an exemption would prevent CSAG's criminal conviction from having its intended deterrent effect. Finally, the Blixseth letter described various business practices and controversies, which it asserted had resulted in past fines and settlements against CSAG and related entities, and argued for denial of the exemption application.

The Applicant noted the commenters' view that the exemption should be denied as a means of holding CSAG accountable and deterring other banks from criminal misconduct, but asserted that the Applicant nevertheless meets the standards under section 408(a) of ERISA for grant of an exemption. The Applicant disputed that there was any basis for denying an exemption to all of CSAG's affiliates and related entities based on the misconduct of a single entity. According to the Applicant, the arguments for denial of the exemption are inconsistent with section 411 of ERISA, which authorizes the Department to debar a fiduciary convicted of a felony, but not its affiliates.

The Applicant asserts that the need to hold CSAG accountable for criminal misconduct and the propriety of the Department of Justice's Plea Agreement are not at issue in the exemption process. Additionally, the Applicant suggests that the proposed exemption would hold CSAG

accountable, in any event, because the relief would only be available to affiliated managers (not CSAG) and only if they follow fourteen stringent new conditions, in addition to the seven conditions in Part I of PTE 84-14 (including its integrity condition, Part I(g), as modified by the proposed exemption). The Applicant also states that CSAG already faces significant sanctions for criminal misconduct, as evidenced by its agreement to pay \$2.8 billion to the Justice Department, Securities and Exchange Commission, Internal Revenue Service, New York State Department of Financial Services, and the Federal Reserve.

2. Spalding Letter.

The Spalding letter commented that the proposed exemption was insufficiently detailed with respect to the investment strategies utilized by affected asset managers and with respect to the proposed audit requirements of the exemption. The letter also suggested that the Department should take an active role in preventing systemic flaws that are tied to market making consortiums.

The Applicant noted Mr. Spalding's objections to the exemption and his concerns with respect to derivatives and other investment strategies that asset manager affiliates of CSAG could pursue, but argued that the propriety of these strategies should properly be left to the named

fiduciaries or IRA owners who hire asset managers to pursue such strategies. The Applicant further argued that such concerns were irrelevant to the proposed exemption, which, did not address or concern specific investment strategies.

3. Representatives Waters, Lynch & Miller (the Representatives) Letter.

The Representatives suggest that the American public has grown increasingly frustrated about a lack of accountability in our financial system, both with regard to conduct contributing to the financial crisis and to scandals that have occurred since then. While they note that law enforcement has obtained record monetary settlements in response to financial misconduct, the Representatives remain concerned that regulators are failing to use the full arsenal of tools available to them to protect the public and retirees from bad actors and to ensure that criminal behavior is appropriately deterred. The Representatives suggest that the beneficial status of "qualified professional asset manager" should be reserved for institutions that have shown a commitment to maintaining a high standard of integrity via compliance with the law and that the Department's process for evaluating exemption requests like the Applicant's may not be sufficiently robust to maintain this standard.

The Applicant asserts that the Department should not base its decision on the goals of deterrence and accountability for the same reasons set forth in its responses to the Rollins, Lang, Rose, Johnson, and Blixseth Letters, above. In addition, the Applicant states that conduct of other financial institutions in connection with the financial crisis and the question of whether those institutions have been appropriately punished are irrelevant to determining whether the Department should grant an exemption providing relief to affiliated managers of CSAG.

The Applicant also disputes that the Department's approval of past exemption requests relating to a failure of Section I(g) indicates that approval is automatic, thereby undermining financial firms' incentives to comply with the law and existing exemptions. The Applicant states that those exemptions imposed additional conditions appropriate to the particular cases at issue and were granted only after notice and comment from interested parties. The Applicant asserts that, consistent with the requirements of section 408(a) of ERISA, the Department has exercised appropriate caution, evaluated the benefits of the exemption to plans managed by affiliates of CSAG and fashioned a set of stringent additional conditions to

ensure that plans' interests are protected.

In addition, the Applicant notes that CSAG, the entity that entered into the Plea Agreement with the Justice Department, is receiving no relief under the proposed exemption and will be unable to rely upon PTE 84-14 for ten years. The Applicant states that, consequently, the only entities receiving relief under the proposed exemption are affiliated asset managers that are registered U.S. advisers, have their own employees, compliance systems and record of legal compliance and that were not engaged in the conduct underlying the Plea Agreement. The Applicant also states that the exemption does not excuse these managers from compliance with Section I(g) of PTE 84-14, which requires that neither the manager nor its affiliates have been convicted of certain crimes. Under the proposed exemption, Section I(g) will continue to apply, with the sole exception of the Conviction resulting from the Plea Agreement.

Finally, the Applicant points to the imposition of fourteen additional substantive conditions in the proposed exemption, in addition to the seven conditions found in Part I of PTE 84-14, which include, among other things, compliance reviews by an independent auditor, policies and procedures covering six different substantive areas (e.g.,

independence of QPAM decisions from CSAG, ERISA compliance, and prompt reporting of violations), training on those policies and procedures, an annual audit, and significant reporting to plans and to the Department. The Applicant adds that the new conditions also require that no employee who participated in the conduct underlying the Plea Agreement be involved in the affiliate's asset management decisions, and that the affiliate will not cause plans to trade with, or procure services for a fee from CSAG, ensuring separation of the affiliates' asset management decisions from the influence of CSAG.

4. Public Citizen Letter.

In its letter, Public Citizen stresses the importance of deterring criminal activity and expresses its view that grant of the exemption would undermine deterrence. In addition, Public Citizen questions whether it can be verified that employees of CSAG's affiliates were uninvolved in the crime. The Applicant believes that its response to the letters from Rollins, Lang, Rose, Johnson, and Blixseth is also responsive to Public Citizen's concern about deterrence and corporate abuse. The Applicant additionally argues that CSAG engaged in an extensive due diligence process to ensure that it could certify the truth of its statement that its affiliates' employees were

uninvolved in CSAG's criminal activities, and that, as a protective safeguard, the proposed exemption is expressly conditioned on the fact that no employee involved in the crime will participate in the asset management decisions of the investment managers.

5. Financial Recovery and Consulting Services Pty Ltd (FRCS) Letter.

The FRCS letter explains that FRCS represents international and U.S. former customers of CSAG who were victims of a fraud or embezzlement. The letter outlines information that FRCS believes should have been, but was not, included in CSAG's application to the Department requesting the proposed exemption. FRCS requests that the Department only consider granting temporary relief to the Applicant, if any relief is to be given. In support of this request, FRCS submitted a history of conduct at various Credit Suisse affiliates that FRCS considers corrupt. Finally, FRCS suggests that CSAG's application does not meet the statutory requirements for an exemption to be issued.

In response, the Applicant objects to any suggestion that the Department deny the exemption as a means to punish CSAG for misconduct, and references its response to the similar concerns expressed in the Rollins, Lang, Rose,

Johnson, and Blixseth Letters. The Applicant also disputes FRCS' argument that plan costs could be reduced appropriately by granting temporary relief to allow Credit Suisse affiliates to liquidate plan accounts over time. Furthermore, the Applicant states that the comment failed to take into account the costs that denying the exemption would impose on plans that continue to use CSAG affiliates to manage their assets. According to CSAG, those plans would lose access to the trading and pricing efficiencies that PTE 84-14 affords for a period of ten years after the conviction.

Applicant's Comment

The Applicant's comment generally requests a variety of changes to the operative language of the exemption, requests clarification on the meaning of certain language, and provides additional information in support of any requests for changes or clarification.

1. Section I(b).

As proposed, Section I(b) of the exemption conditions relief on a requirement that the Credit Suisse Affiliated QPAMs, Credit Suisse Related QPAMs, and their officers, directors, "agents," and employees not have participated in the criminal conduct that is the subject of the Conviction.

The Applicant requests that the term "agents" be removed from Section I(b). The Applicant states that, to the best of its knowledge after due inquiry, the Credit Suisse Affiliated QPAMs and the Credit Suisse Related QPAMs did not participate in the criminal conduct nor did their officers, directors, or employees. However, the Applicant notes that CSAG, which was involved in the criminal conduct, could have previously acted as an agent for a Credit Suisse Affiliated QPAM in some capacity that is unconnected to its criminal conduct or asset management decisions, such as service of process in a foreign country. Therefore, in light of the potentially broad scope of the term "agents," the Applicant is reluctant to make a representation that includes the term "agents." After consideration of the comment, the Department has substituted "agents other than Credit Suisse AG" for the term "agents." Thus, subject to this modification, it remains a condition of the exemption that "[t]he Credit Suisse Affiliated QPAMs and the Credit Suisse Related QPAMs (including officers, directors, agents other than Credit Suisse AG, and employees of such QPAMs) did not participate in the criminal conduct of Credit Suisse AG that is the subject of the Conviction." Accordingly, the QPAMs, their officers, directors, agents (other than CSAG), and

employees must not have aided, assisted in, procured, counseled, or advised the preparation and presentation of false income tax returns and other documents to the Internal Revenue Service of the Treasury Department.

2. Section I(d).

The Applicant requests clarification that an "ERISA-covered plan" or "IRA" in Section I(d) and throughout the exemption refers only to plans subject to Part 4 of Title I of ERISA and section 4975 of the Code. That was the Department's intent and it has, therefore, clarified that an "ERISA-covered plan" or "IRA" refers only to such plans by substituting "subject to Part 4 of Title I of ERISA" for "described in section 3(3) of ERISA" and "section 4975 of the Code" for "section 4975(e)(1) of the Code." Thus, subject to this modification, it remains a condition of the exemption that "[t]he criminal conduct of Credit Suisse AG that is the subject of the Conviction did not directly or indirectly involve the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA).

3. Section I(f).

As proposed, Section I(f) of the exemption provides that a Credit Suisse Affiliated QPAM will not use its authority or influence to direct an investment fund managed

by the QPAM to enter into any transaction with Credit Suisse AG or engage Credit Suisse AG to provide additional services for a fee borne by the investment fund.

The Applicant requests that Section I(f) provide an exception for certain subcustody arrangements entered into with CSAG by global custodians that are unaffiliated with CSAG. According to the Applicant, to the extent that a Credit Suisse Affiliated QPAM invests in a market where CSAG is the local subcustodian or effects the transaction in that market, CSAG could receive compensation from the global custodian.

The Department declines to add a specific exception to the language in Section I(f) as requested by the Applicant. In this regard, the Department is concerned about the potential for self-dealing inasmuch as, depending on the facts and circumstances, a Credit Suisse Affiliated QPAM might effectively use its "authority or influence to direct" an investment fund to "enter into any transaction with" CSAG or "provide additional services, for a fee borne by" the investment fund. The Department notes, however, that it is not expressing a view on whether any particular transaction would constitute a separate prohibited transaction under ERISA or the Code.

The Applicant also requests clarification that if a

Credit Suisse Affiliated QPAM obtains services from CSAG without cost to an ERISA-covered plan or IRA (e.g., at the QPAM's own expense), the condition in Section I(f) will not be violated. The Department clarifies that services provided for no additional cost to an ERISA-covered plan or IRA would not fall within the scope of Section I(f). Accordingly, the Department has modified the phrase "provide additional services for a fee to the investment fund" to read, "provide additional services to such investment fund, for a direct or indirect fee borne by such investment fund" to make the intent of this Section I(f) clear.

The Applicant additionally requests that Section I(f) provide an exception for transactions covered under PTE 75-1, Part III and PTE 2008-07,¹ which permit Credit Suisse Affiliated QPAMs to purchase securities from third parties in an underwriting syndicate where a Credit Suisse Affiliated QPAM's affiliate is a member or manager of the underwriting syndicate. The Applicant believes that prohibiting the use of such exemptions would harm plans,

¹ For PTE 75-1, see 40 FR 50845 (October 31, 1975), as amended at 69 FR 23216 (April 28, 2004), 71 FR 5883 (February 3, 2006), and 78 FR 37572 (June 21, 2013); for PTE 2008-07, see 73 FR 27565 (May 13, 2008).

especially with respect to foreign issuers, where CSAG may often be a manager or member of an underwriting syndicate. The Department declines to add language that excepts transactions covered by PTE 75-1, Part III and PTE 2008-07 from this condition because the transactions permitted by these PTEs are not within the scope of transactions prohibited under Section I(f).

4. Section I(g).

Section I(g) of the proposed exemption provides that Credit Suisse AG and each Credit Suisse Affiliated QPAM will ensure that no employee or agent involved in the criminal conduct that underlies the Conviction will engage in transactions on behalf of any investment fund. The Applicant requests that the reference to "Credit Suisse AG" be removed from this section since CSAG is the convicted entity and the Credit Suisse Affiliated QPAMs are in the best position to ensure compliance with the requirements of the condition provided in Section I(g). Additionally, the Applicant represents that CSAG lacks the authority to monitor all of the Credit Suisse Affiliated QPAMs or to dictate hiring decisions because CSAG may not have operational control of certain Credit Suisse Affiliated QPAMs despite having "control" (as that term is defined in

Section VI(e) of PTE 84-14)² over such entities. The Department concurs that the responsibility for complying with this condition should be imposed upon the Credit Suisse Affiliated QPAMs, and has removed the reference to "Credit Suisse AG" in Section I(g) and also added "Each" to the beginning of this section to clarify that the condition is imposed upon each individual Credit Suisse Affiliated QPAM and that each such Credit Suisse Affiliated QPAM is responsible only for maintaining its own compliance, rather than the compliance of all other Credit Suisse Affiliated QPAMs. Furthermore, the phrase "subject to ERISA" has been added to Section I(g) after the reference to "investment fund" to provide additional clarification that Section I(g) only applies to investment funds for which relief under PTE 84-14 is used.

Additionally, the Applicant requests clarification that a Credit Suisse Affiliated QPAM's failure to comply with this condition will prevent only that particular QPAM from relying on this exemption rather than disqualifying all of the other Credit Suisse Affiliated QPAMs. The

² Section VI(e) of PTE 84-14 defines the term "control" as the power to exercise a controlling influence over the management or policies of a person other than an individual.

Department believes that the changes noted above, combined with changes made to Section I(n), discussed below, provide the necessary clarification to this section and address the Applicant's concerns.

Finally, the Applicant requests that the term "agent" be removed from this section because of its breadth. The Department declines to remove the term "agent" because it could permit the Credit Suisse Affiliated QPAMs to use individuals involved in CSAG's criminal activities as their agents. Accordingly, Section I(g) provides that each Credit Suisse Affiliated QPAM is obligated to ensure that none of its employee or agents, if any, that were involved in the criminal conduct that underlies the Conviction will engage in transactions on behalf of the investment funds it manages.

5. Section I(h).

Section I(h) of the proposed Exemption requires the Applicant to adopt and adhere to specified policies and procedures (the Policies). The Applicant requests that the scope of Section I(h) be clarified to make clear that the requirements of Section I(h) apply to the Credit Suisse Affiliated QPAMs' ERISA-covered plan and IRA clients. The Applicant notes that, in its original form, this section could be interpreted to apply to the assets of other

individuals and entities that are not subject to ERISA or the Code. The Applicant also asks the Department to provide clarification on the scope of laws covered by Section I(h)'s requirement of compliance with various state and federal laws, including whether such compliance specifically relates to the asset management activities of the QPAMs with respect to their ERISA-covered plans and IRAs.

The Department notes that Section I(h) only applies to ERISA-covered plans and IRAs since the relief in PTE 84-14 only applies to such plans and IRAs. However, the Department agrees that additional language could clarify this intent. Therefore, the Department has added qualifying language, where appropriate, to indicate that the requirements of Section I(h) apply to ERISA-covered plans and IRAs, and with respect to compliance with the requirements of ERISA and the Code.

The Applicant also requests that the term "follow" be removed from the prefatory clause of Section I(h), which requires the Credit Suisse Affiliated QPAMs to follow and adhere to the mandated Policies. The Applicant objects that if "follow" is interpreted strictly, it could result in a failure by a Credit Suisse Affiliated QPAM to meet the condition in this section if a Credit Suisse Affiliated

QPAM does not perfectly adhere to the Policies and avoid all mistakes, including inadvertent, technical, or good faith errors. Alternatively, the Applicant asks for clarification that the term "follow" means only that a Credit Suisse Affiliated QPAM must promptly follow the Policies' correction and reporting mechanisms when it knows or should know of a violation of such Policies.

The Department declines to remove the term "follow" from the prefatory clause of Section I(h), inasmuch as it intends for the Credit Suisse Affiliated QPAMs not only to adopt the mandated Policies, but also to adhere to them. The Department agrees, however, that the Credit Suisse Affiliated QPAMs - and the plans they serve - should not run the risk of losing the exemption based on inadvertent, good faith, or de minimis compliance errors. Accordingly, the Department has amended Subsection I(h)(vii) of the exemption to provide that they will not be treated as having failed to develop, implement, maintain or follow the Policies, provided that they correct any instances of noncompliance promptly when discovered or when they reasonably should have known of the noncompliance (whichever is earlier), and provided that they adhere to the reporting requirements for violations that are not promptly corrected.

The Applicant also requests that the reference to "asset management operations" be removed from Subsection I(h)(1)(i). The Applicant explains that "asset management decisions" fully encompasses fiduciary decision-making by Credit Suisse Affiliated QPAMs. In contrast, "asset management operations" could include unrelated business activities, such as information technology security, employee non-discrimination, and workplace, safety, and health issues, matters in which CSAG may, in fact, be involved, but which have no impact on the independence of asset management decisions. Based on this additional information provided by the Applicant, the Department concurs and has removed the phrase "and asset management operations" from this subsection.

Furthermore, the Applicant requests that references to "Credit Suisse AG" be removed from Subsection I(h)(1)(ii)-(vii) because CSAG does not act as a fiduciary for ERISA-covered plans or IRAs in reliance on PTE 84-14. Additionally, the Applicant suggests that imposing these requirements on CSAG would potentially impact branches in non-U.S. markets that do not have any ERISA-covered plan or IRA clients. The Department concurs that this condition should only apply to each Credit Suisse Affiliated QPAM that relies upon PTE 84-14. Therefore, consistent with

other sections where the phrase "Credit Suisse AG" has been removed, it has also been removed from these subsections.

The Applicant also requests that the filing requirements in Subsections I(h)(1)(iv) and (v) be modified to clarify that they apply only to filings with regulators of ERISA-covered plans and IRAS, including the Department of Labor, Department of the Treasury, Department of Justice, and the Pension Benefit Guaranty Corporation. The Department generally concurs with this modification, but notes that the regulators identified in the operative language are listed solely as examples. To the extent that Credit Suisse Affiliated QPAMs engage in filings on behalf of ERISA-covered plans and IRAS with other regulators, those filings would also be covered by these subsections. Therefore, the Department has modified the phrase "any filings or statements made to federal, state, or local government are accurate and complete" in Subsection I(h)(1)(iv) to read, "any filings or statements made by the Credit Suisse Affiliated QPAMs to regulators, including but not limited to, the Department of Labor, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA-covered plans or IRAS are materially accurate and complete, to the best of such QPAM's knowledge at that time." Additionally,

the Department has modified the phrase "the Credit Suisse Affiliated QPAMs do not make material misrepresentations or omit material information in their communications with federal, state, or local government, or their ERISA-covered plan and IRA clients" in Subsection I(h)(1)(v) to read, "the Credit Suisse Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plan and IRA clients."

The Applicant requests that the condition in Subsection I(h)(1)(vii) requiring reporting of violations to specified persons apply only when a Credit Suisse Affiliated QPAM fails to follow the correction and reporting mechanisms built into the Policies, and not in every instance. The Applicant suggests that reporting every error, even those that are generally considered correctable in accordance with ERISA or the Code, may overwhelm the reports' recipients and provide little protection to ERISA-covered plans and IRAs. The Department agrees with the Applicant and has modified the phrase "any violations of or failure to comply with items (ii) through (vi) are promptly reported in writing" in Subsection

I(h)(1)(vii) to read, "any violations of or failure to comply with items (ii) through (vi) are corrected promptly upon discovery and any such violations or compliance failures not promptly corrected are reported, upon discovering the failure to promptly correct, in writing..."

The Department notes, however, that as part of the auditor's review of the operational compliance of each Credit Suisse Affiliated QPAM (as noted in Subsection I(i)(3)), each Credit Suisse Affiliated QPAM should provide documentation to the auditor that reflects any appropriate corrections made as outlined in the Policies. The Department notes further that the documentation of the errors is a means by which the auditor may test operational compliance with the Policies and demonstrate a QPAM's ERISA and Code compliance.

The Applicant requests additional clarification with respect to Subsection I(h)(1)(vii). First, the Applicant requests that each Credit Suisse Affiliated QPAM be required to report to its own General Counsel for Asset Management and head of Compliance, positions which currently exist at each Credit Suisse Affiliated QPAM. Second, the Applicant requests that the Department clarify that a "non-QPAM fiduciary" in the context of this subsection is a fiduciary for any affected ERISA-covered

plan or IRA who is independent of the Applicant and its affiliates, regardless of whether such fiduciary also happens to be a QPAM, but that such fiduciary need not be independent when dealing with one of its affiliates' own plans or the IRAs of their employees. The Department concurs that clarification is appropriate and has thus changed "the head of U.S. Asset Management Compliance" and "the General Counsel for Asset Management" to "the head of Compliance" and "the General Counsel of the relevant Credit Suisse Affiliated QPAM." The Department has also modified "non-QPAM fiduciary of any affected ERISA-covered Plan or IRA" to read, "a fiduciary of any affected ERISA-covered plan or IRA where such fiduciary is independent of Credit Suisse AG; however, with respect to any ERISA-covered plans or IRAs sponsored by an affiliate (as defined in Section VI(d) of PTE 84-14) of Credit Suisse AG or beneficially owned by an employee of Credit Suisse AG or its affiliates, such fiduciary does not need to be independent of Credit Suisse AG."

The Applicant also requests that Subsections I(h)(1) and I(h)(2), with respect to reporting violations, only apply to violations with respect to the development and implementation of the Policies and Training. The Department disagrees that such a limitation is appropriate

because those subsections simply outline what should be included in the Policies and Training. Additionally, the Department notes the other changes made to Subsection I(h)(1) significantly clarify the nature of violations and compliance failures that must be reported. Finally, the Department notes that the Credit Suisse Affiliated QPAMs, as fiduciaries, may have additional notification responsibilities and duties outside the scope of this exemption.

6. Section I(i).

The Applicant requests that references to "Credit Suisse AG" be removed from Section I(i) since only the Credit Suisse Affiliated QPAMs will have Policies and Training in place. The Department concurs with this change and has removed all references to "Credit Suisse AG" from Subsection I(i) except in Subsection I(i)(4), which requires that CSAG, the parent company of the Credit Suisse Affiliated QPAMs, also receive the Audit Reports. It is the Department's view that CSAG should generally be on notice of the legal compliance efforts of its subsidiary-affiliates.

The Applicant additionally requests clarification that the audit requirement will apply to a Credit Suisse Affiliated QPAM only at such time as it has ERISA-covered

plan clients or IRA clients for which it relies upon PTE 84-14. The Department notes that any current and future affiliates that are not currently relying on PTE 84-14 for transactions need not submit to an audit (and therefore need not have Policies and Training in place) until such time as they begin relying on the relief in PTE 84-14.

Furthermore, the Applicant requests that the compliance review, determination, and testing contemplated in Subsections I(i)(1), (2), and (3) should be limited to the development, maintenance, and implementation of the Policies and Training. The Department believes that based on modifications already made to Section I(h), limiting this condition as requested by the Applicant is unnecessary. Section I(h) has already been modified to apply to ERISA-covered plans and IRAs and compliance with laws applicable to such plans and IRAs. Additionally, the Department believes operational compliance is an important aspect of protecting ERISA-covered plan and IRA clients of the Credit Suisse Affiliated QPAMs. Therefore, the Department declines to limit Subsections I(i)(1), (2), and (3) in the requested manner.

The Applicant requests confirmation that, with respect to the audit requirement in Section I(i) of the exemption, each of the Credit Suisse Affiliated QPAMs may be covered

by a separate audit and Audit Report. The Applicant notes that there are situations where a Credit Suisse Affiliated QPAM is not wholly owned by CSAG, and such QPAM might be a competitor with another Credit Suisse Affiliated QPAM. The Department did not intend to require that all of the Credit Suisse Affiliated QPAMs be covered by a single Audit Report and has substituted the phrase "each Credit Suisse Affiliated QPAM" in place of "the Credit Suisse Affiliated QPAMs," where appropriate in Section I(i), to reflect the requested confirmation.

The Applicant also requests that the Department confirm that the phrase "any instances of Credit Suisse AG's or the Credit Suisse Affiliated QPAMs' noncompliance with the written Policies and Training described in paragraph (h) above," In Subsection I(i)(4) refers only to failures to develop and implement the Policies and Training. The Department notes that this language, now modified to remove the reference to "Credit Suisse AG" requires that any instances of noncompliance which are not corrected in accordance with the Policies and which are reported separately to the Auditor under Subsection I(h)(1)(vii) should be noted in the Audit Report. The auditor may also choose to utilize its discretion under this requirement to include, for example, a type of error

that occurs frequently despite being properly corrected on each occasion, where, in the auditor's independent judgment, such repeated errors might rise to a level that the auditor determines should be addressed by a particular Credit Suisse Affiliated QPAM.

The Applicant requests clarification that where the auditor identifies an instance of noncompliance while engaging in the audit, under Subsection I(i)(5), that such notification only needs to be sent to the Credit Suisse Affiliated QPAM to which it applies. The Department notes that the Applicant's understanding of Subsection I(i)(5) is correct and has modified the phrase "The auditor shall notify Credit Suisse AG and the Credit Suisse Affiliated QPAMs" in Subsection I(i)(5) to read, "The auditor shall notify the respective Credit Suisse Affiliated QPAM" in order to provide additional clarification. Furthermore, the Department has decided to strike the sentence, "Credit Suisse AG or a Credit Suisse Affiliated QPAM shall provide written notice to the Department's Office of Exemption Determinations (OED), Room N-5700, 200 Constitution Avenue, NW, Washington DC 20210: of any instances of noncompliance reviewed by the auditor within ten (10) business days after such notice is received from the auditor" from the final temporary exemption because all such instances of

noncompliance should be included in the Audit Reports, which the Department will receive upon completion thereof.

The Applicant notes that in the last sentence of Subsection I(i)(5), the reference to an "explanation of any corrective actions taken by Credit Suisse AG" should refer to corrective actions taken by a Credit Suisse Affiliated QPAM since the Credit Suisse Affiliated QPAMs must operate independently of CSAG. The Department concurs and has changed that phrase so that it now reads, "explanation of any corrective or remedial actions taken by the respective Credit Suisse Affiliated QPAM."

Finally, the Applicant requests that the reference to "Credit Suisse AG" also be removed from Subsection I(i)(6) and that the executive officer of each Credit Suisse Affiliated QPAM only be responsible for certifying its own Audit Report. The Department concurs that the executive of each Credit Suisse Affiliated QPAM officer need only certify the Audit Report for the particular QPAM for which he/she works. However, the Department believes it is important for CSAG to be on notice of the content contained in the Audit Reports. Therefore, the Department has modified the language in Subsection I(i)(6) to indicate that each Credit Suisse Affiliated QPAM is responsible for certifying its own audit and the sufficiency of its

Policies and Training, but has added new Subsection I(i)(7) that requires an executive officer of CSAG to certify in writing that he/she has reviewed the Audit Reports of the Credit Suisse Affiliated QPAMs. The former Subsection I(i)(7) has been renumbered as I(i)(8).

7. Section I(k).

Additionally, the Applicant asserts that the phrase "or other services" in Section I(k) requiring CSAG and the Credit Suisse Affiliated QPAMs to agree to certain undertakings in their agreements with their ERISA-covered plan and IRA clients, may be overbroad, especially as it applies to one of the Credit Suisse Affiliated QPAMs that is a dual-registrant (i.e., both broker-dealer and investment adviser). Therefore, the Applicant requests that the phrase "or other services" in Section I(k) be changed to read, "or other discretionary fiduciary services." The Department concurs with the Applicant's request to clarify the scope of Section I(k), and has altered Section I(k) accordingly.

The Applicant also notes that, with respect to the undertakings required by Section I(k), the Credit Suisse Affiliated QPAMs do not have the authority to unilaterally modify their contracts with ERISA-covered plans and IRAs, and that getting bilateral approval of such a change with

each client would be time-consuming. Therefore, the Applicant proposes that the Department impose a unilateral requirement on the Credit Suisse Affiliated QPAMs which would effectively incorporate the same protections for ERISA-covered plans and IRAs. The Department concurs that this is a sensible modification that will not reduce the protections for ERISA-covered plans and IRAs, and, accordingly, the exemption has been modified to require that the Credit Suisse Affiliated QPAMs send notice to their ERISA-covered plan and IRA clients of this unilateral requirement within six months of the date of a final granted exemption in the Federal Register. Additionally, the Department has added language that clearly makes the undertakings required by Section I(k) effective immediately upon publication of this final granted temporary exemption, although the Credit Suisse Affiliated QPAMs have six months to complete the notification.

The Applicant requests that "the Code" be referenced in appropriate places in Section I(k) to clarify the scope of the applicability to IRAs. The Department concurs and has modified the language in Section I(k) where appropriate.

The Applicant also requests clarification whether, under Section I(k), the Credit Suisse Affiliated QPAMs are

prohibited from being indemnified for prohibited transactions that are not caused by the Credit Suisse Affiliated QPAMs (i.e., where the plan fiduciary or a service provider selected by the plan fiduciary and unrelated to CSAG or a Credit Suisse Affiliated QPAM causes a prohibited transaction or error). The Department confirms that the Credit Suisse Affiliated QPAMs are not prohibited from being indemnified in such circumstances, and the Department has added the phrase "except for violations or prohibited transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of Credit Suisse AG" to clause (3) of Section I(k).

Finally, the Applicant requests a modification to the requirement in Section I(k) that provides that any agreements between CSAG, Credit Suisse Affiliated QPAMs, and their ERISA-covered plan and IRA clients allow for such clients to terminate or withdraw from their arrangements with CSAG or the Credit Suisse Affiliated QPAMs without any fees, penalties or other charges. The Applicant requests that such requirement only apply to separately managed accounts and only with respect to undisclosed or unreasonable fees, penalties, or charges for such termination or withdrawal. The Applicant represents that

all such agreements have reasonable termination provisions, such as 30 days' advance notice, and in the case of separately managed accounts, a plan fiduciary can remove assets from an asset manager's control immediately, in any event. However, the Applicant informs the Department that in a pooled fund, depending on the investment strategy, a longer withdrawal period may be required to protect other investors or address limited liquidity in fund assets, which has been fully disclosed and agreed to by plan fiduciaries. Additionally, the Applicant adds that there may be redemption fees in a pooled fund, which are directed at preventing market timing in order to protect other investors in the fund. The Department notes that the language in Section I(k) was not intended to prevent reasonable fees which are intended to protect other investors or prevent market abuses, but rather to cover fees or charges that could otherwise discourage a client from moving to a new asset manager. Therefore, the Department has added clarifying language at the end of clause (5) of Section I(k) that excepts "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."

8. Section I(m).

The Applicant requests confirmation that, in accordance with Section I(m), notice to interested persons is required to be sent only to ERISA-covered plans and IRAs with respect to which PTE 84-14 may be used and that were clients as of the date the proposal was published in the Federal Register. The Department confirms this understanding.

9. Section I(n).

The Applicant asks for clarification in three areas with respect to Section I(n). First, the Applicant requests clarification that a Credit Suisse Affiliated QPAM will not fail to meet the terms of the exemption solely because a different Credit Suisse Affiliated QPAM or a Credit Suisse Related QPAM fails to satisfy a condition for relief under this exemption. The Department clarifies that a Credit Suisse Affiliated QPAM will not fail to meet the terms of the exemption if a Credit Suisse Related QPAM fails to satisfy a condition for relief. However, as originally drafted, if one Credit Suisse Affiliated QPAM

failed to meet the terms of the exemption, all other Credit Suisse Affiliated QPAMs could be disqualified. After further consideration, the Department decided that it is not appropriate to jeopardize the transactions of ERISA-covered plans and IRAs that have no relationship to the particular Credit Suisse Affiliated QPAM that fails to meet a condition. Therefore, the sentence in Section I(n) that reads, "A Credit Suisse Affiliated QPAM will not fail to meet the terms of this proposed exemption, if granted, solely because a Credit Suisse Related QPAM fails to satisfy a condition for relief under this exemption" has been modified to read, "A Credit Suisse Affiliated QPAM will not fail to meet the terms of this exemption solely because a Credit Suisse Related QPAM or a different Credit Suisse Affiliated QPAM fails to satisfy a condition for relief under this exemption."

Second, the Applicant requests clarification that if a Credit Suisse Affiliated QPAM fails to meet the conditions of the exemption for a particular transaction or a particular ERISA-covered plan or IRA, such failure only precludes the Credit Suisse Affiliated QPAM's reliance on the exemption for such transaction or ERISA-covered plan or IRA for the period of non-compliance. The Department confirms the Applicant's understanding and clarifies that,

to the extent that the conditions of PTE 84-14 are incorporated by reference into this exemption, failure to satisfy a condition of PTE 84-14 will have the same effect as it would if the Applicant was operating only under PTE 84-14. That is, the relief will not be available for a particular transaction, as opposed to an absolute bar to use of the exemptive relief for all future transactions. However, the conditions that are unique to this individual exemption must be met in their entirety in order for Credit Suisse Affiliated QPAMs or Credit Suisse Related QPAMs to remain eligible for the relief in this exemption.

Third, the Applicant requests clarification that the failure of a Credit Suisse Related QPAM or CSAG to satisfy a condition of this exemption will not cause a Credit Suisse Related QPAM to lose the relief herein. The Department clarifies that a Credit Suisse Related QPAM will not lose the relief in this exemption due to any failures of another Credit Suisse Related QPAM or CSAG. However, if CSAG fails to review the Audit Reports, as required by Subsection I(i)(7), CSAG will jeopardize the availability of relief under this individual exemption for all of the Credit Suisse Affiliated QPAMs.

Conclusion

After giving full consideration to the entire record, including the written comments, subject to the Department's responses thereto, the Department has decided to grant a temporary exemption, as modified. The exemption will be effective as of the date a judgment of conviction against Credit Suisse AG for one count of conspiracy to violate section 7206(2) of the Internal Revenue Code in violation of Title 18, United States Code, Section 371 is entered in the District Court for the Eastern District of Virginia in Case Number 1:14-cr-188-RBS and expire one year from the date of publication in the Federal Register.

This exemption is granted on a temporary basis to accommodate requests for a public hearing on whether to grant longer term relief without risking the immediate loss of exemptive relief upon entry of a judgment of conviction. This exemption will prevent disruptions in retirement plan investments while a final determination is made on the Credit Suisse Affiliated QPAM's and the Credit Suisse Related QPAM's ability to serve retirement plan clients under PTE 84-14. At the same time that the Department is issuing this exemption, it is also publishing a proposed exemption for longer term relief and a notice of a public hearing on whether to grant such longer term relief to the Credit Suisse Affiliated QPAMs and the Credit Suisse

Related QPAMs.

The complete application file is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1515, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the proposed exemption published in the Federal Register on September 3, 2014 at 79 FR 52365.

GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties

respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) In accordance with section 408(a) of ERISA and section 4975(c)(2) of the Code, the Department makes the following determinations: the exemption is administratively feasible, the exemption is in the interests of the plan and of its participants and beneficiaries, and the exemption is protective of the rights of participants and beneficiaries of the plan;

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

(4) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately

describe all material terms of the transaction which is the subject of the exemption.

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

EXEMPTION³

Section I: Covered Transactions

The Credit Suisse Affiliated QPAMs and the Credit Suisse Related QPAMs shall not be precluded from relying on the relief provided by Prohibited Transaction Class Exemption (PTE) 84-14⁴ notwithstanding the Conviction (as defined in Section II(c)),⁵ provided the following

³ For purposes of this exemption, references to section 406 of ERISA should be read to refer as well to the corresponding provisions of section 4975 of the Code.

⁴ 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).

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

conditions are satisfied:

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

(b) The Credit Suisse Affiliated QPAMs and the Credit Suisse Related QPAMs (including officers, directors, agents other than Credit Suisse AG, and employees of such QPAMs) did not participate in the criminal conduct of Credit Suisse AG that is the subject of the Conviction;

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

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

(e) Credit Suisse AG did not provide any fiduciary services to ERISA-covered plans or IRAs, except in

tax evasion and conspiracy or attempt to commit income tax evasion.

connection with securities lending services of the New York Branch of Credit Suisse AG, or act as a QPAM for ERISA-covered plans or IRAs;

(f) A Credit Suisse Affiliated QPAM will not use its authority or influence to direct an "investment fund" (as defined in Section VI(b) of PTE 84-14) that is subject to ERISA and managed by such Credit Suisse Affiliated QPAM to enter into any transaction with Credit Suisse AG or engage Credit Suisse AG to provide additional services to such investment fund, for a direct or indirect fee borne by such investment fund regardless of whether such transactions or services may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(g) Each Credit Suisse Affiliated QPAM will ensure that none of its employees or agents, if any, that were involved in the criminal conduct that underlies the Conviction will engage in transactions on behalf of any "investment fund" (as defined in Section VI(b) of PTE 84-14) subject to ERISA and managed by such Credit Suisse Affiliated QPAMs;

(h) (1) Each Credit Suisse Affiliated QPAM immediately develops, implements, maintains, and follows written policies (the Policies) requiring and reasonably designed to ensure that: (i) the asset management

decisions of the Credit Suisse Affiliated QPAMs are conducted independently of Credit Suisse AG's management and business activities; (ii) the Credit Suisse Affiliated QPAM fully complies with ERISA's fiduciary duties and ERISA and the Code's prohibited transaction provisions and does not knowingly participate in any violations of these duties and provisions with respect to ERISA-covered plans and IRAs; (iii) the Credit Suisse Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs; (iv) any filings or statements made by the Credit Suisse Affiliated QPAM to regulators, including but not limited to, the Department of Labor, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA-covered plans or IRAs are materially accurate and complete, to the best of such QPAM's knowledge at that time; (v) the Credit Suisse Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plan and IRA clients; (vi) the Credit Suisse Affiliated QPAM complies with the terms of this exemption;

and (vii) any violations of or failure to comply with items (ii) through (vi) are corrected promptly upon discovery and any such violations or compliance failures not promptly corrected are reported, upon discovering the failure to promptly correct, in writing to appropriate corporate officers, the head of Compliance and the General Counsel of the relevant Credit Suisse Affiliated QPAM, the independent auditor responsible for reviewing compliance with the Policies, and a fiduciary of any affected ERISA-covered plan or IRA where such fiduciary is independent of Credit Suisse AG; however, with respect to any ERISA-covered plan or IRA sponsored by an "affiliate" (as defined in Section VI(d) of PTE 84-14) of Credit Suisse AG or beneficially owned by an employee of Credit Suisse AG or its affiliates, such fiduciary does not need to be independent of Credit Suisse AG; Credit Suisse Affiliated QPAMs will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that they correct any instances of noncompliance promptly when discovered or when they reasonably should have known of the noncompliance (whichever is earlier), and provided that they adhere to the reporting requirements set forth in this item (vii);

(2) Each Credit Suisse Affiliated QPAM immediately develops and implements a program of training (the

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

(i) (1) Each Credit Suisse Affiliated QPAM submits to an audit by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA to evaluate the adequacy of, and compliance with, the Policies and Training required in paragraph (h); the audit requirement must be incorporated in the Policies and the first of the audits must be completed no later than ten (10) months after the date of Conviction. The audit must cover the first six-month period that begins on the date of Conviction; under the terms of the Policies, the second audit must cover the following corresponding six-month period and be completed no later than four (4) months after the period to which the audit applies;

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

(3) The auditor's engagement shall specifically require the auditor to test each Credit Suisse Affiliated QPAM's operational compliance with the Policies and Training;

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

Policies and Training of the respective Credit Suisse Affiliated QPAM shall be promptly addressed by such Credit Suisse Affiliated QPAM, and any actions taken by such Credit Suisse Affiliated QPAM to address such recommendations shall be included in an addendum to the Audit Report. Any determinations by the auditor that the respective Credit Suisse Affiliated QPAM has implemented, maintained, and followed sufficient Policies and Training shall not be based solely or in substantial part on an absence of evidence indicating noncompliance;

(5) The auditor shall notify the respective Credit Suisse Affiliated QPAM of any instances of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date. Upon request, the auditor shall provide OED with all of the relevant workpapers reflecting any instances of noncompliance. The workpapers shall include an explanation of any corrective or remedial actions taken by the respective Credit Suisse Affiliated QPAM;

(6) With respect to each Audit Report, an executive officer of the Credit Suisse Affiliated QPAM to which the Audit Report applies certifies in writing, under penalty of perjury, that the officer has reviewed the Audit Report and

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

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

(8) Each Credit Suisse Affiliated QPAM provides its certified Audit Report to the Department's Office of Exemption Determinations (OED), Room N-5700, 200 Constitution Avenue, NW, Washington DC 20210, no later than 30 days following its completion, and each Credit Suisse Affiliated QPAM makes its Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of an ERISA-covered plan or IRA, the assets of which are managed by such Credit Suisse Affiliated QPAM;

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

attributable to the Conviction;

(k) Effective from the date of publication of this exemption in the Federal Register, with respect to each ERISA-covered plan or IRA for which a Credit Suisse Affiliated QPAM provides asset management or other discretionary fiduciary services, each Credit Suisse Affiliated QPAM agrees: (1) to comply with ERISA and the Code, as applicable to the particular ERISA-covered plan or IRA, and refrain from engaging in prohibited transactions; (2) not to waive, limit, or qualify the liability of the Credit Suisse Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions; (3) not to require the ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the Credit Suisse Affiliated QPAM for violating ERISA or engaging in prohibited transactions, except for violations or prohibited transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of Credit Suisse AG; (4) not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the Credit Suisse Affiliated QPAM; and (5) not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of

reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors. Within six (6) months of the date of publication of this exemption in the Federal Register, each Credit Suisse Affiliated QPAM will provide a notice to such effect to each ERISA-covered plan or IRA for which a Credit Suisse Affiliated QPAM provides asset management or other discretionary fiduciary services;

(1) Effective from the date of publication of this exemption in the Federal Register, each Credit Suisse Affiliated QPAM will maintain records necessary to demonstrate that the conditions of this exemption have been met for six (6) years following the date of any transaction for which such Credit Suisse Affiliated QPAM relies upon the relief in the exemption;

(m)(1) Each sponsor of an ERISA-covered plan and each beneficial owner of an IRA invested in an investment fund managed by a Credit Suisse Affiliated QPAM, or the sponsor of an investment fund in any case where a Credit Suisse

Affiliated QPAM acts only as a sub-advisor to the investment fund; (2) each entity that may be a Credit Suisse Related QPAM; and (3) each ERISA-covered plan for which the New York Branch of Credit Suisse AG provides fiduciary securities lending services, received a notice of the proposed exemption along with a separate summary describing the facts that led to the Conviction, which had been submitted to the Department, and a prominently displayed statement that the Conviction results in a failure to meet a condition in PTE 84-14;

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

Section II: Definitions

(a) The term "Credit Suisse Affiliated QPAM" means a "qualified professional asset manager" (as defined in

section VI(a)⁶ of PTE 84-14) that relies on the relief provided by PTE 84-14 and with respect to which Credit Suisse AG is a current or future "affiliate" (as defined in section VI(d) of PTE 84-14). The term "Credit Suisse Affiliated QPAM" excludes the parent entity, Credit Suisse AG.

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

(c) The term "Conviction" means the judgment of conviction against Credit Suisse AG for one count of conspiracy to violate section 7206(2) of the Internal Revenue Code in violation of Title 18, United States Code, Section 371, which is scheduled to be entered in the

⁶ 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.

District Court for the Eastern District of Virginia in Case Number 1:14-cr-188-RBS.

EFFECTIVE DATE: This exemption will be effective as of the date a judgment of conviction against Credit Suisse AG for one count of conspiracy to violate section 7206(2) of the Internal Revenue Code in violation of Title 18, United States Code, Section 371 is entered in the District Court for the Eastern District of Virginia in Case Number 1:14-cr-188-RBS and expire one year from the date of publication in the Federal Register.

Signed at Washington, DC, this 12th day of November, 2014.

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