facilitate the coordination of technical, funding, and legislative strategies in support of the Administration's justice priorities.

The GAC will guide and monitor the development of the Global information sharing concept. It will advise the Assistant Attorney General, OJP; the Attorney General; the President (through the Attorney General); and local, state, tribal, and federal policymakers in the executive, legislative, and judicial branches. The GAC will also advocate for strategies for accomplishing a Global information sharing capability. Interested persons whose registrations have been accepted may be permitted to participate in the discussions at the discretion of the meeting chairman and with approval of the Global DFO.

David P. Lewis,

Global DFO, Senior Policy Advisor, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice.

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BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Exemption Application No. D–12080]

Proposed Exemption for Certain Prohibited Transaction Restrictions: TT International Asset Management Ltd

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document provides notice of the pendency before the Department of Labor (the Department) of a proposed individual exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). If this proposed exemption is granted, TT International Asset Management Ltd will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14 or the QPAM Exemption), notwithstanding the Conviction (defined in Section I(a)), during the Exemption Period (as defined in Section I(c)).

DATES: If granted, the exemption will be in effect for a period of one year, beginning on the date of the Conviction. Written comments and requests for a public hearing on the proposed exemption should be submitted to the Department by February 13, 2023.

ADDRESSES: All written comments and requests for a hearing should be submitted to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Attention: Application No. D–12080 via email to *e-OED@dol.gov* or online through *http://www.regulations.gov.* Any such comments or requests should be sent by the end of the scheduled comment period. The application for exemption and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1515, 200 Constitution Avenue NW, Washington, DC 20210. See **SUPPLEMENTARY INFORMATION** below for additional information regarding comments.

FOR FURTHER INFORMATION CONTACT: Mrs. Blessed Chuksorji-Keefe of the Department at (202) 693–8567. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Comments

Persons are encouraged to submit all comments electronically and not to follow with paper copies. Comments should state the nature of the person's interest in the proposed exemption and how the person would be adversely affected by the exemption, if granted. Any person who may be adversely affected by an exemption can request a hearing on the exemption. A request for a hearing must state: (1) The name, address, telephone number, and email address of the person making the request; (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption; and (3) a statement of the issues to be addressed and a general description of the evidence to be presented at the hearing. The Department will grant a request for a hearing made in accordance with the requirements above where a hearing is necessary to fully explore material factual issues identified by the person requesting the hearing. A notice of such hearing shall be published by the Department in the **Federal Register**. The Department may decline to hold a hearing if: (1) the request for the hearing does not meet the requirements above; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the factual issues identified can be fully explored through the submission of evidence in written (including electronic) form.

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

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

Proposed Exemption

The Department is considering granting an exemption under the authority of Section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and Section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the Department's exemption procedures.[1] If the proposed exemption is granted, TT International Asset Management Ltd (TTI) will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14 or the QPAM Exemption),[2] notwithstanding the

[1] 29 CFR part 2570, subpart B (75 FR 66637, 66644, October 27, 2011). For purposes of this proposed exemption, references to specific provisions of ERISA Title I, unless otherwise specified, should be read to refer as well to the corresponding provisions of Code Section 4975. Further, this proposed exemption, if granted, does not provide relief from the requirements of, or specific sections of, any law not noted above. Accordingly, TTI is responsible for ensuring compliance with any other laws applicable to the transactions described herein.

[2] 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).

impending judgment of conviction against its affiliate, Sumitomo Mitsui Banking Corporation Nikko Securities, Inc. (Nikko Tokyo) for attempting to peg, fix or stabilize [3] the prices of certain Japanese equity securities that Nikko Tokyo was attempting to place in a block offering (the Conviction).[4] This proposed exemption would be effective for a one-year period beginning on the date of the Conviction if the exemption's conditions and definitions are satisfied.

This proposed exemption would provide relief from certain restrictions set forth in ERISA Sections 406 and 407. It would not, however, provide relief from any other violation of law. Furthermore, the Department cautions that the relief in this proposed exemption would terminate immediately if, among other things, TTI or an affiliate of TTI (as defined in Section VI(d) of PTE 84–14) [5] is convicted of a crime covered by Section I(g) of PTE 84–14 (other than the Conviction as defined in Section I(a)) during the exemption period (as defined in Section I(c)). Although TTI could apply for a new exemption in that circumstance, the Department would not be obligated to grant the exemption.

The terms of this proposed exemption have been specifically designed to permit plans to terminate their relationships in an orderly and cost-effective fashion in the event of an additional conviction or a determination by the plan that it is otherwise prudent to terminate its relationship with TTI.

Summary of Facts and Representations [6]

Background

1. TTI is a global investment firm headquartered in London, UK that currently manages approximately $8.4 billion in assets. TTI and its subsidiaries [7] have operations in the United States, Hong Kong, and Japan. TTI was wholly acquired by Sumitomo Mitsui Financial Group, Inc. (SMFG) on February 28, 2020, and is currently a member of the Sumitomo Mitsui Banking Corporation group (the SMBC Group).[8]

2. The SMBC group is a Japanese financial services firm that conducts activities across a wide range of financial sectors, including banking, asset management, securities trading, leasing, credit card lending, and consumer finance. As currently constituted, SMFG is the group's ultimate parent company. The SMBC group provides asset management services through two subsidiaries. The first is TTI, which is managed independently of the broader SMBC group. The second is Sumitomo Mitsui DS Asset Management Company, Limited, an investment manager headquartered in Tokyo. The SMBC group also conducts securities market activities through the SMBC Nikko Securities franchise. As relevant to this proposed exemption, that includes Nikko Tokyo, a Japanese broker-dealer.

3. TTI is an SEC-registered investment advisor that specializes in managing portfolios for institutional investors, including ERISA-covered Plans (Covered Plans), public retirement plans, and other collective investment vehicles through a variety of equity long-only and long/short strategies across a broad range of industry sectors and geographies.

4. In offering investment management services, TTI operates as a QPAM in reliance on PTE 84–14.[9] TTI advises four segregated ERISA accounts on behalf of the ERISA-covered plans of two major U.S. employers [10] and operates three segregated accounts for public pension plans, which currently hold approximately $1.1 billion in assets. TTI also manages three funds as ERISA ''plan asset'' funds: the TT Emerging Markets Opportunities Fund II Limited, the TT Environmental Solutions Equity Master Fund II Limited, and the TT Non-U.S. Equity Master Fund Limited.[11]

ERISA and Code Prohibited Transactions and PTE 84–14

5. The rules set forth in ERISA Section 406 and Code Section 4975(c)(1) proscribe certain ''prohibited transactions'' between plans and certain parties in interest with respect to those plans.[12] ERISA Section 3(14) defines parties in interest with respect to a plan to include, among others, the plan fiduciary, a sponsoring employer of the plan, a union whose members are covered by the plan, service providers with respect to the plan, and certain of their affiliates.[13] The prohibited transaction provisions under ERISA Section 406(a) and Code Section 4975(c)(1) prohibit, in relevant part, (1) sales, leases, loans, or the provision of services between a party in interest and a plan (or an entity whose assets are deemed to constitute the assets of a plan), (2) the use of plan assets by or for the benefit of a party in interest, or (3) a transfer of plan assets to a party in interest.[14]

6. Under the authority of ERISA Section 408(a) and Code Section 4975(c)(2), the Department has the

[3] According to the Applicant, the unofficial English-language translation of Article 159, paragraph 3 of the FIEA, available on the Japanese Financial Services Agency website, provides that no person may ''conduct a series of Sales and Purchase of Securities, etc. or make offer, Entrustment, etc. or Accepting an Entrustment, etc. therefore in violation of a Cabinet Order for the purpose of pegging, fixing or stabilizing prices of Listed Financial Instruments, etc. in a Financial Instruments Exchange Market or prices of Over-the-Counter Traded Securities in an Over-the-Counter Securities Market.''

[4] Section I(g) of PTE 84–14 generally provides that ''[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of'' certain crimes.

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

[6] The Summary of Facts and Representations is based on TTI's representations provided in its exemption application and does not reflect factual findings or opinions of the Department unless indicated otherwise. The Department notes that the availability of this exemption is subject to the express condition that the material facts and representations contained in application D–12080 are true and complete at all times, and accurately describe all material terms of the transactions covered by the exemption. If there is any material change in a transaction covered by the exemption, or in a material fact or representation described in the application, the exemption will cease to apply as of the date of the change.

[7] TTI subsidiaries include TT International Investment Management LLP, TT International (Hong Kong) Ltd, TT Crosby Ltd, and TT International Advisors Inc.

[8] The SMBC group is a diversified Japanese financial services firm that conducts activities across a wide range of financial sectors, including banking, asset management, securities trading, leasing, credit card lending, and consumer finance.

[9] Currently, TTI is the only member of the SMBC group that is relying upon the QPAM Exemption. TTI states that it is possible that certain affiliates may seek ERISA business in the future that would require reliance on the QPAM Exemption.

[10] Together, these two ERISA-covered plans currently hold approximately $218 million in assets.

[11] TTI is currently in the process of launching the TT Environmental Solutions Fund; the TT Non-U.S. Equity Fund is operational but does not currently hold any ERISA assets.

[12] For purposes of the Summary of Facts and Representations, references to specific provisions of Title I of ERISA, unless otherwise specified, refer also to the corresponding provisions of the Code.

[13] Under the Code, such parties, or similar parties, are referred to as ''disqualified persons.''

[14] The prohibited transaction provisions also include certain fiduciary prohibited transactions under ERISA Section 406(b). These include transactions involving fiduciary self-dealing, fiduciary conflicts of interest, and kickbacks to fiduciaries.

authority to grant an exemption from such ''prohibited transactions'' in accordance with the procedures set forth in its exemption procedure regulation if the Department finds an exemption is: (a) administratively feasible, (b) in the interests of the plan and of its participants and beneficiaries, and (c) protective of the rights of participants and beneficiaries of the plan.[15]

7. PTE 84–14 exempts certain prohibited transactions between a party in interest and an ''investment fund'' (as defined in Section VI(b) of PTE 84–14) in which a plan has an interest if the investment manager managing said investment fund satisfies the definition of ''qualified professional asset manager'' (QPAM) and satisfies additional conditions of the exemption. PTE 84–14 was developed and granted based on the essential premise that broad relief could be afforded for all types of transactions in which a plan engages only if the commitments and the investments of plan assets and the negotiations leading thereto are the sole responsibility of an independent, discretionary manager.[16]

8. Section I(g) of PTE 84–14 prevents an entity that may otherwise meet the QPAM definition from utilizing the exemptive relief provided by the QPAM exemption for itself and its client plans if that entity, an ''affiliate'' thereof, or any direct or indirect five percent or more owner in the QPAM has been either convicted or released from imprisonment, whichever is later, as a result of criminal activity described in Section I(g) within the 10 years immediately preceding a transaction. Section I(g) was included in PTE 84–14, in part, based on the Department's expectation that QPAMs, and those who may be in a position to influence the QPAM's policies, must maintain a high standard of integrity.

Nikko Tokyo Conviction and PTE 84–14 Disqualification

9. On March 24, 2022, the Tokyo District Public Prosecutors Office charged Nikko Tokyo and four of its officers and employees in Tokyo District Court with alleged violations of Japan's Financial Instruments and Exchange Act (the FIEA) for allegedly attempting to peg, fix, or stabilize the prices of certain Japanese equity securities that Nikko Tokyo was attempting to place in a block offering (the Misconduct). Specifically, a block offering is a type of limited public offering that is common in Japan, whereby a dealer typically applies a spread to the price at which it purchased the shares from the seller and the price at which it sells them in the block offering.

10. In connection with the March 24, 2022 charges, the Tokyo Public Prosecutor alleged that between December 2019 and November 2020, Nikko Tokyo, through the actions of relevant officers, purchased shares of five issuers for its own account in an attempt to peg, fix, or stabilize the prices of those securities in anticipation of a block offer. This activity was intended to ensure that the price of the securities being sold through the block offering did not decline significantly, which would have potentially harmed Nikko Tokyo's interests.[17]

11. On April 13, 2022, the Tokyo Public Prosecutor filed additional charges against Nikko Tokyo and two officers and employees of Nikko Tokyo for engaging in similar conduct in connection with five additional block offers between October 2020 and April 2021.[18] The March 24, 2022, and April 13, 2022 charges against Nikko Tokyo have been consolidated for purposes of the Tokyo District Court proceeding.

12. The trial in Tokyo District Court occurred over three days on October 28, 2022, December 1, 2022, and December 26, 2022. TTI represents that the Tokyo District Court is expected to issue a final decision on February 13, 2023. TTI also states that under Japanese law, conviction and judgment occur simultaneously.

Nikko Tokyo Affiliation and Loss of QPAM Status

13. Both TTI and Nikko Tokyo are direct subsidiaries of SMFG and thus are affiliates for the purposes of Section I(g) of the QPAM Exemption. Once the Tokyo District Court issues its final decision and Nikko Tokyo is sentenced in connection with its Conviction, Section I(g) will be triggered and TTI, as well as its Covered Plan clients, will be ineligible to rely on the QPAM Exemption, without receiving an individual prohibited transaction exemption from the Department.

Exemption Request

14. On October 19, 2022, TTI submitted an exemption request to the Department that would permit TTI and its Covered Plan clients to continue to utilize the relief in PTE 84–14, notwithstanding the anticipated Conviction of Nikko Tokyo. In support of its exemption request, TTI asserts that Nikko Tokyo is a remote foreign affiliate of TTI with wholly separate businesses, operations, management, systems, premises, and legal and compliance personnel; that TTI was not involved in any way in the Misconduct; and that the Misconduct did not involve any ERISA assets.

Separation of TTI and Nikko Tokyo

15. TTI states that none of the Misconduct underlying the anticipated Nikko Tokyo Conviction involved TTI or the SMBC group's asset management businesses. Further, it states that none of TTI's personnel was involved in the misconduct and none of the individual officers or employees of Nikko Tokyo had any role at TTI. According to the Applicant, TTI and Nikko Tokyo have separate businesses, operations, management teams, systems, premises, and legal and compliance personnel. Since its acquisition by SMFG on February 28, 2020, TTI has remained a stand-alone business with distinct reporting lines, governance structures, and control frameworks. Further, TTI is not directly owned by or in the same vertical ownership chain as Nikko Tokyo, and TTI and Nikko Tokyo do not share personnel or office space.

16. The Applicant acknowledges that TTI's seven-member board of directors includes four representatives from the SMBC group, but additionally represents that TTI's Management Committee provides direct oversight of the business.[19] The Applicant states that the SMBC group exercises oversight through representation on TTI's board of directors and management committee and TTI receives the benefit of an internal audit back-office function provided by the SMBC group. According to the Applicant, however, TTI personnel remain fully and independently responsible for TTI's material functions, including portfolio and risk management activities, investment and trading decisions, compliance, marketing, and the provision of client services. In addition, dedicated TTI personnel perform all day-to-day functions related to TTI's business as an investment adviser, including onboarding customers,

[15] The Department's exemption procedure regulation is codified at 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).

[16] See 75 FR 38837, 38839 (July 6, 2010).

[17] The Tokyo Public Prosecutor alleged that these ''stabilization transactions'' violated Article 197 Paragraph 1, Item 5, Article 159, Paragraph 3, and Article 207, Paragraph 1, Item 1 of the FIEA and Article 60 of the Penal Code.

[18] Charges were filed under Article 197 Paragraph 1, Item 5, Article 159, Paragraph 3, and Article 207, Paragraph 1, Item 1 of the FIEA and Article 60 of the Penal Code.

[19] The board of directors is responsible for, among other things, setting strategic objectives, approving major initiatives, and ensuring the company has adopted and implemented a compliance infrastructure that is reasonably designed to meet its regulatory obligations.

managing customer accounts, and executing trading decisions.

17. TTI's Management Committee, which includes TTI's Managing Director, Chief Financial Officer, three other TTI executives, and a single representative from the SMBC group, provides direct oversight of the business, including ensuring that TTI implements the strategy set by the board. Day-to-day management at TTI is conducted by a dedicated management team with support from other TTI committees, including the Operations Committee, Product Committee, Valuation Committee, and ESG Committee. The Applicant submits that TTI has retained its investment autonomy and does not rely on SMBC group personnel for any material functions. In addition, TTI has dedicated independent legal, risk, and compliance teams, as well as its own control framework and compliance infrastructure.[20]

18. TTI has detailed policies setting forth its process for handling ERISA assets, identifying and addressing conflicts of interest, best execution, and compliance with applicable anti-money laundering requirements. TTI also has a dedicated Compliance Manual that sets forth, among other things, firm policies related to whistleblowing, handling internal and external complaints, client onboarding, and the process for approving new products or instruments.

19. In addition to its own compliance and governance frameworks, TTI is subject to groupwide oversight as part of the SMBC group. Specifically, TTI's U.S. office and U.S. subsidiary are subject to oversight as part of SMBC group's combined U.S. operations, including by the U.S. Risk Committee. According to the Applicant, this ensures that TTI adheres to the SMBC group's global and regional policies and compliance expectations and provides a mechanism for escalating potential issues to the U.S. chief risk officer or other oversight functions as appropriate.

20. Besides common ownership, the sole connection between TTI and Nikko Tokyo is Hideyuki Fred Omokawa, an SMBC group representative on TTI's board of directors and Management Committee who was appointed as Nikko Tokyo's Managing Executive Officer of Business Strategy and Development on April 1, 2021. The Applicant states that Mr. Omokawa was not involved in any of the Misconduct.

21. TTI states that Nikko Tokyo is not a QPAM, does not manage any ERISA assets, and that no ERISA assets were involved in the Misconduct underlying the anticipated Nikko Tokyo Conviction.

22. Finally, TTI represents that it has not engaged in trading activity with Nikko Tokyo on behalf of ERISA accounts at any point since TTI became affiliated with Nikko Tokyo.

Hardship to Covered Plans

The Applicant represents that Covered Plans would suffer certain hardships if the Applicant loses its eligibility to rely on the QPAM Exemption. The Applicant's representations regarding these hardships are set forth below in paragraphs 23 through 37.

23. TTI represents that if the Department declines to grant this proposed exemption, there would be adverse consequences for Covered Plans and public plans. In this regard, loss of the QPAM Exemption would severely limit the investment transactions available to the accounts that TTI manages on behalf of Covered Plans, hindering TTI's ability to efficiently manage the strategies for which TTI contracted with Covered Plan clients. Further, if TTI were not QPAM Exemption eligible, it could receive less advantageous pricing and certain counterparties could, as a blanket policy, refuse to transact with or provide services to TTI.

24. TTI states that it has extensively reviewed its investment activity and concluded that, as a practical matter, the QPAM Exemption is the only exemption available to provide relief. TTI states that counterparties to the swaps and other transactions in which TTI-managed accounts engage require compliance with, and a representation as to satisfaction of the conditions of, the QPAM Exemption. In light of market reliance on QPAM Exemption, the Applicant submits that it would not be possible for TTI to effectively manage its strategies for ERISA clients, absent the grant of exemptive relief.

The Applicant states that, particularly given the nature of emerging market investments and swap, options, and other derivative transactions, there is discomfort and reluctance on both the part of Covered Plan clients and counterparties to utilize more recent alternative exemptions, such as the service provider exemption under ERISA section 408(b)(17), due to uncertainty about the application of the adequate consideration requirements and the resulting possibility that the use of the exemption is later challenged on those grounds.

25. TTI states that it relies on the QPAM Exemption to conduct a variety of transactions on behalf of Covered Plans, including buying and selling equity securities; preferred stock; American Depository Receipts, and related options; U.S. and foreign fixed-income instruments, including unregistered offerings; various derivatives, including futures, options on futures, and swaps; and foreign exchange products, including spot currencies, forwards, and swaps. TTI also relies upon the QPAM Exemption for the purchase and sale of both foreign and domestic equity securities, registered and sold under Rule 144A or otherwise (*e.g.,* traditional private placement).

TTI specializes in international and emerging market strategies and these strategies depend on TTI's ability to translate and maintain the value of Covered Plan investments from the local currency in which the investment is made into U.S. dollars, the benchmark currency in which the Covered Plan's performance is measured. This creates inherent currency risks. To limit the plans' risk exposure to the underlying securities without simultaneously exposing them to the risk of currency fluctuation, TTI makes substantial use of foreign exchange (FX) hedges by using forward transactions and other FX derivatives. If the Department does not grant this proposed exemption, nearly $2.07 billion in ERISA plans and separately managed accounts for private and public employers would likely be affected, either directly or as a result of TTI's inability to effectively hedge risk.

26. For all but one of the ERISA funds that TTI manages, virtually all assets are either actively or dynamically hedged based on exposures and market conditions.[21] As of November 3, 2022, approximately 16% of the assets under management (AUM) in each of the four segregated ERISA accounts that TTI manages on behalf of the ERISA plans of two major U.S. employers is hedged with respect to Indian, Taiwanese, and Chinese currency, which translates to approximately $35 million in hedges. Further, the TT Emerging Markets Opportunities Fund II has over the past year hedged risks associated with British, Indian, Taiwanese, Chinese, Mexican, and Polish currencies. Without these positions, the TT Emerging Markets Opportunities Fund II would have incurred nearly $5.5 million

[20] This includes TTI's Code of Ethics, which sets forth TTI's expectation that all personnel will ''[o]bserve the highest standards of integrity'' and ensure that TTI maintains its ''strong reputation for regulatory compliance and high professional standards.'' This Code of Ethics also addresses prohibitions on market abuse and restrictions on personal trading.

[21] The actual percentage of AUM in each fund that is hedged at any given time varies.

in losses due to unhedged FX exposures, negatively impacting overall returns.

27. According to the Applicant, TTI's ability to deliver returns depends on its ability to limit its customers' exposure to defined risks, such as international and emerging market equity risk, without introducing additional risk factors such as FX volatility. If TTI loses its ability to rely upon the QPAM Exemption, it would no longer be able to hedge currency for its private and public plan asset clients, preventing it from managing absolute and relative currency risk for such clients in such clients' best interests.

28. Loss of the QPAM Exemption would also impact TTI's agreements with the swap dealers it executes these hedges with pursuant to International Swaps and Derivatives Association Agreements (ISDA Agreements). ISDA agreements require TTI to represent that it meets all conditions of the QPAM Exemption, and a breach of this representation would entitle the counterparty to terminate the transaction. The Applicant states that, as a practical matter, swap dealers would be nearly certain to exercise their right to terminate because TTI's loss of the QPAM Exemption would increase the swap dealers' exposure to risk. Thus, these agreements would be unwound and TTI would no longer be able to employ the hedging activities on which its strategies depend. If these ISDA Agreements were terminated, TTI stats that it would immediately need to unwind approximately $330 million in hedges.[22]

29. TTI submits that if this proposed exemption is not granted, Covered Plans could incur significant costs, including transaction costs, costs associated with finding and evaluating other managers, and costs associated with reinvesting assets with those new managers. TTI states that it has longstanding relationships with its ERISA plan clients and if this exemption were denied, these plans would need to undertake significant work to find an alternative manager.[23] These costs, according to the Applicant include the following: (a) consultant fees, legal fees, and other due diligence expenses for identifying new managers; (b) transaction costs associated with a change in investment manager, including the sale and purchase of portfolio investments to accommodate the investment policies and strategy of the new manager, and the cost of entering into new custodial arrangements; and (c) lost investment opportunities as a result of the change in investment managers.

30. The Applicant states that, given the sophistication of TTI's investment strategies, Covered Plan clients would likely engage in a full RFP process which could take several months to complete. TTI represents that it is considered a leader in emerging markets strategies, and that Covered Plans would have a difficult time finding a suitable replacement. TTI states that plans generally incur tens of thousands of dollars in consulting and legal fees in connection with a search for a new manager and that consultants may charge more for searches involving specialized strategies, such as TTI's international, emerging markets, and environmentally conscious portfolios.

31. The Applicant states that terminating management agreements and liquidating associated positions can have a significant impact on both transaction fees and the market value of the underlying assets. This is particularly true for many of TTI's strategies, which focus on international and emerging markets and may occasionally involve investments in illiquid foreign securities and related derivatives that have large bid-ask spreads, infrequent trading, and/or low trading volumes.

32. TTI states that for U.S. Equity Strategies, assuming average market conditions, the liquidation costs over a 30-day liquidation timeframe might range from 20 to 40 basis points; for significantly shorter liquidation periods, and depending on the strategy, the range could be 30 to 50 basis points. In addition, commission fees and transactions would likely average an additional 4 basis points.

33. For International and Emerging Markets Equity, TTI relies on the QPAM Exemption to buy and sell certain international and emerging markets equity securities. International, and particularly emerging, equity markets are typically less liquid than their domestic counterparts and incur higher transaction costs. Assuming average market conditions, the liquidation costs for equity strategies over a 30-day liquidation timeframe might range from 30 to 50 basis points; for significantly shorter liquidation periods, the range could be 40 to 80 basis points, depending on the strategy. In addition, there would also be an additional average of 10 basis points in commission fees on the transactions.

34. For futures, options, and cleared and bilateral swaps, TTI relies on the QPAM Exemption to buy and sell these products, which certain strategies rely on to hedge risk and obtain certain exposures on an economic basis. TTI states that these investments are important to plans and commingled funds both as an ongoing risk management matter and to hedge various risks. Without the ability to invest in these instruments, plans would no longer have access to a tool that managers routinely use to protect against losses caused by market volatility. If the QPAM Exemption were lost, TTI estimates that its clients could incur average weighted liquidation costs of approximately 5 basis points of the total market value of these products.

35. In the case of foreign currency exposure, Plans that invest in global strategies would be disadvantaged were they to lose the ability to hedge currency risk. If the QPAM Exemption were lost, TTI estimates that its clients could incur average weighted liquidation costs of approximately 5 basis points of the total market value in fixed income products.

Steps Taken To Protect Covered Plans

36. After becoming aware of Nikko Tokyo's indictment, TTI states that it took immediate steps to prevent the trading of all TTI managed accounts with or through Nikko Tokyo. Further, TTI inventoried the ISDAs to which it is a party and reached out to counsel to begin exploring alternative exemptions, none of which were practically available to TTI (both as a contractual matter and as a substantive matter given the nature and extent of the hedging activities employed in the strategies).[24] TTI further states that it has not onboarded any new ERISA clients since becoming aware of Nikko Tokyo's indictment.

37. With respect to existing clients, TTI's options are limited. Because TTI cannot execute its foreign investment strategies consistent with Covered Plans' investment goals absent the QPAM Exemption, TTI states that it is unable to adequately protect Covered Plans from loss of the QPAM Exemption beyond assisting the funds in

[22] The approximate total FX forward exposure of TTI's public and private plan asset accounts as of November 10, 2022 is $330 million.

[23] TTI represents that it has managed ERISA assets for a major U.S. financial institution since at least 2015. TTI also states that it has managed ERISA assets for a large aerospace company since at least 2018.

[24] TTI represents that, given the nature of emerging market investments and swap, options, and other derivative transactions, there is discomfort and reluctance on both the part of ERISA clients and counterparties to utilize more recent alternative exemptions, such as the service provider exemption under ERISA Section 408(b)(17), due to uncertainty about the application of the adequate consideration requirements and the resulting possibility that the use of the exemption is later challenged on those grounds.

identifying potential alternative QPAMs.

Protective Conditions

38. In its exemption application, TTI requested a five-year exemption for TTI and its current and future affiliates and related entities. However, given the short time between now and the Conviction date and the lack of a record necessary to determine that TTI's full request would be in the interest of, and protective of, all affected Covered Plans, the Department has determined to propose this one-year exemption solely for TTI. With the limited term of relief, the Department reserves the right to review TTI's adherence to the conditions set out in this exemption before granting a longer term of relief.

39. In developing administrative exemptions under ERISA Section 408(a), the Department implements its statutory directive to grant only exemptions that are appropriately protective and in the interest of affected plans and IRAs. The Department is proposing this exemption with conditions that would protect Covered Plans (and their participants and beneficiaries) and allow them to continue to utilize the services of TTI if they determine that it is prudent to do so. If this proposed exemption is granted as proposed, it would allow Covered Plans to avoid costs and disruption to investment strategies that may arise if such Covered Plans are forced, on short notice, to hire a different QPAM or asset manager because TTI no longer is able to rely on the relief provided by PTE 84–14 due to the Conviction.

40. This proposed exemption requires TTI to develop, implement, maintain, and follow written policies (the Policies) that are reasonably designed to ensure that, among other things: (a) the asset management decisions of TTI are conducted independently of the corporate management and business activities of Nikko Tokyo; (b) TTI fully complies with ERISA's fiduciary duties; (c) any filings or statements made by TTI to regulators on behalf of Covered Plans are materially accurate and complete; and (d) TTI complies with the terms of this proposed exemption. Further, any violation of or failure to comply with the Policies must be corrected promptly upon discovery, and any such violation or compliance failure that is not promptly corrected must be reported, in writing to appropriate corporate officers upon the discovery of the failure to promptly correct.

41. This proposed exemption requires TTI to develop and implement a training program (the Training) that is conducted by a prudently selected independent professional. The Training must cover the Policies, ERISA and Code compliance, ethical conduct, the consequences for not complying with the conditions of this proposed exemption, and the duty to promptly report wrongdoing.

42. This proposed exemption further requires TTI to be audited for the 12-month exemption period by a prudently selected independent auditor (the Auditor). The Auditor must evaluate the adequacy of TTI's implementation and compliance with the Policies and Training requirements of this proposed exemption. The Auditor must also issue a written report (the Audit Report) to TTI that describes the procedures it performed during the Audit. In its Audit Report, the Auditor must further assess the adequacy of the Policies and Training, TTI's compliance with the Policies and Training, the need, if any, to strengthen the Policies and Training; and any instance(s) of noncompliance by TTI.

43. This proposed exemption also requires that certain TTI senior personnel must review the Audit Report, make certain certifications, and take corrective actions when necessary. In this regard, a general counsel, or one of the three most senior executive officers of TTI must certify in writing and under penalty of perjury that the officer has reviewed the Audit Report, addressed, corrected, or remedied any inadequacy identified in the Audit Report, and determined that the Policies and Training comply with the requirements of this proposed exemption and applicable provisions of ERISA and the Code.

44. This proposed exemption requires TTI to agree and warrant to their Covered Plan clients that they will: (a) comply with ERISA and the Code; (b) refrain from engaging in prohibited transactions that are not otherwise exempt (and promptly correct any inadvertent prohibited transactions); and (c) comply with the standards of prudence and loyalty set forth in ERISA Section 404. This proposed exemption also requires TTI to agree and warrant: (a) to indemnify and hold harmless Covered Plans for certain damages; and (b) not to require (or otherwise cause) Covered Plans to waive, limit, or qualify the liability of TTI for violating ERISA or the Code or engaging in prohibited transactions. Finally, this proposed exemption requires TTI to agree and warrant not to: (a) restrict the ability of Covered Plans to terminate or withdraw from their arrangement with TTI except for reasonable restrictions disclosed in advance, as defined in this proposed exemption; or (b) impose any fees, penalties, or charges for such termination or withdrawal, except for reasonable fees.

45. This proposed exemption contains extensive notice requirements that obligate TTI to provide Covered Plans with a notice of the TTI's obligations under the exemption, a copy of the notice of the exemption as published in the **Federal Register***,* a separate summary describing the facts that led to the Conviction (the Summary), and a prominently displayed statement (the Statement) that the Conviction results in a failure to meet a condition in PTE 84–14.

46. This proposed exemption also requires TTI to designate a senior compliance officer (the Compliance Officer) to conduct a twelve-month review to determine the adequacy and effectiveness of the implementation of the Policies and Training (the Review). The Compliance Officer must prepare a written report for the Review that, among other things, summarizes their material activities during the preceding year, sets forth any instance of noncompliance discovered during the preceding year, and any related corrective action taken.

47. Finally, the Department notes that relief under this proposed exemption is limited solely to TTI and no other affiliates of TTI, SMBC or SMFG, as the term affiliate is defined in PTE 84–14. Further, this proposed exemption will only apply for a limited period of one year. To continue to rely upon the QPAM Exemption beyond the one-year term of the exemption, TTI will have to submit another exemption application to the Department.

Statutory Findings

48. Based on the conditions included in this proposed exemption, the Department has tentatively determined that the relief sought by TTI would satisfy the statutory requirements for an exemption under ERISA Section 408(a).

49. *The Proposed Exemption is ''Administratively Feasible.''* The Department has tentatively determined that the proposed exemption is administratively feasible because, among other things, a qualified independent auditor would be required to perform an in-depth audit covering TTI's compliance with the terms of the exemption, and a corresponding written audit report would be provided to the Department and be made available to the public. The Department notes that the independent audit will incentivize compliance while reducing the immediate need for direct review and oversight by the Department.

50. *The Proposed Exemption is* ''*In the Interest of the Covered Plans.*'' The Department has tentatively determined that the proposed exemption would be in the interests of the participants and beneficiaries of affected Covered Plans. It is the Department's understanding, based on representations from TTI, that if the requested exemption is denied, Covered Plans may be forced to find other managers at a potentially significant cost. According to TTI, ineligibility under the QPAM Exemption would deprive Covered Plans of the investment management services that they expected to receive when they appointed TTI. In this regard, an exemption denial could result in the termination of relationships that the fiduciaries of the Covered Plans have determined to be in the best interests of those plans.

51. *The Proposed Exemption Is* ''*Protective of the Plan.*'' The Department has tentatively determined that the proposed exemption is protective of the interests of the participants and beneficiaries of Covered Plans. As described above, the proposed exemption is subject to a suite of conditions that include, but are not limited to: (a) the development and maintenance of the Policies; (b) the implementation of the Training; (c) a robust audit conducted by a qualified independent auditor; (d) the provision of certain agreements and warranties on the part of TTI; (e) specific notices and disclosures that inform Covered Plans of the circumstances necessitating the need for exemptive relief and TTI's obligations under this exemption; and (f) the designation of a Compliance Officer who must ensure TTI continues to comply with the Policies and Training requirements of this exemption.

Summary

52. This proposed exemption would provide relief from certain of the restrictions set forth in ERISA Section 406 and Code Section 4975(c)(1). No relief or waiver of a violation of any other law would be provided by this proposed exemption. The relief set forth in this proposed exemption would terminate immediately if, among other things, an entity within the TTI corporate structure were convicted of any crime covered by Section I(g) of PTE 84–14 (other than the Conviction). While such an entity could request a new individual prohibited transaction exemption in that event, the Department is not obligated to grant such a request. Consistent with this proposed exemption, the Department's consideration of additional exemptive relief is subject to the findings required under ERISA Section 408(a) and Code Section 4975(c)(2).

53. When interpreting and implementing this exemption, TTI should resolve any ambiguities in favor of the exemption's protective purposes. To the extent additional clarification is necessary, TTI and others should contact EBSA's Office of Exemption Determinations at 202–693–8540.

54. Based on the conditions that are included in this proposed exemption, the Department has tentatively determined that the relief sought by TTI would satisfy the statutory requirements for an individual exemption under ERISA Section 408(a) and Code Section 4975(c)(2).

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons within three (3) days of the publication of the notice of proposed one-year exemption in the **Federal Register**. The notice will be provided to all interested persons in the manner approved by the Department and will contain the documents described therein and a supplemental statement, as required pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on and to request a hearing with respect to the pending exemption. All written comments and/or requests for a hearing must be received by the Department within thirty-three (33) days of the date of publication of this proposed one-year exemption in the **Federal Register**. All comments will be made available to the public.

Warning

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

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under ERISA Section 408(a) and/or Code Section 4975(c)(2) does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and/or the Code, including 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 participants and beneficiaries of the plan and in a prudent fashion in accordance with ERISA Section 404(a)(1)(B); nor does it affect the requirement of Code Section 401(a) that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under ERISA Section 408(a) and/or Code Section 4975(c)(2), the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

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

(4) The proposed exemption would be subject to the express condition that the material facts and representations contained in the application are true and complete at all times and that the application accurately describes all material terms of the transactions which are the subject of the exemption.

(5) The Department notes that all of the material facts and representations set forth in the Summary of Facts and Representations must be true and accurate at all times, and that the relief provided herein is conditioned upon the veracity of all material representations made by the Applicant.

Proposed Exemption

The Department is considering granting a one-year exemption under the authority of ERISA Section 408(a) and Internal Revenue Code (or Code) section 4975(c)(2), and in accordance with the procedures set forth in the exemption procedure regulation.[25]

[25] 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011). Effective December 31, 1978, Section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary

Section I. Definitions

(a) The term ''Conviction'' means the judgment of conviction against SMBC Nikko Securities, Inc. (Nikko Tokyo) in Tokyo District Court for attempting to peg, fix or stabilize the prices of certain Japanese equity securities that Nikko Tokyo was attempting to place in a block offering that is expected to occur on February 13, 2023.

(b) 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 TTI relies on PTE 84–14, or with respect to which TTI has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84–14 or the QPAM Exemption). A Covered Plan does not include an ERISA-covered plan or IRA to the extent that TTI 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.

(c) The term ''Exemption Period'' means the one-year period beginning on the date of the Conviction.

(d) The term ''TTI'' means TT International Asset Management Ltd, and does not include SMBC Nikko Securities, Inc. (Nikko Tokyo).

Section II. Covered Transactions

Under this proposed exemption, TTI would not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14 or the QPAM Exemption) notwithstanding the Conviction, as defined in Section I(a), during the Exemption Period, provided that the conditions set forth in in Section III below are satisfied.

Section III. Conditions

(a) TTI (including its officers, directors, agents other than Nikko Tokyo, and employees) did not know of, did not have reason to know of, and did not participate in the criminal conduct that is the subject of the Conviction. Further, any other party engaged on behalf of TTI 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 that is the subject of the Conviction. For purposes of this proposed exemption, ''participate in'' refers not only to active participation in the criminal conduct of Nikko Tokyo that is the subject of the Conviction, but also to knowing approval of the criminal conduct or knowledge of such conduct without taking active steps to prohibit it, including reporting the conduct to such individual's supervisors, and to the Board of Directors;

(b) TTI (including its officers, directors, employees, and agents, other than Nikko Tokyo) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the Conviction. Further, any other party engaged on behalf of TTI 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 that is the subject of the Conviction;

(c) TTI does not currently and will not in the future employ or knowingly engage any of the individuals that participated in the criminal conduct that is the subject of the Conviction.

(d) At all times during the Exemption Period, TTI will not use its authority or influence to direct an ''investment fund'' (as defined in Section VI(b) of PTE 84–14) that is subject to ERISA or the Code and managed by TTI in reliance on PTE 84–14, or with respect to which TTI has expressly represented to a Covered Plan that it qualifies as a QPAM or relies on the QPAM Exemption, to enter into any transaction with Nikko Tokyo, or to engage Nikko Tokyo to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e) Any failure of TTI to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction;

(f) TTI did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA or Code Section 4975 (an IRA) in a manner that it knew or should have known would: further the criminal conduct that is the subject of the Conviction; or cause TTI or its affiliates to directly or indirectly profit from the criminal conduct that is the subject of the Conviction;

(g) Other than with respect to employee benefit plans maintained or sponsored for its own employees or the employees of an affiliate, Nikko Tokyo will not 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 Covered Plan assets.

(h)(1) TTI must develop, implement, maintain, adjust (to the extent necessary), and follow the written policies and procedures (the Policies). The Policies must require and be reasonably designed to ensure that:

(i) The asset management decisions of TTI are conducted independently of the corporate management and business activities of Nikko Tokyo;

(ii) TTI fully complies with ERISA's fiduciary duties and with ERISA and the Code's prohibited transaction provisions, 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) TTI 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 TTI 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 TTI's knowledge at the time, TTI does not make material misrepresentations or omit material information in its communications with such regulators with respect to Covered Plans or make material misrepresentations or omit material information in its communications with Covered Plans;

(vi) TTI complies with the terms of this exemption; and

(vii) Any violation of or failure to comply with an item in subparagraphs (ii) through (vi) is corrected as soon as reasonably possible upon discovery or as soon after the TTI 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, to the head of compliance and the general counsel (or their functional equivalent) of TTI, and the independent auditor responsible for reviewing compliance with the Policies. TTI will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided it corrects any instance of noncompliance as soon as reasonably possible upon discovery, or as soon as reasonably possible after TTI reasonably should have known of the noncompliance (whichever is earlier), and provided it adheres to the reporting requirements set forth in this subparagraph (vii);

(2) TTI must implement a training program (the Training) during the

of Labor. Therefore, this notice of proposed exemption is issued solely by the Department.

Exemption Period for all relevant TTI asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training required under this exemption may be conducted electronically and must: (a) at a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing; and (b) 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;

(i)(1) TTI must submit 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 TTI's compliance with the Policies and Training conditions described herein. The audit requirement must be incorporated in the Policies. The audit must cover the entire Exemption Period.

(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, TTI will grant the auditor unconditional access to its businesses, including, but not limited to: its computer systems; business records; transactional data; workplace locations; training materials; and personnel. Such access will be provided only to the extent that it is not prevented by state or federal statute, or involves communications subject to attorney client privilege and may be 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 TTI has developed, implemented, maintained, and followed the Policies in accordance with the conditions of this exemption, and has developed and implemented the Training, as required herein;

(4) The auditor's engagement must specifically require the auditor to test TTI's operational compliance with the Policies and Training conditions. In this regard, the auditor must test, for TTI, transactions involving Covered Plans sufficient in size, number, and nature to afford the auditor a reasonable basis to determine TTI's operational compliance with the Policies and Training;

(5) Before the end of the relevant period for completing the audit, the auditor must issue a written report (the Audit Report) to TTI that describes the procedures performed by the auditor during the course of its examination. The Audit Report must include the auditor's specific determinations regarding:

(i) the adequacy of TTI's Policies and Training; TTI's compliance with the Policies and Training conditions; the need, if any, to strengthen such Policies and Training; and any instance of TTI's noncompliance with the written Policies and Training described in Section III(h) above. TTI must promptly address any noncompliance and promptly address or prepare a written plan of action to address any determination by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training. Any action taken, or the plan of action to be taken by TTI must be included in an addendum to the Audit Report (and such addendum must be completed before 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 the Audit Report is submitted, the following period's Audit Report must state whether the plan was satisfactorily completed. Any determination by the auditor that TTI 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 TTI has complied with the requirements under this subparagraph must be based on evidence that TTI has actually implemented, maintained, and followed the Policies and Training required by this exemption. Furthermore, the auditor must not solely rely on the Report created by the compliance officer (the Compliance Officer), as described in Section III(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(i)(3) and (4) above; and

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

(6) The auditor must notify TTI 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 joint general manager of the Corporate Planning who has a direct reporting line to the highest-ranking compliance officer of TTI must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption and that to the best of such officer's knowledge at the time, TTI has addressed, corrected or 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. The certification must also include the signatory's determination 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. Notwithstanding the above, no person, including any person identified by Japanese authorities, who knew of, or should have known of, or participated in, any misconduct underlying the Conviction, by any party, may provide the certification required by this exemption, unless the person took active documented steps to stop the misconduct underlying the Conviction;

(8) TTI's Board of Directors must be provided a copy of the Audit Report and the joint general manager of the Corporate Planning who has a direct reporting line to the highest-ranking compliance officer of TTI must review the Audit Report for TTI and certify in writing, under penalty of perjury, that such officer has reviewed the Audit Report;

(9) TTI must provide its certified Audit Report, by electronic mail to *e-oed@dol.gov.* This delivery must take place no later than thirty (30) days following completion of the Audit Report. The Audit Report will be made part of the public record regarding this exemption. Furthermore, TTI must make its Audit Report unconditionally available, electronically or otherwise, for examination upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan;

(10) TTI and the auditor must submit to *e-OED@dol.gov,* any engagement agreement(s) entered into pursuant to the engagement of the auditor under this exemption no later than two (2) months after the execution of any such engagement agreement;

(11) The auditor must provide the Department, upon request, access to all the workpapers it created and utilized in the course of the audit for inspection and review, provided such access and

inspection is otherwise permitted by law; and

(12) TTI must notify the Department of a change in the independent auditor no later than 60 days 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 TTI;

(j) Throughout the Exemption Period, with respect to any arrangement, agreement, or contract between TTI and a Covered Plan, TTI agrees and warrants:

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

(2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from TTI'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 TTI; or any claim arising out of the failure of TTI to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14, other than the Conviction. This condition applies only to actual losses caused by TTI's violations. Actual losses include 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 because of TTI'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 TTI for violating ERISA or the Code or engaging in prohibited transactions;

(4) Not to restrict the ability of the Covered Plan to terminate or withdraw from its arrangement with TTI with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by TTI, 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 of these arrangements 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 a Covered Plan's investment, and the restrictions must be applicable to all such investors and 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 the withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors;

(6) Not to include exculpatory provisions disclaiming or otherwise limiting the liability of TTI 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 TTI and its affiliates, or damages arising from acts outside the control of TTI; and

(7) TTI must provide a notice of its obligations under this Section III(j) to each Covered Plan. For all other prospective Covered Plans, TTI must agree to its obligations under this Section III(j) in an updated investment management agreement between TTI and such clients or other written contractual agreement. Notwithstanding the above, TTI will not violate this condition solely because a Covered Plan refuses to sign an updated investment management agreement;

(k) Within 60 days after the effective date of this exemption, TTI provides notice of the exemption as published in the **Federal Register**, along with a separate summary describing the facts that led to the Conviction (the Summary), which has been submitted to the Department, and a prominently displayed statement (the Statement) that the Conviction results 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 TTI. All prospective Covered Plan clients that enter into a written asset or investment management agreement with TTI 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 TTI. The notices may be delivered electronically (including by an email that has a link to the exemption). Notwithstanding the above, TTI will not violate the condition solely because a Covered Plan refuses to sign an updated investment management agreement.

(l) TTI 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 Conviction. If an entity within TTI's corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Conviction) during the Exemption Period, relief in this exemption would terminate immediately;

(m)(1) Within 60 days after the effective date of this exemption, TTI must designate a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. Notwithstanding the above, no person, including any person referenced in the indictment that gave rise to the Conviction, who knew of, or should have known of, or participated in, any misconduct described in the indictment, by any party, may be involved with the designation or responsibilities required by this condition, unless the person took active documented steps to stop the misconduct. The Compliance Officer must conduct a review of the Exemption Period (the Exemption Review), to determine the adequacy and effectiveness of the implementation of the Policies and Training. With respect to the Compliance Officer, the following conditions must be met:

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

(ii) The Compliance Officer must have a direct reporting line to the highest-ranking corporate officer in charge of legal compliance for asset management.

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

(i) The Exemption Review includes a review of TTI'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 previous year; any material change in the relevant business activities of TTI; 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 TTI;

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

(iii) In the Exemption Report, the Compliance Officer must certify in writing that to the best of their 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) TTI 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 TTI; the head of compliance and the general counsel (or their functional equivalent) of TTI; and 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 Report, must be completed within 90 days following the end of the period to which it relates.

(n) TTI imposes internal procedures, controls, and protocols to reduce the likelihood of any recurrence of conduct that is the subject of the Convictions;

(o) Nikko Tokyo complies in all material respects with any requirements imposed by a U.S. regulatory authority in connection with the Conviction;

(p) TTI maintains 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 TTI relies upon the relief in this exemption;

(q) During the Exemption Period, TTI 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 TTI or any of its affiliates (as defined in Section VI(d) of PTE 84–14) in connection with conduct described in Section I(g) of PTE 84–14 or ERISA Section 411; and (2) immediately provide the Department with any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement;

(r) Within 60 days after the effective date of this exemption, TTI, in its agreements with, or in other written disclosures provided to Covered Plans, will clearly and prominently inform Covered Plan clients of their right to obtain a copy of the Policies or a description (Summary Policies) which accurately summarizes key components of TTI'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 180 days following the end of the calendar year during which the Policies were changed. If TTI 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. With respect to this requirement, the description may be continuously maintained on a website, provided that such website link to the Policies or Summary Policies is clearly and prominently disclosed to each Covered Plan; and

(s) All the material facts and representations set forth in the Summary of Facts and Representations are true and accurate.

Effective date: If granted, the exemption will be in effect for a period of one year, beginning on the date of the Conviction.

Signed at Washington, DC.

George Christopher Cosby,

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

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2023–01; Exemption Application No. D–12064]

Exemption From Certain Prohibited Transaction Restrictions Involving JPMorgan Chase Co.

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of exemption.

SUMMARY: This document contains a notice of exemption issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This exemption allows entities with specified relationships to JPMorgan Chase Co. (JPMC or the Applicant), located in New York, N.Y., to continue to rely on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14 or the QPAM Exemption), notwithstanding the judgment of conviction against JPMC, as described below.

DATES: The exemption is effective for a period of four years, beginning on January 10, 2023, and ending on January 9, 2027.

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

SUPPLEMENTARY INFORMATION: On October 20, 2022, the Department published a notice of proposed exemption in the **Federal Register** at 87 FR 63802 that would permit certain qualified professional asset managers (QPAMs) within the corporate family of JPMC to continue relying on the class exemptive relief provided under PTE 84–14 [1] for a period of four years notwithstanding the judgment of conviction against JPMC, as described below. The Department is granting this exemption to ensure that the

[1] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).