

**Individual Prohibited Transaction Exemptions
PTE 2017-03 and 2023-01
(QPAM Exemptions)**

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PTE 2017-03 expired on January 9, 2023, and was replaced by PTE 2023-01, which is effective January 10, 2023 through January 9, 2027. Materials relating to PTE 2017-03 are included for reference only.

Summary of Facts
(PTE 2017-03)

Re: Summary of Facts in Connection with Criminal Conviction of JPMorgan Chase & Co. (“JPMC”) for Antitrust Violation in the Foreign Exchange Spot Market

In January 2017, JPMC was convicted of a single violation of federal antitrust law in the U.S. District Court for the District of Connecticut. The conviction constitutes a failure to meet section I(g) of Prohibited Transaction Exemption (“PTE”) 84-14.¹ In advance of the sentencing and conviction, JPMC applied, in May 2015, for an exemption that would permit JPMC and its affiliates that act as “qualified professional asset managers” (“QPAMs”) to continue to qualify for relief in PTE 84-14. In December 2016, the Department granted a temporary exemption to permit JPMC-affiliated QPAMs to continue to use PTE 84-14 for up to twelve (12) months from the conviction date. On December 29, 2017, the Department published a longer-term exemption in the Federal Register, effective from January 10, 2018 through January 9, 2023.

Facts of the Conviction

In May 2015, JPMC resolved an inquiry of the U.S. Department of Justice (“DOJ”) relating to JPMC’s foreign exchange (“FX”) business. Under this resolution, JPMC agreed to plead guilty to a single violation of federal antitrust law and pay a fine of \$550 million. The criminal information, filed in the U.S. District Court for the District of Connecticut, charged JPMC with a one-count violation of the Sherman Antitrust Act, 15 U.S.C. § 1. The antitrust violation referenced in the plea agreement arose principally from the conduct of one trader between July 2010 and January 2013. As set forth in the plea agreement, that trader, who has been dismissed from JPMC, communicated with traders from other institutions in an attempt to improperly influence prices in the euro/U.S. dollar FX spot market. Under the terms of the plea agreement, JPMC entered a plea of guilty to the charge set out in the information, agreed that the District Court would enter a term of probation, and agreed to be subject to certain conditions. The District Court entered a judgment of conviction on January 10, 2017. JPMC has also paid approximately \$1.357 billion to resolve FX investigations by other U.S. and foreign government agencies.

JPMC and its affiliates have cooperated with the DOJ and other regulatory agencies in their investigations of FX trading activities. JPMC’s Board of Directors has formed an FX / Markets Orders Compliance Committee to oversee compliance with the remediation required by the DOJ and other regulatory authorities, including an action plan developed by senior management to meet regulatory commitments. In general, the plan includes enhancements in five areas: (1) supervision, controls, and governance; (2) compliance risk assessment; (3) transaction monitoring and communications surveillance; (4) compliance testing; and (5) internal audit. JPMC has implemented and will continue to implement policies and procedures designed to

¹ PTE 84-14 is a class exemption that permits various parties who are related to employee benefit plans to engage in transactions involving plan assets if, among other conditions, the assets are managed by Qualified Professional Asset Managers that are independent of the parties in interest and that meet specified financial standards.

prevent the recurrence of the conduct that is the subject of the FX matter, as required by the plea agreement.²

The Applicant requested exemptive relief in order to avoid any potential harm to ERISA-covered plans and IRAs. In the absence of the exemptive relief, the conviction would constitute a failure to meet one of the conditions of PTE 84-14 such that, subsequent to the conviction, such QPAMs could not continue to avail themselves of the relief provided by PTE 84-14.

² More information about the DOJ investigation can be found at www.justice.gov.

**Supplement to Account Agreement
(PTE 2017-03)**

Supplement to Account Agreement

In managing your retirement or other employee benefit plan or account assets, we may rely on the exemptive relief provided by U.S. Department of Labor Individual Prohibited Transaction Exemption (“PTE”) 2017-03 (the “Exemption”).¹ The Exemption enables the JPMorgan Chase & Co. affiliate managing your account (“Manager”) to act as a “qualified professional asset manager” under PTE 84-14, as amended, notwithstanding the judgment of conviction against JPMorgan Chase & Co. for violation of the Sherman Antitrust Act, 15 § 1, which would otherwise render the exemption unavailable to the Manager and its affiliates.

PTE 2017-03 requires, among other things, that the Manager provide notice of its agreement to certain obligations with respect to your account. Therefore, the Manager hereby provides notice of its agreement to the obligations under the Exemption (as follows), to the extent and for so long as your account holds assets of a Covered Plan²:

1. To comply with the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), and the Internal Revenue Code of 1986, as amended (the “Code”), as applicable with respect to such Covered Plan³; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions); and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA with respect to each such ERISA-covered plan and IRA, to the extent that section is applicable;
2. To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from: (i) the Manager’s violation of ERISA’s fiduciary duties, as applicable, and of the prohibited transaction provisions of ERISA and the Code, as applicable; (ii) a breach of contract by the Manager; or (iii) any claim arising out of the failure of the Manager to qualify for the exemptive relief provided by PTE 84-14 as a result of a conviction for a crime covered under Section I(g) of PTE 84-14, other than the conviction that necessitated this Exemption. This condition applies only to actual losses caused by the Manager’s violations;
3. Not to require (or otherwise cause) the Covered Plan to waive, limit, or qualify the liability of the Manager 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

¹ Whether we rely on the Exemption depends upon (among other things) the particular strategy in which your account is managed and the potential availability of other exemptive relief. Accordingly, we do not intend this Supplement to be an express representation that the Manager (as defined below) qualifies as a “qualified professional asset manager” (a “QPAM”) or that the Manager relies on the QPAM class exemption (PTE 84-14).

² The term “Covered Plan” is a plan subject to Part 4 of Title 1 of the Employee Retirement Income Security Act of 1974, as amended (“ERISA-covered plan”), or a plan subject to Section 4975 of the Internal Revenue Code of 1986, as amended (“IRA”), with respect to which the Manager relies on PTE 84-14, or with respect to which the Manager (or any affiliate) has expressly represented that the Manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84-14).

³ For your reference and assistance in understanding this Supplement, the requirements of ERISA and section 4975 of the Code are applicable with respect to the management of ERISA-covered plan assets. The requirements of ERISA (such as the fiduciary standards and requirements of sections 402-405 of ERISA) are not applicable to plans subject solely to the requirements of section 4975 of the Code, such as most individual retirement accounts.

arrangement with the Manager with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by the Manager, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any such arrangements involving investments in pooled funds subject to ERISA entered into after January 10, 2018, the adverse consequences must relate to a lack of liquidity of the pooled fund's underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming an ERISA-covered plan's or IRA's investment, and such restrictions must be applicable to all such investors and 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 (described under paragraph 4), 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 is applied consistently and in like manner to all such investors; and
6. Not to include exculpatory provisions disclaiming or otherwise limiting liability of the Manager for a violation of the agreement's terms. 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 which is independent of the Manager and its affiliates, or damages arising from acts outside the control of the Manager, to the extent consistent with Section 410 of ERISA.

This document supersedes the version you may have received in connection with PTE 2016-15. To the extent that the current terms of your account agreement are inconsistent with this notice, this notice shall govern with respect to the management of your account assets (to the extent and for so long as your account is deemed to hold assets of a Covered Plan), without any further action by you. Except to the extent superseded by this notice, the terms and conditions of the account agreement remain in full force and effect. If the terms of any exemption succeeding PTE 2017-03 differ, this notice will be altered accordingly, as may be necessary, as of the effective date of such exemption.

**Final Individual Prohibited
Transaction Exemption PTE 2017-03**

DEPARTMENT OF LABOR**Employee Benefits Security Administration****Exemptions from Certain Prohibited Transaction Restrictions**

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions 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 notice includes the following: 2017–03, JPMorgan Chase & Co., D–11906; 2017–04, Deutsche Investment Management Americas Inc. (DIMA) and Certain Current and Future Asset Management Affiliates of Deutsche Bank AG, D–11908; 2017–05, Citigroup Inc., D–11909; 2017–06, Barclays Capital Inc., D–11910; 2017–07, UBS Assets Management (Americas) Inc.; UBS Realty Investors LLC; UBS Hedge Fund Solutions LLC; UBS O’Connor LLC; and Certain Future Affiliates in UBS’s Asset Management and Wealth Management Americas Divisions, D–11907.

SUPPLEMENTARY INFORMATION: A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. One request for a hearing was received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, 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 proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011)¹ and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

JPMorgan Chase Co. (JPMC or the Applicant) Located in New York, New York

[Prohibited Transaction Exemption 2017–03; Exemption Application No. D–11906]

Discussion

On November 21, 2016, the Department of Labor (the Department) published a notice of proposed exemption in the **Federal Register** at 81 FR 83372, for certain entities with specified relationships to JPMC to continue to rely upon the relief provided by PTE 84–14 for a period of five years,² notwithstanding JPMC’s criminal conviction, as described herein. The Department is granting this exemption in order to ensure that Covered Plans³ whose assets are managed by a JPMC Affiliated QPAM or JPMC Related QPAM may continue to benefit from the relief provided by PTE 84–14. The exemption is effective from

¹ The Department has considered exemption applications received prior to December 27, 2011 under the exemption procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

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), hereinafter referred to as PTE 84–14 or the QPAM exemption.

³ The term “Covered Plan” is a plan subject to Part 4 of Title 1 of ERISA (“ERISA-covered plan”) or a plan subject to Section 4975 of the Code (“IRA”) with respect to which a JPMC Affiliated QPAM relies on PTE 84–14, or with respect to which a JPMC Affiliated QPAM (or any JPMC affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84–14). A Covered Plan does not include an ERISA-covered Plan or IRA to the extent the JPMC Affiliated QPAM has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into its contract, arrangement, or agreement with the ERISA-covered plan or IRA. See further discussion in this Preamble under the heading Comment 8—Policies and Procedures Relating to Compliance with ERISA and the Code—Section I(h)(1)(ii)–(v).

January 10, 2018 through January 9, 2023 (the Exemption Period).

No relief from a violation of any other law is provided by this exemption, including any criminal conviction described in the proposed exemption. Furthermore, the Department cautions that the relief in this exemption will terminate immediately if, among other things, an entity within the JPMC corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Conviction) during the Exemption Period. The terms of this exemption have been specifically designed to promote conduct that adheres to basic fiduciary standards under ERISA and the Code. The exemption also aims to ensure that plans and IRAs can terminate relationships in an orderly and cost effective fashion in the event a plan or IRA fiduciary determines it is prudent for the plan or IRA to sever its relationship with an entity covered by the exemption.

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** at 81 FR 83372 on November 21, 2016. All comments and requests for a hearing were due by January 20, 2017.⁴ The Department received written comments from the Applicant, members of the U.S. Congress, and a number of plan and IRA clients of JPMC. After considering these submissions, the Department has determined to grant the exemption, with revisions, as described below.

Comment 1—Term of the Exemption

The Applicant requests that the Department extend the term of the exemption from five years to nine years from the Conviction Date. The Applicant states that the five year term is inconsistent with precedent and “appears punitive.” The Applicant further states that “exemptions should reflect the underlying facts that necessitated the exemption [and] [h]ere, those facts are as follows: JPMC was convicted of a single crime, based solely on the misconduct of a single individual who was not employed by the Applicant’s asset management businesses and who has been terminated by a firm that has dedicated and continues to dedicate significant resources to enhancing the relevant

⁴ The Department received additional comments from Applicant after the close of the comment period.

controls to prevent future instances of similar misconduct.” The Applicant states that “the exemption imposes additional and burdensome requirements on the asset management businesses of the applicant-businesses entirely uninvolved with the criminal conduct.”

Although the Applicant characterizes the conduct as involving the isolated actions of one individual, the Department does not agree with the apparent suggestion that the Applicant bears little or no responsibility for the criminal conduct. For example, JPMC’s Plea Agreement contains the following statement, under the heading Other Relevant Conduct: “the defendant [JPMC], through its currency traders and sales staff, also engaged in other currency trading and sales practices in conducting FX Spot Market transactions with customers via telephone, email, and/or electronic chat, to wit: (i) Intentionally working customers’ limit orders one or more levels, or ‘pips,’ away from the price confirmed with the customer; (ii) including sales markups, through the use of live hand signals or undisclosed prior internal arrangements or communications, to prices given to customers that communicated with sales staff on open phone lines; (iii) accepting limit orders from customers and then informing those customers that their orders could not be filled, in whole or in part, when in fact the defendant was able to fill the order but decided not to do so because the defendant expected it would be more profitable not to do so; and (iv) disclosing non-public information regarding the identity and trading activity of the defendant’s customers to other banks or other market participants, in order to generate revenue for the defendant at the expense of its customers.”

In developing this exemption, the Department also considered statements made by other regulators. The Financial Conduct Authority’s (FCA) Final Notice states: “[d]uring the Relevant Period, JPMorgan did not exercise adequate and effective control over its G10 spot FX trading business. . . . The front office failed adequately to discharge these responsibilities with regard to obvious risks associated with confidentiality, conflicts of interest and trading conduct.” The Notice further states: “These failings occurred in circumstances where certain of those responsible for managing front office matters were aware of and/or at times involved in behaviors described above.”

By way of further example, the Consent Order of the Office of the Comptroller of the Currency (OCC) states: “[t]he OCC’s examination

findings established that the Bank [the Applicant’s Corporate and Investment Banking line of business] had deficiencies in its internal controls and had engaged in unsafe or unsound banking practices with respect to the oversight and governance of the Bank’s FX trading business such that the Bank failed to detect and prevent the conduct set forth in paragraph twelve (12). The deficiencies and unsafe or unsound practices include the following: (a) The Bank’s oversight and governance of its FX trading business were weak and lacked adequate formal guidance to mitigate and manage risks related to market conduct in FX Trading with respect to sales, trading and supervisory employees in that business. . . .”

The Department also notes the size of relevant fines imposed by various regulators: The Department of Justice imposed a \$550 million fine; The Board of Governors of the Federal Reserve Board imposed a \$342 million fine; and the OCC, the Commodity Futures Trading Commission, and the FCA imposed fines of \$350 million, \$310 million, and £222,166,000, respectively.

This exemption is not punitive; instead, its five-year term and protective conditions reflect the Department’s intent to protect Covered Plans that entrust substantial assets to a JPMC Affiliated QPAM, despite the serious misconduct and supervisory failures described above. The limited term of this exemption gives the Department the opportunity to review the adherence by the JPMC Affiliated QPAMs to the conditions set out herein. If the Applicant seeks an extension of this exemption, the Department will examine whether the compliance and oversight changes mandated by various regulatory authorities are having the desired effect on JPMC entities.

The relationship between the JPMC Affiliated QPAMs and the Applicant’s Corporate and Investment Banking line of business (CIB) is substantial. The Applicant states, “As of the date of the Applicant’s application, JPMC Affiliated QPAMs managed approximately \$100 billion in plan assets through collective investment trusts that use the custody and administration services of the Applicant’s Corporate and Investment Banking line of business (CIB), operating through the Bank. Similarly, certain plans managed by JPMC Affiliated QPAMs through separate accounts have independently selected CIB (operating through the Bank) as their trustee and/or custodian, and transactions directed by JPMC Affiliated QPAMs on behalf of such plans would necessarily require the trustee/custodian to provide services for a direct or

indirect fee.” The Applicant also states, “Because of all of the services CIB necessarily provides to client accounts, the wording of this proposed exemption [that excludes the business line from providing services to funds managed by the Affiliated QPAMs] is tantamount to a denial.”

Notwithstanding the above, as noted below, the Department has determined to revise this exemption to permit CIB to continue to provide services to funds managed by JPMC Affiliated QPAMs, based on the Department’s determination that the conditions set forth herein are sufficiently protective of the Covered Plans, and given the type of transactions covered by this exemption and the Applicant’s representations regarding the types of services provided by CIB. The Department notes that the JPMC Affiliated QPAMs’ substantial and substantive dependency on the JPMC CIB when managing plan and IRA assets also supports the Department’s conclusion that the conditions of the exemption are necessary and appropriate.

Comment 2—Description of Criminal Conduct—Section I

The prefatory language to Section I of the proposed exemption provides, “*If the proposed five-year exemption is granted, certain asset managers with specified relationships to JPMC (the JPMC Affiliated QPAMs and the JPMC Related QPAMs, as defined further in Sections II(a) and II(b), respectively) 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 judgment of conviction against JPMC (the Conviction), as defined in Section II(e), for engaging in a conspiracy to: (1) fix the price of, or (2) eliminate competition in the purchase or sale of the Euro/U.S. dollar currency pair exchanged in the Foreign Exchange (FX) Spot Market, for a period of five years beginning on the date the exemption is granted.*”

The Applicant requests that the description of the charged conduct—the clause beginning “for engaging in a conspiracy”—be omitted. The Applicant states that this description is inaccurate and incomplete, will lead to disputes with counterparties to the detriment of plans, and will make it unlikely that plans will benefit from or be protected by this exemption.

After consideration of the Applicant’s comment, the Department has revised the exemption in the manner requested by the Applicant.

Comment 3—Knowing or Tacit Approval—Sections I(a) and I(c)

Section I(a) of the proposed five-year exemption provides, “(a) Other than a single individual who worked for a non-fiduciary business within JPMorgan Chase Bank and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, agents other than JPMC, and employees of such QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not know of, did not have reason to know of, or participate in the criminal conduct that is the subject of the Conviction. For purposes of this paragraph (a), ‘participate in’ includes the knowing or tacit approval of the misconduct underlying the Conviction;”

Section I(c) of the proposed exemption provides, “(c) The JPMC Affiliated QPAMs will not employ or knowingly engage any of the individuals that participated in the criminal conduct that is the subject of the Conviction. For the purposes of this paragraph (c), ‘participated in’ includes the knowing or tacit approval of the misconduct underlying Conviction;”

The Applicant requests that the words “or tacit” in the phrase “knowing or tacit approval” be deleted in Sections I(a) and I(c). The Applicant states that the term tacit approval “is undefined and ambiguous, and potentially encompasses a broad range of conduct that could become the subject of disputes with counterparties.”

After consideration of the Applicant’s comment, the Department has revised the condition in the manner requested by the Applicant.

Comment 4—Receipt of Compensation—Section I(b)

Section I(b) of the proposed five-year exemption provides, “(b) Other than a single individual who worked for a non-fiduciary business within JPMorgan Chase Bank and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, and agents other than JPMC, and employees of such JPMC QPAMs) did not receive direct compensation, or knowingly receive indirect compensation in connection with the criminal conduct that is the subject of the Conviction.”

The Applicant states that Section I(b) is not practically workable because an

individual can receive compensation only if the entity he or she works for receives funds. The Applicant requests that this condition be modified to reflect that, although undefinable, a non-fiduciary business within JPMorgan Chase Bank may have indirectly received funds in connection with the criminal conduct that is the subject of the Conviction. The Applicant requests that the Department modify this condition as follows:

The JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, and agents other than JPMC, and employees of such JPMC QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the Conviction, other than a non-fiduciary line of business within JPMorgan Chase Bank.

The Department has revised the condition in the manner requested by the Applicant. As revised, the condition precludes relief if any asset management personnel of JPMC received direct compensation, or knowingly received indirect compensation, in connection with the criminal conduct that is the subject of the Conviction.

Comment 5—Inclusion of “Investment Banking Division of JPMorgan Chase Bank”—Sections I(d), I(g), and I(h)(1)(i)

Section I(d) of the proposed five-year exemption provides, “(d) A JPMC 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 or the Code and managed by such JPMC Affiliated QPAM, to enter into any transaction with JPMC or the Investment Banking Division of JPMorgan Chase Bank, or engage JPMC or the Investment Banking Division of JPMorgan Chase Bank 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;”

Section I(g) of the proposed five-year exemption provides, “(g) JPMC and the Investment Banking Division of JPMorgan Chase Bank will not provide discretionary asset management services to ERISA-covered plans or IRAs, and will not otherwise act as a fiduciary with respect to ERISA-covered plan or IRA assets;”

Section I(h)(1)(i) of the proposed five-year exemption provides, “(h)(1)(i) The asset management decisions of the JPMC Affiliated QPAM are conducted independently of JPMC’s management and business activities, including the corporate management and business activities of the Investment Banking Division of JPMorgan Chase Bank;”

The Applicant requests that these sections be revised to allow the Investment Banking Division of JPMorgan Chase Bank to provide services, including the following services, to investment funds managed by the JPMC Affiliated QPAMs: Safekeeping; settlement; administration; full service class action filing service; overdraft protection; sweep and deposit services; portfolio accounting and reporting services; payment processing services; and foreign custodial services. The Applicant states that not allowing the Investment Banking Division of JPMorgan Chase Bank to provide, or to continue to provide, these services would be harmful to more than a thousand plans.

After considering the Applicant’s comment, the Department has revised the exemption in the manner requested by the Applicant such that the condition does not apply to the Investment Banking Division of JPMorgan Chase Bank. In addition, the Department has clarified that Section I(d) applies to an “investment fund” that is subject to ERISA or the Code and managed by such JPMC Affiliated QPAM with respect to Covered Plans. Finally, as requested by the Applicant, Section I(g) has been modified to clarify that JPMC will not violate this condition in the event that it inadvertently becomes an investment advice fiduciary and that JPMC can act as a fiduciary for plans that it sponsors for its own employees or employees of an affiliate.

Comment 6—Exercising Authority Over Plan Assets—Section I(f)

Section I(f) of the proposed five-year exemption provides, “(f) A JPMC Affiliated QPAM or a JPMC Related QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (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 the JPMC QPAM or its affiliates or related parties to directly or indirectly profit from the criminal conduct that is the subject of the Conviction.”

The Applicant requests that Section I(f) be deleted, stating that it is duplicative of Section I(b), ambiguous,

and not administrable or in the interests of plans. The Applicant states that the first clause of the condition does not differ in any material way from the very first and most basic condition of the exemption: That the asset management businesses of the Affiliated QPAMs did not know of or participate in the conduct that is the subject of the Conviction. The Applicant also states that the second clause of the condition which states, “or cause the JPMC QPAM or its affiliates or related parties to directly or indirectly profit from the criminal conduct,” is confusing and repetitive of the condition in section I(b).

The Department declines to make the Applicant’s requested revisions. The Department does not view Condition I(f) (which relates to exercising authority) as ambiguous or duplicative of Section I(b) (which relates to compensation). Further, Condition I(f) is consistent with the Applicant’s prior representation that, “other than a single individual who worked for a nonfiduciary business within JPMorgan Chase Bank and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, the Affiliated QPAMs did not participate in the Conduct and (ii) no current or former employee of JPMC or of any Affiliated QPAM who previously has been or who subsequently may be identified by JPMC, or any U.S. or non-U.S. regulatory or enforcement agencies, as having been responsible for the Conduct will have any involvement in providing asset management services to plans and IRAs or will be an officer, director, or employee of the Applicant or of any Affiliated QPAM.” However, for clarity, the Department has deleted the term “related parties.”⁵

Comment 7—Time to Implement Policies and Training—Section I(h)(1)–(2)

Section I(h) of the proposed five-year exemption provides, “(h)(1) Within four (4) months of the Conviction, each JPMC Affiliated QPAM must develop, implement, maintain, and follow written policies and procedures (the Policies). . . (2) Within four (4) months of the date of the Conviction, each JPMC Affiliated QPAM must develop and implement a program of training (the Training), conducted at least annually, for all relevant JPMC Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel . . .”

⁵ See JPMC Exemption Application (May 20, 2015) at page 11.

The Applicant requests that the Department increase the development period associated with the Policies and Training Requirement (the Development Period) from four (4) months to six (6) months. The Applicant also seeks confirmation that, following the Development Period, it will have twelve (12) months to complete the Training for all relevant employees, and that it must do so again in every succeeding twelve (12) month period. In support of this request, the Applicant represents that JPMC Affiliated QPAMs manage assets for hundreds of ERISA-covered plans, through separate accounts; over a thousand plans, through collective investment trusts; and more than 160,000 IRAs, through various lines of business. The Applicant states that it may take up to six (6) months for all of these asset management staffs to satisfy the conditions set out in subparagraph(h) and then an additional twelve (12) months to accomplish all of the training. The Applicant further requests that Section I(h) be streamlined to match the requirements of PTE 2016–15.

The Department emphasizes that the JPMC QPAMs must comply with the Policies and Training requirements within both PTE 2016–15 and this exemption. To this end, the Department has revised the policies and training requirements of Section I(h) to conform with PTE 2016–15. The two exemptions now follow this timeline: (i) Each JPMC Affiliated QPAM must have developed the Policies and Training required by PTE 2016–15 by July 9, 2017; (ii) the first annual Training under PTE 2016–15 must be completed by July 9, 2018; (iii) each JPMC Affiliated QPAM must develop the Policies and Training required by this exemption, as necessary, by July 9, 2018; and (iv) the first Training under this exemption must be completed by July 9, 2019. By the end of this 30-month period, asset/portfolio management, trading, legal, compliance, and internal audit personnel who were employed from the start to the end of the period must have been trained twice.

Comment 8—Policies and Procedures Relating to Compliance With ERISA and the Code—Section I(h)(1)(ii)–(v)

Section I(h)(1)(ii)–(v) of the proposed five-year exemption provides, “(h)(1) Within four (4) months of the Conviction, each JPMC Affiliated QPAM must develop, implement, maintain, and follow written policies and procedures (the Policies) requiring and reasonably designed to ensure that: . . . (ii) The JPMC Affiliated QPAM fully complies with ERISA’s fiduciary

duties, and with ERISA and the Code’s prohibited transaction provisions, and does not knowingly participate in any violation of these duties and provisions with respect to ERISA-covered plans and IRAs;

(iii) The JPMC 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 JPMC Affiliated QPAM to regulators including, but not limited to, the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA-covered plans or IRAs, are materially accurate and complete, to the best of such QPAM’s knowledge at that time; [and]

(v) The JPMC 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 plans and IRA clients.”

The Applicant requests that these subparagraphs be stricken as duplicative and already mandated by statute. The Applicant states that these conditions could be read to apply the fiduciary duties of ERISA to IRAs, which it claims would be overly broad, punitive, and not rationally related to asset management under the exemption. In the event the Department declines to strike the above subsections, the Applicant requests the following revisions to subsections (ii)–(v):

Subsection (ii): The Applicant requests that JPMC Affiliated QPAMs be required to comply with ERISA’s fiduciary duties, “with respect to ERISA-covered plans managed in reliance on PTE 84–14,” and with ERISA and the Code’s prohibited transaction provisions, “as applicable, with respect to ERISA-covered plans and IRAs managed in reliance on PTE 84–14.”

Subsection (iii): The Applicant requests the removal of “or the Code,” and “IRAs.” With the Applicant’s requested revision, subsection (iii) would read, “The JPMC Affiliated QPAM does not knowingly participate in any other person’s violation of ERISA with respect to ERISA-covered plans.”

Subsection (iv): The Applicant requests that the phrase, “on behalf of ERISA-covered plans or IRAs,” be changed to, “on behalf of ERISA-covered plans or IRAs for which a JPMC Affiliated QPAM provides asset

management or other discretionary fiduciary services in reliance on PTE 84–14.”

Subsection (v): The Applicant requests that the subparagraph be revised to, “(v) The JPMC Affiliated QPAM does not intentionally make material misrepresentations or omit material information, to the best of such QPAM’s knowledge at that time, in its communications with ERISA-covered plans and IRA clients, the assets of which are managed by such JPMC Affiliated QPAM in reliance on PTE 84–14.”

In response to the Applicant’s comments, the Department has modified the Policies’ requirement of adherence to the fiduciary and prohibited transaction provisions of ERISA and the Code so that the Policies expressly focus on the provisions only to the extent “applicable” under ERISA and the Code. In general, however, the Department has otherwise retained the stringency and breadth of the Policies requirement, which is more than justified by the compliance and oversight failures exhibited by JPMC throughout the long period of time during which the criminal misconduct persisted.

The specific elements of the Policies requirement as set forth in this exemption are essential to its protective purposes. In approving this exemption, the Department significantly relies upon conditions designed to ensure that those relying upon its terms for prohibited transaction relief will adopt a culture of compliance centered on basic fiduciary norms and standards of fair dealing, as reflected in the Policies. These standards are core protections of this exemption.

The Department has made some additional changes, however, which should not detract from the Policies’ protective purpose. Thus, as requested by the Applicant, subsection (v) has been revised to contain the “to the best of QPAM’s knowledge at the time” concept found in subsection (iv); and the applicability of subsections (iv) and (v) has been narrowed to ERISA-covered plans and IRAs with respect to which a JPMC Affiliated QPAM relies on PTE 84–14, or with respect to which a JPMC Affiliated QPAM has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption in its dealings with the ERISA-covered plan or IRA (hereinafter, a Covered Plan). To the extent a JPMC QPAM would prefer not to be subject to this provision, however, it may expressly disclaim reliance on QPAM status or PTE 84–14 in entering into its contract with the Covered Plan. This

revision is consistent with the Department’s intent to protect ERISA-covered plans and IRAs that may have hired a JPMC Affiliated QPAM based on the manager’s express representation that it relies on or qualifies under PTE 84–14.

As explained in more detail below, the Department will not strike a condition merely because it is also a statutory requirement. It is the express intent of the Department to preclude relief for a JPMC affiliated QPAM that fails to meet the requirements of this exemption, including those derived from basic standards codified in statute, as applicable.

Comment 9—Correction of Violations and Failures To Comply—Section I(h)(1)(vii)

Section I(h)(1)(vii) of the proposed five-year exemption provides, “*Any violation of, or failure to comply with an item in subparagraphs (ii) through (vi), is corrected promptly upon discovery, and any such violation or compliance failure not promptly corrected is reported, upon the discovery of such failure to promptly correct, in writing, to appropriate corporate officers, the head of compliance, and the General Counsel (or their functional equivalent) of the relevant JPMC Affiliated QPAM, the independent auditor responsible for reviewing compliance with the Policies, and an appropriate fiduciary of any affected ERISA-covered plan or IRA that is independent of JPMC; 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 JPMC or beneficially owned by an employee of JPMC or its affiliates, such fiduciary does not need to be independent of JPMC. A JPMC Affiliated QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance promptly when discovered, or when it reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (vii).*”

The Applicant cites this condition as an example of how the Department made the proposed exemption “inexplicably” and “arbitrarily” more burdensome and onerous than other such exemptions it has granted previously. More specifically, the Applicant seeks several revisions to Section I(h)(vii), stating that its notification requirements are overbroad, and that terms such as “appropriate corporate officers” and “corrected promptly” are either vague or

undefined. The Applicant requests that “subparagraphs (ii) through (vi)” be revised to read “subparagraphs (i) through (vi).” The Applicant also requests that the last sentence of the subparagraph (h) be revised, because it is “overly broad and does not meaningfully provide relief in instances where a violation or compliance failure is corrected.” The Applicant suggests the subparagraph (h) be revised to read, “Within sixty (60) days of discovery of any violation of, or failure to comply with, an item in subparagraphs (i) through (vi), the JPMC QPAM will formulate, in writing, a plan to address such violation or failure (a Correction Plan). To the extent any such Correction Plan is not formulated within sixty (60) days of discovery, the JPMC Affiliated QPAM will report in writing such violation of, or failure to comply with, the item in subparagraphs (i) through (vi) to the head of compliance”

In response to the Applicant’s general comment, the Department has based the conditions of this exemption on both the particular facts of this case and its experience over time with previous exemptions. For the reasons set out herein, the Department has concluded that the specific conditions of this exemption are appropriate and give the Department a reasonable basis for concluding that the exemptions are appropriately protective of affected plans and IRAs. As noted above, a central aim of the exemption is to ensure that those relying upon the exemption for relief from the prohibited transaction rules will consistently act to promote a culture of fiduciary compliance, notwithstanding the conduct that violated Section I(g) of PTE 84–14.

After considering the Applicant’s specific requests for revisions, however, the Department has replaced “appropriate corporate officers” with “the head of compliance and the General Counsel (or their functional equivalent) of the relevant line of business that engaged in the violation or failure.” The Department also will not condition the exemption on a requirement for notification of violations to an appropriate fiduciary of any affected ERISA-covered plan or IRA that is independent of JPMC.

However, the Department is not revising the “subparagraphs (ii) through (vi)” reference to include “subparagraph (i)” because the Department intends to preclude relief to the extent a JPMC Affiliated QPAM fails to develop, implement, maintain, and follow written policies and procedures. Clearly, it is not enough merely to develop policies and procedures,

without also implementing, maintaining, and following the terms of those policies and procedures. Covered Plans do not benefit from the creation of strong policies and procedures, unless they are actually followed.

The Department has revised the term “corrected promptly” for consistency with the Department’s intent that violations or compliance failures be corrected “as soon as reasonably possible upon discovery or as soon after the QPAM reasonably should have known of the noncompliance (whichever is earlier).” However, contrary to the Applicant’s suggestion, the Department intends to preclude relief to the extent violations or failures are not corrected as required by the exemption. Therefore, the Department has not adopted the Applicant’s proposed subparagraph (vii), which requires little more than the formulation of a correction plan, without any corresponding obligation to actually implement the plan.

Comment 10—Training Incorporated in Policies—Section I(h)(2)(i)

Section I(h)(2)(i) of the proposed five-year exemption provides, “. . . *The Training must: (i) Be set forth in the Policies and, at a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this five-year exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing.*”

The Applicant states that the requirement in Section I(h)(2)(i) that the Training must be “set forth in” the Policies is impracticable and may cause significant logistical challenges over time. Accordingly, the Applicant requests that Section I(h)(2)(i) be revised as follows:

“. . . The Training must, 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 permanent exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing.”

After considering this comment, the Department has revised the condition as requested by the Applicant.

Comment 11—Training by Independent Professional—Section I(h)(2)(ii)

Section I(h)(2)(ii) of the proposed five-year exemption provides, “. . . The Training must: . . . (ii) Be conducted by

an independent professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code.”

The Applicant requests that Section I(h)(2)(ii) be deleted, stating that requiring an independent professional is likely to be “counterproductive, a waste of time and resources, and less effective than using internal personnel who are familiar with Applicant’s processes and staff”

Although the Department does not agree with the Applicant’s characterization that hiring an appropriate independent professional, prudently-selected, would be counterproductive and a waste of resources, the Department is persuaded that appropriate JPMC personnel, prudently selected, should be allowed to conduct the training, and has revised the condition accordingly.

Comment 12—Audit—Section I(i)(1)

Section I(i)(1) of the proposed five-year exemption requires that each *JPMC Affiliated QPAM* “submits to an audit conducted annually by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and the JPMC Affiliated QPAM’s compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. Each annual audit must cover a consecutive twelve (12) month period starting with the twelve (12) month period that begins on the effective date of the five-year exemption, and each annual audit must be completed no later than six (6) months after the period to which the audit applies;”

The Applicant requests that the audit requirement be deleted from the exemption in its entirety. The Applicant states that requiring the audit of asset management units that were not accused of wrongdoing is unnecessary and essentially seeks to punish businesses that have not been convicted of a crime. The Applicant requests that, if the audit condition is not omitted, the annual audit should be performed by the Applicant’s Internal Audit function. The Applicant also requests the removal of the requirement mandating incorporation of the audit conditions into the Policies, as the Applicant believes such inclusion serves no purpose and does not further the interest of plans. Additionally, the Applicant requests the removal of the phrase “technical training and proficiency,” because it is redundant and undefined.

The Department declines to delete the audit requirement in its entirety. A recurring, independent, and prudently conducted audit of the JPMC Affiliated QPAMs is critical to ensuring the QPAMs’ compliance with the Policies and Training mandated by this exemption, and the adequacy of the Policies and Training. The required discipline of regular audits underpins the Department’s finding that the exemption should help prevent the sort of compliance failures that led to the Conviction and is protective of Covered Plans and their participants, beneficiaries, and beneficial owners, as applicable.

The Department views the audit requirement as an integral component of the exemption, without which the Department would be unable to make its finding that the exemption is protective of Covered Plans and their participants, beneficiaries, and beneficial owners, as applicable. A recurring, independent audit of the JPMC Affiliated QPAMs is a critical means by which to verify the adequacy of, and compliance with, the Policies and Training mandated by this exemption.

This exemption’s conditions are based, in part, on the Department’s assessment of the seriousness and duration of the misconduct that resulted in the violation of Section I(g) of PTE 84–14, as well as the apparent inadequacy of the controls and oversight mechanisms at JPMC to prevent the misconduct. The FCA’s Final Notice states: “[d]uring the Relevant Period, JPMorgan did not exercise adequate and effective control over its G10 spot FX trading business,” and that, “[t]he front office failed adequately to discharge these responsibilities with regard to obvious risks associated with confidentiality, conflicts of interest and trading conduct.” The OCC states: “the Bank had deficiencies in its internal controls and had engaged in unsafe or unsound banking practices with respect to the oversight and governance of the Bank’s FX trading business” Accordingly, the Department declines to delete the audit requirement in its entirety.

The Department, however, recognizes that, notwithstanding JPMC’s oversight failures, only a small number of individuals at JPMC directly engaged in the misconduct at issue. Thus, the United States District Court for the District of Connecticut stated, in connection with the sentencing of JP Morgan Chase & Co., that “the conduct at issue here was engaged in by a very small number of individuals” and “we do not have banks who appear to have condoned conduct at any high-ranking

level.”⁶ Accordingly, the Department has determined to change the audit interval under this exemption, from annual to biennial. Section I(i)(1) of the exemption, therefore, now requires that each JPMC Affiliated QPAM “*submits to an audit conducted every two years by an independent auditor.*” Each audit must cover the preceding consecutive twelve (12) month period. The first audit must cover the period from July 10, 2018 through July 9, 2019, and must be completed by January 9, 2020. The second audit must cover the period from July 10, 2020 through July 9, 2021, and must be completed by January 9, 2022. In the event that the Exemption Period is extended or a new exemption is granted, the third audit would cover the period from July 10, 2022 through July 9, 2023, and would be completed by January 9, 2024, unless the Department chose to alter the audit requirement in the new or extended exemption;⁷

The Department declines to revise Section I(i)(1) to permit the Applicant’s Internal Audit Department to carry out this exemption’s required audit functions, as such a revision would not be protective of Covered Plans. Auditor independence is essential to this exemption, as it allows for an impartial analysis of the JPMC Affiliated QPAMs. Permitting the Applicant’s Internal Audit Department to carry out this exemption’s required audit functions would be insufficiently protective of Covered Plans. The independence of the auditor is the cornerstone of the integrity of the audit process and is of primary importance to avoid conflicts of interest and any inappropriate influence on the auditor’s findings. The fundamental importance of auditor independence to the integrity of the audit process is well established. For example, the United States Securities and Exchange Commission (SEC) promulgated regulations at 17 CFR 210.2–01 to ensure auditors are independent of their clients, and under 17 CFR 240.10A–2, it is unlawful for an auditor not to be independent in certain circumstances. Likewise, the Public Company Accounting Oversight Board’s

(PCAOB) Rule 3520 states that a public accounting firm and its associated persons must be independent of the firm’s audit client. When working on an audit or attest engagement, the Association of Independent Certified Public Accountants’ (AICPA) Code of Professional Conduct, Objectivity and Independence Principle (AICPA, Professional Standards, ET section 0.300.050.01) states that members should be independent in fact and appearance. Moreover, ERISA section 103(a)(3)(A) requires an accountant hired by an employee benefit plan to examine the plan’s financial statements to be independent. Notwithstanding the Applicant’s representations regarding the staff size and internal policies of JPMC’s Internal Audit Department, serious misconduct occurred over an extended period of time at a JPMC entity.

The Department also disagrees with the Applicant’s assertion that the phrase “technical training and proficiency” is redundant. The two terms are not synonymous, as a person may have taken technical training in a given subject matter but may not be proficient in that subject matter. The exemption requires that the auditor be both technically trained and proficient in ERISA as well as the Code. Accordingly, the Department declines to change the phrase “technical training and proficiency” as used in Section I(i)(1).

The Department also declines to delete the requirement that the audit conditions be incorporated in the Policies. The audit requirement provides a critical independent check on compliance with this exemption’s conditions, and helps ensure that the basic protections set forth in the Policies are taken seriously. Accordingly, the specifics of the audit requirement are important components of the Policies. Their inclusion in the Policies promotes compliance and sends an important message to the institutions’ employees and agents, as well as to Covered Plan clients, that compliance with the policies and procedures will be subject to careful independent review.

After consideration of the Applicant’s concerns regarding the annual audit, the Department is revising the audit condition to require an audit on at least a biennial basis. The Departments notes that if the audit uncovers material deficiencies with JPMC’s compliance with this exemption, then the Applicant should consider conducting an additional audit after making corrections to ensure that it remains in compliance with the exemption. In any event, the Department emphasizes that it retains the right to conduct its own

investigation of compliance based on any such indicators of problems.

Comment 13—Access to Business—Section I(i)(2)

Section I(i)(2) of the proposed five-year exemption requires that “*as permitted by law, each JPMC Affiliated QPAM and, if applicable JPMC, will grant the auditor unconditional access to its business . . .*”

The Applicant requests that the access granted by Section I(i)(2) be limited to: (1) Relevant materials reasonably necessary to conduct the audit; and (2) non-privileged materials that do not contain trade secrets. The Applicant argues that the “unconditional access” required by this condition is too broad and that the absence of specific exclusions could lead to confusion, dispute, and infringement on the JPMC Affiliated QPAMs’ right to protect privileged communications, confidential supervisory information with other regulators (for which the privilege is held by others), irrelevant materials, and trade secrets.

In the Department’s view, to ensure a thorough and robust audit, the independent auditor must be granted access to information it deems necessary to make sound conclusions. Access to such information must be within the scope of the audit engagement and denied only to the extent any disclosure is not permitted by state or federal statute. Enumerating specific restrictions on the accessibility of certain information may have a dampening effect on the auditor’s ability to perform the procedures necessary to make valid conclusions and therefore undermine the effectiveness of the audit. The auditor’s access to such information, however, is limited to information relevant to the auditor’s objectives as specified by the terms of this exemption and to the extent disclosure is not prevented by state or federal statute, or involves communications subject to attorney client privilege. In this regard, the Department has modified Section I(i)(2) accordingly.

Comment 14—Engagement Letter—Section I(i)(3)

Section I(i)(3) of the proposed five-year exemption requires the auditor’s engagement to “*specifically require the auditor to determine whether each JPMC Affiliated QPAM has developed, implemented, maintained, and followed the Policies . . . and has developed and implemented the Training, as required herein.*”

The Applicant requests that Section I(i)(3) be deleted in its entirety, stating

⁶ See TRANSCRIPT of Proceedings: as to JP Morgan Chase & Co. (January 5, 2017 at pages 29–30).

⁷ The third audit referenced above would not have to be completed until after the Exemption Period expires. If the Department ultimately decides to grant relief for an additional period, it could decide to alter the terms of the exemption, including the audit conditions (and the timing of the audit requirements). Nevertheless, the Applicant should anticipate that the Department will insist on strict compliance with the audit terms and schedule set forth above. As it considers any new exemption application, the Department may also contact the auditor for any information relevant to its determination.

that it is unnecessarily duplicative of the substantive requirements of the exemption and that the Applicant will be bound by the conditions of the exemption, whether or not they also appear in the auditor's engagement letter.

The Department does not concur with the Applicant's request. By including a statement of the audit's intended purpose and required determinations in the auditor's agreement, the Applicant ensures that both the auditor and the JPMC Affiliated QPAMs have clear understanding of the purpose and expectations of the audit process. Therefore, the Department declines to omit Section I(i)(3) from the exemption.

Comment 15—Auditor's Test of Operational Compliance—Section I(i)(4)

Section I(i)(4) of the proposed five-year exemption provides that, "*[t]he auditor's engagement must specifically require the auditor to test each JPMC Affiliated QPAM's operational compliance with the Policies and Training*" and "*the auditor must test a sample of each QPAM's transactions involving ERISA-covered Plans and IRAs sufficient in size and nature to afford the auditor a reasonable basis to determine operational compliance with the Policies and Training.*"

The Applicant requests that Section I(i)(4) be deleted in its entirety. The Applicant argues that this Section is unnecessarily duplicative, as other conditions of the exemption govern the audit's scope, the auditor's technical skill, and the prudence of the selection process. The Applicant also argues that the second sentence of Section I(i)(4) unnecessarily intrudes upon the auditor's function and independence. Additionally, the Applicant states that auditors should be granted discretion as to when to sample transactions, as an auditor may not have the capacity to test significant data within the time periods required under this exemption.

The Department declines to make the Applicant's requested revisions with respect to Section I(i)(4). The inclusion of written audit parameters in the auditor's engagement letter is necessary both to document expectations regarding the audit work and to ensure that the auditor can responsibly perform its important work. As stated above, clearly defined audit parameters will minimize any potential for dispute between the Applicant and the auditor. It is appropriate and necessary for the exemption to require a certain amount, and type, of audit work to be performed. Similarly, given the scope and number of relevant transactions, proper sampling is necessary for the auditor to

reach reasonable and reliable conclusions. Although the Department has declined to delete this section in its entirety, as requested by the Applicant, the Department has revised this condition for consistency with other conditions of this exemption which are tailored to the Department's interest in protecting Covered Plans. Therefore, the condition now applies to Covered Plans (*i.e.*, ERISA-covered plans and IRAs with respect to which the JPMC Affiliated QPAM relies on PTE 84–14 or has expressly represented that it qualifies as a QPAM or relies on the QPAM class exemption in its dealings with the ERISA-covered plan or IRA).

The Department notes that Section I(i)(4) does not specify the number of transactions that the auditor must test, but rather requires, for each QPAM, that the auditor test a sample of each such QPAM's transactions involving Covered Plans, "sufficient in size and nature to afford the auditor a reasonable basis to determine operational compliance with the Policies and Training."

Comment 16—Draft of the Audit Report—Section I(i)(5)

Section I(i)(5) of the proposed five-year exemption requires that ". . . on or before the end of the relevant period described in Section I(i)(1) for completing the audit, the auditor must issue a written report (the Audit Report) to JPMC and the JPMC Affiliated QPAM . . ."

The Applicant requests a modification of Section I(i)(5) that would allow the Applicant sufficient time to correct any findings of noncompliance by the auditor before the issuance of the final Audit Report and its provision to the Department. The Applicant states that permitting it to review a draft of the Audit Report well in advance of its submission to the Department would allow the Applicant to implement plans to correct any violations or findings of noncompliance identified by the auditor. The Applicant states that communication with the audited entity is an appropriate audit procedure which ensures that the auditor's factual premises are correct. The Applicant also states that the time required to review the audit should be in advance of the Audit Report's submission and should not take away from the six (6) months given to complete the audit and the thirty (30) days to submit the Audit Report to the Department. The Applicant therefore requests that Section I(i)(5) contain a provision: (1) Requiring the auditor to issue a draft Audit Report to the Applicant and the JPMC Affiliated QPAMs at the end of the period for the completion of the

audit, as described in Section I(i)(1); and (2) providing the Applicant and the JPMC Affiliated QPAM thirty (30) days to review such draft Audit Report. Additionally, the Applicant requests that the exemption allow the auditor to issue one consolidated Audit Report covering all the JPMC Affiliated QPAMs.

The Department agrees that it is appropriate and beneficial for the auditor and the entity being audited to communicate during the audit process. Such communication allows for a dialog regarding, among other things, factual premises, findings, and conclusions. With regard to issues of noncompliance, communication should take place as soon as possible, but in no case later than five (5) days following the discovery of such noncompliance (see Section I(i)(6)) to allow time for the Applicant to provide additional information to the auditor and correct the noncompliance. However, the Department considers a requirement directing the auditor to provide a draft Audit Report to the audited entity in all cases to be inappropriate, as it is a matter best determined by the Applicant and the auditor. The Department notes that, while contemplating the time frames for completion and submission of the Audit Report, it did take into account the auditor's procedural work and communications with the Applicant. The Applicant has not demonstrated the need for additional time to complete and submit the Audit Report. The Department therefore declines to modify Section I(i)(5) as requested by the Applicant.

Lastly, the Department has accepted the Applicant's recommendation that the auditor be allowed to issue one consolidated Audit Report and has modified Section I(i)(5) accordingly.

Comment 17—Auditor's Determination of Compliance—I(i)(5)(i)

Section I(i)(5)(i) of the proposed five-year exemption provides, in part: "*Any determination by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective JPMC Affiliated QPAM must be promptly addressed by such JPMC Affiliated QPAM, and any action taken by such JPMC Affiliated QPAM to address such recommendations must be included in an addendum to the Audit Report (which addendum is completed prior to the certification described in Section I(i)(7) below).*"

The Applicant asserts that Section I(i)(5)(i) is arbitrary, capricious, and

ambiguous and requests that the term “promptly” be omitted from the condition because it will cause disputes over its meaning. The Applicant argues that this perceived ambiguity is problematic in this context because addressing the auditor’s recommendation could be a lengthy process.

In addition, Section I(i)(5)(i) states: *“Furthermore, the auditor must not rely on the Annual Report created by the compliance officer (the Compliance Officer) as described in Section I(m) below in lieu of independent determinations and testing performed by the auditor as required by Section I(i)(3) and (4) above.”*

The Applicant requests that this provision of Section I(i)(5) be deleted, as it imposes a counterproductive limitation on the auditor’s use of the Annual Review and usurps the auditor’s judgment regarding how to perform its role, and whether and when to rely upon any and all resources. The Applicant further states, that denying the auditor the opportunity to fully use its judgment as to which resources it will rely upon contradicts the underlying purpose of this exemption’s broader audit condition, especially in light of the requirements relating to the auditor’s selection and qualifications. Moreover, the Applicant states that the language of this condition will interfere with the workability of the exemption and its use by plans. To that end, the Applicant states that if counterparties cannot determine whether this requirement has been complied with, the exemption will not be used, to the detriment of plans.

The Department acknowledges that the Applicant’s efforts to address the auditor’s recommendations regarding any inadequacy in the Policies and Training identified by the auditor, may take longer to implement than the time limits mandated by the proposed exemption. Accordingly, the Department is modifying Section I(i)(5)(i) to reflect the possibility that the JPMC Affiliated QPAMs’ efforts to address the auditor’s recommendations regarding inadequacies in the Policies and Training identified by the auditor, may not be completed by the submission date of the Audit Report and may require a written plan to address such items. However, any noncompliance identified by the auditor must be promptly addressed. The Department does not agree that the word “promptly” creates inappropriate ambiguity in the condition and declines to remove the word.

The final sentence of Section I(i)(5)(i) expresses the Department’s intent that

the auditor not rely solely on the work of the Compliance Officer and the contents of the Annual Report in formulating its conclusions or findings. The auditor must perform its own independent testing to formulate its conclusions. This exemption does not prohibit the auditor from considering the Compliance Officer’s Annual Report in carrying out its audit function, including the formulation of an audit plan. This exemption, however, does prohibit the auditor from reaching conclusions that are exclusively based upon the contents of the Compliance Officer’s Annual Report. The Department has modified Section I(i)(5)(i) to more clearly reflect these views.

Included with its comment on Section I(i)(5)(i), the Applicant requests the deletion of the Compliance Officer and Annual Review requirements set out in Section I(m). The Department’s response to this request is discussed below.

Comment 18—Adequacy of the Annual Review—Section I(i)(5)(ii)

Section I(i)(5)(ii) of the proposed five-year exemption provides that “[t]he Audit Report must include the auditor’s specific determinations regarding: . . . (ii) The adequacy of the Annual Review described in Section I(m) and the resources provided to the Compliance Officer in connection with such Annual Review.”

The Applicant asserts that requiring the auditor to assess the adequacy of the resources provided to the Compliance Officer is overreaching and should be deleted. The Applicant states that, while the auditor function requires proficiency in ERISA, it does not require sophistication or expertise on resource allocation. According to the Applicant, the question of whether the Compliance Officer has met its obligations under this exemption will be subject to the auditor’s review. The Applicant states that if the auditor finds any deficiencies in the review, the Applicant will address such issues including any allocation of resources.

As discussed in detail below, the Department views the Compliance Officer and the Annual Review as integral to ensuring compliance with the exemption. An independent assessment by the auditor of the adequacy of the Annual Review is essential to providing the Department with the assurance that the Applicant and the JPMC Affiliated QPAMs have given these matters the utmost priority and have taken the actions necessary to comply with the exemption. However, the Department agrees that the QPAMs need not require the auditor to opine on the adequacy of

the resources allocated to the Compliance Officer and has modified Section I(i)(5)(ii) accordingly. If, however, the auditor observes compliance issues related to the Compliance Officer or available resources, it would be appropriate for the auditor to opine on those problems.

Comment 19—Certification of the Audit—Section I(i)(7)

Section I(i)(7) of the proposed five-year exemption provides, in part, that “. . . the General Counsel, or one of the three most senior executive officers of the JPMC Affiliated QPAM to which the Audit Report applies, must certify in writing, under penalties of perjury, that the officer has reviewed that Audit Report and this exemption; addressed, corrected, or remedied any inadequacy identified in the Audit Report . . .”

The Applicant requests that this condition be modified to remove ambiguity, enhance workability, and avoid aspects that could be interpreted as punitive. The Applicant claims that the requirements of Section I(i)(7) should take into account JPMC’s business structure and allow the Applicant to determine which senior officers will review the Audit Report. The Applicant states that it would be preferable that an executive related to an asset/investment management business operating through the QPAM review the Audit Report. In this regard, the Applicant requests Section I(i)(7) be modified in part as follows: “the General Counsel or one of the three most senior executives of the line of business engaged in discretionary assets management activities through the JPMC Affiliated QPAM with respect to which the Audit Report applies . . .”.

The Department concurs that a senior executive officer with knowledge of the asset management business within the QPAM should be allowed to review the Audit Report, and has modified the language of Section I(i)(7), accordingly.

The Applicant also requests that the timing of Section I(i)(7) be clarified. In this regard, the Applicant states that compliance with this condition would be impossible if, for example, a recommendation takes longer to implement than the 30-day period contemplated in Section I(i)(9) for the Audit Report to be certified and provided to the Department.

While the Department does not view Section I(i)(7) as ambiguous, the Department is aware, as stated above, that the Applicant’s efforts to address the auditor’s recommendations regarding inadequacies in the Policies and Training identified by the auditor may take longer to implement than the

timeframe to submit the certified Audit Report. With respect to this issue, the Department did not intend to limit corrective actions to those that could only be completed prior to the submission of the Audit Report. Therefore, the Department has modified Section I(i)(7) to reflect that the senior officer may certify that a written plan to address the inadequacies regarding the Policies and Training identified in the auditor's Report is in place.

The Applicant also states that this condition should clarify that it may appropriately "address" an inadequacy by noting that an alternative action to the auditor's recommendation, or even no action, is a preferable means of protecting ERISA plan clients and IRAs. The Applicant states that this condition is intrusive, as it invites the auditor, through its conclusions and recommendations, to micromanage the business of the relevant JPMC QPAM. The Applicant claims that, with broad access to a JPMC Affiliated QPAM's records, the auditor could identify any number of potential inadequacies, all of which the JPM Affiliated QPAM should not be required to accept unconditionally.

As mentioned above, the Department has determined that it is necessary for the auditor to be afforded unfettered access to JPMC Affiliated QPAM records, to the extent that the analysis of such records falls within the twelve month period to which the audit relates. For the first audit required by this exemption, that period runs from January 10, 2018 through January 9, 2019. The conditions of this exemption do not prohibit the Applicant from disagreeing with the auditor with respect to whether certain practices fail to comply with the terms of this exemption. However, in those circumstances where the auditor is not persuaded to change its position on a matter the auditor considers noncompliant, the Applicant will be responsible to correct such matters. Nor do the conditions of this exemption prohibit the Applicant from disagreeing with the auditor with respect to the appropriate method for correcting or addressing issues of noncompliance. The Department would expect the Applicant and the auditor to have meaningful communications on such differences of opinion. In the event the Applicant chooses to apply a corrective method that differs from that recommended by the auditor, the Audit Report and the Addendum attached thereto should explain in detail the noncompliance, the auditor's recommended action, the corrective method chosen, and, if applicable, why

the Applicant chose a corrective method different from that recommended by the auditor.

Lastly, the Applicant requests deletion of the requirement in Section I(i)(7) for certification by the senior executive officer under penalties of perjury. The Applicant argues that this requirement is unnecessary and inappropriate as this exemption already requires accuracy in communications with regulators and clients.

The Department declines to remove this requirement, which makes clear the importance of the correction process and creates a strong incentive going forward to take seriously the audit process—and compliance generally.

Comment 20—Review and Certification of Audit Report—Section I(i)(8)

Section I(i)(8) the proposed five-year exemption provides that "*[t]he Risk Committee of JPMC's Board of Directors is provided a copy of each Audit Report; and a senior executive officer with a direct reporting line to the highest ranking legal officer of JPMC must review the Audit Report for each JPMC Affiliated QPAM . . .*"

The Applicant requests that the requirement to provide the Audit Report to the Risk Committee of JPMC's Board of Directors be omitted. The Applicant states that the Department, in imposing this condition, is acting beyond the scope of its authority. The Applicant also represents that this condition constitutes micromanaging by the Department and is inappropriate and unnecessary. The Applicant further states that this requirement does not protect plans and participants and is duplicative of other conditions contained in this exemption. The Applicant argues that a mandate by the Department concerning JPMC's internal processes for handling information is outside the scope of the exemption and does not further the statutory goal of protecting plans.

The Applicant requests that the exemption provide that the certifying reviewer be a senior executive officer. The Applicant further states that the exemption should not mandate that the certifying reviewer be a senior executive officer in the direct reporting line to the highest ranking legal officer of JPMC.

Finally, the Applicant requests the requirement in Section I(i)(8) that the certification by the senior executive officer be made under penalty of perjury be deleted, as it is unnecessary.

The Department notes that in its application and related materials, the Applicant has represented that it has established, or is in the process of establishing comprehensive changes to

processes and procedures that are, in part, intended to change the culture at JPMC from the top down. As represented by the Applicant, these changes are focused on enhancements in: (1) Supervision, controls, and governance; (2) compliance risk assessment; (3) transaction monitoring and communications surveillance; (4) compliance testing; and (5) internal audit.⁸

The Department has developed this exemption to ensure that the highest levels of management are aware of ongoing matters concerning JPMC, the JPMC Affiliated QPAMs, and compliance with this exemption. Requiring the provision of the Audit Report to the Board of Directors and certification by a senior executive officer in the reporting line of the highest legal compliance officer provides assurance that the highest levels of management within JPMC stay informed about JPMC's and the JPMC Affiliated QPAMs' compliance with the terms of this exemption. In the Department's view, such officials are in the best position to ensure that any inadequacy identified by the auditor is appropriately addressed and that necessary changes to corporate policy are effectuated if and where necessary. Requiring certification under penalty of perjury is consistent with the Department's longstanding view that basic requirements of compliance and integrity are fundamental to an entity's ability to qualify as a QPAM.

Comment 21—Availability of the Audit Report—Section I(i)(9)

The Applicant claims that the requirements in Section I(i)(9) that "*each JPMC Affiliated QPAM must make its Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of an ERISA-covered plan or IRA, the assets of which are managed by such JPMC Affiliated QPAM*" is outside the scope of the exemption and is unnecessary. The Applicant states that the availability of the Audit Report should be limited to ERISA-covered plans and IRAs for which the Applicant relies on PTE 84–14. The Applicant argues that it is overly-broad, punitive and not related to the relief provided in the exemption to extend this condition to plans and IRAs for which the Affiliated JPMC QPAMs do not rely on PTE 84–14. Additionally, the Applicant requests that the Audit Report should be made

⁸ See JPMC Exemption Application (May 20, 2015) at page 12.

available upon request and that any such provision of the Audit Report may be facilitated via electronic delivery.

The Department does not agree that the condition in Section I(i)(9) is punitive. As the Applicant recognized in its application, ERISA-covered plans, IRAs, and counterparties routinely rely on QPAM status before entering into agreements with financial institutions, even if those institutions do not believe compliance with PTE 84-14 is strictly necessary for any particular transaction. Accordingly, the Department has an interest in ensuring that the conditions of this exemption broadly protect ERISA-covered plans and IRAs that have relied on QPAM status in deciding to enter into an agreement with the Applicant or the Affiliated JPMC QPAMs.

Nevertheless, the Department has revised Section I(i)(9) to clarify that the JPMC Affiliated QPAMs are required to make the documents available to any fiduciary of a Covered Plan. The Audit Report, in any event, will be incorporated into the public record attributable to this exemption, under Exemption Application Number D-11906, and, therefore, independently accessible by members of the public. Accordingly, the Department has determined to revise the condition by replacing the phrase “an ERISA-covered plan or IRA, the assets of which are managed by such JPMC Affiliated QPAM” with the term “Covered Plan” (as defined in Section II(c)). Lastly, the Department agrees that access to the Audit Report need only be upon request and such access can be electronic, and has revised the exemption accordingly.

Comment 22—Engagement Agreements—Section I(i)(10)

The Applicant claims that the requirement under Section I(i)(10)(B) which provides, “[e]ach JPMC Affiliated QPAM and the auditor must submit to OED . . . (B) any engagement agreement entered into with any other entity retained in connection with such QPAM’s compliance with the Training or Policies conditions of this five-year exemption, no later than six (6) months after the Conviction Date (and one month after the execution of any agreement thereafter)” should be omitted as it is unnecessary, punitive, and not in the interest of plans or their participants. The Applicant states that the terms of engagement between the JPMC Affiliated QPAMs and the auditor and trainer should be left to the discretion of the parties to such engagement agreements. The Applicant maintains that it is intrusive to mandate that every service provider contract that

relates to the Policies and the Training be provided to the Department. Additionally, the Applicant requests that the timeframe for provision of the auditor’s engagement be modified to no later than six (6) months after execution of such engagement agreement.

In coordination with the Department’s modification of Section I(h)(2)(ii) to remove the requirement that the Training must be conducted by an independent professional, the Department has determined to remove the requirement in Section I(i)(10)(B) to provide to the Department the engagement agreements entered into with entities retained in connection with compliance with the Training or Policies conditions. Furthermore, to remove any confusion and uncertainty regarding the timing of the submission of the auditor’s engagement agreement, the Department has modified Section I(i)(10) to require that the auditor’s engagement agreement be submitted to the Office of Exemption Determinations no later than two (2) months after the engagement agreement is entered into by the Applicant and the independent auditor.

Comment 23—Auditor’s Workpapers—Section I(i)(11)

Section I(i)(11) the proposed five-year exemption provides that the “*auditor must provide OED, upon request, all of the workpapers created and utilized in the course of the audit, including, but not limited to: The audit plan; audit testing; identification of any instance of noncompliance by the relevant JPMC Affiliated QPAM; and an explanation of any corrective or remedial action taken by the applicable JPMC Affiliated QPAM.*” The Applicant states that Section I(i)(11) is duplicative and could cause the Applicant to lose the exemption due to the auditor’s actions or inaction. Additionally, the Applicant notes that this condition should account for workpapers which the auditor does not want to submit to the public file on the basis of confidentiality or privacy of information. The Applicant argues that such workpapers may contain information such as client data, employee personal information, and other sensitive information. The Applicant therefore requests that the Department exempt such workpapers in a manner that does not compromise the Department’s ability to review such workpapers. Finally, the Applicant claims that by stating “all of the workpapers” and then providing list of what “all” might encompass, the Department is being overzealous and duplicative.

The Department acknowledges that certain information contained in the workpapers may be confidential and proprietary, and having that information in a public file may create needless or avoidable disclosure issues. The Department has determined to modify Section I(i)(11) to remove the requirement that the auditor provide the workpapers to OED,⁹ and instead require that the auditor provide access to the workpapers for the Department’s review and inspection. However, given the importance of the workpapers to the Department’s own review and the Applicant’s contractual relationship with the auditor, the Department declines to include, as requested by the Applicant, a statement in Section I(i)(11) that a failure on behalf of the auditor to meet this condition will not violate the exemption.

Comment 24—Replacement of Auditor—Section I(i)(12)

Section I(i)(12) of the proposed five-year exemption states that: “*JPMC must notify the Department at least thirty (30) days prior to any substitution of an auditor . . . and that JPMC demonstrate[e] to the Department’s satisfaction that such new auditor is independent of JPMC, experienced in the matters that are the subject of the exemption, and capable of making the determination required by [the] exemption.*”

The Applicant requests that this Section I(i)(12) be deleted as it is inconsistent with the condition for the initial selection of an auditor and duplicative of other substantive terms of the exemption. Initially, the Applicant notes that permitting JPMC’s internal audit department to perform the audit functions required under this exemption would render this condition unnecessary. The Applicant states that requiring JPMC to demonstrate the independence and qualifications of the auditor prior to a substitution serves no useful purpose, given the audit process timeline laid out under this exemption. The Applicant states that, since the exemption does not grant the Department the authority to approve the initial auditor selection, likewise the Department should not have the authority to approve the selection of a subsequent auditor. The Applicant states that many circumstances which could necessitate an auditor change would not relate to compliance with the terms of the exemption. The Applicant

⁹ OED is the Office of Exemption Determinations within the Employee Benefits Security Administration agency of the United States Department of Labor.

states that if the Department's concern is the removal of a critical auditor, this condition is not rationally related to such an issue.

As explained above, the Department does not agree that the internal audit department of JPMC is the appropriate entity to perform the audit. The auditor's independence is critical to the Department's determination that the exemption protects Covered Plans. This exemption is not unique in requiring the Department be notified of changes to service providers (see, e.g., the requirement of Schedule C of the Form 5500 Annual Return/Report for the Plan Administrator of certain plans to report to the Department a termination of the plan's auditor and/or enrolled actuary and to provide an explanation of the reasons for the termination, including a description of any material disputes or matters of disagreement concerning the termination). Furthermore, requiring the Applicant to notify the Department of the substitution of an auditor serves to ensure that the JPMC Affiliated QPAMs are attentive to the audit process and the protections it provides; and that the Department has the information it needs to review compliance. The Department has determined to modify Section I(i)(12) to remove the requirement for JPMC to demonstrate the independence and qualifications of the auditor, however, and requires instead that JPMC, no later than two months from the engagement of the replacement auditor, notify the Department of a change in auditor and of the reason(s) for the substitution including any material disputes between the terminated auditor and JPMC. JPMC's fiduciary obligations with respect to the selection of the auditor, as well as the significant role a credible selection plays in reducing the need for more extensive oversight by the Department, should be sufficient to safeguard the selection process.

Comments 25–26—Contracts With Plans and IRAs—Section I(j)

Section I(j) of the proposed five-year exemption provides: “Effective as of the effective date of this five-year exemption, with respect to any arrangement, agreement, or contract between a JPMC Affiliated QPAM and an ERISA-covered plan or IRA for which a JPMC Affiliated QPAM provides asset management or other discretionary fiduciary services, each JPMC Affiliated QPAM agrees and warrants:

(1) To comply with ERISA and the Code, as applicable with respect to such ERISA-covered plan or IRA; to refrain from engaging in prohibited transactions that are not otherwise

exempt (and to promptly correct any inadvertent prohibited transactions); and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA, as applicable, with respect to each such ERISA-covered plan and IRA;

(2) To indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a JPMC Affiliated QPAM's violation of applicable laws, a JPMC Affiliated QPAM's breach of contract, or any claim brought in connection with the failure of such JPMC Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Conviction;

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

(4) 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 JPMC 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 JPMC, and its affiliates;

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

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

applied consistently and in like manner to all such investors; and

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

(8) Within four (4) months of the date of the Conviction, each JPMC Affiliated QPAM must provide a notice of its obligations under this Section I(j) to each ERISA-covered plan and IRA for which an JPMC Affiliated QPAM provides asset management or other discretionary fiduciary services. For all other prospective ERISA-covered plan and IRA clients for which a JPMC Affiliated QPAM provides asset management or other discretionary services, the JPMC Affiliated QPAM will agree in writing to its obligations under this Section I(j) in an updated investment management agreement between the JPMC Affiliated QPAM and such clients or other written contractual agreement”.

The Applicant states that Section I(j) of the proposed exemption is overbroad, entirely inappropriate, not rationally-related to asset management, inconsistent with the Administrative Procedure Act (the APA), an attempt to create a private right of action for IRAs, and punitive; that it should be limited to ERISA-covered plans and IRAs with respect to which the Applicant relies on the QPAM Exemption; and that it is not reasonably designed to protect plans or their participants. The Applicant also requests that the condition clarify that it supersedes the analogous condition in PTE 2016–15, so as not to impose duplicative requirements, and also be modified to read as follows: “This subparagraph supersedes Section I(i) of PTE 2016–15, as of the date of the exemption's publication in the **Federal Register**. Effective as of the publication date, with respect to any arrangement, agreement, or contract between a JPMC Affiliated QPAM and an ERISA-covered plan or IRA for which a JPMC Affiliated QPAM provides asset management or other discretionary fiduciary services in reliance on PTE 84–14”

As explained above, ERISA-covered plans and IRAs routinely rely on QPAM status as a condition of entering into transactions with financial institutions, even with respect to transactions that do not require adherence to PTE 84–14. Indeed, the Applicant recognized this fact in its application (see, e.g., Applicant's statement that “[w]hile

equity strategies rarely rely on the QPAM Exemption, plans invested in such strategies could decide to find other managers or pooled funds if the affiliated investment managers were no longer QPAMs"). In addition, it may not always be clear whether the JPMC Affiliated QPAM intends to rely upon PTE 84-14 for any particular transaction. Accordingly, it is critical to ensure that protective conditions are in place to safeguard the interests of ERISA-covered plans and IRAs that are acting in reliance on the availability of this exemption, particularly those who may not have entered into the transaction in the first place, but for the Department's grant of this exemption.

The Department has a clear interest in protecting such Covered Plans that enter into an asset management agreement with a JPMC Affiliated QPAM in reliance on the manager's qualification as a QPAM. Moreover, when a Covered Plan terminates its relationship with an asset manager, it may incur significant costs and expenses as its investments are unwound and in connection with finding a new asset manager. The Department rejects the view that it acts outside its authority by protecting ERISA-covered plans and IRAs that rely on JPMC's asset managers' eligibility for this exemption, and reemphasizes the seriousness of the criminal misconduct that caused JPMC to need this exemption. The Department may grant an exemption under Section 408(a) of ERISA or Section 4975(c)(2)(C) of the Code only to the extent the Secretary finds, among other things, that the exemption is protective of the affected plan(s) or IRA(s). As noted by regulators, personnel at JPMorgan Chase Bank, a QPAM, engaged in serious misconduct over an extended period of time at the expense of their own clients. This misconduct appears to have stemmed, in part, from deficiencies in control and oversight.

Notwithstanding the misconduct, which resulted in violation of Section I(g) of PTE 84-14, the Department has granted this exemption based, in significant part, upon the inclusion of Section I(j)(1) in the exemption, which protects Covered Plans by, among other things, requiring JPMC Affiliated QPAMs to make an express commitment to their customers to adhere to the requirements of ERISA and the Code, as applicable. As previously indicated, the Department has concluded that a culture of compliance, centered on adherence to basic standards of fair dealing as set forth in this exemption, gives the Department a compelling basis for making the required statutory findings that the exemption is in the

interests of plan and IRA investors and protective of their rights. Absent such findings, the exemption would have been denied.

In response to the Applicant's comments, however, the Department has required an express commitment to comply with the fiduciary standards and prohibited transaction rules only to the extent these provisions are "applicable" under ERISA and the Code. This section, as modified, should serve its salutary purposes of promoting a culture of compliance and enhancing the ability of plans and IRA customers to sever their relationships with minimal injury in the event of non-compliance. This conclusion is reinforced, as well, by the limited nature of the relief granted by this exemption, which generally does not extend to transactions that involve self-dealing.

In response to the Applicant's comments, the Department also notes that nothing in ERISA or the Code prevents the Department from conditioning relief on express contractual commitments to adhere to the requirements set out herein. The QPAMs remain free to disclaim reliance on the exemption and to avoid such express contractual commitments. To the extent, however, that they hold themselves out as fiduciary QPAMs, they should be prepared to make an express commitment to their customers to adhere to the requirements of this exemption. This commitment strengthens and reinforces the likelihood of compliance, and helps ensure that, in the event of noncompliance, customers—particularly IRA customers—will be insulated from injuries caused by non-compliance. These protections also ensure that customers will be able to extricate themselves from transactions that become prohibited as a result of the QPAMs' misconduct, without fear of sustaining additional losses as a result of the QPAMs' actions. In this connection, however, the Department emphasizes that the only claims available to the QPAMs' customers pursuant to these contractual commitments are those separately provided by ERISA or other state and federal laws that are not preempted by ERISA. As before, private litigants have only those causes of action specifically authorized by laws that exist independent of this exemption.

Comment 27—Indemnity Provision—Section I(j)(2).

Section I(j)(2) of the proposed five-year exemption provides that "[e]ffective as of the effective date of

this five-year exemption, with respect to any arrangement, agreement, or contract between a JPMC Affiliated QPAM and an ERISA covered plan or IRA for which a JPMC Affiliated QPAM provides asset management or other discretionary fiduciary services, each JPMC Affiliated QPAM agrees and warrants: . . . (2) To indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a JPMC Affiliated QPAM's violation of applicable laws, a JPMC Affiliated QPAM's breach of contract, or any claim brought in connection with the failure of such JPMC Affiliated QPAM to qualify for the exemptive relief provided by PTE 84-14 as a result of a violation of Section I (g) of PTE 84-14 other than the Conviction."

The Applicant requests that this condition be deleted because it is punitive, beyond the Department's authority, and provides for damages that are excessive and/or not reasonably related to any conduct of the JPMC Affiliated QPAMs. In addition, the Applicant represents that the condition may operate in a manner that is fundamentally unfair because it is not limited to clients who are harmed through a direct, causal link to the loss of exemptive relief provided by PTE 84-14.

Also with respect to section I(j)(2), the Applicant requests clarifying language stating that the JPMC Affiliated QPAM indemnification obligations under this exemption do not extend to damages resulting from, or caused by forces beyond the control of JPMC, including certain acts of government authorities and acts of God.

In this regard, the Applicant requests a revision of section I(j)(2) such that each JPMC Affiliated QPAM must agree and warrant to indemnify and hold harmless the ERISA-covered plan or IRA, "*for any reasonable losses involving such arrangement, agreement or contract and resulting directly from a JPMC Affiliated QPAM's violation of ERISA, or, to the extent the JPMC Affiliated QPAM relies on the exemptive relief provided by PTE 84-14 under the arrangement, agreement or contract for any explicit transactional exit costs of any instrument with respect to which PTE 84-14 was expressly relied upon and for which no other exemption is available, resulting directly and solely from the failure of such JPMC Affiliated QPAM to qualify for the exemptive relief provided by PTE 84-14 as a result of a violation of Section I(g) of PTE 84-14, other than as a result of the Conviction."*

As explained above, the intended purpose of this exemption is to protect

ERISA-covered plans and IRAs who entrust the JPMC Affiliated QPAMs with the management of their retirement assets. To this end, the Department believes that the protective purpose of this exemption is furthered by Section I(j)(2). The Department emphasizes that this condition is not punitive, but rather ensures that, when an ERISA-covered plan or IRA enters into an asset management agreement with a JPMC Affiliated QPAM in reliance on the manager's qualification as a QPAM, it may expect adherence to basic fiduciary norms and standards of fair dealing, notwithstanding the prior conviction. The condition also ensures that the ERISA-covered plan or IRA will be able to disengage from that relationship in the event that the terms of this exemption are violated without undue injury. Accordingly, the Department has revised the applicability of this condition to more closely reflect this interest. In particular, the condition applies only to Covered Plans. As indicated above, if the asset manager would prefer not to be subject to these provisions as exemption conditions, it may expressly disclaim reliance on QPAM status or PTE 84-14 in entering into its contract with the ERISA-covered plan or IRA (in that case, however, it could not rely on the exemption for relief). The Department has made certain further changes to this condition upon consideration of the Applicant's comment. These changes include: renumbering the condition for clarity; replacing "applicable laws" with clarifying language that conforms to the one-year exemption; and replacing "any damages" with "actual losses resulting directly from" certain acts or omissions of the JPMC Affiliated QPAMs. Because I(j)(2) extends only to actual losses resulting directly from the actions of the JPMC Affiliated QPAMs, it does not encompass losses solely caused by other parties, events, or acts of God.

Comment 28—Limits on Liability—Section I(j)(3) and I(j)(7).¹⁰

Sections I(j)(3) and I(j)(7) of the proposed five-year exemption provide that "*leffective as of the effective date of this five-year exemption, with respect to any arrangement, agreement, or contract between a JPMC Affiliated QPAM and an ERISA-covered plan or IRA for which a JPMC Affiliated QPAM provides asset management or other discretionary fiduciary services, each*

¹⁰ The Department has determined that subsection (4) is duplicative of the exemption's prohibition on exculpatory clauses, described below. Thus, the subsection has been deleted.

JPMC Affiliated QPAM agrees and warrants:

. . . (3) Not to require (or otherwise cause) the ERISA-covered plan or IRA to waive, limit, or qualify the liability of the JPMC Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions; [and] . . . (7) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the JPMC Affiliated QPAM for a violation of such agreement's terms, except for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of JPMC, and its affiliates."

The Applicant requests that these conditions be deleted because they: duplicate the statutory requirements in ERISA and the Code, which ensure that the JPMC Affiliated QPAMs remain liable to their plan or IRA clients for the asset manager's violations of the law; do not afford plans and IRAs any greater protection; and amount to unnecessary overregulation. To the extent there is a violation of a contract, the Applicant represents that adequate causes of action exist to remedy the issue.

Alternatively, the Applicant requests that, if the Department declines to amend Section I(j)(7) as requested, this Section be revised to clarify that losses caused by counterparties, trading venues, or acts of terrorism, war, etc., are carved out of the QPAM's liability.

The Department declines to delete Section I(j)(3) from the final exemption. As the Applicant points out, ERISA already precludes ERISA fiduciaries from disclaiming obligations under ERISA. See ERISA section 410 (prohibiting exculpatory clauses as void against public policy). To the extent the exemption condition prevents the JPMC Affiliated QPAMs from including contractual provisions that are void as against public policy there is no legitimate basis for objection. Such exculpatory language should not be in the governing documents in the first place and is potentially misleading because it suggests disclaimer of obligations that may not be disclaimed.

Outside the context of ERISA section 410, the provision's requirement that the JPMC Affiliated QPAMs retain accountability for adherence to the basic obligations set forth in this exemption is justified by the misconduct that led to the Conviction as discussed above, and by the need to ensure that ERISA-covered plan and IRA customers may readily obtain redress and exit contracts with JPMC Affiliated QPAMs without harm in the event of violations.

The Department has determined that Section I(j)(4), as proposed, is

duplicative of the exemption's prohibition on exculpatory clauses, described below. Thus, that subsection has been deleted. Accordingly, the subsections in Section I(j) have been renumbered.

The Department has modified Section I(j)(6) (formerly (j)(7)) to clarify that the prohibition on exculpatory provisions does not extend to losses that arise from an act or event not caused by JPMC. Nothing in this section alters the prohibition on exculpatory provisions set forth in ERISA Section 410.

Comment 29—Termination and Withdrawal Restriction

Under Sections I(j)(5) and I(j)(6) of the proposed five-year exemption, the JPMC Affiliated QPAMs agree: "*. . . (5) Not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the JPMC Affiliated QPAM (including any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM), with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors as a result of an actual lack of liquidity of the underlying assets, provided that such restrictions are applied consistently and in like manner to all such investors; [and] . . . (6) 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."*

The Applicant represents that these conditions should be deleted because they are harmful to ERISA-covered plans and IRAs and their participants and beneficiaries, and are punitive to the Applicant. Withdrawal provisions, according to the Applicant, should be designed to protect all investors in a pooled fund or in a particular strategy. The Applicant states that the proposed restrictions here would disrupt the JPMC Affiliated QPAMs' existing relationships with and contractual obligations to their clients, notwithstanding the fact that plans and IRAs have determined that such

relationships are in their best interests. The Applicant represents that lockup provisions are commonly used, designed to protect all investors in a pooled fund, and applied evenly to all investors. If conditions relating to withdrawal are not permitted, the Applicant asserts that ERISA-covered plans and IRAs will not be able to invest in their desired alternatives or strategies.

The Applicant requests that, should these conditions be retained, they be modified as follows: Under renumbered Sections I(j)(4) and (j)(5), the JPMC Affiliated QPAMs agree: “. . . (4) Not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the JPMC Affiliated QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors; [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.”

The Department has revised renumbered Section I(j)(4) in partial satisfaction of the Applicant's request. This section now provides, “Not to restrict the ability of such Covered Plan to terminate or withdraw from its arrangement with the JPMC Affiliated QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any such arrangements involving investments in pooled funds subject to ERISA entered into after the effective date of this exemption, the adverse consequences must relate to of a lack of liquidity of

the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming Covered Plan's investment, and such restrictions must be applicable to all such investors and effective no longer than reasonably necessary to avoid the adverse consequences.”

Renumbered Section I(j)(5) is consistent with the Applicant's request.

Comment 30—Updated Investment Management Agreement

Section I(j)(8) of the proposed five-year exemption provides that “[w]ithin four (4) months of the date of the Conviction, each JPMC Affiliated QPAM must provide a notice of its obligations under this Section I(j) to each ERISA-covered plan and IRA for which an JPMC Affiliated QPAM provides asset management or other discretionary fiduciary services. For all other prospective ERISA-covered plan and IRA clients for which a JPMC Affiliated QPAM provides asset management or other discretionary services, the JPMC Affiliated QPAM will agree in writing to its obligations under this Section I(j) in an updated investment management agreement between the JPMC Affiliated QPAM and such clients or other written contractual agreement.”

The Applicant represents that this condition is duplicative and “potentially inconsistent” with PTE 2016–15, and could cause the Applicant to lose the exemption through the actions of another. The Applicant requests that the Department publish a notice of technical correction to PTE 2016–15 to eliminate the notice to clients under that exemption so that only one notice with the final obligations will be provided to clients. The Applicant states that it should not be required to issue two sets of potentially inconsistent notices to clients. Instead, once the final exemption is published in the **Federal Register**, the Applicant suggests that the condition be modified to require that the notices, and the proposed and final exemptions, be sent to clients within six (6) months. The Applicant asserts that this request will alleviate client confusion. Alternatively, the Applicant requests that the Department modify renumbered Section I(j)(7) so that it will deem any notices and mailings under PTE 2016–15 to meet the requirements of the final exemption. In addition, the Applicant requests that the Department modify renumbered Section I(j)(7) to clarify that it is limited to agreements, arrangements, or contracts in which a JPMC Affiliated QPAM provides services in reliance on PTE 84–14, and where the Applicant has a direct

contractual relationship with the plan or IRA. Finally, the Applicant represents that a bilateral investment management agreement containing the obligations under Section I(j) should not be required. If the client refuses to sign an updated agreement, the Applicant states that the JPMC Affiliated QPAM unintentionally may be in violation of this condition even where it has met the substantive requirements of Section I(j). The Applicant represents that its compliance with the exemption should not depend on action by its clients. Therefore, the Applicant requests that this requirement be eliminated, and that renumbered Section I(j)(7) be revised as follows to reflect the Applicant's aforementioned changes: “Within six (6) months of the date of this exemption's publication in the **Federal Register**, each JPMC Affiliated QPAM will provide a notice of its obligations under this Section I(j) to each ERISA-covered plan and IRA for which a JPMC Affiliated QPAM provides asset management or other discretionary fiduciary services in a direct contractual relationship and in reliance on PTE 84–14 as of the date of the notice. The Applicant shall be deemed to have met this condition if, with respect to any plan or IRA client, the Applicant met the requirements of PTE 2016–15. For all other ERISA-covered plan and IRA clients (i.e., those plans and IRAs that become direct contractual clients after the time the notice described in PTE 2016–15 is provided to existing clients) for which a JPMC Affiliated QPAM provides asset management or other discretionary services in reliance on PTE 84–14, the JPMC Affiliated QPAM will provide a notice of its obligations under this Section I(j) to such clients within six (6) months after the date of publication of this exemption.”¹¹

The Department declines to make a change to PTE 2016–15, since, among other things, the change the Applicant seeks is not a technical correction, but rather would require amending that exemption. Accordingly, the Applicant must fully comply with the terms of PTE 2016–15, including Section I(j). However, the Department has modified renumbered Section I(j)(7) for better coordination with PTE 2016–15. As modified, the exemption's text now

¹¹ In a letter to the Department dated March 7, 2017, the Applicant expresses similar concerns about the perceived inconsistencies, duplicative nature, and administrative challenges created by the client notification requirement in Section I(i) of PTE 2016–15 as well as in the proposed exemption. In the letter, the Applicant recommends that the notice be provided to clients *only after* the final exemption has been granted. This is consistent with the Applicant's proposed revisions to renumbered Section I(j)(7).

provides that a notice that satisfies Section I(i)(2) of that exemption will satisfy renumbered Section I(j)(7) of this exemption, unless the notice contains any language that limits, or is inconsistent with, the scope of this exemption.

As noted above, the Department has an interest in protecting an ERISA-covered plan or IRA that enters into an asset management agreement with a JPMC Affiliated QPAM in reliance on the manager's qualification as a QPAM, regardless of whether the QPAM relies on the class exemption when managing the ERISA-covered plan's or IRA's assets. The Department has revised the applicability of this condition to more closely reflect this interest, and the condition now applies to Covered Plans. The Department has also modified the condition so that a JPMC Affiliated QPAM will not violate the condition solely because a Covered Plan refuses to sign an updated investment management agreement. In addition, the JPMC Affiliated QPAM must give notice of its obligations under Section I(j) to each Covered Plan by July 9, 2018, consistent with the applicant's request for additional time to provide the notice.

Comment 31—Notice to Plan Clients—Section I(k)(1)¹²

Section I(k)(1) of the proposed five-year exemption provides that “[w]ithin thirty (30) days of the publication of this proposed five-year exemption in the **Federal Register**, each JPMC Affiliated QPAM will provide a notice of the proposed five-year exemption, along with a separate summary describing the facts that led to the Conviction (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that the Conviction results in a failure to meet a condition in PTE 84–14, to each sponsor of an ERISA-covered plan and each beneficial owner of an IRA for which a JPMC Affiliated QPAM provides asset management or other discretionary services, or the sponsor of an investment fund in any case where a JPMC Affiliated QPAM acts only as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests. In the event that this proposed five-year exemption is granted, the **Federal Register** copy of the notice of final five-year exemption must be delivered to such clients within sixty (60) days of its publication in the **Federal Register**, and may be delivered electronically (including by an

email that has a link to the exemption). Any prospective clients for which a JPMC Affiliated QPAM provides asset management or other discretionary services must receive the proposed and final five-year exemptions with the Summary and the Statement prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the JPMC Affiliated QPAM.”

The Applicant requests that (k)(1) be changed to require each existing and prospective client with respect to which the Applicant has a direct contractual relationship and relies on the QPAM exemption, to be provided with a link to the proposed and final exemption within six (6) months after publication; and prospective clients after six (6) months should receive the proposed and final exemptions through any reasonable delivery method (such as a written notice of the applicable website where the exemptions can be found). The Applicant asserts that the provision, as proposed, is overbroad and punitive and not rationally related to the use of the QPAM Exemption. The Applicant also states that, for prospective clients, it is duplicative to provide the Summary and the copies of the proposal and final grant, which both state the same facts and will be burdensome to prospective clients due to the size of the asset management agreement.

The Department notes that the proposed exemption provides details of the facts and circumstances underlying the Conviction not found in the Summary or this exemption. One of the purposes of such a complete disclosure is to ensure that all interested parties are aware of and attentive to the complete facts and circumstances surrounding JPMC's application for exemption. Requiring the disclosure of the Summary, proposal, and grant provides the opportunity for all parties to have knowledge of these facts and circumstance. Notwithstanding this, the Department has modified the condition to clarify that disclosures may be provided electronically. Further, the notice requirement has been narrowed to ERISA-covered plans and IRAs that would benefit from this knowledge (*i.e.*, Covered Plans).

Comment 32—Notice to Non-Plan Clients—Section I(k)(2)

Section I(k)(2) of the proposed five-year exemption provides, “[e]ach JPMC Affiliated QPAM will provide a **Federal Register** copy of the proposed five-year exemption, a **Federal Register** copy of the final five-year exemption; the Summary; and the Statement to each:

(A) Current Non-Plan Client within four (4) months of the effective date, if any, of a final five-year exemption; and (B) Future Non-Plan Client prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the JPMC Affiliated QPAM. For purposes of this subparagraph (2), a Current Non-Plan Client means a client of a JPMC Affiliated QPAM that: is neither an ERISA-covered plan nor an IRA; has assets managed by the JPMC Affiliated QPAM as of the effective date, if any, of a final five-year exemption; and has received a written representation (qualified or otherwise) from the JPMC Affiliated QPAM that such JPMC Affiliated QPAM qualifies as a QPAM or qualifies for the relief provided by PTE 84–14”

The Applicant requests that Section I(k)(2) be deleted in its entirety because, in its opinion, the provision is punitive and beyond the Department's authority. The Applicant requests that any notice requirement be limited to ERISA-covered plans and IRAs that have a direct contractual relationship with a JPMC Affiliated QPAM and actually rely on PTE 84–14.

Given the breadth of the notice requirements otherwise mandated by the exemption, and its decision to restrict the requirements to those arrangements for which QPAM status plays an integral role (*i.e.*, the QPAM represents or relies upon its QPAM status), the Department has determined to delete this provision.

Comment 33—Compliance Officer—Section I(m)

Section I(m) of the proposed five-year exemption provides, in part, “JPMC designates a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements describe herein. The Compliance Officer must conduct an annual review (the Annual Review) to determine the adequacy and effectiveness of the implementation of the Policies and Training”

The Applicant requests that the conditions relating to the Compliance Officer be deleted because they are punitive, inconsistent with precedent, and inconsistent with the APA. The Applicant states that the criminal conduct that necessitated the exemption did not involve in any way JPMC's asset management business, and that the QPAMs already have very robust compliance departments. The Applicant states that it is duplicative to have another layer of compliance and the condition substitutes the Department's

¹² The Department has renumbered this condition as section I(k) in this exemption.

judgment for that of the Applicant and its many other regulators. Furthermore, the Applicant states that the criminal conduct was the result of one single former FX trader, and that the inclusion of this condition is without any precedent, and is arbitrary and capricious. Finally, the Applicant states that every compliance officer is not a lawyer, and that the condition's time frames are inconsistent, and not practicable.

The Department is removing the requirement that the Compliance Officer be a legal professional (*i.e.*, a lawyer), but declines to make the Applicant's other requested changes. JPMC personnel engaged in serious misconduct that was not limited to one trader and that was caused, at least in part, by serious failures of compliance and oversight. The misconduct relevant to the development of this exemption spanned multiple years and involved repeated failures by JPMC personnel, in supervisory and oversight positions. The Department's determination to grant this exemption is based in part on the Department's view that an internal compliance officer with responsibility for the policies and procedures mandated by this exemption will provide the level of oversight necessary to ensure that such Policies and Training are properly implemented.

Comment 34—Deferred Prosecution Agreement/Non-Prosecution Agreement—Section I(o)

Section I(o) of the proposed five-year exemption provides, with respect to any Deferred Prosecution Agreement or Non-Prosecution Agreement: "*During the effective period of the five-year exemption JPMC: (1) Immediately discloses to the Department any Deferred Prosecution Agreement (a DPA) or a Non-Prosecution Agreement (an NPA) with the U.S. Department of Justice, entered into by JPMC or any of its affiliates in connection with conduct described in Section I(g) of PTE 84-14 or section 411 of ERISA; and (2) Immediately provides the Department any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement. After review of the information, the Department may require JPMC, its affiliates, or related parties, as specified by the Department, to submit a new application for the continued availability of relief as a condition of continuing to rely on this exemption. If the Department denies the relief requested in the new application, or does not grant such relief within twelve months of application, the relief*

described herein is revoked as of the date of denial or as of the expiration of the twelve month period, whichever date is earlier."

The Applicant requests that this condition be deleted because it is punitive, and is inconsistent with the APA, statutory authority, and the Department's own regulatory authority. The Applicant states that the condition contravenes the DOL's exemption procedure regulation at 29 CFR part 2570, which requires that the Department propose a notice of termination of an exemption for public comment. The Applicant also states that the provision could create risk and uncertainty, including uncertainty for counterparties, with respect to the very transactions that this exemption is designed to prevent from suddenly expiring. According to the Applicant, the condition itself could have the effect of causing plans to terminate such transactions at significant cost. The Applicant also suggests that parties could enter into an NPA or a DPA for investigations where a bank is not convicted, and in some cases, not even charged with, a felony. The Applicant states further that the timing and factual basis of the NPA/DPA could be distant in time or place from the current plan management operations that should be the Department's concern. Finally, the Applicant states that the provision is inconsistent with the anti-criminal provisions of Section I(g) of PTE 84-14 or section 411 of ERISA, which both require actual convictions, whereas an NPA/DPA is related to a decision by the DOJ not to prosecute.

The Department in no way intended that this condition be read as providing for an automatic revocation of this exemption, and in light of the Applicant's comments, has revised the condition accordingly. As revised, the condition simply requires that the Applicant notify the Department if and when it or any of its affiliates enter into a DPA or NPA with the U.S. Department of Justice for conduct described in section I(g) of PTE 84-14 or ERISA Section 411 and immediately provide the Department with any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement. The Department retains the right to propose a withdrawal of the exemption pursuant to its procedures contained at 29 CFR 2570.50, should the circumstances warrant such action.

Comment 35—Right to Copies of Policies and Procedures—Section I(p)

Section I(p) of the proposed five-year exemption provides that, "*[e]ach JPMC Affiliated QPAM, in its agreements with ERISA-covered plan and IRA clients, or in other written disclosures provided to ERISA-covered plan and IRA clients, within 60 days prior to the initial transaction upon which relief hereunder is relied, and then at least once annually, will clearly and prominently: Inform the ERISA-covered plan and IRA client that the client has the right to obtain copies of the QPAM's written Policies adopted in accordance with the exemption."*

The Applicant requests that this condition be deleted because it is impracticable, duplicative, and punitive, and not reasonably designed to be protective of plans and their participants. The Applicant states that it has over 300 policies and procedures that touch on ERISA and the Code and it is not reasonable to require the disclosure and provision of all the policies. Furthermore, the Applicant states that it cannot provide notice sixty (60) days prior to the time that the exemption is used because that date will precede the final exemption. Finally, the Applicant states that the number of notices required to be provided to clients is overly burdensome and excessive, and will lead to confusion and clients ignoring the mailings.

The Department disagrees, in part, with the Applicant's comment. Affording ERISA covered-plan and IRA clients a means by which to review and understand the Policies implemented in connection with this exemption is a vital protection that is fundamental to this exemption's purpose. However, the Department has modified the condition so that the QPAMs, at their election, may instead provide Covered Plans disclosure that accurately describes or summarizes key components of the Policies, rather than provide the Policies in their entirety. The Department has also determined that such disclosure may be continuously maintained on a website, provided that the website link to the summary of the written Policies is clearly and prominently disclosed to those Covered Plan clients to whom this section applies. The Department also agrees with the Applicant that the timing requirement for disclosure should be revised and, accordingly, has modified the condition of Section I(p) to require notice regarding the information on the website within six months of the initial effective date of this exemption, and thereafter to the extent certain

material changes are made to the Policies.

Comment 36—No-Fault Provision—Section I(q)

Section I(q) of the proposed five-year exemption provides that, “[a] JPMC Affiliated QPAM or a JPMC Related QPAM will not fail to meet the terms of this exemption solely because a different JPMC Affiliated QPAM or JPMC Related QPAM fails to satisfy a condition for relief described in Sections I(c), (d), (h), (i), (j), (k), (l), (n) and (p).”

The Applicant requests that the relief provided under Section I(q) be extended to cover Sections I(e), (f), (g), and (m). The Applicant states that the failure of one JPMC Affiliated QPAM to meet these conditions should not disqualify all other JPMC Affiliated QPAMs from reliance on this exemption. The Applicant also states that the auditor’s failure to fulfill its requirements under this exemption should not disqualify the JPMC Affiliated QPAMs from relying on the exemption.

The Department declines to extend the relief provided under Section I(q) to Sections I(e), (f), (g), and (m).

Section I(e) provides that any failure of a JPMC Affiliated QPAM or JPMC Related QPAM to comply with Section I(g) of PTE 84–14 arose solely from the Conviction. As set forth in the Applicant’s materials, the Conviction is the sole reason a new exemption is necessary for the JPMC Affiliated QPAMs. If there were a new or additional conviction of a crime described in Section I(g) of PTE 84–14, the Department would need to assess the misconduct, its scope, and its significance. Without such an assessment, the Department could not be confident of the adequacy of the conditions set forth herein with respect to the JPMC Affiliated QPAMs and Related QPAMs. Indeed, depending on the particular facts, a subsequent criminal conviction could be strong evidence of the inadequacy of this exemption’s conditions to protect Covered Plans. Further, as stated above, the Department is not obligated to grant further relief to the extent such a conviction occurs.

Section I(f) provides that no JPMC Affiliated QPAM or JPMC Related QPAM exercised authority over the assets of any ERISA-covered plan or 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 the JPMC QPAM or its affiliates or related parties to directly or indirectly profit from the criminal conduct that is the subject of the Conviction. The Applicant has, in its

application and in its response to questions raised by the Department, provided statements under penalty of perjury, that they are in compliance with this condition, and the Department relied upon those statements in granting this relief. Based on these statements, the Department determines that there is no reason to include relief from Section I(f) in Section I(q).

Section I(g) requires two specific entities, JPMC and the Investment Bank of JPMorgan Chase Bank, refrain from providing investment management services to plans. Section I(m) requires JPMC to install a Compliance Officer to undertake various compliance and reporting obligations. Thus, with respect to Sections I(g) and (m), the obligations imposed extend exclusively to JPMC and the Investment Bank of JPMorgan Chase Bank. Consequently, if the relief under I(q) were extended to Sections I(g) and I(m), it would render them virtually meaningless. There would be little or no effective penalty for the failure to comply with the conditions, as the Affiliated and Related QPAMs would remain free to rely on the exemption’s terms. The Department also believes that the potential for disqualification of all JPMC Affiliated QPAMs under this agreement will serve as additional incentive for JPMC and JPMorgan Chase Bank to comply in good-faith with the provisions of Sections I(g) and (m).

Finally, except as noted in Comment 23 above, the Department accepts the Applicant’s comment that failure of the auditor to comply with any of the conditions of the exemption, should not be treated as a failure by the JPMC Affiliated QPAMs to comply with the conditions of the exemption provided that such failure was not due to the actions or inactions of JPMC or its affiliates, and Section I(q) is amended, accordingly.

Comment 37—Definition of Affiliated QPAM—Section II(a)

Section II(a) of the proposed five-year exemption provides: “(a) The term ‘JPMC Affiliated QPAM’ means a ‘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 JPMC is a current or future ‘affiliate’ (as defined in Section VI(d)(1) of PTE 84–14). The term ‘JPMC Affiliated QPAM’ excludes the parent entity, JPMC, the division implicated in the criminal conduct that is the subject of the Conviction.”

The Applicant states that the last sentence of proposed Section II(a) contains an unintended error, as JPMC

is not a division but is the parent company in the affiliated group.

The Department agrees with this comment and has modified the Section accordingly. The Department has reordered Section II, as described below.

Comment 38—Definition of Conviction—Section II(e)

Section II(e) of the proposed five-year exemption provides: “The term ‘Conviction’ means the judgment of conviction against JPMC for violation of the Sherman Antitrust Act, 15 U.S.C. 1, which is scheduled to be entered in the District Court for the District of Connecticut (the District Court) (Case Number 3:15-cr-79-SRU), in connection with JPMC, through one of its euro/U.S. dollar (EUR/USD) traders, entering into and engaging in a combination and conspiracy to fix, stabilize, maintain, increase or decrease the price of, and rig bids and offers for, the EUR/USD currency pair exchanged in the FX spot market by agreeing to eliminate competition in the purchase and sale of the EUR/USD currency pair in the United States and elsewhere. For all purposes under this exemption, ‘conduct’ of any person or entity that is the ‘subject of [a] Conviction’ encompasses any conduct of JPMC and/or their personnel, that is described in the Plea Agreement, (including the Factual Statement), and other official regulatory or judicial factual findings that are a part of this record.”

The Applicant states that this definition inaccurately paraphrases the Plea Agreement and significantly expands the conduct to which JPMC was charged and pleaded guilty. The Applicant states that it is neither appropriate nor accurate for the Department to expand the definition beyond the charge that was the subject of the Plea Agreement.

After considering this comment, the Department has revised the definition accordingly.

Comment 39—Notice to Interested Persons

The Applicant requests that the Department confirm, and the Department so confirms, that the Applicant had 30 days after **Federal Register** publication of the proposal to notify interested persons.

Comment 40—Summary of Facts and Representations

The Applicant seeks certain clarifications to the Summary of Facts and Representations that the Department does not view as relevant to its determination whether to grant this exemption. Those requested

clarifications may be found as part of the public record for Application No. D-11906, in a letter to the Department, dated January 20, 2017.

Comment of John Williams (December 7, 2016)

Mr. Williams comments that it is unclear “how an entity which has been convicted of wrong-doing should be granted a 5-year exemption from regulations that it has already violated.”

The Applicant responds that Mr. Williams’ statement is based on an erroneous view that the Applicant has entered into a guilty plea with the Department. With regard to the notice to interested persons, the Applicant states that Mr. Williams’ comment misconstrues, and improperly conflates, the criminal proceedings and the purpose of the proposed exemption. The Applicant states that it is not seeking, and the proposed exemption does not grant, relief from regulations that have already been violated. The Applicant further states that, although the JPMC Affiliated QPAMs did not participate in or know of the misconduct, the conviction of the non-asset manager affiliate would nevertheless disqualify the uninvolved asset managers from relying on the QPAM exemption. The Department reiterates that it determined that this exemption is protective of, and in the interest of, Covered Plans given the enhanced compliance and oversight requirements it imposes on JPMC Affiliated QPAMs.

Comment of Lauri Robinson (December 12, 2016)

Ms. Robinson states that it “is very difficult for laypersons to understand how I can be adversely affected by this,” and requests that the Department “make it easier to understand or elaborate on how it affects [sic] current IRAs.” Ms. Robinson believes that the Applicant “should have informed customers of the violation and 550 million dollar fine.”

In response, the Applicant states that, among other things, the conviction was a matter of public record as of the date on which the plea agreement was entered, and that Ms. Robinson was notified, as an interested person, in accordance with the terms of the proposed exemption.

The Department notes that each JPMC Affiliated QPAM must provide a notice of the exemption, along with a separate summary describing the facts that led to the Conviction, and a prominently displayed statement that the Conviction results in a failure to meet a condition in PTE 84-14, to each sponsor or beneficial owner of a Covered Plan, or the sponsor of an investment fund in

any case where a JPMC Affiliated QPAM acts only as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests.

Comment of Mark Levy (December 20, 2016)

Mr. Levy, who states that he owns a Chase investment account, urges the Department not to “grant[the Applicant] a ‘pass’ for their wrong doing [sic],” because “[n]o institution should be considered ‘too big’ to pay its share of imposed fines/penalties.”

In response, the Applicant states that, among other things, JPMC is liable for approximately \$1.9 billion in monetary penalties imposed by the Department of Justice and other regulators; and that the asset management businesses of the JPMC affiliated QPAMs had no involvement in, or knowledge of, the misconduct. The Department reiterates that this exemption is not punitive and is instead designed to protect Covered Plans.

Comment of Dan Cable (December 22, 2016)

Mr. Cable objects to the exemption in general by stating he does not believe that: (i) The Applicant is taking its criminal behavior seriously, (ii) the QPAM exemption is not customarily and routinely used, and (iii) the Applicant has not adequately demonstrated harm to clients if the exemption is not granted.

In response, the Applicant states that, among other things, the Department of Justice, the District Court, and other applicable regulators already have imposed upon the Applicant certain monetary penalties and other sanctions intended to punish the Applicant and deter future wrongdoing. The Applicant states that it has taken responsibility for the conduct that was the basis of the plea agreement, that the JPMC Affiliated QPAMs had no involvement in the conduct, and that such conduct violated neither ERISA nor the Department’s regulations. As such, the Applicant states that Department should not use the exemption process to further punish these uninvolved asset managers, and that to do so would only harm the plan and IRA clients of the uninvolved JPMC Affiliated QPAMs.

The commenter also expresses concern that the training and audit requirements of the proposed exemption are inadequate. In response, the Applicant disagrees and states that these proposed requirements are imposed on entities that had no involvement in the criminal conduct and that these requirements add to pre-existing robust and comprehensive training, audit, and

compliance functions — both firm-wide and specific to the asset management businesses.

The commenter also expresses concern that the JPMC Affiliated QPAMs benefited from the criminal conduct that is the subject of the Conviction. In response, the Applicant notes that the proposed exemption contains the following condition: “(b) Other than a single individual who worked for a non-fiduciary business within JPMorgan Chase Bank and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, agents other than JPMC, and employees of such JPMC QPAMs) did not receive direct compensation, or knowingly receive indirect compensation in connection with the criminal conduct that is the subject of the Conviction.” The Applicant states that it is able to and will comply with this condition.

The commenter expresses skepticism that the JPMC Affiliated QPAMs will not “hire any of the crooks.” In response, the Applicant states that the proposed exemption contains the following condition: “The JPMC Affiliated QPAMs will not employ or knowingly engage any of the individuals that participated in the criminal conduct that is the subject of the Conviction.” The Applicant states that it is able to and will comply with this condition.

The commenter states that the QPAM exemption is not routinely relied upon by the Applicant. According to the Applicant, practically all retirement plans expect their asset managers to use the QPAM exemption, and many counterparties expect representations from the Applicant that it applies.

Finally, the commenter states that it is unclear how a client of the JPMC Affiliated QPAMs would be harmed in the event that the Department does not grant the requested exemption. In response, the Applicant states that the loss of QPAM status for the JPMC Affiliated QPAMs would have a very substantial impact, affecting a significant number of ERISA plans and IRAs. The Applicant notes that, as of the time its application was filed, the Applicant managed approximately \$65.5 billion in assets for ERISA plans, and over \$12 billion in IRA assets for over 32,000 IRAs.

Comment of Sharon Bushman (December 26, 2016)

The commenter, who states she is the holder of an IRA managed by the

Applicant, states that she does not understand the notice to interested persons, and requests that no action be taken on the exemption until a full explanation is provided regarding the implications for individual clients. In response, the Applicant states that the Department fully explained the purpose and effect of the exemption in the preamble to the **Federal Register** notice.

As noted above, each JPMC Affiliated QPAM must provide a notice of the exemption, along with a separate summary describing the facts that led to the Conviction, and a prominently displayed statement that the Conviction results in a failure to meet a condition in PTE 84–14, to each sponsor or beneficial owner of a Covered Plan, or the sponsor of an investment fund in any case where a JPMC Affiliated QPAM acts only as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests.

Comment of Cynthia Beaver (January 18, 2017)

The commenter states that she does not understand the notice to interested persons and requests clarification regarding whether she will be required to move her account if the exemption is not granted. If the exemption is granted, the commenter asks whether there will be adequate “outside oversight” to ensure that her account is safe.

In response, the Applicant expresses the view that the proposed exemption’s conditions (taking into account the Applicant’s comments with respect to the proposal) are sufficient and are designed to protect clients such as the commenter from the any adverse effects of the JPMC Affiliated QPAMs losing the QPAM exemption.

The Department notes that the exemption requires an extensive audit every two years by a qualified auditor who is independent of JPMC.

Comment—Letter From House Committee on Financial Services

The Department also received a comment letter from certain members of Congress (the Members) regarding this exemption, as well as regarding other QPAM-related proposed one year exemptions. In the letter, the Members stated that certain conditions contained in these proposed exemptions are crucial to protecting the investments of our nation’s workers and retirees, referring to proposed conditions which require each bank to: (a) Indemnify and hold harmless ERISA-covered plans and IRAs for any damages resulting from the future misconduct of such bank; and (b) disclose to the Department any Deferred Prosecution Agreement or a Non-

Prosecution Agreement with the U.S. Department of Justice. The Members also requested that the Department hold hearings in connection with the proposed exemptions.

The Department acknowledges the Members’ concerns regarding the need for public discourse regarding proposed exemptions. To this end, the Department’s procedures regarding prohibited transaction exemption requests under ERISA (the Exemption Procedures) afford interested persons the opportunity to request a hearing. Specifically, section 2570.46(a) of the Exemption Procedures provides that, “[a]ny interested person who may be adversely affected by an exemption which the Department proposes to grant from the restrictions of section 406(b) of ERISA, section 4975(c)(1)(E) or (F) of the Code, or section 8477(c)(2) of FERSA may request a hearing before the Department within the period of time specified in the **Federal Register** notice of the proposed exemption.” The Exemption Procedures provide that “[t]he Department will grant a request for a hearing made in accordance with paragraph (a) of this section where a hearing is necessary to fully explore material factual issues identified by the person requesting the hearing.” The Exemption Procedures also provide that “[t]he Department may decline to hold a hearing where: (1) The request for the hearing does not meet the requirements of paragraph (a) of this section; (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.”¹³

While the Members’ letter raises important policy issues, it does not appear to raise specific material factual issues. The Department previously explored a wide range of legal and policy issues regarding Section I(g) of the QPAM Exemption during a public hearing held on January 15, 2015 in connection with the Department’s proposed exemption involving Credit Suisse AG, and has determined that an additional hearing on these issues is not necessary.

After giving full consideration to the record, the Department has decided to grant the exemption, as described above. The complete application file (Application No. D–11906) 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

¹³ 29 CFR part 2570, published at 76 FR 66653 (October 27, 2011).

Constitution Avenue NW, Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department’s decision to grant this exemption, refer to the notice of proposed exemption published on November 21, 2016 at 81 FR 83372.

Exemption

Section I: Covered Transactions

Certain entities with specified relationships to JPMC (hereinafter, the JPMC Affiliated QPAMs and the JPMC Related QPAMs, as defined in Sections II(g) and II(h), respectively) 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, as defined in Section II(a), during the Exemption Period,¹⁴ provided that the following conditions are satisfied:

(a) Other than a single individual who worked for a non-fiduciary business within JPMorgan Chase Bank and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, agents other than JPMC, and employees of such QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not know of, did not have reason to know of, or participate in the criminal conduct that is the subject of the Conviction. For purposes of this paragraph (a), “participate in” means the knowing approval of the misconduct underlying the Conviction;

(b) Apart from a non-fiduciary line of business within JPMorgan Chase Bank, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, and agents other than JPMC, and employees of such JPMC QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the Conviction;

(c) The JPMC Affiliated QPAMs will not employ or knowingly engage any of

¹⁴ Section I(g) of PTE 84–14 generally provides relief only if “[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 violation of the Sherman Antitrust Act, Title 15 United States Code, Section 1.

the individuals that participated in the criminal conduct that is the subject of the Conviction. For the purposes of this paragraph (c), “participated in” means the knowing approval of the misconduct underlying the Conviction;

(d) At all times during the Exemption Period, no JPMC Affiliated QPAM will use its authority or influence to direct an “investment fund” (as defined in Section VI(b) of PTE 84–14), that is subject to ERISA or the Code and managed by such JPMC Affiliated QPAM with respect to one or more Covered Plans, to enter into any transaction with JPMC, or to engage JPMC 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 a JPMC Affiliated QPAM or a JPMC Related QPAM to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction;

(f) A JPMC Affiliated QPAM or a JPMC Related QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (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 the JPMC Affiliated QPAM, the JPMC Related QPAM, or their 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, JPMC will not act as a fiduciary within the meaning of section 3(21)(A)(i) or (iii) of ERISA, or section 4975(e)(3)(A) and (C) of the Code, with respect to ERISA-covered plan and IRA assets; provided, however, that JPMC will not be treated as violating the conditions of this exemption solely because it acted as an investment advice fiduciary within the meaning of section 3(21)(A)(ii) or section 4975(e)(3)(B) of the Code;

(h)(1) By July 9, 2018, each JPMC Affiliated QPAM must develop, implement, maintain, and follow written policies and procedures (the Policies). The Policies must require, and must be reasonably designed to ensure that:

(i) The asset management decisions of the JPMC Affiliated QPAM are conducted independently of the corporate management and business activities of JPMC;

(ii) The JPMC Affiliated QPAM 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) The JPMC Affiliated QPAM does not knowingly participate in any other person’s violation of ERISA or the Code with respect to Covered Plans;

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

(v) To the best of the JPMC Affiliated QPAM’s knowledge at the time, the JPMC Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to Covered Plans;

(vi) The JPMC Affiliated QPAM 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 QPAM reasonably should have known of the noncompliance (whichever is earlier), and any such violation or compliance failure not so corrected is reported, upon the discovery of such failure to so correct, in writing, to the head of compliance and the General Counsel (or their functional equivalent) of the relevant line of business that engaged in the violation or failure, and the independent auditor responsible for reviewing compliance with the Policies. A JPMC Affiliated QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance as soon as reasonably possible upon discovery, or as soon as reasonably possible after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (vii);

(2) By July 9, 2018, each JPMC Affiliated QPAM must develop a program of training (the Training), to be conducted at least annually, for all relevant JPMC Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit

personnel. The first Training under this Final Exemption must be completed by all relevant JPMC Affiliated QPAM personnel by July 9, 2019 (by the end of this 30-month period, asset/portfolio management, trading, legal, compliance, and internal audit personnel who were employed from the start to the end of the period must have been trained twice: the first time under PTE 2016–15; and the second time under this exemption). The Training must:

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

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

(i)(1) Each JPMC Affiliated QPAM submits to an audit conducted every two years by an independent auditor who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and each JPMC Affiliated QPAM’s compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. Each audit must cover the preceding consecutive twelve (12) month period. The first audit must cover the period from July 10, 2018 through July 9, 2019, and must be completed by January 9, 2020. The second audit must cover the period from July 10, 2020 through July 9, 2021, and must be completed by January 9, 2022. In the event that the Exemption Period is extended or a new exemption is granted, the third audit would cover the period from July 10, 2022 through July 9, 2023, and would have to be completed by January 9, 2024 (unless the Department chooses to alter the biennial audit requirement in the new or extended exemption);¹⁵

(2) Within the scope of the audit and to the extent necessary for the auditor,

¹⁵ The third audit referenced above would not have to be completed until after the Exemption Period expires. If the Department ultimately decides to grant relief for an additional period, it could decide to alter the terms of the exemption, including the audit conditions (and the timing of the audit requirements). Nevertheless, the Applicant should anticipate that the Department will insist on strict compliance with the audit terms and schedule set forth above. As it considers any new exemption application, the Department may also contact the auditor for any information relevant to its determination.

in its sole opinion, to complete its audit and comply with the conditions for relief described herein, and only to the extent such disclosure is not prevented by state or federal statute, or involves communications subject to attorney client privilege, each JPMC Affiliated QPAM and, if applicable, JPMC, will grant the auditor unconditional access to its business, including, but not limited to: its computer systems; business records; transactional data; workplace locations; training materials; and personnel. Such access is limited to information relevant to the auditor's objectives as specified by the terms of this exemption;

(3) The auditor's engagement must specifically require the auditor to determine whether each JPMC Affiliated QPAM 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 each JPMC Affiliated QPAM's operational compliance with the Policies and Training. In this regard, the auditor must test, for each QPAM, a sample of such QPAM's transactions involving Covered Plans, sufficient in size and nature to afford the auditor a reasonable basis to determine such QPAM's operational compliance with the Policies and Training;

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

(i) The adequacy of each JPMC Affiliated QPAM's Policies and Training; each JPMC Affiliated QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective JPMC Affiliated QPAM's noncompliance with the written Policies and Training described in Section I(h) above. The JPMC Affiliated QPAM must promptly address any noncompliance. The JPMC Affiliated QPAM must 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 of the respective Affiliated QPAM. Any action taken or the plan of action to be taken by the respective JPMC Affiliated QPAM must be included in an addendum to the Audit Report (such addendum must be completed prior to the certification described in Section I(i)(7) below). In the event such a plan of action to address the auditor's recommendation regarding the adequacy of the Policies and Training is not completed by the time of submission of the Audit Report, the following period's Audit Report must state whether the plan was satisfactorily completed. Any determination by the auditor that the respective JPMC Affiliated QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that a JPMC Affiliated QPAM has complied with the requirements under this subparagraph must be based on evidence that the particular JPMC Affiliated QPAM has actually implemented, maintained, and followed the Policies and Training required by this exemption. Furthermore, the auditor must not solely rely on the Annual Report created by the compliance officer (the Compliance Officer), as described in Section I(m) below, as the basis for the auditor's conclusions in lieu of independent determinations and testing performed by the auditor, as required by Section I(i)(3) and (4) above; and

(ii) The adequacy of the most recent Annual Review described in Section I(m);

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

(7) With respect to each Audit Report, the General Counsel, or one of the three most senior executive officers of the line of business engaged in discretionary asset management services through the JPMC Affiliated QPAM with respect to which the Audit Report applies, must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption; that such JPMC Affiliated QPAM 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. Such 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;

(8) The Risk Committee of JPMC's Board of Directors is provided a copy of each Audit Report; and a senior executive officer with a direct reporting line to the highest ranking legal compliance officer of JPMC must review the Audit Report for each JPMC Affiliated QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report;

(9) Each JPMC Affiliated QPAM provides its certified Audit Report, by regular mail to: Office of Exemption Determinations (OED), 200 Constitution Avenue NW, Suite 400, Washington, DC 20210; or by private carrier to: 122 C Street NW, Suite 400, Washington, DC 20001-2109. This delivery must take place no later than thirty (30) days following completion of the Audit Report. The Audit Report will be made part of the public record regarding this exemption. Furthermore, each JPMC Affiliated QPAM must make its Audit Report unconditionally available, electronically or otherwise, for examination upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan;

(10) Each JPMC Affiliated QPAM and the auditor must submit to OED: 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, for inspection and review, access to all the workpapers created and utilized in the course of the audit, provided such access and inspection is otherwise permitted by law; and

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

(j) As of January 10, 2018 and throughout the Exemption Period, with respect to any arrangement, agreement, or contract between a JPMC Affiliated

QPAM and a Covered-Plan, the JPMC Affiliated QPAM agrees and warrants:

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

(2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from a JPMC Affiliated QPAM's violation of ERISA's fiduciary duties, as applicable, and of the prohibited transaction provisions of ERISA and the Code, as applicable; a breach of contract by the QPAM; or any claim arising out of the failure of such JPMC Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Conviction. This condition applies only to actual losses caused by the JPMC Affiliated QPAM's violations.

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

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

(5) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed

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

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

(7) By July 9, 2018, each JPMC Affiliated QPAM must provide a notice of its obligations under this Section I(j) to each Covered Plan. For all other prospective Covered Plans, the JPMC Affiliated QPAM will agree to its obligations under this Section I(j) in an updated investment management agreement between the JPMC Affiliated QPAM and such clients or other written contractual agreement. This condition will be deemed met for each Covered Plan that received a notice pursuant to PTE 2016–15 that meets the terms of this condition. Notwithstanding the above, a JPMC Affiliated QPAM will not violate the condition solely because a Plan or IRA refuses to sign an updated investment management agreement;

(k) By March 10, 2018, each JPMC Affiliated QPAM will provide a notice of the exemption, along with a separate summary describing the facts that led to the Conviction (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) 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, or the sponsor of an investment fund in any case where a JPMC Affiliated QPAM acts as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests. Any prospective client for which a JPMC Affiliated QPAM relies on PTE 84–14 or has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption must receive the proposed and final exemptions with the Summary and the Statement prior to, or contemporaneously with, the client's receipt of a written asset management

agreement from the JPMC Affiliated QPAM. Disclosures may be delivered electronically.

(l) The JPMC Affiliated QPAMs must comply with each condition of PTE 84–14, as amended, with the sole exception of the violation of Section I(g) of PTE 84–14 that is attributable to the Conviction;

(m)(1) By July 9, 2018, JPMC designates a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. The Compliance Officer must conduct an annual review for each annual period beginning on January 10, 2018, (the Annual Review)¹⁶ 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 each Annual Review, the following conditions must be met:

(i) The Annual Review includes a review of: 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 the JPMC Affiliated QPAMs; and any change to ERISA, the Code, or regulations related to fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of the JPMC Affiliated QPAMs;

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

¹⁶ Such Annual Review must be completed with respect to the annual periods ending January 9, 2019; January 9, 2020; January 9, 2021; January 9, 2022; and January 9, 2023.

procedures, monitoring, or additional and/or changed processes or systems, and management's actions on such recommendations;

(iii) In each Annual Report, the Compliance Officer must certify in writing that to his or her knowledge: (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 preceding year and any related correction taken to date have been identified in the Annual Report; and (D) the JPMC Affiliated QPAMs have complied with the Policies and Training, and/or corrected (or is correcting) any instances of noncompliance in accordance with Section I(h) above;

(iv) Each Annual Report must be provided to appropriate corporate officers of JPMC and each JPMC Affiliated QPAM to which such report relates; the head of compliance and the General Counsel (or their functional equivalent) of the relevant JPMC Affiliated QPAM; and must be made unconditionally available to the independent auditor described in Section I(i) above;

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

(n) Each JPMC 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 JPMC Affiliated QPAM relies upon the relief in the exemption;

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

(p) By July 9, 2018, each JPMC Affiliated QPAM, in its agreements with, or in other written disclosures provided to Covered Plans, will clearly and prominently inform Covered Plan clients of their right to obtain a copy of the Policies or a description ("Summary Policies") which accurately summarizes

key components of the QPAM's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within six (6) months following the end of the calendar year during which the Policies were changed.¹⁷ With respect to this requirement, the description may be continuously maintained on a website, provided that such website link to the Policies or the Summary Policies is clearly and prominently disclosed to each Covered Plan; and

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

Section II: Definitions

(a) The term "Conviction" means the judgment of conviction against JPMC for violation of the Sherman Antitrust Act, 15 U.S.C. 1, entered in the District Court for the District of Connecticut (the District Court) (case number 3:15-cr-79-SRU). For all purposes under this exemption, "conduct" of any person or entity that is the "subject of [a] Conviction" encompasses the conduct described in Paragraph 4(g)-(i) of the Plea Agreement filed in the District Court in case number 3:15-cr-79-SRU; and

(b) The term "Conviction Date" means the date of the judgment of the trial court. For avoidance of confusion, the Conviction Date is January 10, 2017, as set forth on page 3 of Dkt. 49, in case number 3:15-cr-79-SRU.

(c) The term "Covered Plan" means a plan subject to Part 4 of Title 1 of ERISA ("ERISA-covered plan") or a plan subject to Section 4975 of the Code ("IRA") with respect to which a JPMC Affiliated QPAM relies on PTE 84-14, or with respect to which a JPMC Affiliated QPAM (or any JPMC affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84-14). A Covered Plan does not include an ERISA-covered Plan or IRA to the extent

the JPMC Affiliated QPAM has expressly disclaimed reliance on QPAM status or PTE 84-14 in entering into its contract, arrangement, or agreement with the ERISA-covered plan or IRA;

(d) The terms "ERISA-covered plan" and "IRA" mean, respectively, a plan subject to Part 4 of Title I of ERISA and a plan subject to section 4975 of the Code.

(e) The term "Exemption Period" means January 10, 2018, through January 9, 2023;

(f) The term "JPMC" means JPMorgan Chase and Co., the parent entity, but does not include any subsidiaries or other affiliates;

(g) The term "JPMC Affiliated QPAM" means a "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 JPMC is a current or future "affiliate" (as defined in Section VI(d)(1) of PTE 84-14). The term "JPMC Affiliated QPAM" excludes the parent entity, JPMC, the entity implicated in the criminal conduct that is the subject of the Conviction

(h) The term "JPMC 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 JPMC owns a direct or indirect five percent or more interest, but with respect to which JPMC is not an "affiliate" (as defined in Section VI(d)(1) of PTE 84-14).

Effective Date

This exemption is effective on January 10, 2018. The term of the exemption is from January 10, 2018, through January 9, 2023 (the Exemption Period).

Department's Comment: The Department cautions that the relief in this exemption will terminate immediately if, among other things, an entity within the JPMC corporate structure is convicted of a crime described in Section I(g) of PTE 84-14 (other than the Conviction) during the Exemption Period. Although JPMC could apply for a new exemption in that circumstance, the Department would not be obligated to grant the exemption. The terms of this exemption have been specifically designed to permit plans to terminate their relationships in an orderly and cost effective fashion in the event of an additional conviction or a determination that it is otherwise prudent for a plan to terminate its relationship with an entity covered by the exemption.

¹⁷In the event Applicant meets this disclosure requirement through Summary Policies, changes to the Policies shall not result in the requirement for a new disclosure unless, as a result of changes to the Policies, the Summary Policies are no longer accurate.

Further Information

For more information on this exemption, contact Mr. Joseph Brennan of the Department, telephone (202) 693-8456. (This is not a toll-free number.)

JPMorgan Chase Co. (JPMC or the Applicant) Located in New York, New York

[Prohibited Transaction Exemption (PTE) 2017–03; Exemption Application No. D–11906].

Discussion

On December 29, 2017, the Department published PTE 2017–03 in the **Federal Register** at 82 FR 61816. PTE 2017–03 is an administrative exemption from the prohibited transaction provisions of the Employee Retirement Income Security Act of 1974 (the Act), and the Internal Revenue Code of 1986, that permits certain entities with specified relationships to JPMC to continue to rely upon the relief provided by PTE 84–14¹ for a period of five years, notwithstanding JPMC’s criminal conviction (the Conviction). The Department granted PTE 2017–03 to ensure that Covered Plans² whose assets are managed by a JPMC Affiliated QPAM or a JPMC Related QPAM may continue to benefit from the relief provided by PTE 84–14. The exemption is effective from January 10, 2018 through January 9, 2023.

The Department has decided to make certain technical and clarifying corrections to the exemption, as described below.

Technical Corrections

Sections I(g) and I(m)

The Department’s response to Comment 36 on page 61833 of the exemption states: “Section I(g) requires two specific entities, JPMC and the Investment Bank of JPMorgan Chase Bank, to refrain from providing investment management services to plans. . . . Thus, with respect to Sections I(g) and (m), the obligations imposed extend exclusively to JPMC and the Investment Bank of JPMorgan Chase Bank. . . . The Department also believes that the potential for disqualification of all JPMC Affiliated QPAMs under this agreement will serve

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), hereinafter referred to as PTE 84–14 or the QPAM Exemption.

² A “Covered Plan” is a plan subject to Part 4 of Title 1 of ERISA (“ERISA-covered plan”) or a plan subject to Section 4975 of the Code (“IRA”), with respect to which a JPMC Affiliated QPAM relies on PTE 84–14, or with respect to which a JPMC Affiliated QPAM (or any JPMC affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84–14). A Covered Plan does not include an ERISA-covered Plan or IRA to the extent the JPMC Affiliated QPAM has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into its contract, arrangement, or agreement with the ERISA covered plan or IRA.

as additional incentive for JPMC and JPMorgan Chase Bank to comply in good-faith with the provisions of Sections I(g) and (m).”

The Department is revising its response to Comment 36 by removing references to “the Investment Bank of JPMorgan Chase Bank” because Section I(g) and I(m) do not apply to such entity. Similarly, the Department is also removing the phrase “JPMorgan Chase Bank” from the sentence that reads, “[t]he Department also believes that the potential for disqualification of all JPMC Affiliated QPAMs under this agreement will serve as additional incentive for JPMC and JPMorgan Chase Bank to comply in good-faith with the provisions of Sections I(g) and (m).”

Section I(h)(1)(vii)

The Department is adding the term “as reasonably possible” to the first sentence of the first full paragraph on page 61821 of the preamble to the exemption. As revised, the first sentence of the first full paragraph on page 61821 now reads: “The Department has revised the term ‘corrected promptly’ to be consistent with the Department’s intent that violations or compliance failures be corrected ‘as soon as reasonably possible upon discovery or as soon as reasonably possible after the QPAM reasonably should have known of the noncompliance (whichever is earlier).”

Section I(i)(10)

Section I(i)(10) of the exemption states: “(10) Each JPMC Affiliated QPAM and the auditor must submit to [the Office of Exemption Determinations] OED: 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.”

The Department is revising Section I(i)(10) of the exemption to clarify the timing requirements for submission of the auditor agreements. As revised, Section I(i)(10) of the exemption now states: “(10) Any engagement agreement with an auditor to perform the audits required under the terms of this exemption must be submitted to OED by March 9, 2018 if the agreement was executed on or prior to January 10, 2018. Any engagement agreement(s) entered into subsequent to January 10, 2018 must be submitted to OED no later than two (2) months after the execution of such engagement agreement.”

Section I(j)(7)

Section I(j)(7) of the exemption states: “(7) By July 9, 2018, each JPMC

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Technical Corrections to Exemptions From Certain Prohibited Transaction Restrictions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of technical corrections.

SUMMARY: On December 29, 2017 the Department of Labor (the Department) published notices of exemptions in the **Federal Register** granting relief 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 notice includes technical corrections to those published prohibited transaction exemptions (PTEs): PTE 2017–03, JPMorgan Chase & Co., D–11906; PTE 2017–04, Deutsche Investment Management Americas Inc. (DIMA) and Certain Current and Future Asset Management Affiliates of Deutsche Bank AG, D–11908; PTE 2017–05, Citigroup Inc., D–11909; PTE 2017–06, Barclays Capital Inc., D–11910; PTE 2017–07, UBS Assets Management (Americas) Inc.; UBS Realty Investors LLC; UBS Hedge Fund Solutions LLC; UBS O’Connor LLC; and Certain Future Affiliates in UBS’s Asset Management and Wealth Management Americas Divisions, D–11907.

⁷ For the same reasons which led the Florida Board of Medicine to revoke Respondent’s medical license, I conclude that the public interest necessitates that this Order be effective immediately. 21 CFR 1316.67.

Affiliated QPAM must provide a notice of its obligations under this Section I(j) to each Covered Plan. For all other prospective Covered Plans, the JPMC Affiliated QPAM will agree to its obligations under this Section I(j) in an updated investment management agreement between the JPMC Affiliated QPAM and such clients or other written contractual agreement.”

The Department notes that the term “prospective Covered Plan,” as used in Section I(j)(7), means a Covered Plan that enters into a written asset or investment management agreement with a JPMC Affiliated QPAM on or after July 10, 2018.

Section I(k)

Section I(k) of the exemption states: “(k) By March 10, 2018, each JPMC Affiliated QPAM will provide a notice of the exemption, along with a separate summary describing the facts that led to the Conviction (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) 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, or the sponsor of an investment fund in any case where a JPMC Affiliated QPAM acts as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests. Any prospective client for which a JPMC Affiliated QPAM relies on PTE 84–14 or has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption must receive the proposed and final exemptions with the Summary and the Statement prior to, or contemporaneously with, the client’s receipt of a written asset management agreement from the JPMC Affiliated QPAM. Disclosures may be delivered electronically.”

The Department is replacing the term “prospective client” with “prospective Covered Plan.” As revised, “prospective Covered Plan,” as used in Section I(k), means a Covered Plan that enters into a written asset or investment management agreement with a JPMC Affiliated QPAM on or after March 10, 2018.

The Department is clarifying that the requirements of Section I(k) will be met with respect to all current and prospective Covered Plans if, by March 10, 2018, the Applicant posts the required Section I(k) disclosure documents on a website whose link/address is referenced in: (a) The notice sent by the Applicant following the grant of the temporary exemption; or (b) the relevant investment management agreement received by the client (including instances where such

reference describes the site as containing the required obligations under the temporary exemption), and the Applicant informs clients who are Covered Plan clients as of the effective date of this exemption, in writing, by March 10, that they can go back to the website to find the additional documents, which are identified.

The Department is also clarifying that, for Covered Plans that enter into a written asset or investment management agreement with the Applicant between January 11, 2018, and March 9, 2018, the written notice that the website has been updated must be provided to such Covered Plans by March 31, 2018.

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

**Proposed Individual Prohibited
Transaction Exemption PTE 2017-03**

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Exemptions From Certain Prohibited Transaction Restrictions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions 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 notice includes the following proposed exemptions: D-11856, Deutsche Investment Management Americas Inc. and Certain Current and Future Asset Management Affiliates of Deutsche Bank AG; D-11859, Citigroup, Inc.; D-11861, JPMorgan Chase & Co.; D-11862, Barclays Capital Inc.; D-11906, JPMorgan Chase & Co.; D-11907, UBS Assets Management, UBS Realty Investors, UBS Hedge Fund Solutions LLC, UBS O'Connor LLC, and Certain Future Affiliates in UBS's Asset Management and Wealth Management Americas Divisions; D-11908, Deutsche Investment Management Americas Inc. and Certain Current and Future Asset Management Affiliates of Deutsche Bank; D-11909, Citigroup, Inc.; and, D-11910, Barclays Capital Inc.

DATES: All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice.

ADDRESSES: Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (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. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, U.S. Department of Labor, 200 Constitution Avenue NW., Suite 400, Washington, DC 20210. Attention: Application No.

_____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via email or FAX. Any such comments or requests should be sent either by email to: *moffitt.betty@dol.gov*, or by FAX to (202) 693-8474 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1515, 200 Constitution Avenue NW., Washington, DC 20210.

Warning: All comments will be made available to the public. Do not include any personally identifiable information (such as Social Security number, name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

SUPPLEMENTARY INFORMATION:

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).¹ Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file

with the Department for a complete statement of the facts and representations.

¹ The Department has considered exemption applications received prior to December 27, 2011 under the exemption procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

JPMorgan Chase & Co. (JPMC or the Applicant), Located in New York, New York

[Application No. D-11906]

Proposed Five Year Exemption

The Department is considering granting a five-year exemption under the authority of section 408(a) of the Act (or 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).⁵⁸

⁵⁸ For purposes of this proposed five-year exemption, references to section 406 of Title I of the

Section I: Covered Transactions

If the proposed five-year exemption is granted, certain asset managers with specified relationships to JPMC (the JPMC Affiliated QPAMs and the JPMC Related QPAMs, as defined further in Sections II(a) and II(b), respectively) 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),⁵⁹ notwithstanding the judgment of conviction against JPMC (the Conviction), as defined in Section II(c),⁶⁰ for engaging in a conspiracy to: (1) Fix the price of, or (2) eliminate competition in the purchase or sale of the euro/U.S. dollar currency pair exchanged in the Foreign Exchange (FX) Spot Market, for a period of five years beginning on the date the exemption is granted, provided the following conditions are satisfied:

(a) Other than a single individual who worked for a non-fiduciary business within JPMorgan Chase Bank and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, agents other than JPMC, and employees of such QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not know of, did not have reason to know of, or participate in the criminal conduct that is the subject of the Conviction. For purposes of this paragraph (a), “participate in” includes the knowing or tacit approval of the misconduct underlying the Conviction;

(b) Other than a single individual who worked for a non-fiduciary business within JPMorgan Chase Bank and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, and agents other than JPMC, and employees of such JPMC QPAMs) did not receive direct compensation, or

knowingly receive indirect compensation in connection with the criminal conduct that is the subject of the Conviction;

(c) The JPMC Affiliated QPAMs will not employ or knowingly engage any of the individuals that participated in the criminal conduct that is the subject of the Conviction. For the purposes of this paragraph (c), “participated in” includes the knowing or tacit approval of the misconduct underlying Conviction;

(d) A JPMC 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 or the Code and managed by such JPMC Affiliated QPAM, to enter into any transaction with JPMC or the Investment Banking Division of JPMorgan Chase Bank, or engage JPMC or the Investment Banking Division of JPMorgan Chase Bank 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 a JPMC Affiliated QPAM or a JPMC Related QPAM to satisfy Section I(g) of PTE 84-14 arose solely from the Conviction;

(f) A JPMC Affiliated QPAM or a JPMC Related QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (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 the JPMC QPAM or its affiliates or related parties to directly or indirectly profit from the criminal conduct that is the subject of the Conviction;

(g) JPMC and the Investment Banking Division of JPMorgan Chase Bank will not provide discretionary asset management services to ERISA-covered plans or IRAs, and will not otherwise act as a fiduciary with respect to ERISA-covered plan or IRA assets;

(h)(1) Within four (4) months of the Conviction, each JPMC Affiliated QPAM must develop, implement, maintain, and follow written policies and procedures (the Policies) requiring and reasonably designed to ensure that:

(i) The asset management decisions of the JPMC Affiliated QPAM are conducted independently of JPMC’s management and business activities, including the corporate management and business activities of the Investment Banking Division of JPMorgan Chase Bank;

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

(iii) The JPMC 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 JPMC Affiliated QPAM to regulators, including, but not limited to, the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA-covered plans or IRAs, are materially accurate and complete, to the best of such QPAM’s knowledge at that time;

(v) The JPMC 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 plans and IRA clients;

(vi) The JPMC Affiliated QPAM complies with the terms of this five-year exemption; and

(vii) Any violation of, or failure to comply with an item in subparagraphs (ii) through (vi), is corrected promptly upon discovery, and any such violation or compliance failure not promptly corrected is reported, upon the discovery of such failure to promptly correct, in writing, to appropriate corporate officers, the head of compliance, and the General Counsel (or their functional equivalent) of the relevant JPMC Affiliated QPAM, the independent auditor responsible for reviewing compliance with the Policies, and an appropriate fiduciary of any affected ERISA-covered plan or IRA that is independent of JPMC; 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 JPMC or beneficially owned by an employee of JPMC or its affiliates, such fiduciary does not need to be independent of JPMC. A JPMC Affiliated QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance promptly when discovered, or when it reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (vii);

Act, unless otherwise specified, should be read to refer as well to the corresponding provisions of section 4975 of the Code.

⁵⁹ 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).

⁶⁰ 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 felonies including violation of the Sherman Antitrust Act, Title 15 United States Code, Section 1.

(2) Within four (4) months of the date of the Conviction, each JPMC Affiliated QPAM must develop and implement a program of training (the Training), conducted at least annually, for all relevant JPMC Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must:

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

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

(i)(1) Each JPMC Affiliated QPAM submits to an audit conducted annually by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and the JPMC Affiliated QPAM's compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. Each annual audit must cover a consecutive twelve month period starting with the twelve month period that begins on the effective date of the five-year exemption, and each annual audit must be completed no later than six (6) months after the period to which the audit applies;

(2) To the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, and as permitted by law, each JPMC Affiliated QPAM and, if applicable, JPMC, will grant the auditor unconditional access to its business, including, but not limited to: Its computer systems; business records; transactional data; workplace locations; training materials; and personnel;

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

(4) The auditor's engagement must specifically require the auditor to test each JPMC Affiliated QPAM's operational compliance with the

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

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

(i) The adequacy of the JPMC Affiliated QPAM's Policies and Training; the JPMC Affiliated QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective JPMC Affiliated QPAM's noncompliance with the written Policies and Training described in Section I(h) above. Any determination by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective JPMC Affiliated QPAM must be promptly addressed by such JPMC Affiliated QPAM, and any action taken by such JPMC Affiliated QPAM to address such recommendations must be included in an addendum to the Audit Report (which addendum is completed prior to the certification described in Section I(i)(7) below). Any determination by the auditor that the respective JPMC Affiliated QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that the JPMC Affiliated QPAM has complied with the requirements under this subsection must be based on evidence that demonstrates the JPMC Affiliated QPAM has actually implemented, maintained, and followed the Policies and Training required by this five-year exemption. Furthermore, the auditor must not rely on the Annual Report created by the compliance officer (the Compliance Officer) as described in Section I(m) below in lieu of independent determinations and testing performed by the auditor as required by Section I(i)(3) and (4) above; and

(ii) The adequacy of the Annual Review described in Section I(m) and

the resources provided to the Compliance Officer in connection with such Annual Review;

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

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

(8) The Risk Committee of JPMC's Board of Directors is provided a copy of each Audit Report; and a senior executive officer with a direct reporting line to the highest ranking legal compliance officer of JPMC must review the Audit Report for each JPMC Affiliated QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report;

(9) *Each JPMC Affiliated QPAM provides its certified Audit Report, by regular mail to:* The Department's Office of Exemption Determinations (OED), 200 Constitution Avenue NW., Suite 400, Washington, DC 20210, or by private carrier to: 122 C Street NW., Suite 400, Washington, DC 20001-2109, no later than 30 days following its completion. The Audit Report will be part of the public record regarding this five-year exemption. Furthermore, each JPMC Affiliated QPAM must make its Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of an ERISA-covered plan or IRA, the assets of which are managed by such JPMC Affiliated QPAM;

(10) *Each JPMC Affiliated QPAM and the auditor must submit to OED:* (A) Any engagement agreement(s) entered into pursuant to the engagement of the auditor under this five-year exemption; and (B) any engagement agreement entered into with any other entity retained in connection with such QPAM's compliance with the Training or Policies conditions of this five-year

exemption, no later than six (6) months after the Conviction Date (and one month after the execution of any agreement thereafter);

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

(12) JPMC must notify the Department at least 30 days prior to any substitution of an auditor, except that no such replacement will meet the requirements of this paragraph unless and until JPMC demonstrates to the Department's satisfaction that such new auditor is independent of JPMC, experienced in the matters that are the subject of the exemption, and capable of making the determinations required of this exemption;

(j) Effective as of the effective date of this five-year exemption, with respect to any arrangement, agreement, or contract between a JPMC Affiliated QPAM and an ERISA-covered plan or IRA for which a JPMC Affiliated QPAM provides asset management or other discretionary fiduciary services, each JPMC Affiliated QPAM agrees and warrants:

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

(2) To indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a JPMC Affiliated QPAM's violation of applicable laws, a JPMC Affiliated QPAM's breach of contract, or any claim brought in connection with the failure of such JPMC Affiliated QPAM to qualify for the exemptive relief provided by PTE 84-14 as a result of a violation of Section I(g) of PTE 84-14 other than the Conviction;

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

(4) 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 JPMC 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 JPMC, and its affiliates;

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

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

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

(8) Within four (4) months of the date of the Conviction, each JPMC Affiliated QPAM must provide a notice of its obligations under this Section I(j) to each ERISA-covered plan and IRA for which an JPMC Affiliated QPAM provides asset management or other discretionary fiduciary services. For all other prospective ERISA-covered plan and IRA clients for which a JPMC Affiliated QPAM provides asset management or other discretionary services, the JPMC Affiliated QPAM will agree in writing to its obligations under this Section I(j) in an updated investment management agreement between the JPMC Affiliated QPAM and

such clients or other written contractual agreement;

(k)(1) *Notice to ERISA-covered plan and IRA clients.* Within thirty (30) days of the publication of this proposed five-year exemption in the **Federal Register**, each JPMC Affiliated QPAM will provide a notice of the proposed five-year exemption, along with a separate summary describing the facts that led to the Conviction (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that the Conviction results in a failure to meet a condition in PTE 84-14, to each sponsor of an ERISA-covered plan and each beneficial owner of an IRA for which a JPMC Affiliated QPAM provides asset management or other discretionary services, or the sponsor of an investment fund in any case where a JPMC Affiliated QPAM acts only as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests. In the event that this proposed five-year exemption is granted, the **Federal Register** copy of the notice of final five-year exemption must be delivered to such clients within sixty (60) days of its publication in the **Federal Register**, and may be delivered electronically (including by an email that has a link to the exemption). Any prospective clients for which a JPMC Affiliated QPAM provides asset management or other discretionary services must receive the proposed and final five-year exemptions with the Summary and the Statement prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the JPMC Affiliated QPAM; and

(2) *Notice to Non-Plan Clients.* Each JPMC Affiliated QPAM will provide a **Federal Register** copy of the proposed five-year exemption, a **Federal Register** copy of the final five-year exemption; the Summary; and the Statement to each: (A) Current Non-Plan Client within four (4) months of the effective date, if any, of a final five-year exemption; and (B) Future Non-Plan Client prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the JPMC Affiliated QPAM. For purposes of this subparagraph (2), a Current Non-Plan Client means a client of a JPMC Affiliated QPAM that: Is neither an ERISA-covered plan nor an IRA; has assets managed by the JPMC Affiliated QPAM as of the effective date, if any, of a final five-year exemption; and has received a written representation (qualified or otherwise) from the JPMC Affiliated QPAM that such JPMC Affiliated QPAM qualifies as a QPAM or

qualifies for the relief provided by PTE 84–14. For purposes of this subparagraph (2), a Future Non-Plan Client means a client of a JPMC Affiliated QPAM that is neither an ERISA-covered plan nor an IRA that has assets managed by the JPMC Affiliated QPAM as of the effective date, if any, of a final five-year exemption, and has received a written representation (qualified or otherwise) from the JPMC Affiliated QPAM that such JPMC Affiliated QPAM is a QPAM, or qualifies for the relief provided by PTE 84–14;

(l) The JPMC Affiliated QPAMs must comply with each condition of PTE 84–14, as amended, with the sole exception of the violation of Section I(g) of PTE 84–14 that is attributable to the Conviction;

(m)(1) JPMC designates a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. The Compliance Officer must conduct an annual review (the Annual 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 legal professional with 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 that is independent of JPMC's other business lines;

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

(i) The Annual Review includes a review of: 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 business activities of the JPMC Affiliated QPAMs; and any change to ERISA, the Code, or regulations related to fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of the JPMC Affiliated QPAMs;

(ii) The Compliance Officer prepares a written report for each Annual Review (each, an Annual Report) that (A) summarizes his or her material activities during the preceding year; (B) sets forth any instance of noncompliance discovered during the preceding year, and any related corrective action; (C)

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

(iii) *In each Annual Report, the Compliance Officer must certify in writing that to his or her knowledge:* (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 preceding year and any related correction taken to date have been identified in the Annual Report; (D) the JPMC Affiliated QPAMs have complied with the Policies and Training in all respects, and/or corrected any instances of noncompliance in accordance with Section I(h) above; and (E) JPMC has provided the Compliance Officer with adequate resources, including, but not limited to, adequate staffing;

(iv) Each Annual Report must be provided to appropriate corporate officers of JPMC and each JPMC Affiliated QPAM to which such report relates; the head of compliance and the General Counsel (or their functional equivalent) of the relevant JPMC Affiliated QPAM; and must be made unconditionally available to the independent auditor described in Section I(i) above;

(v) Each Annual Review, including the Compliance Officer's written Annual Report, must be completed at least three (3) months in advance of the date on which each audit described in Section I(i) is scheduled to be completed;

(n) Each JPMC 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 JPMC Affiliated QPAM relies upon the relief in the exemption;

(o) *During the effective period of the five-year exemption JPMC:* (1) Immediately discloses to the Department any Deferred Prosecution Agreement (a DPA) or a Non-Prosecution Agreement (an NPA) with the U.S. Department of Justice, entered into by JPMC or any of its affiliates in connection with conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA; and

(2) Immediately provides the Department any information requested

by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement. After review of the information, the Department may require JPMC, its affiliates, or related parties, as specified by the Department, to submit a new application for the continued availability of relief as a condition of continuing to rely on this exemption. If the Department denies the relief requested in the new application, or does not grant such relief within twelve months of application, the relief described herein is revoked as of the date of denial or as of the expiration of the twelve month period, whichever date is earlier;

(p) Each JPMC Affiliated QPAM, in its agreements with ERISA-covered plan and IRA clients, or in other written disclosures provided to ERISA-covered plan and IRA clients, within 60 days prior to the initial transaction upon which relief hereunder is relied, and then at least once annually, will clearly and prominently: Inform the ERISA-covered plan and IRA client that the client has the right to obtain copies of the QPAM's written Policies adopted in accordance with the exemption; and

(q) A JPMC Affiliated QPAM or a JPMC Related QPAM will not fail to meet the terms of this exemption solely because a different JPMC Affiliated QPAM or JPMC Related QPAM fails to satisfy a condition for relief described in Sections I(c), (d), (h), (i), (j), (k), (l), (n) and (p).

Section II: Definitions

(a) The term "JPMC Affiliated QPAM" means a "qualified professional asset manager" (as defined in Section VI(a)⁶¹ of PTE 84–14) that relies on the relief provided by PTE 84–14 and with respect to which JPMC is a current or future "affiliate" (as defined in Section VI(d)(1) of PTE 84–14). The term "JPMC Affiliated QPAM" excludes the parent entity, JPMC, the division implicated in the criminal conduct that is the subject of the Conviction.

(b) The term "JPMC 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 JPMC owns a direct or indirect five percent or more interest, but with respect to which JPMC

⁶¹ 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 has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

is not an “affiliate” (as defined in Section VI(d)(1) of PTE 84–14).

(c) The terms “ERISA-covered plan” and “IRA” mean, respectively, a plan subject to Part 4 of Title I of ERISA and a plan subject to section 4975 of the Code.

(d) The term “JPMC” means JPMorgan Chase and Co., the parent entity, but does not include any subsidiaries or other affiliates;

(e) The term “Conviction” means the judgment of conviction against JPMC for violation of the Sherman Antitrust Act, 15 U.S.C. 1, which is scheduled to be entered in the District Court for the District of Connecticut (the District Court) (Case Number 3:15-cr-79-SRU), in connection with JPMC, through one of its euro/U.S. dollar (EUR/USD) traders, entering into and engaging in a combination and conspiracy to fix, stabilize, maintain, increase or decrease the price of, and rig bids and offers for, the EUR/USD currency pair exchanged in the FX spot market by agreeing to eliminate competition in the purchase and sale of the EUR/USD currency pair in the United States and elsewhere. For all purposes under this exemption, “conduct” of any person or entity that is the “subject of [a] Conviction” encompasses any conduct of JPMC and/or their personnel, that is described in the Plea Agreement, (including the Factual Statement), and other official regulatory or judicial factual findings that are a part of this record; and

(f) The term “Conviction Date” means the date that a judgment of Conviction against JPMC is entered by the District Court in connection with the Conviction.

Effective Date: This proposed five-year exemption will be effective beginning on the date of publication of such grant in the **Federal Register** and ending on the date that is five years thereafter. Should the Applicant wish to extend the effective period of exemptive relief provided by this proposed five-year exemption, the Applicant must submit another application for an exemption. In this regard, the Department expects that, in connection with such application, the Applicant should be prepared to demonstrate compliance with the conditions for this exemption and that the JPMC Affiliated QPAMs, and those who may be in a position to influence their policies, have maintained the high standard of integrity required by PTE 84–14.

Department’s Comment: Concurrently with this proposed five-year exemption, the Department is publishing a proposed one-year exemption for JPMC Affiliated QPAMs to continue to rely on PTE 84–14. That one-year exemption is

intended to allow the Department sufficient time, including a longer comment period, to determine whether to grant this five-year exemption. The proposed one-year exemption is designed to protect ERISA-covered plans and IRAs from the potential costs and losses, described below, that would be incurred if such JPMC Affiliated QPAMs were to suddenly lose their ability to rely on PTE 84–14 as of the Conviction date.

The proposed five-year exemption would provide relief from certain of the restrictions set forth in sections 406 and 407 of ERISA. No relief from a violation of any other law would be provided by this exemption including any criminal conviction described herein.

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

Summary of Facts and Representations⁶²

Background

1. JPMC is a financial holding company and global financial services firm, incorporated in Delaware and headquartered in New York, New York, with approximately 240,000 employees and operations in over 60 countries. According to the Applicant, JPMC provides a variety of services, including investment banking, financial services for consumers and small business, commercial banking, financial transaction processing, and asset management.

The Applicant represents that JPMC’s principal bank subsidiaries are: (a) JPMorgan Chase Bank, a national banking association wholly owned by JPMC, with U.S. branches in 23 states; and (b) Chase Bank USA, National Association, a national banking

⁶² The Summary of Facts and Representations is based on the Applicant’s representations, unless indicated otherwise.

association that is JPMC’s credit card-issuing bank. The Applicant also represents that two of JPMC’s principal non-bank subsidiaries are its investment bank subsidiary, J.P. Morgan Securities LLC, and its primary investment management subsidiary, J.P. Morgan Investment Management Inc. (JPMIM). The bank and nonbank subsidiaries of JPMC operate internationally through overseas branches and subsidiaries, representative offices and subsidiary foreign banks.

The Applicant explains that entities within the JPMC’s asset management line of business (Asset Management) serve institutional and retail clients worldwide through the Global Investment Management (GIM) and Global Wealth Management (GWM) businesses. The Applicant represents that JPMC’s Asset Management line of business had total client assets of about \$2.4 trillion and discretionary assets under management of approximately \$1.7 trillion at the end of 2014.⁶³

2. The Applicant represents that JPMC has several affiliates that provide investment management services.⁶⁴ JPMorgan Chase Bank and most of the U.S. registered advisers manage the assets of ERISA-covered plans and/or IRAs on a discretionary basis. They routinely rely on the QPAM Exemption to provide relief for party in interest transactions. According to the Applicant, the primary domestic bank and U.S. registered adviser affiliates in which JPMC owns a significant interest, directly or indirectly, include the following: JPMorgan Chase Bank, N.A.; JPMorgan Investment Management Inc.; J.P. Morgan Securities LLC; JF International Management Inc.; J.P. Morgan Alternative Asset Management, Inc.; Highbridge Capital Management, LLC; and Security Capital Research & Management Incorporated. These are the entities that currently would be

⁶³ In addition to its Asset Management line of business, the Applicant represents that JPMC operates three other core lines of business. They are: Consumer and Community Banking Services; Corporate and Investment Banking Services; and Commercial Banking Services.

⁶⁴ Section VI(d) of PTE 84–14 defines an “affiliate” of a person, 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.

covered by the exemption, if it is granted.

3. In addition to the QPAMs identified above, the Applicant has other affiliated managers that meet the definition of a QPAM that do not currently manage ERISA or IRA assets on a discretionary basis, but may in the future, including: J.P. Morgan Partners, LLC; Sixty Wall Street Management Company LLC; J.P. Morgan Private Investments Inc.; J.P. Morgan Asset Management (UK) Limited; JPMorgan Funds Limited; and Bear Stearns Asset Management, Inc. The Applicant requests that affiliates that manage ERISA or IRA assets be covered by the five-year exemption. The Applicant also acquires and creates new affiliates frequently, and to the extent that these new affiliates meet the definition of a QPAM and manage ERISA-covered plans or IRAs, the Applicant requests that these entities be covered by the five-year exemption. The Applicant represents that JPMC owns, directly or indirectly, a 5% or greater interest in certain investment managers (and may in the future own similar interests in other managers), but such managers are not affiliated in the sense that JPMC has actual control over their operations and activities. JPMC does not have the authority to exercise a controlling influence over these investment managers and is not involved with the managers' clients, strategies, or ERISA assets under management, if any.⁶⁵ The Applicant requests that these entities also be covered by the five-year exemption.

4. On May 20, 2015, the Applicant filed an application for exemptive relief from the prohibitions of sections 406(a) and 406(b) of ERISA, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) of the Code, in connection with a conviction that would make the relief in PTE 84-14 unavailable to any current or future JPMC-related investment managers.

⁶⁵ Section VI(d) of PTE 84-14 defines an "affiliate" of a person, 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.

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.

On May 20, 2015, the U.S. Department of Justice (Department of Justice) filed a criminal information in the U.S. District Court for the District of Connecticut (the District Court) against JPMC, charging JPMC with a one-count violation of the Sherman Antitrust Act, 15 U.S.C. 1 (the Information). The Information charges that, from at least as early as July 2010 until at least January 2013, JPMC, through one of its euro/U.S. dollar (EUR/USD) traders, entered into and engaged in a combination and conspiracy to fix, stabilize, maintain, increase or decrease the price of, and rig bids and offers for, the EUR/USD currency pair exchanged in the FX spot market by agreeing to eliminate competition in the purchase and sale of the EUR/USD currency pair in the United States and elsewhere. The criminal conduct that is the subject of the Conviction involved near daily conversations, some of which were in code, in an exclusive electronic chat room used by certain EUR/USD traders, including the EUR/USD trader described herein.

5. JPMC sought to resolve the charges through a Plea Agreement presented to the District Court on May 20, 2015. Under the Plea Agreement, JPMC agreed to enter a plea of guilty to the charge set out in the Information (the Plea). In addition, JPMC has made an admission of guilt to the District Court. The Applicant expects that the District Court will enter a judgment against JPMC that will require remedies that are materially the same as those set forth in the Plea Agreement.

Pursuant to the Plea Agreement, the District Court will order a term of probation and JPMC will be subject to certain conditions. First, JPMC must not commit another crime in violation of the federal laws of the United States or engage in the Conduct set forth in Paragraphs 4(g)–(i) of the Plea Agreement during the term of probation, and shall make disclosures relating to certain other sales-related practices. Second, JPMC must notify the probation officer upon learning of the commencement of any federal criminal investigation in which JPMC is a target, or federal criminal prosecution against it. Third, JPMC must implement and must continue to implement a compliance program designed to prevent and detect the criminal conduct that is the subject of the Conviction. Fourth, JPMC must further strengthen its compliance and internal controls as required by the CFTC, the Financial Conduct Authority (FCA), and any other regulatory or enforcement agencies that have addressed the criminal conduct that is the subject of the Conviction, as

set forth in the factual basis section of the Plea Agreement, and report to the probation officer and the United States, upon request, regarding its remediation and implementation of any compliance program and internal controls, policies, and procedures that relate to the conduct described in the factual basis section of the Plea Agreement.

6. Pursuant to the Plea Agreement, JPMC must promptly bring to the Department of Justice Antitrust Division's attention: (a) All credible information regarding criminal violations of U.S. antitrust laws by the defendant or any of its employees as to which the JPMC's Board of Directors, management (that is, all supervisors within the bank), or legal and compliance personnel are aware; (b) all federal criminal or regulatory investigations in which the defendant is a subject or a target, and all administrative or regulatory proceedings or civil actions brought by any federal governmental authority in the United States against the defendant or its employees, to the extent that such investigations, proceedings or actions allege violations of U.S. antitrust laws.

7. Pursuant to the Plea Agreement, JPMC must promptly bring to the Department of Justice Criminal Division, Fraud Section's attention: (a) All credible information regarding criminal violations of U.S. law concerning fraud, including securities or commodities fraud by the defendant or any of its employees as to which the JPMC's Board of Directors, management (that is, all supervisors within the bank), or legal and compliance personnel are aware; and (b) all criminal or regulatory investigations in which JPMC is or may be a subject or a target, and all administrative proceedings or civil actions brought by any governmental authority in the United States against JPMC or its employees, to the extent such investigations, proceedings or actions allege violations of U.S. law concerning fraud, including securities or commodities fraud.

Pursuant to Paragraph 9(c) of the Plea Agreement, the Department of Justice agreed "that it [would] support a motion or request by [JPMC] that sentencing in this matter be adjourned until the Department of Labor has issued a ruling on the defendant's request for an exemption. . . ." According to the Applicant, sentencing has not yet occurred in the District Court, nor has sentencing been scheduled.

8. Along with the Department of Justice, the Board of Governors of the Federal Reserve Board (FRB), the Office of the Comptroller of the Currency (OCC), the Commodity Futures Trading

Commission (CFTC), and the Financial Conduct Authority (FCA) have conducted or have been conducting investigations into the practices of JPMC and its direct and indirect subsidiaries relating to FX trading.

The FRB issued a cease and desist order on May 20, 2015, against JPMC concerning unsafe and unsound banking practices relating to JPMC's FX business and requiring JPMC to cease and desist, assessing against JPMC a civil money penalty of \$342,000,000, and requiring JPMC to agree to take certain affirmative actions (FRB Order).

The OCC issued a cease and desist order on November 11, 2014, against JPMorgan Chase Bank concerning deficiencies and unsafe or unsound practices relating to JPMorgan Chase Bank's wholesale FX business and requiring JPMorgan Chase Bank to cease and desist, ordering JPMorgan Chase Bank to pay a civil money penalty of \$350,000,000, and requiring JPMorgan Chase Bank to agree to take certain affirmative actions (OCC Order).

The CFTC issued a cease and desist order on November 11, 2014, against JPMorgan Chase Bank relating to certain FX trading activities and requiring JPMorgan Chase Bank to cease and desist from violating certain provisions of the Commodity Exchange Act, ordering JPMorgan Chase Bank to pay a civil monetary penalty of \$310,000,000, and requiring JPMorgan Chase Bank to agree to certain conditions and undertakings (CFTC Order).

The FCA issued a warning notice on November 11, 2014, against JPMorgan Chase Bank for failing to control business practices in its G10 spot FX trading operations and caused JPMorgan Chase Bank to pay a financial penalty of £222,166,000 (FCA Order).

9. In addition to the investigations described above, relating to FX trading, the Applicant is or has been the subject of other investigations, by: (a) The Hong Kong Monetary Authority, which concluded its investigation of the Applicant on December 14, 2014, and found no evidence of collusion among the banks investigated, rigging of FX benchmarks published in Hong Kong, or market manipulation, and imposed no financial penalties on the Applicant; (b) the South Africa Reserve Bank, which released the report of its inquiry of the Applicant on October 19, 2015, and found no evidence of widespread malpractice or serious misconduct by the Applicant in the South Africa FX market, and noted that most authorized dealers have acceptable arrangements and structures in place as well as whistle-blowing policies and client complaint processes; (c) the Australian

Securities & Investments Commission, (d) the Japanese Financial Services Agency, (e) the Korea Fair Trade Commission, and (f) the Swiss Competition Commission. According to the Applicant, it is cooperating with the inquiries by these organizations.

In addition, the French criminal authorities have been investigating a series of transactions entered into by senior managers of Wendel Investissement (Wendel) during the period 2004–2007. In 2007, the Paris branch of JPMorgan Chase Bank provided financing for the transactions to a number of Wendel managers. The Applicant explains that JPMC is responding to and cooperating with the investigation, and to date, no decision or indictment has been made by the French court.

In addition, the Applicant represents that the Criminal Division of the Department of Justice is investigating the Applicant's compliance with the Foreign Corrupt Practices Act and other laws with respect to the Applicant's hiring practices related to candidates referred by clients, potential clients, and government officials, and its engagement of consultants in the Asia Pacific region. The Applicant states that it is responding to, and cooperating with, this investigation.

The Applicant also represents that to its best knowledge, it does not have a reasonable basis to believe that the discretionary asset management activities of any affiliated QPAM are subject to the aforementioned investigations. Further, the Applicant represents that JPMC currently does not have a reasonable basis to believe that there are any pending criminal investigations involving JPMC or any of its affiliated companies that would cause a reasonable plan or IRA customer not to hire or retain the institution as a QPAM.

10. Once the Conviction is entered, the JPMC Affiliated QPAMs and the JPMC Related QPAMs, as well as their client plans that are subject to Part 4 of Title I of ERISA (ERISA-covered plans) or section 4975 of the Code (IRAs), will no longer be able to rely on PTE 84–14, pursuant to the anti-criminal rule set forth in section I(g) of the class exemption, absent an individual exemption. The Applicant is seeking an individual exemption that would permit the JPMC Affiliated QPAMs and the JPMC Related QPAMs, and their ERISA-covered plan and IRA clients to continue to utilize the relief in PTE 84–14, notwithstanding the anticipated Conviction, provided that such QPAMs satisfy the additional conditions

imposed by the Department in the proposed five-year exemption herein.

11. According to the Applicant, the criminal conduct giving rise to the Plea did not involve any of the JPMC Affiliated QPAMs acting in the capacity of investment manager or trustee. JPMC's participation in the antitrust conspiracy described in the Plea Agreement is limited to a single EUR/USD trader in London. The Applicant represents that the criminal conduct that is the subject of the Conviction was not widespread, nor was it pervasive; rather it was isolated to a single trader. No current or former personnel from JPMC or its affiliates have been sued individually in this matter for the criminal conduct that is the subject of the Conviction, and the individual referenced in the Complaint as responsible for such criminal conduct is no longer employed by JPMC or its affiliates.⁶⁶

The Applicant submits that the criminal conduct that is the subject of the Conviction did not involve any of JPMC's asset management staff. The Applicant represents that: (a) Other than a single individual who worked for a non-fiduciary business within JPMorgan Chase Bank and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, the JPMC Affiliated QPAMs, and the JPMC Related QPAMs (including officers, directors, agents other than JPMC, and employees of such QPAMs who had responsibility for, or exercised authority in connection with, the management of plan assets) did not know of, did not have reason to know of, and did not participate in the criminal conduct that is the subject of the Conviction; and (b) no current or former employee of JPMC or of any JPMC Affiliated QPAM who previously has been or who subsequently may be identified by JPMC, or any U.S. or non-U.S. regulatory or enforcement agencies, as having been responsible for the such criminal conduct has or will have any involvement in providing asset management services to plans and IRAs or will be an officer, director, or employee of the Applicant or of any JPMC Affiliated QPAM.⁶⁷

⁶⁶The Applicant has confirmed with JPMC's Human Resources Department that the individual referenced in the Complaint is no longer employed with any entity within JPMC or its affiliates.

⁶⁷The Applicant states that counsel for JPMC confirmed that the individual responsible for the criminal conduct that is the subject of the Conviction is not currently employed by any entity that is part of JPMC. This individual's employment has been terminated and a notation has been made

Continued

12. According to the Applicant, the transactions covered by this five-year exemption include the full range of everyday investment transactions that a plan might enter into, including the purchase and sale of debt and equity securities, both foreign and domestic, both registered and sold under Rule 144A or otherwise (e.g., traditional private placement), pass-through securities, asset-backed securities, the purchase and sale of commodities, futures, forwards, options, swaps, stable value wrap contracts, real estate, real estate financing and leasing, foreign repurchase agreements, foreign exchange, and other investments, and the hedging of risk through a variety of investment instruments and strategies. The Applicant states that all of these transactions are customary for the industry and investment managers routinely rely on the QPAM Exemption to enter into them.

13. The Applicant represents that the investment management businesses that are operated out of the JPMC Affiliated QPAMs are separated from the non-investment management businesses of the Applicant. Each of these investment management businesses, including the investment management business of JPMorgan Chase Bank (as well as the agency securities lending business of JPMorgan Chase Bank), have systems, management, dedicated risk and compliance officers and legal coverage that are separate from the foreign exchange trading activities that were the subject of the Plea Agreement.

The Applicant represents that the investment management businesses of the JPMC Affiliated QPAMs are subject to policies and procedures and JPMC Affiliated QPAM personnel engage in training designed to ensure that such businesses understand and manage their fiduciary duties in accordance with applicable law. Thus, the Applicant maintains that the management of plan assets is conducted separately from: (a) The non-investment management business activities of the Applicant, including the investment banking, treasury services and other investor services businesses of the Corporate & Investment Bank business of the Applicant (CIB); and/or (b) the criminal conduct that is the subject of the Plea Agreement. Generally, the policies and procedures create information barriers, which prevent employees of the JPMC Affiliated QPAMs from gaining access to inside information that an affiliate may have acquired or developed in connection with the investment

in his employment file to ensure he is not re-hired at any future date.

banking, treasury services or other investor services business activities. These policies and procedures apply to employees, officers, and directors of the JPMC Affiliated QPAMs. The Applicant maintains an employee hotline for employees to express any concerns of wrongdoing anonymously.

The Applicant represents that, to the best of its knowledge: (a) No JPMC employees are involved in the trading decisions or investment strategies of the JPMC Affiliated or Related QPAMs; (b) the JPMC Affiliated and Related QPAMs do not consult with JPMC employees prior to making investment decisions on behalf of plans; (c) JPMC does not control the asset management decisions of the JPMC Affiliated or Related QPAMs; (d) the JPMC Affiliated and Related QPAMs do not need JPMC's consent to make investment decisions, correct errors, or adopt policies or training for staff; and (e) there is no interaction between JPMC employees and the JPMC Affiliated or Related QPAMs in connection with the investment management activities of the JPMC Affiliated QPAMs.

Statutory Findings—In the Interest of Affected Plans and IRAs

14. The Applicant states that, if the proposed five-year exemption is denied, the JPMC Affiliated QPAMs may be unable to manage efficiently the strategies for which they have contracted with thousands of plans and IRAs. Transactions currently dependent on the QPAM Exemption could be in default and be terminated at a significant cost to the plans. In particular, the Applicant represents that the JPMC Affiliated QPAMs have entered, and could in the future enter, into contracts on behalf of, or as investment adviser of, ERISA-covered plans, collective trusts and other funds subject to ERISA for certain outstanding transactions, including but not limited to: The purchase and sale of debt and equity securities, both foreign and domestic, both registered and sold under Rule 144A or otherwise (e.g., traditional private placement); pass-through securities; asset-backed securities; and the purchase and sale of commodities, futures, options, stable value wrap contracts, real estate, foreign repurchase agreements, foreign exchange, and other investments.

The JPMC Affiliated QPAMs also have entered into, and could in the future enter into, contracts for other transactions such as swaps, forwards, and real estate financing and leasing on behalf of their ERISA clients. According to the Applicant, these and other strategies and investments require the

JPMC Affiliated QPAMs to meet the conditions in the QPAM Exemption. The Applicant states that certain derivatives transactions and other contractual agreements automatically and immediately could be terminated without notice or action, or could become subject to termination upon notice from a counterparty, in the event the Applicant no longer qualifies for relief under the QPAM Exemption.

15. The Applicant represents that real estate transactions, for example, could be subject to significant disruption without the QPAM Exemption. Clients of the JPMC Affiliated QPAMs have over \$27 billion in ERISA and public plan assets in commingled funds invested in real estate strategies, with approximately 235 holdings. Many transactions in these accounts rely on Parts I, II and III of the QPAM Exemption as a backup to the collective investment fund exemption (which may become unavailable to the extent a related group of plans has a greater than 10% interest in the collective investment fund). The Applicant estimates that there would be significant loss in value if assets had to be quickly liquidated—over a 10% bid-ask spread—in addition to substantial reinvestment costs and opportunity costs. There could also be prepayment penalties. In addition, real estate transactions are affected in funds that are not deemed to hold plan assets under applicable law. While funds may have other available exemptions for certain transactions, that fact could change in the future.

16. The JPMC Affiliated QPAMs also rely on the QPAM Exemption when buying and selling fixed income products. Stable value strategies, for example, rely on the QPAM Exemption to enter into wrappers and insurance contracts that permit the assets to be valued at book value. Many counterparties specifically require a representation that the QPAM Exemption applies, and those contracts could be in default if the requested exemption were not granted. Depending on the market value of the assets in these funds at the time of termination, such termination could result in losses to the stable value funds. The Applicant states that, while the market value currently exceeds book value, that can change at any time, and could result in market value adjustments to withdrawing plans and withdrawal delays under their contracts.

17. The Applicant submits that nearly 400 accounts managed by the JPMC Affiliated QPAMs (including commingled funds and separately managed accounts) invest in fixed

income products, with a total portfolio of approximately \$49.3 billion in market value of ERISA and public plan assets in commingled funds. Fixed income strategies in which those accounts are invested include investment-grade short, intermediate, and long duration bonds, as well as securitized products, and high yield and emerging market investments. If the QPAM Exemption were lost, the Applicant estimates that its clients could incur average weighted liquidation costs of approximately 65 basis points of the total market value in fixed income products, assuming normal market conditions where the holdings can be liquidated at a normal bid-offer spread without significant widening. While short and intermediate term bonds could be liquidated for between 15–50 basis points, long duration bonds may be more difficult to liquidate and costs may range from 75–100 basis points. Costs of liquidating high-yield and emerging market investments could range from 75–150 basis points. Such costs do not include reinvestment costs for transitioning to a new manager.

18. The Applicant states that, futures, options, and cleared and bilateral swaps, which certain strategies rely on to hedge risk and obtain certain exposures on an economic basis, rely on the QPAM Exemption. The Applicant further states that the QPAM Exemption is particularly important for securities and other instruments that may be traded on a principal basis, such as mortgage-backed securities, corporate debt, municipal debt, other US fixed income securities, Rule 144A securities, non-US fixed income securities, non-US equity securities, US and non-US over-the-counter instruments such as forwards and options, structured products and FX.

19. The Applicant represents that plans that decide to continue to employ the JPMC Affiliated QPAMs could be prohibited from engaging in certain transactions that would be beneficial to such plans, such as hedging transactions using over-the-counter options or derivatives. Counterparties to such transactions are far more comfortable with the QPAM Exemption than any other exemption, and a failure of the QPAM Exemption to be available could trigger a default or early termination by the plan or pooled trust. Even if other exemptions were acceptable to such counterparties, the Applicant predicts that the cost of the transaction might increase to reflect any lack of comfort in transacting business using a less familiar exemption. The Applicant represents that plans may also face collateral consequences, such as missed

investment opportunities, administrative delay, and the cost of investing in cash pending reinvestments.

20. The Applicant represents that, to the extent that plans and IRAs believe they need to withdraw from their arrangements, they could incur significant transaction costs, including costs associated with the liquidation of investments, finding new asset managers, and the reinvestment of plan assets.⁶⁸ The Applicant believes that the transaction costs to plans of changing managers are significant, especially for many of the strategies employed by the JPMC Affiliated QPAMs. The Applicant also believes that, depending on the strategy, the cost of liquidating assets in connection with transitioning clients to another manager could be significant.⁶⁹ The process for transitioning to a new manager typically is lengthy, and likely would involve numerous steps—each of which could last several months—including retaining a consultant, engaging in the request for proposals, negotiating contracts, and ultimately transitioning assets. In addition, securities transactions would incur transaction-related expenses.

Statutory Findings—Protective of the Rights of Participants of Affected Plans and IRAs

21. The Applicant has proposed certain conditions it believes are protective of participants and beneficiaries of ERISA-covered plans and IRAs with respect to the transactions described herein. The Department has determined that it is necessary to modify and supplement the conditions before it can tentatively determine that the requested exemption meets the statutory requirements of section 408(a) of ERISA. In this regard, the Department has tentatively determined that the following conditions adequately protect the rights of participants and beneficiaries of affected plans and IRAs with respect to

⁶⁸ The Department notes that, if this temporary exemption is granted, compliance with the condition in Section I(j) of the exemption would require the JPMC Affiliated QPAMs to hold their plan customers harmless for any losses attributable to, inter alia, any prohibited transactions or violations of the duty of prudence and loyalty.

⁶⁹ Some investments are more liquid than others (e.g., Treasury bonds generally are more liquid than foreign sovereign bonds and equities generally are more liquid than swaps). Some of the strategies followed by the Applicant tend to be less liquid than certain other strategies and, thus, the cost of a transition would be significantly higher than, for example, liquidating a large cap equity portfolio. Particularly hard hit would be the real estate separate account strategies, which are illiquid and highly dependent on the QPAM Exemption.

the transactions that would be covered by this proposed five-year exemption.

The five-year exemption, if granted as proposed, is only available to the extent: (a) Other than with respect to a single individual who worked for a non-fiduciary business within JPMorgan Chase Bank and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, JPMC Affiliated QPAMs, including their officers, directors, agents other than JPMC, and employees, did not know of, have reason to know of, or participate in the criminal conduct of JPMC that is the subject of the Conviction (for purposes of this requirement, “participate in” includes an individual’s knowing or tacit approval of the misconduct underlying the Conviction); (b) any failure of those QPAMs to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction; and (c) other than a single individual who worked for a non-fiduciary business within JPMorgan Chase Bank and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, agents other than JPMC, and employees of such JPMC QPAMs) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the Conviction.

22. The Department expects the JPMC Affiliated QPAMs will rigorously ensure that the individual associated with the misconduct will not be employed or knowingly engaged by such QPAMs. In this regard, the five-year exemption mandates that the JPMC Affiliated QPAMs will not employ or knowingly engage any of the individuals that participated in the FX manipulation that is the subject of the Conviction. For purposes of this condition, “participated in” includes an individual’s knowing or tacit approval of the behavior that is the subject of the Conviction.

23. Further, the JPMC 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 or the Code and managed by such JPMC Affiliated QPAM to enter into any transaction with JPMC or the Investment Banking Division of JPMorgan Chase Bank, or to engage JPMC or the Investment Banking Division of JPMorgan Chase Bank 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.

24. The JPMC Affiliated QPAMs and the JPMC Related QPAMs must comply with each condition of PTE 84–14, as amended, with the sole exception of the violation of Section I(g) of PTE 84–14 that is attributable to the Conviction. Further, any failure of the JPMC Affiliated QPAMs or the JPMC Related QPAMs to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction.

No relief will be provided by this five-year exemption if a JPMC Affiliated QPAM or a JPMC Related QPAM exercised authority over plan assets in a manner that it knew or should have known would: Further the criminal conduct that is the subject of the Conviction; or cause the JPMC QPAM or its affiliates or related parties to directly or indirectly profit from the criminal conduct that is the subject of the Conviction. Also, no relief will be provided by this five-year exemption to the extent JPMC or the Investment Banking Division of JPMorgan Chase Bank: Provides any discretionary asset management services to ERISA-covered plans or IRAs; or otherwise acts as a fiduciary with respect to ERISA-covered plan or IRA assets.

25. The Department believes that robust policies and training are warranted where, as here, the criminal misconduct has occurred within a corporate organization that is affiliated with one or more QPAMs managing plan or IRA assets. Therefore, this proposed five-year exemption requires that within four (4) months of the Conviction, each JPMC Affiliated QPAM must develop, implement, maintain, and follow written policies (the Policies) requiring and reasonably designed to ensure that: The asset management decisions of the JPMC Affiliated QPAM are conducted independently of the corporate management and business activities of JPMC, including the management and business activities of the Investment Banking Division of JPMorgan Chase Bank; the JPMC Affiliated QPAM fully complies with ERISA's fiduciary duties, and with ERISA and the Code's prohibited transaction provisions, and does not knowingly participate in any violation of these duties and provisions with respect to ERISA-covered plans and IRAs; the JPMC 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; any filings or statements made by the JPMC 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; the JPMC 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; and the JPMC Affiliated QPAM complies with the terms of this five-year exemption. Any violation of, or failure to comply with these Policies must be corrected promptly upon discovery, and any such violation or compliance failure not promptly corrected is reported, upon discovering the failure to promptly correct, in writing, to appropriate corporate officers, the head of compliance, and the General Counsel (or their functional equivalent) of the relevant JPMC Affiliated QPAM, the independent auditor responsible for reviewing compliance with the Policies, and an appropriate fiduciary of any affected ERISA-covered plan or IRA, which fiduciary is independent of JPMC. A JPMC Affiliated QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance promptly when discovered or when it reasonably should have known of the noncompliance (whichever is earlier), and provided that it reports such instance of noncompliance as explained above.

26. The Department has also imposed a condition that requires each JPMC Affiliated QPAM, within four (4) months of the date of the Conviction, to develop and implement a program of training (the Training), conducted at least annually, for all relevant JPMC Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must be set forth in the Policies and, at a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this five-year exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing. Further, the Training must be conducted

by an independent professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code.

27. *Independent Transparent Audit.* The Department views a rigorous and transparent audit that is conducted annually by an independent party, as essential to ensuring that the conditions for exemptive relief described herein are followed by the JPMC Affiliated QPAMs. Therefore, Section I(i) of this proposed five-year exemption requires that each JPMC Affiliated QPAM submits to an audit, conducted annually by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and the JPMC Affiliated QPAM's compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. In addition, each annual audit must cover a consecutive twelve (12) month period starting with the twelve (12) month period that begins on the effective date of the five-year exemption. Each annual audit must be completed no later than six (6) months after the period to which the audit applies.

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

In addition, the auditor's engagement must specifically require the auditor to determine whether each JPMC Affiliated QPAM has complied with the Policies and Training conditions described herein, and must further require the auditor to test each JPMC Affiliated QPAM's operational compliance with the Policies and Training. The auditor must issue a written report (the Audit Report) to JPMC and the JPMC Affiliated QPAM to which the audit applies that describes the procedures performed by the auditor during the course of its examination. The Audit Report must include the auditor's specific determinations regarding: The adequacy of the JPMC Affiliated QPAM's Policies and Training; the JPMC Affiliated QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective JPMC

Affiliated QPAM's noncompliance with the written Policies and Training.

Any determination by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective JPMC Affiliated QPAM must be promptly addressed by such JPMC Affiliated QPAM, and any action taken by such JPMC Affiliated QPAM to address such recommendations must be included in an addendum to the Audit Report. Further, any determination by the auditor that the respective JPMC Affiliated QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that the JPMC Affiliated QPAM has complied with the requirements, as described above, must be based on evidence that demonstrates the JPMC Affiliated QPAM has actually implemented, maintained, and followed the Policies and Training required by this five-year exemption. Finally, the Audit Report must address the adequacy of the Annual Review required under this exemption and the resources provided to the Compliance Officer in connection with such Annual Review. Moreover, the auditor must notify the respective JPMC Affiliated QPAM of any instance of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date.

29. This exemption requires that certain senior personnel of JPMC review the Audit Report and make certain certifications and take various corrective actions. In this regard, the General Counsel, or one of the three most senior executive officers of the JPMC Affiliate QPAM to which the Audit Report applies, must certify, in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this five-year exemption; addressed, corrected, or remedied an inadequacy identified in the Audit Report; and determined that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this proposed five-year exemption and with the applicable provisions of ERISA and the Code. The Risk Committee of JPMC's Board of Directors is provided a copy of each Audit Report; and a senior executive officer with a direct reporting line to the highest ranking legal compliance officer of JPMC must review the Audit Report for each JPMC

Affiliated QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report.

30. In order to create a more transparent record in the event that the proposed relief is granted, each JPMC Affiliated QPAM must provide its certified Audit Report to the Department no later than thirty (30) days following its completion. The Audit Report will be part of the public record regarding this five-year exemption.

Further, each JPMC Affiliated QPAM must make its Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of an ERISA-covered plan or IRA, the assets of which are managed by such JPMC Affiliated QPAM. Additionally, each JPMC Affiliated QPAM and the auditor must submit to the Department any engagement agreement(s) entered into pursuant to the engagement of the auditor under this five-year exemption. Also, they must submit to the Department any engagement agreement entered into with any other entity retained in connection with such QPAM's compliance with the Training or Policies conditions of this proposed five-year exemption no later than six (6) months after the Conviction Date (and one month after the execution of any agreement thereafter).

Finally, if the exemption is granted, the auditor must provide the Department, upon request, all of the workpapers created and utilized in the course of the audit, including, but not limited to: The audit plan; audit testing; identification of any instance of noncompliance by the relevant JPMC Affiliated QPAM; and an explanation of any corrective or remedial action taken by the applicable JPMC Affiliated QPAM.

In order to enhance oversight of the compliance with the exemption, JPMC must notify the Department at least thirty (30) days prior to any substitution of an auditor, and JPMC must demonstrate to the Department's satisfaction that any new auditor is independent of JPMC, experienced in the matters that are the subject of the exemption, and capable of making the determinations required of this five-year exemption.

31. *Contractual Obligations.* This five-year exemption requires the JPMC Affiliated QPAMs to enter into certain contractual obligations in connection with the provision of services to their clients. It is the Department's view that the condition in Section I(j) is essential

to the Department's ability to make its findings that the proposed five-year exemption is protective of the rights of the participants and beneficiaries of ERISA-covered and IRA plan clients of JPMC Affiliated QPAMs under section 408(a) of ERISA.

In this regard, effective as of the effective date of this five-year exemption, with respect to any arrangement, agreement, or contract between a JPMC Affiliated QPAM and an ERISA-covered plan or IRA for which a JPMC Affiliated QPAM provides asset management or other discretionary fiduciary services, each JPMC Affiliated QPAM agrees and warrants: (a) To comply with ERISA and the Code, as applicable with respect to such ERISA-covered plan or IRA, to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions), and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA, as applicable, with respect to each such ERISA-covered plan and IRA; (b) to indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a JPMC Affiliated QPAM's violation of applicable laws, a JPMC Affiliated QPAM's breach of contract, or any claim brought in connection with the failure of such JPMC Affiliated QPAM to qualify for the exemptive relief provided by PTE 84-14 as a result of a violation of Section I(g) of PTE 84-14 other than the Conviction; (c) not to require (or otherwise cause) the ERISA-covered plan or IRA to waive, limit, or qualify the liability of the JPMC Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions; (d) 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 JPMC 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 JPMC, and its affiliates; (e) not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the JPMC Affiliated QPAM (including any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM), with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a

pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors as a result of an actual lack of liquidity of the underlying assets, provided that such restrictions are applied consistently and in like manner to all such investors; (f) not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors; and (g) not to include exculpatory provisions disclaiming or otherwise limiting liability of the JPMC Affiliated QPAM for a violation of such agreement's terms, except for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of JPMC, and its affiliates.

32. Further, within four (4) months of the date of the Conviction, each JPMC Affiliated QPAM must provide a notice of its obligations under Section I(j) to each ERISA-covered plan and IRA for which an JPMC Affiliated QPAM provides asset management or other discretionary fiduciary services. For all other prospective ERISA-covered plan and IRA clients for which a JPMC Affiliated QPAM provides asset management or other discretionary services, the JPMC Affiliated QPAM will agree in writing to its obligations under Section I(j) in an updated investment management agreement between the JPMC Affiliated QPAM and such clients or other written contractual agreement.

33. *Notice Requirements.* The proposed exemption contains extensive notice requirements, some of which extend not only to ERISA-covered plan and IRA clients of JPMC Affiliated QPAMs, but which also go to non-Plan clients of JPMC Affiliated QPAMs. In this regard, the Department understands that many firms may promote their "QPAM" designation in order to earn asset management business, including from non-ERISA plans. Therefore, in order to fully inform any clients that may have retained JPMC Affiliated QPAMs as asset managers because such JPMC Affiliated QPAMs have represented themselves as able to rely on PTE 84-14, the Department has determined to condition exemptive

relief upon the following notice requirements.

Within fifteen (15) days of the publication of this proposed five-year exemption in the **Federal Register**, each JPMC Affiliated QPAM will provide a notice of the proposed five-year exemption, along with a separate summary describing the facts that led to the Conviction (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that the Conviction results in the failure to meet a condition in PTE 84-14, to each sponsor of an ERISA-covered plan and each beneficial owner of an IRA for which a JPMC Affiliated QPAM provides asset management or other discretionary services, or the sponsor of an investment fund in any case where a JPMC Affiliated QPAM acts only as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests. In the event that this proposed five-year exemption is granted, the **Federal Register** copy of the notice of final five-year exemption must be delivered to such clients within sixty (60) days of its publication in the **Federal Register**, and may be delivered electronically (including by an email that has a link to the exemption). Any prospective clients for which a JPMC Affiliated QPAM provides asset management or other discretionary services must receive the proposed and final five-year exemptions with the Summary and the Statement prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the JPMC Affiliated QPAM.

In addition, each JPMC Affiliated QPAM will provide a **Federal Register** copy of the proposed five-year exemption, a **Federal Register** copy of the final five-year exemption; the Summary; and the Statement to each: (A) Current Non-Plan Client within four (4) months of the effective date, if any, of a final five-year exemption; and (B) Future Non-Plan Client prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the JPMC Affiliated QPAM. A "Current Non-Plan Client" is a client of a JPMC Affiliated QPAM that: Is neither an ERISA-covered plan nor an IRA; has assets managed by the JPMC Affiliated QPAM as of the effective date, if any, of a final five-year exemption; and has received a written representation (qualified or otherwise) from the JPMC Affiliated QPAM that such JPMC Affiliated QPAM qualifies as a QPAM or qualifies for the relief provided by PTE 84-14. A "Future Non-Plan Client" is a client of a JPMC

Affiliated QPAM that is neither an ERISA-covered plan nor an IRA that has assets managed by the JPMC Affiliated QPAM after the effective date, if any, of a final five-year exemption, and has received a written representation (qualified or otherwise) from the JPMC Affiliated QPAM that such JPMC Affiliated QPAM is a QPAM, or qualifies for the relief provided by PTE 84-14.

34. This proposed five-year exemption also requires JPMC to designate a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. The Compliance Officer will have several obligations that it must comply with, as described in Section I(m) above. These include conducting an annual review (the Annual Review) to determine the adequacy and effectiveness of the implementation of the Policies and Training; the preparation of a written report for each Annual Review (each, an Annual Report) that, among other things, summarizes his or her material activities during the preceding year; and sets forth any instance of noncompliance discovered during the preceding year, and any related corrective action. Each Annual Report must be provided to appropriate corporate officers of JPMC and each JPMC Affiliated QPAM to which such report relates; the head of compliance and the General Counsel (or their functional equivalent) of the relevant JPMC Affiliated QPAM; and must be made unconditionally available to the independent auditor described above.

35. Each JPMC Affiliated QPAM must 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 JPMC Affiliated QPAM relies upon the relief in the proposed five-year exemption.

36. The proposed five-year exemption mandates that, during the effective period of this five-year exemption JPMC must immediately disclose to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) that JPMC or an affiliate enters into with the U.S. Department of Justice, to the extent such DPA or NPA involved conduct described in Section I(g) of PTE 84-14 or section 411 of ERISA. In addition, JPMC must immediately provide the Department any information requested by the Department, as permitted by law, regarding the agreement and/or the conduct and allegations that led to the agreement. The Department may,

following its review of that information, require JPMC or a party specified by the Department, to submit a new application for the continued availability of relief as a condition of continuing to rely on this exemption. In this regard, the QPAM (or other party submitting the application) will have the burden of justifying the relief sought in the application. If the Department denies the relief requested in that application, or does not grant such relief within twelve months of the application, the relief described herein would be revoked as of the date of denial or as of the expiration of the twelve month period, whichever date is earlier.

37. Finally, each JPMC Affiliated QPAM, in its agreements with ERISA-covered plan and IRA clients, or in other written disclosures provided to ERISA-covered plan and IRA clients, within sixty (60) days prior to the initial transaction upon which relief hereunder is relied, will clearly and prominently: Inform the ERISA-covered plan or IRA client that the client has the right to obtain copies of the QPAM's written Policies adopted in accordance with this five-year exemption.

Statutory Findings—Administratively Feasible

38. The Applicant represents that the proposed exemption is administratively feasible because it does not require any monitoring by the Department. Furthermore, the requested five-year exemption does not require the Department's oversight because, as a condition of this proposed five-year exemption, neither JPMC nor the Investment Banking Division of JPMorgan Chase Bank will provide any fiduciary or QPAM services to ERISA-covered plans and IRAs.

Summary

39. Given the revised and new conditions described above, the Department has tentatively determined that the relief sought by the Applicant satisfies the statutory requirements for a five-year exemption under section 408(a) of ERISA.

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons within 30 days of the publication of the notice of proposed five-year exemption in the **Federal Register**. The notice will be provided to all interested persons in the manner described in Section I(k)(1) of this proposed five-year exemption 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 sixty (60) days of the date of publication of this proposed exemption in the **Federal Register**. All comments will be made available to the public.

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

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

Summary of Facts

(PTE 2023-01)

Re: Summary of Facts in Connection with Criminal Conviction of JPMorgan Chase & Co. (“JPMC”) for Antitrust Violation in the Foreign Exchange Spot Market

In January 2017, JPMC was convicted of a single violation of federal antitrust law in the U.S. District Court for the District of Connecticut. **The conviction constitutes a failure to meet section I(g) of Prohibited Transaction Exemption (“PTE”) 84-14.**¹ In advance of the sentencing and conviction, JPMC applied, in May 2015, for an exemption that would permit JPMC and its affiliates that act as “qualified professional asset managers” (“QPAMs”) to continue to qualify for relief in PTE 84-14. In December 2016, the Department granted a temporary exemption to permit JPMC-affiliated QPAMs to continue to use PTE 84-14 for up to twelve (12) months from the conviction date. On December 29, 2017, the Department published a longer-term exemption in the Federal Register, effective from January 10, 2018 through January 9, 2023. On January 10, 2023, the Department granted an exemption to the JPMC-affiliated QPAMs covering the remaining four years of the disqualification period (January 10, 2023 through January 9, 2027).

Facts of the Conviction

In May 2015, JPMC resolved an inquiry of the U.S. Department of Justice (“DOJ”) relating to JPMC’s foreign exchange (“FX”) business. Under this resolution, JPMC agreed to plead guilty to a single violation of federal antitrust law and pay a fine of \$550 million. The criminal information, filed in the U.S. District Court for the District of Connecticut, charged JPMC with a one-count violation of the Sherman Antitrust Act, 15 U.S.C. § 1. The antitrust violation referenced in the plea agreement arose principally from the conduct of one trader between July 2010 and January 2013. As set forth in the plea agreement, that trader, who has been dismissed from JPMC, communicated with traders from other institutions in an attempt to improperly influence prices in the euro/U.S. dollar FX spot market. Under the terms of the plea agreement, JPMC entered a plea of guilty to the charge set out in the information, agreed that the District Court would enter a term of probation, and agreed to be subject to certain conditions. The District Court entered a judgment of conviction on January 10, 2017. JPMC has also paid approximately \$1.357 billion to resolve FX investigations by other U.S. and foreign government agencies.

JPMC and its affiliates have cooperated with the DOJ and other regulatory agencies in their investigations of FX trading activities. JPMC’s Board of Directors has formed an FX / Markets Orders Compliance Committee to oversee compliance with the remediation required by the DOJ and other regulatory authorities, including an action plan developed by senior management to meet regulatory commitments. In general, the plan includes enhancements in five areas: (1) supervision, controls, and governance; (2) compliance risk assessment; (3) transaction monitoring and communications surveillance; (4) compliance testing; and (5) internal audit.

¹ PTE 84-14 is a class exemption that permits various parties who are related to employee benefit plans to engage in transactions involving plan assets if, among other conditions, the assets are managed by Qualified Professional Asset Managers that are independent of the parties in interest and that meet specified financial standards.

JPMC has implemented and will continue to implement policies and procedures designed to prevent the recurrence of the conduct that is the subject of the FX matter, as required by the plea agreement.²

JPMC requested exemptive relief in order to avoid any potential harm to ERISA-covered plans and IRAs. In the absence of the exemptive relief, the conviction would constitute a failure to meet one of the conditions of PTE 84-14 such that, subsequent to the conviction, such QPAMs could not continue to avail themselves of the relief provided by PTE 84-14 for a period of ten (10) years.

² More information about the DOJ investigation can be found at www.justice.gov.

**Supplement to Account Agreement
(PTE 2023-01)**

Supplement to Account Agreement

In managing your retirement or other employee benefit plan or account assets, we may rely on the exemptive relief provided by U.S. Department of Labor Individual Prohibited Transaction Exemption (“PTE”) 2023-01 (the “Exemption”).¹ The Exemption enables the JPMorgan Chase & Co. affiliate managing your account (“Manager”) to act as a “qualified professional asset manager” under PTE 84-14, as amended, notwithstanding the judgment of conviction against JPMorgan Chase & Co. for violation of the Sherman Antitrust Act, 15 § 1, which would otherwise render the exemption unavailable to the Manager and its affiliates.

PTE 2023-01 requires, among other things, that the Manager provide notice of its agreement to certain obligations with respect to your account. Therefore, the Manager hereby provides notice of its agreement to the obligations under the Exemption (as follows), to the extent and for so long as your account holds assets of a Covered Plan²:

1. To comply with the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), and the Internal Revenue Code of 1986, as amended (the “Code”), as applicable with respect to such Covered Plan³; 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: (i) the Manager’s violation of ERISA’s fiduciary duties, as applicable, and of the prohibited transaction provisions of ERISA and the Code, as applicable; (ii) a breach of contract by the Manager; or (iii) any claim arising out of the failure of the Manager to qualify for the exemptive relief provided by PTE 84-14 as a result of a conviction for a crime covered under Section I(g) of PTE 84-14, other than the conviction that necessitated this Exemption. This condition applies only to actual losses caused by the Manager’s violations. The term “actual losses” includes, but is not limited to, losses and related costs arising from unwinding transactions with third parties and from transitioning Covered Plan assets to an alternative asset manager as well as costs associated with any exposure to excise taxes under Code section 4975 as a result of the Manager’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

¹ Whether we rely on the Exemption depends upon (among other things) the particular strategy in which your account is managed and the potential availability of other exemptive relief. Accordingly, we do not intend this Supplement to be an express representation that the Manager (as defined below) qualifies as a “qualified professional asset manager” (a “QPAM”) or that the Manager relies on the QPAM class exemption (PTE 84-14).

² The term “Covered Plan” means a plan subject to Part 4 of Title 1 of the Employee Retirement Income Security Act of 1974, as amended (“ERISA-covered plan”), or a plan subject to Section 4975 of the Internal Revenue Code of 1986, as amended (“IRA”), with respect to which the Manager relies on PTE 84-14, or with respect to which the Manager (or any affiliate) has expressly represented that the Manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84-14).

³ For your reference and assistance in understanding this Supplement, the requirements of ERISA and section 4975 of the Code are applicable with respect to the management of ERISA-covered plan assets. The requirements of ERISA (such as the fiduciary standards and requirements of sections 402-405 of ERISA) are not applicable to plans subject solely to the requirements of section 4975 of the Code, such as most individual retirement accounts.

liability of the Manager 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 the Manager with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by the Manager, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any such arrangements involving investments in pooled funds subject to ERISA entered into after January 10, 2023, 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 such 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 (described under paragraph 4), 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 is applied consistently and in like manner to all such investors; and
6. Not to include exculpatory provisions disclaiming or otherwise limiting liability of the Manager for a violation of the agreement's terms. To the extent consistent with Section 410 of ERISA, 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 which is independent of the Manager and its affiliates, or damages arising from acts outside the control of the Manager.

As of January 10, 2023, this document supersedes the version you may have received in connection with PTE 2017-03. To the extent that the current terms of your account agreement are inconsistent with this notice, this notice shall govern with respect to the management of your account assets (to the extent and for so long as your account is deemed to hold assets of a Covered Plan), without any further action by you. Except to the extent superseded by this notice, the terms and conditions of the account agreement remain in full force and effect. Upon the expiration of the Exemption on January 9, 2027, the terms of this notice cease to apply with respect to the management of your account assets.

**Final Individual Prohibited
Transaction Exemption PTE 2023-01**

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 84–14¹ 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).

participants and beneficiaries of ERISA-covered Plans and IRAs managed by JPMC affiliates (together, Covered Plans) are protected.

This exemption provides only the relief specified in the text of the exemption and does not provide relief from violations of any law other than the prohibited transaction provisions of Title I of ERISA and the Code expressly stated herein.

The Department intends for the terms of this exemption to promote adherence by the JPMC QPAMs to basic fiduciary standards under Title I of ERISA and the Code. An important objective in granting this exemption is to ensure that Covered Plans can terminate their relationships with a JPMC QPAM in an orderly and cost-effective fashion in the event the fiduciary of a Covered Plan determines that it is prudent to do so.

Based on the Applicant's adherence to all the conditions of the exemption, the Department makes the requisite findings under ERISA Section 408(a) that the exemption is: (1) administratively feasible, (2) in the interest of Covered Plans and their participants and beneficiaries, and (3) protective of the rights of the participants and beneficiaries of Covered Plans. Accordingly, affected parties should be aware that the conditions incorporated in this exemption are, individually and taken as a whole, necessary for the Department to grant the relief requested by the Applicant. Absent these or similar conditions, the Department would not have granted this exemption.

The Applicant requested an individual exemption pursuant to ERISA Section 408(a) in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).

Background

1. JPMC is the parent company of investment management affiliates that rely upon the class exemptive relief provided under the QPAM Exemption to manage the assets of Covered Plans (The JPMC Affiliated QPAMs). In addition to the JPMC Affiliated QPAMs, JPMC currently owns a 5% or greater direct or indirect interest in certain investment managers that also rely upon the QPAM Exemption but are not affiliated with JPMC in the sense of having common control (the JPMC Related QPAMs).²

² Since the Department granted PTE 2017–03, the following seven JPMC QPAMs have exercised discretionary control over the management and disposition of client assets held by ERISA-covered Plans and IRAs (together, Covered Plans): JPMorgan Chase Bank, N.A., J.P. Morgan Alternative Asset Management, Inc., JPMorgan Asset Management

2. The QPAM Exemption exempts certain prohibited transactions between a party in interest and an “investment fund” (as defined in Section VI(b) of the QPAM Exemption) in which a plan has an interest if the investment manager with discretion over the investment of plan assets satisfies the definition of “qualified professional asset manager” and satisfies additional conditions of the exemption. The QPAM Exemption 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.³

3. Section I(g) of the QPAM Exemption prevents an entity that may otherwise meet the definition of QPAM from utilizing the exemptive relief provided, for itself and its client plans, if that entity, an “affiliate” thereof,⁴ 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 the transaction. Section I(g) was included in the QPAM Exemption, in part, based on the Department's expectation that a QPAM, and those who may be in a position to influence the QPAM's policies, must maintain a high standard of integrity.

4. On May 20, 2015, the Department of Justice filed a Criminal Information in the U.S. District Court for the District of Connecticut (the District Court)⁵ charging JPMC with a one-count violation of the Sherman Antitrust Act.⁶ The Information charged that as early as July 2010 until at least January 2013, JPMC, through one of its euro/U.S. dollar (EUR/USD) traders, entered into and engaged in a combination and

(Asia Pacific) Limited, J.P. Morgan Investment Management Inc., J.P. Morgan Private Investments Inc., J.P. Morgan Securities LLC., and Security Capital Research & Management Incorporated.

³ See 75 FR 38837, 38839 (July 6, 2010).

⁴ 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.”

⁵ Case Number 3:15–CR–79–SRU.

⁶ 15 U.S.C. 1.

conspiracy to fix, stabilize, maintain, increase or decrease the price of, and rig bids and offers for, the EUR/USD currency pair exchanged in the foreign exchange spot market by agreeing to eliminate competition in the purchase and sale of the EUR/USD currency pair in the United States and elsewhere (the Criminal Misconduct). The Criminal Misconduct involved near-daily conversations, some of which were conducted in code, in an exclusive electronic chat room. On May 20, 2015, JPMC agreed to enter a guilty plea to the charge set out in the Information (the Plea Agreement). The District Court subsequently entered a judgment of Conviction against JPMC on January 10, 2017.

5. Once the District Court entered the Conviction, the JPMC Affiliated QPAMs and the JPMC Related QPAMs, as well as their Covered Plan clients, became ineligible to rely on the QPAM Exemption (due to the Section I(g) disqualification provision) without receiving an individual prohibited transaction exemption from the Department.

6. On December 22, 2016, the Department granted PTE 2016–15 which permitted the JPMC Affiliated QPAMs and the JPMC Related QPAMs to continue to rely upon the relief provided in the QPAM exemption for a period of one year, from January 10, 2017 through January 9, 2018.⁷ Subsequently, on December 29, 2017, the Department granted PTE 2017–03, a second individual exemption that permitted the JPMC Affiliated QPAMs and the JPMC Related QPAMs to continue to rely upon the relief provided by the QPAM Exemption for a period of five years, from January 10, 2018 through January 9, 2023.⁸ PTEs 2016–15 and 2017–03 each contain a set of conditions that are designed to protect those Covered Plans that entrust their assets to a JPMC QPAM despite the serious nature of the Criminal Misconduct underlying the Conviction.

7. With PTEs 2016–15 and 2017–03, the Department decided to grant limited terms of relief despite the Applicant's request for an exemption that would cover the entire 10-year ineligibility period triggered by Section I(g). With the limited terms of relief, the Department reserved the right to review the JPMC QPAMs' adherence to the conditions set out in those exemptions.

8. On October 1, 2021, the Applicant filed an application for exemptive relief

⁷ PTE 2016–15, 81 FR 94028 (December 22, 2016). PTE 2016–15 became effective on January 10, 2017 (the date on which the District Court.

⁸ PTE 2017–03, 82 FR 61816 (December 29, 2017).

that would permit the JPMC QPAMs to continue to rely upon the QPAM Exemption for a period of four years from January 10, 2023 (the expiration of PTE 2017–03), through January 9, 2027 (the conclusion of the Section I(g) 10-year ineligibility period). On February 7, 2022, the Applicant supplemented its application with the most recent audit report, as required under PTE 2017–03.

9. In support of its request to extend exemptive relief through the end of the disqualification period, the Applicant submits that the JPMC Affiliated QPAMs and the JPMC Related QPAMs have complied with all of the conditions of PTE 2017–03 and, therefore, should be permitted to continue to rely upon the QPAM Exemption in order to avoid substantial costs and other disruptions to Covered Plans that would otherwise occur in the absence of relief.

10. In the proposed exemption the Department discussed in greater detail the suite of conditions imposed by PTE 2017–03 and the JPMC QPAMs' compliance with each of those conditions. In the proposed exemption the Department also discussed the Applicant's representations regarding the potential for adverse consequences for Covered Plans if this exemption is not granted.

11. The Department encourages anyone reading this grant notice to consult the proposed exemption for a more complete discussion of all material facts underlying the Applicant's exemption request and the Department's decision to proceed with this grant notice.

Written Comments

In the proposed exemption, the Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption. All comments and requests for a hearing were due to the Department by December 19, 2022. The Department received four written comments and no hearing requests. Two written comments were received from the Applicant and two written comments were received from other interested persons. The comments are discussed in more detail below.

Comments From the Applicant

Comment 1: Certification of Audit Report

Section III(i)(7) of the proposed exemption requires a general counsel or senior executive at the JPMC Affiliated QPAMs to make certain certifications with respect to the audit report. Section III(i)(7), in pertinent part, states:

“Notwithstanding the above, no person, including any person referenced in the Statement of Facts that gave rise to the Conviction, who knew of, or should have known of, or participated in, any misconduct described in the Statement of Facts 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.”

The Applicant requests the Department to modify the language of Section III(i)(7) to make it consistent with PTE 2017–03 so that participation and knowledge relate to the misconduct that was the subject of the Conviction. The Applicant states that, while the plea agreement was not limited to a description of criminal conduct, only the foreign exchange antitrust violations were deemed criminal by the Department of Justice (DOJ). The Applicant requests that the final sentence of the condition be limited to “conduct underlying the Conviction.”

In addition, the Applicant notes that the reference to a Statement of Facts in Section III(i)(7) is unclear and should be removed, because there is no section entitled Statement of Facts in either the plea agreement or the information. Accordingly, the Applicant requests that Section III(i)(7), in pertinent part, be modified to read:

“. . . Notwithstanding the above, no person, including any person referenced in the plea agreement that gave rise to the Conviction, who knew of, or should have known of, or participated in, the misconduct underlying the Conviction may provide the certification required by this exemption, unless the person took active documented steps to stop the misconduct.”

Department's Response: The Department agrees with the Applicant's requests in part and disagrees in part. The Department declines to make the Applicant's requested change to Section III(i)(7). The officer tasked with reviewing the audit report and certifying that the JPMC Affiliated QPAMs have remedied any instance of noncompliance with the Policies and Training should not have knowingly participated in the misconduct identified by the DOJ. This includes the misconduct directly underlying the Conviction and also the tertiary misconduct cited by DOJ. The Department agrees, however, with the Applicant's request to strike the reference to “Statement of Facts.”

Comment 2: Indemnification

Section III(j)(2) of the proposed exemption provides: *Throughout the Exemption Period, with respect to any*

arrangement, agreement, or contract between a JPMC Affiliated QPAM and a Covered Plan, the JPMC Affiliated QPAM agrees and warrants: (2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from a JPMC Affiliated QPAM's violation of ERISA's fiduciary duties, as applicable, and of the prohibited transaction provisions of ERISA and the Code, as applicable; a breach of contract by the QPAM; or any claim arising out of the failure of such JPMC Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14, other than the Conviction. This condition applies only to actual losses caused by the JPMC Affiliated QPAM'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 as a result of a QPAM's inability to rely upon the relief in the QPAM Exemption.

The Applicant requests the Department to delete the expanded discussion of “actual losses” at the end of Section III(j)(2). The Applicant states that, although the Department uses the same definition, in different circumstances, in the recently published Proposed Amendment to Prohibited Transaction Class Exemption 84–14, several commenters asserted that this definition was too expansive, goes far beyond any transaction reliant on the QPAM Exemption, appears punitive with respect to the investment manager, and would represent a windfall to plan clients. If the convicted entity is the asset manager and it is no longer allowed to manage plan assets, the Applicant states that plans may well believe that the criminal conduct of their manager militates in favor of terminating the arrangement. The Applicant states that where the asset manager is not only not the convicted entity, but did not know of, have reason to know of, or participate in that conduct, the exemption effectively forces plans to terminate their arrangements, if only to have their market losses covered. According to the Applicant, it seems patently unfair to apply this definition only to the Applicant, in advance of a change in the rule applicable to all managers.

The Applicant further submits that for many JPMC Affiliated QPAMs who use the QPAM Exemption only occasionally or not at all for a particular account or strategy, there is no reason for the JPMC Affiliated QPAMs to be required to

indemnify a plan for losses with respect to transactions that never relied on the QPAM Exemption. Nor should the JPMC Affiliated QPAMs be required to indemnify for a new manager search when under the provisions of ERISA, the plan is not required to terminate its arrangement with the JPMC Affiliated QPAM.⁹

The Applicant states that the potential liability exposure associated with the broad and vague indemnification requirements is extensive and ambiguous and it is not commercially reasonable to include indemnity provisions of this magnitude. According to the Applicant, this new burden will likely impact the fees and expenses managers charge plans for their services due to, among other things, higher compliance and liability insurance costs. The Applicant states that imposing new and distinct penalties for loss of eligibility for one specific exemption when that exemption may not have been used at all for the transaction at issue is arbitrary and unwarranted.

Department's Response: The Department declines to make the requested change. The Department views the new language as a clarification of the term "actual losses" as contemplated by Section III(j)(2). In the event a JPMC Affiliated QPAM is no longer able to rely on the QPAM Exemption, Section III(j)(2) allows Covered Plans to prudently manage their plans without needing to consider the costs caused by the QPAM's own violations, including costs resulting from unwinding transactions and transitioning plan assets to a new manager (as these costs will be borne by the QPAM and not the Covered Plan).

In the Department's view, it is important that plans have the option to take their business elsewhere when parties fail to meet the conditions of the exemption and should not be locked into disadvantageous relationships based on the cost of unwinding transactions—a cost that would not have been incurred if there had been full compliance with the exemption. In addition, the Department notes that nothing in this exemption prevents the JPMC Affiliated QPAMs from entering

⁹ The Department notes that under this exemption a JPMC Affiliated QPAM may disclaim reliance on QPAM status in a written modification of a contract, arrangement, or agreement with a Covered Plan, where the modification is made in a bilateral document signed by the client, the client's attention is specifically directed toward the disclaimer, and the client is advised in writing that, with respect to any transaction involving the client's assets, the JPMC Affiliated QPAM will not represent that it is a QPAM, and will not rely on the relief described in PTE 84–14.

into indemnification arrangements with affiliates to manage circumstances where an affiliate causes the loss of another affiliate's QPAM status.

Comment 3: Entities in Corporate Structure

Section III(l) of the proposed exemption states: *The JPMC Affiliated QPAM 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, during the Exemption Period, an entity within the JPMC corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Conviction), relief in this exemption would terminate immediately.*

The Applicant submits that the language, "an entity within the JPMC corporate structure," was intended to mean an affiliate of the JPMC Affiliated QPAMs within the meaning of Section VI(d) of the QPAM Exemption, because this latter formulation is used throughout PTE 2017–03. The Applicant states that the use of alternative language will be confusing and ambiguous and urges the Department to use the language used elsewhere in PTE 2017–03 instead. Accordingly, the Applicant requests that Section III(l), in pertinent part, be modified to read:

. . . If, during the Exemption Period, an affiliate of the JPMC Affiliated QPAMs (as defined in Section VI(d) of PTE 84–14)¹⁰ is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Conviction), relief in this exemption would terminate immediately;

Department's Response: The Department agrees with the Applicant's requested change and has amended Section III(l) accordingly.

Comment 4: Deferred Prosecution Agreement

Section III(u) of the proposed exemption provides: *(u) Other than former employees who worked on the Precious Metals Desk and U.S. Treasuries Desk within the CIB in the*

¹⁰ For purposes of Section I(g) of the QPAM Exemption, an "affiliate" of a person means—(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.

Global Markets division, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, agents and employees of such QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not know of, did not have reason to know of, and did not participate in the conduct underlying the September 29, 2020, deferred prosecution agreement entered into between the Department of Justice and JPMC, JPMorgan Chase Bank, and JPMS (the DPA). Further, any other party engaged on behalf of the JPMC Affiliated QPAMs and JPMC Related QPAMs who had responsibility for or exercised authority in connection with the management of plan assets did not know or have reason to know of and did not participate in the criminal conduct that is the subject of the DPA.

Section III(v) of the proposed exemption provides: *(v) Apart from a non-fiduciary line of business within JPMorgan Chase Bank, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, and agents, and employees of such JPMC QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the conduct underlying the DPA. Further, any other party engaged on behalf of the JPMC Affiliated QPAMs and the JPMC Related QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not receive direct compensation, or knowingly receive indirect compensation, in connection with the conduct underlying the DPA.*

The Applicant requests that these conditions be modified to carve out a nonfiduciary line of business in JPMorgan Chase Bank and J.P. Morgan Securities LLC (JPMS). In connection with PTE 2017–03, the Department included an exception for an individual who worked for a non-fiduciary line of business within JPMorgan Chase Bank in Sections (a) and (b)—conditions that relate to the conduct underlying the Conviction—to ensure that the conditions accurately reflected the plea agreement could be met. The Applicant asserts that the new conditions in this exemption relating to the DPA should use similar language relating to a non-fiduciary line of business within JPMorgan Chase Bank and JPMS.

Accordingly, the Applicant requests that Sections III(u) and (v), in pertinent part, be modified to read:

(u) Apart from a non-fiduciary line of business within JPMorgan Chase Bank

and JPMS, and except as set forth in the Resolution Documents . . . Resolution Documents' refers to settlements entered into with the CFTC and SEC in connection with related, parallel proceedings on the same date as the DPA.

(v) Apart from a non-fiduciary line of business within JPMorgan Chase Bank and JPMS, . . .

Department's Response: The Department declines to make the requested change to proposed condition (u). Proposed condition (u) mirrors condition (a) in PTE 2017–03, because both conditions provide, in general terms, that except for a limited number of former employees, the JPMC Affiliated QPAMs and their employees did not know of nor have reason to know of the criminal conduct that is the subject of the relevant misconduct and did not participate in it. Further, the Department is concerned that the Applicant's "Resolution Documents" exception may effectively allow individuals who had knowledge of the misconduct that is the subject of the DPA to continue to work in the asset management lines of businesses of JPMC Affiliated QPAMs.

The Department is revising condition (v) consistent with the Applicant's request (*i.e.*, by adding an exception to the non-fiduciary business lines of business of JPMS), to more accurately reflect the terms of and parties to the DPA.

Comment 5: Timing of Audit

Section III(i)(1) of the proposal states: *Each JPMC Affiliated QPAM must submit to an audit conducted every two years by an independent auditor . . . Each audit must cover the preceding consecutive twelve (12) month period. The first audit must cover the period from July 10, 2022, through July 9, 2023, and must be completed by December 31, 2023. The second audit must cover the period from July 1, 2024, through June 30, 2025, and must be completed by December 31, 2025. The third audit must cover the period from July 1, 2026, through January 9, 2027, and must be completed by July 8, 2027.*

The Applicant requests that the Department revert to the January 9 completion date for each audit that was specified in PTE 2017–03, instead of December 31.

The Applicant submits that there is no material advantage to plans in reducing the audit timeline and a December 31 deadline for the first two audits under the proposed exemption would also pose logistical challenges because of the holidays, both for the Auditor and the QPAMs.

Department's Response: The Department agrees with the Applicant's requested change and has amended Section III(i)(1) accordingly.

Comment 6: Definition of JPMC

Section I(d) of the proposed exemption provides: *The term "JPMC" means JPMorgan Chase and Co.*

The Applicant states that PTE 2017–03 includes clarifying language that the definition of "JPMC" refers to the parent entity but does not include any subsidiaries or other affiliates. The Applicant states that a change in the definition of "JPMC" will be confusing because certain conditions apply specifically to the parent entity (JPMC), rather than subsidiaries or other affiliates, and the deletion of the clarifying language in the definition would inject ambiguity into such conditions and, for certain conditions, render them incapable of administration.

Accordingly, the Applicant requests that Section I(d) of the proposal be modified to read: *The term "JPMC" means JPMorgan Chase and Co., the parent entity, but does not include any subsidiaries or other affiliates.*

Department's Response: The Department agrees with the Applicant's requested change and has amended Section I(d) accordingly.

Comment 7: Timing of Policies and Training

Section III(h)(1) of the proposed exemption provides, in pertinent part: *Each JPMC Affiliated QPAM must maintain, adjust (to the extent necessary), implement, and follow the written policies and procedures (the Policies).*

Section III(h)(2) of the proposed exemption provides, in pertinent part: *Each JPMC Affiliated QPAM must continue to implement a training program (the Training) conducted at least annually for all relevant JPMC Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel . . .*

The Applicant notes that as written, there is no period provided for modifications required by the proposal (or a final exemption), which effectively requires any revisions to be completed and implemented before the effective date of a final exemption. The Applicant requests that Section III(h)(1) be amended to allow two months for any required modifications to be made to the Policies to the extent any modifications are required by this exemption.

With respect to the timing of the Training, the Applicant requests that the

final annual Training under PTE 2017–03 must be completed by July 9, 2023, and the first annual Training under a final exemption must be completed by July 9, 2024.

Accordingly, the Applicant requests that Sections III(h)(1) and (2), in pertinent part, be modified to read:

(h)(1) By a date that is two (2) months after the effective date of this exemption, each JPMC Affiliated QPAM must maintain, adjust (to the extent necessary), implement, and follow the written policies and procedures (the Policies) . . .

(h)(2) . . . The final annual training under PTE 2017–03 must be completed by all relevant JPMC Affiliated QPAM personnel by July 9, 2023, and the first Training under this exemption must be completed by all relevant JPMC Affiliated QPAM personnel by July 9, 2024.

Department's Response: The Department agrees with the Applicant's requested change and has amended Section III(h)(1) and (2) accordingly.

Comment 8: Required Notices

Section III(j)(7) of the proposed exemption provides: *Each JPMC Affiliated QPAM must provide a notice of its obligations under this Section I(j) to each Covered Plan. For all other prospective Covered Plans, the JPMC Affiliated QPAM must agree to its obligations under this Section I(j) in an updated investment management agreement between the JPMC Affiliated QPAM and such clients or other written contractual agreement. This condition will be deemed met for each Covered Plan that received a notice pursuant to PTE 2016–15 or PTE 2017–03 that meets the terms of this condition. This condition will also be met where the JPMC Affiliated QPAM previously agreed to the same obligations required by this Section I(j) in an updated investment management agreement between the JPMC Affiliated QPAM and a Covered Plan. Notwithstanding the above, a JPMC Affiliated QPAM will not violate this condition solely because a Covered Plan refuses to sign an updated investment management agreement.*

Section III(k) of the proposed exemption provides: *Within 60 days after the effective date of this exemption, each JPMC Affiliated QPAM 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 a JPMC Affiliated QPAM, or the sponsor of an investment fund in any case where a JPMC Affiliated QPAM acts as a subadviser to the investment fund in which such ERISA-covered plan and IRA invests. All prospective Covered Plan clients that enter into a written asset or investment management agreement with a JPMC Affiliated QPAM after a date that is 60 days after the effective date of this exemption must receive a copy of the notice of the exemption, the Summary, and the Statement before, or contemporaneously with, the Covered Plan's receipt of a written asset or investment management agreement from the JPMC Affiliated QPAM. The notices may be delivered electronically (including by an email that has a link to the exemption). Notwithstanding the above, a JPMC Affiliated QPAM will not violate the condition solely because a Covered Plan refuses to sign an updated investment management agreement.

For Covered Plan clients that first become clients on or after January 10, 2023, but before May 10, 2023, a JPMC Affiliated QPAM will meet the requirements of this Section (k) to the extent the investment management or comparable agreements with the JPMC Affiliated QPAM includes notification language referencing PTE 2017-03 and a link to the required materials, provided the website containing such materials stipulated under the notification conditions in this proposed exemption, if granted, is updated, as necessary, by May 10, 2023.

The Applicant requests clarification that to the extent a Covered Plan client received notices as required pursuant to Sections I(j)(7) and I(k) of PTE 2017-03, a new notice would not be required, provided the website currently containing the materials stipulated under such sections of PTE 2017-03 is updated, as necessary, to incorporate any modifications to the comparable provisions in this exemption (e.g., Sections III(j)(7) and III(k)), by May 10, 2023 (four months following the effective date of this exemption, if granted).

The Applicant states that if the expanded definition of "actual losses" in Section III(j)(2) is the only substantive amendment to this condition, as compared against PTE 2017-03, a repeat notice due solely to this modification would be likely to confuse Covered Plans without a material benefit.

The Applicant states that it is likely that many clients that retain the JPMC Affiliated QPAMs shortly after the effective date of the final exemption (January 10, 2023) will enter into investment management or comparable agreements with the JPMC Affiliated QPAMs that continue to include notification language referencing PTE 2017-03 and a link to the required materials thereunder. As the Department did through email clarification when PTE 2017-03 was published, the Applicant requests that it should also be considered to have met the notification requirements in the exemption for such clients that first become Covered Plan clients on or after January 10, 2023, but before May 10, 2023, to the extent the investment management or comparable agreements with the JPMC Affiliated QPAMs include notification language referencing PTE 2017-03 and a link to the required materials, provided the website containing such materials stipulated under the notification conditions in the exemption is updated, as necessary, by May 10, 2023. The Applicant expects that clients that first become Covered Plan clients on or after May 10, 2023 will enter into agreements with the JPMC Affiliated QPAMs that include notification language specifically referencing this exemption, including links to the updated website containing the materials stipulated under the conditions of this exemption.

Accordingly, the Applicant requests that Section III(j)(7) be modified to read:

(7) Each JPMC Affiliated QPAM must provide a notice of its obligations under this Section III(j) to each Covered Plan. This condition will be deemed met for: (i) each Covered Plan that received a notice pursuant to Section I(i) of PTE 2016-15 or Section I(j)(7) of PTE 2017-03 prior to January 10, 2023 (the effective date of this exemption), and (ii) each Covered Plan that receives a notice on or after January 10, 2023, but before May 10, 2023, pursuant to an investment management or comparable agreement with the JPMC Affiliated QPAM that includes notification language referencing the obligations set forth in Section I(j) of PTE 2017-03 and a link to the required materials thereunder, provided that the website containing the materials stipulated under such section of PTE 2017-03 is updated, as necessary, to incorporate any modifications to the comparable provisions within this Section III(j)(7) by May 10, 2023 (four months following the effective date of this exemption). For Covered Plans that enter into an investment management or comparable agreement with the JPMC Affiliated

QPAM on or after May 10, 2023, the JPMC Affiliated QPAM must agree to its obligations under this Section III(j) within such investment management agreement between the JPMC Affiliated QPAM and such clients or other written contractual agreement (i.e., such agreements will include notification language referencing the obligations under this exemption—not PTE 2017-03—and a link to the required materials hereunder). This condition will be deemed met for each Covered Plan that received a notice pursuant to PTE 2016-15 or PTE 2017-03. This condition will also be met where the JPMC Affiliated QPAM previously agreed to a substantially similar obligation required by this Section III(j) in an updated investment management agreement between the JPMC Affiliated QPAM and a Covered Plan. Notwithstanding the above, a JPMC Affiliated QPAM will not violate this condition solely because a Covered Plan refuses to sign an updated investment management agreement;

The Applicant also requests that Section III(k) be modified to read:

Each JPMC Affiliated QPAM must provide a copy 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 (collectively, the "Exemption Notice Materials"), to each Covered Plan that has entered into a written asset or investment management agreement with a JPMC Affiliated QPAM, or the sponsor of an investment fund in any case where a JPMC Affiliated QPAM acts as a subadviser to the investment fund in which such ERISA-covered plan and IRA invests. This condition will be deemed met for: (i) each Covered Plan that received a notice pursuant to Section I(k) of PTE 2017-03 prior to January 10, 2023 (the effective date of this exemption), and (ii) each Covered Plan that receives a notice on or after January 10, 2023, but before May 10, 2023, pursuant to an investment management or comparable agreement with the JPMC Affiliated QPAM that includes notification language referencing the materials set forth in Section I(k) of PTE 2017-03 and a link to the required materials thereunder, provided that the website containing the materials stipulated under such section of PTE 2017-03 is updated, as necessary, to incorporate the Exemption Notice Materials specified in this Section III(k) by May 10, 2023 (four months following the effective date of the exemption). For

Covered Plan clients that enter into a written investment management or comparable agreement with a JPMC Affiliated QPAM on or after May 10, 2023, the JPMC Affiliated QPAM will provide the Exemption Notice Materials described in this Section III(k) within such investment management agreement between the JPMC Affiliated QPAM and such clients or other written contractual agreement (i.e., such agreements will include language referencing the Exemption Notice Materials under this Section III(k) of exemption—not PTE 2017–03—and a link to the website where such Exemption Notice Materials may be accessed). The notices may be delivered electronically (including by a link to the exemption). Notwithstanding the above, a JPMC Affiliated QPAM will not violate the condition solely because a Covered Plan refuses to sign an updated investment management agreement;

Department's Response: The Department declines to make the requested changes with one exception. The Applicant has not demonstrated that simply updating a website without sending a corresponding notification of the update to Covered Plans would represent adequate notice. Without a corresponding notice that directs Covered Plans to access the updated website, Covered Plans may never become aware that (a) a new exemption has been published; or (b) that the obligations of the JPMC Affiliated under Section III(j) have been modified.

The Department confirms that the Applicant will meet the notification requirements in the exemption with respect to such clients that first become Covered Plan clients on or after January 10, 2023, but before May 10, 2023, to the extent the investment management or comparable agreements with the JPMC Affiliated QPAMs include notification language referencing PTE 2017–03 and a link to the required materials, provided the website containing such materials stipulated under the notification conditions in the exemption is updated, as necessary, by May 10, 2023.

The Department notes that with respect to the notice of obligations requirement in Section III(j)(7), all Covered Plans must receive a notice that includes the clarified definition of actual losses as stated in Section III(j)(2) of this exemption (PTE 2023–01). The Department notes that with respect to the notice of obligations requirement in Section III(j)(7), all Covered Plans must receive a notice that includes the clarified definition of actual losses as provided in Section III(j)(2) of this exemption (PTE 2023–01). Covered

Plans that previously received a notice in connection with PTEs 2016–15 or 2017–03 must receive a new notice if the notice they previously received did not include the definition of actual losses provided in this exemption.

Comment 9: Appointment of Compliance Officer

Section III(m) of the proposed exemption provides, in pertinent part: *Within 60 days after the effective date of this exemption, each JPMC Affiliated QPAM must designate a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein.*

The Applicant requests confirmation that there is no need to reappoint the Compliance Officer appointed pursuant to PTE 2017–03. In addition, the Applicant notes that PTE 2017–03 required JPMC to designate the Compliance Officer, rather than the Affiliated QPAMs or relevant lines of business. The Applicant requests confirmation that the JPMC Affiliated QPAMs or lines of business need not reappoint the Compliance Officer appointed by JPMC pursuant to PTE 2017–03.

Department's Response: The Department confirms that there is no need to reappoint the Compliance Officer appointed pursuant to PTE 2017–03.

Comment 10: Exemption Review

Section III(m)(2)(i) of the proposed exemption provides, in pertinent part: *The annual Exemption Review includes a review of the JPMC Affiliated QPAM's compliance with and effectiveness of the Policies and Training and of the following: . . . the most recent Audit Report issued pursuant to this exemption or PTE 2017–03; . . .*

The Applicant submits that the Department did not intend for this condition to require the JPMC Affiliated QPAMs to comment on the audit report. Instead, the Applicant believes that the Department intended to require the Compliance Officer to comment on any violations raised by the audit. Accordingly, the Applicant requests that Section III(m)(2)(i), in pertinent part, be modified to read: *The annual Exemption Review includes a review of the JPMC Affiliated QPAM's compliance with and effectiveness of the Policies and Training and of the following: . . . any compliance failures referenced in the most recent Audit Report issued pursuant to this exemption or PTE 2017–03; . . .*

Department's Response: The Department believes the Applicant's

requested change is too narrow. However, the Department sees merit in focusing the JPMC Affiliated QPAM's review on each material error, recommendation, and compliance failure identified in the Audit Report, and has modified the exemption accordingly.

Comment 11: Direction of Investment Fund

Section III(d) of the proposed exemption provides, in pertinent part: *At all times during the Exemption Period, no JPMC Affiliated QPAM will use its authority or influence to direct an "investment fund" (as defined in Section VI(b) of PTE 84–14) that is subject to ERISA or the Code and managed by such JPMC Affiliated QPAM in reliance on PTE 84–14, or with respect to which a JPMC Affiliated QPAM has expressly represented to a Covered Plan that it qualifies as a QPAM or relies on the QPAM class exemption, to enter into any transaction with JPMC, or to engage JPMC 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.*

The Applicant suggests that this condition should be simplified by referring to "Covered Plan," as opposed to repeating in this provision the definition of "Covered Plan" already set forth in Section I(b).¹¹ As the language used in Section III(d) is substantively identical, using the term "Covered Plan" in this condition would achieve the same result.

Department's Response: The Department agrees with the Applicant's requested change and has amended Section III(d) accordingly.

Comment 12: Transition for Newly Acquired Asset Managers

The Applicant states that from time to time, JPMC acquires asset managers that rely, as of the effective date of the acquisition, on the QPAM Exemption. According to the Applicant, when a manager is in the process of being acquired, it is generally unwilling, or practically unable, to communicate with its clients regarding all the terms of the

¹¹ Section I(b) defines a "Covered Plan" to mean "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 a JPMC Affiliated QPAM relies on PTE 84–14, or with respect to which a JPMC Affiliated QPAM (or any JPMC affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84–14)."

acquiror's individual QPAM exemption, e.g., in case the transaction does not close. In addition, the associated information and documentation may raise questions from plan clients that the manager being acquired cannot answer, and it would be inappropriate to allow the acquiror to talk directly to the manager's clients prior to close.

The Applicant states that, while the exemption has many requirements, all of which must be contained in the policies and procedures of the newly acquired manager, the acquired entity is typically unable to change its policies and procedures until the transaction has closed. Only at the acquisition's close does the acquired manager try to meld new policies and procedures related to the QPAM Exemption to its own policies.

The Applicant submits that the consequences for violating the exemption are severe, and the acquired manager would be understandably reluctant to accept these liabilities until it had trained its own employees. Further, the Applicant expects that it would be quite challenging for the independent auditor to insert an entirely new entity, with which it has no familiarity, into its audit testing in real-time (to the extent it even has the necessary resources to expand its audit and can confirm it remains independent from the acquired manager).

The Applicant states that in the prior and current exemptions (PTEs 2016–15 and 2017–03) the Department allowed for six months to comply with all of the exemption conditions at the outset. However, for a newly acquired manager, there is no time provided at all. The Applicant asserts that it is nearly impossible to come into full compliance with the exemption before any such acquisition closes, given all of the conditions regarding notices, training, policies, compliance regimes, etc.

As stated by the Applicant, if full compliance with the exemption is not in place as of an acquisition's closing date, the acquired manager may not be able to transact in reliance on PTE 84–14 on behalf of its plan clients, even where it was doing so immediately prior to the closing date. For plans managed by the acquired manager, transactions may have to be terminated, strategies changed, and guidelines amended, causing disruption to such plans through no fault of their own.

The Applicant requests that with respect to any newly acquired manager relying on PTE 84–14, the operative terms of the exemption shall first apply after a date that is six months after the closing date for the acquisition. In addition, the acquired manager could

continue to rely on PTE 84–14 without conditions during that six-month period, which can be used to provide the necessary notices to the new affiliate's clients, provide training to the new affiliate's employees, draft policies and procedures, accommodate the audit schedule, and make sure that systems are in place to implement the ERISA policies, etc.

The Applicant requests the addition of the following language to the operative language of the exemption:

With respect to an asset manager that becomes a JPMC Affiliated QPAM after the effective date of this exemption by virtue of being acquired (in whole or in part) by JPMC or a subsidiary or affiliate of JPMC, the newly-acquired JPMC Affiliated QPAM would not be precluded from relying on the exemptive relief provided by PTE 84–14 notwithstanding the Conviction as of the closing date for the acquisition; however, the operative terms of the exemption shall not apply to the newly-acquired JPMC Affiliated QPAM until a date that is six (6) months after the closing date for the acquisition. To that end, the newly-acquired JPMC Affiliated QPAM will initially submit to an audit pursuant to Section III(i) of this exemption as of the first audit period that begins on a date following the date that is six (6) months after the closing date for the acquisition.

Department's Response: The Department agrees, in part, with the Applicant's requested change. However, the Department believes any new JPMC Affiliated QPAM must be subject to an audit covering the entirety of the JPMC QPAM's reliance on this exemption. Also, the newly-acquired JPMC Affiliated QPAM must be included in the first audit that occurs following the QPAM's acquisition. The Department is adding a new condition (w) in accordance with the Applicant's request, with an amended final sentence that reads:

. . . To that end, the newly-acquired JPMC Affiliated QPAM will initially submit to an audit pursuant to Section III(i) of this exemption as of the first audit period that begins following the closing date for the acquisition. The period covered by the audit must begin on the date on which the JPMC Affiliated QPAM was acquired.

Number of Convictions

The Proposal references "Convictions" in Section III(n). Because a single conviction necessitated the need for exemptive relief, the Applicant requests that this reference to "Convictions" be replaced by "the Conviction."

Department's Response: The Department agrees with the Applicant's requested change and has amended Section III(n) accordingly.

Comments From the Public

The Department received one written comment in support of the exemption and another written comment requesting that the exemption be denied. The comment requesting a denial however did not raise any substantive issues. The Department also received multiple phone calls from interested persons requesting an explanation of the exemption.

Comment From the Department

In Section III(j) of this grant notice, the Department changed several references from "Section I" to Section "III."

The Department also notes that the application file number was misstated in the proposed exemption as D–12035. The correct application file for this exemption is D–12064.

The complete application file (D–12064) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, please refer to the notice of proposed exemption published on October 20, 2022, at 87 FR 63802.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under ERISA Section 408(a) does not relieve a fiduciary or other party in interest from certain requirements of other ERISA provisions, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA Section 404, which, among other things, require a fiduciary to discharge their duties respecting the plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion in accordance with ERISA Section 404(a)(1)(B).

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

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

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

Accordingly, the following exemption is granted under the authority of ERISA Section 408(a), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B:¹²

Exemption

Section I. Definitions

(a) The term “Conviction” means the judgment of conviction against JPMC for violation of the Sherman Antitrust Act, 15 U.S.C. 1, entered in the District Court for the District of Connecticut (the District Court) (case number 3:15-cr-79-SRU). For all purposes under this exemption, “conduct” of any person or entity that is the “subject of [a] Conviction” encompasses the conduct described in Paragraph 4(g)–(i) of the Plea Agreement filed in the District Court in case number 3:15-cr-79-SRU (the Plea Agreement).

(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 a JPMC Affiliated QPAM relies on PTE 84–14, or with respect to which a JPMC Affiliated QPAM (or any JPMC affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84–14). A Covered Plan does not include an ERISA-covered plan or IRA to the extent the JPMC Affiliated QPAM has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA. Further, a JPMC Affiliated QPAM may disclaim reliance on QPAM status or PTE 84–14 in a written modification of a contract, arrangement, or agreement with an ERISA-covered plan or IRA, where the modification is made in a bilateral document signed by the client, the client’s attention is specifically directed toward the

disclaimer, and the client is advised in writing that, with respect to any transaction involving the client’s assets, the JPMC Affiliated QPAM will not represent that it is a QPAM, and will not rely on the relief described in PTE 84–14.

(c) The term “Exemption Period” means January 10, 2023, through January 9, 2027.

(d) The term “JPMC” means JPMorgan Chase and Co., the parent entity, but does not include any subsidiaries or other affiliates.

(e) The term “JPMC Affiliated QPAM” means a “qualified professional asset manager,” as defined in Section VI(a) of PTE 84–14, that relies on the relief provided by PTE 84–14 or represents to Covered Plans that it qualifies as a QPAM, and with respect to which JPMC is a current or future “affiliate” (as defined in Section VI(d)(1) of PTE 84–14). The term “JPMC Affiliated QPAM” excludes the parent entity, JPMC, the entity implicated in the criminal conduct that is the subject of the Conviction.

(f) The term “JPMC 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 whom JPMC owns a direct or indirect five percent or more interest but is not an “affiliate” (as defined in Section VI(d)(1) of PTE 84–14).

(g) The term “Newly Acquired JPMC Affiliated QPAM” means an asset manager that becomes a JPMC Affiliated QPAM after the effective date of this exemption by virtue of being acquired (in whole or in part) by JPMC or a subsidiary or affiliate of JPMC.

Section II. Covered Transactions

Under this exemption, the JPMC Affiliated QPAMs and the JPMC Related QPAMs, as defined in Sections I(e) and I(f), respectively, 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,¹³ provided that the

¹³ Section I(g) of PTE 84–14 generally provides relief only if “[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 violation of the Sherman Antitrust Act, Title 15 United States Code, Section 1.

conditions set forth in in Section III below are satisfied.

Section III. Conditions

(a) Other than a single individual who worked for a non-fiduciary business within JPMorgan Chase Bank and who had no responsibility for, nor exercised any authority in connection with, the management of plan assets, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, agents other than JPMC, and employees of such QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not know of, did not have reason to know of, and did not participate in the criminal conduct that is the subject of the Conviction. Further, any other party engaged on behalf of the JPMC Affiliated QPAMs and JPMC Related QPAMs who had responsibility for or exercised authority in connection with the management of plan assets did not know or have reason to know of and did not participate in the criminal conduct that is the subject of the Conviction. For purposes of this exemption, “participate in” refers not only to active participation in the criminal conduct of JPMC 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) Apart from a non-fiduciary line of business within JPMorgan Chase Bank, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, and agents other than JPMC, and employees of such JPMC QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the Conviction. Further, any other party engaged on behalf of the JPMC Affiliated QPAMs and the JPMC Related QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct of that is the subject of the Conviction;

(c) The JPMC Affiliated QPAMs do 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.

¹² 76 FR 66637, 66644 (October 27, 2011).

(d) At all times during the Exemption Period, no JPMC Affiliated QPAM will use its authority or influence to direct a Covered Plan to enter into any transaction with JPMC, or to engage JPMC to provide any service to such Covered Plan, for a direct or indirect fee borne by such Covered Plan, 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 a JPMC Affiliated QPAM or a JPMC Related QPAM to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction;

(f) A JPMC Affiliated QPAM or a JPMC Related QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or Code Section 4975 (an IRA) in a manner that it knew or should have known would: further the criminal conduct that is the subject of the Conviction; or cause the JPMC Affiliated QPAM, the JPMC Related QPAM, or their 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, JPMC 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; provided, however, that JPMC will not be treated as violating the conditions of this exemption solely because it acted as an investment advice fiduciary within the meaning of ERISA Section 3(21)(A)(ii) or Code Section 4975(e)(3)(B);

(h)(1) By a date that is two (2) months after the effective date of this exemption, each JPMC Affiliated QPAM must maintain, adjust (to the extent necessary), implement, 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 the JPMC Affiliated QPAM are conducted independently of the corporate management and business activities of JPMC;

(ii) The JPMC Affiliated QPAM 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) The JPMC Affiliated QPAM does not knowingly participate in any other

person's violation of ERISA or the Code with respect to Covered Plans;

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

(v) To the best of the JPMC Affiliated QPAM's knowledge at the time, the JPMC Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to Covered Plans or make material misrepresentations or omit material information in its communications with Covered Plans;

(vi) The JPMC Affiliated QPAM 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 QPAM reasonably should have known of the noncompliance (whichever is earlier), and any such violation or compliance failure not so corrected is reported, upon the discovery of such failure to so correct, in writing, to the head of compliance and the general counsel (or their functional equivalent) of the relevant line of business that engaged in the violation or failure, and the independent auditor responsible for reviewing compliance with the Policies. A JPMC Affiliated QPAM 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 the QPAM 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) Each JPMC Affiliated QPAM must continue to implement a training program (the Training) conducted at least annually for all relevant JPMC Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The final annual training under PTE 2017–03 must be completed by all relevant JPMC Affiliated QPAM personnel by July 9, 2023, and the first Training under this exemption must be completed by all relevant JPMC Affiliated QPAM personnel by July 9, 2024. The Training required under this exemption may be

conducted electronically and must: (i) at a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing; and (ii) be conducted by a professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code to perform the tasks required by this exemption;

(i)(1) Each JPMC Affiliated QPAM must submit to an audit conducted every two years by an independent auditor who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of and each JPMC Affiliated QPAM's compliance with the Policies and Training conditions described herein. The audit requirement must be incorporated in the Policies. Each audit must cover the preceding consecutive twelve (12) month period. The first audit must cover the period from July 10, 2022, through July 9, 2023, and must be completed by January 9, 2024. The second audit must cover the period from July 1, 2024, through June 30, 2025, and must be completed by January 9, 2026. The third audit must cover the period from July 1, 2026, through January 9, 2027, and must be completed by July 8, 2027;

(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, each JPMC Affiliated QPAM and, if applicable, JPMC, 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 each JPMC Affiliated QPAM 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 each JPMC Affiliated QPAM's operational compliance with the Policies and Training conditions. In this regard, the auditor must test, for each QPAM, a sample of the QPAM's transactions involving Covered Plans sufficient in size and nature to afford the auditor a reasonable basis to determine the QPAM's operational compliance with the Policies and Training;

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

(i) the adequacy of each JPMC Affiliated QPAM's Policies and Training; each JPMC Affiliated QPAM's compliance with the Policies and Training conditions; the need, if any, to strengthen such Policies and Training; and any instance of the respective JPMC Affiliated QPAM's noncompliance with the written Policies and Training described in Section III(h) above. The JPMC Affiliated QPAM 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 of the respective JPMC Affiliated QPAM. Any action taken, or the plan of action to be taken, by the respective JPMC Affiliated QPAM 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 the respective JPMC Affiliated QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating

noncompliance. In this last regard, any finding that a JPMC Affiliated QPAM has complied with the requirements under this subparagraph must be based on evidence that the particular JPMC Affiliated QPAM has actually implemented, maintained, and followed the Policies and Training required by this exemption. Furthermore, the auditor must not solely rely on the Annual 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 most recent Annual Review described in Section III(m);

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

(7) With respect to each Audit Report, the general counsel, or one of the three most senior executive officers of the line of business engaged in discretionary asset management services through the JPMC Affiliated QPAM with respect to which the Audit Report applies must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption and that to the best of such officer's knowledge at the time, the JPMC Affiliated QPAM 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 referenced in the Plea Agreement that gave rise to the Conviction, who knew of, or should have known of, or participated in, any misconduct described in the Plea Agreement 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;

(8) The Risk Committee of JPMC's Board of Directors is provided a copy of each Audit Report, and a senior

executive officer with a direct reporting line to the highest-ranking legal compliance officer of JPMC must review the Audit Report for each JPMC Affiliated QPAM and certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report;

(9) Each JPMC Affiliated QPAM provides 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, each JPMC Affiliated QPAM must make its Audit Report unconditionally available, electronically or otherwise, for examination upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan;

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

(j) Throughout the Exemption Period, with respect to any arrangement, agreement, or contract between a JPMC Affiliated QPAM and a Covered Plan, the JPMC Affiliated QPAM 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 a JPMC Affiliated QPAM's violation of ERISA's fiduciary duties, as applicable, and of the

prohibited transaction provisions of ERISA and the Code, as applicable; a breach of contract by the QPAM; or any claim arising out of the failure of such JPMC Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14, other than the Conviction. This condition applies only to actual losses caused by the JPMC Affiliated QPAM's violations. The term Actual Losses includes, but is not limited to, losses and related costs arising from unwinding transactions with third parties and from transitioning Plan assets to an alternative asset manager as well as costs associated with any exposure to excise taxes under Code section 4975 as a result of a QPAM's inability to rely upon the relief in the QPAM Exemption.

(3) Not to require (or otherwise cause) the Covered Plan to waive, limit, or qualify the liability of the JPMC Affiliated QPAM 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 the JPMC Affiliated QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by the QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any 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 liability of the JPMC Affiliated QPAM for a violation of such agreement's terms. To the extent consistent with ERISA Section 410, however, this provision does not prohibit disclaimers for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of JPMC and its affiliates, or damages arising from acts outside the control of the JPMC Affiliated QPAM; and

(7) Each JPMC Affiliated QPAM must provide a notice of its obligations under this Section III(j) to each Covered Plan. For all other prospective Covered Plans, the JPMC Affiliated QPAM must agree to its obligations under this Section III(j) in an updated investment management agreement between the JPMC Affiliated QPAM and such clients or other written contractual agreement. This condition will be deemed met for each Covered Plan that received a notice pursuant to PTE 2016–15 or PTE 2017–03 that meets the terms of this condition. This condition will also be met where the JPMC Affiliated QPAM previously agreed to the same obligations required by this Section III(j) in an updated investment management agreement between the JPMC Affiliated QPAM and a Covered Plan. Notwithstanding the above, a JPMC Affiliated QPAM 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, each JPMC Affiliated QPAM 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 a JPMC Affiliated QPAM, or the sponsor of an investment fund in any case where a JPMC Affiliated QPAM acts as a sub-adviser to the investment fund in which such ERISA-covered plan and IRA invests. All prospective Covered Plan clients that enter into a written asset or investment management agreement with a JPMC Affiliated QPAM after a date that is 60 days after the effective date of this exemption must receive a copy of the notice of the exemption, the

Summary, and the Statement before, or contemporaneously with, the Covered Plan's receipt of a written asset or investment management agreement from the JPMC Affiliated QPAM. The notices may be delivered electronically (including by an email that has a link to the exemption). Notwithstanding the above, a JPMC Affiliated QPAM will not violate the condition solely because a Covered Plan refuses to sign an updated investment management agreement.

For Covered Plan clients that first become clients on or after January 10, 2023, but before May 10, 2023, a JPMC Affiliated QPAM will meet the requirements of this Section (k) to the extent the investment management or comparable agreements with the JPMC Affiliated QPAM includes notification language referencing PTE 2017–03 and a link to the required materials, provided the website containing such materials stipulated under the notification conditions in this exemption, if granted, is updated, as necessary, by May 10, 2023;

(l) The JPMC Affiliated QPAM 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, during the Exemption Period, an affiliate of the *JPMC Affiliated QPAMs (as defined in Section VI(d) of PTE 84–14)* is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Conviction), relief in this exemption would terminate immediately;

(m)(1) Within 60 days after the effective date of this exemption, each JPMC Affiliated QPAM must designate a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. For purposes of this condition (m), each relevant line of business within a JPMC Affiliated QPAM may designate its own Compliance Officer(s). Notwithstanding the above, no person, including any person referenced in the Statement of Facts that gave rise to the Plea Agreement, who knew of, or should have known of, or participated in, any misconduct described in the Statement of Facts, 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 each twelve-month period of the Exemption Period (the Exemption Review), to determine the adequacy and effectiveness of the implementation of the Policies and Training. 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 annual Exemption Review includes a review of the JPMC Affiliated QPAM's compliance with and effectiveness of the Policies and Training and of the following: any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the compliance and risk control function (or its equivalent) during the previous year; any material error, recommendation, and compliance failure identified in the most recent Audit Report; any material change in the relevant business activities of the JPMC Affiliated QPAMs; and any change to ERISA, the Code, or regulations related to fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of the JPMC Affiliated QPAMs;

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

instances of noncompliance in accordance with Section III(h) above;

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

(v) The annual Exemption Review, including the Compliance Officer's written Report, must be completed within three (3) months following the end of the period to which it relates. The annual Exemption Reviews under this exemption must cover the following periods: January 10, 2023 through December 31, 2023; January 1, 2024 through December 31, 2024; January 1, 2025 through December 31, 2025; and January 1, 2026 through January 9, 2027.

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

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

(p) Each JPMC Affiliated QPAM 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 the JPMC Affiliated QPAM relies upon the relief in this exemption;

(q) During the Exemption Period, JPMC 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 JPMC 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, each JPMC Affiliated QPAM, in its agreements with, or in other written disclosures provided to Covered Plans, will clearly and prominently inform Covered Plan clients of their right to obtain a copy of the Policies or a description (Summary Policies) which accurately summarizes key components of the JPMC Affiliated

QPAM's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within six (6) months following the end of the calendar year during which the Policies were changed. If the Applicant meets this disclosure requirement through Summary Policies, changes to the Policies shall not result in the requirement for a new disclosure unless, as a result of changes to the Policies, the Summary Policies are no longer accurate. 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;

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

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

(u) Other than former employees who worked on the Precious Metals Desk and U.S. Treasuries Desk within the CIB in the Global Markets division, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, agents and employees of such QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not know of, did not have reason to know of, and did not participate in the conduct underlying the September 29, 2020, deferred prosecution agreement entered into between the Department of Justice and JPMC, JPMorgan Chase Bank, and JPMS (the DPA). Further, any other party engaged on behalf of the JPMC Affiliated QPAMs and JPMC Related QPAMs who had responsibility for or exercised authority in connection with the management of plan assets did not know or have reason to know of and did not participate in the criminal conduct that is the subject of the DPA.

(v) Apart from a non-fiduciary line of business within JPMorgan Chase Bank and JPMS, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, and

agents, and employees of such JPMC QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the conduct underlying the DPA. Further, any other party engaged on behalf of the JPMC Affiliated QPAMs and the JPMC Related QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not receive direct compensation, or knowingly receive indirect compensation, in connection with the conduct underlying the DPA.

(w) With respect to an asset manager that becomes a JPMC Affiliated QPAM after the effective date of this exemption by virtue of being acquired (in whole or in part) by JPMC or a subsidiary or affiliate of JPMC (a “newly-acquired JPMC Affiliated QPAM”), the newly-acquired JPMC Affiliated QPAM would not be precluded from relying on the exemptive relief provided by PTE 84–14 notwithstanding the Conviction as of the closing date for the acquisition; however, the operative terms of the exemption shall not apply to the newly-acquired JPMC Affiliated QPAM until a date that is six (6) months after the closing date for the acquisition. To that end, the newly-acquired JPMC Affiliated QPAM will initially submit to an audit pursuant to Section III(i) of this exemption as of the first audit period that begins following the closing date for the acquisition. The period covered by the audit must begin on the date on which the JPMC Affiliated QPAM was acquired.

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

Accordingly, after considering the entire record developed in connection with the Applicant’s exemption application, the Department has determined to grant the exemption described above.

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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BILLING CODE 4510–29–P

**Proposed Individual Prohibited
Transaction Exemption PTE 2023-01**

managers (QPAMs) and the JPMC Related QPAMs) 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 judgment of conviction against JPMC, as described below.

DATES: If granted, this proposed exemption will be effective for a period of four years beginning on January 10, 2023, and ending on January 9, 2027, if the exemption’s conditions and definitions are satisfied.

Written comments and requests for a public hearing on the proposed exemption should be submitted to the Department by December 19, 2022.

ADDRESSES: All written comments and requests for a hearing should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Attention: Application No. D–12035 via email to *e-OED@dol.gov* or online through *https://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: Mr. Joseph Brennan of the Department at (202) 693–8456. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:
Comments

In light of the current circumstances surrounding the COVID–19 pandemic caused by the novel coronavirus which may result in disruption to the receipt of comments by U.S. Mail or hand delivery/courier, 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 the manner in which 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 *https://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 *https://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 *https://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 OF LABOR

Employee Benefits Security Administration

[Exemption Application No. D–12035]

Proposed Exemption for Certain Prohibited Transaction Restrictions Involving JPMorgan Chase Co. (JPMC or the Applicant) Located in New York, New York

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) and/or the Internal Revenue Code of 1986 (the Code). If the proposed exemption is granted, certain asset managers with specified relationships to JPMorgan Chase Co. (JPMC) (the JPMC Affiliated qualified professional asset

procedures set forth in 29 CFR part 2570, subpart B (75 FR 66637, 66644, October 27, 2011).¹ If the proposed exemption is granted, certain asset managers with specified relationships to JPMC (the JPMC Affiliated QPAMs and the JPMC Related QPAMs) 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 judgment of conviction against JPMC (the Conviction)³ for engaging in a conspiracy to fix the price of, or eliminate competition in, the purchase or sale of the euro/U.S. dollar currency pair exchanged in the Foreign Exchange (FX) Spot Market. This proposed exemption, if granted, will be effective for a period of four years beginning on January 10, 2023, and ending on January 9, 2027, if the exemption's conditions and definitions are satisfied.

This proposed exemption, would provide relief from certain of the 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, an entity within the JPMC corporate structure 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 the JPMC QPAMs 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 a plan that it is otherwise prudent to terminate its relationship with an entity covered by the exemption.

Summary of Facts and Representations⁴

Background

1. JPMC is a financial holding company and global financial services firm incorporated in Delaware and headquartered in New York, New York. JPMC's principal bank subsidiaries are JPMorgan Chase Bank, N.A. and Chase Bank USA, National Association. Two of JPMC's principal non-bank subsidiaries are its primary broker-dealer subsidiary, J.P. Morgan Securities LLC, and its primary investment management subsidiary, J.P. Morgan Investment Management Inc. (JPMIM). JPMC operates through four major reportable segments or lines of business: Consumer & Community Banking (CCB), Corporate & Investment Bank (CIB), Commercial Banking (CB), and Asset & Wealth Management (AWM).

2. JPMC is the publicly-traded parent company of investment management affiliates that function as QPAMs, through which the CCB, CIB, and AWM segments operate. Since the Department granted PTE 2017–03 (as discussed in more detail below), the following seven JPMC QPAMs have exercised discretionary control over the management and disposition of client assets held by ERISA-covered Plans and IRAs (together, Covered Plans):⁵ JPMorgan Chase Bank, N.A., J.P. Morgan Alternative Asset Management, Inc., JPMorgan Asset Management (Asia Pacific) Limited, J.P. Morgan Investment Management Inc., J.P. Morgan Private Investments Inc., J.P. Morgan Securities

LLC., and Security Capital Research & Management Incorporated.

The JPMC Affiliated QPAMs provide investment management services to thousands of plans and IRAs. In managing these assets, the JPMC Affiliated QPAMs regularly rely on the QPAM Exemption. In addition to the JPMC Affiliated QPAMs, JPMC currently owns a 5% or greater direct or indirect interest in certain investment managers that are not affiliated with JPMC in the actual control sense (the JPMC Related QPAMs). JPMC does not have the authority to exercise a controlling influence over the JPMC Related QPAMs and is not involved with their clients, strategies, or ERISA assets under management, if any.

ERISA and Code Prohibited Transactions and PTE 84–14

3. 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.⁶ 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.⁷ 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.⁸

Under the authority of ERISA Section 408(a) and Code Section 4975(c)(2), the Department has the authority to grant exemptions from such “prohibited transactions” in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011) 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)

¹ 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, the Applicant 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).

³ 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 felonies including violation of the Sherman Antitrust Act, Title 15 United States Code, Section 1.

⁴ The Summary of Facts and Representations is based on the Applicant'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 availability of this exemption, is subject to the express condition that the material facts and representations contained in application D–12035 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.

⁵ For purposes of this proposed exemption, 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 a JPMC Affiliated QPAM relies on PTE 84–14, or with respect to which a JPMC Affiliated QPAM (or any JPMC affiliate) has expressly represented that the manager qualifies as a QPAM or relies on PTE 84–14.

⁶ For purposes of the Summary of Facts and Representations, references to specific provisions of Title I of ERISA, unless otherwise specified, refer also to the corresponding provisions of the Code.

⁷ Under the Code, such parties, or similar parties, are referred to as “disqualified persons.”

⁸ 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.

protective of the rights of participants and beneficiaries.

4. 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 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.⁹

5. Section I(g) of PTE 84–14 prevents an entity that may otherwise meet the definition of QPAM from utilizing the exemptive relief provided by the QPAM exemption, for itself and its client plans if that entity, an “affiliate” thereof,¹⁰ 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 the 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 maintain a high standard of integrity.

JPMC Conviction and PTE 84–14 Disqualification

6. On May 20, 2015, the Department of Justice filed a Criminal Information in the U.S. District Court for the District of Connecticut (the District Court)¹¹ charging JPMC with a one-count violation of the Sherman Antitrust Act.¹² The Information charged that from at least as early as July 2010 until at least January 2013, JPMC, through one of its euro/U.S. dollar (EUR/USD)

traders, entered into and engaged in a combination and conspiracy to fix, stabilize, maintain, increase or decrease the price of, and rig bids and offers for, the EUR/USD currency pair exchanged in the foreign exchange (FX) spot market by agreeing to eliminate competition in the purchase and sale of the EUR/USD currency pair in the United States and elsewhere (the Criminal Misconduct). The Criminal Misconduct involved near-daily conversations some of which were in code, in an exclusive electronic chat room used by certain EUR/USD traders.

JPMC resolved the charges through a plea agreement presented to the District Court on May 20, 2015 (the Plea Agreement), under which JPMC agreed to enter a plea of guilty to the charge set out in the Information. A judgment of the Conviction was subsequently entered against JPMC on January 10, 2017, and pursuant to the judgment, JPMC was required to pay approximately \$550 million in total fines and restitution in connection with the Conviction.

The Prior and Existing Exemptions

7. *PTE 2016–15.* Once the District Court entered the Conviction, the JPMC Affiliated QPAMs and the JPMC Related QPAMs, as well as their Covered Plan clients, became ineligible to rely on PTE 84–14, pursuant to section I(g) of the class exemption without receiving an individual prohibited transaction exemption from the Department. The JPMC Affiliated QPAMs submitted an exemption application to the Department on May 20, 2015, and after reviewing the application, the Department granted PTE 2016–15 on January 10, 2017. PTE 2016–15 permitted the JPMC Affiliated QPAMs and the JPMC Related QPAMs to continue to rely upon the relief provided in the QPAM exemption for one-year period from the date of the Conviction.¹³

8. *PTE 2017–03.* Subsequently, on December 29, 2017, the Department granted PTE 2017–03, a second individual exemption that permitted the JPMC Affiliated QPAMs and the JPMC Related QPAMs to continue to rely upon the relief provided by PTE 84–14 for a period of five years beginning on January 10, 2018, and ending on January 9, 2023.¹⁴

¹³ PTE 2016–15, 81 FR 94028 (December 22, 2016). PTE 2016–15 became effective on January 10, 2017 (the date on which the District Court entered the Conviction against JPMC) and expired on January 10, 2018.

¹⁴ PTE 2017–03, 82 FR 61816 (December 29, 2017).

9. PTEs 2016–15 and 2017–03 each contain a set of conditions that are designed to protect those Covered Plans that entrust their assets to a JPMC Affiliated QPAM despite the serious nature of the Criminal Misconduct underlying the Conviction. The Department discusses some of the protective conditions below.¹⁵

Conditions of PTE 2017–03

10. PTE 2017–03 requires each JPMC Affiliated QPAM 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 the JPMC Affiliated QPAM are independent of the corporate management and business activities of JPMC; (b) the JPMC Affiliated QPAM fully complies with ERISA’s fiduciary duties; (c) any filings or statements made by the JPMC Affiliated QPAM to regulators on behalf of Covered Plans are materially accurate and complete; and (d) the JPMC Affiliated QPAM complies with the terms of PTE 2017–03. 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.

11. PTE 2017–03 requires each JPMC Affiliated QPAM to develop and implement a training program (the Training) that is conducted at least annually 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 PTE 2017–03, and the duty to promptly report wrongdoing.

12. PTE 2017–03 further requires each JPMC Affiliated QPAM to be audited biannually (covering the preceding 12-month period) by a prudently selected independent auditor (the Auditor). The Auditor must evaluate the adequacy of each JPMC Affiliated QPAM’s implementation of the Policies and Training requirements of PTE 2017–03 and their compliance with them. The Auditor must issue a written report (the Audit Report) to JPMC and each JPMC Affiliated QPAM to which the audit applies that describes the procedures performed during the Audit. In its Audit Report, the Auditor must assess the

¹⁵ The following paragraphs do not discuss all of the conditions set out in PTE 2017–03. For the complete set of conditions, see PTE 2017–03, 82 FR 61816 (December 29, 2017).

⁹ See 75 FR 38837, 38839 (July 6, 2010).

¹⁰ 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.”

¹¹ Case Number 3:15–CR–79–SRU.

¹² 15 U.S.C. 1.

adequacy of each of the JPMC Affiliated QPAM's Policies and Training, their compliance with the Policies and Training, the need, if any, to strengthen the Policies and Training, and any instance(s) of noncompliance.

13. PTE 2017–03 also requires certain JPMC senior personnel to 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 each JPMC Affiliated QPAM to which the Audit Report applies 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 PTE 2017–03 and applicable provisions of ERISA and the Code.

14. PTE 2017–03 requires each JPMC Affiliated QPAM to agree and warrant to its Covered Plan clients that it 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. PTE 2017–03 also requires each JPMC Affiliated QPAM 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 each JPMC Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions. Finally, PTE 2017–03 requires the JPMC Affiliated QPAMs to agree and warrant not to: (a) restrict the ability of Covered Plans to terminate or withdraw from their arrangement with the JPMC Affiliated QPAM, with the exception of reasonable restrictions disclosed in advance, as defined in PTE 2017–03; or (b) impose any fees, penalties, or charges for such termination or withdrawal, with the exception of reasonable fees.

15. PTE 2017–03 contains extensive notice requirements that obligate the JPMC Affiliated QPAMs to provide Covered Plans with a notice of the QPAM'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.

16. PTE 2017–03 also requires JPMC to designate a senior compliance officer (the Compliance Officer) to conduct an annual review to determine the adequacy and effectiveness of the implementation of the Policies and Training (the Annual Review). The Compliance Officer must prepare a written report for each Annual 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.

Current Exemption Request

17. On October 1, 2021, the Applicant filed an application for exemptive relief that would permit the JPMC Affiliated QPAMs and the JPMC Related QPAMs to continue to rely upon the relief provided under PTE 84–14 for a period of four years from January 10, 2023 (the expiration of PTE 2017–03), through January 9, 2027 (the conclusion of the Section I(g) 10-year ineligibility period triggered by the Conviction). On February 7, 2022, the Applicant supplemented its application with the Second Audit Report. In support of its request, the Applicant states that: each of the JPMC Affiliated QPAMs and the JPMC Related QPAMs have complied with the conditions of PTE 2017–03 and, therefore, should be permitted to continue to rely upon PTE 84–14 through the remainder of the ineligibility period in order to avoid substantial costs and other disruptions that would occur if it no longer could rely on the exemption. The Applicant's representations regarding PTE 2017–03 compliance are addressed immediately below and its representations regarding costs to Covered Plans begins at paragraph 42 under the heading "Hardship to Plans."

Compliance With PTE 2017–03

18. *Training.* The Applicant represents that the JPMC Affiliated QPAMs developed and implemented a comprehensive Training program before the July 9, 2018, deadline specified in PTE 2017–03. Through a web-based e-learning training module, the Applicant requires the Training to be completed annually by relevant personnel of each JPMC Affiliated QPAM, including asset/portfolio management, trading, legal, compliance, and internal audit personnel, as required under PTE 2017–03. The Training is designed to track completion by required participants and covers compliance with ERISA and the Code, including applicable ERISA fiduciary duty and prohibited transaction provisions. The Applicant

updates the Training annually, as necessary, for clarity, accessibility, and legislative and regulatory changes.

19. *Policies and Procedures.* The Applicant represents that before the effective date of PTE 2016–15, each JPMC Affiliated QPAM developed and instituted a firmwide policy specifically addressing fiduciary responsibilities under ERISA and the Code (the ERISA Policies). The ERISA Policies cover a broad range of topics relevant to the JPMC QPAMs' management of Covered Plan assets, including ERISA's prohibited transaction rules, party in interest transactions, self-dealing and conflicts of interest, employer securities, and employer real property. The ERISA Policies also cover PTE 84–14, PTE 2017–03, the statutory exemption provided under ERISA Section 408(b)(2), recordkeeping and reporting obligations, and the applicability of the ERISA Policies to Covered Plans.

Each section of the ERISA Policies provides background information, identifies responsible parties, and describes objective requirements, internal practices, and reporting obligations. The ERISA Policies address compliance requirements for Covered Plans and assign responsibility for specific activities to relevant JPMC personnel. They further address PTE 2017–03's required content related to manager independence, compliance with ERISA and the Code, communications with regulators, exemption compliance, corrections, and the Training. The ERISA Policies also feature cross-references to related policies, procedures, and compliance manuals, and are supplemented by a library of pre-existing firmwide, line of business-specific, and JPMC QPAM-specific policies and procedures on particular topics.

The ERISA Policies apply to all lines of business that engage in activities involving a JPMC Affiliated QPAM's exercise of investment discretion or provision of investment advice to plans and plan asset investment funds, or indirect service as an adviser or sub-adviser to a pooled investment vehicle deemed to hold the assets of Covered Plans. The Applicant represents that an electronic notice was sent to relevant JPMC Affiliated QPAM personnel regarding the availability of the ERISA Policies and that the ERISA Policies have been easily accessible on JPMC's intranet during the relevant period. The Applicant states that the ERISA Policies are reviewed annually and updated as necessary.

20. *Internal Compliance Processes.* The Applicant represents that the JPMC Affiliated QPAMs conducted a thorough

review of their ERISA policies and procedures and implemented or augmented a variety of testing, monitoring, and reporting capabilities to ensure that they employ and follow robust and comprehensive compliance systems.

21. *The Audits.* PTE 2017–03 requires the JPMC Affiliated QPAMs to submit to an audit conducted annually by a prudently selected independent auditor to evaluate the adequacy of, and each JPMC Affiliated QPAM's compliance with, the Policies and Training requirements of the exemption. The JPMC Affiliated QPAMs have undergone two comprehensive audits performed by Newport Trust Company (Newport). Newport completed its first audit (covering July 10, 2018 through July 9, 2019) on January 9, 2020 (the First Audit). Newport completed its second audit (covering July 10, 2020–July 9, 2021) on January 9, 2022 (the Second Audit). In conducting the audits, Newport states that it thoroughly analyzed the Policies and Training implemented by each JPMC Affiliated QPAM in connection with PTE 2017–03.

Auditor's Findings

22. *The ERISA Policies.* With respect to the ERISA Policies, Newport gathered information from JPMC through six separate data requests, reviewed the JPMC Affiliated QPAMs' obligations under ERISA and applicable Policies and Procedures, held discussions with JPMC personnel regarding existing internal governance structures (and how the Policies were uniquely tailored to accommodate individual JPMC Affiliated QPAMs' investment strategies), and tested the JPMC Affiliated QPAMs' operational compliance with the Policies.

In the First Audit, Newport determined that JPMC's ERISA Policies are "comprehensive in scope and adequately address all of the content required by PTE 2017–03." Based on its review, Newport, "determined that the JPMC QPAMs developed, implemented and maintained Policies in accordance with the conditions of the Exemption." In the Second Audit, Newport concluded that "[t]he ERISA Policy is comprehensive in scope and adequately addresses all of the content required by the Exemption." Newport identified no gaps or areas of insufficient coverage within the ERISA Policy and concluded that the ERISA Policy is clearly written and provides relevant personnel with an appropriate amount of information about each topic.

Newport also reviewed JPMC's firmwide and line of business-specific

policies and procedures that supplement the ERISA Policy to better understand how the ERISA Policy fits within JPMC's broader governance structure. Newport concluded that the Policies, comprised of the ERISA Policy and these supplemental policies and procedures, provide JPMC personnel with clear guidance on relevant procedural requirements and extensive documentation related to the management of assets held by Covered Plans.

23. *The Training.* In its assessment of the Training, Newport states that it held discussions with JPMC personnel regarding the qualifications of the Training's developer and implementer, as well as the format, timing, and schedule for the Training. Newport also reviewed the online course material and attendance records. Newport states that the JPMC Affiliated QPAMs developed and implemented a comprehensive Training program before the deadline specified in PTE 2017–03 and rolled out a web-based e-learning training module more than a year before the required deadline of July 9, 2018.

Newport further states that it reviewed the content of the Online Training Module and noted that, in compliance with the requirement specified in the ERISA Policies, the training covered: (a) the Policies; (b) ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions); (c) ethical conduct; (d) the consequences of not complying with the exemption conditions (including any loss of exemptive relief); and (e) prompt reporting of wrongdoing. During the period covered by the Second Audit, Newport states that based upon a comparison of enrollment records against completion records, the Training had a 99.89% attendance rate for the designated individuals.

24. *Compliance with ERISA and the Code.* Newport states that it selected individual prohibited transaction exemptions, principal transactions, proprietary investments, and record retention as focus areas for special scrutiny during the period covered by its audits. Newport notes that it identified the following issues.

25. *Issue: PTE 2003–24 Compliance.* Newport states that, on December 2, 2021, JPMC personnel disclosed to Newport an issue related to compliance with PTE 2003–24.¹⁶ As described by

¹⁶PTE 2003–24 permits the purchase of securities by an asset management affiliate of the applicant (JPMorgan Chase Bank) on behalf of employee benefit plans, including those investing in a pooled fund, for which the applicant acts as a fiduciary, from any person other than the applicant or an

JPMC in a written summary to Newport, during a review of certain bank regulatory reporting requirements relating to affiliated transactions, JPMC's Asset Management Line of Business (AM) identified 19 new issuances,¹⁷ constituting approximately 2% of the 946 total new issuances that JPMC purchased on behalf of managed funds and accounts from July 2020 to June 2021, that were underwritten by an affiliate but not included on the respective 23B bank regulatory reporting.

Newport states that JPMC is remediating this PTE 2003–24 underreporting issue consistent with its correction procedures and past precedent by taking the following steps: (a) completing a review of affiliated transactions; (b) reviewing all issuances purchased by the asset manager on behalf of managed funds and accounts from July 2020 through June 2021 that were underwritten by an affiliate to confirm compliance with reporting requirements; (c) further analyzing exceptions to determine the root cause, identifying and implementing procedural enhancements, and considering any redress as applicable and necessary; and (d) re-issuing relevant PTE 2003–24 quarterly reporting per the asset manager's internal procedures for reporting affiliated transactions with an explanation to the impacted Covered Plans.

Based on its evaluation, Newport determined that AM complied with the ERISA Policies and line of business-specific procedures with respect to PTE 2003–24 for transactions involving Covered Plans during the period covered by the audit. Newport states that it intends to follow up to confirm that the proposed remediation was implemented as planned.

26. *Issue: Fee Offsetting Issues.* Newport states that representatives from JPMC's Private Banking line of business (PB) identified three separate issues related to the offsetting process for Covered Plans invested in proprietary investment products. On July 28, 2020, JPMC notified Newport that PB had identified gaps in the fee offsetting

affiliate thereof, during the existence of an underwriting or selling syndicate with respect to such securities, where the affiliated broker-dealer is a manager or member of such syndicate, and/or where an affiliated trustee serves as trustee of a trust that issued the securities (whether or not debt securities) or serves as indenture trustee of securities that are debt securities.

¹⁷The JPMC asset manager subsequently reviewed its quarterly PTE 2003–24 reporting during the same period and determined that 12 of the 19 new issuances were reported but 7 were not reported.

process during a historical review of the firm's fee offsetting process conducted in late 2019. The review identified two primary gaps: (a) a failure to flag certain proprietary funds as fee offset eligible in the relevant systems and therefore not providing the relevant monthly information regarding fee offsets; and (b) a failure to set up certain accounts for fee offsetting. The review encompassed approximately 100,000 Covered Plans dating back to 2012 and identified 753 accounts that were impacted.

Newport states that, before 2013, account coding errors were more frequent because portfolio managers had to go through a manual process to make sure account coding was set up for fee offsetting. After the implementation of enhancements in 2013, the fee offset coding was automatically applied to accounts identified as Covered Plans. In addition, PB now performs weekly checks to ensure that all new Covered Plans are fee offset eligible. With these enhancements, JPMC determined that no further changes to the fee offsetting process were needed.

Newport states that PB Operations led the remediation process, identified impacted accounts, calculated the amounts owed to each client (the amount of fees that were not offset plus an interest charge for lost earnings calculated using the Department's VFCP Calculator), and notified clients. Newport also notes that PB fully credited all impacted client accounts and prepared an excise tax filing.

27. JPMC identified two other PB issues related to fee offsetting for proprietary investments and communicated those issues to Newport on December 2, 2021. While preparing a response to one of Newport's inquiries regarding the fee offsetting process for Sample Accounts, PB representatives identified an issue with one proprietary exchange traded fund (ETF) held in one of the Sample Accounts that closed in the middle of a month during the period covered under the Second Audit. PB conducted a review of all Covered Plans that had closed mid-month and held ETFs and escalated the issue with legal, compliance, and operations leadership.

Newport states that JPMC detected an error in the process for calculating offset amounts associated with proprietary ETFs held at the time accounts are closed, and that this issue has persisted since July 2018 when proprietary ETFs were first launched for use in managed accounts. Specifically, the Closed Account Report used to determine the credit amount owed to accounts that closed mid-month and that held proprietary funds showed certain issues.

PB conducted an analysis of all Covered Plans managed by PB that closed mid-month between July 2018 and September 2021. PB's analysis found that over 550 accounts were under-credited for an aggregate amount of approximately \$4,500 and that over 1,400 accounts were over-credited for an aggregate of approximately \$144,000. PB representatives notified Newport that the Closed Account Report has been corrected to ensure accuracy going forward, and that PB is currently calculating the total impact of the fee offset amounts owed (including lost earnings), determining the approach for crediting accounts, developing a plan for communication with clients and advisors for affected accounts, and preparing an excise tax filing. Newport plans to follow up on the anticipated timing of the remediation process and has requested that PB update Newport throughout the remediation process.

28. Another issue was identified on August 9, 2021, when an investor notified the PB fee billing team of a discrepancy in its client's advisory fee calculation. Upon further analysis, the PB team discovered that while the proprietary fund fee offset had been correctly applied when the account was initially billed, the offset was not reapplied following an update to (*i.e.*, recalculation of) the previously calculated fee. The issue arose when a coding change was made following a conversion from an old fee to a new billing program in March 2020. This resulted in offsets no longer being applied when there was a rebilling of an incorrect advisory fee after onboarding.

PB representatives conducted a review of all Covered Plans that had a fee update between September 2018 and July 2021 and calculated a preliminary impact of approximately \$2,000 across 80 accounts.¹⁸ PB representatives notified Newport that the fee billing group has corrected the program to ensure that all future fee updates include the required offset. PB is currently calculating the total impact of

¹⁸ With respect to this last issue, the Applicant represents that PB did not choose September 2018 as a beginning date for their search. In March 2020, the functionality that enabled an advisory fee to be recalculated was migrated from one system to another. In connection with this migration, the functionality was not implemented correctly in the new system. Thus, as of March 2020, when an advisory fee was recalculated, the offset was not included in the recalculated fee. Once this system issue was discovered, PB reviewed all accounts that had an advisory fee that was updated/recalculated between March 2020 and July 2021, the period during which the functionality was faulty. The earliest dated invoice that required rebilling through the new system—and thus impacted by the defective system migration and functionality—was from September 2018.

the offset amounts owed (including lost earnings), determining the approach for crediting accounts, developing a plan for communication with clients and advisors for affected accounts, and preparing an excise tax filing.

Newport states that it plans to follow up on the anticipated timing of the remediation process and has requested that PB update Newport throughout the process. Based on Newport's assessment, PB self-identified several issues related to fee offsetting for proprietary investment products and promptly took steps to remediate those issues in accordance with its correction procedures. Therefore, Newport did not find any instances of noncompliance related to proprietary investment products within PB during the period covered by PTE 2017-03. However, given the multiple issues that have been identified above, Newport recommended that PB perform a comprehensive assessment of its existing fee offsetting processes.

Deferred Prosecution Agreement

29. On September 29, 2020, JPMC, JPMorgan Chase Bank and J.P. Morgan Securities LLC (JPMS) entered into a deferred prosecution agreement with the Department of Justice (the DPA).¹⁹ As required by the conditions of PTE 2017-03, JPMC provided written notification to the Department regarding the DPA on that date. In response to a request for information from Newport, and as set forth in the DPA, JPMC stated that between 2008 and 2016, former employees of JPMC and JPMS who worked on the Precious Metals Desk and U.S. Treasuries Desk within the CIB in the Global Markets division, engaged in trading practices known as "spoofing", in which the traders placed orders to buy or sell precious metals or U.S. Treasury futures contracts, or U.S. Treasury notes and bonds in the secondary cash market with the intent to cancel those orders before execution in an effort to manipulate the market in those instruments.

30. The Applicant represents that there is no connection between the lines of business that manage assets through QPAMs in reliance on PTE 84-14 and the conduct cited in the DPA. JPMC, as a firm, conducts discretionary investment management activities through various lines of business that engage in relevant transactions through several JPMC legal entities. JPMorgan Chase Bank, NA is the legal entity that manages cash collateral related to the

¹⁹ The CFTC and SEC announced separate settlements in connection with related, parallel proceedings on the same date as the DPA.

securities lending sub-line of business. Accordingly, JPMorgan Chase Bank, NA is the QPAM in this instance, and it may rely on PTE 84–14 to manage such cash collateral.

While all JPMC personnel ultimately report to common senior leadership at some level, the Agency Securities Finance business (*i.e.*, the asset management business) is distinct from the Global Markets business (including the business groups that comprise the Precious Metals and U.S. Treasuries Desks), and each such business has separate heads and dedicated compliance and internal staff.²⁰ The Applicant states that the control functions have dedicated personnel covering Agency Securities Finance, and those individuals do not perform those services for the Global Markets Division, including the Precious Metals and U.S. Treasuries Desks within that division. Ultimately, these control function personnel report up to common senior leadership at some level.

31. The Applicant represents that, to the best of its knowledge, there have been no instances where JPMC QPAMs entered into trades for Covered Plans with the Precious Metals or U.S. Treasuries Desks. Accordingly, the spoofing activity referred to in the DPA should not have directly impacted any such Covered Plans. Further, JPMC states that it is not aware of any impact to Covered Plans from the conduct underlying the DPA. JPMC, however, states that the activities described in the DPA may have had an indirect impact on participants in the markets at issue, regardless of whether such market participants had traded with the Precious Metals and U.S. Treasuries Desks.

32. Newport states that the trading conduct cited in the DPA ceased in 2016, before the Audit periods covered under PTEs 2016–15 and 2017–03. In addition, JPMC confirmed to Newport that, to its knowledge, none of the JPMC Affiliated QPAMs traded directly with the CIB Global Markets Precious Metals or U.S. Treasuries Desks during the period between 2008 and 2016, nor do they today. JPMC states that it has found

²⁰ All CIB Compliance function personnel roll up to the CCO for CIB, and all firm-wide Compliance function personnel roll up to the JPMorgan Global Chief Compliance Officer, who reports to the firm's Chief Risk Officer. Similarly, business-aligned Internal Audit function personnel roll up to the Chief Auditor-CIB and ultimately to the General Auditor of JPMC. In addition, some surveillance, monitoring, and testing functions utilize centralized resources and personnel within Compliance, and business-aligned Compliance personnel collaborate with other stakeholders across the firm across many lines of business.

no evidence of direct impact to Covered Plans managed on a discretionary basis by JPMC QPAMs during the period cited in the DPA. JPMC also stated that Covered Plans were not found to have been affected in connection with precious metals barrier options transactions.

33. Newport requested information regarding the structure and functions of the JPMC compliance and internal audit controls pertaining to the activities described in the DPA to determine whether oversight measures are sufficient to prevent and detect future similar activities. Based on its review, Newport concluded that the trading and market conduct and personnel that are the subject of the DPA did not have any direct bearing on the activities of the JPMC Affiliated QPAMs subject to the Audits and that JPMC took measures designed to enhance oversight and controls, prevent the occurrence of similar future conduct, and detect any issues relating to trading activities cited in the DPA.

Compliance With Other Conditions of PTE 2017–03

34. Newport determined that the JPMC QPAMs did not participate in the Criminal Misconduct that is the subject of the Conviction.²¹ Rather, the Criminal Misconduct was the action of one trader working in the FX trading business of JPMorgan Chase Bank who did not work at any time for a fiduciary line of business within JPMC. Newport determined further that there was no indication that the Criminal Misconduct related to any identified transaction involving Covered Plans nor did any JPMC QPAM personnel participate in such activities or receive remuneration in connection with them. Newport further determined that the JPMC QPAMs did not employ or knowingly engage the individual that participated in the Criminal Misconduct.

35. The conditions of PTE 2017–03 require Newport to determine that filings or statements made by the JPMC QPAMs to regulators, including but not limited to the Department, the Treasury, the DOJ, and the PBGC, on behalf of or in relation to Covered Plans, are materially accurate and complete. Based on its review of regulator communications, Newport determined that the JPMC QPAMs followed their ERISA Policies in accordance with the

²¹ As noted earlier, the Criminal Misconduct is in connection with FX spot market manipulation in violation of the Sherman Antitrust Act, 15 U.S.C. 1, entered in the District Court for the District of Connecticut (the District Court) (case number 3:15-cr-79-SRU).

communications requirements of PTE 2017–03.

36. Condition I(d) of PTE 2017–03 provides that JPMC must not use its authority or influence to direct any investment fund subject to ERISA or the Code and managed by a JPMC QPAM with respect to one or more Covered Plans to enter into any transaction with JPMC, or to engage JPMC 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. Newport determined that JPMC has met its obligations in these regards.

37. Based on its review of the client documentation and representations made by JPMC personnel, Newport determined that the JPMC Affiliated QPAMs have complied with the various contractual requirements specified in Section I(j) of PTE 2017–03. Newport also determined that the JPMC Affiliated QPAMs have complied with the communication requirements of Section I(k) of PTE 2017–03.

38. With regard to the Compliance Officer requirements of PTE 2017–03, Newport states that in April 2018, JPMC designated David S. Villwock, JPMC's Head of Firmwide Fiduciary Compliance, to serve as the Compliance Officer for purposes of PTE 2017–03. Newport states that Mr. Villwock has the requisite experience with, and knowledge of, the regulation of financial services and products (including under ERISA and the Code) and has a direct reporting line to JPMC's highest-ranking corporate officer in charge of legal compliance for asset management. Newport concludes that, with the appointment of Mr. Villwock as the Compliance Officer, JPMC complied with the relevant requirements of PTE 2017–03.

39. PTE 2017–03 also requires Newport to assess the adequacy of the Annual Review conducted by the Compliance Officer. Newport states that Mr. Villwock conducted an Annual Review for the most recent twelve-month period that ended on January 9, 2021, which was memorialized in an Annual Report provided to Newport on April 8, 2021. Based on its review, Newport determined that: (a) the Annual Report covers all of the content required under PTE 2017–03; (b) Mr. Villwock provided the required written certifications regarding the Annual Report; and (c) the recipients of the Annual Report included the appropriate corporate officers of JPMC and each JPMC QPAM to which such report

relates. Further, Newport found that the Annual Report was thorough and effectively leveraged JPMC's existing compliance apparatus.

40. Newport determined that the JPMC Affiliated QPAMs' record retention activities were operationally compliant with Section I(n) of PTE 2017-03 and with JPMC's Record Management Policies.

41. Newport states that it did not find any instance where a client contract specifically contradicted the requirements of Section I(j)(7) of PTE 2017-03. In this regard, Newport notes that JPMC provided a copy of the Supplement to Account Agreement found on JPMC's client portal, which specifically incorporates the contract requirements set out in Section I(j) of PTE 2017-03. Newport states that JPMC representatives confirmed that the JPMC Affiliated QPAMs provided notice to Covered Plan clients informing them that a Supplement to Account Agreement was available through its client portal, prior to July 9, 2018.

Hardship to Covered Plans

42. The Applicant represents that if the Department declines to grant this proposed exemption, there would be adverse consequences for ERISA-covered plans, public plans, and IRAs. In the absence of exemptive relief, the JPMC Affiliated QPAMs may be unable to manage, or manage as efficiently, the strategies for which they have contracted with thousands of Covered Plans. Further, Covered Plans desiring to withdraw from their arrangements could incur significant transaction costs as well as costs associated with finding new managers and reinvesting assets with those new managers. The Applicant states that the transaction costs associated with changing managers are significant, especially in many of the strategies employed by the JPMC Affiliated QPAMs. In this regard, the cost of liquidating assets, identifying and selecting new managers, and reinvesting assets would be borne by the Covered Plans and their participants.

43. The Applicant states that, if the Department denies the exemption request, transactions currently dependent on PTE 84-14 or where PTE 84-14 was the counterparty's expected relief, could be in default and terminated at a significant cost to Covered Plans. According to the Applicant, Covered Plans that decide to retain the JPMC Affiliated QPAMs as their asset manager could be prohibited from engaging in certain potentially beneficial transactions such as hedging transactions using over-the-counter options or derivatives. The Applicant

states that counterparties to such transactions are far more comfortable with the QPAM Exemption than any other currently available exemption, and the unavailability of the QPAM Exemption could trigger a default or early termination by a Covered Plan or pooled trust.

44. The Applicant represents that in the event of an exemption denial, certain derivatives transactions and other contractual agreements automatically and immediately could be terminated without notice or action or could become subject to termination upon notice from a counterparty in the event the Applicant no longer qualifies for relief under the QPAM Exemption.

45. The Applicant represents that some of its strategies tend to be less liquid than others and, thus, the transition costs would be significantly higher than, for example, liquidating a large-cap equity portfolio. Real estate is an example of a strategy that could experience significant disruption without the QPAM Exemption. Clients of the JPMC Affiliated QPAMs have over \$38.9 billion in ERISA and public plan assets in commingled funds that are invested in real estate strategies, with approximately 224 holdings. Many transactions in these accounts rely on Parts I, II, and III of the QPAM Exemption as a backup to the collective investment fund exemption²² (which may become unavailable to the extent a related group of plans has a greater than 10% interest in the collective investment fund). The Applicant estimates that there could be a significant loss in value if assets had to be quickly liquidated. In that instance, the QPAM may end up having to sell assets at a discount of more than 10% of their carrying price, which is pegged at FMV. There could also be prepayment penalties on the financing of these assets.

46. The Applicant further asserts that JPMC Affiliated QPAMs rely on the QPAM Exemption when buying and selling fixed income products. Stable value strategies, for example, rely on the QPAM Exemption to enter into wrappers and insurance contracts that permit the assets to be valued at book value. Many counterparties specifically require a representation that the QPAM Exemption applies, and those contracts could be in default if the requested exemption were not granted. Depending on the market value of the assets in these funds at the time of termination, such termination could result in losses to the stable value funds.

47. The Applicant states that as of March 31, 2021, approximately 500 accounts managed through the JPMC Affiliated QPAMs (including commingled funds and separately managed accounts) invest in fixed income products with a total portfolio of approximately \$100 billion in market value of ERISA and public plan assets in commingled funds. If the QPAM Exemption were lost, the Applicant estimates that its clients' costs of approximately could incur average weighted liquidation 50-75 basis points of the total market value in fixed income products. While money markets and short and intermediate term bonds could be liquidated for between 5-50 basis points, long duration bonds may be more difficult to liquidate, and liquidation costs may range from 75-100 basis points. Further, the liquidation costs for high-yield and emerging market investments could range from 75-150 basis points.

The Applicant notes that not all JPMC QPAM investment strategies exclusively rely upon the QPAM exemption for prohibited transaction relief. In fact, for equities, foreign exchange, and publicly traded bond strategies, the JPMC Affiliated QPAMs have other exemptions upon which they can rely. In the case of public bonds, the JPMC Affiliated QPAMs can rely upon class exemption 75-1 Part II and the statutory exemption under ERISA Section 408(b)(17).

48. While equity purchases in the market are not necessarily made in reliance on the QPAM Exemption, such strategies often use derivatives, foreign exchange (for non-U.S. strategies), and other products that require the QPAM Exemption. The Applicant manages over \$50 billion in ERISA and public plan assets in equity strategies within the Applicant's Asset Management business that could suffer different liquidation costs depending on the strategy. On average, for all equity strategies, the liquidation costs for a 30-day liquidation timeframe might range from 40-80 basis points.

49. Agency securities lending is a business within JPMorgan Chase Bank that makes loans of securities owned by clients, including Covered Plans, secured by cash collateral. JPMorgan Chase Bank acts as investment manager for such cash and invests it in short-term instruments. The cash collateral is maintained in 32 separately managed accounts with total ERISA assets under management of approximately \$3.9 billion.²³ JPMorgan Chase Bank may

²² 56 FR 31966 (July 12, 1991).

²³ As of June 2021.

rely on the QPAM Exemption with respect to the investment of cash collateral for its agency securities lending business. The Applicant believes that many brokers and counterparties with whom JPMorgan Chase Bank deals in regard to cash collateral investments rely on JPMorgan Chase Bank's QPAM status, because of the prevalence of the QPAM Exemption as the industry standard exemption. If the QPAM Exemption were unavailable, such brokers and counterparties could be reluctant to continue doing business with Covered Plans.

50. Many accounts managed by the JPMC Affiliated QPAMs are similarly invested in hedging instruments to deal with the risk of currency exposure for investments in foreign markets. For example, the JPMC Affiliated QPAMs engage in foreign exchange swap transactions and in foreign exchange spot and forward transactions to hedge against fluctuations in foreign exchange rates, for speculative or other alpha-seeking purposes, to settle trades in foreign securities, and for other reasons. The Applicant represents that it would not be in the interests of Covered Plans to be invested in global strategies without being able to hedge currency risk or otherwise engage in foreign exchange transactions. While there may be other exemptions upon which to rely, the market and regular counterparties may choose to rely on the QPAM Exemption and refuse to trade or price the trade accordingly for any greater risk they foresee in the absence of that exemption.

Applicant's Requested Modifications

52. With its exemption request, the Applicant requested that this exemption incorporate certain modifications relative to the conditions of PTE 2017–03. These modification requests and the Department's responses to them are described in further detail below.

53. *Newly Acquired Asset Managers.* The Applicant represents that from time to time, JPMC acquires asset managers that could rely on PTE 84–14. According to the Applicant, it would be nearly impossible for such managers to come into full compliance with PTE 2017–03 or this proposed exemption before any such acquisition closes considering all the conditions regarding notices, training, policies, and compliance regimes. Where the Applicant acquires a new asset manager that already has its own plan clients for which it is using the QPAM Exemption as of the closing date of the transaction, in the absence of relief, that manager needs to comply with the terms of the individual QPAM exemption

immediately. Where the new asset manager is not in immediate compliance, Covered Plan clients of the new asset manager with swaps ongoing might have to terminate them immediately, and new transactions could not be consummated, because the new asset manager is not in compliance on day one with all of the conditions of the exemption (e.g., contractual obligations and other investment management agreement amendments; distribution of exemption notice, statement and policy summary; drafting of policies and procedures; training; and feasibility of audit coverage).

The Applicant states that the process of integrating an acquired company can take many months or years. The company being acquired does not in the normal course adopt policies, train on those policies, or interfere with existing client communications or agreements before the acquisitions close, particularly when the acquirer is a large and complex financial institution such as the Applicant. According to the Applicant, it is not free to communicate with a target's clients until after the closing, nor can it communicate with a target's employees, directors, officers, or agents to cause them to draft or adopt policies, procedures, or training. Therefore, the Applicant requests that the conditions of this proposed exemption would not apply until a date that is six months after the closing date for an acquisition.²⁴

Department's Response: The Department is unable to make the requested change without detailed information regarding the specific conditions implicated by the requested change, and an explanation regarding why six months is an appropriate extension period.

54. *Training Conducted Electronically.* The Applicant requests confirmation from the Department that the Training may be conducted electronically or via a website. In reliance on a prior clarification from the Department, the JPMC Affiliated QPAMs have been utilizing a web-based training tool that the Auditor has already deemed sufficient to provide JPMC Affiliated QPAM personnel with adequate training in compliance with PTE 2017–03.

Department's Response: The Department confirms the Applicant's request that the Training of JPMC

²⁴ The Applicant further states that, the acquired manager would continue to rely on PTE 84–14 during that six-month period, which could be used to provide the necessary notices to the new affiliate's clients, to provide training to the new affiliate's employees, to make sure that systems are in place to implement the ERISA policies, etc.

personnel may be conducted either electronically or via a website.

55. *Timing of the Training.* The Applicant requests that the Department change the timing of the Training to once per calendar year ending on December 31 as opposed to once every twelve months ending on July 9, with the last training required during calendar year 2026. The Applicant states that doing so will enable the JPMC Affiliated QPAMs to measure compliance with the training requirement as of year-end (as opposed to July 9). Per this request, relevant personnel would be required to complete a Training under PTE 2017–03 by July 9, 2022, and the next training would be completed under this proposed exemption by December 31, 2023. Future Trainings would be required by December 31, 2024, 2025, and 2026.

Department's Response: The Department declines to make the Applicant's requested change, which would result in approximately 18 months between deadlines for annual Training, without justification that the requested change is equally protective of Covered Plans as the current annual training requirement.

56. *Flexibility to Abbreviate the Training for Returning Learners.* The Applicant requests confirmation that the content of Training need not be the same for new learners as for JPMC Affiliated QPAM personnel who have previously demonstrated proficiency with the subject matter of the Training. The Applicant states that: (a) the Training fully covers the subject matter required under PTE 2017–03 in significant detail and concludes with a knowledge assessment; (b) the Training has been administered for several years now; and (c) tenured employees have demonstrated comprehension of the subject matter by successfully completing the assessment. Accordingly, the Applicant requests confirmation that less detailed training can be used for personnel who have completed the full Training and successfully completed the accompanying assessment in a prior year.

Department's Response: The Department declines to make this requested change because the Applicant has not sufficiently demonstrated that less detailed Training for relevant JPMC personnel would be equally protective of Covered Plans as the training described in this proposed exemption.

57. *Notification Requirements.* If this proposed exemption is granted, the Applicant must provide a Notice to Interested Persons (NTIP) to Covered

Plan clients shortly after the proposed exemption is published in the **Federal Register**. The Applicant requests clarification that the NTIP requirement will be deemed met for each Covered Plan client via notice by **Federal Register** publication.

To the extent that the Department is unwilling to grant this request, the Applicant requests clarification that the NTIP requirement will be deemed met for each Covered Plan client by posting the required NTIP materials on the JPMC Affiliated QPAM or JPMC Related QPAM's website where the notice of obligations under PTE 2017–03 (Section I(j)(7)), and notice of the Exemption (Section I(k)), are currently posted provided such website is updated, as necessary, within 15 days of the publication of this exemption in the **Federal Register**.

In addition, with respect to the Notice requirements of this exemption, the Applicant requests clarification that such requirements will be deemed met for each Covered Plan client that received the equivalent notifications pursuant to PTE 2017–03, provided the website currently containing the materials stipulated is updated, as necessary, by May 10, 2023 (four months following the effective date of this exemption, if granted). Accordingly, such clients would not need to be notified again pursuant to this proposed exemption.

Department's Response: The Department declines to make the requested changes. The Applicant has not demonstrated that simply updating a website without sending a corresponding notification of the update to Covered Plans would represent adequate notice. Without a corresponding notice that directs Covered Plans to access the website, certain Covered Plans may never become aware that a new proposed exemption has been published.

58. *New Covered Plan Clients.* The Applicant represents that it is likely that many clients that retain the JPMC Affiliated QPAMs shortly after the effective date of this proposed exemption (January 10, 2023) would enter into investment management or comparable agreements with the JPMC Affiliated QPAMs that continue to include notification language referencing PTE 2017–03 and a link to the required materials thereunder. As the Department did through email clarification when PTE 2017–03 was published, the Applicant requests clarification that it would meet the notification requirements in this exemption for such clients that first become Covered Plan clients on or after

January 10, 2023, but before May 10, 2023, to the extent the investment management or comparable agreements with the JPMC Affiliated QPAMs include notification language referencing PTE 2017–03 and a link to the required materials, provided the website containing such materials stipulated under the notification conditions in this proposed exemption, if granted is updated, as necessary, by May 10, 2023. The Applicant expects that clients that first become Covered Plan clients on or after May 10, 2023, would enter into agreements with the JPMC Affiliated QPAMs that include notification language specifically referencing this exemption including links to the updated website containing the materials stipulated under such conditions.

Department's Response: The Department concurs with the Applicant's request regarding clients that first become Covered Plan clients on or after January 10, 2023, but before May 10, 2023.

59. *Audit and Compliance Officer Annual Review Timing.* The Applicant requests that the Department change the timing of the final two audits to begin on July 1, rather than July 10. The Applicant states that this change would enable the Auditor to request data and other necessary information as of the end of calendar quarters, facilitating the JPMC Affiliated QPAMs' ability to readily gather and deliver such material. The Applicant also requests the beginning of the Compliance Officer's Annual Review period to be delayed nine days, from January 1 to January 10.

Department's Response: The Department concurs with the Applicant's requests regarding the start date of the audit and the start date of the Compliance Officer Annual Review.

60. *Auditor Cooperation.* The Applicant states that continued relief under this exemption should not be conditioned upon the Auditor cooperating with, or disclosing workpapers to, the Department. The Applicant states that neither the JPMC Affiliated QPAMs nor Covered Plans can control the Independent Auditor's actions in this regard.

Department's Response: The Department declines to make this requested revision. JPMC should make every effort to ensure that the Auditor fully cooperates with the Department. The Department, also, is unaware of any instance where an Auditor failed to fully cooperate with the Department in connection with a QPAM Section I(g) audit.

61. *Definition of Covered Plan.* The Applicant requests clarification that a

JPMC QPAM may include a disclaimer in a modification of a contract, arrangement, or agreement with a Covered Plan as follows: "Notwithstanding the above, a JPMC Affiliated QPAM may disclaim reliance on QPAM status or PTE 84–14 in a written modification of a contract, arrangement, or agreement with an ERISA-covered plan or IRA, where the modification is made in a bilateral document signed by the client, the client's attention is specifically directed toward the disclaimer, and the client is advised in writing that, with respect to any transaction involving the client's assets, the JPMC Affiliated QPAM will not represent that it is a QPAM, and will not rely on the relief described in PTE 84–14."

Department's Response: The Department concurs with the Applicant's requested change.

62. Section I(j) requires each JPMC Affiliated QPAM to provide a notice of its obligations under that section to each Covered Plan. The Applicant requests the Department's confirmation that this condition would be met where the JPMC Affiliated QPAM previously agreed to the same obligations required by Section I(j) in an updated investment management agreement between the JPMC Affiliated QPAM and a Covered Plan.

Department's Response: The Department confirms that this condition would be met where the JPMC Affiliated QPAM previously agreed to the same obligations required by Section I(j) in an updated investment management agreement between the JPMC Affiliated QPAM and a Covered Plan.

Additional Changes to the Exemption's Conditions

63. Since granting PTE 2017–03, the Department has clarified and updated certain conditions included in QPAM Section I(g) exemptions to enhance protections for Covered Plans. These updated conditions appear in Sections III(a) and (b) of this proposed exemption.

Proposed Exemption's Protective Conditions

64. 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 the

JPMC Affiliated and Related QPAMs. If this proposed exemption is granted as proposed, it would allow Covered Plans to avoid costs and disruptions to investment strategies that may arise if such Covered Plans are forced, on short notice, to hire a different QPAM or asset manager because the JPMC Affiliated and Related QPAMs no longer are able to rely on the relief provided by PTE 84–14 due to the Conviction.

65. The Department notes that the protective conditions of this proposed exemption are essentially the same as the protective suite of conditions set forth under PTE 2017–03, with certain modifications for consistency with the Department’s more recent individual exemptions relating to Section I(g) of PTE 84–14. Given the seriousness of the misconduct described in the DPA discussed above, the Department is adding two new conditions. The first provides that, other than former employees who worked on the Precious Metals Desk and U.S. Treasuries Desk within the CIB in the Global Markets division, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, agents and employees of such QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not know of, did not have reason to know of, and did not participate in the conduct underlying the DPA. Further, any other party engaged on behalf of the JPMC Affiliated QPAMs and JPMC Related QPAMs who had responsibility for or exercised authority in connection with the management of plan assets did not know or have reason to know of and did not participate in the criminal conduct that is the subject of the DPA.

The second provides that, apart from a non-fiduciary line of business within JPMorgan Chase Bank, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, and agents, and employees of such JPMC QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the conduct underlying the DPA. Further, any other party engaged on behalf of the JPMC Affiliated QPAMs and the JPMC Related QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not receive direct compensation, or knowingly receive indirect compensation, in connection with the conduct underlying the DPA.

Statutory Findings

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

67. *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 each JPMC Affiliated QPAM’s compliance with the terms of the exemption, and a corresponding written audit report would be provided to the Department and made available to the public. The Department notes that the independent audit would incentivize compliance while reducing the immediate need for review and oversight by the Department.

68. *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 the Applicant, that if the requested exemption is denied, Covered Plans may be forced to find other managers at a potentially significant cost. According to the Applicant, ineligibility under Section I(g) of PTE 84–14 would deprive the Covered Plans of the investment management services that these plans expected to receive when they appointed these managers. 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.

69. *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 continued 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 the JPMC Affiliated QPAMs; (e) specific notices and disclosures that inform Covered Plans of the circumstances necessitating

the need for exemptive relief and the JPMC Affiliated QPAMs’ obligations under this exemption; and (f) the designation of a Compliance Officer who must ensure the JPMC Affiliated QPAMs continue to comply with the Policies and Training requirements of this exemption.

Summary

70. 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 JPMC 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 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).

71. When interpreting and implementing this exemption, the Applicant and the JPMC Affiliated QPAMs should resolve any ambiguities in light of the exemption’s protective purposes. To the extent additional clarification is necessary, these persons or entities should contact EBSA’s Office of Exemption Determinations at 202–693–8540.

72. Based on the conditions that are included in this proposed exemption, the Department has tentatively determined that the relief sought by the Applicant 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 thirty (30) days of the publication of the notice of proposed four-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 sixty (60) days of the date of publication of this proposed four-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 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.

Proposed Exemption

The Department is considering granting a four-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 exemption procedure regulation.²⁵

Section I. Definitions

(a) The term “Conviction” means the judgment of conviction against JPMC for violation of the Sherman Antitrust Act, 15 U.S.C. 1, entered in the District Court for the District of Connecticut (the District Court) (case number 3:15-cr-79-SRU). For all purposes under this exemption, “conduct” of any person or entity that is the “subject of [a] Conviction” encompasses the conduct described in Paragraph 4(g)–(i) of the Plea Agreement filed in the District Court in case number 3:15-cr-79-SRU (the Plea Agreement).

(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 a JPMC Affiliated QPAM relies on PTE 84–14, or with respect to which a JPMC Affiliated QPAM (or any JPMC affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84–14). A Covered Plan does not include an ERISA-covered plan or IRA to the extent the JPMC Affiliated QPAM has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA. Further, a JPMC Affiliated QPAM may disclaim reliance on QPAM status or PTE 84–14 in a written modification of a contract, arrangement, or agreement with an ERISA-covered plan or IRA, where the modification is made in a bilateral document signed by the client, the client’s attention is specifically directed toward the disclaimer, and the client is advised in

writing that, with respect to any transaction involving the client’s assets, the JPMC Affiliated QPAM will not represent that it is a QPAM, and will not rely on the relief described in PTE 84–14.

(c) The term “Exemption Period” means January 10, 2023, through January 9, 2027.

(d) The term “JPMC” means JPMorgan Chase and Co.

(e) The term “JPMC Affiliated QPAM” means a “qualified professional asset manager,” as defined in Section VI(a) of PTE 84–14, that relies on the relief provided by PTE 84–14 or represents to Covered Plans that it qualifies as a QPAM, and with respect to which JPMC is a current or future “affiliate” (as defined in Section VI(d)(1) of PTE 84–14). The term “JPMC Affiliated QPAM” excludes the parent entity, JPMC, the entity implicated in the criminal conduct that is the subject of the Conviction.

(f) The term “JPMC 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 whom JPMC owns a direct or indirect five percent or more interest but is not an “affiliate” (as defined in Section VI(d)(1) of PTE 84–14).

Section II. Covered Transactions

Under this proposed exemption, the JPMC Affiliated QPAMs and the JPMC Related QPAMs, as defined in Sections I(e) and I(f), respectively, 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,²⁶ provided that the conditions set forth in Section III below are satisfied.

Section III. Conditions

(a) Other than a single individual who worked for a non-fiduciary business within JPMorgan Chase Bank and who had no responsibility for, nor exercised any authority in connection with, the management of plan assets, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers,

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

²⁶ Section I(g) of PTE 84–14 generally provides relief only if “[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 violation of the Sherman Antitrust Act, Title 15 United States Code, Section 1.

directors, agents other than JPMC, and employees of such QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not know of, did not have reason to know of, and did not participate in the criminal conduct that is the subject of the Conviction. Further, any other party engaged on behalf of the JPMC Affiliated QPAMs and JPMC Related QPAMs who had responsibility for or exercised authority in connection with the management of plan assets did not know or have reason to know of and did not participate in the criminal conduct 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 JPMC 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) Apart from a non-fiduciary line of business within JPMorgan Chase Bank, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, and agents other than JPMC, and employees of such JPMC QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the Conviction. Further, any other party engaged on behalf of the JPMC Affiliated QPAMs and the JPMC Related QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct of that is the subject of the Conviction;

(c) The JPMC Affiliated QPAMs do 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, no JPMC Affiliated QPAM will use its authority or influence to direct an “investment fund” (as defined in Section VI(b) of PTE 84–14) that is subject to ERISA or the Code and managed by such JPMC Affiliated QPAM in reliance on PTE 84–14, or with respect to which a JPMC Affiliated QPAM has expressly represented to a Covered Plan that it qualifies as a QPAM or relies on the QPAM class

exemption, to enter into any transaction with JPMC, or to engage JPMC 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 a JPMC Affiliated QPAM or a JPMC Related QPAM to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction;

(f) A JPMC Affiliated QPAM or a JPMC Related QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or Code Section 4975 (an IRA) in a manner that it knew or should have known would: further the criminal conduct that is the subject of the Conviction; or cause the JPMC Affiliated QPAM, the JPMC Related QPAM, or their 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, JPMC 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; provided, however, that JPMC will not be treated as violating the conditions of this exemption solely because it acted as an investment advice fiduciary within the meaning of ERISA Section 3(21)(A)(ii) or Code Section 4975(e)(3)(B);

(h)(1) Each JPMC Affiliated QPAM must maintain, adjust (to the extent necessary), implement, 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 the JPMC Affiliated QPAM are conducted independently of the corporate management and business activities of JPMC;

(ii) The JPMC Affiliated QPAM 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) The JPMC Affiliated QPAM does not knowingly participate in any other person’s violation of ERISA or the Code with respect to Covered Plans;

(iv) Any filings or statements made by the JPMC Affiliated QPAM to regulators, including, but not limited to, the

Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of or in relation to Covered Plans, are materially accurate and complete to the best of such QPAM’s knowledge at that time;

(v) To the best of the JPMC Affiliated QPAM’s knowledge at the time, the JPMC Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to Covered Plans or make material misrepresentations or omit material information in its communications with Covered Plans;

(vi) The JPMC Affiliated QPAM 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 QPAM reasonably should have known of the noncompliance (whichever is earlier), and any such violation or compliance failure not so corrected is reported, upon the discovery of such failure to so correct, in writing, to the head of compliance and the general counsel (or their functional equivalent) of the relevant line of business that engaged in the violation or failure, and the independent auditor responsible for reviewing compliance with the Policies. A JPMC Affiliated QPAM 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 the QPAM 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) Each JPMC Affiliated QPAM must continue to implement a training program (the Training) conducted at least annually for all relevant JPMC Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training required under this exemption may be conducted electronically and must: (i) at a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing; and (ii) be conducted by a professional who has been prudently

selected and who has appropriate technical training and proficiency with ERISA and the Code to perform the tasks required by this exemption;

(i)(1) Each JPMC Affiliated QPAM must submit to an audit conducted every two years by an independent auditor who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of and each JPMC Affiliated QPAM's compliance with the Policies and Training conditions described herein. The audit requirement must be incorporated in the Policies. Each audit must cover the preceding consecutive twelve (12) month period. The first audit must cover the period from July 10, 2022, through July 9, 2023, and must be completed by December 31, 2023. The second audit must cover the period from July 1, 2024, through June 30, 2025, and must be completed by December 31, 2025. The third audit must cover the period from July 1, 2026, through January 9, 2027, and must be completed by July 8, 2027;

(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, each JPMC Affiliated QPAM and, if applicable, JPMC, 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 each JPMC Affiliated QPAM 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 each JPMC Affiliated QPAM's operational compliance with the Policies and Training conditions. In this regard, the auditor must test, for each QPAM, a sample of the QPAM's transactions involving Covered Plans sufficient in size and nature to afford the auditor a reasonable basis to determine the QPAM's operational

compliance with the Policies and Training;

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

(i) the adequacy of each JPMC Affiliated QPAM's Policies and Training; each JPMC Affiliated QPAM's compliance with the Policies and Training conditions; the need, if any, to strengthen such Policies and Training; and any instance of the respective JPMC Affiliated QPAM's noncompliance with the written Policies and Training described in Section I(h) above. The JPMC Affiliated QPAM 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 of the respective JPMC Affiliated QPAM. Any action taken, or the plan of action to be taken, by the respective JPMC Affiliated QPAM must be included in an addendum to the Audit Report (and such addendum must be completed before the certification described in Section I(i)(7) below). In the event such a plan of action to address the auditor's recommendation regarding the adequacy of the Policies and Training is not completed by the time 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 the respective JPMC Affiliated QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that a JPMC Affiliated QPAM has complied with the requirements under this subparagraph must be based on evidence that the particular JPMC Affiliated QPAM has actually implemented, maintained, and followed the Policies and Training required by this exemption. Furthermore, the auditor must not solely rely on the Annual Report created by the

compliance officer (the Compliance Officer), as described in Section I(m) below, as the basis for the auditor's conclusions in lieu of independent determinations and testing performed by the auditor, as required by Section I(i)(3) and (4) above; and

(ii) The adequacy of the most recent Annual Review described in Section I(m);

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

(7) With respect to each Audit Report, the general counsel, or one of the three most senior executive officers of the line of business engaged in discretionary asset management services through the JPMC Affiliated QPAM with respect to which the Audit Report applies must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption and that to the best of such officer's knowledge at the time, the JPMC Affiliated QPAM 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 referenced in the Statement of Facts that gave rise to the Conviction, who knew of, or should have known of, or participated in, any misconduct described in the Statement of Facts 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;

(8) The Risk Committee of JPMC's Board of Directors is provided a copy of each Audit Report, and a senior executive officer with a direct reporting line to the highest-ranking legal compliance officer of JPMC must review the Audit Report for each JPMC Affiliated QPAM and certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report;

(9) Each JPMC Affiliated QPAM provides 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, each JPMC Affiliated QPAM must make its Audit Report unconditionally available, electronically or otherwise, for examination upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan;

(10) Each JPMC Affiliated QPAM and the auditor must submit to *e-OED@dol.gov* any engagement agreement(s) executed 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 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) JPMC must notify the Department of a change in the independent auditor no later than two (2) months after the engagement of a substitute or subsequent auditor and must provide an explanation for the substitution or change including a description of any material disputes between the terminated auditor and JPMC;

(j) Throughout the Exemption Period, with respect to any arrangement, agreement, or contract between a JPMC Affiliated QPAM and a Covered Plan, the JPMC Affiliated QPAM 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 a JPMC Affiliated QPAM's violation of ERISA's fiduciary duties, as applicable, and of the prohibited transaction provisions of ERISA and the Code, as applicable; or a breach of contract by the QPAM; or any claim arising out of the failure of such JPMC Affiliated QPAM to qualify for the exemptive relief provided by PTE 84-14 as a result of a violation of Section I(g) of PTE 84-14, other than the Conviction. This condition applies only to actual losses caused by the JPMC Affiliated QPAM'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 as a result of a QPAM's inability to rely upon the relief in the QPAM Exemption.

(3) Not to require (or otherwise cause) the Covered Plan to waive, limit, or qualify the liability of the JPMC Affiliated QPAM 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 the JPMC Affiliated QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by the QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any 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 liability of the JPMC Affiliated QPAM for a violation of such agreement's terms. To the extent consistent with ERISA Section 410, however, this provision does not prohibit disclaimers for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is

independent of JPMC and its affiliates, or damages arising from acts outside the control of the JPMC Affiliated QPAM; and

(7) Each JPMC Affiliated QPAM must provide a notice of its obligations under this Section I(j) to each Covered Plan. For all other prospective Covered Plans, the JPMC Affiliated QPAM must agree to its obligations under this Section I(j) in an updated investment management agreement between the JPMC Affiliated QPAM and such clients or other written contractual agreement. This condition will be deemed met for each Covered Plan that received a notice pursuant to PTE 2016-15 or PTE 2017-03 that meets the terms of this condition. This condition will also be met where the JPMC Affiliated QPAM previously agreed to the same obligations required by this Section I(j) in an updated investment management agreement between the JPMC Affiliated QPAM and a Covered Plan. Notwithstanding the above, a JPMC Affiliated QPAM 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, each JPMC Affiliated QPAM 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 a JPMC Affiliated QPAM, or the sponsor of an investment fund in any case where a JPMC Affiliated QPAM acts as a sub-adviser to the investment fund in which such ERISA-covered plan and IRA invests. All prospective Covered Plan clients that enter into a written asset or investment management agreement with a JPMC Affiliated QPAM after a date that is 60 days after the effective date of this exemption must receive a copy of the notice of the exemption, the Summary, and the Statement before, or contemporaneously with, the Covered Plan's receipt of a written asset or investment management agreement from the JPMC Affiliated QPAM. The notices may be delivered electronically (including by an email that has a link to the exemption). Notwithstanding the above, a JPMC Affiliated QPAM will not violate the condition solely because a Covered Plan refuses to sign an updated investment management agreement.

For Covered Plan clients that first become clients on or after January 10, 2023, but before May 10, 2023, a JPMC Affiliated QPAM will meet the requirements of this Section (k) to the extent the investment management or comparable agreements with the JPMC Affiliated QPAM includes notification language referencing PTE 2017–03 and a link to the required materials, provided the website containing such materials stipulated under the notification conditions in this proposed exemption, if granted, is updated, as necessary, by May 10, 2023;

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

(m)(1) Within 60 days after the effective date of this exemption, each JPMC Affiliated QPAM must designate a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. For purposes of this condition (m), each relevant line of business within a JPMC Affiliated QPAM may designate its own Compliance Officer(s). Notwithstanding the above, no person, including any person referenced in the Statement of Facts that gave rise to the Plea Agreement, who knew of, or should have known of, or participated in, any misconduct described in the Statement of Facts, 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 each twelve-month period of the Exemption Period (the Exemption Review), to determine the adequacy and effectiveness of the implementation of the Policies and Training. 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 annual Exemption Review includes a review of the JPMC Affiliated QPAM's compliance with and effectiveness of the Policies and Training and of the following: any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the compliance and risk control function (or its equivalent) during the previous year; the most recent Audit Report issued pursuant to this exemption or PTE 2017–03; any material change in the relevant business activities of the JPMC Affiliated QPAMs; and any change to ERISA, the Code, or regulations related to fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of the JPMC Affiliated QPAMs;

(ii) The Compliance Officer prepares a written report for the Exemption Review (an Exemption Report) that (A) summarizes their material activities during the prior year; (B) sets forth any instance of noncompliance discovered during the prior year, and any related corrective action; (C) details any change to the Policies or Training to guard against any similar instance of noncompliance occurring again; and (D) makes recommendations, as necessary, for additional training, procedures, monitoring, or additional and/or 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) the JPMC Affiliated QPAMs have complied with the Policies and Training, and/or corrected (or are correcting) any known instances of noncompliance in accordance with Section III(h) above;

(iv) The Exemption Report must be provided to appropriate corporate officers of JPMC and each JPMC Affiliated QPAM to which such report relates; the head of compliance and the general counsel (or their functional equivalent) of JPMC and the relevant JPMC Affiliated QPAM; and must be made unconditionally available to the

independent auditor described in Section I(i) above;

(v) The annual Exemption Review, including the Compliance Officer's written Report, must be completed within three (3) months following the end of the period to which it relates. The annual Exemption Reviews under this exemption must cover the following periods: January 10, 2023, through December 31, 2023; January 1, 2024, through December 31, 2024; January 1, 2025, through December 31, 2025; and January 1, 2026, through January 9, 2027.

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

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

(p) Each JPMC Affiliated QPAM 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 the JPMC Affiliated QPAM relies upon the relief in this exemption;

(q) During the Exemption Period, JPMC 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 JPMC or any of its affiliates (as defined in Section VI(d) of PTE 84–14) in connection with conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA; and (2) immediately 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, each JPMC Affiliated QPAM, in its agreements with, or in other written disclosures provided to Covered Plans, will clearly and prominently inform Covered Plan clients of their right to obtain a copy of the Policies or a description (Summary Policies) which accurately summarizes key components of the JPMC Affiliated QPAM's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within six (6) months following the end of the calendar year during which the Policies were changed. If the Applicant meets this disclosure requirement through Summary Policies, changes to the Policies shall not result in the

requirement for a new disclosure unless, as a result of changes to the Policies, the Summary Policies are no longer accurate. 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;

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

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

(u) Other than former employees who worked on the Precious Metals Desk and U.S. Treasuries Desk within the CIB in the Global Markets division, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, agents and employees of such QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not know of, did not have reason to know of, and did not participate in the conduct underlying the September 29, 2020, deferred prosecution agreement entered into between the Department of Justice and JPMC, JPMorgan Chase Bank, and JPMS (the DPA). Further, any other party engaged on behalf of the JPMC Affiliated QPAMs and JPMC Related QPAMs who had responsibility for or exercised authority in connection with the management of plan assets did not know or have reason to know of and did not participate in the criminal conduct that is the subject of the DPA.

(v) Apart from a non-fiduciary line of business within JPMorgan Chase Bank, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, and agents, and employees of such JPMC QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the conduct underlying the DPA. Further, any other party engaged on behalf of the JPMC Affiliated QPAMs and the JPMC Related QPAMs who had responsibility

for, or exercised authority in connection with the management of plan assets did not receive direct compensation, or knowingly receive indirect compensation, in connection with the conduct underlying the DPA.

Effective Date: If granted, the exemption will be effective for a period of four years beginning on January 10, 2023, and ending on January 9, 2027.

George Christopher Cosby,

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

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