

included in the record of the meeting and will be available by contacting the EBSA Public Disclosure Room. Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed.

Individuals or representatives of organizations wishing to address the Advisory Council should forward their requests to the Executive Secretary or telephone (202) 693-8668. Oral presentations will be limited to ten minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact the Executive Secretary by September 22, 2014 at the address indicated.

Signed at Washington, DC, this 27th day of August 2014.

**Phyllis C. Borzi,**

*Assistant Secretary, Employee Benefits Security Administration.*

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**BILLING CODE 4510-29-P**

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

[Application No. D-11819]

#### Notice of Proposed Exemption involving Credit Suisse AG (hereinafter, either Credit Suisse AG or the Applicant) Located in Zurich, Switzerland

**AGENCY:** Employee Benefits Security Administration, U.S. Department of Labor.

**ACTION:** Notice of Proposed Exemption

**SUMMARY:** This document contains a notice of pendency before the Department of Labor (the Department) of a proposed individual exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act), and the Internal Revenue Code of 1986, as amended (the Code). The proposed exemption, if granted, would affect the ability of certain entities with specified relationships to Credit Suisse AG to continue to rely upon the relief provided by Prohibited Transaction Class Exemption 84-14.

**DATES:** *Effective Date:* If granted, this proposed exemption will be effective as of the date a judgment of conviction against Credit Suisse AG for one count of conspiracy to violate section 7206(2)

of the Internal Revenue Code in violation of Title 18, United States Code, Section 371 is entered in the District Court for the Eastern District of Virginia in Case Number 1:14-cr-188-RBS.

**DATES:** Written comments and requests for a public hearing on the proposed exemption should be submitted to the Department within 35 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 proposed exemption and the manner in which the person would be adversely affected by the exemption, if granted. 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 public hearing concerning the proposed exemption should be sent to the Office of Exemption Determinations, Employee Benefits Security Administration, Room N-5700, U.S. Department of Labor, 200 Constitution Avenue NW., Washington DC 20210, Attention: Application No. D-11819. 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](mailto:moffitt.betty@dol.gov), or by FAX to (202) 219-0204 by the end of the scheduled comment period. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1515, 200 Constitution Avenue NW., Washington, DC 20210. Comments and hearing requests will also be available online at [www.regulations.gov](http://www.regulations.gov) and [www.dol.gov/ebsa](http://www.dol.gov/ebsa), at no charge.

**Warning:** If you submit written comments or hearing requests, do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments and hearing requests may be posted on the Internet and can be retrieved by most Internet search engines.

**FOR FURTHER INFORMATION CONTACT:** Erin S. Hesse, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202)

693-8546. (This is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** If the proposed exemption in this document is granted, any entity with a specified relationship to Credit Suisse AG will not be precluded from relying on the relief provided by Prohibited Transaction Class Exemption 84-14 (49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010)), notwithstanding a judgment of conviction against Credit Suisse AG for one count of conspiracy to violate section 7206(2) of the Internal Revenue Code in violation of Title 18, United States Code, Section 371, to be entered in the District Court for the Eastern District of Virginia in Case Number 1:14-cr-188-RBS. The proposed exemption has been requested by Credit Suisse AG pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011). Effective December 31, 1978, section 102 of the Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor. Accordingly, this notice of proposed exemption is being issued solely by the Department.

#### Summary of Facts and Representations<sup>1</sup>

##### Background

1. The Applicant represents that Credit Suisse Group AG (Credit Suisse Group) is a publicly-traded company organized in Switzerland and headquartered in Zurich. As of December 31, 2013, Credit Suisse Group had assets of approximately \$980.1 billion, including approximately \$47.3 billion in shareholders' equity. Credit Suisse Group owns a 100% interest in Credit Suisse AG (i.e., the Applicant), which operates as a bank, with all related banking, finance, consultancy, service, and trading activities in Switzerland and abroad.

2. The Applicant further represents that it has financial relationships with a wide range of entities that may act as "qualified professional asset managers" (QPAMs), in reliance on the exemptive relief provided in Prohibited

<sup>1</sup> The Summary of Facts and Representations is based on the Applicant's representations and does not reflect the views of the Department, unless indicated otherwise.

Transaction Class Exemption (PTE) 84–14.<sup>2</sup>

PTE 84–14 provides a conditional exemption for certain transactions between a party in interest with respect to an employee benefit plan and an investment fund (as defined in Section VI(b) of PTE 84–14) in which the plan has an interest, where the investment fund is managed by a QPAM. One of the conditions for exemptive relief in PTE 84–14, Section I(g), precludes an entity that may otherwise meet the definition of a QPAM provided in Section VI(a) of PTE 84–14 from relying on the relief provided by the class exemption if that entity or an affiliate thereof or any owner, direct or indirect, of a 5 percent or more interest in the QPAM has, within 10 years immediately preceding the transaction, been either convicted or released from imprisonment, whichever is later, as a result of certain specified criminal activity described in that section. This condition was included in PTE 84–14, in part, based on the expectation that a QPAM, and those who may be in a position to influence its policies, maintain a high standard of integrity.<sup>3</sup>

3. The Applicant represents that it is an affiliate (as defined in Section VI(d) of PTE 84–14) of Credit Suisse Asset Management LLC, Credit Suisse Securities (USA) LLC, CSAM Limited, and a number of other entities that act as QPAMs and manage over \$2 billion in assets (collectively, the Credit Suisse Affiliated QPAMs). The Applicant represents that it also owns a five percent or more interest in certain other entities (the Credit Suisse Related QPAMs) that may provide investment management services to plans in reliance on the exemptive relief provided in PTE 84–14, but are not affiliates (as defined in Section VI(d) of PTE 84–14) of Credit Suisse AG. As noted above in paragraph two, Section I(g) of PTE 84–14 would also preclude the Credit Suisse Related QPAMs from relying on the relief provided by PTE 84–14, notwithstanding the fact that they are not affiliated with Credit Suisse AG.

4. The Applicant notes that, on May 19, 2014, the Tax Division of the United States Department of Justice and the U.S. Attorney's Office for the Eastern District of Virginia filed a one-count criminal information (the Information) in the District Court for the Eastern

District of Virginia (the District Court)<sup>4</sup> charging Credit Suisse AG with a conspiracy to violate section 7206(2) of the Code in violation of Title 18, United States Code, Section 371.<sup>5</sup> The Information identifies the Applicant and its subsidiaries, Credit Suisse Fides and Clariden Leu Ltd., of willfully aiding, assisting in, procuring, counseling, and advising the preparation and presentation of false income tax returns and other documents to the Internal Revenue Service of the Treasury Department (IRS), for decades, prior to and through approximately 2009.

5. According to the Statement of Facts filed in the criminal case (the Statement of Facts), for decades prior to and through approximately 2009, Credit Suisse AG operated an illegal cross-border banking business that knowingly and willfully aided and assisted thousands of U.S. clients in opening and maintaining undeclared accounts<sup>6</sup> concealing their offshore assets and income from the IRS. Private bankers employed by Credit Suisse AG (referred to as Relationship Managers or RMs) served as the primary contact for U.S. clients with undeclared accounts at Credit Suisse AG. Credit Suisse AG used a variety of means to assist U.S. clients in concealing their undeclared accounts, including by: Assisting clients in using sham entities as nominee beneficial owners of the undeclared accounts; soliciting IRS forms that falsely stated under penalty of perjury that the sham entities beneficially owned the assets in the accounts; failing to maintain in the United States records related to the accounts; destroying account records sent to the United States for client review; using Credit Suisse managers and employees as unregistered investment advisors on undeclared accounts; facilitating withdrawals of funds from undeclared accounts by either providing hand-delivered cash in the United States or using Credit Suisse's correspondent bank accounts in the United States; structuring transfers

of funds to evade currency transaction reporting requirements; and providing offshore credit and debit cards to repatriate funds in the undeclared accounts.

6. According to the Statement of Facts, Credit Suisse AG made a number of ineffectual attempts to consolidate these U.S. clients' accounts in Credit Suisse AG business entities that complied with U.S. law. For instance, starting in or about 2009, Credit Suisse AG engaged in a flawed process of verifying tax compliance of U.S. accounts in order to allow these accounts to remain at Credit Suisse AG. In December 2010, the Tax Division of the DOJ informed Credit Suisse AG that it had begun a criminal investigation of Credit Suisse AG that had uncovered evidence of tax law violations. Although Credit Suisse AG had either transferred or terminated the majority of its relationships with these U.S. clients by approximately 2010, Credit Suisse AG continued to identify U.S. customer accounts for closure until in or about 2013.

7. On May 19, 2014, pursuant to a plea agreement (the Plea Agreement), the Applicant entered a plea of guilty for assisting U.S. citizens in federal income tax evasion. The Applicant represents that it expects the District Court to enter a judgment of conviction (the Conviction) against Credit Suisse AG that will require remedies that are materially the same as set forth in the Plea Agreement. The Conviction is scheduled to be entered on or after November 1, 2014.

#### *Failure To Comply With Section I(g) of PTE 84–14 and Proposed Relief*

8. As noted above, Section I(g) of PTE 84–14 expressly identifies a criminal conviction of a QPAM, an affiliate thereof, or any owner, direct or indirect, of a 5 percent or more interest in a QPAM, for income tax evasion as precluding the QPAM from relying on the relief set forth in the class exemption. Pursuant to that section, once the Conviction is entered, the Credit Suisse Affiliated QPAMs and Credit Suisse Related QPAMs will no longer be able to rely on PTE 84–14. The Applicant is seeking an individual exemption that would permit the Credit Suisse Affiliated QPAMs and the Credit Suisse Related QPAMs to continue to rely on PTE 84–14, notwithstanding the Conviction, to the extent that such QPAMs meet certain additional conditions, as proposed herein.

<sup>2</sup> 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).

<sup>3</sup> See 47 FR 56945, 56947 (December 21, 1982).

<sup>4</sup> *United States of America v. Credit Suisse AG*, Case Number 1:14-cr-188-RBS.

<sup>5</sup> Section 7206(2) of the Code prohibits willfully aiding, assisting, procuring, counseling, or advising the preparation or presentation of false income tax returns. Section 371 of Title 18 of the United States Code generally prohibits two or more persons from conspiring either to commit any offense against the United States or to defraud the United States.

<sup>6</sup> An "undeclared account" is a financial account owned by an individual subject to U.S. tax and maintained in a foreign country that has not been reported by the individual account owner to the U.S. government on an income tax return and a Report of Foreign Bank and Financial Accounts (FBAR). U.S. citizens, resident aliens, and legal permanent residents have an obligation to report all income earned from foreign bank accounts on their tax returns and to pay the taxes due on that income.

*Statutory Findings—In the Interest of Affected Plans and IRAs*

9. The Applicant submits that the requested exemption would be in the interest of affected plans, those described in section 3(3) of ERISA (ERISA-covered plans) or section 4975(e)(1) of the Code (IRAs). In this regard, the Applicant states that the exemption would allow ERISA-covered plans and IRAs managed by the Credit Suisse Affiliated QPAMs and Credit Suisse Related QPAMs to avoid the costs or losses that would arise if these QPAMs were suddenly unable to rely on the relief afforded by PTE 84–14 after the Conviction. The Applicant submits that if the Credit Suisse Affiliated QPAMs lose the relief in PTE 84–14, three main investment strategies used for ERISA-covered plans and IRAs would be impacted. The first strategy, Credit, seeks to invest in long-term fixed income opportunities by investing in syndicated bank loans, high yield bonds, and structured asset backed securities that trade over-the-counter in the primary and secondary markets. This strategy covers five ERISA-covered plans and pooled funds. About half of the strategy involves loans engaged in by Credit Suisse Affiliated QPAMs in reliance of the relief provided by PTE 84–14. The second strategy, Commodities, seeks to replicate the return of certain commodities indices by investing in futures, structured notes, total return swaps, and other derivatives. This strategy covers eight ERISA-covered plans and pooled funds. The third strategy, Liquid Alternative Beta (LAB), seeks to replicate the performance of hedge fund sectors such as long/short equity, event driven, and managed futures using liquid tradable instruments. The LAB strategy invests in ADRs, equity securities, ETFs, futures, forwards, and options. This strategy covers four ERISA-covered plans.

10. The Applicant represents that the cost of terminating an investment is generally the difference between the bid price and the ask price for any particular investment. Furthermore, some investments are more liquid than others (e.g., Treasury bonds are more liquid than foreign sovereign bonds and equities are more liquid than swaps). According to the Applicant, the strategies mentioned above (Credit, Commodities, and LAB) tend to be less liquid than certain other strategies and, thus, the cost of terminating an investment therein would be significantly higher than, for example, liquidating a large cap equity portfolio. The Applicant estimates that the cost to

ERISA-covered plans and IRAs of transitioning from Credit Suisse Affiliated QPAMs to other unrelated managers in each of the three strategies is as follows: LAB—about eleven basis points; Credit—under two basis points to liquidate the assets but because of the bid/ask spread, as much as fifty basis points to reinvest the assets; and Commodities—three to five basis points. Based on the amount of assets in each strategy, the Applicant estimates that the total cost of liquidating would be about \$450,000. However, the Applicant notes that the affected ERISA-covered plans and IRAs would need to reinvest in the market, so the real cost would potentially be much higher. The Applicant additionally represents that the Credit Suisse Affiliated QPAMs do not impose any charges or penalties on ERISA-covered plans or IRAs for terminating or withdrawing from any agreements for the provision of asset management or other services by the Credit Suisse Affiliated QPAMs.

11. The Applicant states further that the proposed exemption would enable ERISA-covered plans and IRAs managed by the Credit Suisse Affiliated QPAMs and Credit Suisse Related QPAMs to continue with the current investment strategies of their chosen QPAM. The Applicant suggests that any ERISA-covered plan or IRA that is forced to move to a new investment manager could incur transition costs, including costs associated with identifying an appropriate investment manager to act as a QPAM.

*Statutory Findings—Protective of Affected Plans and IRAs*

12. The Applicant submits that the proposed exemption, if granted, would be protective of affected ERISA-covered plans and IRAs. The Applicant represents that the criminal conduct of Credit Suisse AG that is the subject of the Conviction did not directly or indirectly involve the assets of any ERISA-covered plan or IRA. The Applicant also represents that neither the Credit Suisse Affiliated QPAMs nor the Credit Suisse Related QPAMs (including the officers, directors, employees, or agents of such QPAMs) participated in the criminal conduct that forms the basis for the Conviction. Additionally, the Applicant represents that neither the Credit Suisse Affiliated QPAMs nor the Credit Suisse Related QPAMs directly received any compensation in connection with such conduct. Finally, the Applicant states that Credit Suisse AG, the entity to be convicted, did not provide any fiduciary services to ERISA-covered plans or IRAs, except in connection with certain

securities lending services of the New York Branch of Credit Suisse AG, or act as a QPAM for any ERISA-covered plan or IRA.

*Credit Suisse Affiliated QPAMs.* The Applicant explains that Credit Suisse Affiliated QPAMs are part of the Asset Management business in the U.S. and the U.K., whereas the Relationship Managers involved in the criminal conduct worked for Credit Suisse AG or other non-U.S. affiliates in Switzerland. Furthermore, the Applicant notes that Credit Suisse Affiliated QPAMs maintain separate registrations, books and records, and accounts from the Relationship Managers in Switzerland. Additionally, other than research and other publicly available information, which is provided to many investment managers, and which Credit Suisse Affiliated QPAMs receive from hundreds of analysts and investment banks, asset management decisions and asset management operations of Credit Suisse Affiliated QPAMs are independent of (i.e., not influenced by) Credit Suisse AG's management and business activities. The Applicant represents that the trading decisions and investment strategy of Credit Suisse Affiliated QPAMs for their clients is not shared with Credit Suisse AG employees outside of the asset management division, nor does the asset management division consult with other parts of the Credit Suisse AG organization prior to making investment decisions on behalf of its clients.

*Credit Suisse Related QPAMs.* The Applicant represents that Credit Suisse AG's relationships to many of the entities that may be considered Credit Suisse Related QPAMs is so minimal that Credit Suisse AG does not know if such entities are acting as QPAMs in reliance on the relief in PTE 84–14. Furthermore, the Applicant represents that any such Credit Suisse Related QPAMs maintain their own information and technology infrastructure and do not share office space or employees with Credit Suisse AG. According to the Applicant, such Credit Suisse Related QPAMs are entirely separate and distinct from Credit Suisse AG. Furthermore, the Applicant states that no employee of Credit Suisse AG sits on the board of directors of any Credit Suisse Related QPAM. The Applicant explains that Credit Suisse AG does not have the power to exercise a controlling influence over the management or policies of such QPAMs. Additionally, the Applicant's investments in such QPAMs are intended to be, and are, passive investments. The Applicant adds that Credit Suisse AG does not have the power to exercise a controlling

influence over the investment management decisions of these managers. Therefore, the Applicant maintains that Credit Suisse AG has no "control" over such Credit Suisse Related QPAMs as that term is defined in Section VI(e) of PTE 84-14.<sup>7</sup>

13. The Applicant represents that if this proposed exemption is granted, Credit Suisse Affiliated QPAMs will not use their authority or influence to direct an investment fund (as defined in Section VI(b) of PTE 84-14) managed by a Credit Suisse Affiliated QPAM to enter into any transaction with Credit Suisse AG or engage Credit Suisse AG to provide additional services, for a fee, to the investment fund regardless of whether such transactions or services may otherwise be within the scope of relief provided by an administrative or statutory exemption. Additionally, the Applicant represents that any employee accused of engaging in the criminal conduct that underlies the Conviction will not transact business on behalf of any investment fund managed by the Credit Suisse Affiliated QPAMs.

14. The Department notes that the proposed exemption, if granted, provides additional protection to affected ERISA-covered plans and IRAs because it requires a prudently selected, independent auditor, who has appropriate technical training and proficiency with Title I of ERISA, to evaluate the adequacy of and compliance with the policy and training requirements described below. The first of the audits must be completed no later than twelve (12) months after a final exemption for the covered transactions is granted in the **Federal Register** and must cover the first six-month period that begins on the date a final exemption is granted in the **Federal Register**; all subsequent audits must cover the following corresponding twelve-month periods and be completed no later than 6 months after the period to which it applies. The auditor shall determine whether Credit Suisse AG and the Credit Suisse Affiliated QPAMs have developed, implemented, maintained, and followed written policies (the Policies) requiring and designed to ensure that: (i) The asset management decisions and asset management operations of the Credit Suisse Affiliated QPAMs are conducted independently of Credit Suisse AG's management and business activities; (ii) Credit Suisse AG and the Credit Suisse Affiliated QPAMs fully comply with

ERISA's fiduciary duties and prohibited transaction provisions, and do not knowingly participate in any violations of these duties and provisions; (iii) Credit Suisse AG and the Credit Suisse Affiliated QPAMs do not knowingly participate in any other person's violation of ERISA, the Code, or other federal, state, or local law; (iv) any filings or statements made to federal, state, or local government are accurate and complete; (v) Credit Suisse AG and the Credit Suisse Affiliated QPAMs do not make material misrepresentations or omit material information in their communications with federal, state, or local government, or their ERISA-covered plan and IRA clients; (vi) Credit Suisse AG and the Credit Suisse Affiliated QPAMs comply with the terms of this exemption; and (vii) any violations of or failure to comply with items (ii) through (vi) are promptly reported in writing to appropriate corporate officers, the head of Credit Suisse U.S. Asset Management Compliance, the General Counsel for Credit Suisse Asset Management, the independent auditor responsible for reviewing compliance with the Policies, and a non-QPAM fiduciary of any affected ERISA-covered plan or IRA.

15. The independent auditor shall also determine whether Credit Suisse AG and the Credit Suisse Affiliated QPAMs have developed a training program (the Training) for Credit Suisse AG and Credit Suisse Affiliated QPAM personnel covering, at a minimum, the Policies, ERISA compliance, the consequences for not complying with the conditions of this proposed exemption, if granted, (including the loss of the exemptive relief provided herein), prompt reporting of wrongdoing, and ethical conduct. The auditor shall also determine whether Credit Suisse AG and the Credit Suisse Affiliated QPAMs are operationally compliant with the Policies and Training.

16. The auditor shall provide a written report (the Audit Report), upon completion of each audit that it conducts, to Credit Suisse AG and the Credit Suisse Affiliated QPAMs that describes the auditor's determinations as required under this proposed exemption, if granted, and the steps performed by the auditor during the course of the auditor's examinations. The Report will also include the auditor's determinations with regards to the adequacy of the Policies and the Training and any recommendations with respect to strengthening the Policies and Training, and any instances of Credit Suisse AG's or the Credit Suisse Affiliated QPAMs'

noncompliance with the written Policies and Training described above. Any determinations made by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training shall be promptly addressed by Credit Suisse AG and the Credit Suisse Affiliated QPAMs, and any actions taken by Credit Suisse AG or the Credit Suisse Affiliated QPAMs to address such recommendations shall be included in an addendum to the Audit Report.

17. The auditor shall notify Credit Suisse AG and the Credit Suisse Affiliated QPAMs of any instances of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date. Credit Suisse AG or a Credit Suisse Affiliated QPAM shall provide written notice to the Department's Office of Exemption Determinations (OED) of any instances of noncompliance reviewed by the auditor within ten (10) business days after such notice is received from the auditor. Upon request, the auditor shall provide OED with all of the relevant workpapers reflecting any instances of noncompliance. The workpapers shall identify whether and to what extent the assets of ERISA-covered plans or IRAs were involved in the instance(s) of noncompliance and an explanation of any corrective actions taken by Credit Suisse AG.

18. An executive officer of Credit Suisse AG will certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report and this exemption, addressed any inadequacies identified in the Audit Report, and determined that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code. Similarly, an executive officer of each Credit Suisse Affiliated QPAM will certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report and this exemption, addressed any inadequacies identified in the Audit Report, and determined that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code. Finally, the Applicant provides each certified Audit Report to OED no later than 30 days following its completion and Credit Suisse AG and the Credit Suisse Affiliated QPAMs make the Audit Report unconditionally

<sup>7</sup> 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.

available for examination by any duly authorized employee or representative of the Department, or other relevant regulators, and any fiduciary of an ERISA-covered plan or IRA, the assets of which are managed by a Credit Suisse Affiliated QPAM.

19. The Department notes that the proposed exemption, if granted, will also be protective of plans and their participants and beneficiaries, because, in any agreements with ERISA-covered plans or IRAs for the provision of asset management or other services, Credit Suisse AG and the Credit Suisse Affiliated QPAMs will contain additional protective covenants described herein. In this regard, in such agreements, Credit Suisse AG or a Credit Suisse Affiliated QPAM, as applicable, must agree to comply with ERISA and to refrain from engaging in prohibited transactions; must not purport to waive, limit, or qualify the liability of Credit Suisse AG or the Credit Suisse Affiliated QPAMs for violating ERISA or engaging in prohibited transactions; must not require the ERISA-covered plans or IRAs (or sponsors of such ERISA-covered plans or IRAs) to indemnify Credit Suisse AG or the Credit Suisse Affiliated QPAMs for violating ERISA or engaging in prohibited transactions; must not restrict the ability of such ERISA-covered plans or IRAs to terminate or withdraw from their arrangements with Credit Suisse AG or the Credit Suisse Affiliated QPAMs; and must not impose any fees, penalties, or charges for such termination or withdrawal.

20. The Department also notes that a Credit Suisse Affiliated QPAM will not fail to meet the terms of this proposed exemption, if granted, solely because a Credit Suisse Related QPAM fails to satisfy a condition for relief under this exemption. Additionally, a Credit Suisse Related QPAM will not fail to meet the terms of this proposed exemption, if granted, solely because Credit Suisse AG, a Credit Suisse Affiliated QPAM, or a different Credit Suisse Related QPAM fails to satisfy a condition for relief under this exemption.

21. The Applicant represents that if a final exemption is granted in the **Federal Register**, Credit Suisse AG and the Credit Suisse Affiliated QPAMs will maintain records necessary to demonstrate that the conditions of this exemption have been met for six (6) years following the date of any transactions for which Credit Suisse Affiliated QPAMs rely upon the relief in the exemption.

22. The Applicant represents further that, if this proposed exemption is

granted, Credit Suisse AG will provide to (1) each sponsor of an ERISA-covered plan and each beneficial owner of an IRA invested in an investment fund managed by a Credit Suisse Affiliated QPAM, or the sponsor of an investment fund in any case where a Credit Suisse Affiliated QPAM acts only as a sub-advisor to the investment fund; (2) each entity that may be a Credit Suisse Related QPAM; and (3) each ERISA-covered plan for which the New York Branch of Credit Suisse AG provides fiduciary securities lending services, a notice of the proposed exemption, along with a separate summary of the facts that led to the Conviction, which has been submitted to the Department, and a prominently displayed statement that the Conviction results in a failure to meet a condition in PTE 84–14.

23. Finally, the Applicant represents that the proposed exemption will protect the interests of affected ERISA-covered Plans and IRAs because it would allow the Credit Suisse Affiliated QPAMs to engage in transactions described in PTE 84–14 only to the extent that all of the longstanding conditions set forth in PTE 84–14 (except for Section I(g), as a result of the Conviction) are fully met.

#### *Statutory Findings—Administratively Feasible*

24. The Applicant represents that the requested exemption is administratively feasible because it does not require any monitoring by the Department but relies on an independent auditor to determine that Credit Suisse AG's and the Affiliated QPAMs' compliance policies, and the conditions for the exemption, are being followed. Furthermore, compliance with other sections of PTE 84–14 has been determined to be administratively feasible by the Department in many other similar cases.

#### **Notice to Interested Persons**

Notice of the proposed exemption (the Notice) will be provided to all interested persons within five (5) days of publication of the Notice in the **Federal Register**. The Notice will be provided to all interested persons in the manner agreed upon by the Applicant and the Department. Such notification will contain a copy of the Notice, as published in the **Federal Register**, and a supplemental statement, as required, pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform all interested persons of their right to comment on and to request a hearing with respect to the pending exemption. All written comments and/or requests for a hearing must be received by the Department within thirty-five (35) days

of the publication of the Notice in the **Federal Register**.

All comments will be made available to the public. *Warning:* Do not include any personally identifiable information (such as 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.

#### **General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

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

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

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

### Proposed Exemption

Based on the foregoing facts and representations submitted by the Applicant, 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 procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011).<sup>8</sup>

#### Section I: Covered Transactions

If the proposed exemption is granted, the Credit Suisse Affiliated QPAMs and the Credit Suisse Related QPAMs shall not be precluded from relying on the relief provided by Prohibited Transaction Class Exemption (PTE) 84-14<sup>9</sup> notwithstanding the Conviction (as defined in Section II(c)),<sup>10</sup> provided the following conditions are satisfied:

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

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

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

(d) The criminal conduct of Credit Suisse AG that is the subject of the Conviction did not directly or indirectly involve the assets of any plan described in section 3(3) of ERISA (an ERISA-covered plan) or section 4975(e)(1) of the Code (an IRA);

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

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

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

(g) Credit Suisse AG and the Credit Suisse Affiliated QPAMs will ensure that no employee or agent involved in the criminal conduct that underlies the Conviction will engage in transactions on behalf of any investment fund (as defined in Section VI(b) of PTE 84-14) managed by the Credit Suisse Affiliated QPAMs;

(h)(1) Credit Suisse AG and the Credit Suisse Affiliated QPAMs immediately develop, implement, maintain, and follow written policies (the Policies) requiring and designed to ensure that:

(i) The asset management decisions and asset management operations of the Credit Suisse Affiliated QPAMs are conducted independently of Credit Suisse AG's management and business activities; (ii) Credit Suisse AG and the Credit Suisse Affiliated QPAMs fully comply with ERISA's fiduciary duties and prohibited transaction provisions, and do not knowingly participate in any violations of these duties and provisions; (iii) Credit Suisse AG and the Credit Suisse Affiliated QPAMs do not knowingly participate in any other person's violation of ERISA, the Code, or other federal, state, or local law; (iv) any filings or statements made to federal, state, or local government are accurate and complete; (v) Credit Suisse AG and the Credit Suisse Affiliated QPAMs do not make material misrepresentations or omit material information in their communications with federal, state, or local government, or their ERISA-covered plan and IRA clients; (vi) Credit Suisse AG and the Credit Suisse Affiliated QPAMs comply with the terms of this exemption; and (vii) any violations of or failure to comply with items (ii) through (vi) are promptly reported in writing to appropriate corporate officers, the head of U.S. Asset Management Compliance, the General Counsel for Asset Management, the independent auditor responsible for reviewing compliance with the Policies, and a non-QPAM

fiduciary of any affected ERISA-covered plan or IRA;

(2) Credit Suisse AG and the Credit Suisse Affiliated QPAMs also immediately develop and implement a program of training (the Training), conducted at least annually for Credit Suisse AG and Credit Suisse Affiliated QPAM personnel; at a minimum, the training covers the Policies, ERISA compliance (including fiduciary duties and the prohibited transaction provisions) and ethical conduct, the consequences for not complying with the conditions of this proposed exemption, if granted, (including the loss of the exemptive relief provided herein), prompt reporting of wrongdoing;

(i)(1) Credit Suisse AG and the Credit Suisse Affiliated QPAMs submit to an audit conducted annually by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA to evaluate the adequacy of the policies and training required in paragraph (h), as well as compliance with those requirements; the first of the audits must be completed no later than twelve (12) months after a final exemption for the covered transactions is granted in the **Federal Register**. The first audit must cover the first six-month period that begins on the date a final exemption is granted in the **Federal Register**; all subsequent audits must cover the following corresponding twelve-month periods and be completed no later than 6 months after the period to which the audit applies;

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

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

(4) For each audit, the auditor shall issue a written report (the Audit Report) to Credit Suisse AG and the Credit Suisse Affiliated QPAMs that describes the steps performed by the auditor during the course of its examination. The Audit Report shall include the auditor's specific determinations regarding the adequacy of the Policies and Training; the auditor's recommendations (if any) with respect to strengthening such Policies and Training; and any instances of Credit Suisse AG's or the Credit Suisse

<sup>8</sup> For purposes of this proposed exemption, references to section 406 of ERISA should be read to refer as well to the corresponding provisions of section 4975 of the Code.

<sup>9</sup> 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).

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

Affiliated QPAMs' noncompliance with the written Policies and Training described in paragraph (h) above. Any determinations made by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training shall be promptly addressed by Credit Suisse AG and the Credit Suisse Affiliated QPAMs, and any actions taken by Credit Suisse AG or the Credit Suisse Affiliated QPAMs to address such recommendations shall be included in an addendum to the Audit Report. Any determinations by the auditor that Credit Suisse AG and the Credit Suisse Affiliated QPAMs have implemented, maintained, and followed sufficient Policies and Training, shall not be based solely or in substantial part on an absence of evidence indicating noncompliance;

(5) The auditor shall notify Credit Suisse AG and the Credit Suisse Affiliated QPAMs of any instances of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date. Credit Suisse AG or a Credit Suisse Affiliated QPAM shall provide written notice to the Department's Office of Exemption Determinations (OED), Room N-5700, 200 Constitution Avenue NW., Washington, DC 20210: Of any instances of noncompliance reviewed by the auditor within ten (10) business days after such notice is received from the auditor. Upon request, the auditor shall provide OED with all of the relevant workpapers reflecting any instances of noncompliance. The workpapers shall identify whether and to what extent the assets of ERISA-covered plans or IRAs were involved in the instance(s) of noncompliance and an explanation of any corrective actions taken by Credit Suisse AG;

(6) With respect to each audit, an executive officer of Credit Suisse AG and an executive officer of each Credit Suisse Affiliated QPAM certifies in writing, under penalty of perjury, that the respective officer has reviewed the Audit Report and this exemption, addressed any inadequacies identified in the Audit Report, and determined that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code;

(7) Credit Suisse AG provides each certified Audit Report to OED no later than 30 days following its completion and Credit Suisse AG and the Credit

Suisse Affiliated QPAMs make the Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, or other relevant regulators, and any fiduciary of an ERISA-covered plan or IRA, the assets of which are managed by a Credit Suisse Affiliated QPAM;

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

(k) In any agreements with ERISA-covered plans or IRAs for the provision of asset management or other services, Credit Suisse AG and the Credit Suisse Affiliated QPAMs agree to comply with ERISA and to refrain from engaging in prohibited transactions; the agreements do not purport to waive, limit, or qualify the liability of Credit Suisse AG or the Credit Suisse Affiliated QPAMs for violating ERISA or engaging in prohibited transactions; the agreements do not require the ERISA-covered plans or IRAs (or sponsors of such ERISA-covered plans or IRAs) to indemnify Credit Suisse AG or the Credit Suisse Affiliated QPAMs for violating ERISA or engaging in prohibited transactions; the agreements do not restrict the ability of such ERISA-covered plans or IRAs to terminate or withdraw from their arrangements with Credit Suisse AG or the Credit Suisse Affiliated QPAMs; and the agreements do not impose any fees, penalties, or charges for such termination or withdrawal;

(l) After a final exemption is granted in the **Federal Register**, Credit Suisse AG and the Credit Suisse Affiliated QPAMs will maintain records necessary to demonstrate that the conditions of this exemption have been met for six (6) years following the date of any transactions for which Credit Suisse Affiliated QPAMs rely upon the relief in the exemption;

(m)(1) Each sponsor of an ERISA-covered plan and each beneficial owner of an IRA invested in an investment fund managed by a Credit Suisse Affiliated QPAM, or the sponsor of an investment fund in any case where a Credit Suisse Affiliated QPAM acts only as a sub-advisor to the investment fund; (2) each entity that may be a Credit Suisse Related QPAM; and (3) each ERISA-covered plan for which the New York Branch of Credit Suisse AG provides fiduciary securities lending services, receives this notice of proposed exemption along with a separate summary describing the facts that led to the Conviction, which has been submitted to the Department, and a prominently displayed statement that

the Conviction results in a failure to meet a condition in PTE 84-14;

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

## Section II: Definitions

(a) The term "Credit Suisse Affiliated QPAM" means a "qualified professional asset manager" (as defined in section VI(a) <sup>11</sup> of PTE 84-14) that relies on the relief provided by PTE 84-14 and with respect to which Credit Suisse AG is a current or future "affiliate" (as defined in section VI(d) of PTE 84-14). The term "Credit Suisse Affiliated QPAM" excludes Credit Suisse AG.

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

(c) The term "Conviction" means the judgment of conviction against Credit Suisse AG for one count of conspiracy to violate section 7206(2) of the Internal Revenue Code in violation of Title 18, United States Code, Section 371, which is scheduled to be entered in the District Court for the Eastern District of Virginia in Case Number 1:14-cr-188-RBS.

Signed at Washington, DC, this 28th day of August, 2014.

**Lyssa Hall,**

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

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<sup>11</sup> 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 such bank, savings and loan association, insurance company, or investment adviser has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.