

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

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons within 15 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 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 forty five (45) days of the date of publication of this proposed exemption in the **Federal Register**. All comments will be made available to the public.

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.

FOR FURTHER INFORMATION CONTACT: Scott Ness of the Department, telephone (202) 693-8561. (This is not a toll-free number.)

Citigroup, Inc. (Citigroup or the Applicant), Located in New York, New York

[Application No. D-11909]

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).¹²³

¹²³ 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 Citigroup (the Citigroup Affiliated QPAMs and the Citigroup 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),¹²⁴ notwithstanding the judgment of conviction against Citicorp (the Conviction), as defined in Section II(c),¹²⁵ 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 Citigroup's Markets and Securities Services business, and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, the Citigroup Affiliated QPAMs and the Citigroup Related QPAMs (including their officers, directors, agents other than Citicorp, 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 Citigroup's Markets and Securities Services business, and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, the Citigroup Affiliated QPAMs and the Citigroup Related QPAMs (including

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

¹²⁴ 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).

¹²⁵ 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.

their officers, directors, and agents other than Citigroup, and employees of such Citigroup 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 Citigroup 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 Citigroup 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 Citigroup Affiliated QPAM, to enter into any transaction with Citicorp or the Markets and Securities Services business of Citigroup, or to engage Citicorp or the Markets and Securities Services business of Citigroup, 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 Citigroup Affiliated QPAM or a Citigroup Related QPAM to satisfy Section I(g) of PTE 84-14 arose solely from the Conviction;

(f) A Citigroup Affiliated QPAM or a Citigroup 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 Citigroup Affiliated QPAM or the Citigroup Related QPAM or its affiliates or related parties to directly or indirectly profit from the criminal conduct that is the subject of the Conviction;

(g) Citicorp and the Markets and Securities Services business of Citigroup will not provide discretionary asset management services to ERISA-covered plans or IRAs, or otherwise act as a fiduciary with respect to ERISA-covered plan or IRA assets;

(h)(1) Within four (4) months of the Conviction, each Citigroup 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 Citigroup Affiliated QPAM are

conducted independently of the corporate management and business activities, including the corporate management and business activities of the Markets and Securities Services business of Citigroup;

(ii) The Citigroup 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 Citigroup 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 Citigroup 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 Citigroup 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 Citigroup 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 Citigroup 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 Citigroup; 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 Citigroup or beneficially owned by an employee of Citigroup or its affiliates, such fiduciary does not need to be independent of Citigroup. A Citigroup 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);

(2) Within four (4) months of the date of the Conviction, each Citigroup Affiliated QPAM must develop and implement a program of training (the Training), conducted at least annually, for all relevant Citigroup 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 Citigroup 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 Citigroup 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;

(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 Citigroup Affiliated QPAM and, if applicable, Citigroup, 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 Citigroup 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 Citigroup 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 Citigroup and the Citigroup 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 Citigroup Affiliated QPAM's Policies and Training; the Citigroup 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 Citigroup 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 Citigroup Affiliated QPAM must be promptly addressed by such Citigroup Affiliated QPAM, and any action taken by such Citigroup 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 Citigroup 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 Citigroup Affiliated QPAM has complied with the requirements under this subsection must be based on evidence that demonstrates the Citigroup 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 Citigroup 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 Citigroup 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 Citigroup'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 Citigroup must review the Audit Report for each Citigroup Affiliated QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report;

(9) Each Citigroup 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 Citigroup 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 Citigroup Affiliated QPAM;

(10) Each Citigroup 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 Citigroup Affiliated QPAM; and an explanation of any corrective or remedial action taken by the applicable Citigroup Affiliated QPAM; and

(12) Citigroup must notify the Department at least thirty (30) days prior to any substitution of an auditor, except that no such replacement will meet the requirements of this paragraph unless and until Citigroup demonstrates to the Department's satisfaction that such new auditor is independent of Citigroup, 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 Citigroup Affiliated QPAM and an ERISA-covered plan or IRA for which a Citigroup Affiliated QPAM provides asset management or other discretionary fiduciary services, each Citigroup 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 Citigroup Affiliated QPAM's violation of applicable laws, a Citigroup Affiliated QPAM's breach of contract, or any claim brought in connection with the failure of such Citigroup 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 Citigroup 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 Citigroup 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 Citigroup, 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 Citigroup 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;

(7) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the Citigroup 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 which is independent of Citigroup, and its affiliates; and

(8) Within four (4) months of the date of the Conviction, each Citigroup Affiliated QPAM must provide a notice of its obligations under this Section I(j) to each ERISA-covered plan and IRA for which a Citigroup Affiliated QPAM

provides asset management or other discretionary fiduciary services. For all other prospective ERISA-covered plan and IRA clients for which a Citigroup Affiliated QPAM provides asset management or other discretionary services, the Citigroup Affiliated QPAM will agree in writing to its obligations under this Section I(j) in an updated investment management agreement between the Citigroup Affiliated QPAM and such clients or other written contractual agreement;

(k)(1) *Notice to ERISA-covered plan and IRA clients.* Within fifteen (15) days of the publication of this proposed five-year exemption in the **Federal Register**, each Citigroup 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 Citigroup Affiliated QPAM provides asset management or other discretionary services, or the sponsor of an investment fund in any case where a Citigroup 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 Citigroup 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 Citigroup Affiliated QPAM; and

(2) *Notice to Non-Plan Clients.* Each Citigroup 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 Citigroup Affiliated QPAM. For

purposes of this subparagraph (2), a Current Non-Plan Client means a client of a Citigroup Affiliated QPAM that: Is neither an ERISA-covered plan nor an IRA; has assets managed by the Citigroup 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 Citigroup Affiliated QPAM that such Citigroup 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 Citigroup Affiliated QPAM that is neither an ERISA-covered plan nor an IRA that, has assets managed by the Citigroup 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 Citigroup Affiliated QPAM that such Citigroup Affiliated QPAM is a QPAM, or qualifies for the relief provided by PTE 84–14;

(l) The Citigroup 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) Citigroup 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 Citigroup'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 Citigroup 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 Citigroup 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 Citigroup 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) Citigroup 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 Citigroup and each Citigroup Affiliated QPAM to which such report relates; the head of compliance and the General Counsel (or their functional equivalent) of the relevant Citigroup 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 Citigroup 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 Citigroup Affiliated QPAM relies upon the relief in the exemption;

(o) During the effective period of the five-year exemption, Citigroup: (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 Citigroup 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. The Department may, following its review of that information, require Citigroup 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. If the Department denies the relief requested in that application, or does not grant such relief within twelve (12) 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;

(p) Each Citigroup 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 Citigroup Affiliated QPAM or a Citigroup Related QPAM will not fail to meet the terms of this exemption, solely because a different Citigroup Affiliated QPAM or Citigroup 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 “Citigroup Affiliated QPAM” means a “qualified professional asset manager” (as defined in section VI(a)¹²⁶ of PTE 84–14) that relies on the relief provided by PTE 84–14 and with respect to which Citigroup is a current or future “affiliate” (as defined in

section VI(d)(1) of PTE 84–14). The term “Citigroup Affiliated QPAM” excludes the parent entity, Citigroup and Citigroup’s Banking Division.

(b) The term “Citigroup 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 Citigroup owns a direct or indirect five percent or more interest, but with respect to which Citigroup 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 “Citicorp” means Citicorp, Inc., the parent entity, but does not include any subsidiaries or other affiliates;

(e) The term “Conviction” means the judgment of conviction against Citigroup 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-78-SRU), in connection with Citigroup, 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 five-year, “conduct” of any person or entity that is the “subject of [a] Conviction” encompasses any conduct of Citigroup 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 Citicorp 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 Citigroup 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 Citigroup 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 Citigroup 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 Citigroup 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 Representations¹²⁷

Background

1. Citigroup is a global diversified financial services holding company incorporated in Delaware and headquartered in New York, New York. Citigroup and its affiliates provide

¹²⁶ 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.

¹²⁷ The Summary of Facts and Representations is based on the Applicant’s representations, unless indicated otherwise.

consumers, corporations, governments and institutions with a broad range of financial products and services, including consumer banking and credit, corporate and investment banking, securities brokerage, trade and securities services and wealth management. Citigroup has approximately 241,000 employees and operations in over 160 countries and jurisdictions. As of December 31, 2014, Citigroup had approximately \$1.8 trillion of assets under management and held \$889 billion in deposits.

2. Citigroup currently operates, for management reporting purposes, via two primary business segments which include: (a) Citigroup's Global Consumer Banking businesses (GCB); and (b) Citigroup's Institutional Clients Group (ICG).

GCB includes a global, full-service consumer franchise delivering a wide array of retail banking, commercial banking, Citi-branded credit cards and investment services through a network of local branches, offices and electronic delivery systems. GCB had 3,280 branches in 35 countries around the world. For the year ended December 31, 2014, GCB had \$399 billion of average assets and \$331 billion of average deposits.

ICG provides a broad range of banking and financial products and services to corporate, institutional, public sector and high-net-worth clients in approximately 100 countries. ICG transacts with clients in both cash instruments and derivatives, including fixed income, foreign currency, equity and commodity products. ICG is divided into several business lines including: (a) Citi Corporate and Investment Banking; (b) Treasury and Trade Solutions; (c) Markets and Securities Services; and (d) Citi Private Bank (CPB).

3. The Applicant represents that Citigroup has several affiliates that provide investment management services.¹²⁸ Citigroup provides investment advisory services to clients world-wide through a number of different programs offered by various

businesses that are tailored to meet the needs of its diverse clientele. Within the United States, Citigroup offers its investment advisory programs primarily through the following: (a) CPB and Citigroup's Global Consumers Group (GCG), acting through Citigroup Global Markets Inc. (CGMI); and (b) Citibank, N.A. (Citibank) and Citi Private Advisory, LLC (CPA) (collectively, the Advisory Businesses). The Applicant represents that CPA and CGMI are each investment advisers, registered under the Advisers Act. The Applicant also represents that CPB, CGMI, Citibank, and CPA are QPAMs.

Within the United States, Citigroup's Advisory Businesses are conducted within CPB and GCG. Together, CPB and GCG provide services to over 44,000 customer advisory accounts with assets under management totaling over \$33 billion. Of these, there are over 20,000 accounts for ERISA pension plans and individual retirement accounts (IRAs) (collectively, Retirement Accounts), with assets under management of approximately \$3.8 billion.

Although each of the advisory programs offered by the Advisory Businesses is unique, most utilize independent third-party managers on a discretionary or nondiscretionary basis, as determined by the client. Other programs such as Citi Investment Management (CIM), which operates through both the CGMI and CPB business units, primarily provide advice concerning the selection of individual securities for CPB clients.

CPB, GCG, CBNA, CGMI and their affiliates provide administrative, management and/or technical services designed to implement and monitor client's investment guidelines, and in certain nondiscretionary programs, offer recommendations on investing and re-investing portfolio assets for the client's consideration. CPB provides private banking services, and offers its clients access to a broad array of products and services available through bank and non-bank affiliates of Citigroup. GCG services include U.S. and international retail banking, U.S. consumer lending, international consumer finance, and commercial finance. Citibank is a wholly-owned subsidiary of Citigroup and a national banking association which provides fiduciary advisory services.

4. CGMI is a wholly-owned subsidiary of Citigroup whose principal activities include retail and institutional private client services which include: (a) Advice with respect to financial markets; (b) the execution of securities and commodities transactions as a broker or dealer; (c) securities

underwriting; (d) investment banking; (e) investment management (including fiduciary and administrative services); and (f) trading and holding securities and commodities for its own account. CGMI holds a number of registrations, including registration as an investment adviser, a securities broker-dealer, and a futures commission merchant.

CPA is also a wholly-owned subsidiary of Citigroup and provides advisory services to private investment funds that are organized to invest primarily in other private investment funds advised by third-party managers.

The Applicant represents that trading decisions and investment strategy of current Citigroup Affiliated QPAMs for their clients is not shared with Citigroup employees outside of the Advisory Business, nor do employees of the Advisory Business consult with other Citigroup affiliates prior to making investment decisions on behalf of clients.

5. On May 20, 2015, the Applicant filed an application for exemptive relief in connection with a conviction that would make the relief in PTE 84-14 unavailable to any current or future Citigroup-related investment managers. In this regard, the U.S. Department of Justice (Department of Justice) conducted an investigation of certain conduct and practices of Citigroup in the FX spot market. Thereafter, Citicorp, a Delaware corporation that is a financial services holding company and the direct parent company of Citibank, entered into a plea agreement with the Department of Justice (the Plea Agreement), to be approved by the U.S. District Court for the District of Connecticut (the District Court), pursuant to which Citicorp has pleaded guilty to one count of an antitrust violation of the Sherman Antitrust Act, 15 U.S.C. 1 (15 U.S.C. 1).

As set forth in the Plea Agreement, from at least December 2007 and continuing to at least January 2013 (the Relevant Period), Citicorp, through one London-based euro/U.S. dollar (EUR/USD) trader employed by Citibank, entered into and engaged in a 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 included 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

¹²⁸ 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.

employed by Citibank. The criminal conduct that is the subject of the Conviction forms the basis for the Department of Justice's antitrust charge that Citicorp violated 15 U.S.C. 1.

Under the terms of the Plea Agreement, the Department of Justice and Citicorp have agreed that the District Court should impose a sentence requiring Citicorp to pay a criminal fine of \$925 million. The Plea Agreement also provides for a three-year term of probation, with conditions to include, among other things, Citigroup's continued implementation of a compliance program designed to prevent and detect the criminal conduct that is the subject of the Conviction throughout its operations, as well as Citigroup's further strengthening of its compliance and internal controls as required by other regulatory or enforcement agencies that have addressed the criminal conduct that is the subject of the Conviction, including: (a) The U.S. Commodity Futures Trading Commission (the CFTC), pursuant to its settlement with Citibank on November 11, 2014, requiring remedial measures to strengthen the control framework governing Citigroup's FX trading business; (b) the Office of the Comptroller of the Currency, pursuant to its settlement with Citibank on November 11, 2014, requiring remedial measures to improve the control framework governing Citigroup's wholesale trading and benchmark activities; (c) the U.K. Financial Conduct Authority (FCA), pursuant to its settlement with Citibank on November 11, 2014; and (d) the U.S. Board of Governors of the Federal Reserve System (FRB), pursuant to its settlement with Citigroup entered into concurrently with the Plea Agreement with Department of Justice, requiring remedial measures to improve Citigroup's controls for FX trading and activities involving commodities and interest rate products.

6. The Applicant states that in January 2016, Nigeria's Federal Director of Public Prosecutions filed charges against a Nigerian subsidiary of Citibank and fifteen individuals (some of whom are current or former employees of that subsidiary) relating to specific credit facilities provided to a certain customer in 2000 to finance the import of goods. The Applicant represents that these charges are the latest of a series of charges that were filed and then withdrawn between 2007 and 2011. 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 Citigroup QPAMs are

subject to these charges. Further, the Applicant represents that it does not have a reasonable basis to believe that there are any pending criminal investigations involving Citigroup or any of its affiliates that would cause a reasonable plan or IRA customer not to hire or retain the institution as a QPAM.

7. Notwithstanding the aforementioned charges, once the Conviction is entered, the Citigroup Affiliated QPAMs and the Citigroup 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 Citigroup Affiliated QPAMs and the Citigroup 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.

8. The Applicant represents that the criminal conduct that is the subject of the Conviction was neither widespread nor pervasive. The Applicant states that such criminal conduct consisted of isolated acts perpetrated by a single EUR/USD trader employed in Citigroup's Markets and Securities Services business in the United Kingdom who was removed from the activities of the Citigroup Affiliated QPAMs, both geographically and organizationally. The Applicant represents that this London-based EUR/USD trader was not an officer or director of Citigroup, and did not have any involvement in, or influence over, Citigroup or any of the Citigroup Affiliated QPAMs. The Applicant states that this London-based EUR/USD trader had minimal management responsibilities, which related exclusively to Citigroup's G10 Spot FX trading business, outside of the United States. As represented by the Applicant, once senior management became aware of the criminal conduct that is the subject of the Conviction, Citibank took action to terminate the employee.

9. The Applicant represents that the Citigroup Affiliated QPAMs, 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. The Applicant also represents that no current or former employee of Citigroup or of any Citigroup Affiliated QPAM who

previously has been or who subsequently may be identified by Citigroup, or any U.S. or non-U.S. regulatory or enforcement agencies, as having been responsible for the criminal conduct that is the subject of the Conviction 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 Citigroup Affiliated QPAM.

Citigroup's Business Separation/ Compliance/Training

10. The Applicant represents that Citigroup's Advisory Businesses are operated independently from Citigroup's Markets and Securities Services, the segment of Citigroup in which foreign exchange trading is conducted.¹²⁹ Although the Advisory Business falls under the umbrellas of ICG and GCG, it operates separately in all material respects from the sales and trading businesses that comprise that business segment. The Advisory Business maintains separate: (a) Management and reporting lines; (b) compliance programs; (c) compensation arrangements; (d) profit and loss reporting (with different comptrollers), (e) human resources and training programs, and (f) legal coverage. The Applicant represents that the Advisory Businesses maintain a separate, dedicated compliance function, and have protocols to preserve the separation between employees in the Advisory Business and those in Markets and Securities Services.

11. The Applicant represents that Citigroup's independent control functions, including Compliance, Finance, Legal and Risk, set standards according to which Citigroup and its businesses are expected to manage and oversee risks, including compliance with applicable laws, regulatory requirements, policies and standards of ethical conduct. Among other things, the independent control functions provide advice and training to Citigroup's businesses and establish tools, methodologies, processes and oversight of controls used by the businesses to foster a culture of compliance and control and to satisfy those standards.

¹²⁹ The Applicant represents that each of Citigroup's primary business units operates a large number of separate and independent businesses. These lines of business generally have: (a) A group of employees working solely on matters specific to its line of business, (b) separate management and reporting lines; (c) tailored compliance regimens; (d) separate compensation arrangements; (e) separate profit and loss reporting; (vi) separate human resources personnel and training, (f) dedicated risk and compliance officers and (g) dedicated legal coverage.

12. The Applicant represents that compliance at Citigroup is an independent control function within Franchise Risk and Strategy that is designed to protect Citigroup not only by managing adherence to applicable laws, regulations and other standards of conduct, but also by promoting business behavior and activity that is consistent with global standards for responsible finance. The Applicant states that Citigroup has implemented company-wide initiatives designed to further embed ethics in Citigroup's culture. This includes training for more than 40,000 senior employees that fosters ethical decision-making and underscores the importance of escalating issues, a video series featuring senior leaders discussing ethical decisions, regular communications on ethics and culture, and the development of enhanced tools to support ethical decision-making.

Statutory Findings—In the Interest of Affected Plans and IRAs

13. The Applicant represents that, if the exemption is denied, the Citigroup Affiliated QPAMs may be unable to effectively manage assets subject to ERISA or the prohibited transaction provisions of the Code where PTE 84–14 is needed to avoid engaging in a prohibited transaction. The Applicant further represents that plans and participants would be harmed because they would be unnecessarily deprived of the current and future opportunity to utilize the Applicant's experience in and expertise with respect to the financial markets and investing. The Applicant anticipates that, if the exemption is denied, some of Citigroup's 20,000 existing Retirement Account clients may feel forced to terminate their advisory relationship with Citigroup, incurring expenses related to: (a) Consultant fees and other due diligence expenses for identifying new managers; (b) transaction costs associated with a change in investment manager, including the sale and purchase of portfolio investments to accommodate the investment policies and strategy of the new manager, and the cost of entering into new custodial arrangements; and (c) lost investment opportunities in connection with the change.¹³⁰

¹³⁰ The Department notes that, if this five-year exemption is granted, compliance with the condition in Section I(j) of the exemption would require the Citigroup 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.

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

14. 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 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 Citigroup's Markets and Securities Services business and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, Citigroup Affiliated QPAMs, including their officers, directors, agents other than Citigroup, and employees, did not know of, have reason to know of, or participate in the criminal conduct of Citigroup that is the subject of the Conviction (for purposes of this requirement, the term "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 Citigroup's Markets and Securities Services business, and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, the Citigroup Affiliated QPAMs and the Citigroup Related QPAMs (including their officers, directors, agents other than Citigroup, and employees of such Citigroup QPAMs) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the Conviction.

15. The Department expects the Citigroup 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

Citigroup 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, the term "participated in" includes an individual's knowing or tacit approval of the behavior that is the subject of the Conviction.

16. Further, the Citigroup 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 Citigroup Affiliated QPAM to enter into any transaction with Citigroup or the Markets and Securities Services business of Citigroup, or to engage Citigroup or the Markets and Securities Services business of Citigroup 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.

17. The Citigroup Affiliated QPAMs and the Citigroup 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 Citigroup Affiliated QPAMs or the Citigroup 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 Citigroup Affiliated QPAM or a Citigroup 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 Citigroup Affiliated QPAM or the Citigroup Related 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 Citigroup or the Markets and Securities Services business of Citigroup 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.

18. 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 Citigroup 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 Citigroup Affiliated QPAM are conducted independently of the management and business activities of Citigroup, including the management and business activities of the Markets and Securities business of Citigroup; the Citigroup 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 Citigroup 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 Citigroup 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 Citigroup 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 Citigroup 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 Citigroup 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 such fiduciary is independent of Citigroup. A Citigroup 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.

19. The Department has also imposed a condition that requires each Citigroup 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 Citigroup 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.

20. *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 Citigroup Affiliated QPAMs. Therefore, Section I(i) of this proposed five-year exemption requires that each Citigroup 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 Citigroup 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.

21. 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 Citigroup Affiliated QPAM and, if applicable, Citigroup, 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 Citigroup Affiliated QPAM has complied with the Policies and Training conditions described herein, and must further require the auditor to test each Citigroup Affiliated QPAM's operational compliance with the Policies and Training. The auditor must issue a written report (the Audit Report) to Citigroup and the Citigroup 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 Citigroup Affiliated QPAM's Policies and Training; the Citigroup 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 Citigroup 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 Citigroup Affiliated QPAM must be promptly addressed by such Citigroup Affiliated QPAM, and any action taken by such Citigroup 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 Citigroup 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 Citigroup Affiliated QPAM has complied with the requirements, as described above, must be based on evidence that demonstrates the Citigroup 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 Citigroup 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.

22. This exemption requires that certain senior personnel of Citigroup 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 Citigroup 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 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 Citigroup'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 Citigroup must review the Audit Report for each Citigroup Affiliated QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report.

23. In order to create a more transparent record in the event that the proposed relief is granted, each Citigroup 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 Citigroup 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 Citigroup Affiliated QPAM. Additionally, each Citigroup 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 Citigroup Affiliated QPAM; and an explanation of any corrective or remedial action taken by the applicable Citigroup Affiliated QPAM.

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

24. *Contractual Obligations.* This five-year exemption requires the Citigroup 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 Citigroup 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 Citigroup Affiliated QPAM and an ERISA-covered plan or IRA for which a Citigroup Affiliated QPAM provides asset management or other discretionary fiduciary services, each Citigroup Affiliated QPAM must agree and warrant: (a) To comply with ERISA and the Code, as applicable, with respect to such ERISA-covered plan or IRA, and 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 violation of applicable laws, a breach of contract, or any claim arising out of the failure of such Citigroup 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 Citigroup 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 Citigroup Affiliated QPAM for violating ERISA or the Code, or engaging in prohibited transactions, except for a violation or a prohibited transaction caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary which is independent of Citigroup, 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 Citigroup 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 the actual lack of liquidity of the underlying assets, provided that such restrictions are applied consistently and in like manner to all such investors; and (f) not to impose any fee, penalty, or charge 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 each such fee is applied consistently and in like manner to all such investors. Furthermore, any contract, agreement or arrangement between a Citigroup Affiliated QPAM and its ERISA-covered plan or IRA client must not contain exculpatory provisions disclaiming or otherwise limiting liability of the Citigroup Affiliated QPAM for a violation of such agreement's terms, except for liability caused by error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary which is independent of Citigroup, and its affiliates.

30. With respect to current ERISA-covered plan and IRA clients for which

a Citigroup Affiliated QPAM provides asset management or other discretionary fiduciary services, within four (4) months of the date of publication of this notice of five-year exemption in the **Federal Register**, the Citigroup Affiliated QPAM will provide a notice of its obligations under Section I(j) to each such ERISA-covered plan and IRA client. For all other prospective ERISA-covered plan and IRA clients for which a Citigroup Affiliated QPAM provides asset management or other discretionary services, the Citigroup Affiliated QPAM will agree in writing to its obligations under this Section I(j) in an updated investment management agreement between the Citigroup Affiliated QPAM and such clients or other written contractual agreement.

31. *Notice Requirements.* The proposed exemption contains extensive notice requirements, some of which extend not only to ERISA-covered plan and IRA clients of Citigroup Affiliated QPAMs, but which also go to non-Plan clients of Citigroup 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 Citigroup Affiliated QPAMs as asset managers because such Citigroup 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 Citigroup 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 Citigroup Affiliated QPAM provides asset management or other discretionary services, or the sponsor of an investment fund in any case where a Citigroup Affiliated QPAM acts only as a sub-adviser 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 Citigroup 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 Citigroup Affiliated QPAM.

In addition, each Citigroup 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 Citigroup Affiliated QPAM. A “Current Non-Plan Client” is a client of a Citigroup Affiliated QPAM that: Is neither an ERISA-covered plan nor an IRA; has assets managed by the Citigroup 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 Citigroup Affiliated QPAM that such Citigroup 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 Citigroup Affiliated QPAM that is neither an ERISA-covered plan nor an IRA that has assets managed by the Citigroup 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 Citigroup Affiliated QPAM that such Citigroup Affiliated QPAM is a QPAM, or qualifies for the relief provided by PTE 84–14.

32. This proposed five-year exemption also requires Citigroup 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 Citigroup and each Citigroup Affiliated QPAM to which such report relates; the head of compliance and the General Counsel (or their functional equivalent) of the relevant Citigroup Affiliated QPAM; and must be made unconditionally available to the independent auditor described above.

33. Each Citigroup 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 Citigroup Affiliated QPAM relies upon the relief in the proposed five-year exemption.

34. The proposed five-year exemption mandates that, during the effective period of this five-year exemption, Citigroup must immediately disclose to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) that Citigroup or an affiliate enters into with the 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, Citigroup 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 Citigroup 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 (12) 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 (12) month period, whichever date is earlier.

35. Finally, each Citigroup 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

36. 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 Citigroup nor the Markets and Securities Services business of Citigroup will provide any fiduciary or QPAM services to ERISA-covered plans and IRAs.

Summary

37. 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 15 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 forty five (45) 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.)

Barclays Capital Inc. (BCI or the Applicant), Located in New York, New York

[Application No. D-11910]

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).¹³¹

Section I: Covered Transactions

If the proposed five-year exemption is granted, certain asset managers with specified relationships to Barclays PLC (BPLC) (the Barclays Affiliated QPAMs and the Barclays 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),¹³² notwithstanding the judgment of conviction against BPLC (the Conviction), as defined in Section II(c),¹³³ 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 certain individuals who: Worked for a non-fiduciary business within BCI; had no responsibility for, and exercised no authority in connection with, the management of plan assets; and are no longer employed by BPLC, the Barclays Affiliated QPAMs and the Barclays Related QPAMs (including their officers, directors, agents other than BPLC, and employees of such QPAMs

¹³¹ For purposes of this proposed exemption, references to section 406 of the Act should be read to refer as well to the corresponding provisions of section 4975 of the Code.

¹³² 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).

¹³³ 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.

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) The Barclays Affiliated QPAMs and the Barclays Related QPAMs (including their officers, directors, agents other than BPLC, and employees of such Barclays 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) A Barclays Affiliated QPAM will not employ or knowingly engage any of the individuals that participated in the criminal conduct that is the subject of the Conviction (for purposes of this paragraph (c), "participated in" includes the knowing or tacit approval of the misconduct underlying the Conviction);

(d) A Barclays 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 Barclays Affiliated QPAM to enter into any transaction with BPLC or BCI, or engage BPLC 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 Barclays Affiliated QPAM or a Barclays Related QPAM to satisfy Section I(g) of PTE 84-14 arose solely from the Conviction;

(f) A Barclays Affiliated QPAM or a Barclays 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 Barclays Affiliated QPAM or the Barclays Related QPAM or its affiliates or related parties to directly or indirectly profit from the criminal conduct that is the subject of the Conviction;

(g) BPLC and BCI will not provide discretionary asset management services to ERISA-covered plans or IRAs, nor will otherwise act as a fiduciary with respect to ERISA-covered plan or IRA assets;