

Agreed Statement of Facts), dated April 23, 2015, between the Antitrust Division and Fraud Section of the Criminal Division of the U.S. Department of Justice (the DOJ) and DB Group Services resolving the charge brought by the DOJ in case number 3:15-cr-00062-RNC against DB Group Services for wire fraud in violation of Title 18, United States Code, Section 1343.

#### Effective Date

The effective date of this exemption is April 18, and the exemption will be effective from April 18, 2018, through April 17, 2021 (the Exemption Period).

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

#### Further Information

For more information on this exemption, contact Mr. 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

[Prohibited Transaction Exemption 2017-05; Exemption Application No. D-11909]

#### Discussion

On November 21, 2016, the Department of Labor (the Department) published a notice of proposed exemption in the **Federal Register** at 81 FR 83416, for certain entities with specified relationships to Citigroup to continue to rely upon the relief provided by PTE 84-14 for a period of five years,<sup>34</sup> notwithstanding Citicorp's criminal conviction, as described herein. The Department is granting this exemption in order to ensure that

<sup>34</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), hereinafter referred to as PTE 84-14 or the QPAM Exemption.

Covered Plans<sup>35</sup> whose assets are managed by a Citigroup Affiliated QPAM or Citigroup Related QPAM may continue to benefit from the relief provided by PTE 84-14. This exemption is effective from January 10, 2018 through January 9, 2023 (the Exemption Period).

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

#### Written Comments

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption, published in the **Federal Register** at 81 FR 83416 on November 21, 2016. All comments and requests for a hearing were due by March 1, 2017.<sup>36</sup> The Department received written comments from the Applicant, members of the U.S. Congress, and a number of plan and IRA clients of Citigroup. After considering these submissions, the Department has determined to grant the exemption, with revisions, as described below.

#### Term of the Exemption and Conditions

The Applicant requests that the exemption's term and underlying

<sup>35</sup> "Covered Plan" is a plan subject to Part 4 of Title 1 of ERISA ("ERISA-covered plan") or a plan subject to Section 4975 of the Code ("IRA"), with respect to which a Citigroup Affiliated QPAM relies on PTE 84-14, or with respect to which a Citigroup Affiliated QPAM (or any Citigroup affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84-14). A Covered Plan does not include an ERISA-covered Plan or IRA to the extent the Citigroup Affiliated QPAM has expressly disclaimed reliance on QPAM status or PTE 84-14 in entering into its contract, arrangement, or agreement with the ERISA covered plan or IRA.

<sup>36</sup> The Department received additional comments from the Applicant, however, after the close of the comment period.

conditions be revised to conform with certain exemptions issued by the Department prior to 2014. The Applicant cites 16 individual exemptions granted by the Department prior to 2014 involving financial institutions that could not satisfy Section I(g) of PTE 84-14 (the Pre-2014 Exemptions) because of criminal convictions. The Applicant states that the conditions included within the Pre-2014 Exemptions remained materially unchanged during this time. The Applicant additionally cites PTE 2015-06 and 2015-14 (the 2015 Exemptions) which, like the Pre-2014 Exemptions, permitted certain financial institutions to continue to rely upon the relief provided by PTE 84-14, notwithstanding judgments of conviction against such institutions.

The Applicant states that, with respect to the 2015 Exemptions, the Department adopted certain additional conditions not previously included in the Pre-2014 Exemptions, including: (1) Shortening the period of relief from 10 years to 5 years; (2) particularized requirements relating to policies, procedures, and annual training; and (3) an annual audit requirement. The Applicant states that the public record underlying the 2015 Exemptions does not present any demonstrated deficiency with respect to the Pre-2014 Exemptions that warranted the adoption of these additional conditions in the 2015 Exemptions. Nor, according to the Applicant, are the 2015 Exemptions' additional conditions explained by any change in relevant laws or guidance, or any distinction between the conduct that gave rise to the need for the 2015 Exemptions compared to the conduct that gave rise to the need for the Pre-2014 Exemptions.

The Applicant also cites a Presidential Memorandum and two Executive Orders: (1) Presidential Memorandum on Fiduciary Duty Rule, dated February 3, 2017; (2) Presidential Executive Order on Core Principles for Regulating the United States Financial System, dated February 3, 2017; and (3) Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs, dated January 30, 2017 (the Executive Orders). The Applicant states that these Executive Orders suggest a compelling reason for the Department to revert to the approach reflected in the Pre-2014 Exemptions.

The Applicant further states that the individual exemptions granted by the Department in connection with criminal convictions fall into two different categories. In one category, the applicant's underlying misconduct is integral to corporate business activity.

In the other category, according to the Applicant, the applicant's underlying misconduct is non-integral and isolated to a small number of employees. The Applicant states that the conduct underlying this exemption resembles the facts underlying those exemptions in which misconduct was non-integral and isolated to a small number of employees, as it was "limited to one London-based euro/U.S. dollar trader and the unit he worked in was distant and separate from the Applicant's businesses that rely on PTE 84-14."

The Applicant states that, taken together and considered against the historical backdrop of the individual exemptions and Executive Orders summarized above, there are compelling reasons for the Department to revert to the approach reflected in the Pre-2014 Exemptions, including: (1) Extending the exemption from a 5-year term to a 9-year term, and (2) eliminating the independent audit and compliance officer requirements under the exemption. The Applicant states that the Department's past practice for these types of exemptions has been to provide for ten-year relief and that the rationale for abbreviating the term in this exemption does not appear to be connected to the nature or severity of the misconduct at issue.

The Department declines to extend the term of this exemption to ten years. Although the Applicant characterizes the conduct as involving the isolated actions of one individual, the Department does not agree with the apparent suggestion that the Applicant bears little or no responsibility for the criminal conduct. In considering the misconduct, the Department did not limit its analysis to the acts of the single trader identified by the Applicant. The Department also considered the period of time during which the misconduct persisted, the compliance and supervisory mechanisms within Citigroup that failed to detect and prevent the misconduct, and certain other relevant misconduct identified in Citicorp's Plea Agreement.

Citicorp's Plea Agreement identifies misconduct that extended beyond the isolated acts of the single London-based euro/U.S. dollar trader. For example, Citicorp's Plea Agreement contains the following statement under the heading Other Relevant Conduct: "the defendant [Citicorp], through its currency traders and sales staff, also engaged in other currency trading and sales practices in conducting FX Spot Market transactions with customers via telephone, email, and/or electronic chat, to wit: (i) Intentionally working customers' limit orders one or more levels, or "pips,"

away from the price confirmed with the customer; (ii) including sales markup, through the use of live hand signals or undisclosed prior internal arrangements or communications, to prices given to customers that communicated with sales staff on open phone lines; (iii) accepting limit orders from customers and then informing those customers that their orders could not be filled, in whole or in part, when in fact the defendant was able to fill the order but decided not to do so because the defendant expected it would be more profitable not to do so; and (iv) disclosing non-public information regarding the identity and trading activity of the defendant's customers to other banks or other market participants, in order to generate revenue for the defendant at the expense of its customers."

In developing this exemption, the Department also considered statements made by regulators concerning the compliance and supervisory mechanisms within Citigroup that failed to detect and prevent the misconduct. For example, the Financial Conduct Authority's (FCA) Final Notice to Citibank N.A., states: "[d]uring the Relevant Period, Citi did not exercise adequate and effective control over its G10 spot FX trading business," and, "[t]hese failings occurred in circumstances where certain of those responsible for managing front office matters were aware of and/or at times involved in behaviours described above." The Notice further states: "They also occurred despite the fact that risks around confidentiality were highlighted when in August 2011 Citi became aware that a trader in its FX business outside London had inappropriately shared confidential client information in a chat room with a trader at another firm."

By way of further example, the Consent Order of the Office of the Comptroller of the Currency (OCC) states: "[t]he OCC's examination findings established that the Bank had deficiencies in its internal controls and had engaged in unsafe or unsound banking practices with respect to the oversight and governance of the Bank's FX Trading such that the Bank failed to detect and prevent the conduct. . . ." The OCC's Consent Order also states that, "deficiencies and unsafe or unsound practices include the following: (a) The Bank's compliance risk assessment lacked sufficient granularity and failed to identify the risks related to market conduct in FX Trading with respect to sales, trading and supervisory employees in that business; (b) The Bank's transaction monitoring and communications surveillance were inadequate to detect

potential Employee market misconduct in FX Trading. . . ."

With respect to the severity of the misconduct, the Department notes the magnitude of the relevant fines imposed by various regulators, which include: \$925 million by the Department of Justice; \$342 million by the Board of Governors of the Federal Reserve; \$350 million by the OCC; \$310 million by the Commodity Futures Trading Commission; and £225,575,000 by the FCA.

The Department also notes that this exemption's five-year term and protective conditions reflect the Department's intent to protect Covered Plans that entrust substantial assets to a Citigroup Affiliated QPAM, despite the serious nature of the misconduct and the compliance and oversight failures exhibited by Citigroup throughout the extended period of time during which the criminal misconduct persisted. The term of this exemption gives the Department the opportunity to review the adherence by the Citigroup Affiliated QPAMs' to the conditions set out herein. If the Applicant seeks to extend this exemption beyond this five year term, the Department will examine whether the compliance and oversight changes mandated by the various regulatory authorities are having the desired effect on the Citigroup entities.

#### Description of Criminal Conduct— Sections I and II(e)

The prefatory language to Section I of the proposed five-year exemption provides that, "*the Citigroup Affiliated QPAMs and the Citigroup Related QPAMs, as defined in Sections II(f) and II(g), respectively, will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84-14 (PTE 84-14 or the QPAM Exemption), notwithstanding the judgment of conviction against Citicorp (the Conviction), as defined in Section II(a), 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.*"

Section II(e) of the proposed five year exemption provides that, in relevant part, "[t]he 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.”

The Applicant incorporates by reference its comment letter submitted to the Department in connection with PTE 2016–14 (PTE 2016–14 Comment Letter),<sup>37</sup> in which the Applicant requested that references to the Conviction be limited to the actual judgment of conviction against Citicorp. The Applicant states that the references to the Conviction in the prefatory language of Section I and Section II would cause confusion for Plans and counterparties transacting with Plans. The Applicant also requests that the Department revise Section II(e) by replacing “Citigroup” with “Citicorp,” as Citicorp was the entity charged in connection with the Plea Agreement.

After consideration of the Applicant’s comment, the Department has revised the exemption to provide that “[t]he term ‘Conviction’ means the judgment of conviction against Citicorp for violation of the Sherman Antitrust Act, 15 U.S.C. 1, entered in the District Court for the District of Connecticut (the District Court) (case number 3:15–cr–78–SRU). For all purposes under this exemption, ‘conduct’ of any person or entity that is the ‘subject of [a] Conviction’ encompasses the conduct described in Paragraph 4(g)–(i) of the Plea Agreement filed in the District Court in case number 3:15–cr–78–SRU.” The Department has also revised Section II(e) by replacing “Citigroup” with “Citicorp.” The Department has also renumbered the definition of Conviction as Section II(a) in the final exemption.

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

Section I(a) of the proposed five-year exemption provides, “(a) *Other than a single individual who worked for a non-fiduciary business within 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).”*

With regard to Section I(a), the Applicant requests the deletion of the parenthetical, which reads, “(for purposes of this paragraph (a), ‘participate in’ includes the knowing or tacit approval of the misconduct underlying the Conviction).”<sup>38</sup> The Department declines to delete this definition of “participate in,” but has replaced “knowing or tacit approval,” with “knowing approval.”

Section I(c) of the proposed exemption provides, “(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).”*

With regard to Section I(c), the Applicant requests that the definition of “participated in” be changed from, “the knowing or tacit approval of the misconduct underlying the Conviction” to, “approving or condoning the misconduct underlying the Conviction.”

After consideration of the Applicant’s comment, the Department has revised Section I(c) in a manner that is consistent with Section I(a), as described above. Accordingly, the relevant part of Section I(c) now reads, “For the purposes of this paragraph (c), ‘participated in’ means the knowing approval of the misconduct underlying the Conviction.”

Receipt of Compensation—Section I(b)

Section I(b) of the proposed five-year exemption provides, “(b) *Other than a single individual who worked for a non-fiduciary business within 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, 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.”*

The Applicant requests the replacement of “Citigroup” with “Citicorp” in the phrase, “(including their officers, directors, and agents other than Citigroup. . . .” After considering the Applicant’s comment, the Department has revised the exemption in the manner requested by the Applicant.

Use of Authority or Influence—Section I(d)

Section I(d) of the proposed exemption provides that, “(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.”*

In the PTE 2014 Comment Letter, the Applicant represented that a sudden cessation of services by the Markets and Securities Services Business of Citigroup to affected plans, such as agency securities lending services, would be disruptive to such plans. In this regard, the Applicant seeks deletion of the condition’s reference to “the Markets and Securities Services Business of Citigroup.”

After considering the Applicant’s comment, the Department has revised the exemption in the manner requested by the Applicant such that the condition does not apply to the Markets and Securities Services Business of Citigroup. The Department has also revised Section I(d) by clarifying that it applies to, “an ‘investment fund’. . . . managed by such Citigroup Affiliated QPAM with respect to Covered Plans.” This modification to Section I(d) reflects the Department’s interest in ensuring

<sup>37</sup> See Citigroup PTE 2016–14 Comment Letter, dated November 25, 2016.

<sup>38</sup> Certain of the Applicant’s requested revisions, including its requested revision with respect to Section I(a), are reflected in a red-lined draft attachment which the Applicant provided to the Department with its comment letter.

that the conditions included herein broadly protect Covered Plans.

Provision of Asset Management Services—Section I(g)

Section I(g) of the proposed exemption provides that “(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.*”

In the PTE 2016–14 Comment Letter, the Applicant represented that the function of the Markets and Securities Services Business of Citigroup may be deemed to involve fiduciary conduct and that requiring those services to be terminated suddenly would be disruptive to affected plans. The Applicant therefore seeks the deletion of the condition’s reference to the Markets and Securities Services Business of Citigroup.

The Applicant also requests that Section I(g) be revised to read, “Other than with respect to employee benefit plans maintained or sponsored for their own employees or the employees of an affiliate, Citicorp will not act as a fiduciary within the meaning of ERISA Section 3(21)(A)(i) or (iii), or Code Section 4975(e)(3)(A) or (C), with respect to ERISA-covered plan and IRA assets; in accordance with this provision, Citicorp will not be treated as violating the conditions of this exemption solely because they acted as investment advice fiduciaries within the meaning of ERISA Section 3(21)(A)(ii) or Section 4975(e)(3)(B) of the Code.”

After considering the Applicant’s comment regarding disruption and damages to affected ERISA-covered plans and IRAs, the Department has revised the exemption in the manner requested by the Applicant. Additionally, the Department has revised Section I(g) to clarify that Citigroup will not violate this condition in the event that it inadvertently becomes an investment advice fiduciary or acts as a fiduciary for plans that it sponsors for its own employees or employees of an affiliate.

Policies and Procedures Relating to Compliance with ERISA and the Code—Section I(h)(1)–(2)

Section I(h) of the proposed five-year exemption provides that, “(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) . . . (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 Applicant requests that the Department increase the development period associated with the Policies and Training Requirements (the Development Period) from four (4) months to six (6) months from the date of the Conviction. The Applicant also requests clarification that a Citigroup Affiliated QPAM’s obligation to “develop” the Policies and Training under this section can be satisfied to the extent that such Citigroup Affiliated QPAM has developed Policies and Training independent of this exemption, including Policies and Training developed in connection with PTE 2016–14. The Applicant further requests that the Department clarify that the Applicant shall have up to twelve (12) months to train all relevant employees following the Development Period, and that such Training will then be conducted at least annually, in accordance with Section I(h)(2).

The Department emphasizes that the Citigroup QPAMs must comply with the Policies and Training requirements within both PTE 2016–14 and this exemption. To this end, the Department has revised the policies and training requirements of Section I(h) to conform with PTE 2016–14. The two exemptions now follow this timeline: (i) Each Citigroup Affiliated QPAM must have developed the Policies and Training required by PTE 2016–14 by July 9, 2017; (ii) the first annual Training under PTE 2016–14 must be completed by July 9, 2018; (iii) each Citigroup Affiliated QPAM must develop the Policies and Training required by this exemption, as necessary, by July 9, 2018; and (iv) the first Training under this exemption must be completed by July 9, 2019. By the end of this 30-month period, asset/portfolio management, trading, legal, compliance, and internal audit personnel who were employed from the start to the end of the period must have been trained twice.

In addition, Section I(h)(1)(i) of the proposed five-year exemption provides that the Policies must be 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.*”

The Applicant requests the deletion of the condition’s reference to the Markets and Securities Services Business of Citigroup. In the PTE 2016–14 Comment letter, the Applicant stated that such revision is necessary in order to avoid disruption to affected plans and IRAs. The Department concurs with this comment, and has revised the condition to state that, “[t]he Policies must require, and must be 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 of Citigroup.”

Section I(h)(1)(ii) of the proposed five-year exemption provides that the Policies must be reasonably designed to ensure that: “(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.*”

The Department has determined to revise Section I(h)(1)(ii) to clarify this exemption’s expectations regarding the substance of the Policies. In this regard, the Department has added the term, “as applicable with respect to each Covered Plan,” following the phrase, “ERISA’s fiduciary duties, and with ERISA and the Code’s prohibited transaction provisions.”

Section I(h)(1)(iv) of the proposed five-year exemption provides that the Policies must be reasonably designed to ensure that: “(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.*”

The Department has determined to revise Section I(h)(1)(iv) to better coordinate with the other conditions of this exemption. In this regard, the Department has revised the condition to read, “. . . on behalf of or in relation to Covered Plans. . . .”

Section I(h)(1)(v) of the proposed five-year exemption provides that the Policies must be reasonably designed to ensure that: “(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.”

The Department has revised Section I(h)(1)(v) in the same manner as it revised Section I(h)(1)(iv). The Department has also revised Section I(h)(1)(v) by adding the following language to the beginning of the section: “To the best of the Citigroup Affiliated QPAM’s knowledge at the time. . . .”

Incorporating the Training into the Policies—Section I(h)(2)(i)

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

The Department has revised Section I(h)(2)(i) by removing the requirement that the Training must be set forth in the Policies. As revised, Section I(h)(2)(i) provides that the Training must, “(i) At a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing.”

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

Section I(h)(2)(ii) of the proposed five-year exemption provides that the Training must, “(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.*”

The Applicant requests that the requirement that the professional be “independent” be omitted, on the basis that the “independence” of the trainer will not enhance the quality or effectiveness of the training, and may in fact detract from it. In this regard, the Applicant states that the training will be monitored by the Compliance Officer, subject to annual review by the Compliance Officer (the Annual Review), and audited by the independent auditor. The Applicant states that a professional trainer who is familiar with the Applicant’s operations, culture, and management is

less likely to be independent, but is more likely to be effective in its role. The Applicant also states that the compliance and audit functions mandated under this exemption will provide adequate safeguards that are sufficient to address any concern arising from a lack of independence on the part of the professional trainer. In sum, the Applicant requests that it be permitted to implement the required training within the context of its own existing training regime.

Although the Department disagrees with the Applicant’s assertion that hiring a prudently-selected, independent professional may in fact detract from the quality and effectiveness of the training required under this exemption, the Department is persuaded that Citigroup personnel who are prudently-selected and have appropriate technical training and proficiency with ERISA and the Code may conduct the training. The Department has revised the condition accordingly.

Audit Requirement—Section I(i).

Section I(i)(1) of the proposed five-year exemption provides that, “(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.*”

As stated above, the Applicant requests that the audit requirement be deleted from the exemption in its entirety. In support of its request, the Applicant states that the audit requirement is burdensome, costly, and redundant. The Applicant also states that it has comprehensive compliance and internal audit departments, and that these departments should be responsible for carrying out the audit requirements under this exemption.

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

prevent the sort of compliance failures that led to the Conviction.

The Department views the audit requirement as an integral component of the exemption, without which the Department would be unable to make its finding that the exemption is protective of Covered Plans and their participants, beneficiaries, and beneficial owners, as applicable. This exemption’s conditions are based, in part, on the Department’s assessment of the seriousness and duration of the misconduct that resulted in the violation of Section I(g) of PTE 84–14, as well as the apparent inadequacy of control and oversight mechanisms at Citigroup to prevent the misconduct. The Department, however, recognizes that, notwithstanding Citigroup’s oversight failures, only a small number of individuals at Citigroup directly engaged in the misconduct at issue. Thus, the United States District Court for the District of Connecticut stated, in connection with the sentencing of Citicorp, that: “the conduct at issue here was engaged in by a very small number of individuals,” and that, “we do not have banks who appear to have condoned conduct at any high-ranking level.”<sup>39</sup>

Accordingly, the Department has determined to change the audit interval under this exemption from annual to biennial. Section I(i)(1) of the exemption, therefore, now requires that each Citigroup Affiliated QPAM submit “to an audit conducted every two years by an independent auditor.” Each audit must cover the preceding consecutive twelve (12) month period. The first audit must cover the period from July 10, 2018 through July 9, 2019, and must be completed by January 9, 2020. The second audit must cover the period from July 10, 2020 through July 9, 2021, and must be completed by January 9, 2022. In the event that the Exemption Period is extended or a new exemption is granted, the third audit would cover the period from July 10, 2022 through July 9, 2023, and would be completed by January 9, 2024, unless the Department chose to alter the audit requirement in the new or extended exemption.<sup>40</sup>

<sup>39</sup> See TRANSCRIPT of Proceedings: as to Citicorp (January 5, 2017 at pages 29–30).

<sup>40</sup> The third audit referenced above would not have to be completed until after the Exemption Period expires. If the Department ultimately decides to grant relief for an additional period, it could decide to alter the terms of the exemption, including the audit conditions (and the timing of the audit requirements). Nevertheless, the Applicant should anticipate that the Department will insist on strict compliance with the audit terms and schedule set forth above. As it considers any new exemption application, the Department may also contact the auditor for any information relevant to its determination.

The Department notes that if the audit uncovers material deficiencies with Citigroup's compliance with this exemption, then the Applicant should consider conducting an additional audit after making corrections to ensure that it remains in compliance with the exemption. In any event, the Department emphasizes that it retains the right to conduct its own investigation of compliance based on any such indicators of problems.

The Department declines to revise Section I(i) in a manner that would permit the Applicant's Internal Audit Department to carry out this exemption's required audit functions. Permitting the Applicant's internal audit department to carry out this exemption's required audit functions would be insufficiently protective of Covered Plans. Auditor independence is essential to this exemption, as it allows for an impartial analysis of the Citigroup Affiliated QPAMs. The independence of the auditor is the cornerstone of the integrity of the audit process and is of primary importance to avoid conflicts of interest and any inappropriate influence on the auditor's findings.

The fundamental importance of auditor independence to the integrity of the audit process is well established. For example, the United States Securities and Exchange Commission (SEC) promulgated regulations at 17 CFR 210.2-01 to ensure that auditors are independent of their clients, and under 17 CFR 240.10A-2, it is unlawful for an auditor not to be independent in certain circumstances. Likewise, the Public Accounting Oversight Board's (PCAOB) Rule 3520 states that a public accounting firm and its associated persons must be independent of the firm's audit clients. The Association of Independent Certified Public Accountants' (AICPA) Code of Professional Conduct, Objectivity and Independence Principle (AICPA, Professional Standards, ET section 0.300.050.01) requires members working on an audit or attest engagement to be independent, in fact and appearance. Moreover, ERISA section 103(a)(3)(A) requires an accountant hired by an employee benefit plan to examine the plan's financial statements to be independent.

#### Entities Subject to Audit—Section I(i)

Section I(i)(1) of the proposed five-year exemption provides, “(i)(1) Each Citigroup Affiliated QPAM submits to an audit conducted annually by an independent auditor. . . .”

The Applicant requests that only the particular Citigroup Affiliated QPAMs and Citigroup Related QPAMs actually

relying upon PTE 84-14 and this exemption when providing services to, or engaging in transactions as an agent for, their clients, should be subject to the audit requirement under this exemption, and not every entity within the Citigroup-affiliated group that could be eligible to be a “qualified professional asset manager,” as defined in PTE 84-14. The Applicant also requests that Section I(i)(1) be revised to state that the Citigroup entities subject to the audit requirement are Citigroup Affiliated QPAM's, “which the Applicant has identified in a certificate signed by the officer who will review and certify the Audit Report (as defined in Section I(i)(5)) pursuant to Section I(i)(8).” In support of its request, the Applicant states that the purpose of the independent audit is to ensure that Citigroup entities relying upon PTE 84-14 are in compliance with the conditions of PTE 84-14 and the conditions of this exemption. The Applicant also states that it would identify the relevant entities to the independent auditor in a certificate signed by the compliance officer who will review the Audit Report.

The Department has determined to revise Section I(i)(1) in the manner requested by the Applicant. The Department acknowledges that the independent auditor will need to be provided with the identities of the Citigroup Affiliated QPAMs to be audited and that the Applicant is best positioned to provide such information. The Department notes that Section I(i) requires the audit of each Citigroup entity that relies upon QPAM status, or expressly represents to ERISA-covered plan or IRA clients that it qualifies as a QPAM.

#### Auditor Information Access—Section I(i)(2)

Section I(i)(2) of the proposed five-year exemption provides, “(i)(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.”

The Applicant requests that the phrase “as permitted by law” be clarified by the addition of the following proviso: “provided, that the auditor shall not have access to any privileged information or confidential supervisory information.” The Applicant states that certain privileged or confidential

supervisory information which would be “permitted by law” to be shared with the auditor could result in the loss of the attorney-client or other privilege, or regulatory interest in maintaining confidentiality. The Applicant states that the purposes of the independent audit can be fully accomplished without requiring the Applicant to bear such costs. The Applicant also states that relevant privileges, and in particular, the attorney-client privilege, are based on important policy interests that routinely are thought to outweigh other critically important legal and social interests.

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

#### Audit Transaction Sampling—Section I(i)(4)

Section I(i)(4) of the proposed five-year exemption provides, “(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.”

The Applicant requests that the Department clarify that audit “samples” pursuant to this condition need only apply to transactions undertaken in reliance on PTE 84-14. The Applicant states that the purpose of the independent audit is to confirm compliance with the conditions required under the exemption and permit the Applicant to continue to

utilize PTE 84–14 on behalf of Covered Plans.

The Department has revised this condition for consistency with other conditions of this exemption which are tailored to the Department's interest in protecting Covered Plans. Therefore, the condition now applies only to Covered Plans. The Department additionally notes that Section I(i)(4) does not specify the number of transactions that the auditor must test, but rather requires, for each QPAM, that the auditor test a sample of each such QPAM's transactions involving Covered Plans, "sufficient in size and nature to afford the auditor a reasonable basis to determine operational compliance with the Policies and Training."

#### Audit Report—Section I(i)(5)

Section I(i)(5) of the proposed five-year exemption provides that, "*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 solely rely on the Annual Report created by the compliance officer (the Compliance Officer) as described in Section I(m) below as the basis for the auditor's conclusions in lieu of independent determinations and testing performed by the auditor as required by Section I(i)(3) and (4) above; and*

*(ii) The adequacy of the Annual Review described in Section I(m) and the resources provided to the Compliance Officer in connection with such Annual Review."*

To improve consistency between the audit conditions of this exemption, the Department has modified Section I(i)(5) to clarify that the auditor may issue one consolidated Audit Report covering all the Citigroup QPAMS for the period of time being audited. The Department also acknowledges that the Citigroup Affiliated QPAMs' efforts to address the auditor's recommendations regarding any inadequacy in the Policies and Training identified by the auditor may take longer to implement than the time limits mandated by the proposed exemption. Accordingly, the Department is modifying Section I(i)(5)(i) to reflect the possibility that the Citigroup Affiliated QPAMs' efforts to address the auditor's recommendations regarding any inadequacy in the Policies and Training may not be completed by the submission date of the Audit Report and may involve a written plan to address such items. However, any noncompliance identified by the auditor must be promptly addressed.

The revised Section also requires that if such a written plan of action to address the auditor's recommendation as to the adequacy of the Policies and Training is not completed by the submission of the Audit Report, the following period's Audit Report must state whether the plan was satisfactorily completed. Additionally, the Department has modified the final sentence in Section I(i)(5)(i) to more clearly express the Department's intent that the auditor must not rely solely on the work of the Compliance Officer and the Compliance Officer's Annual Report in formulating its conclusions or findings. The auditor must perform its own independent testing to formulate its conclusions. This exemption does not prohibit the auditor from considering the Compliance Officer's Annual Report in carrying out its audit

function, including its formulation of an audit plan. This exemption, however, does prohibit the auditor from reaching conclusions that are exclusively based upon the contents of the Compliance Officer's Annual Report.

Finally, while an independent assessment by the auditor of the adequacy of the Annual Review is essential to providing the Department with the assurance that the Applicant and the Citigroup QPAMs have given these matters the utmost priority and have taken the necessary actions to comply with the exemption, the Department has determined that the auditor should not be responsible for opining on the adequacy of the resources allocated to the Compliance Officer and has modified Section I(i)(5)(i) accordingly. If, however, the auditor observes compliance issues related to the Compliance Officer or available resources, it would be appropriate for the auditor to opine on those problems.

#### Certification of Audit Report—Section I(i)(7)–(8)

Section I(i)(7) of the proposed five-year exemption provides that, "*(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."*

Section I(i)(8) of the proposed five-year exemption provides, "*(i)(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."*

With respect to Section I(i)(7), the Applicant requests clarification that the certifying official who must "certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption. . . ." should be the general counsel or one of the three most senior executive officers of the Citigroup Affiliated QPAM itself

(and not of the ultimate parent of the Citigroup-affiliated corporate group, Citigroup Inc.).

With respect to Section I(i)(8), the Applicant requests that, “a senior executive officer with a direct reporting line to the highest ranking legal compliance officer of Citigroup,” be revised to, “a senior executive officer of Citigroup or one of its affiliates who reports directly to, or reports to another executive who reports directly to, the highest ranking compliance officer of Citigroup. . . .”

The Department agrees that the obligation under Section I(i)(7) to review the Audit Report and identify and remedy deficiencies may be carried out by the general counsel or one of the three most senior executive officers of the Citigroup Affiliated QPAM itself. The Department also agrees that the obligation under Section I(i)(8) to review the Audit Report may be carried out by a senior executive officer of Citigroup or one of its affiliates who reports directly to, or reports to another executive who reports directly to, the highest ranking compliance officer of Citigroup. The Department has revised Sections I(i)(7) and (8) accordingly.

Additionally, to coordinate with the revisions applied to Section I(i)(5), as discussed above, the Department has revised Section I(i)(7) to acknowledge that the Applicant’s efforts to address the auditor’s recommendations regarding inadequacies in the Policies and Training may take longer to implement than the required timeframe for submission of the certified Audit Report. In this regard, the Department did not intend to limit the Applicant’s ability to implement corrective measures by requiring that such efforts be completed prior to the submission of the Audit Report. Therefore, the Department has modified Section I(i)(7) to reflect that the senior executive officer may certify that a written plan to address the inadequacies regarding the Policies and Training identified in the auditor’s report is in place.

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

Section I(i)(9) of the proposed exemption provides in part, “. . . 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 in reliance of PTE 84–14.”

Throughout this exemption, the Department has discussed its interest in ensuring that the conditions included herein broadly protect ERISA-covered plans and IRAs that enter into an asset management agreement with a Citigroup Affiliated QPAM in reliance on such QPAM’s qualification under PTE 84–14. However, the Department recognizes that, under certain circumstances, extending the Applicant’s disclosure obligations beyond the plan and IRA clients that this exemption is designed to protect does not contribute to this exemption’s intended purpose. With regard to Section I(i)(9), the Department has adopted revisions which require the Citigroup Affiliated QPAMs to make the Audit Report available to any fiduciary of a Covered Plan. Accordingly, the Department has revised this condition by replacing the phrase “an ERISA-covered plan or IRA, the assets of which are managed by such Citigroup Affiliated QPAM” with the term “Covered Plan” (as defined in Section II(b)). Lastly, the Department has revised Section I(i)(9) to require that access to the Audit Report need only be provided upon request and such access can be electronic. The Department notes that the Audit Report, in any event, will be incorporated into the public record attributable to this exemption, under Exemption Application Number D–11909, and, therefore, independently accessible by members of the public.

#### Engagement Agreements—Section I(i)(10)

Section I(i)(10) of the proposed exemption provides that “[e]ach 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 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).”

In coordination with the Department’s modification of Section I(h)(2)(ii), which permits prudently-selected Citigroup personnel to conduct the training, the Department has determined to remove the Section I(i)(10)(B) requirement for Citigroup Affiliated QPAMs and the auditor to provide the Department with engagement agreements entered into with entities retained in connection with the Training or Policies conditions. Furthermore, to remove any confusion and uncertainty regarding the timing of

the submission of the auditor’s engagement agreement, the Department has modified Section I(i)(10) to require that the auditor’s engagement agreement be submitted to the Office of Exemption Determinations no later than two (2) months after the engagement agreement is entered into by the Applicant and the independent auditor.

#### Audit Workpapers—Section I(i)(11)

Section I(i)(10) of the proposed exemption requires “[t]he 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.”

The Department acknowledges that certain information contained in the audit workpapers may be confidential and proprietary, and that the inclusion of such information in the public file may create avoidable disclosure issues. The Department has modified Section I(i)(11) to remove the requirement that the auditor provide the workpapers to OED,<sup>41</sup> and instead require that the auditor provide access to the workpapers for the Department’s review and inspection.

#### Substitution of the Auditor—Section I(i)(12)

Section I(i)(12) of the proposed exemption provides “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.”

The Department has revised this condition for consistency with its interest in protecting Covered Plans. As revised, Section I(i)(12) now requires that Citigroup, no later than two (2) months following the engagement of a replacement auditor, must notify the Department of the auditor substitution and the reason(s) for the substitution, including any material disputes between the terminated auditor and Citigroup. The Department has also

<sup>41</sup> OED is the Office of Exemption Determinations within the Employee Benefits Security Administration agency of the United States Department of Labor.



revised Section I(i)(12) to remove the requirement for Citigroup to demonstrate the independence and qualifications of the auditor. Citigroup's fiduciary obligations with respect to the selection of the auditor, as well as the significant role a credible selection plays in reducing the need for more extensive oversight by the Department, should be sufficient to safeguard the selection process.

#### Contractual Commitments to Covered Plans—Section I(j)

Section I(j) of the proposed five-year exemption provides, “(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.”

The Applicant states that the creation of new contractual rights as contemplated under Section I(j) is inappropriate and unnecessary for the protection of ERISA-covered plan and

IRA clients. The Applicant states that Section (j) would require the creation of new contractual commitments in favor of ERISA-covered Plan and IRA clients that would be substantially similar to the contractual commitments contemplated by the Best Interest Contract Exemption (the “BIC Exemption”) published in the **Federal Register** on April 18, 2016. The Applicant states that the proposed extension of these BIC Exemption provisions to this exemption is inappropriate, because the BIC Exemption is intended to address circumstances in which a fiduciary may have a conflict of interest, while this exemption would apply only in contexts in which no such conflict exists. The Applicant further states that, under the circumstances, it is appropriate at a minimum for Section I(j) of the exemption to be revised to provide that in no circumstance shall the contractual commitments required therein extend beyond the contractual commitments required to be made to a fiduciary seeking to rely on the BIC Exemption, if any, as the BIC Exemption is in effect from time to time.

The Applicant also requests that the requirements of Section I(j) be limited to services that are rendered to Plan clients in reliance on PTE 84–14. Accordingly, the Applicant requests that Section I(j) should be clarified by adding the phrase, “in reliance on PTE 84–14,” immediately following the phrase, “asset management or other discretionary fiduciary services,” in the leading paragraph and in two other places in Section I(j)(8). The Applicant states that the effect of the Exemption is to permit the Applicant to continue to use PTE 84–14 and that imposing conditions relating to conduct that is not connected to the relief being provided exceeds the statutory mandate of Section 408(a).

The Department may grant an exemption under Section 408(a) of ERISA or Section 4975(c)(2)(C) of the Code only to the extent the Secretary finds, among other things, that the exemption is protective of the affected plan(s) or IRA(s). Notwithstanding the misconduct, which resulted in violation of Section I(g) of PTE 84–14, the Department has granted this exemption based, in significant part, upon the inclusion of Section I(j), which protects Covered Plans by, among other things, requiring the Citigroup Affiliated QPAMs to make express commitments to adhere to the requirements of ERISA and the Code, as applicable.

As previously indicated, the Department has concluded that a culture of compliance, centered on

adherence to basic standards of fair dealing as set forth in this exemption, gives the Department a compelling basis for making the required statutory findings that the exemption is in the interests of plan and IRA investors and protective of their rights. Absent such findings, the exemption would have been denied.

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

The Department notes that nothing in ERISA or the Code prevents the Department from conditioning relief on express contractual commitments to adhere to the requirements set out herein. The QPAMs remain free to disclaim reliance on the exemption and to avoid such express contractual commitments. To the extent, however, that they hold themselves out as fiduciary QPAMs, they should be prepared to make an express commitment to their customers to adhere to the requirements of this exemption. This commitment strengthens and reinforces the likelihood of compliance, and helps ensure that, in the event of noncompliance, customers, including IRA customers, will be insulated from injuries caused by non-compliance.

These protections also ensure that customers will be able to extricate themselves from transactions that become prohibited as a result of the QPAMs’ misconduct, without fear of sustaining additional losses as a result of the QPAMs’ actions. In this connection, however, the Department emphasizes that the only claims available to the QPAMs’ customers pursuant to these contractual commitments are those separately provided by ERISA or other state and federal laws that are not preempted by ERISA. As before, private litigants have only those causes of action specifically authorized by laws that exist independent of this exemption.

As explained above, ERISA-covered plans and IRAs routinely rely on QPAM status as a condition of entering into transactions with financial institutions,

even with respect to transactions that do not require adherence to PTE 84–14. In addition, it may not always be clear whether a Citigroup Affiliated QPAM intends to rely upon PTE 84–14 for any particular transaction. Accordingly, it is critical to ensure that protective conditions are in place to safeguard the interests of ERISA-covered plans and IRAs that are acting in reliance on the availability of this exemption, particularly with respect to plans and IRAs that may not have entered into a transaction in the first place, but for the Department’s grant of this exemption.

The Department has revised this condition for consistency with its interest in protecting Covered Plans. The condition now applies to ERISA-covered plans and IRAs only when the Citigroup Affiliated QPAM relies on PTE 84–14 or has expressly represented that it qualifies as a QPAM or relies on the QPAM class exemption in its dealings with the ERISA-covered plan or IRA (*i.e.*, a Covered Plan). To the extent a Citigroup QPAM would prefer not to be subject to these conditions, however, it may expressly disclaim reliance on QPAM status or PTE 84–14 in entering into its contract with the ERISA-covered plan or IRA.

#### Contractual Commitments—Section I(j)(1)

Section I(j)(1) of the proposed five-year exemption provides that 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.*”

The Applicant requests the phrase, “as applicable” be moved to follow the phrase, “. . .with respect to such ERISA-covered plan or IRA.” The Department has determined to revise Section I(j)(1) by adding “to the extent that Section is applicable,” following the phrase, “with respect to each such ERISA-covered plan and IRA” at the end of the condition. As written, the text expressly focuses on provisions of ERISA and the Code only to the extent those provisions are applicable to the conduct at issue.

#### Indemnity Provision—Section I(j)(2)

Section I(j)(2) of the proposed five-year exemption provides that each Citigroup Affiliated QPAM agrees and

warrants: “(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.*”

The Applicant requests that Section I(j)(2) be revised to read: “To indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a violation of ERISA’s fiduciary duties and of ERISA and the Code’s prohibited transaction provisions, 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;”

As explained above, the intended purpose of this exemption is to protect Covered Plans that entrust the Citigroup Affiliated QPAMs with the management of their retirement assets. To this end, the Department believes that the protective purpose of this exemption is furthered by Section I(j)(2). This condition ensures that, when a Covered Plan enters into an asset management agreement with a Citigroup Affiliated QPAM in reliance on the manager’s qualification as a QPAM, it may expect adherence to basic fiduciary norms and standards of fair dealing, notwithstanding the prior conviction. This condition also ensures that the Covered Plan will be able to disengage from that relationship without undue injury in the event that the terms of this exemption are violated.

Accordingly, the Department has revised the applicability of this condition to more closely reflect this interest. In particular, the condition applies to Covered Plans. As indicated above, if the asset manager would prefer not to be subject to these provisions as exemption conditions, it may expressly disclaim reliance on QPAM status or PTE 84–14 in entering into its contract with an ERISA-covered plan or IRA (in that case, however, it could not rely on the exemption for relief). The Department has made certain further changes to this condition, which include: Replacing “applicable laws” with clarifying language that conforms to PTE 2016–14; and replacing “any damages” with “actual losses resulting directly from” certain acts or omissions of the Citigroup Affiliated QPAMs. Because I(j)(2) extends only to actual

losses resulting directly from the actions of the Citigroup Affiliated QPAMs, it does not encompass losses solely caused by other parties, events, or acts of God.

#### Contractual Commitments—Section I(j)(4)

Section I(j)(4) of the proposed five-year exemption provides that each Citigroup Affiliated QPAM agrees and warrants: “(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.*”

The Department has determined that Section I(j)(4), as proposed, is duplicative of the exemption’s prohibition on exculpatory clauses under Section I(j)(7). The Department therefore has deleted Section I(j)(4) and renumbered the subsequent subsections in Section I(j) accordingly.

#### Contractual Commitments—Section I(j)(5)<sup>42</sup>

Section I(j)(5) of the proposed five-year exemption provides that each Citigroup Affiliated QPAM agrees and warrants: “(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.*”

The Applicant requests that I(j)(5) be revised by replacing, “including” with “with respect to,” and replacing, “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;” with “in connection with any such arrangements involving investments in pooled funds subject to

ERISA entered into after the Conviction Date, the adverse consequences must relate to a lack of liquidity of the pooled fund’s underlying assets, valuation issues, or regulatory reasons that prevent the fund from immediately redeeming an ERISA-covered plan’s or IRA’s investment, and such restrictions are applicable to all such investors and effective no longer than reasonably necessary to avoid the adverse consequences.”

The Department has modified this condition (renumbered in this exemption as Section I(j)(4)) to clarify the circumstances under which reasonable restrictions are necessary to protect the remaining investors in a pooled fund and to also clarify that, in any such event, the restrictions must be reasonable and last no longer than reasonably necessary to remedy the adverse consequences. The revised and renumber Section I(j)(4) provides, “Not to restrict the ability of such Covered Plan to terminate or withdraw from its arrangement with the Citigroup Affiliated QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any such arrangements involving investments in pooled funds subject to ERISA entered into after the effective date of this exemption, the adverse consequences must relate to of a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming an ERISA-covered plan’s or IRA’s investment, and such restrictions must be applicable to all such investors and effective no longer than reasonably necessary to avoid the adverse consequences.”

#### Limits on Liability—Section I(j)(7)

Section I(j)(7) of the proposed five-year exemption provides that each Citigroup Affiliated QPAM agrees and warrants: “(j)(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.*”

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

#### Notice and Updated Investment Management Agreement—Section I(j)(8)

Section I(j)(8) of the proposed five-year exemption provides that, “(j)(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.*”

The Applicant requests that Section I(j)(8) be revised to extend the applicable notification period from 4 months to 6 months. The Applicant also requests that I(j)(8) be limited to ERISA-covered plans and IRAs for which a Citigroup Affiliated QPAM provides asset management or other discretionary fiduciary services “*in reliance on PTE 84-14.*”

As noted above, the Department has an interest in protecting an ERISA-covered plan or IRA that enters into an asset management agreement with a Citigroup Affiliated QPAM in reliance on the manager’s qualification as a QPAM, regardless of whether the QPAM relies on the class exemption when managing such ERISA-covered plan’s or IRA’s assets. The Department has revised the applicability of this condition to more closely reflect this interest, and the condition now applies only to Covered Plans. The Department has also modified the condition so that a Citigroup Affiliated QPAM will not violate the condition solely because a Covered Plan refuses to sign an updated investment management agreement. In addition, the Department has revised Section I(j)(8) to provide that the Citigroup Affiliated QPAM must provide notice to each Covered Plan by July 9, 2018.

<sup>42</sup> The Department has renumbered this section as Section I(j)(4) in this final exemption.

Notice to Covered Plan Clients—Section I(k)(1)<sup>43</sup>

Section I(k)(1) of the proposed five-year exemption provides, in relevant part that, “*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. . . . 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**.”*

The Applicant requests that Section I(k)(1) be revised to read, in relevant part, “Each Citigroup Affiliated QPAM has provided a notice of the proposed five-year exemption, along with a separate summary describing the facts that led to the Conviction (the Summary). . . . In addition, 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**. . . .”

The Department notes that the proposed exemption provides details of the facts and circumstances underlying the Conviction not found in the Summary or the final grant. One of the purposes of such a complete disclosure is to ensure that all interested parties are aware of, and attentive to, the complete facts and circumstances surrounding Citigroup’s application for exemption. Requiring the disclosure of the Summary, proposal, and grant provides the opportunity for all parties to have knowledge of these facts and circumstance.

Notwithstanding this, the Department has modified the condition to clarify that disclosures under this condition may be provided electronically. Further, the notice requirement under this condition has been narrowed to ERISA-covered plans and IRAs that would benefit from this knowledge (*i.e.*, Covered Plans).

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

Section I(k)(2) of the proposed five-year exemption provides, in relevant part that, “*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.”*

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

Compliance Officer—Section I(m)

Section I(m)(1) of the proposed five-year exemption provides, “*(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. . . . (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.”*

As stated above, the Applicant requests that the compliance officer requirement of Section I(m) be deleted from the exemption in its entirety. In support of its request, the Applicant states that this requirement is burdensome, costly, and redundant. The Applicant states that it has comprehensive compliance and internal audit departments that should be responsible for developing and implementing the necessary policies and procedures under this exemption.

The Department declines to eliminate the compliance officer requirement under this exemption. Citigroup personnel engaged in serious misconduct that was caused, at least in part, by compliance and oversight failure. The Department’s determination to grant this exemption is based in part on the view that an internal compliance officer with responsibility for the Policies and Training mandated by this exemption will provide the level of oversight necessary to ensure that such Policies and Training are properly

developed and implemented throughout the term of this exemption.

The Applicant also requests that Section I(m)(1) be clarified by deleting the word “legal” from the phrase “legal compliance” in clause (ii). In this regard, the Applicant states that the Citigroup’s compliance function is separate from its legal function. The Applicant also requests that Section I(m) be revised to clarify that the Compliance Officer will be a senior compliance officer of Citigroup Inc. or one of its affiliates, and that such senior compliance officer will be an officer who reports directly to, or reports to another compliance officer who reports directly to, Citigroup Inc.’s highest ranking compliance officer (whose title is currently Global Chief Compliance Officer of Citigroup Inc.).

After consideration of the Applicant’s comment, the Department has revised Section I(m)(1) in the manner requested by the Applicant.

Deferred Prosecution/Non-Prosecution Agreements—Section I(o)

Section I(o) of the proposed five-year exemption provides, “*(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.”*

The Applicant requests that Section I(o)(2) be revised to read substantially the same as Section I(l) of PTE–2016–14, subject to the following additional changes. The Applicant requests the replacement of the word “immediately” with “promptly” in subsections (1) and (2); the insertion of the word “reasonably” before the phrase

<sup>43</sup> The Department has renumbered this section as Section I(k) in this final exemption.

“requested by the Department” in subsection (2); and the deletion of the final sentence of subsection (2), which reads “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.”

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

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

Section I(p) of the proposed five-year exemption provides that, “[e]ach 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.”

Ensuring that ERISA covered-plan and IRA clients have a means by which to review and understand the Policies implemented in connection with this exemption is a vital protection that is fundamental to this exemption’s purpose. The Department has modified Section I(p) to provide that the Citigroup Affiliated QPAMs, at their election, may provide Covered Plans with a disclosure that accurately describes or summarizes key components of the Policies. As revised, Section I(p) does not require the Citigroup Affiliated QPAMs to provide the Policies in their entirety. The Department has also determined that such disclosure may be continuously

maintained on a website, provided that a website link to the summary of the written Policies is clearly and prominently disclosed to those Covered Plan clients to whom this section applies. The Department has also modified Section I(p) to require that the Citigroup Affiliated QPAMs provide notice regarding the information on the website within 60 days of the effective date of this exemption, and thereafter to the extent certain material changes are made to the Policies.

#### New Definition of Citicorp

In the PTE 2016–14 Comment Letter, the Applicant requested that the Department add a definition for the term “Citicorp” to read as: “The term ‘Citicorp’ means, a financial services holding company organized and existing under the laws of Delaware and does not include any subsidiaries or other affiliates.” After consideration of the Applicant’s comment, the Department has added a new Section II(e) to this exemption defining Citicorp in the manner requested by the Applicant.

#### Summary of Facts and Representations

The Applicant seeks certain clarifications to the Summary of Facts and Representations which the Department does not view as relevant to its determination whether to grant this exemption. Those requested clarifications may be found as part of the public record for Application No. D–11909, in a letter to the Department, dated February 28, 2017.

#### Letter From House Committee on Financial Services

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

The Department acknowledges the Members’ concerns regarding the need for public discourse regarding proposed

exemptions. To this end, the Department’s procedures regarding prohibited transaction exemption requests under ERISA (the Exemption Procedures) afford interested persons the opportunity to request a hearing. Specifically, section 2570.46(a) of the Exemption Procedures provides that, “[a]ny interested person who may be adversely affected by an exemption which the Department proposes to grant from the restrictions of section 406(b) of ERISA, section 4975(c)(1)(E) or (F) of the Code, or section 8477(c)(2) of FERSA may request a hearing before the Department within the period of time specified in the **Federal Register** notice of the proposed exemption.” The Exemption Procedures provide that “[t]he Department will grant a request for a hearing made in accordance with paragraph (a) of this section where a hearing is necessary to fully explore material factual issues identified by the person requesting the hearing.” The Exemption Procedures also provide that “[t]he Department may decline to hold a hearing where: (1) The request for the hearing does not meet the requirements of paragraph (a) of this section; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the factual issues identified can be fully explored through the submission of evidence in written (including electronic) form.”<sup>44</sup>

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

#### Comments From Interested Persons

The Department also received comment letters from certain interested persons. With respect to each, the commenter sought a further explanation regarding the proposed exemption.

After giving full consideration to the record, the Department has decided to grant the exemption, as described above. The complete application file (Application No. D–11909) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200

<sup>44</sup> 29 CFR part 2570, published at 76 FR 66653, October 27, 2011.

Constitution Avenue NW, Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 21, 2016 at 81 FR 83416.

### Exemption

#### Section I: Covered Transactions

Certain entities with specified relationships to Citigroup (hereinafter, the Citigroup Affiliated QPAMs and the Citigroup Related QPAMs, as defined in Sections II(f) and II(g), respectively) will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84-14 (PTE 84-14 or the QPAM Exemption), notwithstanding the Conviction, as defined in Section II(a), during the Exemption Period,<sup>45</sup> provided that 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" means the knowing 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 their officers, directors, and agents other than Citicorp, 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" means the knowing approval of the misconduct underlying the Conviction;

(d) At all times during the Exemption Period, no Citigroup Affiliated QPAM will use its authority or influence to direct an "investment fund" (as defined in Section VI(b) of PTE 84-14), that is subject to ERISA or the Code and managed by such Citigroup Affiliated QPAM in reliance on PTE 84-14, or with respect to which a Citigroup Affiliated QPAM has expressly represented to an ERISA-covered plan or IRA with assets invested in such "investment fund" that it qualifies as a QPAM or relies on PTE 84-14, to enter into any transaction with Citicorp, or to engage Citicorp 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, the Citigroup Related QPAM, or their affiliates to directly or indirectly profit from the criminal conduct that is the subject of the Conviction;

(g) Other than with respect to employee benefit plans maintained or sponsored for its own employees or the employees of an affiliate, Citicorp will not act as a fiduciary within the meaning of section 3(21)(A)(i) or (iii) of ERISA, or section 4975(e)(3)(A) and (C) of the Code, with respect to ERISA-covered plan and IRA assets; provided, however, that Citicorp will not be treated as violating the conditions of this exemption solely because it acted as an investment advice fiduciary within the meaning of section 3(21)(A)(ii) or section 4975(e)(3)(B) of the Code;

(h)(1) By July 9, 2018, each Citigroup Affiliated QPAM must develop,

implement, maintain, and follow written policies and procedures (the Policies). The Policies must require, and must be reasonably designed to ensure that:

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

(ii) The Citigroup Affiliated QPAM fully complies with ERISA's fiduciary duties, and with ERISA and the Code's prohibited transaction provisions, as applicable with respect to each Covered Plan, and does not knowingly participate in any violation of these duties and provisions with respect to Covered Plans;

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

(iv) Any filings or statements made by the 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 or in relation to Covered Plans, are materially accurate and complete, to the best of such QPAM's knowledge at the time;

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

(vi) The Citigroup Affiliated QPAM complies with the terms of this exemption; and

(vii) Any violation of, or failure to comply with an item in subparagraphs (ii) through (vi), is corrected as soon as reasonably possible upon discovery, or as soon after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and any such violation or compliance failure not so corrected is reported, upon the discovery of such failure to so correct, in writing, to the head of compliance and the General Counsel (or their functional equivalent) of the relevant line of business that engaged in the violation or failure, and the independent auditor responsible for reviewing compliance with the Policies. A 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 as soon as reasonably possible upon discovery, or as soon as reasonably possible after the QPAM reasonably should have known

<sup>45</sup> 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.

of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (vii);

(2) By July 9, 2018, each Citigroup Affiliated QPAM must develop a program of training (the Training), to be conducted at least annually, for all relevant Citigroup Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The first Training under this Final Exemption must be completed by all relevant Citigroup Affiliated QPAM personnel by July 9, 2019 (by the end of this 30-month period, asset/portfolio management, trading, legal, compliance, and internal audit personnel who were employed from the start to the end of the period must have been trained twice: The first time under PTE 2016–15; and the second time under this exemption). The Training must:

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

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

(i)(1) Each Citigroup Affiliated QPAM, which the Applicant has identified in a certificate signed by the officer who will review and certify the Audit Report (as defined in Section I(i)(5)) pursuant to Section I(i)(8), submits to an audit conducted every two years by an independent auditor who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and each Citigroup Affiliated QPAM's compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. Each audit must cover the preceding consecutive twelve (12) month period. The first audit must cover the period from July 10, 2018 through July 9, 2019, and must be completed by January 9, 2020. The second audit must cover the period from July 10, 2020 through July 9, 2021, and must be completed by January 9, 2022. In the event that the Exemption Period is extended or a new exemption is granted, the third audit would cover the period from July 10, 2022 through July 9, 2023, and would have to be completed by January 9, 2024 (unless the Department chooses to alter the

biennial audit requirement in the new or extended exemption);

(2) Within the scope of the audit and to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, and only to the extent such disclosure is not prevented by state or federal statute, or involves communications subject to attorney client privilege, 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. Such access is limited to information relevant to the auditor's objectives as specified by the terms of this exemption;

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

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

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

(i) The adequacy of each Citigroup Affiliated QPAM's Policies and Training; each 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. The Citigroup Affiliated QPAM must properly address

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

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

(6) The auditor must notify the respective 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; that such Citigroup Affiliated QPAM has

addressed, corrected or remedied any noncompliance and inadequacy or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. Such certification must also include the signatory's determination that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption, and with the applicable provisions of ERISA and the Code;

(8) The Risk Management Committee of Citigroup's Board of Directors is provided a copy of each Audit Report; and a senior executive officer of Citigroup or one of its affiliates who reports directly to, or reports to another executive who reports directly to, the highest ranking 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: Office of Exemption Determinations (OED), 200 Constitution Avenue NW, Suite 400, Washington, DC 20210, or by private carrier to: 122 C Street NW, Suite 400, Washington, DC 20001-2109. This delivery must take place no later than thirty (30) days following completion of the Audit Report. The Audit Report will be made part of the public record regarding this exemption. Furthermore, each Citigroup Affiliated QPAM must make its Audit Report unconditionally available, electronically or otherwise, for examination upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan;

(10) Each Citigroup Affiliated QPAM and the auditor must submit to OED: Any engagement agreement(s) entered into pursuant to the engagement of the auditor under this exemption, no later than two (2) months after the execution of any such engagement agreement;

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

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

between the terminated auditor and Citigroup;

(j) As of January 10, 2018, and throughout the Exemption Period, with respect to any arrangement, agreement, or contract between a Citigroup Affiliated QPAM and a Covered Plan, the Citigroup Affiliated QPAM agrees and warrants:

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

(2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from a Citigroup Affiliated QPAM's violation of ERISA's fiduciary duties, as applicable, and the prohibited transaction provisions of ERISA and the Code, as applicable; a breach of contract by the QPAM; or any claim arising out of the failure of such 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. This condition applies only to actual losses caused by the Citigroup Affiliated QPAM's violations;

(3) Not to require (or otherwise cause) the Covered Plan 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 restrict the ability of such Covered Plan to terminate or withdraw from its arrangement with the Citigroup Affiliated QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any such arrangements involving investments in pooled funds subject to ERISA entered into after the effective date of this exemption, the adverse consequences must relate to of a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming an ERISA-covered plan's or IRA's investment, and such restrictions must be applicable to all such investors and

effective no longer than reasonably necessary to avoid the adverse consequences;

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

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

(7) By July 9, 2018, each Citigroup Affiliated QPAM must provide a notice of its obligations under this Section I(j) to each Covered Plan. For all other prospective Covered Plans, the Citigroup Affiliated QPAM will agree 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. This condition will be deemed met for each Covered Plan that received a notice pursuant to PTE 2016-14 that meets the terms of this condition.

Notwithstanding the above, a Citigroup Affiliated QPAM will not violate the condition solely because a Plan or IRA refuses to sign an updated investment management agreement;

(k) By March 10, 2018, each Citigroup Affiliated QPAM will provide a notice of the exemption, along with a separate summary describing the facts that led to the Conviction (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that the Conviction results in a failure to meet a condition in PTE 84-14, to each sponsor and beneficial owner of a Covered Plan, or the sponsor of an investment fund in any case where a Citigroup Affiliated QPAM acts as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests. Any



prospective clients for which a Citigroup Affiliated QPAM relies on PTE 84–14 or has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption must receive the proposed and final exemptions with the Summary and the Statement prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the Citigroup Affiliated QPAM. Disclosures may be delivered electronically.

(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) By July 9, 2018, 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 for each annual period beginning on January 10, 2018 (the Annual Review)<sup>46</sup> to determine the adequacy and effectiveness of the implementation of the Policies and Training. With respect to the Compliance Officer, the following conditions must be met:

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

(ii) The Compliance Officer must be a senior compliance officer of Citigroup Inc. or one of its affiliates, and such senior compliance officer will be an officer who reports directly to, or reports to another compliance officer who reports directly to, Citigroup Inc.'s highest ranking compliance officer (whose title is currently Global Chief Compliance Officer of Citigroup Inc.);

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

(i) The Annual Review includes a review of: Any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the compliance and risk control function (or its equivalent) during the previous year; any material change in the relevant business activities of the 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; and (D) the Citigroup Affiliated QPAMs have complied with the Policies and Training and/or corrected (or is correcting) any instances of noncompliance in accordance with Section I(h) above;

(iv) Each Annual Report must be provided to appropriate corporate officers of 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 within three (3) months following the end of the period to which it relates;

(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 Exemption Period, 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;

(p) By July 9, 2018, each Citigroup Affiliated QPAM, in its agreements with, or in other written disclosures provided to Covered Plans, will clearly and prominently inform Covered Plan clients of their right to obtain a copy of the Policies or a description ("Summary Policies") which accurately summarizes key components of the QPAM's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within six (6) months following the end of the calendar year during which the Policies were changed.<sup>47</sup> With respect to this requirement, the description may be continuously maintained on a website, provided that such website link to the Policies or the Summary Policies is clearly and prominently disclosed to each Covered Plan; and

(q) A 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); or if the independent auditor described in Section I(i) fails a provision of the exemption other than the requirement described in Section I(i)(11), provided that such failure did not result from any actions or inactions of Citigroup or its affiliates.

## Section II: Definitions

(a) The term "Conviction" means the judgment of conviction against Citicorp for violation of the Sherman Antitrust Act, 15 U.S.C. 1, entered in the District Court for the District of Connecticut (the District Court) (Case Number 3:15-cr-78–SRU). For all purposes under this exemption, "conduct" of any person or entity that is the "subject of [a] Conviction" encompasses the conduct described in Paragraph 4(g)-(i) of the Plea Agreement filed in the District Court in Case Number 3:15-cr-78–SRU;

(b) The term "Covered Plan" is a plan subject to Part 4 of Title 1 of ERISA ("ERISA-covered plan") or a plan

<sup>46</sup> Note that such Annual Review must be completed with respect to the annual periods ending January 9, 2019; January 9, 2020; January 9, 2021; January 9, 2022; and January 9, 2023.

<sup>47</sup> In the event Applicant meets this disclosure requirement through Summary Policies, changes to the Policies shall not result in the requirement for a new disclosure unless, as a result of changes to the Policies, the Summary Policies are no longer accurate.

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

(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 “Exemption Period” means January 10, 2018, through January 9, 2023.

(e) The term “Citicorp” means Citicorp, a financial services holding company organized and existing under the laws of Delaware and does not include any subsidiaries or other affiliates.

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

(g) 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).

#### Effective Date

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

Department’s Comment: The Department cautions that the relief in this exemption would terminate immediately if 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 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.

#### Further Information

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

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

[Prohibited Transaction Exemption 2017–06; Exemption Application No. D–11910]

#### Discussion

On November 21, 2016, the Department of Labor (the Department) published a notice of proposed exemption in the **Federal Register** at 81 FR 83427, for certain entities with specified relationships to Barclays PLC (BPLC) to continue to rely upon the relief provided by PTE 84–14 for a period of five years,<sup>48</sup> notwithstanding BPLC’s criminal conviction, as described herein. The Department is granting this exemption in order to ensure that Covered Plans<sup>49</sup> whose assets are managed by a Barclays Affiliated QPAM or Barclays Related QPAM may continue to benefit from the relief provided by PTE 84–14. This exemption is effective from January 10, 2018 through January 9, 2023 (the Exemption Period).

No relief from a violation of any other law is provided by this exemption, including any criminal conviction described in the proposed exemption.

<sup>48</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), hereinafter referred to as PTE 84–14 or the QPAM Exemption.

<sup>49</sup> “Covered Plan” is a plan subject to Part 4 of Title 1 of ERISA (“ERISA-covered plan”) or a plan subject to section 4975 of the Code (“IRA”) with respect to which a Barclays Affiliated QPAM relies on PTE 84–14, or with respect to which a Barclays Affiliated QPAM (or any BPLC affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84–14). A Covered Plan does not include an ERISA-covered Plan or IRA to the extent the Barclays Affiliated QPAM has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into its contract, arrangement or agreement with the ERISA-covered plan or IRA. See further discussion in this Preamble under the heading Comments 9, 10 & 11—Policies and Procedures Relating to Compliance with ERISA and the Code—Section I(i)(ii)–(v).

Furthermore, the Department cautions that the relief in this exemption will terminate immediately if, among other things, an entity within the BPLC corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Conviction) during the Exemption Period. The terms of this exemption have been specifically designed to promote conduct that adheres to basic fiduciary standards under ERISA and the Code. The exemption also aims to ensure that plans and IRAs can terminate relationships in an orderly and cost effective fashion in the event a plan or IRA fiduciary determines it is prudent for the plan or IRA to sever its relationship with an entity covered by the exemption.

#### Written Comments

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption, published in the **Federal Register** at 81 FR 83427 on November 21, 2016.<sup>50</sup> All comments and requests for a hearing were due by January 5, 2017. The Department received written comments from the Applicant and members of the U.S. Congress. After considering these submissions, the Department has determined to grant the exemption, with revisions, as described below.

#### Comment 1—Confirmation of the Comment Period Deadline

The Applicant requests that the Department confirm that the reference in the preamble to the proposed exemption to comments being due within 30 days was unintentional and the deadline for comments was January 5, 2017. The Department so confirms.

#### Comment 2—Term of the Exemption

The Applicant requests that the Department extend the term of the exemption from five years to ten years from the Conviction Date, as defined in Section II(e). The Applicant states that the five-year term is inconsistent with precedent and that the “conduct that is the subject of BPLC’s conviction was described by the Department of Justice (DOJ) as ‘limited to a small part of [BPLC’s] operations;’ it involved only two traders; and it did not involve any of BPLC’s asset management units.” The Applicant further states that the limitation to five years is especially problematic given that the DOJ plea

<sup>50</sup> The Department received additional comments from Applicant, however, after the close of the comment period.