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# QPAM and INHAM Audits

Under ERISA, the Department of Labor ("DOL") can grant individual and "class" prohibited transaction exemptions ("PTEs") that allow qualifying financial institutions that provide discretionary asset management services to retirement plan assets to engage in a wide range of necessary transactions with parties in interest that would otherwise be "prohibited transactions," without liability under ERISA or the imposition of excise tax under the Internal Revenue Code. Typically PTEs are issued subject to numerous conditions and limitations. Certain PTEs require an independent auditor to determine compliance with the exemption's conditions.

Traditionally, financial institutions that manage assets of their own pension plans seek to do so under two exemptions – the prohibited transaction class exemption governing "qualified professional asset managers" or QPAMs under Prohibited Transaction Class Exemption 84-14 (the "QPAM Exemption"), or the in-house asset management exemption or "INHAM Exemption" under Prohibited Transaction Class Exemption 96-23 (the "INHAM Exemption"). Both the QPAM and INHAM Exemptions require an individual policy audit of the financial institution by a qualified independent auditor.

In addition, virtually all large financial institutions have sought to qualify as a QPAM for managing assets of third party pension, profit-sharing and ERISA "plan asset" funds for a number of reasons, including the expansive definition of a party in interest to include entities providing services to plans and the concern that a party in interest relationship may develop over time. The QPAM designation is viewed by investors and clients as a kind of prudential threshold and, therefore, is seen as essential by large financial institutions.

Section I(g)of the QPAM Exemption requires that neither the QPAM, nor its affiliates nor its owners have been convicted of specified crimes within the past ten years. If a QPAM violates this condition it automatically loses its QPAM designation. However, such institutions can apply for an individual exemption from the DOL to continue to qualify as a QPAM. Recently there have been a number of criminal convictions of large financial institutions with subsidiary QPAMs collectively managing hundreds of billions of dollars of retirement plan assets. Each of these QPAMs require an exemption to continue to qualify as a QPAM.

In the past three years alone, JP Morgan Chase, Barclays, Citicorp, Royal Bank of Scotland, UBS, Deutsche Bank, Credit Suisse and BNP Paribas have entered into criminal plea agreements or have been criminally convicted for a variety of matters and have been ordered to pay billions of dollars in fines and forfeitures. As a result of these criminal convictions the QPAMs of each of these financial institutions has sought an individual exemption from the DOL to continue to serve as QPAMs.

As a general matter, QPAMs managing third-party plan assets do not require an annual audit or certification process. However, in situations where Section I(g) compliance has been violated, the DOL, in its recent temporary or permanent exemptions to UBS, BNP Paribas, Credit Suisse and Deutsche Bank, the pending exemption applications for JP Morgan Chase, Barclays and Citicorp., and a second exemption for UBS (related to a second criminal conviction), have required or referenced an independent audit as a condition of exemptive relief. The purpose of these audits, generally conducted on an annual basis, is to evaluate the adequacy of and compliance with the

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remedial policies and training required by the specific exemption. The independent auditor must be prudently selected and have appropriate technical training and proficiency with ERISA to evaluate the adequacy of, and compliance with, the policies and training.

As a leading independent fiduciary, Evercore Trust Company, N.A. (Evercore Trust) currently serves as an independent auditor for both the audits required by QPAMs who have been criminally convicted and are seeking to maintain their QPAM status, and the annual audit required by INHAMs managing their own plan assets. In fact, over the past 15 years, the Evercore Trust team has served as an independent third party assigned with auditing fiduciary compliance or assuming fiduciary responsibilities on more exemptions than the next two competing firms combined, including many of the most complex exemptions granted by the DOL to large financial institutions and Fortune 500 corporations.

Please contact any of the following individuals to learn more about our experience and perspectives related to QPAM and INHAM Exemption audits:

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