

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

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Notice of proposed exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following proposed exemptions: D–11868, Royal Bank of Canada (together with its current and future affiliates, RBC or the Applicant); D–11875, Northern Trust Corporation (together with its current and future affiliates, Northern or the Applicant; and D–11879, Proposed Extension of PTE 2015–15 involving Deutsche Bank AG (Deutsche Bank).

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

**ADDRESSES:** Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, U.S. Department of Labor, 200 Constitution Avenue NW., Suite 400, Washington, DC 20210. Attention: Application No. \_\_\_\_\_, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via email or FAX. Any such comments or requests should be sent either by email to: [moffitt.betty@dol.gov](mailto:moffitt.betty@dol.gov), or by FAX to (202) 693–8474 by the end of the scheduled comment period. The applications for exemption and the

comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1515, 200 Constitution Avenue NW., Washington, DC 20210.

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

**SUPPLEMENTARY INFORMATION:****Notice to Interested Persons**

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

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

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

**Royal Bank of Canada (Together With Its Current and Future Affiliates, RBC or the Applicant), Located in Toronto, Ontario, Canada**

[Exemption Application No. D–11868]

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

**Proposed Temporary Exemption**

The Department is considering granting a temporary exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended, (ERISA or the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).<sup>2</sup>

**Section I: Covered Transactions**

If the proposed temporary exemption is granted, certain entities with specified relationships to Royal Bank of Canada Trust Company (Bahamas) Limited (hereinafter, the RBC QPAMs, as further defined in Section II(b)) shall not be precluded from relying on the exemptive relief provided by Prohibited Transaction Exemption (PTE) 84–14,<sup>3</sup> notwithstanding a judgment of conviction against Royal Bank of Canada Trust Company (Bahamas) Limited for aiding and abetting tax fraud, to be entered in France in the District Court of Paris (the Conviction, as further defined in Section II(a)),<sup>4</sup> for a period of up to twelve months beginning on the date of the Conviction (the Conviction Date), provided that the following conditions are satisfied:

(a) The RBC QPAMs (including their officers, directors, agents other than RBC, and employees of such RBC QPAMs) did not know of, have reason to know of, or participate in the criminal conduct of RBCTC Bahamas that is the subject of the Conviction (for purposes of this paragraph (a), “participate in” includes the knowing or tacit approval of the misconduct underlying the Conviction);

(b) The RBC QPAMs (including their officers, directors, agents other than RBC, and employees of such RBC QPAMs) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the Conviction;

<sup>2</sup> For purposes of this proposed temporary exemption, references to section 406 of Title I of the Act, unless otherwise specified, should be read to refer as well to the corresponding provisions of section 4975 of the Code.

<sup>3</sup> 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

<sup>4</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 income tax evasion, and aiding and abetting tax evasion.

(c) The RBC 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 purposes of this paragraph (c), "participated in" includes the knowing or tacit approval of the misconduct underlying the Conviction);

(d) An RBC 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 RBC QPAM, to enter into any transaction with RBCTC Bahamas or engage RBCTC Bahamas 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 the RBC QPAMs to satisfy Section I(g) of PTE 84-14 arose solely from the Conviction;

(f) No entities holding assets that constitute 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) were involved in the criminal conduct that is the subject of the Conviction;

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

(h)(1) Each RBC QPAM must immediately develop, implement, maintain, and follow written policies (the Policies) requiring and reasonably designed to ensure that:

(i) The asset management decisions of the RBC QPAM are conducted independently of the management and business activities of RBC, including RBCTC Bahamas;

(ii) The RBC 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 violations of these duties and provisions with respect to ERISA-covered plans and IRAs;

(iii) The RBC QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs;

(iv) Any filings or statements made by the RBC QPAM to regulators, including but not limited to, the Department of Labor, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation,

on behalf of ERISA-covered plans or IRAs are materially accurate and complete, to the best of such QPAM's knowledge at that time;

(v) The RBC QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plan and IRA clients;

(vi) The RBC QPAM complies with the terms of this temporary exemption, if granted; and

(vii) Any violation of, or failure to comply with, an item in subparagraph (ii) through (vi), is corrected promptly upon discovery, and any such violation or compliance failure not promptly corrected is reported, upon discovering the failure to promptly correct, in writing, to appropriate corporate officers, the head of compliance and the General Counsel (or their functional equivalent) of the relevant RBC QPAM, and an appropriate fiduciary of any affected ERISA-covered plan or IRA where such fiduciary is independent of RBC; however, with respect to any ERISA-covered plan or IRA sponsored by an "affiliate" (as defined in Section VI(d) of PTE 84-14) of RBC or beneficially owned by an employee of RBC or its affiliates, such fiduciary does not need to be independent of RBC. An RBC QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance promptly when discovered or when it reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (vii);

(2) Each RBC QPAM must immediately develop and implement a program of training (the Training), conducted at least annually, for all relevant RBC QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must be set forth in the Policies and at a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this temporary exemption, if granted (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing;

(i) Effective as of the effective date of this temporary exemption, if granted, with respect to any arrangement,

agreement, or contract between an RBC QPAM and an ERISA-covered plan or IRA for which an RBC QPAM provides asset management or other discretionary fiduciary services, each RBC QPAM agrees:

(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 with respect to each such ERISA-covered plan and IRA;

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

(3) 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 RBC 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 RBC;

(4) Not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the RBC 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;

(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 RBC QPAM for a violation of such agreement's terms; and

(7) To indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a violation of applicable laws, a breach of contract, or any claim arising out of the failure of such RBC 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.

Within six (6) months of the date of publication of a notice of temporary exemption in the **Federal Register**, if granted, each RBC QPAM will: Provide a notice of its obligations under this Section I(i) to each ERISA-covered plan and IRA for which an RBC QPAM provides asset management or other discretionary fiduciary services; and Separately warrant in writing to each such ERISA-covered plan and IRA its obligations under subparagraph (1) of this Section I(i);

(j) The RBC QPAMs comply with each condition of PTE 84-14, as amended, with the sole exceptions of the violations of Section I(g) of PTE 84-14 that are attributable to the Conviction;

(k) Each RBC QPAM will maintain records necessary to demonstrate that the conditions of this temporary exemption, if granted, have been met, for six (6) years following the date of any transaction for which such RBC QPAM relies upon the relief in the temporary exemption, if granted;

(l) During the effective period of this temporary exemption, if granted, neither RBC nor any affiliate enters into a Deferred Prosecution Agreement (a DPA) or a Non-Prosecution Agreement (an NPA) with the U.S. Department of Justice, in connection with conduct described in Section I(g) of PTE 84-14 or section 411 of ERISA; and

(m) An RBC QPAM will not fail to meet the terms of this temporary exemption, if granted, solely because a different RBC QPAM fails to satisfy a condition for relief under this temporary exemption, if granted, described in Sections I(c), (d), (h), (i), (j), and (k).

## Section II: Definitions

(a) The term "Conviction" means the potential judgment of conviction against RBCTC Bahamas for aiding and abetting tax fraud to be entered in France in the District Court of Paris, French Special Prosecutor No. 1120392066, French Investigative Judge No. JIRSIF/11/12;

(b) The term "RBC QPAM" means a "qualified professional asset manager"

(as defined in section VI(a)<sup>5</sup> of PTE 84-14) that relies on the relief provided by PTE 84-14 and with respect to which RBCTC Bahamas is a current or future "affiliate" (as defined in section VI(d) of PTE 84-14);

(c) The term "RBCTC Bahamas" means Royal Bank of Canada Trust Company (Bahamas) Limited, a Bahamian "affiliate" of RBC (as defined in section VI(c) of PTE 84-14);

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

(e) The term "RBC" means Royal Bank of Canada, together with its current and future affiliates.

**Effective Date:** This proposed temporary exemption, if granted, will be effective for the period beginning on the Conviction Date until the earlier of: The date that is twelve months following the Conviction Date; or the effective date of a final agency action made by the Department in connection with an application for long-term exemptive relief for the covered transactions described herein.

**Department's Comment:** The Department is publishing this proposed temporary exemption in order to protect ERISA-covered plans and IRAs from certain costs and/or investment losses that may arise to the extent entities with a corporate relationship to RBCTC Bahamas lose their ability to rely on PTE 84-14 as of the Conviction Date, as described below.

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

Furthermore, the Department cautions that the relief in this proposed exemption, if granted, would terminate immediately if, among other things, an entity within the RBC 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

<sup>5</sup> In general terms, a QPAM is an independent fiduciary that is a bank, savings and loan association, insurance company, or investment adviser that meets certain equity or net worth requirements and other licensure requirements and that has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

proposed exemption have been specifically designed to permit plans to terminate their relationships in an orderly and cost effective fashion in the event of an additional conviction or a determination that it is otherwise prudent for a plan to terminate its relationship with an entity covered by the proposed exemption.

## Summary of Facts and Representations

### Background

1. The Royal Bank of Canada (together with its current and future affiliates, RBC or the Applicant) is a Canadian corporation headquartered in Toronto, Ontario. RBC is Canada's largest bank and one of the largest banks in the world, with approximately 78,000 employees in offices through Canada, the United States, and 38 other countries. RBC provides personal and commercial banks, wealth management services, insurance, investor services, and capital markets products and services on a global basis. As of October 31, 2014, RBC had approximately CAD\$457 billion in assets under management and CAD\$4.6 trillion in assets under administration and equity attributable to shareholders of CAD\$52.7 billion.

2. RBC owns RBC Capital Markets, LLC, a U.S. registered broker-dealer and a U.S. registered investment adviser. RBC also owns RBC Global Asset Management (U.S.) Inc., a U.S. registered investment adviser, as well as several other registered investment adviser affiliates in the United States and around the world.

3. Royal Bank of Canada Trust Company (Bahamas) Limited (RBCTC Bahamas) is a wholly owned subsidiary of RBC located in the Bahamas, and is regulated by the Central Bank of the Bahamas. RBCTC Bahamas currently provides trust and company management services in all major currencies to international clients. RBCTC Bahamas currently employs 16 full-time equivalents and 5 contractors, and has reported revenues of USD \$5,143,861 in fiscal year 2015. As of the second quarter of 2016, RBCTC Bahamas has reported total assets under custody of \$2.5 billion, which includes cash, real estate, art, securities, and interests in privately held companies. RBCTC Bahamas is not engaged in asset management activities and does not act as a fiduciary of any plans subject to Part 4 of Title I of ERISA (ERISA-covered plans) or section 4975 of the Code (IRAs).

4. RBCTC Bahamas trust and company management services include ongoing interaction with trusts' settlors

and beneficiaries, investment managers and advisors, and settlors' legal counsel, among others. RBCTC Bahamas also may appoint corporate directors (entities wholly owned by RBCTC Bahamas) for some of the underlying holding entities owned by the trusts for which RBCTC Bahamas acts as trustee. These entities hold assets (which could include cash marketable securities, privately held companies, art, yachts, and other property).

5. Among RBCTC Bahamas's services is providing directors for corporations created by their clients. Such RBCTC Bahamas personnel perform the usual duties of corporate directors. Moreover, RBCTC Bahamas must properly keep the accounts, as they are subject to internal audit to ascertain that proper management is in place. As a result, RBCTC Bahamas provides trust and company accounting each year, variously including upon request, among other things, an account of all monies received and distributed. In addition, at the request of a client, RBCTC Bahamas will, among other things, assist in the appointment of investment advisors and proposed investment houses and assist in communication with legal advisors, investment advisors and corporate formation agents. Further, as requested, RBCTC Bahamas will, among other things, exercise all duties, responsibilities and powers as set out in the documentation governing RBCTC Bahamas's appointment as trustee and attend to all day to day administrative issues.

6. Over the last several years, RBCTC Bahamas's operations have been reduced in scope. On November 4, 2015, RBCTC Bahamas announced that it had entered into a purchase and sale agreement with SMP Partners Group to sell its Trust, Custody and Fund Administration businesses in the Caribbean. This follows the announcement in November 2014 that RBC would be exiting a number of its Wealth Management businesses in the Caribbean. Upon completion of the sale and orderly transfer of the structures and assets to new providers, RBCTC Bahamas will surrender its trust license back to the Central Bank of the Bahamas. The Applicant anticipates that this process will be completed in the next 12 to 24 months. RBC represents that, even if the sale is completed, ongoing operations will still be necessary to support the remaining assets. As a result, the requested exemption will still be required.

#### *Investigation for Tax Fraud*

7. The Applicant has applied for an exemption in relation to a potential judgment of conviction against RBCTC Bahamas for aiding and abetting tax fraud, to be entered in France in the District Court of Paris, French Special Prosecutor No. 1120392066, French Investigative Judge No. JIRSIF/11/12 (the Conviction). The facts forming the basis of the Conviction reach back several years and involve investigations by French prosecutors. In January 2012, RBCTC Bahamas was summoned to appear before a French Judge of Instruction (the Investigative Judge) concerning an investigation into non-payment of French inheritance taxes by Guy Wildenstein and Alec Daniel Armand Wildenstein (the Wildensteins) following the death in 2001 of family patriarch Daniel Wildenstein. RBCTC Bahamas was placed under judicial investigation, and in December 2013, the Investigative Judge referred the case to the French national prosecutor of financial crimes (the Special Prosecutor) for a review and recommendation. In January 2015, the Special Prosecutor submitted a recommendation that RBCTC Bahamas and several others be charged with complicity in the Wildensteins' alleged tax fraud and money laundering.

8. On April 9, 2015, the Paris Court of Appeal (the Court) for the District Court of Paris issued an Order of Dismissal and Referral before the Criminal Court (the Referral Order). In the Referral Order, RBCTC Bahamas is charged with complicity in the alleged tax fraud of the Wildensteins with respect to taxes allegedly owed to France on assets held in a Bahamian trust for which RBCTC Bahamas has served as successor trustee since 2004.<sup>6</sup> Specifically, the Court found that the investigation produced sufficient charges against RBCTC Bahamas for having, in the Bahamas, beginning on November 19, 2004, aided and abetted tax fraud committed in Paris by Daniel Wildenstein's heirs by deliberately concealing a portion of the sums subject to French taxation on Daniel Wildenstein's estate, in particular the works of art placed in the "Delta Trust" of which RBCTC Bahamas was the

<sup>6</sup> The Referral Order charges both of the Wildensteins with multiple counts of tax fraud, notably for failing to disclose, and pay taxes on, assets held in various trusts following the death of Daniel Wildenstein. The Wildensteins, both of whom are among the beneficiaries of the trust for which RBCTC Bahamas has served as trustee since 2004, have been charged with failing to report and pay inheritance taxes on the assets held in that trust following the death in 2001 of Daniel Wildenstein, and again in an amended filing made in 2008.

trustee, deeds which are governed by and punishable under Articles 121–2, 121–6, 121–7, 321–1, 321–3, 321–12 of the French Criminal Code and Articles 1741 *et* 1745 of the French General Tax Code.

9. According to the Applicant, the pertinent facts that underlie these charges, as set out in the Referral Order, are as follows: on February 23, 1998, Daniel Wildenstein established a discretionary trust in the Bahamas called the Delta Trust. The Delta Trust was designed to be revocable up to the point of Daniel Wildenstein's death, then irrevocable thereafter. The Delta Trust was settled with works of art. Royal Bank of Scotland was the initial trustee of the Delta Trust. In early 2001, Royal Bank of Scotland was replaced as trustee by Coutts Trust Holdings Limited, which was succeeded by Coutts Trustees (Bahamas) Limited. On October 21, 2001, Daniel Wildenstein died in Paris. On April 28, 2002, Guy Wildenstein and his brother, Alec Wildenstein Sr., filed an inheritance tax statement in relation to the estate of their father, Daniel Wildenstein, as required by French tax laws. Guy Wildenstein and Alec Wildenstein Sr. did not disclose, in this inheritance tax statement, the existence of the Delta Trust or the existence of the assets therein. RBCTC Bahamas was appointed trustee in November of 2004, three years after Daniel Wildenstein's death and more than two years after Guy Wildenstein and Alec Wildenstein Sr. had filed their allegedly false inheritance tax statement.

10. The Applicant represents that, according to the French authorities, the existence of the Delta Trust as well as the assets of the Delta Trust should have been disclosed to the French authorities by Guy Wildenstein and by Alec Wildenstein Sr. when they filed their inheritance tax statement in 2002.<sup>7</sup> An inheritance tax would have followed in relation to these assets.

11. The Referral Order provides that RBCTC Bahamas actually knew, or should have known, that Daniel Wildenstein was of French nationality, and that he died in France. The Referral Order also provides that, at the least, RBCTC should have investigated in greater detail the facts in relation to Daniel Wildenstein's residency and, likewise, the tax consequences of that

<sup>7</sup> The authorities allege that this disclosure should have occurred because the assets in the Delta Trust were initially revocable (*i.e.*, the assets in trust could be revoked by Daniel Wildenstein up to the time of his death). As such, the authorities state that the assets in the Delta Trust belonged to Daniel Wildenstein's estate and were therefore taxable under French tax laws.

residency. In addition, the Referral Order provides that the Delta Trust did not operate as a discretionary trust for purposes of French tax law, which would have generally required the trustee to have control over the management of the trust's assets. Among other things,<sup>8</sup> the Referral Order describes the existence of a management agreement between the trustee and the Wildenstein art gallery in New York as well as to the role played by the gallery as further evidence that the Delta Trust remained under the Wildenstein family's control before and after Daniel Wildenstein's death. Under the terms of the management agreement, the Wildenstein gallery was retained by the Delta Trust trustee to assist and to advise upon the management of the collection of art in trust. Finally, the Referral Order points out that RBCTC Bahamas filed an amended declaration with the Internal Revenue Service to declare the paintings in the Delta Trust which were present on U.S. territory at the time of Daniel Wildenstein's death, even though the Delta Trust was purportedly discretionary and irrevocable.

12. RBC contests its liability for aiding and abetting tax evasion. The trial commenced on January 4, 2016. On January 6, 2016, the Paris Criminal Court suspended the proceeding to probe the trial's constitutionality. The Applicant represents that the trial is scheduled to resume on September 22, 2016, and that the conviction date (if there is a conviction) is expected to be on or after October 14, 2016.

#### *Significance of Class PTE 84-14 and the Violation of Condition I(g) of PTE 84-14*

13. The Department notes that the rules set forth in section 406 of the Employee Retirement Income Security Act of 1974, as amended (ERISA) and section 4975(c) of the Internal Revenue Code of 1986, as amended (the Code) proscribe certain "prohibited transactions" between plans and related parties with respect to those plans, known as "parties in interest."<sup>9</sup> Under the authority of section 408(a) of ERISA and section 4975(c)(2) of the Code, the Department has the authority to grant exemptions from such "prohibited transactions" in accordance with the procedures set forth in 29 CFR part

2570, subpart B (76 FR 66637, 66644, October 27, 2011).

14. Class Prohibited Transaction Exemption 84-14 (PTE 84-14)<sup>10</sup> exempts certain prohibited transactions between a party in interest and an "investment fund" (as defined in Section VI(b) of that exemption)<sup>11</sup> in which a plan has an interest, if the investment manager satisfies the definition of "qualified professional asset manager" (QPAM) and satisfies additional conditions for the exemption. PTE 84-14 was developed and granted based on the essential premise that broad relief could be afforded for all types of transactions in which a plan engages only if the commitments and the investments of plan assets and the negotiations leading thereto are the sole responsibility of an independent, discretionary, manager.<sup>12</sup>

15. However, Section I(g) of PTE 84-14 prevents an entity that may otherwise meet the definition of "QPAM" from utilizing the exemptive relief provided by PTE 84-14, for itself and its client plans, if that entity or an "affiliate"<sup>13</sup> thereof or any owner, direct or indirect, of a 5 percent or more interest in the QPAM has, within 10 years immediately preceding the transaction, been either convicted or released from imprisonment, whichever is later, as a result of certain specified criminal activity described in that section.<sup>14</sup> The Department notes that Section I(g) was included in PTE 84-14, in part, based on the expectation that a QPAM, and those who may be in a

position to influence its policies, maintain a high standard of integrity.<sup>15</sup> Accordingly, in the event that RBCTC is convicted of the crimes alleged in the Referral Order, QPAMs with certain corporate relationships to RBCTC, as well as their client ERISA-covered plans and IRAs will no longer be able to rely on PTE 84-14 without an additional individual exemption issued by the Department.

#### *The RBC QPAMs and the Failure To Comply With PTE 84-14*

16. Certain current and future "affiliates" of RBCTC Bahamas, as that term is defined in section VI(d) of PTE 84-14, may act as QPAMs in reliance on PTE 84-14 (these entities are collectively referred to as the "RBC QPAMs"). The primary U.S. bank and U.S. registered adviser affiliates in which RBC owns a significant interest, directly or indirectly, include the following: (1) RBC Global Asset Management (U.S.) Inc.; (2) RBC Global Asset Management (UK) Limited; (3) RBC Capital Markets, LLC; and (4) BlueBay Asset Management LLP. The Applicant also represents that there are other affiliated managers that could meet the definition of "QPAM" in the future, but which do not currently have ERISA or IRA clients. Additionally, there are other managers that are not currently registered as investment advisers under the Investment Advisers Act of 1940 but could become registered investment advisers in the future while managing ERISA and IRA assets and seek to use PTE 84-14 to facilitate certain transactions.

17. RBC explains that the RBC QPAMs provide asset management services to thousands of ERISA-covered plans and IRAs. In managing these assets, the RBC QPAMs regularly rely on PTE 84-14 for, among other things, global fixed income, global equities, futures, options, swaps and other derivatives, alternative funds, including hedge funds, and similar instruments and strategies. The issuing documents for many instruments contain deemed representations regarding reliance, at least partially, on PTE 84-14.

18. According to the Applicant, the investment management businesses that are operated out of the RBC QPAMs are separate from RBCTC Bahamas, and from the non-investment management business activities of RBCTC Bahamas that are the subject of criminal charges under French law. The Applicant states that RBC QPAMs have dedicated systems, management, risk and compliance officers. RBC represents that

<sup>10</sup> 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

<sup>11</sup> An "investment fund" includes single customer and pooled separate accounts maintained by an insurance company, individual trusts and common, collective or group trusts maintained by a bank, and any other account or fund to the extent that the disposition of its assets (whether or not in the custody of the QPAM) is subject to the discretionary authority of the QPAM.

<sup>12</sup> See 75 FR 38837, 38839 (July 6, 2010).

<sup>13</sup> Section VI(d) of PTE 84-14 defines the term "affiliate" for purposes of Section I(g) as "(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person, (2) Any director of, relative of, or partner in, any such person, (3) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, or a 5 percent or more partner or owner, and (4) Any employee or officer of the person who—(A) Is a highly compensated employee (as defined in Section 4975(e)(2)(H) of the Code) or officer (earning 10 percent or more of the yearly wages of such person), or (B) Has direct or indirect authority, responsibility or control regarding the custody, management or disposition of plan assets."

<sup>14</sup> For purposes of Section I(g) of PTE 84-14, a person shall be deemed to have been "convicted" from the date of the judgment of the trial court, regardless of whether that judgment stands on appeal.

<sup>8</sup> The Applicant notes that the French authorities point to a "Letter of Wishes," which Daniel Wildenstein delivered to the then trustee, as evidence that the assets of the Delta Trust remained under Daniel Wildenstein's control during his lifetime.

<sup>9</sup> For purposes of the Summary of Facts and Representations, references to specific provisions of Title I of ERISA, unless otherwise specified, refer also to the corresponding provisions of the Code.

<sup>15</sup> See 47 FR 56945, 56947 (December 21, 1982).

the investment management businesses of the RBC QPAMs are subject to policies and procedures, and RBC QPAM personnel engage in training, designed to ensure that such businesses understand and abide by their fiduciary duties in accordance with applicable law.

19. According to RBC, the policies and procedures create information barriers designed to prevent employees of the RBC QPAMs from gaining access to inside information that an affiliate may have acquired or developed in connection with the investment banking, treasury services or other investor services business activities. These policies and procedures apply to employees, officers, and directors of the RBC QPAMs. The Applicant also maintains an employee hotline for employees to express any concerns of wrongdoing anonymously.

#### *Request for Relief*

20. At the time of this proposed temporary exemption, RBCTC (Bahamas) has not been convicted and therefore its conduct has not been determined to be criminal.<sup>16</sup> Moreover, RBCTC (Bahamas) maintains that it engaged in no criminal conduct and it is mounting a defense in the French proceeding. Nevertheless, the Applicant states that if the Paris Criminal Court issues a Conviction of RBCTC Bahamas, the RBC QPAMs will be in violation of Section I(g) of PTE 84–14. In the event that the condition in Section I(g) of PTE 84–14 is violated, those asset managers can no longer rely on PTE 84–14 without a separate individual prohibited transaction exemption. Therefore, the Applicant has requested an exemption to allow the RBC QPAMs to continue to use PTE 84–14, notwithstanding such Conviction.<sup>17</sup>

#### *Statutory Findings—Administratively Feasible*

21. The Applicant states that the proposed exemption is administratively feasible because it does not require any monitoring by the Department. Furthermore, the exemption's limited effective duration provides the Department the opportunity to make its determination whether or not long-term exemptive relief is warranted, without causing sudden and potentially costly harm to ERISA-covered plans and IRAs.

<sup>16</sup> The Applicant represents that there is an ongoing regulatory investigation into the matter in Hong Kong, but the Applicant is not aware of any indication that this investigation is leading to potential criminal indictments in Hong Kong.

<sup>17</sup> The Department notes that, in the event that RBCTC Bahamas is not convicted, the RBC QPAMs may continue to rely on PTE 84–14 without additional exemptive relief.

#### *Statutory Findings—In the Interests of Affected Plans and IRAs*

22. The Applicant states that an exemption will be in the interest of the affected ERISA-covered plans and IRAs and their participants and beneficiaries. According to the Applicant, there are numerous transactions entered into by RBC QPAMs on behalf of their ERISA-covered plan and IRA clients that require the RBC QPAMs to meet the conditions in PTE 84–14. According to RBC, these include contracts entered into by RBC QPAMs on behalf of or as investment adviser for ERISA-covered plans, collective trusts and other funds subject to ERISA for certain outstanding transactions, including, but not limited to: The purchase and sale of debt and equity securities, and asset-backed securities; the purchase and sale of commodities; real estate financing and leasing arrangements; and certain derivative transactions such as futures, options, swaps, and forwards.

23. The Applicant states that, in the event that the RBC QPAMs can no longer rely on PTE 84–14, counterparties to the above transactions could seek to terminate their contracts, resulting in significant losses to their ERISA-covered plan clients. Furthermore, according to RBC, in the event the Applicant no longer qualifies for relief under the PTE 84–14, many derivatives transactions and other contractual agreements automatically and immediately could be terminated without notice or action.

24. The Applicant states that, without an exemption to continue to rely on PTE 84–14, ERISA-covered plan and IRA clients of RBC QPAMs may be required to seek other investment managers, at significant disruption and cost. RBC states that the process of transitioning to a new manager typically is lengthy, and likely would involve numerous steps each of which could last several months—including retaining a consultant, engaging in the request for proposals, negotiating contracts, and ultimately transitioning assets, as well as the transaction-related expenses incurred in connection with the purchase of securities.

25. Furthermore, the Applicant states, many of the investments of ERISA-covered plan and IRA clients managed by RBC QPAMs could be difficult to transition to a new investment manager, and the transition of certain strategies, such as transitioning from a stable value fund, could create significant disruption for 401(k) plans. The Applicant maintains that RBC QPAMs' inability to rely upon PTE 84–14 could result in significant, unplanned redemptions

from pooled funds, which would in turn frustrate the QPAMs' efforts to effectively manage the pooled funds' assets and harm remaining plan investors by increasing the expense ratios of the investment funds.

26. The Applicant believes that, depending on the strategy, the cost of liquidating assets in connection with transitioning clients to another manager could be significant. Furthermore, transaction costs may be higher in times of significant market volatility, especially with respect to certain strategies.

*Fixed Income.* The Applicant states that RBC QPAMs rely on PTE 84–14 when buying and selling fixed income products. As of June 30, 2015, the total portfolio of accounts managed by the RBC QPAMs that were invested in fixed income products was approximately \$4.86 billion in market value. Of that total, approximately \$2.82 billion consisted of ERISA-covered assets, and approximately \$2.04 billion consisted of public plan assets. According to the Applicant, those accounts are invested in, for example, the following instruments pursuant to various fixed income strategies: Investment-grade bonds, leveraged finance instruments, emerging market sovereign debt, emerging market corporate debt, convertible bonds, multi-asset credit instruments, and short-duration government bonds.

*Costs of Liquidating Fixed Income.* According to the Applicant, if RBC QPAMs could no longer rely on PTE 84–14, a typical ERISA-covered plan or IRA client of the RBC QPAMs could suffer different liquidation costs depending on the strategy employed within fixed income. For example, investment grade bonds and emerging market sovereign debt could be liquidated for a cost of between 25–50 basis points, not including reinvestment costs. Leveraged finance and emerging market corporate debt may be more difficult to liquidate and costs may range from 50–150 basis points, not including reinvestment costs. The costs of liquidating convertible bonds could be between 50–75 basis points, and costs of liquidating multi-asset credit could be between 35–100 basis points, not including reinvestment costs.

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

27. The Applicant proposed certain conditions it believes are protective of the rights of participants and beneficiaries of ERISA-covered plans and IRAs with respect to the transactions described herein. The

Department has determined to revise certain of those conditions, and to add certain new conditions, in order to make its required finding that the requested exemption is protective of the rights of participants and beneficiaries of affected plans and IRAs. In this regard, the Department has tentatively determined that the following conditions adequately protect the rights of participants and beneficiaries of affected plans and IRAs with respect to the transactions that would be covered by this temporary exemption, if granted.

28. Several of these conditions highlight the Department's expectation that the affected RBC QPAMs were not involved in the misconduct by RBCTC Bahamas that is the subject of the Conviction.<sup>18</sup> For example, relief under this proposed exemption is only available to the extent: (1) RBC QPAMs, including their officers, directors, agents other than RBC, and employees, did not know of, have reason to know of, or participate in the criminal conduct of RBCTC Bahamas that is the subject of the Conviction (for purposes of this requirement, "participated in" includes the knowing or tacit approval of the misconduct underlying the Conviction);<sup>19</sup> (2) any failure of those QPAMs to satisfy Section I(g) of PTE 84-14 arose solely from the Conviction; and (3) the RBC QPAMs (including their officers, directors, agents other than RBC, and employees of such RBC QPAMs) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the Conviction.

29. The Department expects the RBC QPAMs to rigorously ensure that the individuals associated with the criminal conduct of RBCTC Bahamas will not be employed or knowingly engaged by such QPAMs. In this regard, the temporary exemption, if granted as proposed, mandates that the RBC QPAMs will not employ or knowingly engage any of the individuals that participated in criminal conduct that is the subject of the Conviction. For purposes of this requirement, "participated in" includes the knowing

or tacit approval of the misconduct underlying the Conviction. Further, the RBC 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 RBC QPAM, to enter into any transaction with RBCTC Bahamas or engage RBCTC Bahamas 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.

30. The RBC QPAMs must comply with each condition of PTE 84-14, as amended, with the sole exceptions of the violation of Section I(g) of PTE 84-14 that is attributable to the Conviction. Further, any failure of the RBC QPAMs to satisfy Section I(g) of PTE 84-14 arose solely from the Conviction.

31. No relief will be provided by the temporary exemption, if granted, to the extent that any entities holding assets that constitute the assets of an ERISA-covered plan or IRA were involved in the criminal conduct that is the subject of the Conviction. Further, no relief will be provided to the extent RBCTC Bahamas provides any discretionary asset management services to ERISA-covered plans or IRAs, or otherwise acts as a fiduciary with respect to ERISA-covered plan and IRA assets.

32. The Department believes that robust policies and training are warranted where, as here, alleged criminal misconduct has occurred within a corporate organization that is affiliated with one or more QPAMs managing plan investments in reliance on PTE 84-14. Therefore, this proposed temporary exemption, if granted, requires that each RBC QPAM must immediately develop, implement, maintain, and follow written policies (the Policies) requiring and reasonably designed to ensure that: The asset management decisions of the RBC QPAM are conducted independently of the management and business activities of RBC, including RBCTC Bahamas; the RBC 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 violations of these duties and provisions with respect to ERISA-covered plans and IRAs; the RBC QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs; any filings or statements made by the RBC QPAM to regulators, including but not limited to, the Department of Labor, the

Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA-covered plans or IRAs are materially accurate and complete, to the best of such QPAM's knowledge at that time; the RBC QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plan and IRA clients; and the RBC QPAM complies with the terms of this temporary exemption, if granted. Any violation of, or failure to comply with these items is corrected promptly upon discovery, and any such violation or compliance failure not promptly corrected is reported, upon discovering the failure to promptly correct, in writing, to appropriate corporate officers, the head of compliance and the General Counsel (or their functional equivalent) of the relevant RBC QPAM, and an appropriate fiduciary of any affected ERISA-covered plan or IRA where such fiduciary is independent of RBC.

33. The Department has also imposed a condition that requires each RBC QPAM to immediately develop and implement a program of training (the Training), for all relevant RBC QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must be set forth in the Policies and at a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this temporary exemption, if granted (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing.

34. This temporary exemption, if granted, requires RBC QPAMs to enter into certain contractual obligations in connection with the provision of services to their clients. It is the Department's view that the condition for exemptive relief requiring these contractual obligations is essential to the Department's ability to make its findings that the proposed temporary exemption is protective of the rights of the participants and beneficiaries of ERISA-covered and IRA plan clients of RBC QPAMs under section 408(a) of ERISA. In this regard, Section I(i) of the proposed temporary exemption provides that, as of the effective date of this temporary exemption, if granted, with respect to any arrangement,

<sup>18</sup> The Department notes that, at the time of publication of this proposed temporary exemption, RBCTC Bahamas has not been convicted. In the event that RBCTC Bahamas is not convicted, the RBC QPAMs may continue to rely on PTE 84-14 without additional exemptive relief.

<sup>19</sup> The Applicant represents that, while certain other entities in the RBC corporate family were generally aware of RBCTC (Bahamas)'s responsibilities, including the administration of various trusts, no such entity was involved in the day-to-day operations of the trusts and, the alleged misconduct did not relate to the asset management services provided by the RBC QPAMs.



agreement, or contract between a RBC QPAM and an ERISA-covered plan or IRA for which a RBC QPAM provides asset management or other discretionary fiduciary services, each RBC QPAM must agree: To comply with ERISA and the Code, as applicable with respect to such ERISA-covered plan or IRA, and refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions), and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA with respect to each such ERISA-covered plan and IRA; to indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a violation of applicable laws, a breach of contract, or any claim arising out of the failure of such RBC 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; not to require (or otherwise cause) the ERISA-covered plan or IRA to waive, limit, or qualify the liability of the RBC QPAM for violating ERISA or the Code or engaging in prohibited transactions; 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 RBC 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 RBC; not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the RBC QPAM (including any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM), with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors as a result of an actual lack of liquidity of the underlying assets, provided that such restrictions are applied consistently and in like manner to all such investors; and 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. Furthermore, any contract, agreement or arrangement between an RBC QPAM and its ERISA-covered plan or IRA client must not contain exculpatory provisions disclaiming or otherwise limiting liability of the RBC QPAM for a violation of such agreement's terms.

35. Within six (6) months of the date of publication of a notice of temporary exemption in the **Federal Register**, if granted, each RBC QPAM will: Provide a notice of its obligations under Section I(i) to each ERISA-covered plan and IRA for which the RBC QPAM provides asset management or other discretionary fiduciary services; and separately warrant in writing to each such ERISA-covered plan and IRA its obligations under subparagraph (1) of Section I(i).

36. Each RBC QPAM must maintain records necessary to demonstrate that the conditions of this temporary exemption, if granted, have been met for six (6) years following the date of any transaction for which such RBC QPAM relies upon the relief in the temporary exemption.

37. Furthermore, the proposed temporary exemption mandates that, during the effective period of this temporary exemption, if granted, neither RBCTC Bahamas nor any affiliate enters into a Deferred Prosecution Agreement (a DPA) or a Non-Prosecution Agreement (an NPA) with the Department of Justice, in connection with conduct described in section I(g) of PTE 84–14 or section 411 of ERISA. The Applicant represents that, with the exception of an investigation for LIBOR manipulation, RBC is not the subject of any current investigation involving criminal authorities.<sup>20</sup> Furthermore, the Applicant represents that RBC currently does not have a reasonable basis to believe that there are any pending criminal investigations involving RBC or any of its affiliated companies that would cause a reasonable plan or IRA customer not to hire or retain the institution as a QPAM.

38. The proposed exemption, if granted, would provide relief from certain of the restrictions set forth in Section 406 and 407 of ERISA. Such a granted exemption would not provide relief from any other violation of law, including any criminal conviction not expressly described herein. Pursuant to

<sup>20</sup> The Applicant states that RBC has been the subject of demands for information from various governmental and regulatory authorities.

the terms of this proposed exemption, if granted, any criminal conviction not expressly described herein, but otherwise described in Section I(g) of PTE 84–14 and attributable to the applicant for purposes of PTE 84–14, would result in the applicant's loss of this exemption, if granted.

#### *Summary*

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

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

Written comments and requests for a public hearing on the proposed temporary exemption should be submitted to the Department within seven (7) days from the date of publication of this **Federal Register** Notice. Given the short comment period, the Department will consider comments received after such date, in connection with its consideration of more permanent relief.

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

**FOR FURTHER INFORMATION CONTACT:** Ms. Anna Mpras Vaughan of the Department, telephone (202) 693–8565. (This is not a toll-free number.)

**Northern Trust Corporation (Together With Its Current and Future Affiliates, Northern or the Applicant), Located in Chicago, Illinois**

[Exemption Application No. D–11875]

#### *Proposed Temporary Exemption*

The Department is considering granting a temporary exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended, (ERISA or the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).<sup>21</sup>

<sup>21</sup> For purposes of this proposed temporary exemption, references to section 406 of Title I of the Act, unless otherwise specified, should be read to refer as well to the corresponding provisions of section 4975 of the Code.



## Section I: Covered Transactions

If the proposed temporary exemption is granted, certain entities with specified relationships to Northern Trust Fiduciary Services (Guernsey) Ltd. (hereinafter, the Northern QPAMs, as further defined in Section II(b)) will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14),<sup>22</sup> notwithstanding a judgment of conviction against Northern Trust Fiduciary Services (Guernsey) Ltd. to be entered in France in the District Court of Paris, for aiding and abetting tax fraud (the Conviction, as further defined in Section II(a)),<sup>23</sup> for a period of up to twelve months beginning on the date of the Conviction (the Conviction Date), provided that the following conditions are satisfied:

(a) The Northern QPAMs (including their officers, directors, agents other than Northern, and employees of such Northern QPAMs) did not know of, have reason to know of, or participate in the criminal conduct of NTFS that is the subject of the Conviction (for purposes of this paragraph (a), “participate in” includes the knowing or tacit approval of the misconduct underlying the Conviction);

(b) The Northern QPAMs (including their officers, directors, agents other than Northern, and employees of such Northern 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 Northern 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 purposes of this paragraph (c), “participated in” includes the knowing or tacit approval of the misconduct underlying the Conviction);

(d) A Northern 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 Northern QPAM, to enter into any transaction with NTFS or engage NTFS 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 the Northern QPAMs to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction;

(f) No entities holding assets that constitute 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) were involved in the criminal conduct that is the subject of the Conviction;

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

(h)(1) Each Northern QPAM must immediately develop, implement, maintain, and follow written policies (the Policies) requiring and reasonably designed to ensure that:

(i) The asset management decisions of the Northern QPAM are conducted independently of the management and business activities of Northern, including NTFS and Northern’s non-asset management affiliates;

(ii) The Northern 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 violations of these duties and provisions with respect to ERISA-covered plans and IRAs;

(iii) The Northern QPAM does not knowingly participate in any other person’s violation of ERISA or the Code with respect to ERISA-covered plans and IRAs;

(iv) Any filings or statements made by the Northern QPAM to regulators, including but not limited to, the Department of Labor, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA-covered plans or IRAs are materially accurate and complete, to the best of such QPAM’s knowledge at that time;

(v) The Northern QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plan and IRA clients;

(vi) The Northern QPAM complies with the terms of this temporary exemption, if granted; and

(vii) Any violation of, or failure to comply with, an item in subparagraph (ii) through (vi), is corrected promptly upon discovery, and any such violation or compliance failure not promptly corrected is reported, upon discovering the failure to promptly correct, in writing, to appropriate corporate officers, the head of compliance and the General Counsel (or their functional equivalent) of the relevant Northern QPAM, and an appropriate fiduciary of any affected ERISA-covered plan or IRA where such fiduciary is independent of Northern; however, with respect to any ERISA-covered plan or IRA sponsored by an “affiliate” (as defined in Section VI(d) of PTE 84–14) of Northern or beneficially owned by an employee of Northern or its affiliates, such fiduciary does not need to be independent of Northern. A Northern QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance promptly when discovered or when it reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (vii);

(2) Each Northern QPAM must immediately develop and implement a program of training (the Training), conducted at least annually, for all relevant Northern QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must be set forth in the Policies and at a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this temporary exemption, if granted (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing;

(i) Effective as of the effective date of this temporary exemption, if granted, with respect to any arrangement, agreement, or contract between a Northern QPAM and an ERISA-covered plan or IRA for which a Northern QPAM provides asset management or other discretionary fiduciary services, each Northern QPAM agrees:

(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

<sup>22</sup> 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

<sup>23</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 income tax evasion, and aiding and abetting tax evasion.

with respect to each such ERISA-covered plan and IRA;

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

(3) 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 Northern 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 Northern;

(4) Not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the Northern 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;

(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 Northern QPAM for a violation of such agreement's terms; and

(7) To indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a violation of applicable laws, a breach of contract, or any claim arising out of the failure of such Northern 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.

Within six (6) months of the date of publication of a notice of temporary

exemption in the **Federal Register**, if granted, each Northern QPAM will: Provide a notice of its obligations under this Section I(i) to each ERISA-covered plan and IRA for which a Northern QPAM provides asset management or other discretionary fiduciary services; and separately warrant in writing to each such ERISA-covered plan and IRA its obligations under subparagraph (1) of this Section I(i);

(j) The Northern QPAMs comply with each condition of PTE 84-14, as amended, with the sole exceptions of the violations of Section I(g) of PTE 84-14 that are attributable to the Conviction;

(k) Each Northern QPAM will maintain records necessary to demonstrate that the conditions of this temporary exemption, if granted, have been met, for six (6) years following the date of any transaction for which such Northern QPAM relies upon the relief in the temporary exemption, if granted;

(l) During the effective period of this temporary exemption, if granted, neither Northern nor any affiliate enters into a Deferred Prosecution Agreement (a DPA) or a Non-Prosecution Agreement (an NPA) with the U.S Department of Justice, in connection with conduct described in Section I(g) of PTE 84-14 or section 411 of ERISA; and

(m) A Northern QPAM will not fail to meet the terms of this temporary exemption, if granted, solely because a different Northern QPAM fails to satisfy a condition for relief under this temporary exemption, if granted, described in Sections I(c), (d), (h), (i), (j), and (k).

## Section II: Definitions

(a) The term "Conviction" means the potential judgment of conviction against NTFS for aiding and abetting tax fraud to be entered in France in the District Court of Paris, French Special Prosecutor No. 1120392066, French Investigative Judge No. JIRSIF/11/12;

(b) The term "Northern QPAM" means a "qualified professional asset manager" (as defined in section VI(a) <sup>24</sup> of PTE 84-14) that relies on the relief provided by PTE 84-14 and with respect to which NTFS is a current or future "affiliate" (as defined in section VI(d) of PTE 84-14);

(c) The term "NTFS" means Northern Trust Fiduciary Services (Guernsey) Ltd.,

<sup>24</sup> In general terms, a QPAM is an independent fiduciary that is a bank, savings and loan association, insurance company, or investment adviser that meets certain equity or net worth requirements and other licensure requirements and that has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

an affiliate" of Northern (as defined in section VI(c) of PTE 84-14) located in Guernsey;

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

(e) The term "Northern" means Northern Trust Corporation, together with its current and future affiliates.

**Effective Date:** This proposed temporary exemption, if granted, will be effective for the period beginning on the Conviction Date until the earlier of: The date that is twelve months following the Conviction Date; or the effective date of a final agency action made by the Department in connection with an application for long-term exemptive relief for the covered transactions described herein.

**Department's Comment:** The Department is publishing this proposed temporary exemption in order to protect ERISA-covered plans and IRAs from certain costs and/or investment losses that may arise to the extent entities with a corporate relationship to NTFS lose their ability to rely on PTE 84-14 as of the Conviction Date, as described below.

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

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

## Summary of Facts and Representations

### Background

1. Northern Trust Corporation (together with its current and future affiliates, Northern or the Applicant) is a financial holding company that

provides investment management, asset and fund administration, fiduciary, and banking services for corporations, institutions, and affluent individuals. Northern conducts business through various U.S. and non-U.S. subsidiaries, including The Northern Trust Company (the Bank), an Illinois bank headquartered in Chicago, Illinois.

2. The Bank was founded in 1889 and conducts its business through its U.S. operations, its branches in Toronto, London, Australia, Beijing, the Cayman Islands and Singapore, as well as various U.S. and non-U.S. subsidiaries. The Bank is a member of the Federal Reserve System, its deposits are insured by the Federal Deposit Insurance Corporation and it is subject to regulation by both such entities, as well as the Division of Banking of the Illinois Department of Financial and Professional Regulation.

As of December 31, 2015, Northern had a total of 16,200 active employees, including 7,990 employees of the Bank. As of the same date, Northern had consolidated assets of approximately \$117 billion. Of that consolidated figure, approximately \$116 billion are assets of the Bank. In addition, as of December 31, 2015, Northern had assets under custody of approximately \$6.1 trillion, and assets under management of approximately \$875 billion.

3. The Bank has a significant trust and custody business and acts as trustee for employee benefit plans subject to Part 4 of Title I of ERISA (ERISA-covered plans), individual retirement accounts subject to section 4975 of the Code (IRAs) and other accounts subject to ERISA or Section 4975 of the Code. The Bank also maintains ERISA-governed collective investment trusts and other commingled vehicles for investment of pension assets. Northern also has a number of direct and indirect subsidiary registered investment advisers that are subject to the Investment Advisers Act of 1940 and that provide discretionary investment management services to ERISA and IRA customers.

4. Northern Trust Fiduciary Services (Guernsey) Ltd. (NTFS) is an indirect wholly-owned subsidiary of Northern. NTFS is incorporated in Guernsey, and is regulated by the Guernsey Financial Services Commission. NTFS currently provides trust and company management and administration services to international clients. NTFS currently employs 22.6 full-time equivalents, and has reported revenues of GBP 5 million (approximately \$7 million) in fiscal year 2015. As of the second quarter of 2016, NTFS reported total assets under trusteeship of GBP 32 billion (approximately \$ 42 billion),

which includes cash, real estate, art, securities, and interests in privately held companies. NTFS is not engaged in asset management activities for, and does not act as a fiduciary of, any ERISA plan or IRA.

5. The trust and company management and administration services provided by NTFS include ongoing interaction with the settlor and beneficiaries, investment managers and advisors, and the settlor's legal counsel, among others. NTFS also may appoint individual directors that are personnel of NTFS, if required, or more commonly corporate directors (entities wholly owned by NTFS) to act as the directors of some of the underlying holding companies owned by the trusts for which NTFS acts as trustee. These companies hold assets (which could include cash, marketable securities, privately held companies, art, real estate and other property).

6. The services provided by NTFS may include the provision of corporate secretarial support for companies created by its clients. In addition, NTFS is required to keep the accounts of the trusts to which it is appointed, and may also maintain the financial records of the asset holding companies it administers.

Financial information may be provided to the settlor or beneficiaries on request, to the extent permitted by applicable law and the documentation governing NTFS' appointment.

In addition, at the request of a client or based on their fiduciary powers as trustee, NTFS will, among other things, act as directed or discretionary trustee, appoint investment advisers or managers, and exercise all duties, responsibilities and powers as set out in the documentation governing NTFS's appointment and attend to all day to day administrative issues.

NTFS operates based on internal policies and procedures of the Northern, and is subject to internal audit to ascertain compliance. NTFS is managed by a board of directors, which meets at least quarterly. In addition, the board has delegated certain powers to an Acceptance Committee for consideration of new business, a Fiduciary Committee for the review of the companies' fiduciary activities, a Discretionary Committee for consideration of the exercise of discretionary powers by NTFS as trustee and a Risk Committee for consideration and management of risks.

#### *Investigation for Tax Fraud*

7. The Applicant has applied for an exemption in relation to a potential judgment of conviction against NTFS for

aiding and abetting tax fraud, to be entered in France in the District Court of Paris, French Special Prosecutor No. 1120392066, French Investigative Judge No. JIRSIF/11/12 (the Conviction). The facts forming the basis of the Conviction reach back several years and involve investigations by French prosecutors. In 2010, French prosecutors opened judicial investigations questioning whether Guy Wildenstein and Alec Daniel Armand Wildenstein (the Wildensteins), heirs to a set of trusts established by family patriarch Daniel Wildenstein, had engaged in money laundering, bankruptcy-related fraud, forgery and/or tax evasion in connection with their decision not to include trust assets in French tax filings made following Daniel Wildenstein's death in 2001. NTFS, as successor trustee to the trusts, was itself investigated by French prosecutors.

8. On April 9, 2015, the investigating authorities for the District Court of Paris issued an Order of Partial Discharge and Referral before the Criminal Court (the Referral Order). The Referral Order charges both Guy and Alec Wildenstein with several counts of tax fraud for failing to disclose, and pay taxes on, assets held in various trusts following the 2001 death of their father, Daniel Wildenstein. One of eight defendants in the Referral Order, NTFS is charged with violations of Articles 121–2, 121–6, and 121–7 of the French Criminal Code, and Articles 1741 et 1745 of the French General Tax Code for alleged complicity in the Wildensteins' alleged tax fraud based on assets held in trust for certain beneficiaries, including the Wildensteins. The portion of the case relevant to NTFS relates to assets held in two Guernsey trusts for which NTFS served as successor trustee since 1999: <sup>25</sup> the "1989 Sonstrust" (the Sons Trust) and the "1989 Davidtrust" (the David Trust). The trusts include properties located in Kenya, the British Virgin Islands, 740 Madison Avenue and 19 East 64th Street in New York City, shares of Wildenstein and Co Inc., and of various art galleries. The French authorities state that their investigation produced sufficient information to allege that NTFS, in Guernsey, beginning in September 1999, aided and abetted tax fraud committed in Paris by Daniel Wildenstein's heirs through the alleged concealment of a portion of the assets that the French state are subject to French estate taxes owed by the Wildensteins.

9. According to the Applicant, the pertinent facts that underlie these

<sup>25</sup> Northern acquired Baring Trustees (Guernsey) Limited in 2005, and thereafter renamed it NTFS.

charges, as set out in the Referral Order, are as follows: On February 23, 1989, Daniel Wildenstein established two irrevocable and discretionary trusts in Bermuda, the Sons Trust and the David Trust. Bermuda Trust Company Limited was appointed as trustee. The Sons Trust was incorporated for the benefit of the children of Daniel Wildenstein, Guy and Alec, and of his second wife, Sylvia Roth-Wildenstein. The David Trust was incorporated for the benefit of the grandchildren of Daniel Wildenstein. In September 1999, Baring Trustees (Guernsey) Limited became the trustee of these two trusts, replacing Baring Brothers (Guernsey) Limited, which had been the trustee since 1990, replacing Bermuda Trust Company Limited. The Applicant states that, in 2005, following the purchase of Baring's financial institutions group by the Northern Trust group, Baring Trustees (Guernsey) Limited became Northern Trust Fiduciary Services (Guernsey) Limited.

On October 21, 2001, Daniel Wildenstein died in Paris. On April 28, 2002, Guy Wildenstein and his brother, Alec Wildenstein Sr., filed an inheritance tax statement in relation to their father Daniel Wildenstein's estate. The statement did not identify the Sons Trust and the David Trust or the assets held by these trusts.

10. The Applicant represents that, according to the French authorities, the existence of the Sons Trust and David Trust, as well as the assets of these trusts, should have been disclosed by the Wildensteins when they filed their inheritance tax statement. The French state that these assets are subject to French taxes, and that an inheritance tax would have been imposed on these assets.

11. The Applicant represents that the French authorities' position is that the Sons Trust and David Trust contained assets that the Wildensteins were required to identify because the trusts are, in their view, non-discretionary. In this regard, the Referral Order describes the following allegations made by the French prosecutor:

- The assets placed within the trusts are held by companies, and the trustee does not have sufficient control of the companies or the assets.

- Daniel Wildenstein was co-trustee, and during his lifetime he could have asked the trustee to distribute all of the trusts' assets to the beneficiaries.

- In addition to naming a trustee, the trust deeds also named an individual to fulfill the role of "protector" of the trusts, a Wildenstein family attorney who was financially dependent upon the family.

- The protector permitted certain financial flows debited from the Sons Trust bank account without the trustee's consent, and these money flows were later re-characterized as loans.

- The trusts operated abnormally and there was some commingling between the trusts' assets and Daniel Wildenstein's assets.

- The trustee's fees were too low in relation to the value of the assets in the trusts, and the assets were actually managed by companies without supervision by the trustee.

12. NTFS contests its liability for aiding and abetting tax evasion. The trial commenced on January 4, 2016. On January 6, 2016, the Criminal Court of Paris suspended the proceeding to probe the trial's constitutionality. The trial resumed on September 22, 2016. The Applicant expects the trial to end on October 20, 2016.

13. The Applicant represents that on the last day of trial, the court will announce when it will render its decision (generally a few weeks later). The Applicant states that the parties will have 10 days from the conviction ruling/decision date to lodge an appeal. Further, the Applicant states that if appeals are lodged, any criminal judgment issued after the trial will remain non-final until the appellate process concludes. In addition, the Applicant states that if none of the parties lodges an appeal, the criminal judgment will be final.

#### *Significance of Class PTE 84-14 and the Violation of Condition I(g) of PTE 84-14*

14. The Department notes that the rules set forth in section 406 of the Employee Retirement Income Security Act of 1974, as amended (ERISA) and section 4975(c) of the Internal Revenue Code of 1986, as amended (the Code) proscribe certain "prohibited transactions" between plans and related parties with respect to those plans, known as "parties in interest."<sup>26</sup> Under the authority of section 408(a) of ERISA and section 4975(c)(2) of the Code, the Department has the authority to grant exemptions from such "prohibited transactions" in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).

#### *15. Class Prohibited Transaction Exemption 84-14 (PTE 84-14)*<sup>27</sup>

<sup>26</sup> For purposes of the Summary of Facts and Representations, references to specific provisions of Title I of ERISA, unless otherwise specified, refer also to the corresponding provisions of the Code.

<sup>27</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).

exempts certain prohibited transactions between a party in interest and an "investment fund" (as defined in Section VI(b) of that exemption)<sup>28</sup> in which a plan has an interest, if the investment manager satisfies the definition of "qualified professional asset manager" (QPAM) and satisfies additional conditions for the exemption. PTE 84-14 was developed and granted based on the essential premise that broad relief could be afforded for all types of transactions in which a plan engages only if the commitments and the investments of plan assets and the negotiations leading thereto are the sole responsibility of an independent, discretionary, manager.<sup>29</sup>

16. However, Section I(g) of PTE 84-14 prevents an entity that may otherwise meet the definition of "QPAM" from utilizing the exemptive relief provided by PTE 84-14, for itself and its client plans, if that entity or an "affiliate"<sup>30</sup> thereof or any owner, direct or indirect, of a 5 percent or more interest in the QPAM has, within 10 years immediately preceding the transaction, been either convicted or released from imprisonment, whichever is later, as a result of certain specified criminal activity described in that section.<sup>31</sup> The Department notes that Section I(g) was included in PTE 84-14, in part, based on the expectation that a QPAM, and those who may be in a position to influence its policies, maintain a high standard of integrity.<sup>32</sup> Accordingly, in the event that NTFS is convicted of the crimes alleged in the Referral Order, certain Northern asset managers that rely on the relief

<sup>28</sup> An "investment fund" includes single customer and pooled separate accounts maintained by an insurance company, individual trusts and common, collective or group trusts maintained by a bank, and any other account or fund to the extent that the disposition of its assets (whether or not in the custody of the QPAM) is subject to the discretionary authority of the QPAM.

<sup>29</sup> See 75 FR 38837, 38839 (July 6, 2010).

<sup>30</sup> Section VI(d) of PTE 84-14 defines the term "affiliate" for purposes of Section I(g) as "(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person, (2) Any director of, relative of, or partner in, any such person, (3) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, or a 5 percent or more partner or owner, and (4) Any employee or officer of the person who—(A) Is a highly compensated employee (as defined in Section 4975(e)(2)(H) of the Code) or officer (earning 10 percent or more of the yearly wages of such person), or (B) Has direct or indirect authority, responsibility or control regarding the custody, management or disposition of plan assets."

<sup>31</sup> For purposes of Section I(g) of PTE 84-14, a person shall be deemed to have been "convicted" from the date of the judgment of the trial court, regardless of whether that judgment stands on appeal.

<sup>32</sup> See 47 FR 56945, 56947 (December 21, 1982).

provided by PTE 84–14 (the Northern QPAMs) and with respect to which NTFS is a current or future “affiliate” (as defined in section VI(d) of PTE 84–14), as well as their client ERISA-covered plans and IRAs will no longer be able to rely on PTE 84–14 without an additional individual exemption issued by the Department.

#### *Northern QPAMs*

17. The investment management businesses that are operated out of the Northern QPAMs are separate from NTFS, and from the activities of NTFS that are the subject of criminal charges under French law. The Northern QPAMs have dedicated systems, management, risk and compliance officers. The investment management businesses of the Northern QPAMs are subject to codes of conduct, and Northern QPAM personnel engage in training, designed to ensure that such businesses understand and abide by their fiduciary duties in accordance with applicable law. The codes of conduct create information barriers designed to prevent employees of the Northern QPAMs from gaining access to inside information that an affiliate may have acquired or developed in connection with the investment banking, treasury services or other investor services business activities. These codes of conduct apply to employees, officers and directors of the Northern QPAMs. The Applicant also maintains an employee hotline for employees to anonymously express any concerns of wrongdoing.

#### *Changes Made by Northern Since Its Acquisition of Baring Trustees (Guernsey) Limited*

18. The Applicant represents that all personnel involved in taking on the Wildenstein business or that had any dealings with such matters at the time of the alleged misconduct have long since left NTFS, either before or around the time of the Northern acquisition of Baring Trustees (Guernsey) Limited in 2005 or some years before the criminal trial started.<sup>33</sup> Furthermore, the

Applicant states that Northern’s review of the files has not identified any wrongdoing on the part of current or former NTFS staff, nor are any current or former NTFS (or Baring Trustees (Guernsey) Limited) employees among the six individuals charged by the French prosecutors in connection with the Wildenstein business.

19. The Applicant represents that new policies, procedures and training came into effect since Northern’s acquisition of Baring Trustees (Guernsey) Limited in 2005, several years after the events that are the subject of the French prosecution occurred. Upon becoming a part of the Northern organization, Baring Trustees (Guernsey) Limited was renamed NTFS and became subject to Northern’s own internal control procedures designed to prevent improper activities. The Applicant represents that NTFS has complied (and will continue to comply) with all applicable legal and regulatory requirements, including but not limited to requirements potentially linked to the alleged conduct underlying the charges against NTFS.

The Applicant further represents that resources dedicated to maintaining risk and compliance procedures have been enhanced significantly since Northern’s acquisition of Baring Trustees (Guernsey) Limited in 2005. Hundreds of new risk and compliance personnel have been hired by Northern in that period. For example, according to the Applicant, at the time of the acquisition of Baring Trustees (Guernsey) Limited (and the Wildenstein relationship) in 2005, Northern had five full-time equivalent employees handling compliance with anti-money laundering (“AML”) regulations; as of December 31, 2015 that number had increased to 78 full-time equivalent employees.

20. The Applicant represents that it maintains a system of internal controls to ensure ongoing compliance with AML and know-your-client related regulations. According to the Applicant, one of the key controls is the implementation of risk-based, comprehensive customer due diligence policies, procedures and processes for all customers, particularly those that present a high risk for money laundering or terrorist financing. Northern has also adopted Global

Wildenstein business, or dealing with matters even potentially related to the alleged misconduct, have long since left the company, many before or around the time of the Northern acquisition of Baring Trustees (Guernsey) Limited in 2005. In addition, the Applicant represents that others departed NTFS in the years thereafter, before the criminal charge was levied. The Applicant confirms that none of these persons is employed by NTFS or other Northern affiliates today.

Minimum Standards for Customer Due Diligence for its clients as a critical part of its Global AML/Economic Sanctions Compliance Program.

21. The Applicant represents that it has new systems for evaluating new clients or acquisitions. Northern represents that it assesses the money laundering and related risks of each new client relationship. Northern represents that it has developed a Global Anti-Money Laundering & Combating the Financing of Terrorism Risk Rating Policy & Methodology to evaluate new client/business relationships and assess their money laundering risk and related risks. In addition, Northern represents that it utilizes a Client Relationship Form to collect the information necessary to assess the client risk rating. Clients will initially be risk rated during the client take-on process and subsequently as the client profile changes.

#### *Request for Relief*

22. At the time of this proposed temporary exemption, NTFS has not been convicted and therefore its conduct has not been determined to be criminal. Moreover, NTFS maintains that it engaged in no criminal conduct and it is mounting a defense in the French proceeding. Nevertheless, the Applicant states that if the Paris Criminal Court issues a Conviction of NTFS, the Northern QPAMs will be in violation of Section I(g) of PTE 84–14. In the event that the condition in Section I(g) of PTE 84–14 is violated, the Northern QPAMs can no longer rely on PTE 84–14 without a separate individual prohibited transaction exemption. Therefore, the Applicant has requested an exemption to allow the Northern QPAMs to continue to use PTE 84–14, notwithstanding such Conviction.<sup>34</sup>

#### *Statutory Findings—Administratively Feasible*

23. The Applicant states that the proposed exemption is administratively feasible because it does not require any monitoring by the Department. Furthermore, the exemption’s limited effective duration provides the Department the opportunity to make its determination whether or not long-term exemptive relief is warranted, without causing sudden and potentially costly harm to ERISA-covered plans and IRAs.

<sup>33</sup> The Applicant represents that no NTFS employees (or former employees of Baring Trustees (Guernsey) Limited) were investigated or charged, nor were any other corporate entities related to NTFS investigated or charged. The Applicant states that the individual who appears to have been the primary contact for the Wildenstein business after NTFS acquired Baring Trustees (Guernsey) Limited was Nigel de La Rue (a former employee of Baring Trustees (Guernsey) Limited) who is not charged in the French proceeding and who left NTFS in January 2006, shortly after the acquisition. Further, the Applicant represents that other individuals at Baring Trustees (Guernsey) Limited and NTFS assisted in managing the Wildenstein accounts, and that all personnel involved in taking on the

<sup>34</sup> The Department notes that, in the event that NTFS is not convicted, the Northern QPAMs may continue to rely on PTE 84–14 without additional exemptive relief.

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

24. The Applicant states that an exemption will be in the interest of the affected ERISA-covered plans and IRAs and their participants and beneficiaries. According to the Applicant, there are numerous transactions entered into by Northern QPAMs on behalf of their ERISA-covered plan and IRA clients that require the Northern QPAMs to meet the conditions in PTE 84–14. According to Northern, these include contracts entered into by Northern QPAMs on behalf of or as investment adviser for ERISA-covered plans, collective trusts and other funds subject to ERISA for certain outstanding transactions, including, but not limited to: the purchase and sale of debt and equity securities, and asset-backed securities; the purchase and sale of commodities; real estate financing and leasing arrangements; and certain derivative transactions such as swaps and forwards.

25. The Applicant states that, in the event that the Northern QPAMs can no longer rely on PTE 84–14, counterparties to the above transactions could seek to terminate their contracts, resulting in significant losses to their ERISA-covered plan clients. Furthermore, according to Northern, in the event the Applicant no longer qualifies for relief under the PTE 84–14, many derivatives transactions and other contractual agreements automatically and immediately could be terminated without notice or action.

26. The Applicant states that, without an exemption to continue to rely on PTE 84–14, ERISA-covered plan and IRA clients of Northern QPAMs may be required to seek other investment managers, at significant disruption and cost. Northern states that the process of transitioning to a new manager typically is lengthy, and likely would involve numerous steps each of which could last several months—including retaining a consultant, engaging in the request for proposals, negotiating contracts, and ultimately transitioning assets, as well as the transaction-related expenses incurred in connection with the purchase of securities.

27. Furthermore, the Applicant states, many of the investments of ERISA-covered plan and IRA clients managed by Northern QPAMs could be difficult to transition to a new investment manager, and the transition of certain strategies, such as transitioning from a stable value fund, could create significant disruption for 401(k) plans. The Applicant maintains that Northern QPAMs' inability to rely upon PTE 84–

14 could result in significant, unplanned redemptions from pooled funds, which would in turn frustrate the QPAMs' efforts to effectively manage the pooled funds' assets and harm remaining plan investors by increasing the expense ratios of the investment funds.

28. The Applicant believes that, depending on the strategy, the cost of liquidating assets in connection with transitioning clients to another manager could be significant. Furthermore, transaction costs may be higher in times of significant market volatility, especially with respect to certain strategies.

29. *Costs of Liquidating Fixed Income.* According to the Applicant, if Northern QPAMs could no longer rely on PTE 84–14, a typical ERISA-covered plan or IRA client of the Northern QPAMs could suffer different liquidation costs depending on the strategy employed within fixed income. For example, investment grade bonds and emerging market sovereign debt could be liquidated for a cost of between 25–50 basis points, not including reinvestment costs. Leveraged finance and emerging market corporate debt may be more difficult to liquidate and costs may range from 50–150 basis points, not including reinvestment costs. The costs of liquidating convertible bonds could be between 50–75 basis points, and costs of liquidating multi-asset credit could be between 35–100 basis points, not including reinvestment costs.

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

30. The Applicant proposed certain conditions it believes are protective of the rights of participants and beneficiaries of ERISA-covered plans and IRAs with respect to the covered transactions described herein. The Department has determined to revise certain of those conditions, and to add certain new conditions, in order to make its required finding that the requested exemption is protective of the rights of participants and beneficiaries of affected plans and IRAs. In this regard, the Department has tentatively determined that the following conditions adequately protect the rights of participants and beneficiaries of affected plans and IRAs with respect to the transactions that would be covered by this temporary exemption, if granted.

31. Several of these conditions highlight the Department's expectation that the affected Northern QPAMs were not involved in the misconduct by NTFS that is the subject of the

Conviction.<sup>35</sup> For example, relief under this proposed exemption is only available to the extent: (1) Northern QPAMs, including their officers, directors, agents other than Northern, and employees, did not know of, have reason to know of, or participate in the criminal conduct of NTFS that is the subject of the Conviction (for purposes of this requirement, "participated in" includes the knowing or tacit approval of the misconduct underlying the Conviction); (2) any failure of those QPAMs to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction; and (3) the Northern QPAMs (including their officers, directors, agents other than Northern, and employees of such Northern QPAMs) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the Conviction.

32. The Department expects the Northern QPAMs to rigorously ensure that the individuals associated with the criminal conduct of NTFS will not be employed or knowingly engaged by such QPAMs. In this regard, the temporary exemption, if granted as proposed, mandates that the Northern QPAMs will not employ or knowingly engage any of the individuals that participated in criminal conduct that is the subject of the Conviction. For purposes of this requirement, "participated in" includes the knowing or tacit approval of the misconduct underlying the Conviction. Further, the Northern 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 Northern QPAM, to enter into any transaction with NTFS or engage NTFS 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.

33. The Northern QPAMs must comply with each condition of PTE 84–14, as amended, with the sole exceptions of the violation of Section I(g) of PTE 84–14 that is attributable to the Conviction. Further, any failure of the Northern QPAMs to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction.

<sup>35</sup> The Department notes that, at the time of publication of this proposed temporary exemption, NTFS has not been convicted. In the event that NTFS is not convicted, the Northern QPAMs may continue to rely on PTE 84–14 without additional exemptive relief.

34. No relief will be provided by the temporary exemption, if granted, to the extent that any entities holding assets that constitute the assets of an ERISA-covered plan or IRA were involved in the criminal conduct that is the subject of the Conviction. Further, no relief will be provided to the extent NTFS provides any discretionary asset management services to ERISA-covered plans or IRAs, or otherwise acts as a fiduciary with respect to ERISA-covered plan and IRA assets.

35. The Department believes that robust policies and training are warranted where, as here, alleged criminal misconduct has occurred within a corporate organization that is affiliated with one or more QPAMs managing plan investments in reliance on PTE 84–14. Therefore, this proposed temporary exemption, if granted, requires that each Northern QPAM must immediately develop, implement, maintain, and follow written policies (the Policies) requiring and reasonably designed to ensure that: The asset management decisions of the Northern QPAM are conducted independently of the management and business activities of Northern, including NTFS and any non-asset management activities of Northern; the Northern 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 violations of these duties and provisions with respect to ERISA-covered plans and IRAs; the Northern QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs; any filings or statements made by the Northern QPAM to regulators, including but not limited to, the Department of Labor, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA-covered plans or IRAs are materially accurate and complete, to the best of such QPAM's knowledge at that time; the Northern QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plan and IRA clients; and the Northern QPAM complies with the terms of this temporary exemption, if granted. Any violation of, or failure to comply with these items is corrected promptly upon discovery, and any such violation or compliance failure not

promptly corrected is reported, upon discovering the failure to promptly correct, in writing, to appropriate corporate officers, the head of compliance and the General Counsel (or their functional equivalent) of the relevant Northern QPAM, and an appropriate fiduciary of any affected ERISA-covered plan or IRA where such fiduciary is independent of Northern.

36. The Department has also imposed a condition that requires each Northern QPAM to immediately develop and implement a program of training (the Training), for all relevant Northern QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must be set forth in the Policies and at a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences of not complying with the conditions of this temporary exemption, if granted (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing.

37. This temporary exemption, if granted, requires Northern QPAMs to enter into certain contractual obligations in connection with the provision of services to their clients. It is the Department's view that the condition for exemptive relief requiring these contractual obligations is essential to the Department's ability to make its findings that the proposed temporary exemption is protective of the rights of the participants and beneficiaries of ERISA-covered and IRA plan clients of Northern QPAMs under section 408(a) of ERISA. In this regard, Section I(i) of the proposed temporary exemption provides that, as of the effective date of this temporary exemption, if granted, with respect to any arrangement, agreement, or contract between a Northern QPAM and an ERISA-covered plan or IRA for which a Northern QPAM provides asset management or other discretionary fiduciary services, each Northern QPAM must agree: To comply with ERISA and the Code, as applicable with respect to such ERISA-covered plan or IRA, and refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions), and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA with respect to each such ERISA-covered plan and IRA; to indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a violation of applicable laws, a breach of contract, or any claim arising out of the

failure of such Northern 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; not to require (or otherwise cause) the ERISA-covered plan or IRA to waive, limit, or qualify the liability of the Northern QPAM for violating ERISA or the Code or engaging in prohibited transactions; 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 Northern 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 Northern; not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the Northern QPAM (including any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM), with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors as a result of an actual lack of liquidity of the underlying assets, provided that such restrictions are applied consistently and in like manner to all such investors; and 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. Furthermore, any contract, agreement or arrangement between a Northern QPAM and its ERISA-covered plan or IRA client must not contain exculpatory provisions disclaiming or otherwise limiting liability of the Northern QPAM for a violation of such agreement's terms.

38. Within six (6) months of the date of publication of a notice of temporary exemption in the **Federal Register**, if granted, each Northern QPAM will: Provide a notice of its obligations under Section I(i) to each ERISA-covered plan and IRA for which the Northern QPAM



provides asset management or other discretionary fiduciary services; and Separately warrant in writing to each such ERISA-covered plan and IRA its obligations under subparagraph (1) of Section I(i).

39. Each Northern QPAM must maintain records necessary to demonstrate that the conditions of this temporary exemption, if granted, have been met for six (6) years following the date of any transaction for which such Northern QPAM relies upon the relief in the temporary exemption.

40. Furthermore, the proposed temporary exemption mandates that, during the effective period of this temporary exemption, if granted, neither NTFS nor any affiliate enters into a Deferred Prosecution Agreement (a DPA) or a Non-Prosecution Agreement (an NPA) with the Department of Justice, in connection with conduct described in section I(g) of PTE 84–14 or section 411 of ERISA. The Applicant represents that, to the best of its knowledge, Northern has not, within the past 13 years, been convicted of any crime described in section 411 of ERISA, nor has it been under investigation for any such crime. Furthermore, the Applicant represents that Northern currently does not have a reasonable basis to believe that there are any pending criminal investigations involving Northern or any of its affiliated companies that would cause a reasonable plan or IRA customer not to hire or retain the institution as a QPAM.

#### Summary

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

#### Notice to Interested Persons

Written comments and requests for a public hearing on the proposed temporary exemption should be submitted to the Department within seven (7) days from the date of publication of this **Federal Register** Notice. Given the short comment period, the Department will consider comments received after such date, in connection with its consideration of more permanent relief.

**Warning:** Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be

retrieved by most Internet search engines.

**FOR FURTHER INFORMATION CONTACT:** Ms. Anna Mpras Vaughan of the Department, telephone (202) 693–8565. (This is not a toll-free number.)

#### **Proposed Extension of PTE 2015–15 Involving Deutsche Bank AG (Deutsche Bank), Located in Frankfurt, Germany**

[Exemption Application No. D–11879]

#### *Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code) and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).<sup>36</sup>

#### Section I: Covered Transactions

If the Proposed Extension is granted, certain asset managers with specified relationships to Deutsche Bank (hereinafter, the DB QPAMs, as further defined in Section II(b)) shall not be precluded from relying on the exemptive relief provided by Prohibited Transaction Exemption (PTE) 84–14,<sup>37</sup> notwithstanding a judgment of conviction against Deutsche Securities Korea Co., a South Korean affiliate of Deutsche Bank (hereinafter, DSK, as further defined in Section II(c)), entered on January 25, 2016 (the Korean Conviction, as further defined in Section II(a)),<sup>38</sup> provided that the following conditions are satisfied:

(a) The DB QPAMs (including their officers, directors, agents other than Deutsche Bank, and employees of such DB QPAMs) did not know of, have reason to know of, or participate in the criminal conduct of DSK that is the subject of the Korean Conviction;

(b) Any failure of the DB QPAMs to satisfy Section I(g) of PTE 84–14 arose solely from the Korean Conviction;

<sup>36</sup> For purposes of this proposed exemption, references to the provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

<sup>37</sup> 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

<sup>38</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 income tax evasion and conspiracy or attempt to commit income tax evasion.

(c) The DB QPAMs (including their officers, directors, agents other than Deutsche Bank, and employees of such DB QPAMs) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the Conviction;

(d) A DB 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 and managed by such DB QPAM to enter into any transaction with DSK or engage DSK to provide additional services to such investment fund, for a direct or indirect fee borne by such investment fund regardless of whether such transactions or services may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e)(1) Each DB QPAM maintains and follows written policies (the Policies) requiring and reasonably designed to ensure that: (i) The asset management decisions of the DB QPAM are conducted independently of Deutsche Bank’s management and business activities; (ii) the DB QPAM fully complies with ERISA’s fiduciary duties and ERISA and the Code’s prohibited transaction provisions and does not knowingly participate in any violations of these duties and provisions with respect to ERISA-covered plans and IRAs; (iii) the DB QPAM does not knowingly participate in any other person’s violation of ERISA or the Code with respect to ERISA-covered plans and IRAs; (iv) any filings or statements made by the DB QPAM to regulators, including but not limited to, the Department of Labor, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA-covered plans or IRAs are materially accurate and complete, to the best of such DB QPAM’s knowledge at that time; (v) the DB QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plan and IRA clients; (vi) the DB QPAM complies with the terms of this exemption, if granted; and (vii) any violations of or failure to comply with items (ii) through (vi) are corrected promptly upon discovery and any such violations or compliance failures not promptly corrected are reported, upon discovering the failure to promptly correct, in writing to appropriate corporate officers, the head

of Compliance and the General Counsel of the relevant DB QPAM (or their functional equivalent), the independent auditor responsible for reviewing compliance with the Policies, and an appropriate fiduciary of any affected ERISA-covered plan or IRA that is independent of Deutsche Bank; however, with respect to any ERISA-covered plan or IRA sponsored by an "affiliate" (as defined in Section VI(d) of PTE 84-14) of Deutsche Bank or beneficially owned by an employee of Deutsche Bank or its affiliates, such fiduciary does not need to be independent of Deutsche Bank. DB QPAMs will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that they correct any instances of noncompliance promptly when discovered or when they reasonably should have known of the noncompliance (whichever is earlier), and provided that they adhere to the reporting requirements set forth in this item (vii);

(2) Each DB QPAM maintains and follows a program of training (the Training), conducted during the effective period of this exemption, if granted, for relevant DB QPAM asset management, legal, compliance, and internal audit personnel; the Training must be set forth in the Policies and, at a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions) and ethical conduct, the consequences for not complying with the conditions of this Proposed Extension, (including the loss of the exemptive relief provided therein), and prompt reporting of wrongdoing;

(f)(1) Each DB QPAM submits to an audit conducted 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 compliance with, the Policies and Training described herein; the audit requirement must be incorporated in the Policies. The audit must cover the period of time during which this Proposed Extension, if granted, is effective, and must be completed no later than three (3) months after the period to which the audit applies;

(2) To the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, and as permitted by law, each DB QPAM and, if applicable, Deutsche Bank, will grant the auditor unconditional access to its business,

including, but not limited to: Its computer systems, business records, transactional data, workplace locations, training materials, and personnel;

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

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

(5) On or before the end of the period described in Section I(f)(1) for completing the audit, the auditor must issue a written report (the Audit Report) to Deutsche Bank and the DB QPAM to which the audit applies that describes the procedures performed by the auditor during the course of its examination. The Audit Report must include the auditor's specific determinations regarding the adequacy of, and compliance with, the Policies and Training; the auditor's recommendations (if any) with respect to strengthening such Policies and Training; and any instances of the respective DB QPAM's noncompliance with the written Policies and Training described in paragraph (e) above. Any determinations made by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective DB QPAM must be promptly addressed by such DB QPAM, and any actions taken by such DB QPAM to address such recommendations must be included in an addendum to the Audit Report. Any determinations by the auditor that the respective DB QPAM has maintained and followed sufficient Policies and Training shall not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that the DB QPAM has complied with the requirements under this subsection must be based on evidence that demonstrates the DB QPAM has actually maintained and followed the Policies and Training required by this Proposed Extension, if granted, and not solely on

a lack of evidence that the DB QPAM has violated ERISA;

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

(7) With respect to each Audit Report, the General Counsel or one of the three most senior executive officers of the DB QPAM to which the Audit Report applies certifies in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this Proposed Extension, if granted; addressed, corrected, or remedied any inadequacies identified in the Audit Report; and determined that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this Proposed Extension and with the applicable provisions of ERISA and the Code;

(8) An executive officer of Deutsche Bank reviews the Audit Report for each DB QPAM and certifies in writing, under penalty of perjury, that such officer has reviewed each Audit Report;

(9) Each DB QPAM provides its certified Audit Report to the Department's Office of Exemption Determinations (OED), 200 Constitution Avenue NW., Suite 400, Washington, DC 20210, no later than 30 days following its completion, and each DB QPAM makes 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 DB QPAM;

(10) Each DB QPAM and the auditor will submit to OED (A) any engagement agreement(s) entered into pursuant to the engagement of the auditor under this Proposed Extension, and (B) any engagement agreement entered into with any other entities retained in connection with such QPAM's compliance with the Training or Policies conditions of this Proposed Extension, no later than three (3) months after the date of the Korean Conviction (and one month after the execution of any agreement thereafter);

(11) The auditor shall 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 instances of noncompliance by the relevant DB QPAM, and an explanation of any corrective or remedial actions taken by the applicable DB QPAM; and

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

Notwithstanding the above, this audit requirement will be deemed met to the extent the Department issues more permanent relief that expressly revises this paragraph (f), and the terms of such new audit requirement have been met;

(g) With respect to each ERISA-covered plan or IRA for which a DB QPAM provides asset management or other discretionary fiduciary services, each DB QPAM agrees: (1) To comply with ERISA and the Code, as applicable with respect to such ERISA-covered plan or IRA, and refrain from engaging in prohibited transactions that are not otherwise exempt; (2) not to waive, limit, or qualify the liability of the DB QPAM for violating ERISA or the Code or engaging in prohibited transactions; (3) 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 DB 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 Deutsche Bank; (4) not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the DB 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, provided that such restrictions are applied consistently and in like manner to all such investors; and (5) not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are

applied consistently and in like manner to all such investors. Within two (2) months of the date of publication of a notice of exemption in the **Federal Register**, if granted, each DB QPAM will provide a notice to such effect to each ERISA-covered plan or IRA for which a DB QPAM provides asset management or other discretionary fiduciary services, unless such notice was previously provided consistent with PTE 2015-15;

(h) Each DB QPAM will maintain records necessary to demonstrate that the conditions of this Proposed Extension, if granted, have been met, for six (6) years following the date of any transaction for which such DB QPAM relies upon the relief in the Proposed Extension;

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

(j) The DB QPAMs will not employ any of the individuals that engaged in the spot/futures-linked market manipulation activities that led to the Korean Conviction;

(k) Deutsche Bank disgorged all of its profits generated by the spot/futures-linked market manipulation activities of DSK personnel that led to the Korean Conviction;

(l) Deutsche Bank imposes internal procedures, controls, and protocols on DSK designed to reduce the likelihood of any recurrence of the conduct that is the subject of the Korean Conviction, to the extent permitted by local law;

(m) DSK has not, and will not, provide fiduciary or QPAM services to ERISA-covered Plans or IRAs, and will not otherwise exercise discretionary control over plan assets;

(n) No DB QPAM is a subsidiary of DSK, and DSK is not a subsidiary of any DB QPAM;

(o) The criminal conduct of DSK that is the subject of the Korean Conviction did not directly or indirectly involve the assets of any plan subject to Part 4 of Title I of ERISA or section 4975 of the Code; and

(p) A DB QPAM will not fail to meet the terms of this Proposed Extension solely because a different DB QPAM fails to satisfy the conditions for relief under this Proposed Extension described in Sections I(d), (e), (f), (g), (h), (i) and (j).

#### Section II: Definitions

(a) The term "Korean Conviction" means the judgment of conviction against DSK entered on January 25, 2016, in Seoul Central District Court, relating to charges filed against DSK under Articles 176, 443, and 448 of

South Korea's Financial Investment Services and Capital Markets Act for spot/futures-linked market price manipulation;

(b) The term "DB QPAM" means a "qualified professional asset manager" (as defined in section VI(a) <sup>39</sup> of PTE 84-14) that relies on the relief provided by PTE 84-14 and with respect to which DSK is a current or future "affiliate" (as defined in section VI(d) of PTE 84-14). For purposes of this Proposed Extension, if granted, Deutsche Bank Securities, Inc. (DBSI), including all entities over which it exercises control; and Deutsche Bank AG, including all of its branches, are excluded from the definition of a DB QPAM; and

(c) The term "DSK" means Deutsche Securities Korea Co., a South Korean "affiliate" of Deutsche Bank (as the term "affiliate" is defined in section VI(c) of PTE 84-14).

*Effective Date:* If granted, this Proposed Extension will be effective for the period beginning October 24, 2016 and ending on the earlier of: April 23, 2017 or the effective date of a final agency action made by the Department in connection with Exemption Application No. D-11856.<sup>40</sup>

#### Summary of Facts and Representations

##### Background

1. On October 11, 2011, Deutsche Bank AG (Deutsche Bank) submitted Exemption Application No. D-11696 (the First Request), to allow certain asset managers with specified relationships to Deutsche Bank (the DB QPAMs) to continue to utilize the relief set forth in Prohibited Transaction Exemption (PTE) 84-14,<sup>41</sup> notwithstanding the failure of those entities to meet the requirement set forth in Section I(g) of PTE 84-14 as a result of the pending conviction in Seoul Central District Court (the Korean Court), against Deutsche Securities Korea Co. (DSK) for spot/futures-linked market price manipulation (the Korean Conviction).<sup>42</sup> While the Department

<sup>39</sup> In general terms, a QPAM is an independent fiduciary that is a bank, savings and loan association, insurance company, or investment adviser that meets certain equity or net worth requirements and other licensure requirements and that has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

<sup>40</sup> In this regard, as noted below, the Applicant has requested substantially similar relief to the relief described herein, but on a more permanent basis.

<sup>41</sup> 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

<sup>42</sup> Section I(g) generally provides that "[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the

was considering the First Request, Deutsche Investment Management Americas Inc. (DIMA) and the current and future asset management affiliates of Deutsche Bank, submitted Exemption Application No. D-11856 (the Second Request) to allow the DB QPAMs to continue to rely on PTE 84-14 for a period of ten years, notwithstanding both the Korean Conviction and the anticipated criminal conviction of a Deutsche Bank affiliate, DB Group Services UK Limited, for one count of wire fraud in connection with its alleged role in manipulating LIBOR.

2. In a letter dated July 16, 2015, the Department informed DIMA and Deutsche Bank that it was tentatively denying the Second Request, upon tentatively determining that the requested exemption was not in the interest of affected plans and IRAs, and not protective of those plans and IRAs. The Department held a Tentative Denial conference with representatives of Deutsche Bank on November 9, 2015 and has since requested and received additional information in respect of the Second Request.

3. Although the Department tentatively denied the Second Request, the First Request, which requested an exemption from Section I(g) of PTE 84-14 in connection with only the Korean Conviction, was still pending with the Department. When the Korean Conviction appeared imminent, the Department published a proposed temporary exemption (the First Proposal) in the **Federal Register** at 80 FR 51314. As noted in the preamble to the proposed exemption, affected plans and IRAs may have incurred substantial harm absent such relief; DB QPAMs were not aware of, and did not participate in, the conduct that gave rise to the Korean Conviction; and the conditions set forth in the exemption represented significant enhancements for plans and IRAs with assets managed by certain DB QPAMs.

The Department finalized the First Proposal on September 4, 2015, with an effective period of nine months following the Korean Conviction (PTE 2015-15, 80 FR 53574).<sup>43</sup> The Korean Conviction was entered by the Korean Court on January 25, 2016. As such, PTE

2015-15 is effective from January 25, 2016 until October 24, 2016.

4. The Department now proposes to temporarily extend the relief (the Proposed Extension) provided in PTE 2015-15 from October 24, 2016 until the earlier of April 23, 2017, or the effective date of an exemption that is granted in respect of Exemption Application No. D-11856, if any. The Proposed Extension, if granted, will enable the Department to accommodate a more complete review of the voluminous records submitted in connection with the Second Request and consider whether or not a longer term exemption is appropriate.

#### *Statutory Findings*

5. The Department is proposing this extension based on the same findings the Department made regarding PTE 2015-15. In this regard, the Department has tentatively determined that limited exemptive relief is in the interest of ERISA-covered plans and IRAs managed by the DB QPAMs. The Department is concerned that, absent such relief, plans and IRAs would incur costs in: Searching for new managers; issuing requests for proposals; conducting due diligence (including meetings with potential managers and credit analysts); seeking investment committee approvals and negotiating; and/or drafting new investment management agreements, investment guidelines and related trading documentation with broker-dealers and other counterparties. Deutsche Bank has suggested that the selection of new managers could potentially take several months or longer, resulting in a number of collateral costs including the opportunity costs of missed investments, lower returns from investing in cash pending long term reinvestment, fewer trading counterparties and more limited or costly temporary investment alternatives.

The Department is also taking into consideration Deutsche Bank's prior representations that: ERISA-covered plans and IRAs would incur direct transaction costs in liquidating and reinvesting their portfolios, ranging from 2.5 to 25 basis points (excluding core real estate), resulting in approximately \$5 to \$7 million in expenses; and liquidating certain direct real estate portfolios may result in portfolio discounts of 10-20% of gross asset value, along with 30 to 100 basis points in direct transaction costs, resulting in an estimated total cost to plan investors of between \$281 million and \$723 million, depending on the liquidation period.

6. The Department has tentatively determined that this Proposed Extension is sufficient to protect affected plans and IRAs in light of the conditions herein and the temporary nature of this extension, if granted. The conditions described herein are essentially the same conditions set forth in PTE 2015-15. For example, each DB QPAM must continue to maintain and follow the robust written policies (the Policies) and training requirements (the Training) developed under PTE 2015-15. The Policies, which are described in more detail in the operative language of the Proposed Extension below, are generally designed to, among other things: Ensure the independence of the DB QPAMs from Deutsche Bank and its other affiliates such as DSK; require the strict legal compliance of the DB QPAMs with ERISA, the Code and the prohibited transaction rules; ensure truthfulness and transparency with respect to statements made by DB QPAMs to regulators; and ensure compliance with the terms of this exemption, if granted. The Training, which is also described in more detail in the operative language of the Proposed Extension below, is designed to cover the Policies, ERISA and Code compliance, ethical conduct, the consequences for not complying with the conditions of this Proposed Extension, and prompt reporting of wrongdoing.

In order to verify the DB QPAMs' compliance with the Policies and Training requirements of the Proposed Extension, and the conditions for relief, each DB QPAM must submit to an audit conducted by an independent auditor, prudently selected, who has appropriate technical training and proficiency with ERISA to evaluate the adequacy of, and compliance with, the Policies and Training, and the conditions for relief described herein. Furthermore, to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, each DB QPAM and, if applicable, Deutsche Bank, must 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 auditor's engagement shall specifically require the auditor to determine whether each DB QPAM has developed, implemented, maintained, and followed Policies in accordance with the conditions of this Proposed Extension, if granted, and developed and implemented the Training, as required herein, and it shall specifically require

QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of "certain felonies including income tax evasion and conspiracy or attempt to commit income tax evasion."

<sup>43</sup> For a more complete statement of the facts and representations concerning Deutsche Bank, DSK, and the circumstances surrounding the Korean Conviction, refer to the First Proposal.

the auditor to test each DB QPAM's operational compliance with the Policies and Training.

Furthermore, the auditor must issue a written report (the Audit Report) to Deutsche Bank and the DB QPAM to which the audit applies that describes the procedures performed by the auditor during the course of its examination. The Audit Report must include the auditor's specific determinations regarding: The adequacy of, and compliance with, the Policies and Training; the auditor's recommendations (if any) with respect to strengthening such Policies and Training; and any instances of the respective DB QPAM's noncompliance with the written Policies and Training described above. Furthermore, 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 DB QPAM must be promptly addressed by such DB QPAM, and any actions taken by such DB QPAM to address such recommendations must be included in an addendum to the Audit Report. The auditor is required to notify the respective DB QPAM of any instances of noncompliance identified by the auditor. The General Counsel or one of the three most senior executive officers of the DB QPAM to which the Audit Report applies must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and, if granted, this Proposed Extension; addressed, corrected, or remedied any inadequacies identified in the Audit Report; and determined that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of the Proposed Extension and with the applicable provisions of ERISA and the Code. Moreover, an executive officer of Deutsche Bank must review the Audit Report for each DB QPAM and certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report.

The audit must: Span the period of time covered by this Proposed Extension, if granted; be completed within three months days from the end of the period to which it relates; and be submitted to the Department within 30 days from date the audit is completed. These requirements may be enhanced or changed if subsequent exemptive relief is granted. The DB QPAMs must give the Department copies of the auditor's workpapers upon request. In addition, Deutsche Bank must notify the Department at least 30 days prior to any

substitution of the auditor, and must demonstrate to the Department's satisfaction that the replacement auditor is independent of Deutsche Bank, experienced in the matters that are the subject of the Proposed Extension, and capable of making the determinations required of this Proposed Extension.

Under the terms of the Proposed Extension, if granted, the DB QPAMs must agree to certain terms and undertakings with each ERISA-covered plan or IRA for which a DB QPAM provides asset management or other discretionary fiduciary services, including, generally: (1) Compliance with ERISA and the Code and avoidance of non-exempt prohibited transactions; (2) not to waive, limit, or qualify certain liabilities of the DB QPAM; (3) not to require indemnification of the DB QPAM for violating ERISA or engaging in prohibited transactions; and (4) with minor exceptions, not to restrict the ability of ERISA-covered plan or IRA clients to terminate or withdraw from their arrangement with the DB QPAM or, to impose any fees, penalties, or charges for such termination or withdrawal. Each DB QPAM will provide a notice describing the above-described terms and undertakings to each such ERISA-covered plan or IRA within two (2) months of the date of publication of a notice of extension in the **Federal Register**, if granted, unless such notice was previously provided consistent with PTE 2015–15.

Under the terms of this Proposed Extension, each DB QPAM must: Maintain records necessary to demonstrate that the conditions herein have been met, for six (6) years following the date of any transaction for which such DB QPAM relies upon the relief in the Proposed Extension, if granted; comply with each condition of PTE 84–14, as amended, with the sole exception of the violation of Section I(g) that is attributable to the Korean Conviction; ensure that none of the individuals that engaged in the conduct that led to the Korean Conviction are employed by the DB QPAM; and provide a notice of the Proposed Extension, and if granted, a notice of final extension of PTE 2015–15, along with a separate summary (which has been submitted to the Department) describing the facts that led to the Korean Conviction, and a prominently displayed statement that the Korean Conviction results in a failure to meet a condition in PTE 84–14 to each sponsor of an ERISA-covered plan and each beneficial owner of an IRA invested in an investment fund managed by a DB QPAM, or the sponsor of an investment fund in any case where a DB QPAM acts

only as a sub-advisor to the investment fund.

Lastly, regarding the DB QPAMs, relief under this Proposed Extension, if granted, is only available to the extent the QPAMs covered by this Proposed Extension, as defined in Section II of this Extension, including their officers, directors, agents other than Deutsche Bank, and employees, did not know of, have reason to know of, or participate in the criminal conduct of DSK that is the subject of the Korean Conviction; any failure of those QPAMs to satisfy Section I(g) of PTE 84–14 arose solely from the Korean Conviction; such QPAMs did not directly receive compensation, or knowingly receive indirect compensation, in connection with, the criminal conduct that is the subject of the Korean Conviction; and none of those QPAMs 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 and managed by such DB QPAM to enter into any transaction with DSK, or engage DSK to provide additional services to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transactions or services may otherwise be within the scope of relief provided by an administrative or statutory exemption.

Regarding conditions herein directed at Deutsche Bank, prior to engaging in a transaction covered by this Proposed Extension, if granted, Deutsche Bank must have previously disgorged all of its profits generated from exercising derivative positions and put options in connection with the activity associated with the Korean Conviction. Deutsche Bank must have also previously imposed internal procedures, controls, and protocols on DSK designed to reduce the likelihood of any recurrence of the conduct that is the subject of the Korean Conviction, to the extent permitted by local law.

Regarding conditions herein aimed at DSK, DSK may not provide fiduciary services to ERISA-covered Plans or IRAs, or otherwise exercise discretionary control over plan assets. Further, none of the DB QPAMs may be subsidiaries of DSK, and DSK may not be a subsidiary of any of the DB QPAMs. Finally, the criminal conduct of DSK that is the subject of the Korean Conviction must not have directly or indirectly involved the assets of any plan subject to Part 4 of Title I of ERISA or section 4975 of the Code.

The Proposed Extension, if granted, will not apply to Deutsche Bank

Securities, Inc. (DBSI).<sup>44</sup> Section I(a) of PTE 2015–15, as well as this Proposed Extension, requires that “DB QPAMs (including their officers, directors, agents other than Deutsche Bank, and employees of such DB QPAMs) did not know of, have reason to know of, or participate in the criminal conduct of DSK that is the subject of the Conviction.” In a letter to the Department dated July 15, 2016, Deutsche Bank raised the possibility that an individual,<sup>45</sup> while employed at DBSI, may have known or had reason to know of the criminal conduct of DSK that is the subject of the Korean Conviction. In a letter to the Department dated August 19, 2016, Deutsche Bank further clarified that “there is no evidence that anyone at DBSI other than Mr. Ripley knew in advance of the trades conducted by the Absolute Strategy Group on November 11, 2010.” Deutsche Bank states that it had previously interpreted Section I(a) of PTE 2015–15 as requiring only that “any current director, officer or employee did not know of, have reason to know of, or participate in the conduct.” The Department notes that Deutsche Bank did not raise any interpretive questions regarding Section I(a) of PTE 2015–15, or express any concerns regarding DBSI’s possible noncompliance, during the comment period for PTE 2015–15. Nor did Deutsche Bank seek a technical correction or other remedy to address such concerns between the time that PTE 2015–15 was granted and the date of the Korean Conviction. The Department notes that a period of approximately nine months passed before Deutsche Bank raised an interpretive question regarding Section I(a) of PTE 2015–15. Accordingly, the Department is excluding DBSI from the relief described in this Proposed Extension.

The Proposed Extension, if granted, will also not apply with respect to Deutsche Bank AG (the parent entity) or any of its branches. The Applicant represents that neither Deutsche Bank AG nor its branches have relied on the relief provided by PTE 84–14 since the date of the Korean Conviction.

7. The Department has tentatively determined that the Proposed Extension

is administratively feasible. In this regard, this Proposed Extension, if granted, would not require the Department’s oversight because DSK does not provide any fiduciary or QPAM services to ERISA-covered plans and IRAs and that no ERISA or IRA assets were involved in the Korean Conviction. Furthermore, compliance with the terms of the Proposed Extension and of PTE 2015–15 will be validated through an audit performed by a qualified, independent auditor.

8. The proposed exemption, if granted, would provide relief from certain of the restrictions set forth in Section 406 and 407 of ERISA. Such a granted exemption would not provide relief from any other violation of law, including any criminal conviction not expressly described herein. Pursuant to the terms of this proposed exemption, if granted, any criminal conviction not expressly described herein, but otherwise described in Section I(g) of PTE 84–14 and attributable to the applicant for purposes of PTE 84–14, would result in the applicant’s loss of this exemption, if granted.

Interested persons are directed to the First Proposal, the Facts and Representations of which are incorporated herein, for a more detailed description of the Department’s views regarding the scope of relief and the adequacy of the conditions contained herein.

#### *Effective Dates*

9. This Proposed Extension, if granted, will be effective from October 24, 2016 until the earlier of April 23, 2017 or the effective date of a final agency action made by the Department in connection with Exemption Application No. D–11856. Fiduciaries of ERISA-covered plans and IRAs with assets managed by a DB QPAM should be aware that, if this Proposed Extension is not granted, DB QPAMs may only rely on the relief provided in PTE 84–14 until October 23, 2016. If the Department grants this Proposed Extension, but makes a final decision not to propose the Second Request, the DB QPAMs will be unable to rely on the relief set forth in PTE 84–14, as of April 24, 2017. ERISA-covered plan and IRA fiduciaries should take note that, as described above, the conditions for PTE 2015–15 and this Proposed Extension require DB QPAMs to agree not to restrict the ability of each ERISA-covered plan or IRA client to terminate or withdraw from its arrangement with the DB QPAM, with certain limited exceptions.

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

Written comments and requests for a public hearing on the Proposed Extension should be submitted to the Department within seven (7) days from the date of publication of this **Federal Register** Notice. Given the short comment period, the Department will consider comments received after such date, in connection with its consideration of more permanent relief.

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

#### **FOR FURTHER INFORMATION CONTACT:**

Scott Ness of the Department, telephone (202) 693–8561. (This is not a toll-free number.)

#### **General Information**

The attention of interested persons is directed to the following:

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

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

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

<sup>44</sup> The Applicant represents that DBSI has not relied on the relief provided by PTE 84–14 since the date of the Korean Conviction.

<sup>45</sup> The Applicant identifies the individual as Mr. John Ripley, a senior global manager in DBSI who was based in the United States and who was a functional supervisor over the employees of DSK that were prosecuted for market manipulation. Furthermore, the Applicant states that Mr. Ripley was terminated by DBSI for “loss of confidence” in that he could have exercised more care and been more proactive in reviewing the trades at issue.

statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and

representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 5th day of October, 2016.

**Lyssa E. Hall,**

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

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