



DEPARTMENT OF LABOR

Employee Benefits Security Administration

Technical Correction to PTE 2016-11, Exemption from Certain Prohibited

Transaction Restrictions: Northern Trust Corporation (Together with its Current and Future Affiliates, Northern Trust or the Applicant)

AGENCY: Employee Benefits Security Administration (EBSA), Labor.

ACTION: Notice of Technical Correction.

SUMMARY: This document makes a technical correction to Prohibited Transaction Exemption (PTE) 2016-11 granted to Northern Trust Corporation (D-11875) on October 28, 2016.

DATES: *Issuance date:* This technical correction is issued on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*] without further action or notice.

Exemption Date: PTE 2016-11 will remain in effect for the period beginning on the Conviction date (as corrected herein) until the earlier of: (1) the date that is twelve months following the Conviction date; or (2) 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 in PTE 2016-11.

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

SUPPLEMENTARY INFORMATION:

Background

On October 28, 2016, the Department published PTE 2016-11 in the *Federal Register*.¹ PTE 2016-11 is a temporary administrative exemption that permits certain entities (the Northern Trust Qualified Professional Asset Managers (QPAMs)) with

¹ 81 FR 75150 (October 28, 2016).

specified relationships to Northern Trust Fiduciary Services (Guernsey) Ltd. (NTFS) to continue to rely upon the relief provided by the Department's QPAM Exemption² for a one-year period, notwithstanding a judgment of conviction against NTFS for aiding and abetting tax fraud.³

The Department granted PTE 2016-11 to protect Covered Plans⁴ from the harm that could result from the Northern Trust QPAMs' loss of relief under PTE 84-14 due to the potential conviction of NTFS. Exemptive relief was provided for a period of 12 months from the potential Conviction date to provide the Department with sufficient time to determine whether longer-term relief was appropriate.⁵ PTE 2016-11, as initially granted, defined the term "Conviction" as "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."

In January 2017, the trial court (the Paris District Court) in France acquitted NTFS and all prosecuted parties of the aiding and abetting tax fraud charge, so the exemptive relief provided in PTE 2016-11 was unnecessary. The Paris District Court's verdict was appealed by the French government to the Paris Court of Appeal, which in March 2018 conducted a retrial and in June 2018 upheld the acquittal of all prosecuted

² PTE 84-14, 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005) and as amended at 75 FR 38837 (July 6, 2010), hereinafter referred to as PTE 84-14 or the QPAM Exemption.

³ Section I(g) of PTE 84-14 prevents an entity that may otherwise meet the definition of a QPAM from utilizing the exemptive relief provided by PTE 84-14 for itself and its client plans, if that entity or an "affiliate" thereof, or any owner, direct or indirect, of a five 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 criminal activity described in that section.

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

⁵ Northern Trust's exemption request (D-11875) is available by contacting EBSA's Public Disclosure Room at (202) 693-8673.

parties on the basis that the offenses were time-barred. The Paris Court of Appeal's verdict was appealed by the French government to the Court of Cassation, the highest court in France, which in January 2021, quashed the appellate court's judgment and found that the offenses were not time-barred and there was a legal obligation under French law to declare assets held in certain (but not all) types of trusts.⁶ The Court of Cassation directed a re-trial of all prosecuted parties, including NTFS, and tasked a different panel of the Paris Court of Appeal with ascertaining the nature of the trusts in question. In September - October 2023, the case was tried a third time in front of a different panel of the Paris Court of Appeal. On March 5, 2024, the Paris Court of Appeal issued a judgment of conviction (the 2024 Conviction) against NTFS for aiding and abetting tax fraud. On the same day, NTFS appealed the verdict to the Court of Cassation.

As a result of the most recent legal proceedings, Northern Trust requests the Department to issue a technical correction to PTE 2016-11 to change the definition of the term "Conviction" in PTE 2016-11 by replacing references to the "District Court of Paris" with references to the "Paris Court of Appeal." Northern Trust represents that all other identifying information, including the identity of the case and the underlying facts, remain the same.

Before the 2024 Conviction, a separate defendant in the case against Northern Trust, Royal Bank of Canada, requested and received a technical correction to PTE 2016-10.⁷ Northern Trust requested the Department to make the same technical correction to

⁶ The Applicant states that a key issue in this case was whether trust assets were required to be declared as part of an inheritance tax filing. The Court of Cassation held that the legal requirement to declare trust assets as a part of an inheritance applies to trusts where the settlor had not divested of the trust assets during their lifetime. The Paris Court of Appeal analyzed the features and operations of the applicable trusts to determine whether Mr. Wildenstein had effectively divested himself of the trusts' assets in connection with its March 5, 2024 decision. The Applicant states that the Paris Court of Appeal concluded that Mr. Wildenstein had not effectively divested himself of trust assets.

⁷ See PTE 2016-10, 81 FR 75147 (October 28, 2016). The Department issued a technical correction on December 11, 2023 at 88 FR 85931 that corrected the definition of "Conviction" in PTE 2016-10 to correct the name of the court in France hearing the case as well as the date of conviction.

PTE 2016-11 that it made to PTE 2016-10, because PTE 2016-11 also references the “District Court of Paris” case rather than the Paris Court of Appeal case.

As noted above, PTE 2016-11 was granted in order to protect Covered Plans from harm if Northern Trust were convicted for the crime described in that exemption. PTE 2016-11 would have provided 12 months of exemptive relief to Northern Trust in order to afford the Department sufficient time to evaluate whether a longer-term exemption would be in the interest of, and protective of the rights of, Covered Plans and their participants and beneficiaries. This same harm would arise now that NTFS is convicted for the same crime, pursuant to the 2024 Conviction. Therefore, to ensure that Covered Plans are protected from any harm arising from the Conviction while the Department evaluates whether longer-term relief is appropriate, the Department is correcting the definition of “Conviction” in PTE 2016-11 to refer to “the judgment of conviction against NTFS for aiding and abetting tax fraud entered in France in the Court of Appeal, French Special Prosecutor No. 1120392066, French Investigative Judge No. JIRSIF/11/12 or another court of competent jurisdiction.” PTE 2016-11, as corrected, will be effective for a period of 12 months from the date of such Conviction.

The Applicant represents to the Department that, to the best of Northern Trust’s knowledge, there have been no material changes since February 29, 2016, the date of submission of Northern Trust’s exemption application that serves as the record upon which PTE 2016-11 was proposed and granted, that are relevant to that application or the technical corrections set forth herein, other than changes in Northern Trust’s numbers of clients and assets managed. In addition, the Applicant represents that Northern Trust is and has been subject to a variety of legal proceedings, including civil claims and lawsuits, regulatory examinations, investigations, audits, and requests for information by various governmental regulatory agencies and law enforcement authorities in various jurisdictions. To the best of its knowledge at this time, however, Northern Trust does not

believe that the outcome of any current investigation would cause the exemption to be unavailable. Moreover, the Applicant represents that no affiliate of Northern Trust has been convicted of any crime described in section I(g) of the QPAM Exemption and, to the best of Northern Trust's knowledge, neither Northern Trust nor any affiliate has entered into a deferred prosecution agreement (DPA) or non-prosecution agreement (NPA) since February 29, 2016.

The Department notes that it is making this technical correction based upon Northern Trust's certified representation that since February 29, 2016: (1) there have in fact been no material changes other than those changes noted above; (2) no affiliate of Northern Trust has been convicted of any crime described in section I(g) of the QPAM Exemption, other than the conviction covered under PTE 2016-11 as corrected herein; (3) neither Northern Trust nor any of its affiliates have entered into a DPA or NPA; and (4) to the best of its knowledge at this time, Northern Trust does not believe that the outcome of any current investigation by any of the various governmental regulatory agencies and law enforcement authorities in various jurisdictions would cause the exemption to be unavailable. If, at any time, Northern Trust discovers that any of these representations are no longer true, Northern Trust must immediately contact the Department and separately submit a written statement that provides the Department with the complete details on the circumstances discovered that led any representations to become untrue.

The Department is not taking a position on whether the outcome of any proceedings will cause the exemption to be unavailable and also notes that the availability of PTE 2016-11 is conditioned upon Northern Trust's compliance with all of the conditions included therein, including the condition that expressly states: "During the effective period of this temporary exemption, Northern Trust: (1) Immediately discloses to the Department any DPA or NPA that Northern Trust enters into with the U.S. Department of Justice, to the extent such DPA or NPA involves conduct described in

Section I(g) of PTE 84–14 or section 411 of ERISA.” As noted in the preceding paragraph, if Northern Trust discovers that Northern Trust or any of its affiliates have entered into a DPA or NPA at any time on or after February 29, 2016, Northern Trust must inform the Department promptly upon Northern Trust or its affiliates’ discovery of such fact.

Furthermore, if Northern Trust later submits an exemption application requesting longer term exemptive relief from Section I(g) of PTE 84-14 due to the Conviction, the Department would consider relevant any legal proceedings, including civil claims and lawsuits, regulatory examinations, investigations, audits, and requests for information by various governmental regulatory agencies and law enforcement authorities in various jurisdictions that may be pending at that time notwithstanding whether such proceedings would trigger ineligibility. In this regard, any such proceedings would be relevant to the Department’s analysis of whether the Northern Trust QPAMs (and those who may be in a position to influence the QPAMs’ policies) maintain the high standard of integrity required to operate as a QPAM.

TECHNICAL CORRECTION

Section II(a) of PTE 2016-11 is corrected to read as follows:

“(a) The term “Conviction” means the judgment of conviction against NTFS for aiding and abetting tax fraud entered in France in the Court of Appeal, French Special Prosecutor No. 1120392066, French Investigative Judge No. JIRSIF/11/12 or another court of competent jurisdiction.”

Signed at Washington, DC.

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

