



## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

#### [Exemption Application No. D-12101]

#### **Proposed Exemption from Certain Prohibited Transaction Restrictions Involving Northern Trust Corporation (Together with its Current and Future Affiliates, Northern or the Applicant) Located in Chicago, IL**

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

**ACTION:** Notice of proposed exemption.

**SUMMARY:** This document provides notice of the pendency before the Department of Labor (the Department) of a proposed individual exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code of 1986 (the Code). The proposed exemption would allow certain entities with specified relationships to Northern Trust Fiduciary Services (Guernsey) Limited (NTFS) (hereinafter, the Northern QPAMs, as further defined in section I(e) of the operative language) to rely on the exemptive relief provided by Prohibited Transaction Class Exemption 84-14 (PTE 84-14 or the QPAM Exemption), notwithstanding the judgment of conviction (the Conviction) against NTFS for aiding and abetting tax fraud entered in France in the Paris Court of Appeal, French Special Prosecutor No. 1120392066, French Investigative Judge No. JIRSIF/11/12.

**DATES:** *Exemption date:* This proposed exemption would be in effect for a period of five years beginning on March 5, 2025, and ending on March 4, 2030 (the Exemption Period).

*Comments due:* Written comments and requests for a public hearing on the proposed exemption should be submitted to the Department by [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** All written comments and requests for a hearing should be submitted to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Attention: Application No. D-12101 via email to e-OED@dol.gov or online through <https://www.regulations.gov>. Any such comments or requests should be sent by the end of the scheduled comment period. The application for exemption (the Application) and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1515, 200 Constitution Avenue, N.W., Washington, D.C. 20210, reachable by telephone at (202) 693-8673. See SUPPLEMENTARY INFORMATION below for additional information regarding comments.

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

**SUPPLEMENTARY INFORMATION:**

*Comments:* Persons are encouraged to submit all comments electronically without submitting paper versions. Comments should state the nature of the person's interest in the proposed exemption and how the person would be adversely affected by the exemption, if granted. Any person who may be adversely affected by an exemption can request a hearing on the exemption. A request for a hearing must state: (1) The name, address, telephone number, and email address of the person making the request; (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; and (3) a statement of the issues to be addressed and a general description of the evidence to be presented at the hearing. The Department will grant a request for a hearing made in accordance with the requirements above where a hearing is necessary to fully explore material factual issues identified by the person requesting the hearing. The Department would publish a notice announcing such hearing in the *Federal Register*. The Department may decline to hold a

hearing if: (1) the request for the hearing does not meet the requirements above; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the factual issues identified can be fully explored through the submission of evidence in written (including electronic) form.

*Warning:* All comments received will be included in the public record without change and may be made available online at <https://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be confidential or other information whose disclosure is restricted by statute. If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as a Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. However, if EBSA cannot read your comment due to technical difficulties and cannot contact you for clarification, EBSA might not be able to consider your comment.

Additionally, the <https://www.regulations.gov> website is an “anonymous access” system, which means EBSA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EBSA without going through <https://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the Internet.

### **Proposed Exemption**

The Department is considering granting the exemption pursuant to its authority under ERISA section 408(a) and Code section 4975(c)(2), and in accordance with the Department’s exemption procedures.<sup>1</sup> If the Department grants a final exemption, the

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<sup>1</sup> 29 CFR part 2570, subpart B (75 FR 66637, 66644, October 27, 2011)..

Northern QPAMs will not be precluded from relying on the QPAM Exemption<sup>2</sup> notwithstanding the Conviction, provided the conditions and definitions set forth in the exemption are met.

This proposed exemption would provide relief from certain restrictions set forth in ERISA sections 406 and 407.<sup>3</sup> It would not, however, provide relief from any other violation of law. Furthermore, the Department cautions that the relief in this proposed exemption would terminate immediately if, among other things, Northern or an affiliate of Northern (as defined in section VI(d) of PTE 84-14)<sup>4</sup> is convicted of a crime covered by section I(g) of PTE 84-14 (other than the Conviction) or any other violation occurs during the Exemption Period. Although Northern 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 a plan to terminate its relationship with Northern or an Affiliate in an orderly and cost-effective fashion in the event of an additional conviction of them or a plan fiduciary determines that it otherwise prudent for a plan to terminate its relationship with Northern.

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<sup>2</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), as amended at 75 FR 38837 (July 6, 2010), and as amended at 89 FR 23090 (April 3, 2024).

<sup>3</sup> For purposes of this proposed exemption, references to specific provisions of ERISA Title I, unless otherwise specified, should be read to refer as well to the corresponding provisions of Code section 4975. Further, this proposed exemption, if granted, does not provide relief from the requirements of, or specific sections of, any law not noted above.

<sup>4</sup> PTE 84-14 section VI(d) 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 Code section 4975(e)(2)(H)) 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.” For purposes of this definition, section VI(e) defines the terms “Controlling,” “Controlled by,” “under Common Control with,” and “Controls” means the power to exercise a controlling influence over the management or policies of a person other than an individual.

## Summary of Facts and Representations<sup>5</sup>

### *Northern Trust Corporation (Northern)*

1. Northern 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.

### *Northern QPAMS*

2. Northern has several U.S. and non-U.S. affiliates that provide investment management services. The Northern affiliates that currently manage assets of plans subject to Part 4 of Title I of ERISA (i.e., an ERISA-covered plan) or Code section 4975 (i.e., an IRA; together, a Covered Plan),<sup>6</sup> collective investment trusts and other commingled funds on a discretionary basis, and that routinely rely on the QPAM Exemption to provide relief for party-in-interest transactions, are:

- *The Northern Trust Company* (the Bank) acts as trustee for plans subject to Title I of ERISA and IRAs and other accounts subject to ERISA or Code section 4975. The Bank also maintains ERISA-governed collective investment trusts and commingled vehicles for investment of plan assets.
- *Northern Trust Investments, Inc.* (NTI) is both an Illinois bank regulated by the Illinois Department of Financial and Professional Regulation and

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<sup>5</sup> The Summary of Facts and Representations is based on the Applicant's representations and does not reflect factual findings or opinions of the Department, unless indicated otherwise. The Department notes that the availability of this exemption, if granted, is subject to the express condition that the material facts and representations contained in the Application (D-12101) are true and complete, and accurately describe all material terms of the transactions covered by this exemption. If there is any material change in a transaction covered by this exemption, or in a material fact or representation described in the Application, the exemption will cease to apply as of the date of such change.

<sup>6</sup> In each case, a Covered Plan is an ERISA-covered plan or an IRA with respect to which Northern relies on PTE 84-14, or with respect to which Northern has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84-14 or the QPAM Exemption). A Covered Plan does not include an ERISA-covered plan or IRA to the extent that Northern has expressly disclaimed reliance on QPAM status or PTE 84-14 in entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA.

an investment adviser registered with the SEC under the Advisers Act with its principal office in Chicago, Illinois. NTI provides portfolio management services to corporations, public and private pension plans, Taft-Hartley plans, charitable institutions, foundations, endowments, municipalities, registered mutual funds, collective investment trusts, private investment funds, trust programs, individuals, wrap sponsors and other U.S. and international institutions. As of December 31, 2023, NTI manages discretionary assets of approximately \$1,017 billion, including ERISA and IRA assets.

- *50 South Capital Advisors, LLC* (50 South) is an investment adviser registered with the SEC under the Advisers Act, with its principal office in Chicago, Illinois. 50 South provides portfolio management services to pooled investment vehicles including plan asset funds. As of December 31, 2023, 50 South manages discretionary assets of nearly \$11.3 billion, including ERISA and IRA assets.
- *Northern Trust Securities, Inc.* (NTSI) is an investment advisor registered with the SEC under the Advisers Act with its principal office in Chicago, Illinois. NTSI provides portfolio management services to separately managed accounts. As of October 28, 2024, NTSI manages discretionary assets of approximately \$1.27 billion, including ERISA and IRA assets.

3. According to the Applicant, the Northern QPAMs rely on the QPAM Exemption for transaction that include, without limitation, global fixed income, global equities, futures, options, swaps and other derivatives, investments made by alternative plan asset funds, including hedge funds, and similar instruments and strategies. The issuing documents for many instruments state that the investment manager is deemed to represent that it is relying, at least partially, on PTE 84–14. The four QPAMs described

above, and any future manager affiliated with Northern that relies on the exemptive relief provided in PTE 84-14 with respect to any Covered Plan, are hereinafter referred to as the “Northern QPAMs.”

*The Convicted Entity: NTFS*

4. Northern has an indirect wholly owned subsidiary, Northern, NTFS, that is a limited liability company organized under the laws of Guernsey. NTFS provides a wide range of services, including trust and fiduciary services, to a global client base that includes institutional clients (such as non-U.S. thrift savings and pension trusts of large corporations) and private ultra-high net worth individual or family office clients/trusts. 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 holding companies hold assets which could include cash, marketable securities, privately held companies, art, real estate and other property. With respect to non-U.S. thrift savings and pension trusts, NTFS may be appointed as trustee and responsible for: (i) payments to beneficiaries of the trust (i.e., employees of the company funding the trust); and (ii) auditing the trust using external auditor(s) and providing annual tax filings (depending on domicile). The Applicant represents that NTFS does not act as a “qualified professional asset manager” (QPAM) or otherwise provide investment management services to any accounts subject to ERISA or Code section 4975 and does not act as a fiduciary to any ERISA plan or IRA.

5. NTFS operates based on internal policies and procedures of Northern and is subject to internal audits 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 Appointment Committee for consideration of new or existing business, a Fiduciary Committee for the review of the companies' fiduciary activities and for consideration of the exercise of discretionary powers by NTFS as trustee and a Risk Committee for consideration and management of risks.

*ERISA and Code Prohibited Transactions and PTE 84-14*

6. The rules set forth in ERISA section 406 proscribe certain “prohibited transactions” between plans and parties in interest with respect to those plans. ERISA section 3(14) defines parties in interest with respect to a plan to include, among others, the plan fiduciary, a sponsoring employer of the plan, a union whose members are covered by the plan, service providers with respect to the plan, and certain of their affiliates.<sup>7</sup> The transactions prohibited by ERISA section 406(a) prohibit that are relevant to this proposed exemption are (1) sales, leases, loans, or the provision of services between a party in interest and a plan (or an entity whose assets are deemed to constitute the assets of a plan), (2) the use of plan assets by or for the benefit of a party in interest, or (3) a transfer of plan assets to a party in interest.<sup>8</sup>

7. ERISA section 408(a) gives the Department the authority to grant an exemption from such “prohibited transactions” if the Department finds an exemption is: (a) administratively feasible for the Department; (b) in the interests of the plan and of its participants and beneficiaries; and (c) protective of the rights of participants and beneficiaries.

8. PTE 84-14 exempts certain prohibited transactions between a party in interest and an “investment fund” (as defined in section VI(b) of PTE 84-14) in which a plan has

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<sup>7</sup> Under the Code, such parties, or similar parties, are referred to as “disqualified persons.”

<sup>8</sup> The prohibited transaction provisions also include certain fiduciary prohibited transactions under ERISA section 406(b). These include transactions involving fiduciary self-dealing, fiduciary conflicts of interest, and kickbacks to fiduciaries.

an interest if the investment manager satisfies the definition of “qualified professional asset manager” (QPAM) and satisfies additional conditions of the exemption.<sup>9</sup> PTE 84-14 was developed and granted based on the 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>10</sup>

9. 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 the QPAM Exemption for itself and its client plans if that entity, an “affiliate” thereof, or any direct or indirect five percent or more owner of the QPAM has been either convicted or released from imprisonment, whichever is later, because of criminal activity described in section I(g), or otherwise violates section I(g), within the 10 years immediately preceding a transaction. section I(g) was included in PTE 84-14, in part, based on the Department’s expectation that QPAMs, and those who may be in a position to influence the QPAM’s policies, must maintain a high standard of integrity.<sup>11</sup>

#### *Investigation for Tax Fraud*

10. In 2010 and 2011, 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, fraudulent organization of insolvency, forgery and/or tax evasion in connection with their decision not to include trust assets in French tax

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<sup>9</sup> PTE 84-14 was recently amended, effective June 17, 2024 to among other things, (1) require a QPAM to provide a one-time notice to the Department that the QPAM is relying upon the exemption; (2) update the list of crimes enumerated under section I(g) to explicitly include foreign crimes that are substantially equivalent to the listed crimes; (3) expand the circumstances that may lead to ineligibility; and (4) provide a one-year transition period to help Covered Plans avoid or minimize possible negative impacts of terminating or switching QPAMs or adjusting asset management arrangements when a QPAM becomes ineligible pursuant to section I(g) and allow QPAMs a reasonable period of time to seek an individual exemption, if appropriate. See 89 FR 23090 (April 3, 2024).

<sup>10</sup> See 75 FR 38837, 38839 (July 6, 2010).

<sup>11</sup> See 47 FR 56947 (December 21, 1982).

filings made following Daniel Wildenstein's death in 2001. NTFS, as successor trustee to the trusts, was itself investigated by French prosecutors.<sup>12</sup>

11. 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 charged the Wildensteins 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, was 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 complicity in the Wildensteins' 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: 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.

12. As described in the Referral Order, on February 23, 1989, Daniel Wildenstein established two trusts in Bermuda, the Sons Trust and the David Trust with 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. Baring Brothers (Guernsey) Limited replaced Bermuda Trust Company Limited as the trustee in 1990, and it was itself replaced as

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<sup>12</sup> In September 1999, Baring Trustees became the trustee of these two trusts. Baring Trustees was acquired by Northern on March 31, 2005, and became NTFS by change of name effective on August 31, 2005. With respect to these trusts, the Applicant states that NTFS was a directed trustee; as such, it was not involved in the settlement of the trusts and was not involved in any of the family's tax matters.

trustee in September 1999 by Baring Trustees (Guernsey) Limited (Baring Trustees). The Applicant states that, only in 2005, following the purchase of Baring Asset Management's Financial Services Group (including Baring Trustees) by the Northern Trust Corp, did Baring Trustees become Northern Trust Fiduciary Services (Guernsey) Limited.

13. On October 21, 2001, Daniel Wildenstein died in Paris. On April 28, 2002, the Wildensteins filed an inheritance tax statement in relation to their father Daniel Wildenstein's estate in France. The statement did not identify the Sons Trust and the David Trust or the assets held by these trusts. The Referral Order provides that the Sons Trust and David Trust, as well as their assets, should have been disclosed in the inheritance tax statement, because the trusts were non-discretionary. The Referral Order provides that that these assets in the Sons Trust and the David Trust are subject to French taxes, and that an inheritance tax would have been imposed on these assets. In this regard, the Referral Order provides:

- The assets placed within the trusts were held by companies. The trusts hold a securities interest in these companies, but 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 in some respects 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.

14. 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 by concealing a portion of the sums subject to French estate taxes owed by the Wildensteins.<sup>13</sup>

*PTE 2016-11*

15. The trial commenced on January 4, 2016. Due to the possibility of a conviction that would lead to the loss of the Northern QPAMs' ability to rely on PTE 84-14, the Applicant applied for and received a temporary one year exemption from the Department effective as of the date of 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.<sup>14</sup> The Department granted PTE 2016-11 to protect Covered Plans from the harm that could result from the Northern 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.

16. On January 12, 2017, the Criminal Court of Paris acquitted all prosecuted parties, including NTFS. The Paris District Court's verdict was appealed by the French government to the Paris Court of Appeal. Because NTFS was not convicted, the "Effective Date" under PTE 2016-11 did not occur. On June 29, 2018, following a retrial in March 2018, the Paris Court of Appeal upheld the District Court's acquittal of all prosecuted parties.<sup>15</sup> The French government appealed again to the Court of Cassation,

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<sup>13</sup> As described above, the Applicant notes that Baring Trustees was the trustee of the Sons and David Trust until 2005.

<sup>14</sup> PTE 2016-11, 81 FR 75150, 75152 (October 28, 2016). "Conviction Date" was defined, in relevant part, to mean the date a judgment was rendered against NTFS in the District Court of Paris, French Special Prosecutor No. 1120392066, French Investigative Judge No. JIRSIF/11/12.

<sup>15</sup> The Court of Appeals found that the offenses were time-barred and that there was no legal basis for the offense of tax fraud in relation to the Wildensteins' inheritance.

the highest court in France. In January 2021 the Court of Cassation quashed the appellate court's judgment.<sup>16</sup> From September to October 2023, the case was tried a third time, in front of a different panel of the Paris Court of Appeal.

17. Ultimately, on March 5, 2024, the Paris Court of Appeal rendered a judgment of conviction (the Conviction) against all defendants, including NTFS. NTFS was ordered by the court to pay a fine of €187,500 in conjunction with the judgment. The Applicant represents that the US dollar equivalent of this fine is \$203,445 as of March 5, 2024, and \$204,197 as of November 5, 2024.<sup>17</sup>

18. When the Paris Court of Appeal rendered a judgment of Conviction against NTFS, PTE 84-14 section I(g) was triggered.<sup>18</sup> PTE 2016-11 was technically inapplicable because its definition of "Conviction" referred to the District Court of Paris, instead of the Paris Court of Appeal, and did not include that the judgment of conviction could be entered by another court of competent jurisdiction.<sup>19</sup>

19. On April 4, 2024, the Department issued a technical correction to PTE 2016-11.<sup>20</sup> The technical correction changed the definition of the term "Conviction" in PTE 2016-11 by replacing "the District Court of Paris, French Special Prosecutor No. 1120392066, French Investigative Judge No. JIRSIF/11/12" with "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, is

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<sup>16</sup> The Court of Cassation found: (1) that the offenses were not time barred and (2) that there was a legal obligation under French law to declare assets held in certain (but not all) types of trusts. Namely, the legal requirement to declare trust assets applies to trusts where the settlor had not divested themselves of the trust assets during their lifetime.

<sup>17</sup> The Applicant represents that it used the currency converter from Oanda FX Data Services, located at <https://www.oanda.com/currency-converter/en/> to calculate these figures.

<sup>18</sup> On March 5, 2024, NTFS appealed the verdict to the Court of Cassation. According to the Applicant, under French law, until the Conviction is final, there is no conviction, and NTFS continues to be presumed innocent. The Applicant states that the judgment, as well as its effects including the fine and joint and several liability, will be stayed pending the outcome of the appeal. However, under section I(g) of PTE 84-14 as in effect on the date of the Conviction, "... a person shall be deemed to have been "convicted" from the date of the judgment of the trial court, regardless of whether that judgment remains under appeal."

<sup>19</sup> See 81 FR 75152 (October 28, 2016).

<sup>20</sup> See 89 FR 23612.

effective for a period of one year from the date of the Conviction, ending March 4, 2025. The one-year exemption gives the Department time to consider whether a longer term (5 years) exemption is appropriate based on the facts of the conviction and to more fully develop the record upon which relief, if any, would be based. Upon the expiration of the one-year exemption on March 4, 2025, the Applicant cannot rely on the QPAM Exemption without this five-year relief, regardless of whether or not the Applicant appeals the judgment of Conviction.

*This Exemption Request:*

20. The Applicant requests exemptive relief that would permit the Northern QPAMs to continue to rely on the relief provided by the QPAM Exemption, notwithstanding the disqualifying conviction, for the remaining nine-year period of disqualification upon the expiration of PTE 2016-11. The Department has determined to propose relief for five years, beginning on March 5, 2025, and ending on March 4, 2030, so that it may reevaluate the effectiveness of the protective conditions for relief as well as whether the QPAMs, and those in position to influence them, have continued to maintain a high standard of integrity.

21. According to the Applicant, the Northern QPAMs' investment management business operations are separate from NTFS, and from the activities of NTFS that are the subject of criminal charges under French law.<sup>21</sup> The Northern QPAMs have dedicated systems, management, risk and compliance officers, that are separate from and independent of NTFS. 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

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<sup>21</sup> As described below, the conditions for relief provide that no investment management services may be provided by NTFS to ERISA-covered plans or IRAs.

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 Northern QPAMs. The Applicant also maintains an employee hotline for employees to express any concerns of wrongdoing anonymously.

22. The Applicant represents that no NTFS employees (or former employees of Baring Trustees) 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 was a former employee of Baring Trustees who was not charged in the French proceeding and who left NTFS in January 2006, shortly after the acquisition. Further, the Applicant represents that all personnel involved in working on the Wildenstein accounts, regardless of whether they were implicated in the conduct that became the subject of the Conviction, either left Baring Trustees prior to its acquisition by NTFS in 2005 or shortly thereafter, and none of these persons is employed by NTFS or other Northern affiliates today.

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

24. The Applicant represents that new policies, procedures and training came into effect since Northern's acquisition of Baring Trustees in 2005. Upon becoming a part of the Northern organization, Baring Trustees 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 conduct underlying the charges against NTFS.

25. The Applicant further represents that resources dedicated to maintaining risk and compliance procedures have been enhanced significantly since Northern's acquisition of Baring Trustees 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 (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.

26. The Applicant represents that it maintains a system of internal controls to ensure ongoing compliance with AML and know-your-client (KYC) related regulations. 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 Minimum Standards for Customer Due Diligence for its clients as a critical part of its Global AML/Economic Sanctions Compliance Program.

27. 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.

### *Hardship to Covered Plans*

28. *Overview of loss of QPAM.* The Applicant represents that without the ability to use PTE 84-14 (i.e., the QPAM Exemption), it would be difficult for Northern and its affiliates that currently manage the assets of Covered Plans, collective investment trusts and other commingled funds, on a discretionary basis, to efficiently engage in a variety of routine transactions on behalf of Covered Plan clients with counterparties, because many such counterparties could be a service provider to such Covered Plans. The Applicant states that counterparties are familiar and comfortable with PTE 84-14, as it is generally the most commonly used prohibited transaction exemption for asset managers of ERISA covered Plans or IRAs. The Applicant states that market participants, both clients and counterparties, routinely expect an investment manager of Covered Plan clients to represent that it qualifies as a QPAM — even if such a representation may not technically be required in a particular circumstance or for a particular transaction.

29. The Applicant represents that Northern QPAMs have entered into and could enter into contracts in the future that require the Northern QPAMs to meet the conditions in PTE 84-14 on behalf of Covered Plan clients and on behalf of collective trusts and other funds subject to ERISA. These contracts include contracts entered into by Northern QPAMs on behalf of or as investment adviser for 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 (both foreign and domestic, both registered and issued pursuant to Rule 144A or otherwise); asset-backed securities, commodities, real estate financing and leasing arrangements; and certain derivative transactions (e.g., futures, forwards, swaps, and options). The Applicant states that loss of the Northern QPAMs' ability to rely upon PTE 84-14 could cause considerable harm to Covered Plan clients. For example, the Applicant states that counterparties could seek to

terminate existing contracts, and certain derivative transactions and other contractual agreements could terminate automatically and immediately without notice or action.

30. In addition, the Applicant represents that its Covered Plan clients that continue to retain the Northern QPAMs could be prohibited from engaging in certain transactions that would be beneficial to such Covered Plan clients on a going forward basis, such as hedging transactions using over-the-counter options or derivatives or certain fixed income transactions (e.g., 144A debt securities).<sup>22</sup> The Applicant states that it is unable to quantify the harm to Covered Plans for not being able to engage in hedging transactions or invest in certain fixed income products. Nonetheless, the Applicant represents that these types of transactions are key to managing both risk and returns of a given investment portfolio.<sup>23</sup> Further, the Applicant states that even if other exemptions were acceptable to such counterparties, the cost of the transaction could increase to reflect the increased risk of compliance with respect to new exemptions that are unfamiliar to counterparties, to the detriment of Covered Plan clients.<sup>24</sup>

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<sup>22</sup> Rule 144A of the Securities Act of 1933, as amended (the "Securities Act") provides a safe harbor from the registration requirements of the Securities Act of 1933 for certain private resales of certain securities, including foreign securities, to qualified institutional buyers (QIBs), which generally are large institutional investors that own at least \$100 million in investable assets.

<sup>23</sup> The Applicant states that a common reason to engage in hedging transactions and fixed income transactions, and why the inability to engage in these transactions could be specifically harmful to Covered Plans, would be to provide protection against market risk, where fixed income and hedging transactions are used to manage unknown risks of interest rate fluctuation and market volatility for a specific period of time, while providing a specified return. The Applicant represents that it is not able to quantify the potential harms to Covered Plans if relief for these transactions are no longer available, because the market risks are unknown. The Applicant states that another reason to engage in hedging and fixed income transactions would be to address circumstances where there are limited available securities, such as the use of hedging transactions where a Covered Plan has long-term liabilities, and there are insufficient long-term, fixed-income securities available in the marketplace to provide the required returns over the specified period. The Applicant states that it is not able to ascertain which long-term, fixed-income securities will have limited availability at any given time, and thus the Applicant is not able to quantify the potential harms to Covered Plans.

<sup>24</sup> The Applicant represents that historically, counterparties engaging in certain hedging and securitized transactions have required that Covered Plans be able to rely on the QPAM Exemption in connection with such transactions. Further, the Applicant states that generally, counterparties to a Covered Plan have not agreed to allow the Covered Plan to rely on other potentially available prohibited transaction exemptions (e.g., ERISA section 408(b)(17)) because of the perceived risk related to satisfying the conditions of such other prohibited transaction exemptions. The Applicant states that if it were unable to use the QPAM Exemption in such transactions, it expects that the counterparties who view prohibited transaction exemptions (other than the QPAM Exemption) to be riskier could (a) increase the costs of such transactions to reflect the increased compliance risk or (b) not engage in such transactions with Covered Plans at all.

31. *Overview of Costs.* The Applicant represents that if the Department does not grant the requested exemption, fiduciaries of Covered Plan clients may seek other investment managers, at significant disruption and cost to the Covered Plan clients and ultimately to their participants and beneficiaries. The Applicant states that these issues are described below:

- *Time:* The process of transitioning to a new investment manager is typically lengthy and would likely involve numerous steps each of which could last several months — including retaining a consultant, creating the requests for proposal, evaluating requests for proposal, meeting with prospective investment managers, negotiating contracts and ultimately transitioning assets.
- *Costs:* There are various costs involved in transitioning to a new investment manager.<sup>25</sup> Some of those costs are described in more detail below.
- *Investment consultant costs:* Covered Plans generally incur tens of thousands of dollars in consulting fees in connection with searching for and transitioning to a new investment manager. The costs depend on numerous factors, including the consultants retained, as well as the strategy and/or purpose for which they are being retained. Costs are estimated as follows<sup>26</sup>:
  - \$25,000 to \$75,000 for the replacement of an individual manager or single investment product, or
  - \$30,000 to \$100,000 for the replacement of an “outsourced chief investment officer” (OCIO) or “manager of managers.” The Applicant states that Northern currently has 47 OCIO clients that

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The Applicant states that because this harm is counterparty dependent, the Applicant is unable to quantify the potential harm to Covered Plans.

<sup>25</sup> Notwithstanding that the Applicant’s representations regarding certain costs to Covered Plans if Northern QPAMs are unable to rely on PTE 84-14, the proposed exemption would require the Northern QPAMs to indemnify Covered Plans for “actual losses” that include transition costs. See discussion below.

<sup>26</sup> The Applicant states that these estimates are based on Northern’s general industry knowledge.

would presumably select another investment manager should the Northern QPAMs no longer be able to rely on the QPAM Exemption

- *Legal costs:* Covered Plans generally incur tens of thousands of dollars in legal fees in connection with transitioning to a new investment manager. The costs depend on numerous factors, including the billing rate, the ability to negotiate and the complexity of the agreement. Assuming a \$1,000 blended legal rate (and ignoring any potential alternative fee arrangements), legal costs are estimated to range from \$5,000 to \$30,000 to transition to a new investment manager. Legal costs with respect to alternative investments can range from \$15,000 to \$150,000 per investment, depending on the type of alternative investment and the law firm retained.
- *Investing costs:* The investing costs, or the costs of selling and reinvesting a Covered Plan's assets, differ based on the asset class, as further described below.

32. *Costs Relating to Transitioning an Equity Portfolio.* The Applicant states that trading costs related to an equity portfolio consist of explicit fees and implicit costs. The Applicant states that explicit fees include stamp and exchange fees and commissions. The Applicant also states that implicit costs include bid-ask spreads of assets traded on a principal basis.

33. The Applicant represents that it estimates the costs of transitioning the equity investment portfolio, categorized by geography of equity, as follows:<sup>27</sup>

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<sup>27</sup> The Applicant states that these estimates are its internal calculations based on the estimated size of the notional portfolio multiplied by the estimated basis points. In this regard, the Applicant states that trade-related costs were calculated based on the total asset size of equity collective investment funds of \$279 billion. The Applicant states that there is an additional \$40 billion of assets invested in Northern QPAMs common funds and through separately managed accounts. In addition, the Applicant states that the "Total Trading-Related Cost" figures do not include potential volatility costs, and there could be unknown additional expenses if clients are out of the market for a period of time. Further, the Applicant states that "Commissions" are \$0.05 per share for U.S. securities and 1.5 basis points for non-U.S. securities.

Geography of Equity	Explicit Fees		Implicit Costs	Total Trading-Related Costs
	Stamp and Exchange Fees	Commissions	Bid Ask Spread	
US	\$5,426,400	\$14,000,000	\$178,500,000	\$197,926,400
Americas (excluding US)	\$226,540	\$701,017	\$3,619,000	\$4,546,557
EMEA	\$460,460	\$4,265,763	\$19,162,000	\$23,888,223
APAC	\$20,326,130	\$3,833,220	\$27,499,000	\$51,658,350

34. Additionally, the Applicant states that many Covered Plan clients employ a transition manager for large asset movements. The Applicant states that in such cases, the following transition management costs could apply to the following portfolio types:<sup>28</sup>

Class of Equity	Costs
US	\$230,257,370
Emerging Markets	\$47,624,262
Global (excluding US)	\$298,687,332
Global	\$1,489,917

35. *Costs Relating to Transitioning a Fixed Income Portfolio.* The Applicant states that trading-related costs relating to a fixed income portfolio transition are implicit costs. The Applicant states that it estimates that the costs of transitioning the fixed income investment portfolio categorized by whether the type of fixed income has low trading costs or high trading costs, are as follows:<sup>29</sup>

Class of Fixed Income <sup>30</sup>	Total Trading-Related Costs
Low Trading Costs Portfolio	\$54,520,000

<sup>28</sup> The Applicant states that these figures are internal calculations based on the estimated size of the notional portfolio multiplied by the estimated basis points. The Applicant states that the “Costs” are measured in terms of implementation shortfall, which measures the difference between the decision price and the net execution price (including commissions, fees, etc.).

<sup>29</sup> Trading-related costs were calculated based on the total asset size of fixed income collective investment funds of \$127 billion, and by categorizing the portfolios into lower trading costs portfolios with total trading costs below 0.10% and higher trading cost portfolios with total trading costs exceeding 0.10%. The Applicant states that there is an additional \$11 billion of Covered Plan assets invested in Northern QPAM’s common funds and through separately managed accounts.

<sup>30</sup> The Applicant states that low trading costs portfolios include investment grade bonds and emerging market sovereign debt, while high trading cost portfolios include leverage finance and emerging market corporate debt.

Higher Trading Costs Portfolio	\$33,250,000
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36. *Costs Relating to Transitioning an Alternative Investment (Private Equity and Hedge) Portfolio.* The Applicant states that 50 South provides discretionary asset management services to six ERISA accounts through funds of one and pooled funds subject to ERISA.<sup>31</sup> The Applicant states that each of the two largest ERISA accounts managed by 50 South has \$150 million attributable to Covered Plan clients. In total, the Applicant states that Covered Plan clients own \$519 million of assets under management within these 50 South-managed ERISA accounts.

37. The Applicant states that Covered Plan clients expend between six and eighteen months to select alternative investment managers. When new investment managers are finally selected, Covered Plans may be forced to sell their holdings in the Applicant's funds on the secondary market. The Applicant states that there are unique transaction costs relating to private equity fund-of-funds that are sold on the secondary market. The Applicant states that because interests in private funds are not available on the public markets, Covered Plans typically engage specialized investment banks to run auction processes to sell private equity holdings. The Applicant states that the use of an investment bank ensures transparent price discovery and price maximization for the assets, consistent with the fiduciary requirements for Covered Plans. The Applicant states that investment banks typically charge an advisory fee equal to 50 to 200 basis points of the total exposure sold on the secondary market, which could result in costs ranging from \$2,121,708 to \$8,486,830 for Covered Plan clients investing in 50 South's applicable funds. The Applicant states that in addition to the direct transaction expenses typically associated with a secondary sale, sellers of private equity fund-of-funds typically experience a 22.5% to 30% discount on net asset value for the early liquidation, which

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<sup>31</sup> 50 South also provides discretionary and asset management services to other non-ERISA accounts.

could result in an economic loss ranging from \$49,319,123 to \$65,758,831 for Covered Plan clients investing in 50 South's applicable funds.

38. *Other Disruptions:* The Applicant states that in some cases, Covered Plan clients may find it difficult to transition to a new investment manager, specifically with respect to certain strategies. The Applicant states that below are examples of such disruptions.

- *Pooled Funds:* The 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 such pooled funds. In this regard, the Applicant states that pooled funds incur both fixed and variable expenses. The Applicant represents that unlike variable expenses, fixed expenses (e.g., accounting, regulatory and legal fees) remain the same regardless of the amount of assets in the pooled fund. The Applicant states that such fixed expenses are shared amongst the investors in the Covered Plans. Therefore, the Applicant states that if some, but not all, Covered Plan investors seek to withdraw from a pooled fund, the remaining investors will bear a greater portion of the fixed expenses. The Applicant states that because it cannot anticipate the extent to which Covered Plan investors will withdraw, it cannot quantify this harm with specificity.
- *Opening Custody Accounts:* When an investment manager is hired to manage a separately managed account, it will need to open custody accounts in applicable jurisdictions. There are several jurisdictions where it can take a considerable amount of time to open

custody accounts (e.g., India). There are other jurisdictions where it may not be possible to open a new custody account. In this regard, the Applicant states that during the time period in which a Covered Plan is opening a new custody account (the lapse period), such Covered Plan may not be able to be invested in accordance with the Covered Plan's chosen investment strategy. The Applicant states that the potential harm cannot be quantified because it would require the Applicant to predict and compare the investment returns of (x) the securities that the Covered Plan actually invests during the lapse period, with (y) the alternative securities in which the Covered Plan desired to invest during the lapse period. The Applicant state that these are forward-looking variables over which the Applicant has no control.

**Department's Request for Comment and Notes Regarding Harms to Plans in Paragraphs 31 through 38:**

The Department requests the Applicant to provide a clear description regarding their estimates of costs to Covered Plans in its comment letter. In this regard, the Applicant should describe:

- (1) the amount of Covered Plan assets that are likely to be subject to the costs described above and an explanation of the Applicant's assumptions or methodologies in connection with such figures. For example: "50% of the Covered Plan assets will be likely to incur such costs because...."
- (2) the likelihood of the costs occurring, for each of the transition costs described above. For example: with respect to Covered Plans' Alternative Investments, how likely are Covered Plans to leave Northern Trust for a different manager; with respect to violating representations as to QPAM status in an offering document, the Applicant should provide information regarding how likely that is to occur; etc.
- (3) the circumstances under which the transition costs described in the tables above are being incurred (e.g., are these transition costs that the Applicant contends would be incurred by Covered Plans to remedy contractual violations due to loss of QPAM status, costs due to Covered Plans seeking to use a different investment manager that can rely on QPAM, etc.).

- (4) the extent to which any of the asserted costs reflect the QPAMs' imposition of additional charges or fees on Covered Plans resulting from the loss of QPAM status, and the cause of such additional charges or fees.
- (5) an explanation of the extent to which the costs described herein are not likely to be covered by the QPAMs indemnification obligations under section III(j)(2), described in more detail below, and an explanation why such costs are not attributable to the Applicant's violation of exemption conditions.

Condition (j)(2) of the proposed exemption requires Northern QPAMs to "indemnify and hold harmless" Covered Plans for "actual losses resulting directly from the Northern QPAM's violation of any conditions of this exemption, an Northern QPAM's violation of ERISA's fiduciary duties, as applicable, and of the prohibited transaction provisions of ERISA and the Code, as applicable; a breach of contract by the Northern QPAM; 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." Furthermore, the Department notes that, to the extent Covered Plans "feel forced" to transition to new asset managers because the Northern QPAMs can no longer rely on PTE 84-14, the liquidation and additional costs arising from the transition constitute actual losses resulting directly from the failure of such QPAM to qualify for the exemptive relief provided by PTE 84-14 as a result of violation of section I(g) of PTE 84-14. If a plan's fiduciary is compelled to replace a Northern asset manager as a result of a violation of section I(g) and the asset manager's loss of QPAM status, the affected plan is entitled to indemnification of its associated losses, including the transitional expenses necessary to effectuate the switch to a qualified QPAM.

#### *The Exemption's Protective Conditions*

39. This proposed exemption contains conditions that are similar to the conditions in the Department's recent exemptions from the prohibitions of section I(g) of PTE 84-14. The Department is able to make its findings under ERISA section 408(a) only with the imposition of these conditions, and only if every condition is adhered to in

good faith by the Applicant and the Northern QPAMs.<sup>32</sup> Several of this proposed exemption's conditions are designed to ensure that the Northern QPAMs were not involved in the conduct that gave rise to the Conviction. Accordingly, this proposal does not provide prohibited transaction relief if the Northern QPAMs knew of, had reason to know of, participated in, approved of, or profited from the conduct that gave rise to the Conviction.<sup>33</sup> No other party engaged on behalf of the Northern QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets may have known or have had reason to know of, and did not participate in, the criminal conduct that is the subject of the Conviction.<sup>34</sup> Nor is relief available if a Northern QPAM exercised any authority over plan assets in a manner that it knew or should have known would further the criminal conduct that is the subject of the Conviction or cause the Northern QPAM or its affiliates to directly or indirectly profit from the criminal conduct that is the subject of the Conviction.

40. Further, the Northern QPAMs may not employ or knowingly engage any of the individuals that participated in the criminal conduct attributable to the Conviction.<sup>35</sup> The Northern QPAMs (including their officers, directors, agents other than NTFS, and employees of such Northern QPAMs), any other party engaged on behalf of the Northern QPAMs who had responsibility for, or exercised authority in connection with, the management of plan assets, must not have received direct compensation or knowingly received indirect compensation in connection with the criminal conduct that is the subject of the Conviction.

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<sup>32</sup> This preamble contains a general description of the conditions for the benefit of the reader. See the operative conditions below for more detail. In the event of any inconsistency between the description in this preamble and the operative conditions contained below, the operative conditions are controlling.

<sup>33</sup> For clarity, references to the Northern QPAMs include their officers, directors, agents other than NTFS, and employees of such QPAMs.

<sup>34</sup> "Participate in" for purposes of the conditions refers not only to active participation in the misconduct of NTFS that is the subject of the Conviction, but also includes the knowing or tacit approval of the misconduct underlying the Conviction or knowledge of such conduct without taking active steps to prohibit it, including reporting the conduct to such individual's supervisors, and to Northern's board of directors.

<sup>35</sup> 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.

41. The proposal further provides that no Northern QPAM will use its authority or influence to direct an “investment fund” that is subject to ERISA or the Code and managed by such Northern QPAM in reliance on PTE 84-14, or with respect to which a Northern QPAM has expressly represented to a Covered Plan that it qualifies as a QPAM or relies on PTE 84-14, to enter into any transaction with 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.

42. If the Department grants this exemption, it will terminate immediately if an affiliate of the Northern QPAM (as defined in section VI(d) of PTE 84-14) violates section I(g) of PTE 84-14 (other than with respect to the Conviction). Also, NTFS may not act as a fiduciary within the meaning of ERISA section 3(21)(A)(i) or (iii), or Code section 4975(e)(3)(A) and (C), with respect to Covered Plan assets.

43. The proposed exemption requires each Northern QPAM to implement and follow certain written policies and (the Policies). The Policies must require and be reasonably designed to ensure, among other things, that: (i) the Northern QPAMs’ asset management decisions are conducted independently of the management and business activities of Northern, including NTFS and Northern’s non-asset management affiliates; (ii) the Northern QPAMs fully comply with ERISA’s fiduciary duties and with ERISA and the Code’s prohibited transaction provisions, as applicable with respect to each Covered Plan; (iii) the Northern QPAMs do not knowingly participate in any other person’s violation of ERISA or the Code with respect to Covered Plans; (iv) any filings or statements made by the Northern QPAMs to regulators on behalf of or in relation to Covered Plans are materially accurate and complete; (v) the Northern QPAMs do not make material misrepresentations or omit material information in communications with such regulators with respect to Covered Plans; (vi) the Northern QPAMs comply with the

terms of the exemption; and (vii) any violation of or failure to comply with any of these items is corrected promptly upon discovery, and any such violation or compliance failure not so corrected must be reported in writing to appropriate corporate officers, the head of compliance and the QPAM's general counsel (or their functional equivalent) of the relevant Northern QPAM, and an appropriate fiduciary of any affected Covered Plan where such fiduciary is independent of Northern.<sup>36</sup>

44. This proposed exemption mandates training (Training) conducted at least annually during the Exemption Period. In this regard, all relevant Northern QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel must be trained during the Exemption Period. Among other things, the Training must cover at a minimum, the Policies, ERISA and Code compliance, ethical conduct, the consequences for not complying with the exemption conditions (including any loss of the exemptive relief provided herein) and the requirement for prompt reporting of wrongdoing. The Training may be conducted electronically and must be conducted by a professional who has been prudently selected and has appropriate technical training and proficiency with ERISA and the Code.

45. Under this proposed exemption each Northern QPAM must submit to an audit conducted every two years by an independent auditor, which covers the prior consecutive 12 months. Among other things, the auditor must test a sample of each Northern QPAM's transactions involving Covered Plans that are sufficient in size, number and nature to afford the auditor a reasonable basis to determine such QPAM's operational compliance with the Policies and Training. The auditor's conclusions cannot be based solely on the written report created by the Compliance Officer (the Exemption

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<sup>36</sup> 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 when discovered or when it reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements described herein.

Report), described below, in lieu of independent determinations and testing performed by the auditor.

46. The written report issued by the auditor (the Audit Report) must be certified by the respective general counsel or one of the three most senior executive officers of the line of business engaged in discretionary asset management services through the Northern QPAM with respect to which the Audit Report applies. A copy of the Audit Report must be provided to Northern's Board of Directors. A senior executive officer who has a direct reporting line to Northern's highest ranking legal compliance officer must review the Audit Report for each Northern QPAM and certify in writing and under penalty of perjury that such officer has reviewed each Audit Report.

47. This proposed exemption requires the Northern QPAM to agree and warrant with respect to any arrangement, agreement, or contract between a Northern QPAM and a Covered Plan that, throughout the effective period of the exemption, the Northern QPAM will: (i) comply with ERISA and the Code, as applicable with respect to the Covered Plan; (ii) refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any prohibited transactions); and (iii) comply with the standards of prudence and loyalty set forth in ERISA section 404 with respect to each such ERISA-covered plan. Each Northern QPAM must also agree and warrant to indemnify and hold harmless the Covered Plan for any actual losses resulting directly from any of the following: (a) a Northern QPAM's violation of any conditions of this exemption; (b) a Northern QPAM's violation of ERISA's fiduciary duties and/or the prohibited transaction provisions of ERISA and the Code as applicable; (c) a breach of contract by the Northern QPAM; or (d) any claim arising out of the failure of the Northern QPAM to qualify for the exemptive relief provided by PTE 84-14 as a result of a violation of section I(g) of the exemption other than the Conviction. This condition applies to actual losses caused by the Northern QPAM, including but not limited to losses and related costs arising from

unwinding transactions with third parties and from transitioning Plan assets to an alternative asset manager as well as costs associated with any exposure to excise taxes under Code section 4975 because of a Northern QPAM's inability to rely upon the relief in the QPAM Exemption. The definition of "actual losses" used in this proposed exemption allows fiduciaries of Covered Plans to prudently manage and make the best decisions on behalf of their plans without needing to consider the costs caused by a Northern QPAM's or its affiliate's misconduct, including costs associated with unwinding transactions and transitioning plan assets to a new asset manager, because these costs will be borne by the Northern QPAM and not the Covered Plan.<sup>37</sup>

48. The proposed exemption also requires the Northern QPAM to agree and warrant with respect to any arrangement, agreement, or contract between a Northern QPAM and a Covered Plan that it will not require or cause the Covered Plan to waive, limit, or qualify the liability of the Northern QPAM for violating ERISA or the Code or engaging in prohibited transactions; restrict a Covered Plan from terminating or withdrawing from its arrangement with the Northern QPAM, with the exception of reasonable restrictions 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; impose fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees specifically designed to prevent abusive investment practices or ensure equitable treatment of all investors in a pooled fund; or generally include exculpatory provisions disclaiming or otherwise limiting the liability of the Northern QPAM for a violation of such agreement's terms.

49. This proposed exemption contains specific notice requirements. Each Northern QPAM must provide a notice regarding the proposed exemption and a separate

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<sup>37</sup> The Department notes that with respect to the notice of obligations requirement in section III(j)(7), all Covered Plans must receive a notice that includes the definition of actual losses as provided in section III(j)(2) of this proposed exemption.

summary describing the facts that led to each Conviction (the Summary), which must be submitted to the Department, and a prominently displayed statement (the Statement) that each Conviction results in a failure to meet a condition in PTE 84-14, to each sponsor and beneficial owner of a Covered Plan that entered into a written asset or investment management agreement with a Northern QPAM. The notice, Summary, and Statement must be provided before or contemporaneously with the client's receipt of a written asset management agreement from the Northern QPAM. If the Department grants an exemption, the clients must receive a *Federal Register* copy of the notice of final exemption within sixty (60) days of this exemption's effective date. The notice may be delivered electronically (including by an email containing a link to this exemption).

50. The proposed exemption requires each Northern QPAM to maintain records necessary to demonstrate that the exemption conditions have been met for six (6) years following the date of any transaction for which the Northern QPAM relies upon the relief provided in the exemption. The proposed exemption mandates that each Northern QPAM must designate a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. The Compliance Officer must conduct an exemption review (the Exemption Review) to determine the adequacy and effectiveness of the implementation of the Policies and Training. The Compliance Officer must be a professional with extensive relevant experience with a reporting line to the highest-ranking corporate officer in charge of legal compliance for asset management for the applicable Northern QPAM. At a minimum, the Exemption Review must include review of the following items: (i) any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer during the previous year; (ii) any material change in the relevant business activities of the Northern QPAMs; and (iii) any change to ERISA, the Code, or regulations that may be applicable to the activities of the Northern QPAMs.

51. The Compliance Officer must prepare a written report (i.e., the Exemption Report) that (A) summarizes their material activities during the effective period of the exemption; (B) sets forth any instance of noncompliance discovered, and any related corrective action; (C) details any change to the Policies or Training to guard against any similar instance of noncompliance occurring again; and (D) makes recommendations, as necessary, for additional training, procedures, monitoring, or additional and/or changed processes or systems, and management's actions in response to such recommendations. In each Exemption Report, the Compliance Officer must certify in writing that, among other things, to the best of their knowledge at the time, the report is accurate, and note whether the Northern QPAMs have complied with the Policies and Training, and/or corrected (or are correcting) any instances of noncompliance.

52. The Exemption Report must be (i) provided to the appropriate corporate officers of each Northern QPAM to which such report relates and to the head of compliance and the general counsel (or their functional equivalent) of the relevant Northern QPAM, and (ii) made unconditionally available to the independent auditor. The Exemption Review, including the Compliance Officer's written Exemption Report, must be completed within 90 days following the end of the period to which it relates.<sup>38</sup>

53. The proposed exemption also mandates that, within 60 days of the effective date of the exemption, each Northern QPAM clearly and promptly informs Covered Plan clients of their right to obtain a copy of the Policies or a description (the Summary Policies) which accurately summarizes key components of the Northern QPAM's written Policies developed in connection with this exemption. If the Policies are thereafter

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<sup>38</sup> The Department notes that section I(l) of PTE 2016-11 required Northern to disclose to the Department any Deferred Prosecution Agreement (DPA) or a Non-Prosecution Agreement (NPA) with the U.S. Department of Justice, entered into by Northern or any of its affiliates in connection with conduct described in section I(g) of PTE 84-14 and/or ERISA section 411; and provide the Department any information requested by the Department, as permitted by law. The Department has determined not to include the same condition in this proposed exemption, because a DPA or NPA is now included in the list of disqualifying events under section I(g) of PTE 84-14, effective as of June 17, 2024.

changed, each Covered Plan client must receive a new disclosure within 180 days following the end of the calendar year during which the Policies were changed.<sup>39</sup> With respect to this requirement, the description may be continuously maintained on a website, provided that such website's link to the Policies or Summary Policies is clearly and prominently disclosed to each Covered Plan.

54. Each Northern QPAM must impose its internal procedures, controls, and protocols to reduce the likelihood of any recurrence of conduct that is the subject of the Conviction, and each Northern QPAM must provide the Department with the records necessary to demonstrate that each condition of this exemption has been met within 30 days of a request by the Department. With respect to an asset manager that becomes an Northern QPAM after the effective date of the exemption by virtue of being acquired (in whole or in part) by Northern or a subsidiary or affiliate of Northern (a "newly-acquired Northern QPAM"), the newly-acquired Northern QPAM would not be precluded from relying on the exemptive relief provided by PTE 84-14 notwithstanding the Conviction as of the closing date for the acquisition; however, the operative terms of the exemption shall not apply to the newly-acquired Northern QPAM until a date that is six (6) months after the closing date for the acquisition. To that end, the newly acquired Northern QPAM will initially submit to an audit pursuant to section III(i) of this exemption as of the first audit period that begins following the closing date for the acquisition. The period covered by the audit must begin on the date on which the Northern QPAM was acquired.

55. Finally, all the material facts and representations set forth in the Summary of Facts and Representations must be true and accurate at all times.

*Statutory Findings – Administratively Feasible*

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<sup>39</sup> If the Applicant satisfies this disclosure requirement through Summary Policies, changes to the Policies will not require new disclosure to Covered Plans unless the Summary Policies are no longer accurate because of the changes.

56. The Department has tentatively determined that this proposed exemption would be administratively feasible because, among other things, a qualified independent auditor would be required to perform in-depth audit(s) covering each Northern QPAM's compliance with the exemption, and draft a corresponding written audit report that would be available to the public. The Department notes that the independent audit will provide an incentive for and a measure of compliance with the exemption conditions, while reducing the immediate need for review and oversight by the Department.

*Statutory Findings – In the Interests of the Covered Plans*

57. The Department has tentatively determined that the proposed exemption would be in the interests of the participants and beneficiaries of each affected Covered Plan because of the likely costs the plans would incur if the exemption were denied and the benefits of permitting plans to continue to rely upon the Northern QPAM's services with the additional protections set forth in this exemption.

*Statutory Findings – Protective of the Rights of Participants of the Covered Plans*

58. The Department has tentatively determined that this proposed exemption would be protective of Covered Plans. The exemption would be subject to a suite of protective conditions that the Department has determined provide ample protections for the rights of Covered Plans and their participants and beneficiaries that are managed by QPAMs that have experienced a disqualifying event similar to the one experienced by the Northern QPAMs. The Department notes, however, that in the event the Northern QPAMs become subject to another disqualifying event under PTE 84-14, the Department would be forced to reconsider whether relief is appropriate for the Northern QPAMs, and whether the conditions for relief hereunder are/were adequate to protect Covered Plans. The Department also takes note of the Applicant's representation that the criminal conduct relating to the Wildensteins occurred prior to the acquisition of Baring Trustees by Northern Trust, and that Baring Trustees, currently known as NTFS, is now subject to

Northern Trust's policies and compliance procedures. The Department further notes the Applicant's representation that no one involved in taking on the Wildenstein business or that had any dealings with such matters at the time of the misconduct described in the Conviction works for NTFS. In addition, under this proposed exemption, exemptive relief would begin on March 5, 2025, and it has a limited prospective term of five (5) years, which permits the Department to re-evaluate the Northern QPAMs' adherence to the condition for relief under this exemption, and to determine whether or not to continue to provide the relief hereunder.

### *Summary*

59. 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 ERISA section 408(a) and Code section 4975(c)(2). The proposed exemption provides relief from certain of the restrictions set forth in section 406 and 407 of ERISA. The proposed exemption does not provide relief from any other violation of law, including any criminal conviction not expressly described herein. Any criminal conviction not expressly described herein, or other violation of section I(g) of PTE 84-14 that is attributable to the Applicant would result in the applicant's loss of this exemption.

### **Notice to Interested Persons**

Notice of the proposed exemption will be provided to all interested persons within fifteen (15) days of the publication of the notice of proposed exemption in the *Federal Register*. The notice will be provided to all interested persons in the manner approved by the Department and will contain the documents described therein and a supplemental statement required by 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on and to request a hearing with respect to the pending exemption. All written comments and/or requests for a hearing must be

received by the Department within forty-five (45) days of the date of publication of this proposed exemption in the *Federal Register*. All comments will be made available to the public.

*Warning:* If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines.

### **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 ERISA section 408(a) and/or Code section 4975(c)(2) does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA section 404, which, among other things, require a fiduciary to discharge their duties respecting the plan solely in the interest of the plan and its participants and beneficiaries and in a prudent manner in accordance with ERISA section 404(a)(1)(B); nor does it affect the requirement of Code section 401(a) 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 ERISA section 408(a) and/or Code section 4975(c)(2), 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 exemption would be supplemental to, and not in derogation of, any other provisions of ERISA and/ or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is, in fact, a prohibited transaction; and

(4) The exemption would be subject to the express condition that the material facts and representations contained in the Application are true and complete at all times and that the Application accurately describes all material terms of the transactions which are the subject of the exemption.

### **Proposed Exemption**

Based on the facts and representations set forth in the application for exemption, the Department is proposing to grant an exemption under the authority of ERISA section 408(a) and Code section 4975(c)(2) in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011). 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, this notice of proposed exemption is issued solely by the Department.

#### *Section I. Definitions*

(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 to be entered in another court of competent jurisdiction;

(b) The term “Covered Plan” means a plan subject to Part IV of Title I of ERISA (an “ERISA-covered plan”) or a plan subject to Code section 4975 (an “IRA”), in each case, with respect to which Northern relies on PTE 84–14, or with respect to which

Northern has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84–14 or the QPAM Exemption). A Covered Plan does not include an ERISA-covered plan or IRA to the extent that Northern has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA;

(c) The term “Exemption Period” means a period of five years, beginning on March 5, 2025 and ending on March 4, 2030;

(d) The term “Northern” means Northern Trust Corporation, together with its current and future affiliates;

(e) The term “Northern QPAM” means a “qualified professional asset manager” (as defined in PTE 84-14 section VI(a))<sup>40</sup> 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 PTE 84-14 section VI(d)); and the Northern QPAMs do not and must not include NTFS.

(f) The term “NTFS” means Northern Trust Fiduciary Services (Guernsey) Ltd., an affiliate" of Northern (as defined in PTE 84-14 section VI(c)) located in Guernsey;

(g) The terms “participate,” and “participate in,” when used to describe a person’s role in the criminal conduct described in this exemption, refer not only to a person’s active participation in the misconduct of NTFS that is the subject of the Conviction, but also includes the knowing or tacit approval of the misconduct underlying the Conviction or knowledge of such conduct without taking active steps to prohibit it, including reporting the conduct to such individual’s supervisors, and to Northern’s board of directors.

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<sup>40</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

(h) Wherever found, any reference in this exemption to “the best knowledge” of a party, “best of [a party’s] knowledge,” and similar formulations of the “best knowledge” standard, will be deemed to mean the actual knowledge of the party and the knowledge which they would have had if they had conducted their reasonable due diligence required under the circumstances into the relevant subject matter. If a condition of the exemption requires an individual to provide certification pursuant to their “best knowledge,” then such individual, in order to make such certification, must perform their reasonable due diligence required under the circumstances to determine whether the information such individual is certifying is complete and accurate in all respects. Furthermore, with respect to an entity other than a natural person, the “best knowledge” of the entity includes matters that are known to the directors and officers of the entity or should be known to such individuals upon the exercise of such individuals’ due diligence required under the circumstances.

### *Section II. Covered Transactions*

If the proposed exemption is granted, certain entities with specified relationships to NTFS (i.e., the Northern QPAMs, as defined above) will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84-14 (PTE 84-14),<sup>41</sup> notwithstanding the Conviction (as defined above),<sup>42</sup> during the Exemption Period, provided that the conditions in section III are satisfied.

### *Section III. Conditions*

(a) The Northern QPAMs (including their officers, directors, agents other than NTFS, and employees of such Northern QPAMs) did not know of, have reason to know

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<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), as amended at 75 FR 38837 (July 6, 2010), and as amended at 89 FR 23090 (April 3, 2024).

<sup>42</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.”

of, or participate in the criminal conduct of NTFS that is the subject of the Conviction. Further, any other party engaged on behalf of the Northern QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not know or have reason to know of and did not participate in the criminal conduct that is the subject of the Conviction;

(b) The Northern QPAMs (including their officers, directors, agents other than NTFS, 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. Further, any other party engaged on behalf of the Northern QPAMs who had responsibility for, or exercised authority in connection with, the management of plan assets 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;

(d) At all times during the Exemption Period, no Northern QPAM will use its authority or influence to direct an “investment fund,” (as defined in PTE 84-14 section VI(b)) that is subject to ERISA or the Code and managed by such Northern QPAM in reliance on PTE 84-14, or with respect to which a Northern QPAM has expressly represented to a Covered Plan that it qualifies as a QPAM or relies on the QPAM Exemption, 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 PTE 84-14 section I(g) arose solely from the Conviction;

(f) No Northern QPAM exercised authority over the assets of any Covered Plan in a manner that it knew or should have known would further the criminal conduct that is the subject of the Conviction or cause a Northern QPAM or its affiliates to directly or indirectly profit from the criminal conduct that is the subject of the Conviction;

(g) NTFS has not provided and will not provide discretionary asset management services to Covered Plans, nor will it otherwise act as a fiduciary within the meaning of ERISA section 3(21)(A)(i) or (iii), or Code section 4975(e)(3)(A) and (C), with respect to Covered Plan assets;

(h)(1) Each Northern QPAM will continue to implement, maintain, adjust (to the extent necessary), and follow written policies (the Policies) requiring and reasonably designed to ensure that:

(i) The asset management decisions of each 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, as applicable with respect to each Covered Plan, and does not knowingly participate in any violations of these duties and provisions with respect to Covered Plans;

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

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

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

(vi) The Northern QPAM complies with the terms of this 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 Covered Plan where such fiduciary is independent of Northern; however, with respect to any Covered Plan sponsored by an "affiliate" (as defined in PTE 84-14 section VI(d)) 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 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 continue to implement a program of training (the Training), conducted at least annually during the Exemption Period, for all relevant Northern QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel during the Exemption Period. The Training may be conducted electronically and must: (a) 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 (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing; (b) be conducted by a professional who has been prudently selected and who has appropriate training and proficiency with ERISA and the Code to perform the tasks required by this exemption; and (c) be verified, through in-training knowledge checks, “graduation” tests, and/or other technological tools designed to confirm that personnel fully and in good faith participate in the Training.

(i)(1) Each Northern QPAM must submit to an audit conducted every two years by an independent auditor who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of and each Northern QPAM's compliance with the Policies and Training conditions described herein. The audit requirement must be incorporated in the Policies. Each audit must cover the preceding consecutive twelve (12) month period. The first audit must cover the period from March 5, 2025 (at the end of the period of protection granted under PTE 2016-11), through March 4, 2026, and must be completed by September 4, 2026. The second audit must cover the period from March 5, 2027, through March 4, 2028, and must be completed by September 4, 2028. The third audit must cover the period from March 5, 2029, through March 4, 2030, and must be completed by September 4, 2030;

(2) Within the scope of the audit and to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, each Northern QPAM and, if applicable, Northern, will grant the auditor unconditional access to its businesses, including, but not limited to: its computer systems; business records; transactional data; workplace locations; training materials; and personnel. Such access will be provided only to the extent that it is not prevented by State

or Federal statute, or involves communications subject to attorney client privilege and may be limited to information relevant to the auditor's objectives as specified by the terms of this exemption;

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

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

(5) For each audit, on or before the end of the relevant period for completing the audit described in section III(i)(1), the auditor must issue a written report (the Audit Report) to Northern and the Northern QPAM to which the audit applies that describes the procedures performed by the auditor during the course of its examination. At its discretion, the auditor may issue a single consolidated Audit Report that covers all the Northern QPAMs. The Audit Report must include the auditor's specific determinations regarding:

(i) the adequacy of each Northern QPAM's Policies and Training; each Northern QPAM's compliance with the Policies and Training conditions; the need, if any, to strengthen such Policies and Training; and any instance of the respective Northern QPAM's noncompliance with the written Policies and Training described in section III(h) above. The Northern QPAM must promptly address any noncompliance and promptly address or prepare a written plan of action to address any determination by the auditor

regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective Northern QPAM. Any action taken, or the plan of action to be taken, by the respective Northern QPAM must be included in an addendum to the Audit Report (and such addendum must be completed before the certification described in section III(i)(7) below). In the event such a plan of action to address the auditor's recommendation regarding the adequacy of the Policies and Training is not completed by the time the Audit Report is submitted, the following period's Audit Report must state whether the plan was satisfactorily completed. Any determination by the auditor that the respective Northern QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that a Northern QPAM has complied with the requirements under this subparagraph must be based on evidence that the particular Northern QPAM has actually implemented, maintained, and followed the Policies and Training required by this exemption. Furthermore, the auditor must not solely rely on the Exemption Report created by the compliance officer (Compliance Officer), as described in section III(m) below, as the basis for the auditor's conclusions in lieu of independent determinations and testing performed by the auditor, as required by section III(i)(3) and (4) above; and

(ii) The adequacy of the most recent Exemption Review described in section III(m);

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

(7) With respect to each Audit Report, the general counsel, or one of the three most senior executive officers of the line of business engaged in discretionary asset

management services through the Northern QPAM with respect to which the Audit Report applies must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption and that to the best of such officer's knowledge at the time, the Northern QPAM has addressed, corrected or remedied any noncompliance and inadequacy, or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. The certification must also include the signatory's determination that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code.

Notwithstanding the above, no person who participated in the criminal conduct that is the subject of the Conviction may provide the certification required by this exemption, unless the person took active documented steps to stop the misconduct underlying the Conviction;

(8) Northern's Board of Directors must be provided a copy of each Audit Report, and a senior executive officer with a direct reporting line to the highest-ranking legal compliance officer of Northern must review the Audit Report for each Northern QPAM and certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report. With respect to this subsection (8), such certifying senior executive officer must not have known of, had reason to know of, or participated in, any misconduct underlying the Conviction, unless such person took active documented steps to stop the misconduct underlying the Conviction;

(9) Each Northern QPAM provides its certified Audit Report, by electronic mail to e-oed@dol.gov. This delivery must take place no later than forty-five (45) days following completion of the Audit Report. The Audit Report will be made part of the public record regarding this exemption. Furthermore, each Northern QPAM must make its Audit Report unconditionally available, electronically or otherwise, for examination

upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan;

(10) Each Northern QPAM and the auditor must submit to e-oed@dol.gov any engagement agreement(s) executed pursuant to the engagement of the auditor under this exemption no later than two (2) months after the execution of any such engagement agreement;

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

(12) Northern must notify the Department of a change in the independent auditor no later than 60 days after the engagement of a substitute or subsequent auditor and must provide an explanation for the substitution or change including a description of any material disputes between the terminated auditor and Northern;

(j) Throughout the Exemption Period, with respect to any arrangement, agreement, or contract between a Northern QPAM and a Covered Plan, each Northern QPAM agrees and warrants:

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

(2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from the Northern QPAM's violation of any conditions of this exemption, a Northern QPAM's violation of ERISA's fiduciary duties, as applicable, and of the prohibited transaction provisions of ERISA and the Code, as applicable; a breach

of contract by the Northern QPAM; 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. Actual losses include, but are not limited to, losses and related costs arising from unwinding transactions with third parties and from transitioning Plan assets to an alternative asset manager as well as costs associated with any exposure to excise taxes under Code section 4975 as a result of a Northern QPAM's inability to rely upon the relief in the QPAM Exemption.

(3) Not to require (or otherwise cause) the Covered Plan to waive, limit, or qualify the liability of the Northern QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(4) Not to restrict the ability of the Covered Plan to terminate or withdraw from its arrangement with the Northern QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any of these arrangements involving investments in pooled funds subject to ERISA entered into after the effective date of this exemption, the adverse consequences must relate to a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming a Covered Plan's investment, and such restrictions must be applicable to all such investors in the pooled fund on equal terms and effective no longer than reasonably necessary to avoid the adverse consequences;

(5) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or

specifically designed to ensure equitable treatment of all investors in a pooled fund in the event the 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 the liability of the Northern QPAM for a violation of such agreement's terms. To the extent consistent with ERISA section 410, however, this provision does not prohibit disclaimers for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of the Northern QPAM and its affiliates, or damages arising from acts outside the control of the Northern QPAM; and

(7) Within 60 calendar days after this exemption's effective date, each Northern QPAM must provide a notice of its obligations under this section III(j) to each Covered Plan, including for avoidance of doubt the definition of actual losses as provided in clause (2) above. For Covered Plans that enter into a written asset or investment management agreement with a Northern QPAM on or after 60 calendar days from this exemption's effective date, the Northern QPAM must agree to its obligations under this section III(j) in an updated investment management agreement between the Northern QPAM and such clients or other written contractual agreement. This condition will be deemed met for each Covered Plan that received a notice pursuant to PTE 2016-11 that meets the terms of this condition. This condition will also be met where the Northern QPAM has already agreed to the same obligations required by this section III(j) in an updated investment management agreement between the Northern QPAM and a Covered Plan.

(k) Within 60 days after the effective date of this exemption, each Northern QPAM provides notice of the exemption as published in the *Federal Register*, along with a separate summary describing the facts that led to the Conviction (the Summary), which

has been submitted to the Department, and a prominently displayed statement (the Statement) that the Conviction results in a failure to meet a condition in PTE 84-14 to each sponsor and beneficial owner of a Covered Plan that has entered into a written asset or investment management agreement with the Northern QPAM. All prospective Covered Plan clients that enter into a written asset or investment management agreement with the Northern QPAM (including a participation or subscription agreement in a pooled fund managed by an Northern QPAM) after a date that is 60 days after the effective date of this exemption must receive the proposed and final exemptions with the Summary and the Statement prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the Northern QPAM (for avoidance of doubt, all Covered Plan clients of an Northern QPAM during the Exemption Period must receive the disclosures described in this section by the later of (i) 60 days after the effective date of the exemption or (ii) the date that a Covered Plan client enters into a written asset or investment management agreement with an Northern QPAM). Disclosures required under this paragraph (k) may be delivered electronically (including by an email that has a link to this exemption). Notwithstanding the above paragraph, a Northern QPAM will not violate the condition solely because a Covered Plan refuses to sign an updated investment management agreement;

(l) The Northern QPAMs must comply with each condition of PTE 84-14, as amended, with the sole exceptions of the violations of PTE 84-14 section I(g) that are attributable to the Conviction. If an affiliate of the Northern QPAM (as defined in section VI(d) of PTE 84-14) is convicted of a crime described in PTE 84-14 section I(g) (other than the Conviction) during the Exemption Period, this exemption will terminate immediately;

(m)(1) Within 60 days after the date of publication of the exemption, each Northern QPAM must designate a senior compliance officer (i.e., the Compliance

Officer) to be responsible for compliance with the Policies and Training requirements described herein. No person who participated in the criminal conduct that is the subject of the Conviction, may be involved with the designation or responsibilities required by this condition unless the person took active documented steps to stop the misconduct. The Compliance Officer must conduct a review of each twelve-month period comprising the Exemption Period (each an Exemption Review), to determine the adequacy and effectiveness of the Northern QPAM's implementation of the Policies and Training. With respect to the Compliance Officer, the following conditions must be met:

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

(ii) The Compliance Officer must have a direct reporting line to the highest-ranking corporate officer in charge of legal compliance for asset management.

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

(i) The Exemption Review must include a review of the Northern QPAM's compliance with and effectiveness of the Policies and Training and of the following: any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the compliance and risk control function (or its equivalent) during the twelve-month period under review; the most recent Audit Report issued pursuant to this exemption; any material change in the relevant business activities of the Northern QPAM; and any change to ERISA, the Code, or regulations related to fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of the Northern QPAM;

(ii) The Compliance Officer prepares a written report for the Exemption Review (an Exemption Report) that (A) summarizes their material activities during the twelve-month period under review; (B) sets forth any instance of noncompliance discovered

during the twelve-month period under review, and any related corrective action; (C) details any change to the Policies or Training to guard against any similar instance of noncompliance occurring again; and (D) makes recommendations, as necessary, for additional training, procedures, monitoring, or additional and/or changed processes or systems, and management's actions in response to such recommendations;

(iii) In the Exemption Report, the Compliance Officer must certify in writing that to the best of their knowledge at the time: (A) the report is accurate; (B) the Policies and Training are working in a manner which is reasonably designed to ensure that the Policies and Training requirements described herein are met; (C) any known instance of noncompliance during the twelve-month period under review and any prior period, and any related correction taken to date, has been identified in the Exemption Report; and (D) the Northern QPAM complied with the Policies and Training, and/or corrected (or are correcting) any known instances of noncompliance in accordance with section III(h) above;

(iv) The Exemption Report must be provided to appropriate corporate officers of the Northern QPAM; the head of compliance and the general counsel (or their functional equivalent) of the Northern QPAM; and must be made unconditionally available to the independent auditor described above; and

(v) The Exemption Review, including the Compliance Officer's written Report, must be completed within 90 days following the end of the period to which it relates;

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

(o) Within 60 days after the effective date of the exemption, each Northern QPAM, in its agreements with, or in other written disclosures provided to Covered Plans, will clearly and prominently inform Covered Plan clients of their right to obtain a copy of

the Policies or a description (Summary Policies) which accurately summarizes key components of such Northern QPAM's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within 180 days following the end of the calendar year during which the Policies were changed. If the Northern QPAM meets this disclosure requirement through Summary Policies, changes to the Policies shall not result in the requirement for a new disclosure unless, as a result of changes to the Policies, the Summary Policies are no longer accurate. With respect to this requirement, the description may be continuously maintained on a website, provided that such website link to the Policies or Summary Policies is clearly and prominently disclosed to each Covered Plan;

(q) A Northern QPAM will not fail to meet the terms of this exemption, solely because a different Northern QPAM fails to satisfy a condition for relief under this exemption, described in sections III(c), (d), (h), (i), (j), (k), (l), (m), (n), and (o) or if the independent auditor described in section III(i) fails to comply with a provision of the exemption, other than the requirement described in section III(i)(11), provided that such failure did not result from any actions or inactions of Northern or its affiliates.

(r) Each Northern QPAM imposes internal procedures, controls, and protocols to reduce the likelihood of any recurrence of conduct that is the subject of the Conviction;

(s) All the material facts and representations set forth in the Summary of Facts and Representations are true and accurate at all times; and

(t) With respect to an asset manager that becomes a Northern QPAM after the effective date of the exemption by virtue of being acquired (in whole or in part) by Northern or a subsidiary or affiliate of Northern (a "newly-acquired Northern QPAM"), the newly-acquired Northern QPAM would not be precluded from relying on the exemptive relief provided by PTE 84-14 notwithstanding the Conviction as of the closing date for the acquisition; however, the operative terms of the exemption shall not apply to

the newly-acquired Northern QPAM until a date that is six (6) months after the closing date for the acquisition. To that end, the newly acquired Northern QPAM will initially submit to an audit pursuant to section III(i) of this exemption as of the first audit period that begins following the closing date for the acquisition. The period covered by the audit must begin on the date on which the Northern QPAM was acquired;

(t) Relief in this exemption will terminate on the date that is 12 months following the date that a U.S. regulatory authority makes a final decision that Northern or an affiliate failed to comply in all material respects with any requirement imposed by such regulatory authority in connection with the Conviction; and

(u) Each Northern QPAM must provide the Department with the records necessary to demonstrate that each condition of this exemption has been met within 30 days of a request by the Department.

*Exemption Date:* This exemption will be in effect beginning on March 5, 2025, and ending on March 4, 2030.

Signed at Washington, DC.

**George Christopher Cosby,**

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

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