



DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemptions 2016-10 and 2016-11; Application Numbers D-12113 and D-12112]

**Amendment to Extend Effective Dates for Prohibited Transaction Exemptions:
Royal Bank of Canada, Toronto, Canada; Northern Trust Corporation, Chicago,
Illinois**

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of amendments.

SUMMARY: This document provides notice of an amendment to Prohibited Transaction Exemptions (PTEs) 2016-10, granted to Royal Bank of Canada (together with its Current and Future Affiliates, RBC), and 2016-11, granted to Northern Trust Corporation (together with its Current and Future Affiliates, Northern) that extends the effective periods of the exemptions for up to six months if RBC and Northern meet certain conditions. The amendment to PTE 2016-10 is referred to herein as the RBC QPAM Amendment, and the amendment to PTE 2016-11 is referred to herein as the Northern QPAM Amendment (collectively, the Amendments).

DATES: The Amendments will be in effect on March 5, 2024.

FOR FURTHER INFORMATION CONTACT: For the RBC QPAM Amendment, please contact Ms. Blessed Chuksorji-Keefe, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, (202) 693-8567 (this is not a toll-free number). For the Northern QPAM Amendment, please contact Ms. Anna Mpras Vaughan, Office of Exemption Determinations, Employee Benefits Security

Administration, U.S. Department of Labor, (202) 693-8565 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

On February 21, 2025, the U.S. Department of Labor (the Department) published a notice of proposed amendments in the *Federal Register* (90 FR 10087) pursuant to its authority under ERISA section 408(a), and in accordance with the Department's exemption procedures.¹ The proposed amendments would extend the effective periods of PTE 2016-10 and PTE 2016-11 until the earlier of September 4, 2025, or the date that the Department makes a final agency action in connection with the Notices of Proposed Exemption for the RBC QPAMs and the Northern QPAMs the Department published in the *Federal Register* in January 2025.² The proposed amendments required RBC and Northern to meet the conditions for relief under PTE 2016-10 and PTE 2016-11, respectively, during the proposed extended effective periods.

Based on the RBC and Northern's representations contained in the administrative record, the Department is granting the Amendments as proposed. The Amendments provide only the relief specified herein and do not provide relief from violations of any law other than the prohibited transaction provisions of ERISA.

Benefits of the Amendments: The Department is granting the Amendments based on the applicants' representations that the expiration of the exemptive relief in PTEs 2016-10 and 2016-11 before the Department publishes a final exemption extending

¹ The procedures for requesting an exemption are set forth in 29 CFR part 2570, subpart B (89 FR 4662, 4691, January 24, 2024). 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 by the applicants to the Secretary of Labor. Accordingly, the Department grants this exemption under its sole authority.

² Proposed Exemption for the Royal Bank of Canada and Its Current and Future Affiliates at 90 FR 6013, January 17, 2025; Proposed Exemption From Certain Prohibited Transaction Restrictions Involving Northern Trust Corporation at 90 FR 7174, January 21, 2025.

such relief for an additional period of five years would harm plans and their participants and beneficiaries and Individual Retirement Account owners (Covered Plans).

As discussed below, the Department makes the requisite findings under ERISA section 408(a) that the amendments are: (1) administratively feasible for the Department, (2) in the interest of Covered Plan(s) and their participants and beneficiaries, and (3) protective of the rights of the participants and beneficiaries of Covered Plans, based on the applicants' adherence to all the conditions of PTEs 2016-10 and 2016-11, respectively, at all times. Accordingly, affected parties should be aware that the applicants' adherence to all conditions in PTEs 2016-10 and 2016-11, as applicable, is required for the applicants to rely on the Amendments described herein. Absent these conditions, the Department would not have granted the Amendments.

A. Background

On October 28, 2016, the Department published PTEs 2016-10 and 2016-11 in the *Federal Register*.³ PTE 2016-10 is a temporary administrative exemption that permits certain entities (the RBC Qualified Professional Asset Managers (QPAMs)) with specified relationships to Royal Bank of Canada (Bahamas) Limited (RBCTC Bahamas) to continue to rely on the relief provided by the Department's QPAM Exemption⁴ for a one-year period beginning on March 5, 2024, and ending on March 4, 2025, notwithstanding a potential judgment of conviction against RBCTC Bahamas for aiding and abetting tax fraud.⁵ Similarly, PTE 2016-11 permits certain entities (the Northern

³ 81 FR 75147 and 81 FR 75150 (October 28, 2016).

⁴ PTE 84-14 49 FR 9494, March 13, 1984, as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), as amended at 75 FR 38837 (July 6, 2010), and as amended at 89 FR 23090 (April 3, 2024), hereinafter referred to as PTE 84-14 or the QPAM exemption. Section I(g) of PTE 84-14 prevents an entity that may otherwise meet the definition of a QPAM from utilizing the exemptive relief provided by PTE 84-14 for itself and its client plans, if that entity or an "affiliate" thereof, or any owner, direct or indirect, of a five percent or more interest in the QPAM has within 10 years immediately preceding the transaction, been either convicted or released from imprisonment, whichever is later, as a result of criminal activity described in that section.

⁵ On December 11, 2023, the Department issued a technical correction to PTE 2016-10 when RBCTC Bahamas was convicted of aiding and abetting tax fraud in France to accurately identify the French Court issuing the conviction.

QPAMs) with specified relationships to Northern Trust Fiduciary Services (Guernsey) Ltd. (NTFS) to continue to rely upon the relief provided by the Department's QPAM Exemption for a one-year period beginning on March 5, 2024, and ending on March 4, 2025, notwithstanding a potential judgment of conviction against NTFS for aiding and abetting tax fraud in the same scheme.⁶

The Department granted PTEs 2016–10 and 2016-11 to protect RBC and Northern's ERISA-covered plan and IRA clients from the harm that could result from their respective QPAMs' loss of relief under PTE 84–14 due to the QPAMs' convictions.

RBC and Northern separately applied to the Department for extended relief that would apply after the relief in PTEs 2016-10 and 2016-11 expires on March 4, 2025. In response, on January 17, 2025, the Department published a proposed exemption that would extend the relief in PTE 2016-10 for five years (the RBC Five-Year Proposed QPAM Exemption) from March 5, 2025, to March 4, 2030, if the RBC QPAMs would meet the proposed exemption's conditions.⁷ The proposed exemption has a 45-day notice and comment period that expires on March 3, 2025.

On January 21, 2025, the Department published a similar proposed exemption that would extend the relief in PTE 2016-11 for five years -- from March 5, 2025, to March 4, 2030 (the Northern Five-Year Proposed QPAM Exemption) if the Northern QPAMs meet the terms of the exemption.⁸ The proposed exemption has a 45-day notice and comment period that expires on March 7, 2025.

B. Northern's Concerns with the Northern Five-Year Proposed QPAM Exemption

Following publication of the Northern Five-Year Proposed QPAM Exemption in the *Federal Register*, Northern expressed concern to the Department that due to the

⁶ On April 4, 2024, the Department issued a technical correction to PTE 2016-11 (89 FR 23612) after NTFS was convicted of aiding and abetting tax fraud in France to accurately identify the French Court issuing the conviction.

⁷ 90 FR 6013 (January 17, 2025).

⁸ 90 FR 7174 (January 21, 2025).

timing of the proposed exemption's publication, the proposed exemption cannot be granted before Northern's current relief in PTE 2016-11 expires on March 4, 2025. Even if the Northern QPAMs eventually received relief retroactive to March 5, 2025, the timing would result in a "gap period" during which Northern QPAMs would not qualify for the QPAM Exemption from March 5, 2025, until the date the Department publishes a final exemption. Northern's legal counsel represents that this "gap period" would be harmful to Northern's Covered Plan clients. According to Northern, because Northern QPAMs make representations in their Internal Swaps and Derivative Association (ISDA) agreements with various counterparties stating that to the extent the QPAM is using "plan assets" (within the meaning of ERISA section 3(42)) in connection with a transaction entered into under the ISDA, it is a "qualified professional asset manager," and PTE 84-14 will apply to any applicable transactions entered thereunder. The failure to satisfy this representation can result in a default-based early termination of the ISDA agreements and a lump sum payment would be due to the applicable counterparty.

In addition, Northern maintains that certain fixed income securities have "deemed" ERISA-related representations. This means that the purchaser of the security is deemed to have represented that the purchase, holding, and eventual sale/transfer of the security is not and will not be a non-exempt prohibited transaction under ERISA. In some cases, the applicable fixed income security will specify the PTEs that can be relied upon in connection with the purchase, holding, and sale/transfer of the security. In these instances, only the status-based exemptions are generally permitted.⁹ Northern represents that failure to satisfy these "deemed representations" would void the transaction.

Further, in these situations, Northern could not provide the Department with certainty that counterparties would not exercise their rights to default and/or void

⁹ The status-based exemptions, such as PTEs 84-14, 90-1, 91-38, 95-60, and 96-23, are largely based on the status of the plan fiduciary or the plan asset entity engaging in the transaction, and compliance with several conditions.

applicable transactions. Of specific concern to Northern is the possibility that there could be a market disruption that made it beneficial for the Northern QPAMs' counterparties to default or void a transaction, they may not hesitate to do so, which would cause harms to their covered plan clients. Northern urged the Department provide the necessary exemptive relief that would eliminate such risks to affected plans and their participants and beneficiaries.

For a more complete description of Northern, the Northern QPAMs, and transactions engaged in by the Northern QPAMs, please see the Northern Five-Year Proposed QPAM Exemption published in the *Federal Register* on January 21, 2025 (90 FR 7174).

C. RBC Concerns with the RBC Five-Year Proposed QPAM Exemption

Following publication of the RBC Five-Year Proposed QPAM Exemption, RBC's counsel also expressed concern to the Department that the proposed exemption would not be granted before its current relief expires on March 4, 2025. As is the case with the Northern QPAMs (described above), if the RBC QPAMs eventually received relief retroactive to March 5, 2025, the timing would result in a "gap period" during which the RBC QPAMs would be ineligible to rely on the QPAM Exemption from March 5, 2025, until the date the Department publishes a final exemption. RBC represents that Covered Plans would be harmed if RBC does not obtain exemptive relief before relief in PTE 2016-10 expires on March 5, 2025.

RBC makes the following representations. Many investments needing continuing relief, such as many derivatives, loans, leases, and other extensions of credit, contain deemed or explicit representations that the QPAM Exemption is applicable that include a corresponding contractual obligation to notify the lender, lessor or counterparty if the representation becomes untrue. Under master agreements, moreover, those

representations are deemed to be made each time a transaction is entered into meaning the RBC QPAMs could be prohibited from entering into transactions on behalf of underlying plans for as long as the representation remains untrue (for example, for the period during which exemptive relief is not provided). A breach of a representation or warranty can also trigger an event of default for those trading agreements, which could leave its Covered Plan clients responsible for liquidation and other transition costs. Upon the expiration of PTE 2016-10, that obligation is triggered unless further relief is in place.

As a prudent fiduciary, the investment manager would be obligated to identify every instrument and communicate with every counterparty. While some counterparties might negotiate additional and potentially onerous terms to avoid termination, others would invoke their rights on default.¹⁰ Thus, many Covered Plans could be in default on their continuing representation to clients and counterparties that they meet the conditions of the QPAM Exemption, and counterparties would be able to immediately terminate existing, continuing transactions with the RBC QPAMs' Covered Plan clients.

Further, in RBC's discussions with market counterparties regarding this issue, the counterparties uniformly stated that RBC's hope or even reasonable expectation that the RBC QPAMs would eventually obtain retroactive relief would not be sufficient to avoid default. RBC argues that potential retroactive relief would not be a substitute for obtaining timely exemptive relief with no gap period, and the risk and compliance functions of their institutions might well terminate an existing transaction in the absence of a guarantee that RBC QPAMs could rely on the QPAM Exemption on March 5, 2025 (without a gap period).

Moreover, RBC represents that if there were a gap period in exemptive relief, as other instruments mature, new trades dependent on the QPAM Exemption could not be

¹⁰ RBC notes that counterparties are not acting as a fiduciary to plans and, thus, could terminate positions based on the counterparty's own interests in the event of a default

entered into, leaving Covered Plans without the benefit of all of the instruments and trading strategies contemplated by their investment guidelines. According to RBC, affected plans could be left with fewer and less effective ways to hedge risk, because the QPAM Exemption is often used for hedging trades. Therefore, Covered Plans would not have the trading efficiencies and breadth of investment choices and potential counterparties afforded by the QPAM Exemption for the entire period from the expiration of PTE 2016-10 until final relief was granted, notwithstanding any retroactive relief following a gap period.

These Covered Plans would lose the ability to retain current positions, which might be impossible to replicate with similar economics. In an extremely volatile period, the termination of existing transactions and the inability to enter into new transactions would be severely disadvantageous to plans. Such a curtailed selection of available transactions would negatively impact these Covered Plans, depriving them of the benefits the QPAM Exemption was designed to offer and effectively penalizing them for having retained the RBC QPAMs.

Finally, RBC maintains that a gap period in exemptive relief would introduce tremendous uncertainty for RBC's Covered Plan clients in terms of RBC's ability to fulfill the obligations to such clients as their investment adviser. Because many of RBC's investment management agreements require that it continue to meet the requirements of the QPAM Exemption during the term of such agreements, in the event of a gap period in exemptive relief, the RBC QPAMs would be compelled to give immediate notice to their Covered Plan clients that RBC no longer meets the requirements of the QPAM Exemption upon expiration of PTE 2016-10. Covered Plan clients would need to consult on an emergency basis with their lawyers and consultants; they may decide to incur the cost of a manager search, even though they had no intention of switching managers.

RBC states that any news reports on changes in policy due to the change in Administration could complicate their thinking and trigger precipitous decision making. Market participants could use the uncertainty to undercut trading strategies, and other investment managers could seek to attract and hire RBC portfolio managers who were concerned about the likelihood of relief. This is true even for clients that are not subject to ERISA (and therefore do not depend on RBC's QPAM status) because of the stigma that a QPAM disqualification would create. Pension plans, including non-ERISA plans such as public plans, union plans, corporate plans and others, tend to treat QPAM status as a threshold prerequisite for entrusting plan assets with an investment manager and could be concerned that retaining a non-QPAM asset manager would be viewed by their participants and regulators as a breach of fiduciary duties.

In prior submissions RBC made to the Department in connection with its application for the RBC Five-Year Proposed QPAM Exemption, RBC estimated that Covered Plans would be subjected to substantial transaction and ancillary costs if they liquidated their holdings with RBC and transferred their assets to new managers. These costs would be attributable only to the gap in exemptive relief.

For a more complete discussion of RBC, the RBC QPAMs, and the transactions engaged in by the RBC QPAMs, please see the RBC Five-Year Proposed QPAM Exemption published on January 17, 2025 (90 FR 6013).

D. Written Comments Received Regarding the Proposed Amendments and the Department's Note

In the proposed amendments, the Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to such notice, by February 26, 2025. The Department did not receive any comments nor hearing requests. The complete application files for the Amendments for Northern and for RBC (D-12112 and D-12113, respectively) and for the Northern Five-Year Proposed

Exemption and the RBC Five-Year Proposed QPAM Exemption (D-12101 and D-12102, respectively) are available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1515, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC, 20210, reachable by telephone at (202) 693-8673. For a more complete statement of the facts and representations supporting the Department's decision to grant this Amendment, please refer to the notice of proposed amendments published in the *Federal Register* on February 21, 2025, at 90 FR 10087.

Based on the representations made by RBC and Northern, the Department is hereby granting the Amendments extending the effective periods of PTEs 2016-10 and 2016-11 until the earlier of September 4, 2025 (six months after the current relief in PTEs 2016-10 and 2016-11 expires on March 4, 2025), or the date the Department issues its final agency action in connection with the RBC and Northern Five-Year Proposed QPAM Exemptions to protect Covered Plans from the harmful effects that may occur due to the "gap period" in coverage between the lapse of PTE 2016-10 and PTE 2016-11 and publication date of the RBC Five-Year Proposed QPAM Exemption and the Northern Five-Year Proposed Exemption.

The relief in the Amendments is contingent on RBC and Northern's satisfaction of the conditions in PTEs 2016-10 and 2016-11 at all times. In addition, the RBC and Northern QPAMs must comply with a new condition added by the Amendments that requires them to: (1) maintain the records necessary to demonstrate to the Department that they have met every condition of their respective exemptions during the extended Effective Period; and (2) provide such records to the Department within 30 days after the date of the Department's request.

In granting the Amendments, the Department has relied on the representations of RBC and Northern. Any material facts and representations RBC and Northern made to the Department must always be true and complete.

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 participants and beneficiaries of the plan and in a prudent fashion 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) As required by ERISA section 408(a) and/or Code section 4975(c)(2), the Department hereby finds that the Amendments are 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 Amendments are 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 availability of the Amendments is subject to the express condition that the material facts and representations contained in each Application are true and complete at all times, and that RBC and Northern accurately describe all material terms of the transaction which is the subject of the exemption.

Accordingly, after considering the entire administrative record developed in connection with the Amendments, the Department has determined to grant the following amendments 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 (89 FR 4662, 4691, January 24, 2024). 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 this type to the Secretary of Labor. Therefore, the Amendments are being issued solely by the Department.

Amendments to PTE 2016-10

The Department hereby amends PTE 2016-10 as follows:

1. The first sentence in Section I on page 81 FR 75147 that currently reads:

Certain entities with specified relationships to Royal Bank of Canada Trust Company (Bahamas) Limited (RBCTC Bahamas) (hereinafter, the RBC QPAMs, as further defined in Section II(b)) will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Exemption (PTE) 84-14 [footnote omitted], notwithstanding a judgment of conviction against RBCTC Bahamas for aiding and abetting tax fraud, to be entered in France in the District Court of Paris (the Conviction, as further defined in Section II(a)) [footnote omitted], for a period of up to twelve months beginning on the date of the Conviction (the Conviction Date), provided the following conditions are satisfied:

is replaced with the following sentence:

Certain entities with specified relationships to Royal Bank of Canada Trust Company (Bahamas) Limited (RBCTC Bahamas) (hereinafter, the RBC QPAMs, as further defined in Section II(b)) will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Exemption (PTE 84-14), notwithstanding a judgment of conviction against RBCTC Bahamas for aiding and abetting tax fraud entered in France in the Court of Appeal, French Special Prosecutor No. 1120392066, French Investigative Judge No. JIRSIF/11/12 or another court of competent jurisdiction (the Conviction, as further defined in Section II(a)), for a period of up to 18 months

beginning on the date of the Conviction (the Conviction Date), provided the following conditions are satisfied:

2. The Exemption Date section on page 88 FR 85931 of the Technical Correction to PTE 2016-10, and the Effective Date section on page 81 FR 75149 of PTE 2016-10 are replaced with the following:

PTE 2016-10 will remain in effect for the period beginning on the Conviction Date and continuing until the earlier of: (1) September 4, 2025 (the date that is 18 months after the Conviction Date); or (2) the effective date of a final agency action the Department issues in connection with a notice of proposed exemption providing long-term exemptive relief for the covered transactions described in PTE 2016–10 that the Department published on January 17, 2025 (90 FR 6013) (the Extended Effective Period).

3. A new condition I(n) is added that reads as follows:

The RBC QPAMs must maintain the records necessary to demonstrate to the Department that each condition of PTE 2016-10 has been met during the Extended Effective Period, and the RBC QPAMs must provide such records to the Department within 30 days after the date of a request for such records from the Department.

Amendments to PTE 2016-11

The Department hereby amends PTE 2016-11 as follows:

1. The First Sentence in Section I on pages 81 FR 75150-51 that currently reads:

Certain entities with specified relationships to Northern Trust Fiduciary Services (Guernsey) Ltd. (NTFS) (hereinafter, the Northern QPAMs, as further defined in Section II(b)) will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Exemption 84-14 (PTE) 84-14 [footnote omitted], notwithstanding a judgment of conviction against NTFS for aiding and abetting tax fraud, to be entered in France in the District Court of Paris (the Conviction, as further defined in Section II(a)) [footnote omitted], for a period of up to twelve

months beginning on the date of the Conviction (the Conviction Date), provided the following conditions are satisfied:

is replaced with the following sentence:

Certain entities with specified relationships to Northern Trust Fiduciary Services (Guernsey) Ltd. (NTFS) (hereinafter, the Northern QPAMs, as further defined in Section II(b)) will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Exemption 84-14 (PTE 84-14), notwithstanding a judgment of conviction against NTFS for aiding and abetting tax fraud, entered in France in the Court of Appeal, French Special Prosecutor No. 1120392066, French Investigative Judge No. JIRSIF/11/12 or another court of competent jurisdiction (the Conviction, as further defined in Section II(a)), for a period of up to 18 months beginning on the date of the Conviction (the Conviction Date), provided the following conditions are satisfied:

2. The Exemption Date section on page 89 FR 23613 of the Technical Correction to PTE 2016-11; and the Effective Date section on page 81 FR 75152 of PTE 2016-11 are replaced with the following:

PTE 2016-11 will remain in effect for the period beginning on the Conviction Date and continuing until the earlier of: (1) September 4, 2025 (the date that is 18 months following the Conviction Date); or (2) the effective date of a final agency action made by the Department in connection with a notice of proposed exemption providing long-term exemptive relief for the covered transactions described in PTE 2016-11 that the Department published on January 21, 2025 (90 FR 7174) (the Extended Effective Period).

3. A new condition I(n) is added that reads as follows:

The Northern QPAMs must maintain the records necessary to demonstrate to the Department that each condition of PTE 2016-11 has been met during the Extended

Effective Period, and Northern QPAMs must provide such records to the Department within 30 days after the date of a request for such records from the Department.

George Christopher Cosby,

Director, Office of Exemption Determinations, Employee Benefits Security

Administration, U.S. Department of Labor.

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