



## **DEPARTMENT OF LABOR**

### **Employee Benefits Security Administration**

**[Prohibited Transaction Exemption 2025-06; Application Number D-12101]**

### **Exemption for Certain Prohibited Transactions 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 exemption.

**SUMMARY:** This document provides notice of an individual exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA) and/or the Internal Revenue Code of 1986 (the Code). The exemption permits 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:** This exemption will be in effect during the period beginning on the earlier of September 5, 2025 or the date of publication in the *Federal Register*; and ending on March 4, 2030.

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

The Applicant requested an exemption pursuant to ERISA section 408(a) and Code section 4975(c)(2) in accordance with the Department's exemption procedures set forth in 29 CFR part 2570, subpart B.<sup>1</sup> On January 21, 2025, the Department published a notice of proposed exemption for Northern QPAMs to continue to rely on the exemptive relief provided by PTE 84-14, notwithstanding the Conviction (the Proposed Exemption).<sup>2</sup>

Based on the record and representations made by the Applicant, as discussed below, the Department has determined to grant the Proposed Exemption to ensure that participants and beneficiaries of plans subject to Part 4 of Title I of ERISA (i.e., ERISA-covered plans) and plans subject to Code section 4975 (i.e., IRAs) managed by Northern QPAMs (collectively referred to as Covered Plans<sup>3</sup>) do not suffer the harm that Northern represented would occur if the Northern QPAMs are no longer able to rely on PTE 84-14, due to the Conviction. This exemption provides only the relief specified herein and does not provide relief from violations of any law other than the prohibited transaction provisions of ERISA or the Code.

As discussed below, the Department makes the requisite findings under ERISA section 408(a) that the exemption is: (1) administratively feasible for the Department, (2) in the interest of Covered Plans and their participants and beneficiaries, and (3) protective

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<sup>1</sup> The procedures for requesting an exemption are set forth in 29 CFR part 2570, subpart B (75 FR 66637, 66644, October 27, 2011). The procedures were updated effective April 8, 2024 at 89 FR 4662, 4691, January 24, 2024. Because the application was filed with the Department on April 1, 2024, this application is being processed under the procedures in effect as of that date. Effective December 31, 1978, section 102 of the Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue administrative exemptions under the Code Section 4975(c)(2) to the Secretary of Labor. Accordingly, the Department grants this exemption under its sole authority.

<sup>2</sup> 90 FR 7174.

<sup>3</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.

of the rights of the participants and beneficiaries of Covered Plans, based on the Applicant's adherence to all the conditions and definitions of the exemption at all times. Accordingly, affected parties should be aware that the conditions and definitions incorporated in this exemption are, taken individually and as a whole, necessary for the Department to grant the relief requested by the Applicant.

**Benefits of the Exemption:** Among other things, this exemption ensures that a Covered Plan can terminate its relationship with a Northern QPAM in an orderly and cost-effective fashion when the fiduciary of a Covered Plan determines that it is prudent to do so, subject to certain reasonable restrictions described herein. This exemption promotes adherence to basic fiduciary standards and responsibilities required by Title I of ERISA and the Code by the Northern QPAMs and reinforces their obligation to act with a high degree of integrity on behalf of their Covered Plan clients as required by PTE 84-14.

## **Background**

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.

2. Northern has several U.S. and non-U.S. affiliates that provide investment management services. The Northern affiliates that currently manage assets of Covered Plans, 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 Bank*, which 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), which is both an Illinois bank regulated by the Illinois Department of Financial and Professional Regulation and an investment adviser registered with the U.S. Securities and Exchange Commission (the SEC) under the Investment Advisers Act of 1940, as amended. As of December 31, 2023, NTI managed 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. As of December 31, 2023, 50 South managed discretionary assets of nearly \$11.13 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. As of October 28, 2024, NTSI managed discretionary assets of approximately \$1.27 billion, including ERISA and IRA assets.

3. According to the Applicant, these four Northern QPAMs rely on the QPAM Exemption for transactions 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 contain certain representations or deemed representations regarding reliance, at least partially, on PTE 84-14.

*The Convicted Entity: NTFS*

4. Northern has an indirect wholly owned subsidiary, 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 Applicant represents that NTFS does not act as a 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.

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

5. 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>4</sup> The transactions prohibited by ERISA section 406(a) that are relevant to this 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>5</sup>

6. 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.

7. 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>4</sup> Under the Code, such parties, or similar parties, are referred to as “disqualified persons.”

<sup>5</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. PTE 84-14 provides only very narrow relief from ERISA Section 406(b).

an interest if the investment manager satisfies the definition of “qualified professional asset manager” (i.e., QPAM) and satisfies additional conditions of the exemption.<sup>6</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>7</sup>

8. 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>8</sup>

#### *Investigation of NTFS for Tax Fraud*

9. 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

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<sup>6</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) and as corrected at 89 FR 65779 (August 13, 2024).

<sup>7</sup> See 75 FR 38837, 38839 (July 6, 2010).

<sup>8</sup> See 47 FR 56947 (December 21, 1982).

tax evasion in connection with their decision not to include trust assets in French tax filings made following Daniel Wildenstein's death in 2001. NTFS, as successor trustee to the trusts, was itself investigated by French prosecutors.<sup>9</sup>

10. 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 (PTE 2016-11) from the Department effective as of the date of judgment of conviction against NTFS for aiding and abetting tax fraud.<sup>10</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.

11. Ultimately, on March 5, 2024, the Paris Court of Appeal rendered a judgment of conviction (i.e., the Conviction) against all defendants, including NTFS. NTFS was ordered by the court to pay a fine of [EURO]187,500 in conjunction with the judgment. The Applicant represents that the US dollar equivalent of this fine is \$204,197 as of November 5, 2024.<sup>11</sup>

12. When the Paris Court of Appeal rendered a judgment of conviction against NTFS, PTE 84-14 Section I(g) was triggered.<sup>12</sup> PTE 2016-11, as corrected,<sup>13</sup> was

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<sup>9</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.

<sup>10</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>11</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>12</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 PTE 84-14 section I(g) 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>13</sup> On April 4, 2024, the Department issued a technical correction to PTE 2016-11. 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."

effective for a period of one year from the date of the Conviction, and ended on March 4, 2025. The one-year exemption was intended to give the Department time to consider whether a longer term (e.g., 5 years) exemption would be appropriate based on the facts of the Conviction and to more fully develop the record upon which relief, if any, would be based.

13. Northern subsequently applied to the Department for extended relief that would begin after the relief in PTE 2016-11 expired on March 4, 2025. On January 21, 2025, the Department published the Proposed Exemption to extend the relief in PTE 2016-11 for five years from March 5, 2025, to March 4, 2030.

14. Following publication of the Proposed Exemption in the *Federal Register*, Northern expressed concern to the Department that, due to the timing of the Proposed Exemption's publication, the 45-day notice and comment period would not end until March 7, 2025, after the expiration of relief in PTE 2016-11 on March 4, 2025. Northern stated that, even if the Northern QPAMs eventually received relief retroactive to March 5, 2025, the timing would result in a "gap period" during which the Northern QPAMs would not qualify for the QPAM Exemption from March 5, 2025, until the date the Department published a final exemption. Northern's legal counsel represented to the Department that the resultant gap period in the exemption's relief would be harmful to affected plans and their participants and beneficiaries. For example, the Applicant states that the 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.<sup>14</sup>

15. To protect Covered Plans, on March 5, 2025, the Department published the notice of amendment to PTE 2016-11 (the Amendment) in the *Federal Register* to extend the exemption's effective period until the earlier of September 4, 2025 or the date the Department issues its final agency action in connection with the Proposed Exemption.<sup>15</sup>

#### *Applicant's Representations Regarding this Exemption*

16. 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>16</sup> The Applicant states that 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 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.

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<sup>14</sup> See 90 FR 11330, 11331 for a more detailed explanation of potential harms to plans that could be caused by a gap period in exemptive relief.

<sup>15</sup> See 90 FR 11330.

<sup>16</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.

17. 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 are employed by NTFS or other Northern affiliates today.

18. 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.

19. 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.

20. 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. For example, according to the Applicant, Northern employs

over 100 full-time employees in its Financial Crime Compliance department as of December 31, 2024.

21. The Applicant represents that Northern maintains a system of internal controls to ensure ongoing compliance with anti-money laundering (AML) and know-your-client 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.

22. 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 AntiMoney 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 and Costs to Covered Plans*

23. Paragraphs 28 through 38 of the Proposed Exemption, describe and quantify the hardships that Northern represents Covered Plans would incur if Northern QPAMs could not rely on PTE 84-14. In general terms, Northern QPAMs would not be able to enter into, among other things, contracts for the purchase and sale of certain securities and hedging transactions that rely on compliance with PTE 84-14; and counterparties

could seek to terminate existing contracts or some contracts would terminate automatically without notice or action. Among other things, Covered Plan clients would incur costs from an inability to hedge risk, inability to rely on appropriate investment strategies, and/or counterparty costs resulting from the need to rely on different sources of exemptive relief (e.g., ERISA section 408(b)(17)).

*Department's Note Regarding Harms to Plans for Purposes of Section III(j)(2)*

24. In the preamble to the Proposed Exemption, the Department noted that Section III(j)(2) of the Proposed Exemption requires a Northern QPAM to “indemnify and hold harmless” Covered Plans for “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.” Furthermore, the Department noted that, to the extent Covered Plans 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. The Department also noted that 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.

*Department's Note Regarding Applicability and Limitations of Relief:*

25. This exemption provides relief solely due to the ineligibility of the Northern QPAMs to continue to rely on PTE 84-14 due to the Conviction. The exemption includes protective conditions that allow Covered Plans to continue to use the services of Northern QPAMs if the Covered Plans determine that it is prudent to do so. This exemption allows Covered Plans to avoid cost and disruption to investment strategies that may arise if such Covered Plans are forced, on short notice, to hire a different QPAM or asset manager in connection with the Conviction. The conditions of this exemption also require the Northern QPAMs to adhere to every other specific condition for relief that is required under PTE 84-14, as amended, including the ineligibility provision in the amended version of PTE 84-14, which became effective on June 17, 2024. If any Northern QPAMs violate any conditions of amended PTE 84-14 in the future, they would fail to comply with the requirements of the exemption, and the relief provided under this exemption would become unavailable.

### **Comments Received**

26. In the Proposed Exemption, the Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the Proposed Exemption. All comments and requests for a hearing were due to the Department by March 7, 2025. During the comment period, the Department received 28 phone calls from interested persons generally seeking an explanation of the Proposed Exemption. The Department received three written comments and no requests for a public hearing.<sup>17</sup> One of these comments was a positive comment from an IRA owner with IRA assets managed by Northern and their respective asset managers, asking the Department to grant the Proposed Exemption. The other two comments were from

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<sup>17</sup> All information submitted in connection with this exemption is available through the Department's Public Disclosure Room, by referencing Exemption Application D-12101.

Northern. Northern's first comment addressed three categories of issues: (I) Corrections to the Summary of Facts and Representations; (II) responses to the Department's questions and comments in the Proposed Exemption; and (III) the conditions in the Proposed Exemption. Northern's second comment served as a supplement to clarify certain information provided in Northern's first comment; and provides updates to certain representations made in the exemption application D-12101 (the Exemption Application), pursuant to the Applicant's duty to supplement the Exemption Application under 29 CFR 2570.37. Northern's two comments are discussed together, below (the Northern Comment).

### **Part I. Corrections to the Summary of Facts and Representations.**

27. *Comments 1 through 11 of the Applicant's Comment Letter.* The Applicant identified 11 items in the Summary of Facts and Representations that it believed required ministerial or typographical corrections, or that needed updating. For example, the Applicant notes that Representation 2 of the Proposed Exemption reads, in pertinent part, that "...[a]s of December 31, 2023, 50 South manages discretionary assets of nearly \$11.3 billion, including ERISA and IRA assets." Northern states that the correct approximation of discretionary assets under management by 50 South as of December 31, 2023, is \$11.13 billion.

28. The Department appreciates the Applicant's close reading of the preamble and accepts their changes to the record. None of the 11 items materially change the substance of the exemption or affect the Department's decision to grant this exemption.

### **Part II. The Applicant's Responses to the Departments Questions**

29. *Comment 12 – The Department's Request for Information Regarding Harms to Plans in Representations 31 Through 38 of the Proposed Exemption.* The Department

asked the Applicant to provide a clear description of its estimates of costs to Covered Plans, and to respond to requests (1) through (5) below.

30. Department's Request (1): The Department asked the Applicant to describe the amount of Covered Plan assets that are likely to be subject to the costs described in Representations 31 through 38 of the Proposed Exemption and an explanation of the Applicant's assumptions or methodologies in connection with such figures.

31. The Applicant's Response to Request (1): The Applicant represents that out of \$279 billion of Equity Collective Fund assets described in the Proposed Exemption, \$184 billion represent ERISA account assets. Therefore, 66% of the total Equity Collective fund assets are managed on behalf of Covered Plans which are governed by ERISA. Further, out of the \$127 billion of FI Collective Fund assets described in the Proposed Exemption, \$28 billion represent ERISA account assets. Therefore, 22% of the total Fixed Income Collective fund assets are managed on behalf of Covered Plans which are governed by ERISA. To determine the amount of Covered Plan assets that would be subject to the costs described in Representations 31 through 38, it has assumed that 100% of Covered Plans would terminate the applicable Northern QPAMs, but the Applicant has no way of confirming that assumption and it would depend on the applicable facts and circumstances at the relevant time.

32. Department's Request (2): The Department asked the Applicant to describe the likelihood of the costs occurring, for each of the transition costs described in Representations 31 through 38. For example, with respect to Covered Plans' Alternative Investments, the Department asked how likely Covered Plans are to leave Northern for a different manager. Further, with respect to violating representations as to QPAM status in an offering document, the Department instructed the Applicant to provide information regarding how likely that is to occur.

33. The Applicant's Response to Request (2): In calculating costs, the Applicant assumed that all of its Covered Plan clients would seek to transition to an investment manager who can rely on PTE 84-14.<sup>18</sup> First, the Applicant states that PTE 84-14 allows an investment manager to efficiently engage in a wide variety of transactions on behalf of Covered Plans. Second, the Applicant represents that PTE 84-14 is generally required by certain counterparties when an investment manager transacts on behalf of Covered Plans. Third, the Applicant states that fiduciaries of Covered Plans have long considered the ability to rely on PTE 84-14 as the "gold standard." Nonetheless, the Applicant states that Northern cannot reasonably estimate the likelihood of Covered Plans transitioning to a new investment manager should the Department not provide exemptive relief to the Applicant.

34. Department's Request (3): The Department asked the Applicant to describe the circumstances under which the transition costs described in the tables in Representations 33 through 35 of the Proposed Exemption would be incurred by the Covered Plans.

35. The Applicant's Response to Request (3): The Applicant states that the transaction costs are all related to the costs to Covered Plans who seek to retain a different investment manager.

36. Department's Request (4): The Department asked the Applicant to describe the extent to which any of the asserted costs reflect the Northern QPAMs' imposition of additional charges or fees on Covered Plans (due to the Northern QPAMs' loss of QPAM status), and the cause of the additional charges or fees.

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<sup>18</sup> The Applicant also notes that other financial institutions that have applied for similar relief have assumed that all the Covered Plan clients would seek to transition to a new investment manager that can rely on PTE 84-14.

37. The Applicant's Response to Request (4): The Applicant represents that none of the asserted costs reflect the Northern QPAMs' imposition of additional charges or fees resulting from the loss of QPAM status.

38. Department's Request (5): The Department asked the Applicant to describe the extent to which the costs described in the Proposed Exemption are not likely to be covered by the QPAMs indemnification obligations under section III(j)(2), 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."

39. The Applicant's Response to Request (5): The Applicant states that the Department seems to be asking which of the costs mentioned above would apply if Northern were to again violate Section I(g) of PTE 84-14.<sup>19</sup> The Applicant represents that if Northern were to again violate Section I(g) of PTE 84-14, the answer would depend on the applicable facts and circumstances in existence at that time.

*Department's Note:* The Department notes Northern's representations described in paragraph 34 above, regarding the importance of PTE 84-14 to Covered Plans that hire and retain Northern QPAMs. Those representations suggest to the Department that a number of Covered Plans may transition to new asset managers if the Northern QPAMs

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<sup>19</sup> The Applicant states that Northern's only violation to date of Section I(g) of PTE 84-14 is the Conviction, and so, this question is not relevant to the current circumstances.

can no longer rely on PTE 84-14 due to a conviction that violates Section I(g). For that reason, the Department continues to believe that affected Covered Plans are entitled to indemnification of associated losses, including the transitional expenses necessary to effectuate the switch to a qualified QPAM.

### **Part III. Requested Modifications to the Operative Language**

#### *Comment 13 -- Modification of Section I(a) of the Proposed Exemption:*

40. Section I(a) of the Proposed Exemption defines the “Conviction” as “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.”

41. The Applicant requests the addition of a footnote after the case citation in Section I(a), to read “[o]n March 5, 2024, NTFS appealed this conviction.” The Applicant indicates that, given that one potential outcome of such appeal is that the Conviction could be quashed, it is important to note this appeal in the exemption’s operative language.

Department’s Response: This information appears in the preamble of the Proposed Exemption, at footnote 18, and noted in the preamble of this exemption, at footnote 17. There is no need to reiterate this information in the operative language. Accordingly, the Department declines to make this modification.

#### *Comment 14 -- Modification of the Exemption Period:*

42. Section I(c) of the Proposed Exemption defines the “Exemption Period” as “a period of five years, beginning on March 5, 2025 and ending on March 4, 2030.” The Applicant requests that, for consistency with the effective period of the Amendment, the

effective date of this exemption be the earlier of the date that this exemption is published in the *Federal Register* or September 5, 2025.

Department's Response: The Department has made the requested revision.

*Comment 15 -- Modification of Section I(f) of the Proposed Exemption:*

43. Section I(f) of the Proposed Exemption defines “NTFS” as “Northern Trust Fiduciary Services (Guernsey) Ltd., an affiliate” [sic] of Northern (as defined in PTE 84-14 section VI(c)) located in Guernsey.” The Applicant requests that “Northern Trust Fiduciary Services (Guernsey) Ltd.” be modified to read “Northern Trust Fiduciary Services (Guernsey) Limited.”

Department's Response: The Department has made the requested revision.

*Comment 16 -- Two Requested Modifications of Sections III(h)(1)(vi) and (vii) of the Proposed Exemption:*

44. The conditions of Section III(h)(1)(vi) and (vii) of the Proposed Exemption require, in pertinent part, that “(h)(1) [e]ach 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...(vi) [t]he Northern QPAM complies with the terms of this exemption, if granted... and (vii) [a]ny 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....”

45. Applicant's request regarding (h)(1)(vi) - The Applicant requests that “if granted” be removed from the condition.

Department's Response: The Department has made the requested change.

46. Applicant's request regarding (h)(1)(vii) – The Applicant requests that the language “to appropriate corporate officers, the head of compliance and the General Counsel (or their functional equivalent). . . .” be replaced with “to the Chief Risk Officer, Chief Compliance Officer and General Counsel (or their functional equivalent).

Department's Response: The Department has made the requested change.

*Comment 17 -- Modification of Audit Period:*

47. Section III(i)(1) of the Proposed Exemption states, in pertinent part, that “[e]ach Northern QPAM must submit to an audit conducted every two years. . . .” and that “[e]ach 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.”

48. The Applicant requests changes to the audit periods under the exemption due to the delay in publishing the final exemption. The Applicant states that the Department has previously allowed the independent auditor a year to complete its audit for other financial institutions in similar exemptions.

Department's Response: The Department agrees to modify the audit period for purposes of consistency with other similarly situated financial institutions. Therefore, the audit requirement is modified so that the first audit covers a consecutive 12-month period starting on March 5, 2026. The second audit must cover the consecutive 12-month period starting on March 5, 2028. In the event that the Department grants exemptive relief to the Applicant for an additional 4-year period, the next audit would cover the period from March 5, 2030, through March 4, 2031, and have a required completion date of September 4, 2031.

*Comment 18 -- Modification of Section III(i)(3) of the Proposed Exemption:*

49. Section III(i)(3) provides that 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. The Applicant requests that the word “developed” be removed in the two instances where it appears. The Applicant states that it does not understand how the auditor would test for development of the Policies after the initial audit period.

Department’s Response: The Department declines to make the requested changes. By including a statement of the audit's intended purpose and required determinations in the auditor's agreement, the Applicant ensures that both the auditor and the Northern QPAMs have a clear understanding of the purpose and expectations of the audit process. Among other things, part of this process includes confirmation that each Northern QPAM has developed Policies and Training in accordance with the conditions of the exemption. Though, currently, the Applicant has identified four specific entities that operate as Northern QPAMs, there may be new entities that serve as Northern QPAMs after the initial audit period. Future audits would serve to confirm that these new Northern QPAMs have, among other things, developed Policies in accordance with the conditions of this exemption. Further, the Policies and Training of the existing Northern QPAMs, as well as future Northern QPAMs, may develop and evolve over time.

*Comment 19 -- Modification of Section III(i)(7) of the Proposed Exemption:*

50. Section III(i)(7), which relates to the certification of the Audit, provides, in part that “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.” The Applicant requests that Section III(i)(7) be revised, in pertinent part, to read “...must also include the signatory’s determination that, to the best of such signatory’s knowledge at the time, the Policies and Training in effect at the time of signing are adequate....”

Department’s Response: The Department has made the requested revision, and notes that under Section I(h) of the exemption “the best of the signatory’s knowledge” refers, among other things, to 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.

*Comment 20 -- Modification of Section III(i)(8) of the Proposed Exemption:*

51. This section provides, in part, that “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.”

The Applicant states that the highest-ranking compliance and legal functions are separate functions of the Applicant. The Applicant requests that the provision be revised to state “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 compliance officer or highest-ranking legal 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.”

Department’s Response: The Department concurs with the Applicant’s request and adopts the revision to the condition.

*Comment 21 -- Modification of Section III(j)(2) of the Proposed Exemption:*

52. Section III(j)(2) of the Proposed Exemption states, in pertinent part, that “[t]hroughout 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.... [t]o 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.”

53. The Applicant requests that the Department revert to the contractual provisions required to be agreed to in Covered Plan client contracts under PTE 2016-11,<sup>20</sup> because the Applicant states that it will have already provided these contractual provisions to Covered Plans twice before the new exemption is finalized. In this regard, Section I(i)(7) of PTE 2016-11 requires Northern QPAMs “[t]o indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a violation of applicable laws, a breach of contract, or any claim arising out of the failure of such Northern QPAM to qualify for the exemptive relief provided by PTE 84-14 as a result of a violation of Section I(g) of PTE 84-14 other than the Conviction.”

Department's Response: The Department declines the Applicant's request. The indemnification and make-whole language in Section III(j)(2) of the Proposed Exemption is substantially similar to the indemnification and make-whole language found in parallel provisions of the most recent exemptions from the restrictions of Section I(g) of PTE 84-

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<sup>20</sup> The condition in PTE 2016-11 containing Northern Trust's required contractual agreements and warranties is Section I(i)(7).

14.<sup>21</sup> Since PTE 2016-11 was originally granted, the Department’s indemnification and make-whole condition has evolved as the Department has sought to clarify what losses should be covered if a QPAM were to lose the ability to rely on PTE 84-14. Among other things, the Department has sought to clarify that a violation of a condition of an individual exemption for relief from the restrictions of Section I(g) of PTE 84-14 will trigger a QPAM’s indemnification and make-whole obligation for any actual losses that are the direct result of the loss of relief.

*Comment 22 -- Modification of Section III(m) of the Proposed Exemption:*

54. The Applicant requests that the first sentence of Section III(m) of the Proposed Exemption be revised to add “or a senior legal professional” so that the revised sentence reads “[w]ithin 60 days after the date of publication of the exemption, each Northern QPAM must designate a senior compliance officer or a senior legal professional (*i.e.*, the Compliance Officer) to be responsible for compliance with the Policies and Training requirements....”

Department’s Response: The Department concurs with the Applicant’s request.

*Comment 23 -- Modification of Section III(q) of the Proposed Exemption:*

55. The Applicant requests that Section III(q) be modified so that the phrase “or its affiliates” be removed from the end of the condition since the definition of “Northern” in Section I(d) of the Proposed Exemption already includes affiliates. The revised condition would read, “[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

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<sup>21</sup> See e.g., Section III(j)(2) of PTE 2025-01 at

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.”

Department’s Response: The Department concurs with the Applicant’s request.

*Comment 24 -- Modification of Section III(r) of the Proposed Exemption:*

56. The Applicant requests the deletion of the condition in Section III(r) of the Proposed Exemption, which states “[e]ach Northern QPAM imposes internal procedures, controls, and protocols to reduce the likelihood of any recurrence of conduct that is the subject of the Conviction.” The Applicant states that it does not have a presence in France. The Applicant states that the Conviction relates to an isolated incident with respect to a legacy account from a novel acquisition in a country in which the Applicant does not do business. The Applicant has previously represented that NTFS is not engaged in asset management activities for, and does not act as a fiduciary of, any ERISA plan or IRA. Furthermore, the Applicant states that NTFS has confirmed that it operates based on internal policies and procedures of Northern and is subject to internal audit to ascertain compliance.

Department’s Response: The Department declines to delete Section III(r). Section III(r) is intended to require Northern, not each Northern QPAM, to impose its internal corporate procedures, controls and protocols on its convicted affiliate, NTFS, to reduce the likelihood of any recurrence of the conduct that is the subject of the Conviction. Accordingly, the Department has modified the language to read “Northern imposes its internal procedures, controls, and protocols on NTFS to reduce the likelihood of any recurrence of conduct that is the subject of the Conviction.”

*Comment 25 -- Modification of Section III(t) of the Proposed Exemption:*

57. The Applicant requests deletion of the condition in Section III(t), which provides that, “[r]elief 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 Convictions.” The Applicant states that the Conviction is the result of a French court’s decision and, as a result, the Applicant does not understand what U.S. regulatory issue would be addressed by this condition. The Applicant states that to its knowledge, the Department is the only regulatory agency in the U.S. that is focused on the implications of the Conviction. At a minimum, the Applicant requests that “or an affiliate” be removed from Section III(t). The Applicant states that the definition of “Northern” in the Proposed Exemption includes affiliates.

Department’s Response: The Department declines the Applicant’s request to delete the condition. While at present the Department is not aware of other U.S. regulators that may have an interest in the outcome of the Convictions, the Department is not certain that will always be the case, and the Applicant has not otherwise made a compelling argument that the condition is not relevant. The Department is removing “or an affiliate” because these entities are already included within the term “Northern.”

**Other Revisions and Notes:**

58. On its own motion, the Department reordered Section III to correct omissions and duplications in the alphanumeric order of the conditions. The Department also made several minor, non-substantive revisions that are intended to clarify the exemption and/or correct scrivener’s errors. Further, the Department notes that the Applicant submitted a comment with respect to Section III(h)(1)(i), which it later withdrew.

**Conclusion:**

59. The Department has carefully considered the commenters' requests. After giving full consideration to the entire record, including the comments, the Department has determined to grant the exemption subject to the modifications and clarifications described herein. In granting this exemption, the Department has relied on the representations of the Applicant. If any material statement in the Application, final exemption or the Applicant's comment is not, or may no longer be, completely and factually accurate, the Applicant and recipients of the exemptive relief provided herein must immediately alert the Department.<sup>22</sup>

**Publicly Available Information:**

60. The complete application file (D-12101) is 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, D.C. 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 exemption, please refer to the notice of proposed exemption published on January 21, 2025, at 90 FR 7174.

**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,

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<sup>22</sup> The Representations stated herein are based on the Applicant's representations provided in the Exemption Application and do not reflect factual findings or opinions of the Department unless indicated otherwise. The Department notes that the availability of this exemption is subject to the express condition that the material facts and representations contained in application D-12101 are true and complete at all times, and accurately describe all material terms of the transactions covered by the exemption. If there is any material change in a transaction covered by the exemption, or in a material fact or representation described in the application, the exemption will cease to apply as of the date of the change. Materiality is determined solely by the Department.

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), the Department hereby finds that the exemption is (1) administratively feasible for the Department, (2) in the interests of affected plans and of their participants and beneficiaries, and (3) protective of the rights of participants and beneficiaries of such plans;

(3) The exemption is supplemental to, and not in derogation of, any other ERISA provisions, 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 determining whether the transaction is in fact a prohibited transaction; and

(4) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describe all material terms of the transactions that are the subject of the exemption and are true at all times.

Accordingly, after considering the entire record developed in connection with the Applicant's Exemption Application, the Department has determined to grant the following exemption under the authority of ERISA section 408(a) and Code section 4975(c)(2) in accordance with the Department's exemption procedures regulation.<sup>23</sup>

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<sup>23</sup> 29 CFR part 2570, subpart B (75 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

## EXEMPTION

### ***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 the period beginning on the earlier of September 5, 2025 or the date the exemption is published in the *Federal Register* 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>24</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

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Secretary of the Treasury to issue exemptions of the type requested by the Applicant to the Secretary of Labor. Therefore, this notice of proposed exemption is issued solely by the Department. For purposes of this exemption, references to ERISA section 406, unless otherwise specified, should be read to refer as well to the corresponding provisions of Code section 4975.

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

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) Limited, 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.

(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 refer to 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***

Certain entities with specified relationships to NTFS (i.e., the Northern QPAMs,

as defined above) are not precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84-14 (PTE 84-14),<sup>25</sup> notwithstanding the Conviction (as defined above),<sup>26</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 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

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<sup>25</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), as amended at 89 FR 23090 (April 3, 2024), and as corrected at 89 FR 65779 (August 13, 2024).

<sup>26</sup> Section I(g) of PTE 84-14 generally provides that “a QPAM is ineligible to rely on this exemption for 10 years following: ... [a] Criminal Conviction, as defined in Section VI(r)....”

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; 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 the Chief Risk Officer, Chief Compliance Officer 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, 2026 through March 4, 2027, and must be completed by September 4, 2027. The second audit must cover the period from March 5, 2028, through March 4, 2029, and must be completed by September 4, 2029. In the event that the

Department grants additional exemptive relief to the Applicant after the expiration of this exemption, the next audit would cover the period from March 5, 2030, through March 4, 2031, and have a required completion date of September 4, 2031.

(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, to the best of such signatory's knowledge, 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 compliance officer or highest-ranking legal 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.

(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 or a senior legal professional (*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.

(p) 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.

(q) Northern imposes its internal procedures, controls, and protocols on NTFS to reduce the likelihood of any recurrence of conduct that is the subject of the Conviction.

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

(s) 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.

(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 failed to comply in all material respects with any requirement imposed by such regulatory authority in connection with the Conviction.

(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 dates: The exemption will be in effect during the period beginning on the earlier of September 5, 2025 or the date the exemption is published in the *Federal Register*; and ending on March 4, 2030.

Signed at Washington, DC.

**Christopher Motta,**

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

[FR Doc. 2025-15280 Filed: 8/11/2025 8:45 am; Publication Date: 8/12/2025]