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MORGAN LEWIS RETAIL ADVICE WORKING GROUP

DOL Final Amendment to PTE 84-14, the "QPAM Exemption"

April 2, 2024

REDLINE COMPARISON OF FINAL AND PROPOSED AMENDMENTS TO PTE 84-14

- ***Final Amendment vs. Original PTE 84-14***
- ***Final Amendment vs. Proposed Amendment to PTE 84-14***

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INTRODUCTION

The Department of Labor submitted its final amendment to PTE 84-14 (the "**QPAM exemption**"), to the Federal Register on April 2, 2024. (The proposed amendment was published in July 2022.)

- Scheduled for publication on April 3, 2024, these changes will become effective 75 days from publication, or **June 17, 2024**.

- The final changes are generally less extensive in some respects than the proposal, but we note in particular:

  - Significant changes to the criminal convictions ineligibility provision; and

  - QPAM registration requirement.

We have prepared two redlines.

- The first is designed to be your working copy showing just the substantive changes between the current and the new requirements.

- The second shows the changes from the July 2022 proposed amendment.

As always, we look forward to working with you and your teams, and we thank you for the opportunity to partner with you.

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Working Version

Final Amendment vs. Original PTE 84-14

Section I—General Exemption

The restrictions of ERISA section 406(a)(1)(A) through (D) and the taxes imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A) through (D), shall not apply to a transaction between a Party in Interest with respect to a Plan and an Investment Fund (as defined in Section VI(b)) in which the Plan has an interest, and which is managed by a Qualified Professional Asset Manager (QPAM) (as defined in Section VI(a)), if the following conditions are satisfied:

(a) At the Time of the Transaction (as defined in Section VI(i)), the Party in Interest, or its Affiliate (as defined in Section VI(c)), does not have the authority to—

(1) Appoint or terminate the QPAM as a manager of the Plan assets involved in the transaction, or

(2) Negotiate on behalf of the Plan the terms of the management agreement with the QPAM (including renewals or modifications thereof) with respect to the Plan assets involved in the transaction;

Notwithstanding the foregoing, in the case of an Investment Fund in which two or more unrelated Plans have an interest, a transaction with a Party in Interest with respect to a Plan will be deemed to satisfy the requirements of this Section I(a) if the assets of the Plan managed by the QPAM in the Investment Fund, when combined with the assets of other Plans established or maintained by the same employer (or Affiliate thereof described in Section VI(c)(1) below) or by the same employee organization, and managed in the same Investment Fund, represent less than ten (10) percent of the assets of the Investment Fund;

(b) The transaction is not described in—

(1) Prohibited Transaction Exemption 2006-16 (71 FR 63786; October 31, 2006) (relating to securities lending arrangements) (as amended or superseded),

(2) Prohibited Transaction Exemption 83-1 (48 FR 895; January 7, 1983) (relating to acquisitions by plans of interests in mortgage pools) (as amended or superseded), or

(3) Prohibited Transaction Exemption 82-87 (47 FR 21331; May 18, 1982) (relating to certain mortgage financing arrangements) (as amended or superseded);

(c) The terms of the transaction ~~are negotiated on behalf of the~~, commitments, and investment of fund ~~by,~~ assets, and any associated negotiations are determined by the QPAM (or under the authority and ~~general~~ direction of~~,~~ the QPAM~~, and either~~) which represents the interests of the Investment Fund. Either the QPAM, or (so long as the QPAM retains full fiduciary responsibility with respect to the transaction) a property

manager acting in accordance with written guidelines established and administered by the QPAM, makes the decision on behalf of the Investment Fund to enter into the transaction, provided that the transaction is not part of an agreement, arrangement, understanding designed to benefit a Party in Interest. In exercising its authority, the QPAM must ensure that any transaction, commitment, or investment of fund assets for which it is responsible is based on its own independent exercise of fiduciary judgment and free from any bias in favor of the interests of the plan sponsor or other parties in interest. The QPAM may not be appointed or relied upon to uncritically approve transactions, commitments, or investments negotiated, proposed, or approved by the plan sponsor, or other parties in interest. The prohibited transaction relief provided under this exemption applies only in connection with an Investment Fund that is established primarily for investment purposes. No relief is provided under this exemption for any transaction that has been planned, negotiated, or initiated by a Party in Interest, in whole or in part, and presented to a QPAM for approval to the extent the QPAM would not have sole responsibility with respect to the transaction as required by this Section I(c);

(d) The Party in Interest dealing with the Investment Fund is neither the QPAM nor a person Related to the QPAM;

(e) The transaction is not entered into with a Party in Interest with respect to any Plan whose assets are managed by the QPAM, when combined with the assets of other Plans established or maintained by the same employer (or Affiliate thereof described in subsection VI(c)(1) below) or by the same employee organization, and managed by the QPAM, represent more than twenty (20) percent of the total client assets managed by the QPAM at the time of the transaction; and

(f) At the Time of the Transaction, and at the time of any subsequent renewal or modification thereof that requires the consent of the QPAM, the terms of the transaction are at least as favorable to the Investment Fund as the terms generally available in arm's length transactions between unrelated parties~~;~~.

(g) *Integrity*.

(1) *Ineligibility due to a Criminal Conviction or Prohibited Misconduct*. Subject to the Ineligibility Date provision set forth in Section I(h), a QPAM is ineligible to rely on this exemption for 10 years following:

(A) A Criminal Conviction, as defined in Section VI(r), of the QPAM or any Affiliate thereof (as defined in Section VI(d)), or any owner, direct or indirect, of a five (5) percent or more interest in the QPAM; or

(B) The QPAM, any Affiliate thereof (as defined in Section VI(d)), or any owner, direct or indirect, of a five (5) percent or more interest in the QPAM Participates In Prohibited Misconduct as defined in Section VI(s) and VI(t); or

(2) *Notice to the Department regarding Participation In Prohibited Misconduct*. The QPAM must submit a notice to the Department at QPAM@dol.gov if the QPAM, any Affiliate (as defined in Section VI(d)), or any owner, direct or indirect, of a five (5) percent or more interest in the QPAM, Participates In Prohibited Misconduct as defined in Section VI(s) and VI(t), or enters into an agreement with a foreign government,

however denominated by the laws of the relevant foreign government, that is substantially equivalent to a non-prosecution agreement (NPA) or deferred prosecution agreement (DPA) described in section VI(s)(1). The notice must be sent within 30 calendar days after the Ineligibility Date for the Prohibited Misconduct as determined pursuant to Section (I)(h)(2) below or the execution date of the substantially-equivalent foreign NPA or DPA, and the notice must include a description of the Prohibited Misconduct or the substantially-equivalent foreign NPA or DPA and the name of and contact information for the QPAM.

(h) *Ineligibility Date*. A QPAM shall become ineligible:

(1) as of the "Conviction Date," which is the date of the judgment of the trial court (or the date of the judgment of any court in a foreign jurisdiction that is the equivalent of a U.S. federal or state trial court), regardless of whether that judgment is appealed; or

(2) (A) as of the date on or after June 17, 2024 that the QPAM, any Affiliate thereof (as defined in Section VI(d)), or any owner, direct or indirect, of a five (5) percent or more interest in the QPAM executes a non-prosecution agreement, or a deferred prosecution agreement described in Section VI(s)(1); or

(B) as of the date on or after June 17, 2024 that a final judgment (regardless of whether the judgment is appealed) or a court-approved settlement is ordered by a Federal or State criminal or civil court in connection with determining that the QPAM, any Affiliate thereof (as defined in Section VI(d)), or any owner, direct or indirect, of a five (5) percent or more interest in the QPAM has engaged in Prohibited Misconduct as defined in Section VI(s)(2) and VI(t).

A person will become eligible to rely on this exemption again only upon a subsequent judgment reversing such person's conviction or civil judgment, the effective date of any individual prohibited transaction exemption it receives that expressly permits the relief in this exemption, or the expiration of the 10-year ineligibility period.

(i) *One-Year Transition Period Due to Ineligibility* (One-Year Transition Period or Transition Period). Any QPAM that becomes ineligible under subsection I(g)(1) must provide a Transition Period for its client Plans. Relief is available for transactions (including past transactions) under this exemption during the Transition Period for a maximum period of one year after the Ineligibility Date, provided that the QPAM complies with each condition of the exemption throughout the one-year period (including those additional conditions specified in this subsection (i)). The relief is available during the Transition Period under this exemption only for the QPAM's client Plans that had a pre-existing Written Management Agreement required under subsection VI(a) with the QPAM on the Ineligibility Date. A QPAM must ensure that it manages Plan assets prudently and loyally during the Transition Period. During the Transition Period, the QPAM must comply with the following additional conditions:

(1) Within 30 days after the Ineligibility Date, the QPAM must provide notice to the Department at QPAM@dol.gov and each of its Client Plans stating:

(A) Its failure to satisfy subsection I(g)(1) and the resulting initiation of this One-Year Transition Period;

(B) That during the Transition Period, the QPAM:

(i) Agrees not to restrict the ability of a client Plan to terminate or withdraw from its arrangement with the QPAM;

(ii) Will not impose any fees, penalties, or charges on client Plans in connection with the process of terminating or withdrawing from an Investment Fund managed by the QPAM except for reasonable fees, appropriately disclosed in advance, that are specifically designed to: (a) prevent generally recognized abusive investment practices, or (b) ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in a like manner to all such investors;

(iii) Agrees to indemnify, hold harmless, and promptly restore actual losses to the client Plans for any damages that directly result to them from a violation of applicable laws, a breach of contract, or any claim arising out of the conduct that is the subject of a Criminal Conviction or Prohibited Misconduct of the QPAM, an Affiliate (as defined in Section VI(d)), or an owner, direct or indirect, of a five (5) percent or more interest in the QPAM. Actual losses specifically include losses and 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 QPAM's inability to rely upon the relief in the QPAM Exemption; and

(iv) Will not employ or knowingly engage any individual that Participated In the conduct that is the subject of a Criminal Conviction or Prohibited Misconduct, regardless of whether the individual is separately convicted in connection with the criminal conduct.

(C) An objective description of the facts and circumstances upon which the Criminal Conviction or Prohibited Misconduct is based, written with sufficient detail to fully inform the client Plan's fiduciary of the nature and severity of the conduct so that the fiduciary can satisfy its duties of prudence and loyalty under section 404 of ERISA (29 U.S.C. § 1104), as applicable, with respect to hiring, monitoring, evaluating, and retaining the QPAM in a non-QPAM capacity;

(2) As of the Ineligibility Date under Section I(h), the QPAM must not employ or knowingly engage any individual that Participated In the conduct that is the subject of a Criminal Conviction or that Participated In Prohibited Misconduct causing ineligibility of the QPAM under subsection I(g)(1); and

(3) After the One-Year Transition Period expires, and if the Criminal Conviction is not reversed on appeal, the entity may not rely on the relief provided in this exemption until the expiration of the 10-year ineligibility period unless it obtains an individual exemption permitting it to continue relying upon this exemption.

(j) *Requests for an Individual Exemption*. A QPAM that is ineligible or anticipates that it will become ineligible due to an actual or possible Criminal Conviction or Participating In Prohibited Misconduct as defined in Sections VI(r) and VI(s) may apply for an individual exemption from the Department to continue to rely on the relief provided in this exemption for a longer period than the One-Year Transition Period. An applicant should review the Department's most recently granted individual exemptions involving Section I(g) ineligibility with the expectation that similar conditions will be required of the applicant, if the Department proposes and grants a requested exemption. To that end, if an applicant requests the Department to exclude any term or condition from its exemption that is included in a recently granted individual exemption, the applicant must include a detailed statement with its exemption application explaining the reason(s) why the proposed variation is necessary and in the interest and protective of affected Plans, their participants and beneficiaries, and individuals for whose benefit a Plan described in Code section 4975(e)(1)(B) or (C) is established (IRA owners). The Department will review such requests consist with the requirements of ERISA section 408(a) and Code section 4975(c)(2). Such applicants also should provide detailed information in their applications quantifying the specific cost or harms in dollar amounts, if any, their client Plans would suffer if the QPAM could not rely on the exemption after the Transition Period, including the specific dollar amounts of investment losses resulting from foregone investment opportunities and any evidence supporting the proposition that investment opportunities would be available to client Plans on less advantageous terms. An applicant should not construe the Department's acceptance of an individual exemption application as a guarantee that the Department will grant an individual exemption. A QPAM that submits an individual exemption application must ensure that it manages Plan assets prudently and loyally during the Transition Period in accordance with section 404 of ERISA (29 U.S.C. § 1104), as applicable.

(k) Any QPAM that relies upon this exemption must notify the Department via email at QPAM@dol.gov. Each QPAM that relies upon the exemption must report the legal name of each business entity relying upon the exemption in the email to the Department and any name the QPAM may be operating under. This notification needs to be reported only once unless there is a change to the legal name or operating name(s) of the QPAM relying upon the exemption or the QPAM no longer is relying on the exemptive relief provided in the exemption. The QPAM must provide notice to the Department within ninety (90) calendar days of its reliance on the exemption or a change to its legal or operating name. If the QPAM inadvertently fails to provide notice to the Department within the initial 90 calendar day period, it may notify the Department of its reliance on the exemption or name change and failure to report without losing the relief provided by this exemption. This notice must be provided within an additional 90 calendar days along with an explanation for the QPAM's failure to provide notice. A QPAM may notify the Department if it is no longer relying upon this exemption at any time.

Section II—Specific Exemption for Employers

The restrictions of ERISA sections 406(a), 406(b)(1), and 407(a) and the taxes imposed by Code section 4975(a) and (b, by reason of Code section 4975(c)(1)(A)

through (E), shall not apply to:

(a) The sale, leasing, or servicing of Goods or the furnishing of services, to an Investment Fund managed by a QPAM by a Party in Interest with respect to a Plan having an interest in the fund, if–

(1) The Party in Interest is an employer any of whose employees are covered by the Plan or is a person who is a Party in Interest by virtue of a relationship to such an employer (described in Section VI(c) below),

(2) The transaction is necessary for the administration or management of the Investment Fund,

(3) The transaction takes place in the ordinary course of a business engaged in by the Party in Interest with the general public,

(4) The amount attributable in any taxable year of the Party in Interest to transactions engaged in with an Investment Fund pursuant to this Section II(a) does not exceed one (1) percent of the gross receipts derived from all sources for the prior taxable year of the Party in Interest, and

(5) The requirements of Sections I(c) through (g) above are satisfied with respect to the transaction~~;~~.

(b) The leasing of office or commercial space by an Investment Fund maintained by a QPAM to a Party in Interest with respect to a Plan having an interest in the Investment Fund, if –

(1) The Party in Interest is an employer any of whose employees are covered by the Plan or is a person who is a Party in Interest by virtue of a relationship to such an employer (described in Section VI(c) below);

(2) No commission or other fee is paid by the Investment Fund to the QPAM or to the employer, or to an Affiliate of the QPAM or employer (as defined in Section VI(c) below), in connection with the transaction;

(3) Any unit of space leased to the Party in Interest by the Investment Fund is suitable (or adaptable without excessive cost) for use by different tenants;

(4) The amount of space covered by the lease does not exceed fifteen (15) percent of the rentable space of the office building, integrated office park, or of the commercial center (if the lease does not pertain to office space)~~,~~;

(5) In the case of a Plan that is not an eligible individual account plan (as defined in ERISA section 407(d)(3)), immediately after the transaction is entered into, the aggregate fair market value of employer real property and employer securities held by the Investment Funds of the QPAM in which the Plan has an interest does not exceed ten (10) percent of the fair market value of the assets of the Plan held in those Investment Funds. In determining the aggregate fair market value of employer real property and employer securities as described herein, a Plan shall be considered to own the same proportionate undivided interest in each asset of the Investment Fund or funds as its proportionate interest in the total assets of the Investment Fund(s). For purposes of this requirement, the term "employer real property" means real property leased to, and the term "employer securities" means securities issued by~~,~~ an employer any of

whose employees are covered by the Plan or a Party in Interest of the Plan by reason of a relationship to the employer described in ERISA section 3(14)(E) or (G); and

(6) The requirements of Sections I(c) through (g) above are satisfied with respect to the transaction.

Section III—Specific Lease Exemption for QPAMs

The restrictions of ERISA section 406(a)(1)(A) through (D), 406(b)(1) and (2), and the taxes imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A) through (E), shall not apply to the leasing of office or commercial space by an Investment Fund managed by a QPAM to the QPAM, a person who is a Party in Interest of a Plan by virtue of a relationship to such QPAM described in ERISA section 3(14)(G), (H), or (I), or a person not eligible for the General Exemption of Section I above by reason of Section I(a), if–

(a) The amount of space covered by the lease does not exceed the greater of 7,500 square feet or one (1) percent of the rentable space of the office building, integrated office park, or of the commercial center in which the Investment Fund has the

investment~~,~~;

(b) The unit of space subject to the lease is suitable (or adaptable without excessive cost) for use by different tenants~~,~~;

(c) At the Time of the Transaction, and at the time of any subsequent renewal or modification thereof that requires the consent of the QPAM, the terms of the transaction are not more favorable to the lessee than the terms generally available in arm's length transactions between unrelated parties~~,~~; and

(d) No commission or other fee is paid by the Investment Fund to the QPAM, any person possessing the disqualifying powers described in Section I(a), or any Affiliate of such persons (as defined in Section VI(c) below), in connection with the transaction.

Section IV—Transactions Involving Places of Public Accommodation

The restrictions of ERISA section 406(a)(1)(A) through (D) and 406(b)(1) and (2) and the taxes imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A) through (E), shall not apply to the furnishing of services and facilities (and Goods incidental thereto) by a place of public accommodation owned by an Investment Fund managed by a QPAM to a Party in Interest with respect to a Plan having an interest in the Investment Fund, if the services and facilities (and incidental Goods) are furnished on a comparable basis to the general public.

Section V—Specific Exemption Involving QPAM-Sponsored Plans

The relief in Sections I, III, or IV above from the applicable restrictions of ERISA section 406(a), section 406(b)(1) and (2), and the taxes imposed by Code section 4975(a) and (b), by reason of Code section

4975(c)(1)(A) through (E), shall apply to a transaction involving the assets of a Plan sponsored by the QPAM or an Affiliate (as defined in Section VI(c)) of the QPAM if:

(a) The QPAM has discretionary authority or control with respect to the Plan assets involved in the transaction;

(b) The QPAM adopts Written Policies and Procedures that are designed to ensure compliance with the conditions of the exemption;

(c) An independent auditor, who has appropriate technical training or experience and proficiency with ERISA's fiduciary responsibility provisions and so represents in writing, conducts an Exemption Audit on an annual basis. Following completion of the Exemption Audit, the auditor shall issue a written report to the Plan presenting its specific findings regarding the level of compliance with: (1) the Written Policies and Procedures adopted by the QPAM in accordance with Section V(b) above, and (2) the objective requirements of this exemption. The written report shall also contain the auditor's overall opinion regarding whether the QPAM's program complied with: (1) the Written Policies and Procedures adopted by the QPAM, and (2) the objective requirements of the exemption. The Exemption Audit and the written report must be completed within six months following the end of the year to which the audit relates; and

(d) The transaction meets the applicable requirements set forth in Sections I, III, or IV above.

Section VI—Definitions and General Rules

For purposes of this exemption:

(a) The term "Qualified Professional Asset Manager" or "QPAM" means an Independent Fiduciary which is —

(1) A bank, as defined in section 202(a)(2) of the Investment Advisers Act of 1940 that has the power to manage, acquire or dispose of assets of a Plan, which bank has, as of the last day of its most recent fiscal year, Equity Capital in excess of $1,000,000. Effective as of the last day of the fiscal year ending no later than December 31, 2024, substitute $1,570,300 for $1,000,000. Effective as of the last day of the fiscal year ending no later than December 31, 2027, substitute $2,140,600 for $1,000,000. Effective as of the last day of the fiscal year ending no later than December 31, 2030, substitute $2,720,000 for $1,000,000; or

(2) A savings and loan association, the accounts of which are insured by the Federal Deposit Insurance Corporation that has made application for and been granted trust powers to manage, acquire or dispose of assets of a Plan by a State or Federal authority having supervision over savings and loan associations, which savings and loan association has, as of the last day of its most recent fiscal year, Equity Capital or Net Worth in excess of $1,000,000. Effective as of the last day of the fiscal year ending no later than December 31, 2024, substitute $1,570,300 for $1,000,000. Effective as of the last day of the fiscal year ending no later than December 31, 2027, substitute $2,140,600 for $1,000,000. Effective as of the last day of the fiscal year ending no later than December 31, 2030, substitute $2,720,000 for $1,000,000; or

(3) An insurance company which is qualified under the laws of more than one State to manage, acquire, or dispose of any assets of a Plan, which company has, as of the last day of its most recent fiscal year, Net Worth in excess of $1,000,000 and which is subject to supervision and examination by a State authority having supervision over insurance companies. Effective as of the last day of the fiscal year ending no later than December 31, 2024, substitute $1,570,300 for $1,000,000. Effective as of the last day of the fiscal year ending no later than December 31, 2027, substitute $2,140,600 for $1,000,000. Effective as of the last day of the fiscal year ending no later than December 31, 2030, substitute $2,720,000 for $1,000,000; or

(4) An investment adviser registered under the Investment Advisers Act of 1940 that has total client assets under its management and control in excess of $~~50,000,000~~85,000,000 as of the last day of its most recent fiscal year, and either (A) Shareholders' or Partners' Equity in excess of $~~750,000~~1,000,000, or (B) payment of all of its liabilities including any liabilities that may arise by reason of a breach or violation of a duty described in ERISA sections 404 and 406 is unconditionally guaranteed by—(i) A person with a relationship to such investment adviser described in subsection VI(c)(1) below if the investment adviser and such Affiliate have Shareholders' or Partners' Equity, in the aggregate, in excess of $~~750,000,~~1,000,000; or (ii) A person described in (a)(1), (a)(2) or (a)(3) of Section VI above~~,~~; or (iii) A broker-dealer registered under the Securities Exchange Act of 1934 that has, as of the last day of its most recent fiscal year, Net Worth in excess of $~~750,000;~~ 1,000,000. Effective as of the last day of the fiscal year ending no later than December 31, 2024, substitute ~~"~~$101,956,000 for $85,000,000 and $~~50,000,000" and "~~1,346,000 for $1,000,000~~" for "$750,000"~~. Effective as of the last day of the fiscal year ending no later than December 31, 2027, substitute $118,912,000 for $85,000,000 and $1,694,000 for $1,000,000. Effective as of the last day of the fiscal year ending no later than December 31, 2030, substitute $135,868,000 for $85,000,000 and $2,040,000 for $1,000,000;

Provided that such bank, savings and loan association, insurance company, or investment adviser has acknowledged in a "Written Management Agreement" that it is a fiduciary with respect to each Plan that has retained the QPAM.

(5) By publication through notice in the *Federal Register*, the Department will make subsequent annual adjustments for inflation to the Equity Capital, Net Worth, and asset management thresholds in subsection VI(a)(1) through (4), rounded to the nearest $10,000, no later than January 31 of each year. The adjustments will be effective as of the last day of the fiscal year in which the increase takes effect, ending no later than December 31 of such fiscal year.

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

(c) For purposes of Section I(a) and Sections II and V above, an "Affiliate" of a person means—

(1) Any person directly or indirectly, through one or more intermediaries, Controlling, Controlled by, or under Common Control with the person~~,~~;

(2) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, ten (10) percent or more partner (except with respect to Section II this figure shall be five (5) percent), or highly compensated employee as defined in Code section 4975(e)(2)(H) (but only if the employer of such employee is the Plan sponsor)~~,~~; and

(3) Any director of the person or any employee of the person who is a highly compensated employee, as defined in Code section 4975(e)(2)(H), or who has direct or indirect authority, responsibility or control regarding the custody, management or disposition of Plan assets involved in the transaction. A named fiduciary (within the meaning of ERISA section 402(a)(2)) of a Plan with respect to the Plan assets involved in the transaction and an employer any of whose employees are covered by the Plan will also be considered Affiliates with respect to each other for purposes of Section I(a) above if such employer or an Affiliate of such employer has the authority, alone or shared with others, to appoint or terminate the named fiduciary or otherwise negotiate the terms of the named fiduciary's employment agreement.

(d) For purposes of Section I(g) above an "Affiliate" of a person means—

(1) Any person directly or indirectly through one or more intermediaries, Controlling, Controlled by, or under Common Control with the person~~,~~;

(2) Any director of, Relative of, or partner in, any such person~~,~~;

(3) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, or a five percent or more partner or owner; and

(4) Any employee or officer of the person who—

(A) Is a highly compensated employee (as defined in Code section 4975(e)(2)(H) or officer (earning ten (10) percent or more of the yearly wages of such person)~~,~~; or

(B) Has direct or indirect authority, responsibility, or control regarding the custody, management or disposition of Plan assets.

(e) The terms "Controlling," "Controlled by," "under Common Control with," and "Controls" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(f) The term "Party in Interest" means a person described in ERISA section 3(14) and includes a "disqualified person," as defined in Code section 4975(e)(2).

(g) The term "Relative" means a relative as that term is defined in ERISA section 3(15), or a brother, a sister, or a spouse of a brother or sister.

(h) A QPAM is "Related" to a Party in Interest for purposes of Section I(d) above if, as of the last day of its most recent calendar quarter: (i) The QPAM owns a ten (10) percent or more Interest in the Party in Interest; (ii) a person Controlling, or Controlled by, the QPAM owns a twenty (20) percent or more Interest in the Party in Interest; (iii) the Party in Interest owns a ten (10) percent or more Interest in the QPAM; or (iv) a person Controlling, or Controlled by, the Party in Interest owns a twenty (20) percent or more Interest in the QPAM. Notwithstanding the foregoing, a Party in Interest is "Related" to a QPAM if: (i) A person Controlling, or Controlled by, the Party in Interest has an ownership Interest that is less than twenty (20) percent but greater than ten (10) percent in the QPAM and such person exercises Control over the management or policies of the QPAM by reason of its ownership Interest; (ii) a person Controlling, or Controlled by, the QPAM has an ownership Interest that is less than twenty (20) percent but greater than ten (10) percent in the Party in Interest and such person exercises Control over the management or policies of the Party in Interest by reason of its ownership Interest. For purposes of this definition:

(1) The term "Interest" means with respect to ownership of an entity—

(A) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation,

(B) The capital interest or the profits interest of the entity if the entity is a partnership, or

(C) The beneficial interest of the entity if the entity is a trust

or unincorporated enterprise; and

(2) A person is considered to own an "Interest" if, other than in a fiduciary capacity, the person has or shares the authority—

(A) To exercise any voting rights or to direct some other person to exercise the voting rights relating to such interest, or

(B) To dispose or to direct the disposition of such interest.

(i) "At the Time of the Transaction" means the date upon which the transaction is entered into. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into on or after December 21, 1982, or a renewal that requires the consent of the QPAM occurs on or after December 21, 1982, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, the requirements will continue to be satisfied thereafter with respect to the transaction. Notwithstanding the foregoing, this exemption shall cease to apply to a transaction exempt by virtue of Section I or Section II above at such time as the percentage

requirement contained in Section I(e) is exceeded, unless no portion of such excess results from an increase in the assets transferred for discretionary management to a QPAM. For this purpose, assets transferred do not include the reinvestment of earnings attributable to those Plan assets already under the discretionary management of the QPAM. Nothing in this paragraph shall be construed as exempting a transaction entered into by an Investment Fund which becomes a transaction described in ERISA section 406 or Code section 4975 while the transaction is continuing, unless the conditions of this exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

(j) The term "Goods" includes all things which are movable or which are fixtures used by an Investment Fund but does not include securities, commodities, commodities futures, money, documents, instruments, accounts, chattel paper, contract rights, and any other property, tangible or intangible, which, under the relevant facts and circumstances, is held primarily for investment.

(k) For purposes of subsection VI(a)(1) and (2) above, the term "Equity Capital" means stock (common and preferred), surplus, undivided profits, contingency reserves, and other capital reserves.

(l) For purposes of subsection VI(a)(2), (3), and (4) above, the term "Net Worth" means capital, paid-in and contributed surplus, unassigned surplus, contingency reserves, group contingency reserves, and special reserves.

(m) For purposes of subsection VI(a)(4) above, the term "Shareholders' or Partners' Equity" means the equity shown in the most recent balance sheet prepared within the two years immediately preceding a transaction undertaken pursuant to this exemption, in accordance with generally accepted accounting principles.

(n) The term "Plan" refers to an employee benefit plan described in ERISA section 3(3) and/or a plan described in Code section 4975(e)(1).

(o) For purposes of Section VI(a) above, the term "Independent Fiduciary" means a fiduciary managing the assets of a Plan in an Investment Fund that is independent of and unrelated to the employer sponsoring such Plan. For purposes of this exemption, the fiduciary will not be deemed to be independent of and unrelated to the employer sponsoring the Plan if such fiduciary directly or indirectly Controls, is Controlled by, or is under Common Control with the employer sponsoring the Plan. Notwithstanding the foregoing: (1) for the period from December 21, 1982, through November 3, 2010, a QPAM managing the assets of a Plan in an Investment Fund will not fail to satisfy the requirements of this section solely because such fiduciary is the employer sponsoring the Plan or directly or indirectly Controls, is Controlled by, or is under Common Control with the employer sponsoring the Plan; and (2) effective after November 3, 2010 a QPAM acting as a manager for its own Plan or the Plan of an Affiliate (as defined in subsection VI(c)(1) above) will be deemed to satisfy the requirements of this section if the requirements of Section V above are met.

(p) An "Exemption Audit" of a Plan must consist of the following:

(1) A review of the Written Policies and Procedures adopted by the QPAM pursuant to Section V(b) above for consistency with each of the objective requirements of this exemption (as described in Section VI(q) below)~~.~~;

(2) A test of a representative sample of the Plan's transactions during the audit period that is sufficient in size and nature to afford the auditor a reasonable basis:

(A) To make specific findings regarding whether the QPAM is in compliance with (i) the Written Policies and Procedures adopted by the QPAM pursuant to Section VI(q) below and (ii) the objective requirements of this exemption, and

(B) To render an overall opinion regarding the level of compliance of the QPAM's program with subsection VI(p)(2)(A)(i) and (ii)above;

(3) A determination as to whether the QPAM has satisfied the definition of a QPAM under the exemption; and

(4) Issuance of a written report describing the steps performed by the auditor during the course of its review and the auditor's findings.

(q) For purposes of Section VI(p), the Written Policies and Procedures must describe the following objective requirements of this exemption and the steps adopted by the QPAM to ensure compliance with each of these requirements:

(1) The definition of a QPAM in Section VI(a)~~.~~;

(2) The requirement of Sections V(a) and I(c) regarding the discretionary authority or control of the QPAM with respect to the Plan assets involved in the transaction, in negotiating the terms of the transaction and with respect to the decision on behalf of the Investment Fund to enter into the transaction~~.~~;

(3) For a transaction described in Section I above:

(A) That the transaction is not entered into with any person who is excluded from relief under Section I(a), Section I(d), or Section I(e)~~,~~ above;

(B) That the transaction is not described in any of the class exemptions listed in Section I(b) above;

(4) If the transaction is described in Section III above:

(A) That the amount of space covered by the lease does not exceed the limitations described in Section III(a) above, and

(B) That no commission or other fee is paid by the Investment Fund as described in Section III(d) above.

(r) "Criminal Conviction" occurs when a QPAM, any Affiliate thereof (as defined in Section VI(d)), or any owner, direct or indirect, of a five (5) percent or more interest in the QPAM::

(1) is convicted in a U.S. federal or state court or released from imprisonment, whichever is later, as a result of any felony involving abuse or misuse of such person's Plan position or employment, or position or employment with a labor organization; any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company or fiduciary; income tax evasion; any felony involving the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; conspiracy or attempt to commit any such crimes or a crime in which any of the foregoing crimes is an element; or any crime that is identified or described in ERISA section 411; or

(2) is convicted by a foreign court of competent jurisdiction or released from imprisonment, whichever is later, as a result of a crime, however denominated by the laws of the relevant foreign government, that is substantially equivalent to an offense described in(r)(1) above (excluding convictions and imprisonment that occur within a foreign country that is included on the Department of Commerce's list of "foreign adversaries" that is codified in 15 CFR 7.4, as amended).

(s) "Prohibited Misconduct" means when a QPAM, any Affiliate thereof (as defined in Section VI(d)), or any owner, direct or indirect, of a five (5) percent or more interest in the QPAM:

(1) Enters into a non-prosecution (NPA) or deferred prosecution agreement (DPA) on or after June 17, 2024 with a U.S. federal or state prosecutor's office or regulatory agency, where the factual allegations that form the basis for the NPA or DPA would have constituted a crime described in Section VI(r) if they were successfully prosecuted; or

(2) Is found or determined in a final judgment, or court-approved settlement by a Federal or State criminal or civil court that is entered on or after June 17, 2024 in a proceeding brought by the Department, the Department of Treasury, the Internal Revenue Service, the Securities and Exchange Commission, the Department of Justice, the Federal Reserve Bank, the Office of the Comptroller of the Currency, the Federal Depository Insurance Corporation, the Commodities Futures Trading Commission, a state regulator, or state attorney general to have Participated In one or more of the following categories of conduct irrespective of whether the court specifically considers this exemption or its terms:

(A) engaging in a systematic pattern or practice of conduct that violates the conditions of this exemption in connection with otherwise non-exempt prohibited transactions;

(B) intentionally engaging in conduct that violates the conditions of this exemption in connection with otherwise non-exempt prohibited transactions; or

(C) providing materially misleading information to the Department, the Department of Treasury, the Internal Revenue Service, the Securities and Exchange Commission, the Department of Justice, the Federal

Reserve Bank, the Office of the Comptroller of the Currency, the Federal Depository Insurance Corporation, the Commodities Futures Trading Commission, a state regulator or a state attorney general in connection with the conditions of the exemption.

(t) "Participate In," "Participates In," "Participating In," "Participated In," and "Participation In" all refer not only to active participation in Prohibited Misconduct, but also to knowing approval of the conduct, or knowledge of such conduct without taking active steps to prohibit such conduct, including reporting the conduct to the appropriate compliance personnel.

(u) The QPAM maintains the records necessary to enable the persons described in subsection (u)(2) below to determine whether the conditions of this exemption have been met with respect to a transaction for a period of six years from the date of the transaction in a manner that is reasonably accessible for examination. No prohibited transaction will be considered to have occurred solely due to the unavailability of such records if they are lost or destroyed due to circumstances beyond the control of the QPAM before the end of the six-year period.

(1) No party, other than the QPAM responsible for complying with this Section VI(u), will be subject to the civil penalty that may be assessed under ERISA section 502(i) or the excise tax imposed by Code section 4975(a) and (b), if applicable, if the records are not maintained or available for examination as required by this Section VI(u) below.

(2) Except as provided in subsection (3) or precluded by 12 U.S.C. 484 (regarding limitations on visitorial powers for national banks), and notwithstanding any provisions of ERISA section 504(a)(2) and (b), the records are reasonably available at their customary location during normal business hours for examination by:

(A) Any authorized employee of the Department or the Internal Revenue Service or another state or federal regulator,

(B) Any fiduciary of a Plan invested in an Investment Fund managed by the QPAM,

(C) Any contributing employer and any employee organization whose members are covered by a Plan invested in an Investment Fund managed by the QPAM, or

(D) Any participant or beneficiary of a Plan invested in an Investment Fund managed by the QPAM.

(3) None of the persons described in subsection (2)(B) through (D) above are authorized to examine records regarding an Investment Fund that they are not invested in, privileged trade secrets or privileged commercial or financial information of the QPAM, or information identifying other individuals.

(4) Should the QPAM refuse to disclose information to a person described in subsection (2)(A) through (D) above on the basis that the information is exempt from disclosure, the QPAM must provide a written

notice advising the requestor of the reasons for the refusal and that the Department may request such information by the close of the thirtieth (30th) day following the request.

(5) A QPAM's failure to maintain the records necessary to determine whether the conditions of this exemption have been met will result in the loss of the relief provided under this exemption only for the transaction or transactions for which such records are missing or have not been maintained. Such failure does not affect the relief for other transactions if the QPAM maintains required records for such transactions in compliance with this Section VI(u).

Final Amendment vs. Proposed Amendment to PTE 84-14

Section I—General Exemption

The restrictions of ERISA section 406(a)(1)(A) through (D) and the taxes imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A) through (D), shall not apply to a transaction between a Party in Interest with respect to a Plan and an Investment Fund (as defined in Section VI(b)) in which the Plan has an interest, and which is managed by a Qualified Professional Asset Manager (QPAM) (as defined in Section VI(a)), if the following conditions are satisfied:

(a) At the Time of the Transaction (as defined in Section VI(i)), the Party in Interest, or its Affiliate (as defined in Section VI(c)), does not have the authority to –

(1) Appoint or terminate the QPAM as a manager of the Plan assets involved in the transaction, or

(2) Negotiate on behalf of the Plan the terms of the management agreement with the QPAM (including renewals or modifications thereof) with respect to the Plan assets involved in the transaction;

Notwithstanding the foregoing, in the case of an Investment Fund in which two or more unrelated Plans have an interest, a transaction with a Party in Interest with respect to a Plan will be deemed to satisfy the requirements of this Section I(a) if the assets of the Plan managed by the QPAM in the Investment Fund, when combined with the assets of other Plans established or maintained by the same employer (or Affiliate thereof described in Section VI(c)(1) below) or by the same employee organization, and managed in the same Investment Fund, represent less than ten (10) percent of the assets of the Investment Fund;

(b) The transaction is not described in—

(1) Prohibited Transaction Exemption 2006-16 (71 FR 63786; October 31, 2006) (relating to securities lending arrangements) (as amended or superseded),

(2) Prohibited Transaction Exemption 83-1 (48 FR 895; January 7, 1983) (relating to acquisitions by plans of interests in mortgage pools) (as amended or superseded), or

(3) Prohibited Transaction Exemption 82-87 (47 FR 21331; May 18, 1982) (relating to certain mortgage financing arrangements) (as amended or superseded);

(c) The terms of the transaction, commitments, and investment of fund assets, and any associated negotiations ~~on behalf~~are determined by the QPAM (or under the authority and direction of the QPAM) which represents the interests of the Investment Fund~~ are the sole responsibility of the QPAM~~. Either the QPAM, or (so long as the QPAM retains full fiduciary responsibility with respect to the transaction) a property manager acting in accordance with written guidelines established and administered by the QPAM, makes the decision on behalf of the Investment Fund to enter into the transaction, provided that the transaction is not part of an

agreement, arrangement, or understanding designed to benefit a Party in Interest. In exercising its authority, the QPAM must ensure that any transaction, commitment, or investment of fund assets for which it is responsible is based on its own independent exercise of fiduciary judgment and free from any bias in favor of the interests of the plan sponsor or other parties in interest. The QPAM may not be appointed or relied upon to uncritically approve transactions, commitments, or investments negotiated, proposed, or approved by the plan sponsor, or other parties in interest. The prohibited transaction relief provided under this exemption applies only in connection with an Investment Fund that is established primarily for investment purposes. No relief is provided under this exemption for any transaction that has been planned, negotiated, or initiated by a Party in Interest, in whole or in part, and presented to a QPAM for approval ~~because~~to the extent the QPAM would not have sole responsibility with respect to the transaction as required by this Section I(c);

(d) The Party in Interest dealing with the Investment Fund is neither the QPAM nor a person Related to the QPAM;

(e) The transaction is not entered into with a Party in Interest with respect to any Plan whose assets are managed by the QPAM, when combined with the assets of other Plans established or maintained by the same employer (or Affiliate thereof described in subsection VI(c)(1) below) or by the same employee organization, and managed by the QPAM, represent more than twenty (20) percent of the total client assets managed by the QPAM at the time of the transaction; and

(f) At the Time of the Transaction, and at the time of any subsequent renewal or modification thereof that requires the consent of the QPAM, the terms of the transaction are at least as favorable to the Investment Fund as the terms generally available in arm's length transactions between unrelated parties~~;~~.

(g) *Integrity*.

(1) ~~*Reporting reliance on the exemption to the Department.* Any QPAM that relies upon this exemption must notify the Department via email at~~ *Ineligibility due to a Criminal Conviction or Prohibited Misconduct*. Subject to the Ineligibility Date provision set forth in Section I(h), a QPAM is ineligible to rely on this exemption for 10 years following:

(A) A Criminal Conviction, as defined in Section VI(r), of the QPAM or any Affiliate thereof (as defined in Section VI(d)), or any owner, direct or indirect, of a five (5) percent or more interest in the QPAM; or

(B) The QPAM, any Affiliate thereof (as defined in Section VI(d)), or any owner, direct or indirect, of a five (5) percent or more interest in the QPAM Participates In Prohibited Misconduct as defined in Section VI(s) and VI(t); or

(2) *Notice to the Department regarding Participation In Prohibited Misconduct.* The QPAM must submit a notice to the Department at QPAM@dol.gov~~. Each QPAM that relies upon the exemption must report the legal name of each business entity relying upon the exemption in the email to the Department and any name the QPAM may be operating under. This notification needs to be reported only once unless there is a change to the legal name or~~

~~operating name(s) of the QPAM relying upon the exemption or the QPAM no longer is relying on the exemptive relief provided in the exemption.~~ if the QPAM, any Affiliate (as defined in Section VI(d)), or any owner, direct or indirect, of a five (5) percent or more interest in the QPAM, Participates In Prohibited Misconduct as defined in Section VI(s) and VI(t), or enters into an agreement with a foreign government, however denominated by the laws of the relevant foreign government, that is substantially equivalent to a non-prosecution agreement (NPA) or deferred prosecution agreement (DPA) described in section VI(s)(1). The notice must be sent within 30 calendar days after the Ineligibility Date for the Prohibited Misconduct as determined pursuant to Section (I)(h)(2) below or the execution date of the substantially-equivalent foreign NPA or DPA, and the notice must include a description of the Prohibited Misconduct or the substantially-equivalent foreign NPA or DPA and the name of and contact information for the QPAM.

~~(2) *Written Management Agreement*. In its Written Management Agreement with clients (as required under Section VI(a)), the QPAM must include a statement that, in the event of a Criminal Conviction (described in subsection I(g)(3)(A)) or a Written Ineligibility Notice (described in subsection I(g)(3)(B)) and for at least a period of 10 years~~

(h) *Ineligibility Date*. A QPAM shall become ineligible:

(1) as of the "Conviction Date," which is the date of the judgment of the trial court (or the date of the judgment of any court in a foreign jurisdiction that is the equivalent of a U.S. federal or state trial court), regardless of whether that judgment is appealed; or

(2) (A) as of the date on or after June 17, 2024 that the QPAM, any Affiliate thereof (as defined in Section VI(d)), or any owner, direct or indirect, of a five (5) percent or more interest in the QPAM executes a non-prosecution agreement, or a deferred prosecution agreement described in Section VI(s)(1); or

(B) as of the date on or after June 17, 2024 that a final judgment (regardless of whether the judgment is appealed) or a court-approved settlement is ordered by a Federal or State criminal or civil court in connection with determining that the QPAM, any Affiliate thereof (as defined in Section VI(d)), or any owner, direct or indirect, of a five (5) percent or more interest in the QPAM has engaged in Prohibited Misconduct as defined in Section VI(s)(2) and VI(t).

A person will become eligible to rely on this exemption again only upon a subsequent judgment reversing such person's conviction or civil judgment, the effective date of any individual prohibited transaction exemption it receives that expressly permits the relief in this exemption, or the expiration of the 10-year ineligibility period.

(i) *One-Year Transition Period Due to Ineligibility* (One-Year Transition Period or Transition Period). Any QPAM that becomes ineligible under subsection I(g)(1) must provide a Transition Period for its client Plans. Relief is available for transactions (including past transactions) under this exemption during the Transition Period for a maximum period of one year after the Ineligibility Date, provided that the QPAM complies with each condition of the exemption throughout the one-year period (including those additional conditions

specified in this subsection (i)). The relief is available during the Transition Period under this exemption only for the QPAM's client Plans that had a pre-existing Written Management Agreement required under subsection VI(a) with the QPAM on the Ineligibility Date. A QPAM must ensure that it manages Plan assets prudently and loyally during the Transition Period. During the Transition Period, the QPAM must comply with the following additional conditions:

(1) Within 30 days after the Ineligibility Date, the QPAM must provide notice to the Department at QPAM@dol.gov and each of its Client Plans stating:

(A) Its failure to satisfy subsection I(g)(1) and the resulting initiation of this One-Year Transition Period;

(B) That during the Transition Period, the QPAM:

(~~A~~i) ~~agrees~~Agrees not to restrict the ability of a client Plan to terminate or withdraw from its arrangement with the QPAM;

(~~B~~ii) ~~will~~Will not impose any fees, penalties, or charges on client Plans in connection with the process of terminating or withdrawing from an Investment Fund managed by the QPAM except for reasonable fees, appropriately disclosed in advance, that are specifically designed to: (~~i~~a) prevent generally recognized abusive investment practices, or (~~ii~~b) ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in a like manner to all such investors;

(~~C~~iii) ~~agrees~~Agrees to indemnify, hold harmless, and promptly restore actual losses to the client Plans for any damages that directly result to them from a violation of applicable laws, a breach of contract, or any claim arising out of the conduct that is the subject of a Criminal Conviction or ~~Written Ineligibility Notice~~Prohibited Misconduct of the QPAM ~~or~~, an Affiliate (as defined in Section VI(d)), or an owner, direct or indirect, of a five (5) percent or more interest in the QPAM. Actual losses specifically include losses and 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 QPAM's inability to rely upon the relief in the QPAM Exemption; and

(~~D~~iv) ~~will~~Will not employ or knowingly engage any individual that ~~participated in~~Participated In the conduct that is the subject of a Criminal Conviction or ~~Written Ineligibility Notice~~Prohibited Misconduct, regardless of whether the individual is separately convicted in connection with the criminal conduct.

~~(3) *Ineligibility due to a Criminal Conviction or Written Ineligibility Notice*. Subject to the Ineligibility Date provision set forth in Section I(h), a QPAM is ineligible to rely on this exemption for 10 years following:~~

~~(A) A Criminal Conviction, as defined in Section VI(r), of the QPAM or any Affiliate thereof (as defined in Section VI(d)) — or any owner, direct or indirect, of a five (5) percent or more interest in the QPAM; or~~

(B) Receipt by the QPAM or any Affiliate thereof (as defined in Section VI(d)) or any owner, direct or indirect, of a five (5) percent or more interest in the QPAM of a Written Ineligibility Notice issued by the Department for participating in Prohibited Misconduct. For purposes of this exemption, "participating in" refers not only to active participation in the Prohibited Misconduct, but also to knowing approval of the conduct, or knowledge of such conduct without taking active steps to prohibit such conduct, including reporting the conduct to the appropriate compliance personnel.

(h) *Ineligibility Date*. A QPAM shall become ineligible:

(1) as of the "Conviction Date," which is the date of the judgment of the trial court (or the date of the judgment of any court in a foreign jurisdiction that is the equivalent of a U.S. federal or state trial court), regardless of whether that judgment is appealed; or

(2) the date of the written "Ineligibility Notice" described in Section I(i), below. A person will become eligible to rely on this exemption again only upon a subsequent judgment reversing such person's conviction or the expiration of the 10-year ineligibility period.

(i) *Written Ineligibility Notice – Warning and Opportunity to be Heard*. Before issuing a Written Ineligibility Notice, the Department will issue a written warning to the QPAM identifying specific conduct implicating subsection I(g)(3)(B). The Department will provide the QPAM with the opportunity to be heard, in person (including by phone or videoconference), or in writing, or a combination, before the Department makes a decision about whether to issue the Written Ineligibility Notice. The QPAM will have 20 days from the date of the warning letter to respond with a request for a conference. If a response is not received by the Department within 20 days after the date of the warning letter, the Department will issue a written Ineligibility Notice. The opportunity to be heard will be limited to one conference, which will be scheduled within 30 days of the QPAM's response to the written warning, unless the Department determines in its sole discretion to allow additional conferences. The written Ineligibility Notice will articulate the basis for the Department's determination that the conduct described in subsection I(g)(3)(B) has occurred.

(j) *One-Year Winding-Down Period Due to Ineligibility*. Any QPAM that becomes ineligible under subsection I(g)(3) must engage in a winding-down period during which relief is available under this exemption only for the QPAM's client Plans that had a pre-existing Written Management Agreement required under subsection I(g)(2) above on the Ineligibility Date. Relief during the winding-down period is available for a period of one year after the Ineligibility Date and the QPAM must fully comply with each condition of the exemption during the one year period. A QPAM must ensure that it manages plan assets prudently and loyally during the winding-down period. During the winding-down period, the QPAM must comply with the following additional conditions:

(1) Within 30 days after the Ineligibility Date the QPAM must provide notice to the Department at QPAM@dol.gov and each of its client Plans stating:

(A) its failure to satisfy subsection I(g)(3) and the resulting initiation of this one-year winding-down period;

~~(B) that in accordance with subsections I(g)(2)(A) and (B), it will not restrict the ability of its client Plans to terminate or withdraw from its arrangement with the QPAM nor impose fees, penalties, or charges on the client Plan in connection with terminating or withdrawing from a QPAM-managed Investment Fund; and agrees to indemnify, hold harmless, and promptly restore losses to the client Plan in accordance with subsection I(g)(2)(C);~~

~~(C) an~~C) An objective description of the facts and circumstances upon which the Criminal Conviction or ~~Written Ineligibility Notice~~ Prohibited Misconduct is based, written with sufficient detail to fully inform the client Plan's fiduciary of the nature and severity of the conduct so that ~~such~~the fiduciary can satisfy its ~~fiduciary~~ duties of prudence and loyalty under section 404 of ERISA (29 U.S.C. § 1104), as applicable, with respect to hiring, monitoring, evaluating, and retaining the QPAM in a non-QPAM capacity;

(2) ~~No later than~~As of the Ineligibility Date under Section I(h), the QPAM must not employ or knowingly engage any individual that ~~participated in~~Participated In the conduct that is the subject of a Criminal Conviction or ~~Written Ineligibility Notice~~that Participated In Prohibited Misconduct causing ineligibility of the QPAM under subsection I(g)(~~3~~1)~~;~~

~~(3) The QPAM may not engage in new transactions after the Ineligibility Date in reliance on this exemption for existing client Plans~~; and

(~~4~~3) After the ~~one-year winding-down period expires~~One-Year Transition Period expires, and if the Criminal Conviction is not reversed on appeal, the entity may not rely on the relief provided in this exemption until the expiration of the 10-year ineligibility period unless it obtains an individual exemption permitting it to continue relying upon this exemption.

(~~k~~j) *Requests for an Individual Exemption*. A QPAM that is ineligible or anticipates that it will become ineligible due to an actual or possible Criminal Conviction or Participating In Prohibited Misconduct as defined in Sections VI(r) and VI(s) may apply for an individual exemption from the Department to continue to rely on the relief provided in this exemption for a longer period than the ~~one-year winding-down period~~One-Year Transition Period. An applicant should review the Department's most recently granted individual exemptions involving Section I(g) ineligibility with the expectation that similar conditions will be required of the applicant, if the Department proposes and grants ~~an~~a requested exemption. ~~If~~To that end, if an applicant requests the Department to exclude any term or condition from its exemption that is included in a recently granted individual exemption, the applicant must include a detailed statement with its exemption application explaining the reason(s) why the proposed variation is necessary and in the interest and protective of affected Plans, their participants and beneficiaries, and individuals for whose benefit a Plan described in Code section 4975(e)(1)(B) or (C) is established (IRA owners). The Department will review such requests consist with the requirements of ERISA section 408(a) and Code section 4975(c)(2). Such applicants also should provide detailed information in their applications quantifying the specific cost or harms in ~~dollars~~dollar amounts, if any, their client Plans would suffer if the QPAM could not rely on the exemption after the ~~winding-down period~~Transition Period, including the specific dollar amounts of investment losses resulting from foregone

investment opportunities and any evidence supporting the proposition that investment opportunities would be available to client Plans on less advantageous terms. An applicant should not construe the Department's acceptance of an individual exemption application as a guarantee that the Department will grant an individual exemption. A QPAM that submits an individual exemption application must ensure that it manages Plan assets prudently and loyally during the ~~winding-down period~~Transition Period in accordance with section 404 of ERISA (29 U.S.C. § 1104), as applicable.

(k) Any QPAM that relies upon this exemption must notify the Department via email at QPAM@dol.gov. Each QPAM that relies upon the exemption must report the legal name of each business entity relying upon the exemption in the email to the Department and any name the QPAM may be operating under. This notification needs to be reported only once unless there is a change to the legal name or operating name(s) of the QPAM relying upon the exemption or the QPAM no longer is relying on the exemptive relief provided in the exemption. The QPAM must provide notice to the Department within ninety (90) calendar days of its reliance on the exemption or a change to its legal or operating name. If the QPAM inadvertently fails to provide notice to the Department within the initial 90 calendar day period, it may notify the Department of its reliance on the exemption or name change and failure to report without losing the relief provided by this exemption. This notice must be provided within an additional 90 calendar days along with an explanation for the QPAM's failure to provide notice. A QPAM may notify the Department if it is no longer relying upon this exemption at any time.

Section II—Specific Exemption for Employers

The restrictions of ERISA sections 406(a), 406(b)(1), and 407(a) and the taxes

imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A)

through (E), shall not apply to:

(a) The sale, leasing, or servicing of Goods or the furnishing of services, to an Investment Fund managed by a QPAM by a Party in Interest with respect to a Plan having an interest in the fund, if –

(1) The Party in Interest is an employer any of whose employees are covered by the Plan or is a person who is a Party in Interest by virtue of a relationship to such an employer (described in Section VI(c) below),

(2) The transaction is necessary for the administration or management of the Investment Fund,

(3) The transaction takes place in the ordinary course of a business engaged in by the Party in Interest with the general public,

(4) The amount attributable in any taxable year of the Party in Interest to transactions engaged in with an Investment Fund pursuant to this Section II(a) does not exceed one (1) percent of the gross receipts derived from all sources for the prior taxable year of the Party in Interest, and

(5) The requirements of Sections I(c) through (g) above are satisfied with respect to the transaction.

(b) The leasing of office or commercial space by an Investment Fund maintained by a QPAM to a Party in Interest with respect to a Plan having an interest in the Investment Fund, if –

(1) The Party in Interest is an employer any of whose employees are covered by the Plan or is a person who is a Party in Interest by virtue of a relationship to such an employer (described in Section VI(c) below);

(2) No commission or other fee is paid by the Investment Fund to the QPAM or to the employer, or to an Affiliate of the QPAM or employer (as defined in Section VI(c) below), in connection with the transaction;

(3) Any unit of space leased to the Party in Interest by the Investment Fund is suitable (or adaptable without excessive cost) for use by different tenants;

(4) The amount of space covered by the lease does not exceed fifteen (15) percent of the rentable space of the office building, integrated office park, or of the commercial center (if the lease does not pertain to office space);

(5) In the case of a Plan that is not an eligible individual account plan (as defined in ERISA section 407(d)(3)), immediately after the transaction is entered into, the aggregate fair market value of employer real property and employer securities held by the Investment Funds of the QPAM in which the Plan has an interest does not exceed ten (10) percent of the fair market value of the assets of the Plan held in those Investment Funds. In determining the aggregate fair market value of employer real property and employer securities as described herein, a Plan shall be considered to own the same proportionate undivided interest in each asset of the Investment Fund or funds as its proportionate interest in the total assets of the Investment Fund(s). For purposes of this requirement, the term "employer real property" means real property leased to, and the term "employer securities" means securities issued by an employer any of whose employees are covered by the Plan or a Party in Interest of the Plan by reason of a relationship to the employer described in ERISA section 3(14)(E) or (G); and

(6) The requirements of Sections I(c) through (g) above are satisfied with respect to the transaction.

Section III—Specific Lease Exemption for QPAMs

The restrictions of ERISA section 406(a)(1)(A) through (D), 406(b)(1) and (2), and the taxes imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A) through (E), shall not apply to the leasing of office or commercial space by an Investment Fund managed by a QPAM to the QPAM, a person who is a Party in Interest of a Plan by virtue of a relationship to such QPAM described in ERISA section 3(14)(G), (H), or (I), or a person not eligible for the General Exemption of Section I above by reason of Section I(a), if –

(a) The amount of space covered by the lease does not exceed the greater of 7,500 square feet or one (1) percent of the rentable space of the office building, integrated office park, or of the commercial center in which the Investment Fund has the

investment;

(b) The unit of space subject to the lease is suitable (or adaptable without excessive cost) for use by different tenants;

(c) At the Time of the Transaction, and at the time of any subsequent renewal or modification thereof that requires the consent of the QPAM, the terms of the transaction are not more favorable to the lessee than the terms generally available in arm's length transactions between unrelated parties; and

(d) No commission or other fee is paid by the Investment Fund to the QPAM, any person possessing the disqualifying powers described in Section I(a), or any Affiliate of such persons (as defined in Section VI(c) below), in connection with the transaction.

Section IV—Transactions Involving Places of Public Accommodation

The restrictions of ERISA section 406(a)(1)(A) through (D) and 406(b)(1) and (2) and the taxes imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A) through (E), shall not apply to the furnishing of services and facilities (and Goods incidental thereto) by a place of public accommodation owned by an Investment Fund managed by a QPAM to a Party in Interest with respect to a Plan having an interest in the Investment Fund, if the services and facilities (and incidental Goods) are furnished on a comparable basis to the general public.

Section V—Specific Exemption Involving QPAM-Sponsored Plans

The relief in Sections I, III, or IV above from the applicable restrictions of ERISA section 406(a), section 406(b)(1) and (2), and the taxes imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A) through (E), shall apply to a transaction involving the assets of a Plan sponsored by the QPAM or an Affiliate (as defined in Section VI(c)) of the QPAM if:

(a) The QPAM has discretionary authority or control with respect to the Plan assets involved in the transaction;

(b) The QPAM adopts Written Policies and Procedures that are designed to ensure compliance with the conditions of the exemption;

(c) An independent auditor, who has appropriate technical training or experience and proficiency with ERISA's fiduciary responsibility provisions and so represents in writing, conducts an Exemption Audit on an annual basis. Following completion of the Exemption Audit, the auditor shall issue a written report to the Plan presenting its specific findings regarding the level of compliance with: (1) the Written Policies and Procedures

adopted by the QPAM in accordance with Section V(b) above, and (2) the objective requirements of this exemption. The written report shall also contain the auditor's overall opinion regarding whether the QPAM's program complied with: (1) the Written Policies and Procedures adopted by the QPAM, and (2) the objective requirements of the exemption. The Exemption Audit and the written report must be completed within six months following the end of the year to which the audit relates; and

(d) The transaction meets the applicable requirements set forth in Sections I, III, or IV above.

Section VI—Definitions and General Rules

For purposes of this exemption:

(a) The term **"Qualified Professional Asset Manager" or "QPAM"** means an

Independent Fiduciary which is —

(1) A bank, as defined in section 202(a)(2) of the Investment Advisers Act of 1940 that has the power to manage, acquire or dispose of assets of a Plan, which bank has, as of the last day of its most recent fiscal year, Equity Capital in excess of $1,000,000. Effective as of the last day of the fiscal year ending no later than December 31, 2024, substitute $1,570,300 for $1,000,000. Effective as of the last day of the fiscal year ending no later than December 31, 2027, substitute $2,140,600 for $1,000,000. Effective as of the last day of the fiscal year ending no later than December 31, 2030, substitute $2,720,000 for $1,000,000; or

(2) A savings and loan association, the accounts of which are insured by the Federal Deposit Insurance Corporation that has made application for and been granted trust powers to manage, acquire or dispose of assets of a Plan by a State or Federal authority having supervision over savings and loan associations, which savings and loan association has, as of the last day of its most recent fiscal year, Equity Capital or Net Worth in excess of $1,000,000. Effective as of the last day of the fiscal year ending no later than December 31, 2024, substitute $1,570,300 for $1,000,000. Effective as of the last day of the fiscal year ending no later than December 31, 2027, substitute $2,140,600 for $1,000,000. Effective as of the last day of the fiscal year ending no later than December 31, 2030, substitute $2,720,000 for $1,000,000; or

(3) An insurance company which is qualified under the laws of more than one State to manage, acquire, or dispose of any assets of a Plan, which company has, as of the last day of its most recent fiscal year, Net Worth in excess of $~~2,720,000~~1,000,000 and which is subject to supervision and examination by a State authority having supervision over insurance companies. Effective as of the last day of the fiscal year ending no later than December 31, 2024, substitute $1,570,300 for $1,000,000. Effective as of the last day of the fiscal year ending no later than December 31, 2027, substitute $2,140,600 for $1,000,000. Effective as of the last day of the fiscal year ending no later than December 31, 2030, substitute $2,720,000 for $1,000,000; or

(4) An investment adviser registered under the Investment Advisers Act of 1940 that has total client assets under its management and control in excess of $~~135,870,000~~85,000,000 as of the last day of its most

recent fiscal year, and either (A) Shareholders' or Partners' Equity in excess of $~~2,040,000~~1,000,000, or (B) payment of all of its liabilities including any liabilities that may arise by reason of a breach or violation of a duty described in ERISA sections 404 and 406 is unconditionally guaranteed by—(i) A person with a relationship to such investment adviser described in subsection VI(c)(1) below if the investment adviser and such Affiliate have Shareholders' or Partners' Equity, in the aggregate, in excess of $~~2,040,000~~1,000,000; or (ii) A person described in (a)(1), (a)(2) or (a)(3) of Section VI above; or (iii) A broker-dealer registered under the Securities Exchange Act of 1934 that has, as of the last day of its most recent fiscal year, Net Worth in excess of $1,000,000. Effective as of the last day of the fiscal year ending no later than December 31, 2024, substitute $101,956,000 for $85,000,000 and $1,346,000 for $1,000,000. Effective as of the last day of the fiscal year ending no later than December 31, 2027, substitute $118,912,000 for $85,000,000 and $1,694,000 for $1,000,000. Effective as of the last day of the fiscal year ending no later than December 31, 2030, substitute $135,868,000 for $85,000,000 and $2,040,000 for $1,000,000;

Provided that such bank, savings and loan association, insurance company, or investment adviser has acknowledged in a **"Written Management Agreement"** that it is a fiduciary with respect to each Plan that has retained the QPAM ~~and which complies with subsection I(g)(2)~~.

(5) By publication through notice in the *Federal Register*, the Department will make subsequent annual adjustments for inflation to the Equity Capital, Net Worth, and asset management thresholds in subsection VI(a)(1) through (4), rounded to the nearest $10,000, no later than January 31 of each year. The adjustments will be effective as of the last day of the fiscal year in which the increase takes effect, ending no later than December 31 of such fiscal year.

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

(c) For purposes of Section I(a) and Sections II and V above, an **"Affiliate"** of a person means—

(1) Any person directly or indirectly, through one or more intermediaries, Controlling, Controlled by, or under Common Control with the person;

(2) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, ten (10) percent or more partner (except with respect to Section II this figure shall be five (5) percent), or highly compensated employee as defined in Code section 4975(e)(2)(H) (but only if the employer of such employee is the Plan sponsor); and

(3) Any director of the person or any employee of the person who is a highly compensated employee, as defined in Code section 4975(e)(2)(H), or who has direct or indirect authority, responsibility or control regarding the custody, management or disposition of Plan assets involved in the transaction. A named fiduciary (within the meaning of ERISA section 402(a)(2)) of a Plan with respect to the Plan assets involved in

the transaction and an employer any of whose employees are covered by the Plan will also be considered Affiliates with respect to each other for purposes of Section I(a) above if such employer or an Affiliate of such employer has the authority, alone or shared with others, to appoint or terminate the named fiduciary or otherwise negotiate the terms of the named fiduciary's employment agreement.

(d) For purposes of Section I(g) above an **"Affiliate"** of a person means—

(1) Any person directly or indirectly through one or more intermediaries, Controlling, Controlled by, or under Common Control with the person;

(2) Any director of, Relative of, or partner in, any such person;

(3) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, or a five ~~(5)~~ percent or more partner or owner; and

(4) Any employee or officer of the person who—

(A) Is a highly compensated employee (as defined in Code section 4975(e)(2)(H) or officer (earning ten (10) percent or more of the yearly wages of such person); or

(B) Has direct or indirect authority, responsibility, or control regarding the custody, management or disposition of Plan assets.

(e) The terms **"Controlling," "Controlled by," "under Common Control with," and "Controls"** means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(f) The term **"Party in Interest"** means a person described in ERISA section 3(14) and includes a "disqualified person," as defined in Code section 4975(e)(2).

(g) The term **"Relative"** means a relative as that term is defined in ERISA section 3(15), or a brother, a sister, or a spouse of a brother or sister.

(h) A QPAM is **"Related"** to a Party in Interest for purposes of Section I(d) above if, as of the last day of its most recent calendar quarter: (i) The QPAM owns a ten (10) percent or more Interest in the Party in Interest; (ii) a person Controlling, or Controlled by, the QPAM owns a twenty (20) percent or more Interest in the Party in Interest; (iii) the Party in Interest owns a ten (10) percent or more Interest in the QPAM; or (iv) a person Controlling, or Controlled by, the Party in Interest owns a twenty (20) percent or more Interest in the QPAM. Notwithstanding the foregoing, a Party in Interest is **"Related"** to a QPAM if: (i) A person Controlling, or Controlled by, the Party in Interest has an ownership Interest that is less than twenty (20) percent but greater than ten (10) percent in the QPAM and such person exercises Control over the management or policies of the QPAM by reason of its ownership Interest; (ii) a person Controlling, or Controlled by, the QPAM has an ownership Interest that is less than twenty (20) percent but greater than ten (10) percent in the Party in

Interest and such person exercises Control over the management or policies of the Party in Interest by reason of its ownership Interest. For purposes of this definition:

(1) The term **"Interest"** means with respect to ownership of an entity—

(A) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation,

(B) The capital interest or the profits interest of the entity if the entity is a partnership, or

(C) The beneficial interest of the entity if the entity is a trust or unincorporated enterprise; and

(2) A person is considered to own an **"Interest"** if, other than in a fiduciary capacity, the person has or shares the authority—

(A) To exercise any voting rights or to direct some other person to exercise the voting rights relating to such interest, or

(B) To dispose or to direct the disposition of such interest.

(i) **"At the Time of the Transaction"** means the date upon which the transaction is entered into. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into on or after December 21, 1982, or a renewal that requires the consent of the QPAM occurs on or after December 21, 1982, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, the requirements will continue to be satisfied thereafter with respect to the transaction. Notwithstanding the foregoing, this exemption shall cease to apply to a transaction exempt by virtue of Section I or Section II above at such time as the percentage requirement contained in Section I(e) is exceeded, unless no portion of such excess results from an increase in the assets transferred for discretionary management to a QPAM. For this purpose, assets transferred do not include the reinvestment of earnings attributable to those Plan assets already under the discretionary management of the QPAM. Nothing in this paragraph shall be construed as exempting a transaction entered into by an Investment Fund which becomes a transaction described in ERISA section 406 or Code section 4975 while the transaction is continuing, unless the conditions of this exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

(j) The term **"Goods"** includes all things which are movable or which are fixtures used by an Investment Fund but does not include securities, commodities, commodities futures, money, documents, instruments, accounts, chattel paper, contract rights, and any other property, tangible or intangible, which, under the relevant facts and circumstances, is held primarily for investment.

(k) For purposes of subsection VI(a)(1) and (2) above, the term **"Equity Capital"** means stock (common and preferred), surplus, undivided profits, contingency reserves, and other capital reserves.

(l) For purposes of subsection VI(a)(2), (3), and (4) above, the term **"Net Worth"** means capital, paid-in and contributed surplus, unassigned surplus, contingency reserves, group contingency reserves, and special reserves.

(m) For purposes of subsection VI(a)(4) above, the term **"Shareholders' or Partners' Equity"** means the equity shown in the most recent balance sheet prepared within the two years immediately preceding a transaction undertaken pursuant to this exemption, in accordance with generally accepted accounting principles.

(n) The term **"Plan"** refers to an employee benefit plan described in ERISA section 3(3) and/or a plan described in Code section 4975(e)(1).

(o) For purposes of Section VI(a) above, the term **"Independent Fiduciary"** means a fiduciary managing the assets of a Plan in an Investment Fund that is independent of and unrelated to the employer sponsoring such Plan. For purposes of this exemption, the fiduciary will not be deemed to be independent of and unrelated to the employer sponsoring the Plan if such fiduciary directly or indirectly Controls, is Controlled by, or is under Common Control with the employer sponsoring the Plan. Notwithstanding the foregoing: (1) for the period from December 21, 1982, through November 3, 2010, a QPAM managing the assets of a Plan in an Investment Fund will not fail to satisfy the requirements of this section solely because such fiduciary is the employer sponsoring the Plan or directly or indirectly Controls, is Controlled by, or is under Common Control with the employer sponsoring the Plan; and (2) effective after November 3, 2010 a QPAM acting as a manager for its own Plan or the Plan of an Affiliate (as defined in subsection VI(c)(1) above) will be deemed to satisfy the requirements of this section if the requirements of Section V above are met.

(p) An **"Exemption Audit"** of a Plan must consist of the following:

(1) A review of the Written Policies and Procedures adopted by the QPAM pursuant to Section V(b) above for consistency with each of the objective requirements of this exemption (as described in Section VI(q) below);

(2) A test of a representative sample of the Plan's transactions during the audit period that is sufficient in size and nature to afford the auditor a reasonable basis:

(A) To make specific findings regarding whether the QPAM is in compliance with (i) the Written Policies and Procedures adopted by the QPAM pursuant to Section VI(q) below and (ii) the objective requirements of this exemption, and

(B) To render an overall opinion regarding the level of compliance of the QPAM's program with subsection VI(p)(2)(A)(i) and (ii) above;

(3) A determination as to whether the QPAM has satisfied the definition of a QPAM under the exemption; and

(4) Issuance of a written report describing the steps performed by the auditor during the course of its review and the auditor's findings.

(q) For purposes of Section VI(p), the Written Policies and Procedures must describe the following objective requirements of this exemption and the steps adopted by the QPAM to ensure compliance with each of these requirements:

(1) The definition of a QPAM in Section VI(a);

(2) The requirement of Sections V(a) and I(c) regarding the discretionary authority or control of the QPAM with respect to the Plan assets involved in the transaction, in negotiating the terms of the transaction and with respect to the decision on behalf of the Investment Fund to enter into the transaction;

(3) For a transaction described in Section I above:

(A) That the transaction is not entered into with any person who is excluded from relief under Section I(a), Section I(d), or Section I(e) above;

(B) That the transaction is not described in any of the class exemptions listed in Section I(b) above;

(4) If the transaction is described in Section III above:

(A) That the amount of space covered by the lease does not exceed the limitations described in Section III(a) above, and

(B) That no commission or other fee is paid by the Investment Fund as described in Section III(d) above.

(r) "**Criminal Conviction**" ~~means~~occurs when a QPAM, any Affiliate thereof (as defined in Section VI(d)), or any owner, direct or indirect, of a five (5) percent or more interest in the ~~person or entity~~QPAM:

(1) is convicted in a U.S. federal or state court or released from imprisonment, whichever is later, as a result of any felony involving abuse or misuse of such person~~'~~'s Plan position or employment, or position or employment with a labor organization; any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company or fiduciary; income tax evasion; any felony involving the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; conspiracy or attempt to commit any such crimes or a crime in which any of the foregoing crimes is an element; or ~~a~~any crime that is identified or described in ERISA section 411; or

(2) is convicted by a foreign court of competent jurisdiction or released from imprisonment, whichever is later, as a result of a crime, however denominated by the laws of the relevant foreign government, that is substantially equivalent to an offense described in (r)(1)~~,~~ above (excluding convictions and imprisonment that occur within a foreign country that is included on the Department of Commerce's list of "foreign adversaries" that is codified in 15 CFR 7.4, as amended).

(s) "**Prohibited Misconduct**" means when a QPAM, any Affiliate thereof (as defined in Section VI(d)), or any owner, direct or indirect, of a five (5) percent or more interest in the QPAM:

(1) ~~any conduct that forms the basis for~~Enters into a non-prosecution (NPA) or deferred prosecution agreement ~~that, if successfully prosecuted,~~(DPA) on or after June 17, 2024 with a U.S. federal or state prosecutor's office or regulatory agency, where the factual allegations that form the basis for the NPA or DPA would have constituted a crime described in Section VI(r) if they were successfully prosecuted; or

~~(2) any conduct that forms the basis for an agreement, however denominated by the laws of the relevant foreign government, that is substantially equivalent to a non-prosecution agreement or deferred prosecution agreement described in (1);~~

~~(3~~

(2) Is found or determined in a final judgment, or court-approved settlement by a Federal or State criminal or civil court that is entered on or after June 17, 2024 in a proceeding brought by the Department, the Department of Treasury, the Internal Revenue Service, the Securities and Exchange Commission, the Department of Justice, the Federal Reserve Bank, the Office of the Comptroller of the Currency, the Federal Depository Insurance Corporation, the Commodities Futures Trading Commission, a state regulator, or state attorney general to have Participated In one or more of the following categories of conduct irrespective of whether the court specifically considers this exemption or its terms:

(A) engaging in a systematic pattern or practice of ~~violating~~conduct that violates the conditions of this exemption in connection with otherwise non-exempt prohibited transactions;

(~~4~~B) intentionally ~~violating~~engaging in conduct that violates the conditions of this exemption in connection with otherwise non-exempt prohibited transactions; or

(~~5~~C) providing materially misleading information to the Department, the Department of Treasury, the Internal Revenue Service, the Securities and Exchange Commission, the Department of Justice, the Federal Reserve Bank, the Office of the Comptroller of the Currency, the Federal Depository Insurance Corporation, the Commodities Futures Trading Commission, a state regulator or a state attorney general in connection with the conditions of the exemption.

(t) **"Participate In," "Participates In,"** "**Participating In,**" **"Participated In," and** "**Participation In**" all refer not only to active participation in Prohibited Misconduct, but also to knowing approval of the conduct,

or knowledge of such conduct without taking active steps to prohibit such conduct, including reporting the conduct to the appropriate compliance personnel.

(u) The QPAM maintains the records necessary to enable the persons described in subsection (~~t~~u)(2) below to determine whether the conditions of this exemption have been met with respect to a transaction for a period of six years from the date of the transaction in a manner that is reasonably accessible for examination. No prohibited transaction will be considered to have occurred solely ~~on the basis of~~due to the unavailability of such records if they are lost or destroyed due to circumstances beyond the control of the QPAM before the end of the six-year period.

(1) No party, other than the QPAM responsible for complying with this Section VI(~~r~~u), will be subject to the civil penalty that may be assessed under ERISA section 502(i) or the excise tax imposed by Code section 4975(a) and (b), if applicable, if the records are not maintained or available for examination as required by this Section VI(~~t~~u) below.

(2) Except as provided in subsection (3) or precluded by 12 U.S.C. 484 (regarding limitations on visitorial powers for national banks), and notwithstanding any provisions of ERISA section 504(a)(2) and (b), the records are reasonably available at their customary location during normal business hours for examination by:

(A) Any authorized employee of the Department or the Internal Revenue Service or another state or federal regulator,

(B) Any fiduciary of a Plan invested in an Investment Fund managed by the QPAM,

(C) Any contributing employer and any employee organization whose members are covered by a Plan invested in an Investment Fund managed by the QPAM, or

(D) Any participant or beneficiary of a Plan invested in an Investment Fund managed by the QPAM.

(3) None of the persons described in subsection (2)(B) through (D) above are authorized to examine records regarding an Investment Fund that they are not invested in, privileged trade secrets or privileged commercial or financial information of the QPAM, or information identifying other individuals.

(4) Should the QPAM refuse to disclose information to a person described in subsection (2)(A) through (D) above on the basis that the information is exempt from disclosure, the QPAM must provide a written notice advising the requestor of the reasons for the refusal and that the Department may request such information by the close of the thirtieth (30th) day following the request.

(5) A QPAM's failure to maintain the records necessary to determine whether the conditions of this exemption have been met will result in the loss of the relief provided under this exemption only for the transaction or transactions for which such records are missing or have not been maintained. Such failure does

not affect the relief for other transactions if the QPAM maintains required records for such transactions in compliance with this Section VI(~~t~~u).