BlackRock

October 11, 2022

Acting Assistant Secretary Ali Khawar
Office of Regulations and Interpretations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Ave.
Washington, DC 20001

Submitted online via http://www.regulations.gov

Re: Proposed Amendment to Prohibited Transaction Class Exemption 84-14 (the QPAM Exemption) (Application No. D-12022) (EBSA-2022-0008)

Dear Assistant Secretary Khawar:

BlackRock, Inc. (together with its affiliates, "BlackRock")[1] respectfully submits its comments to the Department of Labor ("DOL") in response to the DOL's Proposed Amendment (the "Proposal") to Prohibited Transaction Exemption ("PTE") 84-14, the class exemption for Qualified Professional Asset Managers (the "QPAM Exemption"). Large asset managers, including BlackRock, and many other members of the financial services industry frequently rely on the QPAM Exemption to facilitate several common financial transactions across a range of asset classes involving employee benefit plans and entities subject to the Employee Retirement Income Security Act of 1974, as amended ("ERISA") or Section 4975 of the Internal Revenue Code of 1986, as amended (the "Code") (collectively, "Plans").[2] When the DOL issued the QPAM Exemption nearly forty years ago, it recognized that pursuant to ERISA's prohibited transaction rules large Plans could have thousands of parties in interest and, as such, without a broadly applicable class exemption, Plans would have to either regularly seek individual exemptions or forego otherwise beneficial investment opportunities.

By issuing the QPAM Exemption, the DOL achieved its goal of improving the administration of the prohibited transaction rules of ERISA, while imposing conditions that protect the interests of Plans and their participants and beneficiaries.[3] It has become the most commonly used PTE for ordinary course transactions involving Plan clients. Market participants, including Plans, Plan sponsors, and counterparties, are familiar and comfortable with the QPAM Exemption. As the DOL recognized when it proposed the QPAM Exemption in 1982, its strength lies in its

[1] BlackRock manages assets on behalf of individual and institutional clients across equity, fixed income, real assets, and other strategies. The assets we manage represent investors' futures and the investment outcomes they seek, and it is our responsibility to help them better prepare themselves to meet their financial goals. Two thirds of the assets we manage are retirement-related assets. BlackRock manages assets for public and private pensions, including defined benefit and defined contribution plans of varying sizes.

[2] References to ERISA should be considered to include references to corresponding provisions of Section 4975 of the Code.

[3] 47 FR 56945, 56946 (Dec. 21, 1982).

breadth and flexibility, allowing Plans and counterparties to engage in most common transactions more efficiently and effectively than would be possible under much more limiting transaction-specific exemptions.

When it issued the QPAM Exemption, the DOL believed that "as a general matter, transactions entered into on behalf of Plans with parties in interest are most likely to conform to ERISA's general fiduciary standards where the decision to enter into the transaction is made by an independent fiduciary."[4] We agree, and we urge the DOL not to lose sight of this guiding principle. In our experience, the QPAM Exemption has worked as intended over the past four decades.

The Proposal would make several significant changes to the QPAM Exemption, including expanding the scope of conduct that would disqualify an asset manager from relying on the QPAM Exemption. In its Proposal, the DOL articulated that an amendment to the QPAM Exemption was necessary, among other reasons, to provide certainty that foreign criminal convictions are included in the scope of the ineligibility provision under Section I(g). Unfortunately, the Proposal does not provide the intended certainty regarding foreign convictions. This uncertainty is not only limited to the types of foreign criminal convictions resulting in disqualification, but also includes the newly proposed range of non-criminal activities that could disqualifying conduct - both foreign and domestic, involving not only the QPAM, but also any affiliate regardless of its proximity to the management of retirement assets. We fear this uncertainty would disrupt QPAMs', Plans,' and counterparties' confidence in the QPAM Exemption, resulting in unnecessary compliance costs and potentially missed investment opportunities for plans. We also believe that the changes may have the unintended effect of causing delays and disruption in the management of Plan assets as a result of engaging with the DOL regarding either clarification as to whether a particular event rises to the level of a disqualifying event and/or seeking a potential individual exemption.

The DOL also stated in the Proposal that by requiring all QPAMs to amend every management agreement to include certain new provisions, including indemnification requirements, it seeks to protect Plans by mitigating the potential costs and disruptions to Plans when a QPAM becomes ineligible for exemptive relief. Unfortunately, in an effort to mitigate potential future costs in the event of a QPAM's disqualification, we believe the DOL's Proposal creates significant and unnecessary administrative burdens and costs for all Plans whose asset managers rely on the QPAM Exemption. We believe that the DOL grossly underestimates number of investment management agreements that would need to be amended and the costs associated with amending all those agreements. For example, the DOL appeared to exclude management agreements that cover IRAs from its calculations, and it also neglected to account for the fact that large plans may have several QPAMs. Comments provided by financial services trade associations such as the American Bankers Association ("ABA") provide estimates that we believe are more representative of the costs expected to be incurred by the Plans and their asset managers. Additionally, we believe that the proposed "winding-down" period fails to protect Plans' interests. Notably (among other reasons), we believe that the proposed change would preclude a QPAM's reliance on the QPAM Exemption for new transactions (including continuing transactions) as it seeks individual relief and potentially encourage Plans to exit relationships with asset managers, even when it may be imprudent to do so.

[4] Id.

While BlackRock agrees with the stated goals of providing certainty regarding disqualifying conduct and protecting Plans, as drafted, the Proposal does not achieve these goals. We believe that more narrowly tailored modifications to the QPAM Exemption can achieve these goals and minimize industry-wide disruptions that could be detrimental to Plans. We believe that the observations and suggestions of the Securities Industry Financial Markets Association, Investment Company Institute, and ABA reflect our concerns regarding the Proposal, including that it will substantially detract from asset managers', Plans', and counterparties' confidence in the QPAM Exemption, and in doing so, undermine the original purposes and primary predicates of the QPAM Exemption.

We thank the DOL for providing the opportunity to comment on the Proposal, and we welcome the opportunity to discuss the issue with the DOL.

Sincerely,

Kathryn Fulton
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