STATE STREET GLOBAL ADVISORS

October 11, 2022

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Assistant Secretary Ali Khawar
Office of Exemption Determinations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

Submitted via http://www.regulations.gov

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

Dear Assistant Secretary Khawar:

State Street Global Advisors, the investment management division of State Street Corporation,[1] appreciates the opportunity to comment on the Department of Labor's (the "Department's") Proposed Amendment ("Proposed Amendment") to PTE-84-14 (the "QPAM Exemption").

With $3.475 trillion in assets under management, State Street Global Advisors is the world's fourth-largest asset manager.[2]

State Street Global Advisors strongly opposes the Proposed Amendment. We urge the Department to withdraw its proposal, conduct additional outreach to refine the purposes and practicality of its approach, and, if deemed necessary, repropose a narrower, more targeted proposal for public comment.

State Street Global Advisors, like virtually every asset manager serving ERISA plans, frequently relies on the existing QPAM Exemption, which provides a well-understood and highly effective means for plan sponsors and other fiduciaries to prudently invest plan assets while complying with ERISA's prohibited transaction rules.

[1] Headquartered in Boston, Massachusetts, State Street Corporation is a global custodian bank which specializes in the provision of financial services to institutional investor clients. This includes the provision of investment servicing, investment management, data and analytics, and investment research and trading. With $38.2 trillion in assets under custody and/or administration and $3.475 trillion in assets under management* as of June 30, 2022, State Street operates in more than 100 markets globally.

*AUM as of June 30, 2022, includes approximately $66 billion of assets with respect to SPDR® products for which State Street Global Advisors Funds Distributors, LLC ("SSGA FD") acts solely as the marketing agent. SSGA FD and State Street Global Advisors are affiliated.

[2] As of June 30, 2022.

Millions of retirement savers are the beneficiaries of the current QPAM Exemption. Pension plans and other retirement savings vehicles have access to more diverse investment opportunities and more efficient markets due to the services and transactions made available by virtue of the QPAM Exemption, with little evidence of abuses by investment market participants.

Unfortunately, the Department's Proposed Amendment, if adopted in final form, will place this well operating and efficient market for ERISA plan investment activity at significant risk. The Proposed Amendment suggests changes with little regard for legal procedures or due process and ill advised substitution of proscriptive and unworkable rules for well-established standards of fiduciary duty for plan sponsors and their asset managers. The result will be the unnecessary and potentially abrupt disqualification of highly credible and valued asset managers from the ERISA pension marketplace, to the detriment of pension plans and retirement savers.

We strongly support the detailed comment letters filed by a number of trade associations, including the Investment Company Institute, Securities Industry and Financial Markets Association, the Insured Retirement Institute, and the American Benefit Council, which describe well the legal, practical, market impact, and retirement savings flaws of the Proposed Amendment. Our comments below highlight our most significant concerns.

The Proposed Amendment's expansion of disqualifying crimes to foreign criminal convictions is unworkable, and compromises plan sponsors' fiduciary duty.

We agree that criminal or other inappropriate behavior outside the United States ("U.S.") is a relevant factor for plan sponsors to consider in selecting asset managers, and should be considered as part of a plan sponsor's broad fiduciary duty. Nevertheless, we have substantial concerns with the Proposed Amendment which suggests that foreign criminal convictions should result in automatic disqualification from the QPAM Exemption.

First, ascribing to an asset manager all of the foreign activities of all of its affiliates is unrealistic and unecessary. Legal violations in separate business lines, independently managed affiliates, and unrelated to ERISA plan asset management have no bearing on an asset management firm's suitability for the QPAM qualification. Such cases should to be considered on a case-by-case basis rather than automatically resulting in a disqualification.

Second, automatic QPAM disqualification based on any foreign conviction unreasonably ties significant U.S. asset manager business to the vagaries of non-U.S. judicial systems. This would extend the automatic disqualification for events that occur in non-U.S. jurisdictions that are well-known for lacking basic, fundamental principles of due process or adherence to the rule of law.

For these reasons, we oppose the Department's proposal to add foreign criminal convictions to the QPAM Exemption's list of disqualifying crimes and urge the Department to consult industry and other interested parties on alternatives, perhaps disclosure-based, which can address the Department's concerns.

The Proposed Amendment's new automatic disqualification for entering into deferred prosecution and non-prosecution agreements is inconsistent with due process and supercedes other prosecutorial and enforcement agencies' authority.

We understand the need for QPAMs to demonstrate their integrity to plan sponsors, and we acknowledge that U.S. convictions for certain criminal activity rightly should disqualify an asset manager from being able to rely upon the QPAM Exemption. But we believe that the current rules work well from that perspective and that the Proposed Amendment goes too far.

More specifically, we have significant concerns with the expansion of automatic QPAM disqualification to deferred prosecution agreements ("DPAs") and non-prosecution agreements ("NPAs"). These arrangements are well recognized as tools available to prosecutors or enforcement officials to accomplish legal or compliance goals without the risks, costs and other challenges of protracted legal proceedings. Under the current QPAM rules, such negotiated settlements are possible in part because they do not result in automatic QPAM disqualification. The Department's Proposed Amendment would effectively eliminate the DPA or NPA option for prosecutors for any firm serving the ERISA pension market, since an automatic disqualification is essentially a ban from the business and no ERISA asset manager would agree to a DPA or NPA as a result.

We urge the Department to more fully consider the consequences of its proposed approach, and to consult with the Department of Justice, the Securities and Exchange Commission and other interested parties before proceeding with this proposal.

The Proposed Amendment's new "planned, negotiated, or initiated" standard would render many common types of transactions that benefit plan clients ineligible, and deny plan sponsors valuable market color and insights.

Market participants, particularly dealers, constantly bring valuable market color, research and investment ideas to asset managers. Such information is valuable to asset managers, but, consistent with their fiduciary duty, asset managers still make investment decisions. There is no prohibited transaction or other ERISA policy concern with these arrangements, which benefit the asset manager and the pension plan.

For reasons apparently aimed at eliminating "QPAM for a Day" activities, the Proposed Amendment creates significant risk that the ordinary course of business

dialogue between market participants and asset managers would violate the QPAM Exemption. The result will likely be dealers limiting their contact with plans and asset managers, denying such plans and asset managers access to valuable investment opportunities and important and useful market color, to the harm of plans and plan participants.

While we do not disagree with the Department on addressing abusive "QPAM for a Day" arrangements, we view that issue as a narrow problem requiring a narrow fix. We urge the Department to consider the breadth and negative impact of its "planned, negotiated, or initiated" standard, and, if needed, to develop a more targeted proposal aimed at specific market abuses.

The Proposed Amendment vastly underestimates the complexity, compliance burden, and cost of its new mandatory contractual terms for management agreements.

While we have numerous concerns with the Proposed Amendment's new contractual requirements, we would particularly like to highlight the significant understatement by the Department of the cost and burden of its proposed new requirements. Investment management agreements are not standardized and need to be tailored to individual clients, which, for us, number in the multiple thousands. The Department's time estimate of a one-hour per agreement time estimate is completely unrealistic. Further, the Department's assumption that amendment by "negative consent" can significantly mitigate the compliance burden of the contract changes is inconsistent with legal and industry practices, particularly in light of plan sponsors' fiduciary duties. Finally, the Department does not account for the cost of the required indemnification clauses in its cost benefit analysis, which will be significant for asset managers.

Conclusion

For all of the reasons described above, along with the concerns and issues raised in the letters submitted by our trade groups, we urge the Department to withdraw its proposed mandatory contractual terms proposal.

While there are some aspects of PTE 84-14 that deserve review and perhaps adjustment, the Proposed Amendment is overly broad, with limited articulation of the abuses intended to be corrected or the policy changes being pursued. Adoption of the Proposed Amendment risks disrupting a well-functioning and effective system for providing services to ERISA plans consistent with ERISA's prohibited transaction rules.

We urge the Department to withdraw the proposed rules, consult further with plan sponsors, asset managers, service providers, and other interested parties, and, if needed, repropose more targeted amendments to the QPAM Exemption in the future.

Please feel free to contact me at sean_o'malley@ssga.com should you wish to discuss our submission in further detail.

Sincerely,

Sean O'Malley
General Counsel
State Street Global Advisors