

PUBLIC SUBMISSION

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Docket: EBSA-2022-0008

Proposed Amendment to Prohibited Transaction Class Exemption 84-14 (the QPAM Exemption)

Comment On: EBSA-2022-0008-0049

Posting of Hearing Transcript Regarding Proposed Amendment to Prohibited Transaction Class Exemption 84-14 (the QPAM Exemption) and Closing of Reopened Comment Period

Submitter Information

Name: James Hartless

General Comment

Dear Sir or Madam,

I am an individual investor and concerned citizen. I am a husband with limited resources, limited time, and no legal team. Still, I felt it necessary to comment as I believe vehemently that asset managers in the financial industry should not get a “get out jail free card.” Also, I think that average citizens should not be put in the vulnerable position of having a criminal manage their retirement. Wall Street should not be able to profit using loopholes to enable financial criminals to continue to manage American citizens’ retirement accounts. Wall Street wants to obfuscate the issue and continue to operate in the shadows. Wall Street is stealing from average citizens without reprimand. However, little by little, if brought to light and the public, we can chip away at the loopholes that these bad actors use to operate against the public’s best interest. Federal regulators must protect the public, and Proposed Amendment to Prohibited Transaction Class Exemption 84-14 (the QPAM Exemption), is a step in the right direction.

In the comment from The Wagner Law Group, they conclude that “in its present form, we believe it will raise costs and add uncertainty in the marketplace.” However, there’s already evidence that this is not the case. In the recent arrest of Bill Hwang of

Archegos, his heavily leveraged portfolio caused billions of dollars in capital to disappear overnight, causing harm to U.S. financial markets and individual investors. As an individual investor, I am not concerned about increased costs if they are fair and transparent. I believe this regulation will prevent bad actors from causing harm to markets and investors.

In the comment from The American Bankers Association, which is certainly not an organization that I would say is looking out for my best interest as a citizen, they claim that “Plan participants and beneficiaries and on IRA owners” will see “(i) diminished and compromised returns on retirement assets, (ii) fewer available investment options and strategies, (iii) reduced choice in asset managers, and (v) increased Plan expenses.” As a citizen, I do not care about reduced choice in asset managers; what concerns me is if they abide by the law. If there are so few asset managers that that is an issue, well, there’s a greater issue plaguing our financial system. Regarding having “fewer available investment strategies,” hedge funds and financial organizations are using more complex strategies than ever. However, I am convinced that their only prerogative is to earn money, with very little concern and often to the detriment of individual investors like myself. Their strategies are opaque by design, which makes wrongdoing and criminal activity more difficult to detect and prosecute.

State Street Global Advisors, another firm I do not consider acting in the public’s best interest, claims that “The Proposed Amendment’s expansion of disqualifying crimes to foreign criminal convictions is unworkable and compromises plan sponsors’ fiduciary duty.” Disbanding a fund manager who has a foreign conviction is precisely what I’d want to happen if they were managing my retirement. We should be prosecuting fund managers for foreign crimes that are “substantially equivalent” to U.S. crimes. Wall Street increasingly uses complex derivative trades that rely on internationalizing swaps and derivatives to avoid criminal prosecution. Mr. Gary Gensler himself says in his A ‘New’ New Era: Prepared Remarks Before the International Swaps and Derivatives Association Annual Meeting speech that “hedge funds and other asset managers increasingly have been using total return swaps to express a position that they may be held on the balance sheet of their prime broker or bank.” Automatic QPAM disqualification and criminal charges should occur when fund managers intentionally use foreign financial instruments to commit crimes.

In conclusion, the Proposed Amendment to Prohibited Transaction Class Exemption 84-14 (the QPAM Exemption) should be passed. The financial system and those operating within it need to be held accountable. We should protect American citizens, not the financial system’s status quo because it is actively working against citizens’ best interests and stealing directly from them in many cases. I want to see players in

the financial system held accountable, and that is why I believe the Proposed Amendments to the QPAM Exemption should be passed.

Sincerely,

A Concerned Individual Investor