

submit to the Commission on or before 5:15 p.m. on March 11, 2024, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties shall file written testimony and supplementary material in connection with their presentation at the conference no later than noon on March 5, 2024. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures*, available on the Commission's website at [https://www.usitc.gov/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf), elaborates upon the Commission's procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Certification.**—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these investigations must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that any information that it submits to the Commission during these investigations may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of these or related investigations or reviews, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

**Authority:** These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Issued: February 15, 2024.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2024-03497 Filed 2-20-24; 8:45 am]

**BILLING CODE 7020-02-P**

**DEPARTMENT OF JUSTICE**

**Notice of Lodging of Proposed Second Stipulation and Final Order Under the Resource Conservation and Recovery Act**

On February 13, 2024, the Department of Justice lodged a proposed Second Stipulation and Final Order (SSFO) with the United States District Court for the District of Puerto Rico in the lawsuit entitled *United States v. Municipality of Toa Alta, Puerto Rico*, Civil Action No. 3:21-01087.

The proposed SSFO resolves two issues that the "Stipulation and Preliminary Injunction Order" (SPIO) entered in this matter in August 2022 (Dkt. No. 127-1) did not address: the claim that failure to remove leachate from the Southeast Cell of the Municipality of Toa Alta's (MTA's) landfill constitutes an imminent and substantial endangerment under Section 7003(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973(a), and the claim for civil penalties Section 7003(b) of RCRA, 42 U.S.C. 6973(b). The SSFO requires Toa Alta to remove and dispose of, under Puerto Rico's Department of Natural and Environmental Resources (DNER) oversight, leachate that is pooling on the bottom liner of the landfill's Southeast Cell and to pay a \$50,000 civil penalty. The SSFO also converts the SPIO into a permanent injunction order.

The publication of this notice opens a period for public comment on the SSFO. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States v. Municipality of Toa Alta*, D.J. Ref. No. 90-7-1-12090. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By email .....	<i>pubcomment-ees.enrd@usdoj.gov</i>
By mail .....	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, D.C. 20044-7611.

Under section 7003(d) of RCRA, a commenter may request an opportunity

for a public meeting in the affected area. Any comments submitted in writing or at a public meeting may be filed by the United States in whole or in part on the public court docket without notice to the commenter.

During the public comment period, the SSFO may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. If you require assistance accessing the SSFO, you may request assistance by email or by mail to the addresses provided above for submitting comments.

**Henry Friedman,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2024-03504 Filed 2-20-24; 8:45 am]

**BILLING CODE 4410-15-P**

**DEPARTMENT OF LABOR**

**Employee Benefits Security Administration**

[Exemption Application No. D-12090]

**Proposed Exemption for DWS Investment Management Americas, Inc. and Certain Current and Future Asset Management Affiliates of Deutsche Bank AG Located in New York, NY**

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Notice of proposed exemption.

**SUMMARY:** This document provides notice of the pendency before the Department of Labor (the Department) of a proposed individual exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act). This proposed exemption would permit certain qualified professional asset managers within the corporate family of Deutsche Bank AG (Deutsche Bank), including DWS Investment Management Americas Inc. (DIMA or the Applicant), and certain current and future affiliates of Deutsche Bank (each a DB QPAM), to continue to rely on the class exemptive relief granted in Prohibited Transaction Exemption (PTE) 84-14 (PTE 84-14, or the QPAM Exemption), notwithstanding the 2017 criminal conviction of DB Group Services (UK) Limited (DB Group Services).

**DATES:**

*Comments due:* Written comments and requests for a public hearing on the proposed exemption should be

submitted to the Department by April 8, 2024.

*Exemption date:* If granted, this exemption will be in effect beginning on April 18, 2024, and ending on April 17, 2027.

**ADDRESSES:** All written comments and requests for a hearing should be submitted to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Attention: Application No. D–12090 via email to [e-OED@dol.gov](mailto:e-OED@dol.gov) or online through <https://www.regulations.gov>. Any such comments or requests should be sent by the end of the scheduled comment period. The application for exemption and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1515, 200 Constitution Avenue NW, Washington, DC 20210. See **SUPPLEMENTARY INFORMATION** below for additional information regarding comments.

**FOR FURTHER INFORMATION CONTACT:** Mr. Frank Gonzalez and Ms. Blessed Chukorji-Keefe of the Department at (202) 693–8553 and (202) 693–8567, respectively. (These are not toll-free numbers.).

**SUPPLEMENTARY INFORMATION:**

*Comments:* Persons are encouraged to submit all comments electronically and not to follow with paper copies. Comments should state the nature of the person’s interest in the proposed exemption and how the person would be adversely affected by the exemption, if granted. Any person who may be adversely affected by an exemption can request a hearing on the exemption. A request for a hearing must state: (1) the name, address, telephone number, and email address of the person making the request; (2) the nature of the person’s interest in the exemption, and the manner in which the person would be adversely affected by the exemption; and (3) a statement of the issues to be addressed and a general description of the evidence to be presented at the hearing. The Department will grant a request for a hearing made in accordance with the requirements above where a hearing is necessary to fully explore material factual issues identified by the person requesting the hearing. A notice of such hearing shall be published by the Department in the **Federal Register**. The Department may decline to hold a hearing if: (1) the request for the hearing does not meet the requirements above; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the

factual issues identified can be fully explored through the submission of evidence in written (including electronic) form.

*Warning:* All comments received will be included in the public record without change and may be made available online at <https://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be confidential or other information whose disclosure is restricted by statute. If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as a Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. However, if EBSA cannot read your comment due to technical difficulties and cannot contact you for clarification, EBSA might not be able to consider your comment. Additionally, the <https://www.regulations.gov> website is an “anonymous access” system, which means EBSA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EBSA without going through <https://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the internet.

**Proposed Exemption**

The Department of Labor (the Department) is considering granting an exemption under the authority of Section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and Section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the Department’s exemption procedures regulation,<sup>1</sup> because it appears that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan. If the Department grants a final exemption, certain qualified professional asset managers within the corporate family of Deutsche Bank AG (Deutsche Bank),

<sup>1</sup> 29 CFR part 2570, subpart B (75 FR 66637, 66644, October 27, 2011). For purposes of this proposed exemption, reference to specific provisions of Title I of ERISA, unless otherwise specified, should be read to refer as well to the corresponding Code provisions.

including DWS Investment Management Americas Inc. (DIMA or the Applicant), and certain current and future affiliates of Deutsche Bank (each a DB QPAM), will not be precluded from relying on the class exemptive relief granted in Prohibited Transaction Exemption (PTE) 84–14 (PTE 84–14, or the QPAM Exemption)<sup>2</sup> notwithstanding the 2017 criminal conviction of DB Group Services (UK) Limited (DB Group Services) for wire fraud in connection with its role in manipulating the United States Dollar based London Interbank Offered Rate (LIBOR), as described in more detail below provided the conditions set forth in the exemption are met.

The exemption, if granted, would provide relief from certain restrictions set forth in ERISA sections 406. It would not, however, provide relief from any other violation of law, such as those laws implicated in the conviction. Furthermore, the Department cautions that the relief in the exemption would terminate immediately if, among other things, an entity within the Deutsche Bank corporate structure is convicted of a crime covered by Section I(g) of PTE 84–14 (other than the U.S. Conviction, as defined in Section I(a) of this proposed exemption) during the exemption period (as defined in Section I(c) of this proposed exemption). Although the DB QPAMs could apply for a new exemption in that circumstance, the Department would not be obligated to grant the exemption.

The terms of this proposed exemption have been specifically designed to permit plans to terminate their relationships in an orderly and cost-effective fashion in the event of an additional conviction or a determination that it is otherwise prudent for a plan to terminate its relationship with an entity covered by the exemption.

**Summary of Facts and Representations**<sup>3</sup>

*Deutsche Bank*

1. Deutsche Bank is a publicly held global banking and financial services company headquartered in Frankfurt,

<sup>2</sup> 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

<sup>3</sup> The Department notes that availability of this exemption would be subject to the express condition that the material facts and representations made by the Applicant in Application D–12090 are true and complete and accurately describe all material terms of the transaction(s) covered by the exemption. If there is any material change in a transaction covered by the exemption, or in a material fact or representation described in the application, the exemption will cease to apply as of the date of the change.

Germany, Deutsche Bank, with and through its affiliates, subsidiaries, and branches, provides a range of services to various entities.

2. Deutsche Bank has several affiliated asset managers, including: DIMA, a Delaware corporation; RREEF America L.L.C. (RREEF), a Delaware limited liability company; DWS Alternatives Global Limited (Global), an entity based in London, United Kingdom; and DWS Investments Australia Limited (DIAL), an entity based in Sydney, Australia.<sup>4</sup> These entities (and future affiliated asset managers of Deutsche Bank) are collectively referred to herein as the DB QPAMs. The DB QPAMs are investment advisers (Advisers) registered under the Investment Advisers Act of 1940, as amended, with the U.S. Securities and Exchange Commission.

3. The DB QPAMs are part of the DWS Group (formerly Deutsche Asset Management), a separate, publicly listed financial services firm that is majority-owned by Deutsche Bank. According to DIMA, the DWS Group is in a separate corporate ownership line than DB Group Services. Thus, the convicted entity is in a different ownership line from the DB QPAMs, *i.e.*, DB Group Services is not an upstream or downstream corporate affiliate of any DB QPAM. DWS Group is not itself a QPAM, but instead is the parent entity that indirectly owns the DB QPAMs. The DWS business has its own dedicated legal and compliance teams and the DB QPAMs have their own boards of directors (in the case of RREEF, which is a limited liability company, its own managers).

4. As Advisers, the DB QPAMs provide discretionary asset management services to plans that are subject to Part 4, Title I of ERISA (ERISA-covered plans) and Individual Retirement Accounts subject to Code Section 4975 (IRAs). For purposes of this proposed exemption, the term “Covered Plan” means an ERISA Plan or an IRA, in each case, with respect to which a DB QPAM relies on PTE 84–14, or with respect to which a DB QPAM (or any Deutsche Bank affiliate) has expressly represented that the manager qualifies as a QPAM or relies on PTE 84–14. A Covered Plan does not include an ERISA-covered Plan or IRA to the extent the DB QPAM has expressly disclaimed reliance on QPAM

status or PTE 84–14 in entering into its contract, arrangement, or agreement with the ERISA-covered plan or IRA.

5. Notwithstanding the above, a DB QPAM may disclaim reliance on QPAM status or PTE 84–14 in a written modification of a contract, arrangement, or agreement with an ERISA-covered plan or IRA, where: the modification is made in a bilateral document signed by the client; the client’s attention is specifically directed toward the disclaimer; and the client is advised in writing that, with respect to any transaction involving the client’s assets, the DB QPAM will not represent that it is a QPAM and will not rely on the relief described in PTE 84–14.

ERISA and Code Prohibited Transactions and PTE 84–14

6. The rules set forth in ERISA Section 406 and Code Section 4975(c)(1) proscribe certain “prohibited transactions” between plans and certain parties in interest with respect to those plans.<sup>5</sup> ERISA Section 3(14) defines parties in interest with respect to a plan to include, among others, the plan fiduciary, a sponsoring employer of the plan, a union whose members are covered by the plan, service providers with respect to the plan, and certain of their affiliates.<sup>6</sup> The prohibited transaction provisions under ERISA Section 406(a) prohibit, in relevant part, (1) sales, leases, loans, or the provision of services between a party in interest and a plan (or an entity whose assets are deemed to constitute the assets of a plan), (2) the use of plan assets by or for the benefit of a party in interest, or (3) a transfer of plan assets to a party in interest.<sup>7</sup>

7. Under the authority of ERISA Section 408(a), the Department has the authority to grant an exemption from such “prohibited transactions” in accordance with the procedures set forth in the exemption procedure regulation<sup>8</sup> if the Department finds an exemption is: (a) administratively feasible, (b) in the interests of the plan and of its participants and beneficiaries,

and (c) protective of the rights of participants and beneficiaries.

8. PTE 84–14 exempts certain prohibited transactions between a party in interest and an “investment fund” (as defined in Section VI(b) of PTE 84–14) in which a plan has an interest if the investment manager satisfies the definition of “qualified professional asset manager” (QPAM) and satisfies additional conditions of the exemption. PTE 84–14 was developed and granted based on the essential premise that broad relief could be afforded for all types of transactions in which a plan engages only if the commitments and the investments of plan assets and the negotiations leading thereto are the sole responsibility of an independent, discretionary manager.<sup>9</sup>

9. Section I(g) of PTE 84–14 prevents an entity that may otherwise meet the definition of QPAM from utilizing the exemptive relief provided by the QPAM Exemption for itself and its client plans if that entity, an “affiliate” thereof,<sup>10</sup> or any direct or indirect five percent or more owner in the QPAM has been either convicted or released from imprisonment, whichever is later, because of criminal activity described in section I(g) within the 10 years immediately preceding a transaction. Section I(g) was included in PTE 84–14, in part, based on the Department’s expectation that QPAMs, and those who may be in a position to influence the QPAM’s policies, must maintain a high standard of integrity.<sup>11</sup>

#### *Prior Convictions and Related Exemptions*

10. On October 11, 2011, DIMA requested an administrative exemption from the Department (the First Request) to allow certain DB QPAMs to continue utilizing the relief set forth in PTE 84–14 notwithstanding the then impending criminal conviction of DSK, a Deutsche Bank affiliate in South Korea under Korean law for spot/futures-linked market price manipulation (the Korean Conviction). Specifically, on January 25,

<sup>9</sup> See 75 FR 38837, 38839 (July 6, 2010).

<sup>10</sup> Section VI(d) of PTE 84–14 defines the term “affiliate” for purposes of Section I(g) as “(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 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 Section 4975(e)(2)(H) of the Code) or officer (earning 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.”

<sup>11</sup> See 47 FR 56947 (December 21, 1982).

<sup>4</sup> Deutsche Bank reorganized Deutsche Asset Management into a separate financial services firm, DWS Group GmbH & Co. KGaA (DWS Group). On March 23, 2018, DWS Group completed the sale of a minority ownership interest and is now a separate, publicly listed financial services firm, but remains majority-owned subsidiary of Deutsche Bank. DIMA, and its investment advisory affiliates, including RREEF, Global and Dial, became wholly owned subsidiaries of DWS Group.

<sup>5</sup> For purposes of the Summary of Facts and Representations, references to specific provisions of Title I of ERISA, unless otherwise specified, refer also to the corresponding provisions of the Code.

<sup>6</sup> Under the Code, such parties, or similar parties, are referred to as “disqualified persons.”

<sup>7</sup> The prohibited transaction provisions also include certain fiduciary prohibited transactions under ERISA Section 406(b). These include transactions involving fiduciary self-dealing, fiduciary conflicts of interest, and kickbacks to fiduciaries.

<sup>8</sup> 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).

2016, the Seoul Central District Court (the Korean Court) convicted DSK of violations of certain provisions of Articles 176, 443, and 448 of the Korean Financial Investment Services and Capital Markets Act (FSCMA) for spot/futures linked market manipulation in connection with the unwinding of an arbitrage position that in turn caused a decline in the Korean market. Upon the entering of the Korean Conviction, the Korean Court sentenced DSK to pay a criminal fine of 1.5 billion South Korean Won (KRW). Furthermore, the Korean Court ordered DB to forfeit KRW 43,695,371,124, and DSK to forfeit KRW 1,183,362,400.<sup>12</sup>

11. While the Department considered the First Request, DIMA submitted a second exemption application (the Second Request) to allow certain DB QPAMs to continue relying on PTE 84–14 for a period of 10 years, notwithstanding both the Korean Conviction and the then-anticipated conviction of DB Group Services (a Deutsche Bank indirect wholly-owned subsidiary based in London, United Kingdom) under U.S. law for one count of wire fraud in connection with its role in manipulating the United States Dollar (US Dollar) based LIBOR (the U.S. Conviction). Specifically, on April 23, 2015, the Fraud Section of the Criminal Division and the Antitrust Division of the United States Department of Justice filed a one-count criminal information in the U.S. District Court for the District of Connecticut (the District Court) charging DB Group Services with one count of wire fraud, in violation of Title 18, United States Code, Section 1343. Pursuant to a plea agreement (the Plea Agreement), DB Group Services entered a guilty plea in the District Court relating to the conduct described therein (including the conduct described in any of the exhibits thereto). On April 18, 2017, the District Court entered a judgment against DB Group Services that required remedies that are materially the same as those set forth in the Plea Agreement.

12. On September 4, 2015, the Department published PTE 2015–15 in connection with the First Request, which provided temporary exemptive relief permitting DB QPAMs to continue relying on PTE 84–14 for a period of nine months, notwithstanding the Korean Conviction.<sup>13</sup> PTE 2015–15 had an effective date of January 25, 2016,

<sup>12</sup> The Korean Court determined that the forfeitures the government collected from both DB and DSK represents the amount of illegal profits that the entities received as result of the criminal conduct.

<sup>13</sup> 80 FR 53574 (September 4, 2015).

which was the day on which the Korean Court entered the Korean Conviction.

13. On October 28, 2016, the Department granted PTE 2016–12, also in connection with the First Request, which extended the relief provided in PTE 2015–15.<sup>14</sup> PTE 2016–12 had an effective date of October 24, 2016, and was scheduled to end on the earlier of April 23, 2017, or the effective date of the Department's final action in connection with the exemption request.

14. On December 22, 2016, the Department published PTE 2016–13 in connection with the Second Request, which granted temporary exemptive relief permitting DB QPAMs to continue to rely on PTE 84–14 for a period of nine months, notwithstanding the Korean Conviction and the U.S. Conviction (collectively, the Convictions).<sup>15</sup> PTE 2016–13 had an effective date of April 18, 2017, and was set to expire after the earlier of twelve months or the effective date of the Department's grant of supplemental exemptive relief.

15. On December 29, 2017, the Department granted PTE 2017–04, which provided temporary exemptive relief, permitting the DB QPAMs to continue to rely on PTE 84–14 for a period of three years beginning April 18, 2018, and ending on April 17, 2021, notwithstanding the Convictions.<sup>16</sup> Thereafter, on February 18, 2018, the Department issued certain technical corrections with respect to PTE 2017–04.

16. On December 12, 2018, Korea's Seoul High Court for the 7th Criminal Division (the Seoul High Court) reversed the Korean Court's decision and declared the defendants not guilty; subsequently, Korean prosecutors appealed the Seoul High Court's decision to the Supreme Court of Korea.

17. On April 19, 2021, the Department granted PTE 2021–01, which allowed the DB QPAMs to continue to rely on the relief provided in PTE 84–14, notwithstanding the U.S. Conviction for three years, beginning on April 18, 2021.<sup>17</sup> PTE 2021–01 extended the relief provided by PTE 2017–04 to April 17, 2024, but only with respect to the U.S. Conviction.<sup>18</sup>

18. On December 21, 2023, the Supreme Court of Korea affirmed the reversal of the Korean Conviction, and it dismissed all judicial proceedings

<sup>14</sup> 81 FR 75153 (October 28, 2016).

<sup>15</sup> 81 FR 94028 (December 22, 2016).

<sup>16</sup> 82 FR 61840 (December 29, 2017).

<sup>17</sup> 86 FR 20410 (April 19, 2021).

<sup>18</sup> Because of the Seoul High Court's decision reversing the Korean Conviction, the Applicant did not request an extension of the relief under PTE 2017–04 for the Korean Conviction.

against DSK. Accordingly, the exemptive relief related to the Korean Conviction is not required.

The Deferred Prosecution Agreement

19. On January 8, 2021, Deutsche Bank entered into a deferred prosecution agreement (DPA) with the U.S. Department of Justice in which Deutsche Bank agreed to pay more than \$130 million to resolve criminal charges for violations of the Foreign Corrupt Practices Act (FCPA) and a commodities fraud scheme. Although the DPA did not result in ineligibility under Section I(g) of PTE 84–14, the Department believes it is important that Deutsche Bank's Covered Plan clients are aware of the DPA and Deutsche Bank's admissions of culpability. The DPA's resolution included criminal penalties of \$85,186,206, criminal disgorgement of \$681,480, victim compensation payments of \$1,223,738, and \$43,329,622 to be paid to the U.S. Securities & Exchange Commission. In the DPA, Deutsche Bank admitted, accepted, and acknowledged that, among other things, it was responsible under United States law for the acts of its officers, directors, employees, and agents, as charged. The charges stem from a scheme to conceal corrupt payments and bribes made to third-party intermediaries by making false entries on Deutsche Bank's books and records and related internal accounting control violations, and a separate scheme to engage in fraudulent and manipulative commodities trading practices involving publicly traded precious metals futures contracts. The FCPA misconduct occurred between 2009 and 2016, and the Commodities fraud misconduct occurred between 2009 and 2013.<sup>19</sup>

*This Exemption Request*<sup>20</sup>

20. On April 24, 2023, DIMA submitted an exemption application (the New Request) seeking to extend the relief provided in PTE 2021–01, which is set to expire on April 17, 2024. The New Request initially sought relief for

<sup>19</sup> This exemption would require that, in connection with the DPA entered on January 8, 2021, between Deutsche Bank and the U.S. Department of Justice to resolve the U.S. government's investigation into violations of the Foreign Corrupt Practices Act and a separate investigation into a commodities fraud scheme, no DB QPAMs were involved in the conduct that gave rise to the DPA, and no Covered Plan assets were involved in the transactions that gave rise to the DPA. Furthermore, the DB QPAMs are not permitted to employ or knowingly engage any of the individuals that participated in the conduct that is the subject of the DPA.

<sup>20</sup> Unless otherwise noted, PTEs 2015–15, 2016–12, 2016–13, 2017–04, and 2021–01, are also referred to herein as the "Prior Exemptions."

both the U.S. Conviction and, if necessary, the Korean Conviction; however, based on the Supreme Court of Korea's dismissal of all judicial proceedings against DSK, such relief is no longer necessary.

*Department's Note:* The Department notes that the Applicant has provided a description below of the specific costs or harms, if any, that would occur to the DB QPAM's Covered Plan clients if the Department denies this exemption request, including evidence that quantifies in dollar amounts any valuable investment opportunities the Covered Plan clients would have to forego and/or the basis for concluding that certain investments could be subject to conditions or limitations that could be disadvantageous or would no longer be available to the Covered Plan clients on advantageous terms. Regardless of whether this proposed exemption is granted, the Department strongly emphasizes that a plan fiduciary's duties of prudence and loyalty apply when hiring, monitoring, evaluating, and retaining an asset manager, regardless of whether the asset manager retains the ability to continue relying on PTE 84–14 under a supplemental individual exemption.<sup>21</sup>

21. *Effective Period of the Proposed Exemption.* Exemptive relief would begin on April 18, 2024 (which is the first day following the expiration of PTE 2021–01) and would end on April 17, 2027.

#### Applicant's Representations in Support of Its Request

22. DIMA states that while exemptions other than PTE 84–14 may apply with respect to certain transactions, PTE 84–14 is particularly important for securities and other instruments that may be traded on behalf of Covered Plans, now or in the future, on a principal basis, such as real estate investments (including purchases and sales, leases and financings), corporate debt, municipal debt, other US fixed income securities, Rule 144A securities, non-US fixed income securities, non-US equity securities, US and non-US over-the-counter instruments (e.g., swaps, forwards, and options), structured products, and foreign exchange. According to DIMA, PTE 84–14 is also important to Plans with respect to the extensions of credit inherent in leveraged investments.

23. DIMA states that because counterparties are familiar and comfortable with PTE 84–14 for a broad

variety of transactions, PTE 84–14 is generally the most commonly used prohibited transaction exemption and is the exemption that counterparties generally rely on as the backup exemption for all transactions. Counterparties may provide less advantageous pricing or may not bid at all where the Covered Plan's investment manager is not a QPAM.

24. DIMA represents that plan fiduciaries expend significant resources, including time and money, in selecting asset managers for their plans. Forcing Covered Plan clients to terminate their chosen managers because the managers no longer have access to the broad coverage and efficiencies of PTE 84–14 will cause such plans to incur a number of additional costs. Additionally, Covered Plan clients will incur direct transaction costs from liquidating and reinvesting their portfolios, which costs and harms are discussed below.

25. DIMA states that the DB QPAMs have demonstrated a clean compliance record that the DB QPAM's independent auditor, Fiduciary Counselors Inc. (the Independent Auditor), confirmed after it examined the DB QPAMs compliance programs and culture through the course of six audits, as described below. According to DIMA, the DB QPAMs have demonstrated a strong culture of compliance through:

- a. Continued compliance with applicable ERISA regulatory requirements, as reflected by the consistent results of six audits performed by the Independent Auditor over more than six years;
- b. Continued compliance with other applicable regulatory requirements;
- c. A thorough training module dedicated to ERISA, reviewed, and approved by the Independent Auditor, mandatory for all in-scope employees, at the outset of their employment and then on a periodic basis;
- d. Centralized, focused, and comprehensive ERISA policies and procedures relating to ERISA and the Code, generally, as well as the specific requirements of PTE 84–14, PTE 2017–04, and PTE 2021–01;
- e. Effective internal compliance processes, including testing and monitoring of DB QPAMs, with continuous improvement; and
- f. No regulatory or judicial findings that a DB QPAM failed to meet the requirements of ERISA during the entire period.

26. *Independent Audits.* The DB QPAMs have undergone six audits in connection with PTE 2015–15, PTE 2016–12, PTE 2016–13, PTE 2017–04, and PTE 2021–01, most recently for the period from April 18, 2022, through

April 17, 2023. During the course of these audits, the Independent Auditor reviewed the following materials, systems, policies and procedures:

- marketing materials directed to Covered Plans, the identity of investment committee members and their affiliations, minutes of investment committee meetings, information barriers, policies and procedures, and emails involving the receipt of nonpublic information;
- client complaints, client complaints policy and procedures, errors policy and procedures, any errors and how such errors are corrected, overdrafts policy and procedures, overdrafts, affiliated broker and/or dealer reports, hardcoding process to avoid trading violations in connection with affiliated broker and/or dealers in trading system, cross trade reports, cross trade hardcoding process in trading system, consent forms for PTE 77–4 and billing records to show offset of fees, the trading system, guideline breach and ERISA breach hardcoding process in the trading system, any guideline breaches and the correspondence file associated with the breaches, the client adoption process, performance metrics on ethics and integrity, personal trading controls, personal trading policy and procedures, and the personal trading system and any related incident reports;
- errors and complaints associated with Covered Plans, errors policy and procedures, complaints policy and procedures, issues relating to overdrafts, escalation procedures and requirements including customer complaints policy and procedures, investment risk oversight including reviews of counterparties, and investment committees' meeting minutes;
- excise tax filings and associated incident reports, and Form ADV and SEC Brochure Rules Policy—DWS, and Form ADV Part 2A (Brochure);
- investment performance reports, PTE 77–4 disclosures, PTE 86–128 disclosures, incident reports, investments marketing materials, and client complaints;
- compliance with PTE 84–14 conditions;
- compliance with PTE 2021–01 conditions (including the written report prepared by the Compliance Officer in accordance with PTE 2021–01); and
- proof of ERISA-related training, the content of training, proof of ethics training, training of new hires, interviews of the portfolio managers regarding the training system and the effectiveness of training, the online training module, the training system and process of assigning courses to employees, and the process for

<sup>21</sup> A fiduciary's failure to abide by these duties may give rise to personal liability on behalf of any such fiduciary.

employees completing assigned training.

27. During the course of the audits, the Independent Auditor interviewed portfolio managers and held meetings with key management and compliance officers, either in person or telephonically, including, most recently, the Compliance Officer, Team Manager Client & Investment Monitoring Investment Guideline Management, Senior Team Manager Client & Investment Monitoring Investment Guideline/DWS Americas Control Officer and Head Investment Guideline Management US, Assistant Vice President—Anti-Bribery and Corruption, Gifts and Entertainment, Senior Team Lead AFC & Anti-Fraud, Bribery & Corruption, Head of Anti-Fraud, Bribery and Corruption (DWS): Vice-President—Lead Anti-Bribery & Corruption, Director and Head of Employee Compliance for Americas, Assistant Vice President, Birmingham Regulatory Team Manager; and Vice President, Regulatory Training. The Independent Auditor was provided demonstrations of key account maintenance, trading, and compliance systems. Numerous documents, reports, policies and procedures and other pertinent information were requested and timely received by the Independent Auditor.

28. According to DIMA, the costs and harms to Covered Plans resulting from the DB QPAMs' inability to rely on PTE 84–14 can best be described by discussing the services for which the DB QPAMs rely on PTE 84–14. In this regard, the DB QPAMs provide discretionary asset management services in reliance on PTE 84–14 to Covered Plans under two DWS business lines: (1) Alternatives (including the Liquid Real Assets, Direct Real Estate and Private Equity businesses) (hereinafter the Alternatives) and (2) Active Institutional. Collectively, DB QPAMs provide discretionary asset management services to ERISA-covered plans, governmental plans and IRAs as follows:<sup>22</sup>

a. *ERISA Accounts*: Through 8 separately managed accounts and two pooled funds subject to ERISA, to a total of 10 ERISA plan accounts, with total assets under management (“AuM”) of approximately \$619 million.

b. *Governmental Plan Accounts*: Through separately managed accounts, to a total of 13 governmental plan accounts, with total AuM of approximately \$5.5 billion.

c. *IRAs*: After the first audit under PTE 2017–04, DIMA began to offer discretionary model portfolios to financial sponsors with IRA clients, but, in connection with DIMA's provision of such services, DIMA has expressly disclaimed, and intends to continue to expressly disclaim, its reliance on PTE 84–14.

29. The Applicant states that the following costs are in addition to the opportunity costs of investing in cash pending reinvestment with a new manager. The individual statistics for each of the foregoing business lines are set forth below:

a. *Alternatives*: Alternatives provides discretionary asset management services to, among others, 8 ERISA accounts and 10 governmental plan accounts. The largest ERISA account is \$198 million. Total ERISA AuM is \$498 million. The largest governmental plan account is \$2.8 billion. Total governmental plan AuM is \$4.9 billion. Alternatives provides these services through separately managed accounts and pooled funds subject to ERISA. Terminating Alternatives' management may result in the following specific harm to the relevant ERISA plan or governmental plan:

i. *Loss of the investor's preferred manager*: Virtually all plan investors expend large amounts of time (6–8 months) and thousands of dollars to find, evaluate, choose, and engage managers. Because of Alternatives' unique position in real estate, infrastructure, and commodities, replacing Alternatives would involve an even greater effort. Further, due to the unique assets chosen by Alternatives under its proprietary models, finding a true replacement is likely impossible, thus necessitating modifications to portfolios, and likely, to strategies and global investment policies, as well, with the consequent costs of those additional ripple effect changes;

ii. *Loss of leading investment manager/performance*: DIMA represents that Alternatives is a market leader, including when it comes to performance, thus making it difficult for investors to find quality replacements;

iii. *Consulting fees*: The consulting fees for searching for a new private manager range from \$30,000 to \$40,000. Consultants may charge twice as much or more for customized searches for private market managers than they charge for public market manager searches;

iv. *Additional time expended*: 25–50 hours of client time to evaluate alternative managers. Plans typically rely on several individuals (whether through a board of trustees, investment

committees or otherwise) to evaluate and select managers. Further, unless a plan has in-house investment professionals, it almost invariably relies on outside consultants to assist with the search and evaluation (at a substantial cost, as noted above);

v. *Legal fees*: The cost in legal fees to review/negotiate new management agreement and guidelines ranges between \$10,000 and \$30,000.

Agreements for institutional asset management are almost invariably negotiated. Further, agreements and guidelines for real estate strategies, especially direct real estate, are generally more complex than for other strategies;

vi. *Transaction costs for direct real estate*: For direct real estate, 30–100 bps in direct transaction costs for early liquidation (e.g., \$8.4 million to \$27.8 million loss for Alternatives' largest governmental plan client);

vii. *Early liquidation discounts*: For direct real estate, 10–20% discount for early liquidation (e.g., \$278.4 million to \$556.8 million loss for Alternatives' largest governmental plan client);

viii. *Transaction costs for non-direct real estate*: For other Alternatives' portfolios, 20–60 bps in direct transaction costs for liquidation (e.g., \$5.6 million to \$16.7 million for Alternatives' largest ERISA client);

b. *Active Institutional*: The Active Institutional team provides institutional discretionary asset management services to a number of separately managed plan accounts, including 2 ERISA plan accounts and 3 governmental plan accounts. The Active Institutional team also provides discretionary model portfolio services to financial sponsors with IRA clients. The largest ERISA account is \$86.5 million. Total ERISA AuM is \$125.5 million. The largest governmental plan account is \$518 million. Total governmental plan AuM is \$644.6 million. The Active Institutional team currently manages these institutional accounts to a broad variety of strategies, including: (I) equities, (II) fixed income, (III) overlay, (IV) commodities, and (V) cash.

*Department's Request for Comment Regarding “Opportunity Costs”*: The Department specifically requests comments from Covered Plans, the DB QPAMs, and the public as to the specific “opportunity cost” of having assets “invested in cash pending reinvestment with a new manager.” In this regard, the Department requests information validating that there is no way to avoid investing assets in cash during the transition to a new manager and information quantifying the costs of having assets uninvested during such a

<sup>22</sup> The Applicant states that all statistical data is as of December 31, 2022, to the best of the Applicant's knowledge.

transition using objective assumptions. The Department notes that it retains the ability to deny an exemption request if the record associated with the request lacks adequate or sufficient supporting data to enable the Department to make its findings that Covered Plans would suffer harms if exemptive relief was not afforded the Applicants.

30. Given the institutional nature of the underlying accounts, these strategies may involve a wide range of asset classes and types, including: (1) US and foreign fixed income (Treasuries, Agencies, corporate bonds, asset-backed securities, mortgage and commercial mortgage-backed securities, deposits); (2) US and foreign mutual funds and ETFs; (3) US and foreign futures, (4) currency; (5) swaps (interest rate and credit default); (6) US and foreign equities; and (7) short term investment funds.

31. According to the Applicant, terminating a plan's chosen manager under any strategy involves various costs, including loss of the investor's preferred manager, transaction costs, search costs and legal costs, with the particular cost turning on the strategy and the assets in which it invests. Estimated costs for the Active Institutional strategy are as follows:

a. *Consulting Fees*: \$30,000 to \$40,000 in consulting fees for a new manager search. Searches for private market managers are significantly more expensive than for public market managers;

b. *Additional Time Expended*: 25–50 hours of client time to evaluate alternative managers, assuming the task is handled by an institutional board of trustees, plan committee or similar group of individuals;

c. *Legal Fees*: \$10,000–\$30,000 in legal fees to review/negotiate new management agreement and guidelines, given that institutional agreements are almost invariably negotiated;

d. *Transaction Costs*: Approximately 8.0 bps in direct transaction costs for liquidation (e.g., \$414,430.44 for Active Institution's largest governmental plan client). This assumption is based on the account's holdings as of December 31, 2022, and may change at any time, given the flexible nature of institutional mandates;

e. *Legal Costs for New Trading Agreements*: The cost in legal fees to negotiate each new futures, cleared derivatives, swaps, or other trading agreement is between \$15,000 and \$30,000.

*Department's Note*: The Department specifically requests comments from Covered Plans, the DB QPAMs, and the public as to the specific costs or harms,

if any, that would flow from denial of the exemption, and data from the Applicant that identifies and quantifies in dollar amounts any valuable investment opportunities that plans would have to forego, and the basis for concluding that those investments would no longer be available to Covered Plans on advantageous terms from the DB QPAMs or other financial service providers. The Department retains the ability to deny an exemption request if the record associated with the request lacks adequate or sufficient supporting data. The Department also requests comments from the public, Covered Plans, and the DB QPAMs regarding the validity of these concerns, as well as any data or analyses that quantify the magnitude of these associated costs and harms in dollar amounts. The Department could decide to deny the exemption request if the record associated with the request lacks adequate or sufficient supporting data.

#### Applicant's Additional Request

32. The Applicant requests that the Department consider imposing an audit requirement upon the DB QPAMs every other year for the remaining years of exemption relief, basing such request on the following three (3) reasons:

a. The U.S. Conviction occurred outside of the DB QPAMs, in an entity that is entirely separate from the asset management business. The DB QPAMs have been subjected to audits that, among other things, confirmed that the Independent Auditor found no suggestion of any inappropriate statements or discussions regarding transactions, interactions, or undue influence from or to Deutsche Bank and the DB QPAMs.

b. Since the Applicant's need for an exemption rests on a single crime, the Applicant submits that similarly situated applicants should be treated consistently and that its case is similar to other applicants with one crime. The Applicant believes that the appropriate and fair comparison is to the foreign exchange ("FX") individual QPAM exemptions granted to those applicants with only one conviction. These applicants have, in their first five years of exemptive relief, three one-year audits. Moreover, those applicants were advised at the time that, if the audits revealed no deficiencies in their compliance programs, the Department could exercise its discretion to alter the exemption conditions in subsequent exemptions.

c. The compliance officer requirement, including full compliance reviews, imposed by PTE 2021–01 is a reasonable substitute for a full audit.

Because the DB QPAMs have demonstrated a strong culture of compliance and commitment to addressing the Department's articulated concerns, the Applicant respectfully requests that the Department exercise its discretion to modify the Independent Auditor requirement for the years covered by the extension of the exemption.

33. The Applicant states that a biennial audit requirement also would benefit plan participants because the audits are expensive and monopolize significant amounts of time of the staff of the asset managers' control functions. In the absence of these requirements, the control functions would be able to set aside more time to develop and implement new and appropriate controls, and perform additional testing, surveillance, monitoring, and other compliance activities on a more expedited and efficient basis.

34. *Department's Response*. The Department declines to modify the timing of the DB QPAMs' audits to every other year. The Department notes that although the DPA is not a disqualifying event under Section I(g) of PTE 84–14, Deutsche Bank admitted to culpability for the crimes described in the DPA. Given the amount of bad conduct reflected by the record, the Department views an annual audit as necessary to ensure the DB QPAMs remain untainted by the bad conduct of certain Deutsche Bank affiliates.

35. The Applicant also requests the addition of a condition addressing newly-acquired investment managers, as was included in the exemption granted to JPMorgan Chase & Co. earlier in year 2023.<sup>23</sup> The Applicant is requesting that in respect to a newly-acquired manager relying on PTE 84–14, the proposed exemption shall first apply after a date that is six (6) months after the acquisition's closing date. The Applicant explains that, from time to time, the Applicant acquires asset managers that rely on the QPAM Exemption, as of the effective date of the acquisition. According to the Applicant, when a manager is in the process of being acquired, it is generally unwilling, or practically unable, to communicate with its clients regarding all the terms of the acquiror's individual QPAM exemption, e.g., in case the transaction does not close. In addition, the associated information and documentation may raise questions from plan clients that the manager being acquired cannot answer, and it would be inappropriate to allow the acquiror to

<sup>23</sup> See 88 FR 1418 (January 10, 2023).

talk directly to the manager's clients prior to close.

36. In addition, PTE 2021–01 has many requirements, all of which must be contained in policies and procedures of the newly-acquired manager. The Applicant states that the acquired entity is typically unable to change its policies and procedures until the transaction has closed and only at that point does it try to meld new policies and procedures related to the individual QPAM exemption to its policies.

37. DIMA states that the consequences for violating the exemption are severe, and the acquired manager would understandably be reluctant to accept these liabilities until it had trained its employees. Further, the Applicant expects it would be quite challenging for the independent auditor to insert an entirely new entity, with which it has no familiarity, into its audit testing in real-time (to the extent it even has the necessary resources to expand its audit and can confirm it remains independent from the acquired manager).

38. According to DIMA, no time was allowed at the outset of the Prior Exemptions for a newly-acquired manager to comply with the exemptions' conditions. These conditions make it nearly impossible to come into full compliance with the exemption before any such acquisition closes, given all of the conditions regarding notices, training, policies, compliance regimes, etc. If full compliance with the exemption is not in place as of the closing date, such manager may not be able to transact in reliance on PTE 84–14 on behalf of its plan clients, even where it was doing so immediately prior to the closing date. For plans managed by the acquired manager, transactions may have to be terminated, strategies changed, and guidelines amended, causing disruption to such plans through no fault of their own.

39. *Department's Response.* The Department agrees, in part, with the Applicant's requested change. However, the Department believes any new DB QPAM must be subject to an audit covering the entirety of the DB QPAM's reliance on this exemption. The newly-acquired DB QPAM must submit itself to the first audit that begins following the DB QPAM's acquisition, but the period covered by such audit covers the period of time beginning with the date of acquisition. The Department is adding a condition in accordance with the Applicant's request that reads:

"With respect to an asset manager that becomes a DB QPAM after the effective date of this exemption by virtue of being acquired (in whole or in part) by DB or

a subsidiary or affiliate of DB (a "newly-acquired DB QPAM"), the newly-acquired DB QPAM would not be precluded from relying on the exemptive relief provided by PTE 84–14 notwithstanding the U.S. Conviction as of the closing date for the acquisition; however, the operative terms of the exemption shall not apply to the newly-acquired DB QPAM until a date that is six (6) months after the closing date for the acquisition. To that end, the newly acquired DB QPAM will initially submit to an audit pursuant to Section III(i) of this exemption as of the first audit period that begins following the closing date for the acquisition. The period covered by the audit must begin on the date on which the DB QPAM was acquired."

The Department explains that the first audit to which a newly-acquired DB QPAM submits may cover a period greater than 1 year. For example, assuming this proposed exemption is granted and the following: DB QPAMs are subject to an annual audit covering April 18th 2024 through April 17th 2025 and a new DB QPAM is acquired on January 1, 2025: The newly-acquired DB QPAM would (1) be permitted to rely on the relief provided by this exemption as of January 1, 2025 (the date of its acquisition), (2) first become subject to the conditional terms of the exemption on July 1, 2025, and (3) initially submit to the first audit beginning post-acquisition (covering April 18, 2025–April 17, 2026). However, such audit of this particular DB QPAM must look back to the date of acquisition and cover the period from January 1, 2025–April 17, 2026.

#### The Exemption's Protective Conditions

40. Several of this proposed exemption's conditions are designed to ensure that the DB QPAMs were not involved in the conduct that gave rise to the U.S. Conviction or the DPA. Accordingly, this proposal does not provide prohibited transaction relief if the DB QPAMs knew of, participated in, approved of, furthered, or profited from the conduct that gave rise to the U.S. Conviction or the DPA.<sup>24</sup> Nor is relief available if a DB QPAM exercised any authority over plan assets in a manner that it knew or should have known would further the criminal conduct that is the subject of the U.S. Conviction or the 2021 DPA or cause the DB QPAM or its affiliates to directly or indirectly profit from the criminal conduct that is

the subject of the U.S. Conviction or the 2021 DPA.

41. Further, the DB QPAMs may not employ or knowingly engage any of the individuals that participated in the conduct attributable to the U.S. Conviction or the DPA. The DB QPAMs (including their officers, directors, agents other than DB Group Services, and employees of these QPAMs) must not have received direct compensation or knowingly received indirect compensation in connection with the criminal conduct that is the subject of the U.S. Conviction or the DPA.

42. The proposal further provides that no DB QPAM will use its authority or influence to direct an "investment fund" that is subject to ERISA or the Code and managed by such DB QPAM in reliance on PTE 84–14, or with respect to which a DB QPAM has expressly represented to an ERISA-covered plan or IRA with assets invested in such "investment fund" that it qualifies as a QPAM or relies on PTE 84–14, to enter into any transaction with DB Group Services to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption.

43. If the Department grants this exemption, it will terminate immediately if Deutsche Bank or any of its affiliates are convicted of any additional crimes (other than the U.S. Conviction) described in Section I(g) of PTE 84–14. Also, with limited exceptions, DB Group Services may not act as a fiduciary within the meaning of ERISA Section 3(21)(A)(i) or (iii), or Code Section 4975(e)(3)(A) and (C), with respect to ERISA-covered plan and IRA assets.

44. The proposal requires each DB QPAM to update, implement and follow certain written policies and procedures (the Policies). These Policies are identical to the policies and procedures mandated by PTE 2021–01. In general terms, the Policies must require and be reasonably designed to ensure among other things that: (i) the DB QPAMs' asset management decisions are conducted independently of the corporate management and business activities of DB Group Services; (ii) the DB QPAMs fully comply with ERISA's fiduciary duties, as applicable, and with ERISA and the Code's prohibited transaction provisions, as applicable; (iii) the DB QPAMs do not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans; (iv) any filings

<sup>24</sup> For clarity, references to the DB QPAMs include their officers, directors, agents other than Deutsche Bank, and employees of such QPAMs.

or statements made by the DB QPAMs to regulators on behalf of or in relation to Covered Plans are materially accurate and complete; (v) the DB QPAMs do not make material misrepresentations or omit material information in communications with such regulators with respect to Covered Plans; (vi) the DB QPAMs do not make material misrepresentations or omit material information in communications with Covered Plans; (vii) the DB QPAMs comply with the terms of the exemption; and (viii) any violation of or failure to comply with any of these items is corrected as soon as reasonably possible upon discovery, or as soon after the DB QPAM reasonably should have known of the noncompliance (whichever is earlier). Any violation or compliance failure not so corrected must be reported in writing to appropriate corporate officers, the head of compliance and the QPAM's general counsel (or their functional equivalent), and the independent auditor responsible for reviewing compliance with the Policies upon the discovery of the failure to correct.

45. This proposal mandates training (Training) that is identical to the training required under PTE 2021–01. In this regard, all relevant DB QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel must be trained during the Exemption Period. Among other things, the Training must cover at a minimum, the Policies, ERISA and Code compliance, ethical conduct, the consequences for not complying with the exemption conditions (including any loss of the exemptive relief provided herein) and the requirement for prompt reporting of wrongdoing. The Training must be conducted by a professional who has been prudently selected and has appropriate technical training and proficiency with ERISA and the Code.

*Department's Comment Regarding Training:* The Department views the Training obligation under this exemption as a key protection of Covered Plans and expects that DB QPAMs and their personnel will complete their training obligations fully and in good faith. To ensure the efficacy of the Training, Section III(h)(2)(iii) requires that the Training “[b]e verified, through in-training knowledge checks, “graduation” tests, and/or other technological tools designed to confirm that personnel fully and in good faith participate in the Training.”

Furthermore, the Department expects the independent auditor described in Section III(i)(1) of the exemption to validate the efficacy of the Training,

and, if necessary, to suggest additional enhancements to the Applicant's Training program.

46. Under this proposal, as in PTE 2021–01, each DB QPAM must submit to an annual audit conducted by an independent auditor. Among other things, the auditor must test a sample of each DB QPAM's transactions involving Covered Plans that are sufficient in size and nature to afford the auditor a reasonable basis to determine such QPAM's operational compliance with the Policies and Training. The auditor's conclusions cannot be based solely on the Exemption Report created by the Compliance Officer, described below, in lieu of independent determinations and testing performed by the auditor.

47. The Audit Report must be certified by the respective DB QPAM's general counsel or one of the three most senior executive officers of the DB QPAM to which the Audit Report applies. A copy of the Audit Report must be provided to the Audit Committee of Deutsche Bank's Supervisory Board. A senior executive officer who has a direct reporting line to Deutsche Bank's highest ranking legal compliance officer must review the Audit Report for each DB QPAM and certify in writing and under penalty of perjury that such officer has reviewed each Audit Report. Deutsche Bank must notify the Department in the event of a change in the committee to which the Audit Report will be provided.

48. This proposal requires the DB QPAM to agree and warrant with respect to any arrangement, agreement, or contract between a DB QPAM and a Covered Plan that, throughout the Exemption Period the DB QPAM will: (i) comply with ERISA and the Code, as applicable with respect to the Covered Plan; (ii) refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions); and (iii) comply with the standards of prudence and loyalty set forth in ERISA Section 404 with respect to each such ERISA-covered plan. Each DB QPAM must also agree and warrant to indemnify and hold harmless the Covered Plan for any actual losses resulting directly from any of the following: (a) a DB QPAM's violation of ERISA's fiduciary duties and/or the prohibited transaction provisions of ERISA and the Code as applicable; (b) a breach of contract by the DB QPAM; or (c) any claim arising out of the failure of the DB QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of the exemption other than the Conviction. This condition applies to

actual losses caused by the DB QPAM, including but not limited to losses and related costs arising from unwinding transactions with third parties and from transitioning Plan assets to an alternative asset manager as well as costs associated with any exposure to excise taxes under Code Section 4975 because of a DB QPAM's inability to rely upon the relief in the QPAM Exemption. The definition of “actual losses” used in this proposed exemption allows fiduciaries of Covered Plans to prudently manage and make the best decisions on behalf of their plans without needing to consider the costs caused by a DB QPAM's or its affiliate's misconduct, including costs associated with unwinding transactions and transitioning plan assets to a new asset manager, because these costs will be borne by the DB QPAM and not the Covered Plan.<sup>25</sup>

49. This proposed exemption contains specific notice requirements. Each DB QPAM must provide a notice regarding the proposed exemption and a separate summary describing the facts that led to each Conviction (the Summary), which must be submitted to the Department, and a prominently displayed statement (the Statement) that each Conviction results in a failure to meet a condition in PTE 84–14, must be provided to each sponsor and beneficial owner of a Covered Plan that entered into a written asset or investment management agreement with a DB QPAM, or the sponsor of an investment fund in any case where a DB QPAM acts as a sub-adviser to the investment fund in which such ERISA-covered plan and IRA invests. The notice, Summary, and Statement must be provided before or contemporaneously with the client's receipt of a written asset management agreement from the DB QPAM. If the Department grants an exemption, the clients must receive a **Federal Register** copy of the notice of final exemption within sixty (60) days of this exemption's effective date. The notice may be delivered electronically (including by an email containing a link to this exemption).

50. The proposal requires each DB QPAM to maintain records necessary to demonstrate that the exemption

<sup>25</sup> The Department notes that with respect to the notice of obligations requirement in Section III(j)(7), all Covered Plans must receive a notice that includes the definition of actual losses as provided in Section III(j)(2) of this proposed exemption. For avoidance of doubt, Covered Plans must receive a new notice if the notice Covered Plans previously received or the contractual language previously agreed to in connection with Section I(j)(7) of PTE 2017–04 or Section I(j)(7) of PTE 2021–01 did not include the definition of actual losses that is provided in this exemption.

conditions have been met for six (6) years following the date of any transaction for which the DB QPAM relies upon the relief provided in the exemption. The proposal mandates that DB must continue to designate a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. The Compliance Officer must conduct an exemption review (the Exemption Review) to determine the adequacy and effectiveness of the implementation of the Policies and Training. The Compliance Officer must be a professional with extensive relevant experience with a reporting line to the highest-ranking corporate officer in charge of compliance for the applicable DB QPAM. At a minimum, the Exemption Review must include review of the following items: (i) any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer during the previous year; (ii) any material change in the relevant business activities of the DB QPAMs; and (iii) any change to ERISA, the Code, or regulations that may be applicable to the activities of the DB QPAMs.

51. The Compliance Officer must prepare a written report (the Exemption Report) that summarizes their material activities during the Exemption Period and sets forth any instance of noncompliance discovered during the Exemption Period and any related corrective action. In each Exemption Report, the Compliance Officer must certify in writing that to the best of their knowledge the report is accurate and note whether the DB QPAMs have complied with the Policies and Training, and/or corrected (or are correcting) any instances of noncompliance.

52. The Exemption Report must be (i) provided to the appropriate corporate officers of Deutsche Bank and each DB QPAM to which such report relates and to the head of compliance and the general counsel (or their functional equivalent) of the relevant DB QPAM, and (ii) made unconditionally available to the independent auditor. The Exemption Review, including the Compliance Officer's written Exemption Report, must be completed within three (3) months following the end of the period to which it relates.

53. Deutsche Bank must also immediately disclose to the Department any deferred prosecution agreement (DPA) or non-prosecution agreement (NPA) with the U.S. Department of Justice, entered into by DB or any of its affiliates (as defined in Section VI(d) of

PTE 84–14) in connection with conduct described in Section I(g) of PTE 84–14 or ERISA Section 411. Under this condition, the Applicant must also provide the Department with any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement. The Department will review the information provided and may seek additional information from the Department of Justice, in order to determine whether the conduct described in the DPA or NPA raises questions about the DB QPAMs' ability to act with a high standard of integrity. The Department retains the right to propose a withdrawal of the exemption pursuant to its procedures contained at 29 CFR 2570.50, should the circumstances warrant such action.

*Department's Request for Comment:* The Department requests comments whether the Applicant should be required to provide information regarding adverse regulatory actions (e.g., fines, censures, penalties, civil lawsuits, settlements of civil or criminal lawsuits), that are taken by other regulators against Deutsche Bank and its affiliates. For example, should the Applicant be required to provide information regarding actions taken by certain regulators (e.g., IRS, SEC, OCC, UK FCA): Are there particular types of information or classes of regulatory actions that are relevant to the Department's determination whether the DB QPAMs should continue to be permitted to rely on PTE 84–14 notwithstanding the U.S. Conviction?

54. The proposal mandates that, among other things, each DB QPAM clearly and promptly informs Covered Plan clients of their right to obtain a copy of the Policies or a description (the Summary Policies) which accurately summarizes key components of the DB QPAM's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within six (6) months following the end of the calendar year during which the Policies were changed.<sup>26</sup> With respect to this requirement, the description may be continuously maintained on a website, provided that such website's link to the Policies or Summary Policies is clearly and prominently disclosed to each Covered Plan.

<sup>26</sup> If the Applicant satisfies this disclosure requirement through Summary Policies, changes to the Policies will not require new disclosure to Covered Plans unless the Summary Policies are no longer accurate because of the changes.

55. Finally, all the material facts and representations set forth in the Summary of Facts and Representations must be true and accurate at all times.

*Clarifying Definition.* In order to avoid confusion and clarify the operation of certain conditions, the Department has included in this proposed exemption a constructional definition of "best knowledge" to clarify that any reference in this exemption to "the best knowledge" of a party will be deemed to mean the actual knowledge of the party and the knowledge which they would have had if they had conducted a diligent inquiry into the relevant subject matter. If a condition of the exemption requires an individual to provide certification pursuant to their "best knowledge," then such individual, in order to make such certification, must perform their reasonable due diligence required under the circumstances to determine whether the information such individual is certifying is complete and accurate in all respects. Furthermore, with respect to an entity other than a natural person, the "best knowledge" of the entity includes matters that are known to the directors and officers of the entity or should be known to such individuals upon the exercise of such individuals' due diligence required under the circumstances.

#### *Statutory Findings*

56. Based on the conditions included in this proposed exemption, the Department has tentatively determined that the relief sought by the Applicant would satisfy the statutory requirements for an exemption under ERISA Section 408(a).

57. *The Proposed Exemption is "Administratively Feasible."* The Department has tentatively determined that the proposal is administratively feasible since, among other things, a qualified independent auditor will be required to perform in-depth audit(s) covering, among other things, each DB QPAM's compliance with the exemption, and a corresponding written audit report will be provided to the Department and available to the public. The Department notes that the independent audit will provide an incentive for, and a measure of, compliance with the exemption conditions, while reducing the immediate need for review and oversight by the Department.

58. *The Proposed Exemption is "In the Interest of the Covered Plans."* The Department has tentatively determined that the proposed exemption is in the interests of the participants and beneficiaries of each affected Covered Plan because of the likely costs the

plans would incur if the exemption were denied and the benefits of permitting plans to continue to rely upon the DB QPAM's services with the additional protections set forth in this exemption.

59. *The Proposed Exemption is "Protective of the Plan."* The Department has tentatively determined that this proposed exemption, if granted, is protective of Covered Plans. The Department takes note of the Applicant's representation that the DB QPAMs have consistently had strong controls in place, which have only improved since the predecessor exemptions were issued. Under this proposal, exemptive relief would begin on April 18, 2024, and it has a limited prospective term of three (3) years which coincides with the end of the disqualification period in connection with the U.S. Conviction, April 17, 2027. Additionally, the proposed exemption has substantially the same conditions set forth in PTE 2017-04 and PTE 2021-01, which covered the U.S. Conviction.

#### Summary

60. This proposed exemption provides relief from certain restrictions set forth in ERISA Sections 406. No relief or waiver of a violation of any other law is provided by the exemption. The relief in this proposed exemption would terminate immediately if, among other things, an entity within the Deutsche Bank corporate structure is convicted of any crime covered by PTE 84-14, Section I(g) (other than the Convictions) during the effective period of the proposed exemption. While such an entity could apply for a new exemption in that circumstance, the Department is not obligated to propose or grant a requested exemption, and no inferences should be drawn with respect to the Department's future action due the Department's issuance of this proposal.

61. When interpreting and implementing this exemption, the Applicant and the DB QPAMs should resolve any ambiguities considering the exemption's protective purposes. To the extent additional clarification is necessary, these persons or entities should contact EBSA's Office of Exemption Determinations at 202-693-8540.

62. Based on the conditions that are included in this proposed exemption, the Department has tentatively determined that the relief sought by the Applicant would satisfy the statutory requirements for an individual exemption under ERISA Section 408(a) and Code Section 4975(c)(2).

#### Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons within fifteen (15) days of the publication of the notice of proposed exemption in the **Federal Register** in the following manner. The Applicant must provide notice of the proposed exemption as published in the **Federal Register**, along with a separate summary describing the facts that led to each Conviction (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that each Conviction results in a failure to meet a condition in PTE 84-14, to each sponsor and beneficial owner of a Covered Plan, or the sponsor of an investment fund in any case where a DB QPAM acts only as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests and a supplemental statement, as required pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on and to request a hearing with respect to the pending exemption. All written comments and/or requests for a hearing must be received by the Department within forty-five (45) days of the date of publication of this proposed exemption in the **Federal Register**. All comments will be made available to the public.

*Warning:* If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment but NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines.

#### General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under ERISA Section 408(a) and/or Code Section 4975(c)(2) does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA Section 404, which, among other things, require a fiduciary to discharge their duties respecting the plan solely in the interest of the participants and beneficiaries of the

plan and in a prudent fashion in accordance with ERISA Section 404(a)(1)(b); nor does it affect the requirement of Code Section 401(a) that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under ERISA Section 408(a) and/or Code Section 4975(c)(2), the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of ERISA and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete at all times, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

#### Proposed Exemption

The Department is considering granting an exemption under the authority of ERISA Section 408(a) and Code Section 4975(c)(2) in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011). Effective December 31, 1978, Section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of proposed exemption is issued solely by the Department.

#### Section I. Definitions

(a) The term "Covered Plan" means a plan subject to ERISA Title I, Part 4 (an ERISA-covered plan) or a plan subject to Code Section 4975 (an IRA), in each case, with respect to which a DB QPAM relies on PTE 84-14, or with respect to which a DB QPAM (or any Deutsche Bank affiliate) has expressly represented that the manager qualifies as a QPAM or relies on PTE 84-14 (the QPAM Exemption). A Covered Plan does not include an ERISA-covered Plan or IRA

to the extent the DB QPAM has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into its contract, arrangement, or agreement with the ERISA-covered plan or IRA. Notwithstanding the above, a DB QPAM may disclaim reliance on QPAM status or PTE 84–14 in a written modification of a contract, arrangement, or agreement with an ERISA-covered plan or IRA, where: the modification is made in a bilateral document signed by the client; the client’s attention is specifically directed toward the disclaimer; and the client is advised in writing that, with respect to any transaction involving the client’s assets, the DB QPAM will not represent that it is a QPAM and will not rely on the relief described in PTE 84–14.

(b) The term “DB QPAM” or “DB QPAMs” means DWS Investment Management Americas, Inc. and any current and future Deutsche Bank asset management affiliates that (i) qualify as a “qualified professional asset manager” (as defined in PTE 84–14, Section VI(a)), (ii) rely on the relief provided by PTE 84–14, and (iii) with respect to which Deutsche Bank is an “affiliate” (as defined in PTE 84–14, Section VI(d)(1)). The term “DB QPAM” excludes DB Group Services (UK) Limited.

(c) The term “Deutsche Bank” or “DB” means Deutsche Bank AG, a publicly held global banking and financial services company headquartered in Frankfurt, Germany.

(d) The term “Exemption Period” means the period of time beginning on April 18, 2024, and ending on April 17, 2027.

(e) The term “U.S. Conviction” means the judgment of conviction against DB Group Services (UK) Limited (DB Group Services), a Deutsche Bank “affiliate” (as defined in PTE 84–14, Section VI(d)), entered on April 18, 2017, by the United States District Court for the District of Connecticut, in case number 3:15-cr-00062-RNC, for one (1) count of wire fraud, in violation of 18 U.S.C. 1343. For all purposes under this exemption, “conduct” of any person or entity that is the “subject of the [U.S. Conviction]” encompasses the factual allegations described in Paragraph 13 of the Plea Agreement filed in the District Court in Case Number 3:15-cr-00062-RNC.

(f) The term “2021 DPA” means the Deferred Prosecution Agreement entered on January 8, 2021, between Deutsche Bank and the U.S. Department of Justice to resolve the U.S. government’s investigation into violations of the Foreign Corrupt Practices Act and a separate investigation into a commodities fraud scheme.

(g) Wherever found, any reference in this exemption to “the best knowledge” of a party, “best of [a party’s] knowledge,” and similar formulations of the “best knowledge” standard, will be deemed to mean the actual knowledge of the party and the knowledge which they would have had if they had conducted their reasonable due diligence required under the circumstances into the relevant subject matter. If a condition of the exemption requires an individual to provide certification pursuant to their “best knowledge,” then such individual, in order to make such certification, must perform their reasonable due diligence required under the circumstances to determine whether the information such individual is certifying is complete and accurate in all respects. Furthermore, with respect to an entity other than a natural person, the “best knowledge” of the entity includes matters that are known to the directors and officers of the entity or should be known to such individuals upon the exercise of such individuals’ due diligence required under the circumstances.

#### Section II: Transactions

The DB QPAMs will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Exemption 84–14 (PTE 84–14)<sup>27</sup> notwithstanding the U.S. Conviction (as defined above in Sections I(e)), during the Exemption Period, provided that the conditions in Section III are satisfied.<sup>28</sup>

#### Section III: Conditions

(a) Other than a single individual who worked for a non-fiduciary business within Deutsche Bank and who had no responsibility for, nor exercised any authority in connection with, the management of plan assets, the DB QPAMs (including their officers, directors, agents other than DB Group Services, and employees of such QPAMs) did not know or have reason to know of, and did not participate in the criminal conduct of DB Group Services that is the subject of the U.S. Conviction or the 2021 DPA. Further, any other party engaged on behalf of the DB QPAMs who had responsibility for, or exercised authority in connection with

the management of plan assets did not know or have reason to know of and did not participate in the criminal conduct that is the subject of the U.S. Conviction or the 2021 DPA. For purposes of this exemption, “participate in” or “participated in” refers not only to active participation in the criminal conduct that is the subject of the U.S. Conviction or the 2021 DPA, but also applies to knowing approval of the criminal conduct that is the subject of the U.S. Conviction or the 2021 DPA or knowledge of the conduct without taking active steps to prevent the conduct, including reporting the conduct to the individual’s supervisors and the Board of Directors;

(b) Apart from a non-fiduciary line of business within Deutsche Bank, the DB QPAMs (including their officers, directors, agents other than DB Group Services, and employees of such QPAMs) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the U.S. Conviction or the 2021 DPA. Further, any other party engaged on behalf of the DB QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the U.S. Conviction or the 2021 DPA;

(c) The DB QPAMs do not currently and will not in the future employ or knowingly engage any of the individuals that participated in the criminal conduct that is the subject of the U.S. Conviction or the 2021 DPA;

(d) At all times during the Exemption Period, no DB QPAM will use its authority or influence to direct an “investment fund” (as defined in Section VI(b) of PTE 84–14) that is subject to ERISA or the Code and managed by a DB QPAM in reliance of PTE 84–14, or with respect to which to which a DB QPAM has expressly represented to a Covered Plan that it qualifies as a QPAM or relies on the QPAM Exemption, to enter into any transaction with DB Group Services, or to engage DB Group Services to provide any service to such Covered Plan, for a direct or indirect fee borne by such Covered Plan, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e) Any failure of the DB QPAMs to satisfy PTE 84–14, Section I(g) arose solely from the U.S. Conviction;

<sup>27</sup> 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430, (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

<sup>28</sup> Section I(g) of PTE 84–14 generally provides relief only if “[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of” certain felonies including fraud.

(f) A DB QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA) in a manner that it knew or should have known would: Further the criminal conduct that is the subject of the U.S. Conviction or the 2021 DPA; or cause the DB QPAM or its affiliates to directly or indirectly profit from the criminal conduct that is the subject of the U.S. Conviction or the 2021 DPA;

(g) Other than with respect to employee benefit plans maintained or sponsored for its own employees or the employees of an affiliate, DB Group Services will not act as a fiduciary within the meaning of ERISA Sections 3(21)(A)(i) or (iii) or Code Sections 4975(e)(3)(A) and (C) with respect to ERISA-covered plan and IRA assets; provided, however, that DB Group Services will not be treated as violating the conditions of this exemption solely because they acted as investment advice fiduciaries within the meaning of ERISA Section 3(21)(A)(ii) or Code Section 4975(e)(3)(B);

(h)(1) Each DB QPAM must continue to maintain, adjust (to the extent necessary), implement, and follow written policies and procedures (the Policies). The Policies must require and be reasonably designed to ensure that:

(i) The asset management decisions of the DB QPAM are conducted independently of the corporate management and business activities of DB Group Services;

(ii) The DB QPAM fully complies with ERISA's fiduciary duties and with ERISA's and the Code's prohibited transaction provisions, as applicable with respect to each Covered Plan and does not knowingly participate in any violation of these duties and provisions with respect to Covered Plans;

(iii) The DB QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans;

(iv) Any filings or statements made by the DB QPAM to regulators, including, but not limited to, the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of or in relation to Covered Plans are materially accurate and complete to the best of such QPAM's knowledge at the time;

(v) To the best of the DB QPAM's knowledge at the time, the DB QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to Covered Plans or make material

misrepresentations or omit material information in its communications with Covered Plans;

(vi) The DB QPAM complies with the terms of the exemption;

(vii) Any violation of or failure to comply with a requirement in subparagraphs (h)(1)(ii) through (h)(1)(vi) is corrected as soon as reasonably possible upon discovery or as soon after the QPAM reasonably should have known of the noncompliance (whichever is earlier) and any such violation or compliance failure not so corrected is reported upon the discovery of such failure to so correct, in writing, to the head of compliance and the DB QPAM's general counsel (or their functional equivalent) of the relevant DB QPAM that engaged in the violation or failure, and the independent auditor responsible for reviewing compliance with the Policies. A DB QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies provided that it corrects any instance of noncompliance as soon as reasonably possible upon discovery or as soon as reasonably possible after the QPAM reasonably should have known of the noncompliance (whichever is earlier) and provided that it adheres to the reporting requirements set forth in this subparagraph (vii);

(2) Each DB QPAM must maintain, adjust (to the extent necessary) and implement a training program (the Training) that is conducted at least annually for all relevant DB QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must:

(i) At a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing;

(ii) Be conducted in-person, electronically or via a website by a professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code to perform the tasks required by this exemption; and

(iii) Be verified, through in-training knowledge checks, "graduation" tests, and/or other technological tools designed to confirm that personnel fully and in good faith participate in the Training;

(i)(1) Each DB QPAM must submit to an audit conducted annually by an independent auditor who has been prudently selected and who has

appropriate technical training and proficiency with ERISA and the Code to evaluate the adequacy of each DB QPAM's compliance with the Policies and Training conditions described herein. The audit requirement must be incorporated in the Policies, and the first audit must cover the period that begins on the first day this exemption is effective, if granted. Each audit must be completed no later than six (6) months after the corresponding audit's ending period;

(2) Within the scope of the audit and to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions described herein, and only to the extent such disclosure is not prevented by State or Federal statute, or involves communications subject to attorney client privilege, each DB QPAM and, if applicable, Deutsche Bank, will grant the auditor unconditional access to its business, including, but not limited to: its computer systems; business records; transactional data; workplace locations; training materials; and personnel. Such access is limited to information relevant to the auditor's objectives, as specified by the terms of this exemption;

(3) The auditor's engagement must specifically require the auditor to determine whether each DB QPAM has developed, implemented, maintained, and followed the Policies in accordance with the conditions of this exemption and has developed and implemented the Training, as required herein;

(4) The auditor's engagement must specifically require the auditor to test each DB QPAM's operational compliance with the Policies and Training. In this regard, the auditor must test a sample of each QPAM's transactions involving Covered Plans that is sufficient in size and nature to afford the auditor a reasonable basis to determine such QPAM's operational compliance with the Policies and Training;

(5) For each audit, the auditor must issue a written report (the Audit Report) to Deutsche Bank, and the DB QPAM to which the audit applies that describes the procedures performed by the auditor in connection with its examination on or before the end of the relevant period described in Section III(i)(1) for completing the audit. The auditor, at its discretion, may issue a single consolidated Audit Report that covers all of the DB QPAMs. The Audit Report must include the auditor's specific determinations regarding:

(i) The adequacy of each DB QPAM's Policies and Training; each DB QPAM's compliance with the Policies and Training; the need, if any, to strengthen

such Policies and Training; and any instance of the respective DB QPAM's noncompliance with the written Policies and Training described in Section III(h) above. The DB QPAM must promptly address any noncompliance and promptly address or prepare a written plan of action to address any determination by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective QPAM. Any action taken or the plan of action to be taken by the respective DB QPAM must be included in an addendum to the Audit Report (and such addendum must be completed before the certification described in Section III(i)(7) below). In the event such a plan of action to address the auditor's recommendation regarding the adequacy of the Policies and Training is not completed by the time the Audit Report is submitted, the following period's Audit Report must state whether the plan was satisfactorily completed. Any determination by the auditor that the respective DB QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that a DB QPAM has complied with the requirements under this subparagraph must be based on evidence that the particular DB QPAM has actually implemented, maintained, and followed the Policies and Training required by this exemption. Furthermore, the auditor must not rely solely on the Annual Report created by the compliance officer (the Compliance Officer) as described in Section III(m) below, as the basis for the auditor's conclusions in lieu of independent determinations and testing performed by the auditor as required by Section III(i)(3) and (4) above; and

(ii) The adequacy of the most recent Annual Review described in Section III(m);

(6) The auditor must notify the respective DB QPAM of any instance of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) With respect to each Audit Report, the DB QPAM's general counsel, or one of the three most senior executive officers of the line of business engaged in discretionary asset management services through the DB QPAM with respect to which the Audit Report applies, must certify in writing, under

penalty of perjury, that such signatory has reviewed the Audit Report and this exemption; and that, to the best of such signatory's knowledge at the time, such DB QPAM has addressed, corrected, or remedied any noncompliance and inadequacy or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. Such certification must also include the signatory's determination that, to the best of such signatory's knowledge at the time, the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this proposed exemption, and with the applicable provisions of ERISA and the Code. Notwithstanding the above, no person who knew of, or should have known of, or participated in, any misconduct underlying the U.S. Conviction or the 2021 DPA, by any party, may provide the certification required by this exemption, unless the person took active documented steps to stop the misconduct underlying the U.S. Conviction or the 2021 DPA;

(8) The Audit Committee of Deutsche Bank's Supervisory Board is provided a copy of each Audit Report, and a senior executive officer with a direct reporting line to the highest-ranking compliance officer of Deutsche Bank must review the Audit Report for each DB QPAM and certify in writing and under penalty of perjury that such officer has reviewed each Audit Report. Deutsche Bank must provide notice to the Department if there is a switch in the committee to which the Audit Report will be provided. With respect to this subsection (8), such certifying executive officer must not have known of, had reason to know of, or participated in, any misconduct underlying the U.S. Conviction (or the 2021 DPA), unless such person took active documented steps to stop the misconduct underlying the U.S. Conviction (or the 2021 DPA);

(9) Each DB QPAM provides its certified Audit Report by electronic mail to: *e-oed@dol.gov*. This delivery must take place no later than thirty (30) days following completion of the Audit Report. The Audit Report will be made part of the public record regarding this exemption. Furthermore, each DB QPAM must make its Audit Report unconditionally available, electronically or otherwise, for examination upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan;

(10) Each DB QPAM and the auditor must submit the following document(s) to OED via electronic mail to *e-oed@dol.gov*: Any engagement agreement(s)

entered into pursuant to the engagement of the auditor under this exemption, no later than two (2) months after the execution of any such engagement agreement;

(11) The auditor must provide the Department, upon request, for inspection and review, access to all the workpapers created and utilized in the course of the audit, provided such access and inspection is otherwise permitted by law; and

(12) Deutsche Bank must notify the Department of a change in the independent auditor no later than two (2) months after the engagement of a substitute or subsequent auditor and must provide an explanation for the substitution or change including a description of any material disputes between the terminated auditor, and Deutsche Bank or any of its affiliates;

(j) Throughout the Exemption Period, with respect to any arrangement, agreement, or contract between a DB QPAM and a Covered Plan, the DB QPAM agrees and warrants:

(1) To comply with ERISA and the Code, as applicable with respect to such Covered Plan; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any prohibited transactions in accordance with applicable rules under ERISA and the Code); and to comply with the standards of prudence and loyalty set forth in ERISA Section 404 with respect to each such Covered Plan to the extent that section is applicable;

(2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from a DB QPAM's violation of ERISA's fiduciary duties, as applicable, and of the prohibited transaction provisions of ERISA and the Code, as applicable; a breach of contract by the QPAM; or any claim arising out of the failure of such DB QPAM to qualify for the exemptive relief provided by PTE 84-14 as a result of a violation of Section I(g) of PTE 84-14 other than the Conviction. This condition applies only to actual losses caused by the DB QPAM's violations. Actual losses include, but are not limited to, losses and related costs arising from unwinding transactions with third parties and from transitioning Plan assets to an alternative asset manager as well as costs associated with any exposure to excise taxes under Code section 4975 as a result of a QPAM's inability to rely upon the relief in the QPAM Exemption.

(3) Not to require or otherwise cause the Covered Plan to waive, limit, or qualify the liability of the DB QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(4) Not to restrict the ability of such Covered Plan to terminate or withdraw from its arrangement with the DB QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any of these arrangements involving investments in pooled funds subject to ERISA entered into after the effective date of this exemption, the adverse consequences must relate to a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming a Covered Plan's investment, and such restrictions must be applicable to all investors in the pooled fund on equal terms and effective no longer than reasonably necessary to avoid the adverse consequences;

(5) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors;

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the DB QPAM for a violation of such agreement's terms. To the extent consistent with ERISA Section 410, however, this provision does not prohibit disclaimers for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of Deutsche Bank and its affiliates, or damages arising from acts outside the control of the DB QPAM; and

(7) Within 60 calendar days after this exemption's effective date, each DB QPAM must provide a notice of its obligations under this Section III(j) to each Covered Plan. For Covered Plans that enter into a written asset or investment management agreement with a DB QPAM on or after 60 calendar days from this exemption's effective date, the DB QPAM must agree to its obligations under this Section III(j) in an updated

investment management agreement between the DB QPAM and such clients or other written contractual agreement. This condition will be deemed met for each Covered Plan that received a notice pursuant to PTE 2017-04 or PTE 2021-01 that meets the terms of this condition. This condition will also be met where the DB QPAM has already agreed to the same obligations required by this Section III(j) in an updated investment management agreement between the DB QPAM and a Covered Plan. Notwithstanding the above, a DB QPAM will not violate the condition solely because a Covered Plan client refuses to sign an updated investment management agreement;

(k) Within 60 days after the effective date of this exemption, each DB QPAM provides notice of the exemption as published in the **Federal Register**, along with a separate summary describing the facts that led to the U.S. Conviction (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that the U.S. Conviction results in a failure to meet a condition in PTE 84-14, to each sponsor and beneficial owner of a Covered Plan, or the sponsor of an investment fund in any case where a DB QPAM acts only as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests. All prospective Covered Plan clients that enter into a written asset or investment management agreement with a DB QPAM (including a participation or subscription agreement in a pooled fund managed by a DB QPAM) after the date that is sixty days after the effective date of this exemption must receive the proposed and final exemptions with the Summary and the Statement prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the DB QPAM (for avoidance of doubt, all Covered Plan clients of a DB QPAM during the Exemption Period must receive the disclosures described in this Section by the later of (i) 60 days after the effective date of the exemption or (ii) the date that a Covered Plan client enters into a written asset or investment management agreement with a DB QPAM). Disclosures required under this paragraph (k) may be delivered electronically (including by an email that has a link to this exemption). Notwithstanding the above paragraph, a DB QPAM will not violate the condition solely because a Plan or IRA refuses to sign an updated investment management agreement;

(l) The DB QPAMs must comply with each condition of PTE 84-14, as amended, with the sole exception of the

violation of PTE 84-14 Section I(g) that is attributable to the U.S. Conviction. If, during the Exemption Period, an affiliate of a DB QPAM (as defined in Section VI(d) of PTE 84-14) is convicted of a crime described in Section I(g) of PTE 84-14 (other than the U.S. Conviction), relief in this exemption would terminate immediately;

(m)(1) Deutsche Bank continues to designate a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. The Compliance Officer previously designated by the DB QPAM(s) under PTE 2021-01 may continue to serve in the role of Compliance Officer provided they meet all the requirements of this Section. Notwithstanding the above, no person who knew of, or should have known of, or participated in, any misconduct underlying the U.S. Conviction (or the 2021 DPA), by any party, may be involved with the designation or responsibilities required by this condition, unless the person took active documented steps to stop the misconduct underlying the U.S. Conviction (or the 2021 DPA). The Compliance Officer must conduct an annual review for each twelve-month period, beginning on this exemption's effective date, (the Exemption Review) to determine the adequacy and effectiveness of the implementation of the Policies and Training. With respect to the Compliance Officer, the following conditions must be met:

(i) The Compliance Officer must be a professional who has extensive experience with, and knowledge of, the regulation of financial services and products, including under ERISA and the Code; and

(ii) The Compliance Officer must have a direct reporting line to the highest-ranking corporate officer in charge of compliance for asset management;

(2) With respect to each Annual Review, the following conditions must be met:

(i) The Annual Review includes a review of the DB QPAM's compliance with and effectiveness of the Policies and Training and of the following: any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the compliance and risk control function (or its equivalent) during the previous year; the most recent Audit Report issued in connection with PTE 2017-04 or PTE 2021-01 or this exemption; (B) any material change in the relevant business activities of the DB QPAMs; and (C) any change to ERISA, the Code, or

regulations related to fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of the DB QPAMs;

(ii) The Compliance Officer prepares a written report for each Annual Review (each, an Annual Report) that: (A) summarizes their material activities during the preceding year; (B) sets forth any instance of noncompliance discovered during the preceding year, and any related corrective action; (C) details any change to the Policies or Training to guard against any similar instance of noncompliance occurring again; and (D) makes recommendations, as necessary, for additional training, procedures, monitoring, or additional and/or changed processes or systems, and management's actions on such recommendations;

(iii) In each Annual Report, the Compliance Officer must certify in writing that to the best of their knowledge at the time: (A) the report is accurate; (B) the Policies and Training are working in a manner which is reasonably designed to ensure that the Policies and Training requirements described herein are met; (C) any known instance of noncompliance during the preceding year and any related correction taken to date have been identified in the Annual Report; and (D) the DB QPAMs have complied with the Policies and Training and/or corrected (or is correcting) any known instances of noncompliance in accordance with Section III(h) above;

(iv) Each Annual Report must be provided to: (A) the appropriate corporate officers of Deutsche Bank and each DB QPAM to which such report relates, and (B) the head of compliance and the DB QPAM's general counsel (or their functional equivalent) of the relevant DB QPAM; and must be made unconditionally available to the independent auditor described in Section III(i) above;

(v) Each Annual Review, including the Compliance Officer's written Annual Report, must be completed within three (3) months following the end of the period to which it relates;

(n) Each DB QPAM will maintain records necessary to demonstrate that the conditions of this exemption have been met, for six (6) years following the date of any transaction for which the DB QPAM relies upon the relief in the exemption;

(o) During the Exemption Period, Deutsche Bank: (1) immediately discloses to the Department any Deferred Prosecution Agreement (a DPA) or a Non-Prosecution Agreement (an NPA) with the U.S. Department of Justice, entered into by Deutsche Bank

any of its affiliates in connection with conduct described in Section I(g) of PTE 84-14 and/or ERISA section 411; and (2) immediately provides the Department any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to such agreement;

(p) Within 60 days after the effective date of this exemption, each DB QPAM, in its agreements with, or in other written disclosures provided to Covered Plans, clearly and prominently informs Covered Plan clients of the Covered Plan's right to obtain a copy of the Policies or a description (Summary Policies), which accurately summarizes key components of the QPAM's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within six (6) months following the end of the calendar year during which the Policies were changed. If the Applicant meets this disclosure requirement through Summary Policies, changes to the Policies shall not result in the requirement for a new disclosure unless, as a result of changes to the Policies, the Summary Policies are no longer accurate. With respect to this requirement, the description may be continuously maintained on a website, provided that such website link to the Policies or the Summary Policies is clearly and prominently disclosed to each Covered Plan;

(q) A DB QPAM will not fail to meet the terms of this exemption, solely because a different DB QPAM fails to satisfy a condition for relief described in Sections III(c), (d), (h), (i), (j), (k), (l), (n) and (p) or if the independent auditor described in Section III(i) fails to comply with a provision of the exemption, other than the requirement described in Section III(i)(11), provided that such failure did not result from any actions or inactions of Deutsche Bank or its affiliates;

(r) Deutsche Bank imposes its internal procedures, controls, and protocols to reduce the likelihood of any recurrence of conduct that is the subject of the U.S. Conviction and the 2021 DPA;

(s) All the material facts and representations set forth in the Summary of Facts and Representations are true and accurate;

(t) With respect to an asset manager that becomes a DB QPAM after the effective date of the exemption by virtue of being acquired (in whole or in part) by DB or a subsidiary or affiliate of DB (a "newly-acquired DB QPAM"), the newly-acquired DB QPAM would not be precluded from relying on the

exemptive relief provided by PTE 84-14 notwithstanding the U.S. Conviction as of the closing date for the acquisition; however, the operative terms of the exemption shall not apply to the newly-acquired DB QPAM until a date that is six (6) months after the closing date for the acquisition. To that end, the newly acquired DB QPAM will initially submit to an audit pursuant to Section III(i) of this exemption as of the first audit period that begins following the closing date for the acquisition. The period covered by the audit must begin on the date on which the DB QPAM was acquired; and

(u) The DB QPAM(s) must provide the Department with the records necessary to demonstrate that each condition of this exemption has been met within 30 days of a request for the records by the Department.

*Exemption Date:* This exemption will be in effect beginning on April 18, 2024, and ending on April 17, 2027.

Signed at Washington, DC.

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

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## DEPARTMENT OF LABOR

### Office of Workers' Compensation Programs

[OMB Control No. 1240-0044]

#### Proposed Extension of Information Collection; Health Insurance Claim Form (OWCP-1500)

**AGENCY:** Office of Workers' Compensation Programs, Labor.

**ACTION:** Request for public comments.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance request for comment to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This request helps to ensure that: requested data can be provided in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the impact of collection requirements on respondents can be properly assessed. Currently, OWCP is soliciting comments on the information collection for Health Claim Insurance Form, OWCP-1500.