

U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

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## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

[Prohibited Transaction Exemption 2024-02; Exemption Application No. D-12090]

#### Exemption From Certain Prohibited Transaction Restrictions Involving 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 exemption.

**SUMMARY:** This document contains a notice of exemption issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This exemption extends for three years the exemptive relief provided by PTE 2021-01, which allows 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 exemptive relief provided by Prohibited Transaction Exemption (PTE) 84-14 (PTE 84-14 or the QPAM Exemption), notwithstanding the 2017 judgment of conviction against DB Group Services (UK) Limited (DB Group Services), as described below.

**DATES:** The exemption will be in effect for a period of three years, beginning on April 18, 2024, and ending on April 17, 2027.

**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:** The Applicant requested an individual exemption pursuant to ERISA section 408(a) in accordance with the

Department's exemption procedures set forth in 29 CFR part 2570, subpart B.<sup>1</sup> On February 21, 2024, the Department published a notice of proposed exemption in the **Federal Register**<sup>2</sup> that would permit certain qualified professional asset managers within the corporate family of Deutsche Bank, including the Applicant, and certain current and future DB QPAMs,<sup>3</sup> to continue to rely on the exemptive relief provided by the QPAM Exemption<sup>4</sup> for a period of three years, notwithstanding the judgment of conviction against Deutsche Bank's affiliate DB Group Services under U.S. law for one count of wire fraud in connection with its role in manipulating the United States Dollar-based LIBOR (the U.S. Conviction).<sup>5</sup> After considering the public comments that the Department received in response to the notice of proposed exemption, the Department is granting this exemption to protect the interests of participants and beneficiaries of plans that are subject to Part 4, Title I of ERISA (ERISA-covered plans) and Individual Retirement Accounts subject to Code Section 4975 (IRAs) (together, Covered Plans).<sup>6</sup> This exemption provides only the relief specified in the text of the exemption and does not provide relief from violations of any law other than the prohibited transaction provisions of Title I of ERISA and the Code expressly stated herein.

<sup>1</sup> 76 FR 66637, 66644, (October 27, 2011).

<sup>2</sup> 89 FR 13091 (February 21, 2024).

<sup>3</sup> This exemption defines "DB QPAM" or "DB QPAMs" to mean 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.

<sup>4</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>5</sup> Section I(g) of PTE 84-14 generally provides that "[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 crimes.

<sup>6</sup> 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. 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.

Furthermore, the Department cautions that this individual exemption only provides exemptive relief from Section I(g) of PTE 84-14 for the DB QPAMs with respect to the U.S. Conviction. This exemption does not affect the requirement for the DB QPAMs to adhere to all conditions of PTE 84-14 as amended on April 3, 2024, effective June 17, 2024.<sup>7</sup> Therefore, the DB QPAMs will become ineligible to rely on the QPAM Exemption again based on a Criminal Conviction or Prohibited Misconduct as specified in PTE 84-14, Section I(g)(1) subject to the Ineligibility Date provision in Section I(h).<sup>8</sup>

Based on the Applicant's adherence to all the conditions of PTE 2021-01<sup>9</sup> and this exemption, the Department makes the requisite findings under ERISA section 408(a) that the exemption is: (1) administratively feasible for the Department, (2) in the interest of Covered Plans and their participants and beneficiaries, and (3) protective of the rights of the participants and beneficiaries of Covered Plans. Accordingly, affected parties should be aware that the conditions incorporated in this exemption are necessary, individually and taken as a whole, for the Department to grant the relief requested by the Applicant. Absent these conditions, the Department would not have granted this exemption.

#### Background

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

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>10</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

<sup>7</sup> 89 FR 23090 (April 3, 2024).

<sup>8</sup> See Section I(g)(1) of PTE 84-14, as amended at id.

<sup>9</sup> 86 FR 20410 (April 19, 2021).

<sup>10</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 a majority-owned subsidiary of Deutsche Bank. DIMA, and its investment advisory affiliates, including RREEF, Global and Dial, became wholly owned subsidiaries of DWS Group.

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, the convicted entity, *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 DB QPAMs have separate boards of directors (in the case of RREEF, which is a limited liability company, its own managers) than DB Group Services.

4. 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) and (2) Active Institutional. Collectively, DB QPAMs provide discretionary asset management services to ERISA-covered plans, governmental plans and IRAs as follows:<sup>11</sup>

a. *ERISA Accounts:* The DB QPAMs provide discretionary asset management services to a total of 10 ERISA-covered plan accounts through eight separately managed accounts and two pooled funds subject to ERISA, with total assets under management (“AUM”) of approximately \$619 million.

b. *Governmental Plan Accounts:* The DB QPAMs additionally provide discretionary asset management services to a total of 13 governmental plan accounts through separately managed accounts with total AUM of approximately \$5.5 billion.

c. *IRAs:* 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.<sup>12</sup>

<sup>11</sup> The Applicant states that all statistical data is as of December 31, 2022, to the best of the Applicant’s knowledge.

<sup>12</sup> For purposes of this exemption, the term “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, 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

*ERISA and Code Prohibited Transactions and PTE 84–14*

5. 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>13</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>14</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>15</sup>

6. 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>16</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.

7. 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 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

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.

<sup>13</sup> For purposes of this section, references to specific provisions of Title I of ERISA, unless otherwise specified, refer also to the corresponding provisions of the Code.

<sup>14</sup> Under the Code, such parties, or similar parties, are referred to as “disqualified persons.”

<sup>15</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>16</sup> 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).

thereto are the sole responsibility of an independent, discretionary manager.<sup>17</sup>

8. 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>18</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>19</sup>

*LIBOR Conviction and PTE 84–14 Disqualification*

9. 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, a Deutsche Bank indirect wholly-owned subsidiary based in London, United Kingdom, with one count of wire fraud in violation of Title 18, United States Code, Section 1343 for its role in manipulating the United States Dollar based LIBOR. 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), and 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. The Conviction, effective on April 18, 2017, would have triggered DIMA’s disqualification under Section I(g) of PTE 84–14 without the exemption described in more detail below.

<sup>17</sup> See 75 FR 38837, 38839 (July 6, 2010).

<sup>18</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>19</sup> See 47 FR 56947 (December 21, 1982).

*The Deferred Prosecution Agreement*

10. 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 \$87 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 at that time, 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. In addition to the \$87,091,424 paid to the U.S. Department of Justice, Deutsche Bank also paid \$43,329,622 to settle related charges brought by the U.S. Securities & Exchange Commission.

11. 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>20</sup>

*The Korean Conviction and DIMA's Prior Exemption Requests*

12. 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 a Deutsche Bank affiliate in South Korea (DSK), under Korean law for spot/futures-linked market price manipulation (the Korean Conviction). Specifically, on January 25, 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 Deutsche Bank AG to forfeit KRW 43,695,371,124, and DSK to forfeit KRW 1,183,362,400.<sup>21</sup> 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 LIBOR Conviction.

13. In response to DIMA's First and Second Requests, the Department granted several temporary short-term exemptions to provide sufficient time for the Department to (a) analyze the facts underlying each of the criminal convictions to determine whether Covered Plans would be harmed; and (b) determine whether long-term relief was appropriate. In this regard, the Department proposed and granted PTEs 2015–15,<sup>22</sup> 2016–12,<sup>23</sup> and 2016–13,<sup>24</sup> which cumulatively provided exemptive relief for DB QPAMs to rely on the relief provided in PTE 84–14, notwithstanding the Korean Conviction and the U.S. Conviction, until April 17, 2018. Thereafter, the Department granted PTE 2017–04,<sup>25</sup> which extended the relief provided by PTE 2016–13 for an additional 3 years, until April 17, 2021.

14. 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, obviating the need for exemptive relief related to the Korean Conviction.<sup>26</sup> Thereafter, 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 more years, until April 17, 2024.<sup>27</sup>

15. The three-year effective periods provided by PTE 2017–04 and PTE 2021–01 were justified by the magnitude, gravity, duration, and pervasiveness of the misconduct relating to the criminal prosecutions by U.S. and foreign authorities. Importantly, the shorter terms of exemptive relief enabled the Department to review the DB QPAMs' compliance efforts periodically to ascertain whether any adjustments to the exemption's conditions were necessary for the Department to make a finding that continuation of exemptive relief to the DB QPAMs remained in the interest of, and protective of the rights of, Covered Plans.

*DB QPAMs' Compliance With Prior Exemptions' Conditions*<sup>28</sup>

16. The Department included a set of conditions in PTE 2021–01 that are designed to protect Covered Plans that entrust their assets for investment by the DB QPAMs despite the serious nature of the criminal misconduct underlying the U.S. Conviction. DIMA states that 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. 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

<sup>20</sup> This exemption would require that, in connection with the DPA, 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>21</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>22</sup> 80 FR 53574 (September 4, 2015).

<sup>23</sup> 81 FR 75153 (October 28, 2016).

<sup>24</sup> 81 FR 94028 (December 22, 2016).

<sup>25</sup> 82 FR 61840 (December 29, 2017), technical correction at 83 FR 7227 (February 20, 2018).

<sup>26</sup> On December 21, 2023, the Supreme Court of Korea affirmed the reversal of the Korean Conviction, and dismissed all judicial proceedings against DSK.

<sup>27</sup> 86 FR 20410 (April 19, 2021). 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.

<sup>28</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."

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. Not being subject to any regulatory or judicial findings that a DB QPAM failed to meet the requirements of ERISA during the entire six-year period.

17. *Independent Audits.* The DB QPAMs have undergone six audits in connection with the Prior Exemptions, most recently for the period from April 18, 2022, through April 17, 2023. The Department thoroughly reviewed the audits as part of its determination to propose individual exemptive relief. In its latest audit, the Independent Auditor determined that “the DB QPAMs have developed, implemented, maintained and followed the requisite policies and procedures required in connection with [PTE 2017–04]. Additionally . . . the DB QPAMs have developed and implemented the requisite training in connection with these policies and procedures required in connection with the [PTE 2017–04].”<sup>29</sup>

#### *Hardship to Covered Plans*

18. In its application for exemptive relief, and as further described in the notice of proposed exemption, DIMA represented 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.

19. DIMA represented 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 that

counterparties generally rely on as the backup exemption for all transactions. According to DIMA, counterparties may provide less advantageous pricing or may not bid at all where the Covered Plan’s investment manager is not a QPAM.

20. DIMA represented that plan fiduciaries expend significant resources, including time and money, in selecting asset managers for their plans. DIMA stated that 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, according to DIMA, Covered Plan clients will incur direct transaction costs from liquidating and reinvesting their portfolios, which costs and harms are discussed below.

21. 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 following services for which the DB QPAMs rely on PTE 84–14. DIMA provided the following statements in support of its application:

a. *Alternatives:* As noted above, 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 Alternatives) and (2) Active Institutional. Alternatives provides discretionary asset management services to, among others, eight ERISA-covered accounts and ten 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, and 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. Approximately six to eight months and thousands of dollars to find, evaluate, choose, and engage a new manager;

ii. Consulting fees to search for a new private manager of approximately \$30,000 to \$40,000;

iii. Approximately 25–50 hours of additional client time to evaluate alternative new managers;

iv. Legal fees to review/negotiate new management agreement and guidelines of approximately \$10,000 to \$30,000;

v. Transaction costs for direct real estate of between 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);

vi. Early liquidation discounts for direct real estate of between 10–20% (e.g., \$278.4 million to \$556.8 million loss for Alternatives’ largest governmental plan client);

vii. Transaction costs for non-direct real estate in other portfolios of between 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 two ERISA plan accounts and three governmental plan accounts. The Active Institutional team also provides discretionary model portfolio services to financial sponsors with IRA clients. Total ERISA AUM is \$125.5 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.

22. According to DIMA, 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.

23. 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 of between \$30,000 to \$40,000 for a new manager search;

b. Approximately 25–50 hours of additional client time to evaluate new managers, assuming the task is handled by an institutional board of trustees, plan committee or similar group of individuals;

c. Legal Fees of approximately \$10,000 to \$30,000 to review/negotiate new management agreement and

<sup>29</sup>The notice of proposed exemption provides a more detailed description of the audits conducted by the Independent Auditor, including the materials, systems, procedures, and records that the Independent Auditor reviewed in order to make conclusions about the DB QPAMs compliance with the conditions for relief. The most recent audit is also available for inspection by the public and is included in its entirety as part of the public record for this exemption under Application No. D–12090.

guidelines, given that institutional agreements are almost invariably negotiated;

d. Transaction Costs of approximately 8.0 bps for liquidations (e.g., \$414,430.44 for Active Institution's largest governmental plan client)—based on the account's holdings as of December 31, 2022;

e. Legal Costs to negotiate each new futures, cleared derivatives, swaps, or other trading agreement of between approximately \$15,000 and \$30,000.

24. The Department notes that this exemption includes protective conditions that allow Covered Plans to continue to utilize the services of DB QPAMs if the Covered Plans determine that it is prudent to do so. In this regard, this exemption allows Covered Plans to avoid cost and disruption to investment strategies that may arise if such Covered Plans are forced, on short notice, to hire a different QPAM or asset manager because DB QPAMs are no longer able to rely on the relief provided by PTE 84–14 due to the U.S. Conviction.

#### Comments Received Regarding the Proposed Exemption

##### Written Comments

25. In the notice of proposed exemption, the Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to such notice, which were due by February 8, 2024. Additionally, the Department requested 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 specifically requested 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 requested 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 transition using objective assumptions. Lastly, the Department requested 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.

26. The Department received three written comments: one from an anonymous submitter; one from an individual financial consultant (Consultant); and one from the Applicant. The Department did not receive a request for a public hearing pertaining to the notice of proposed exemption. The comments are as follows:

*Anonymous Comment:* The anonymous commenter opined that the Applicant should not receive an exemption because of Deutsche Bank's unethical practices with a former US president's company. The anonymous commenter did not provide supporting information for the Department to consider.

*Consultant's Comment:* The Consultant shared their concern that the exemption may: (1) create conflicts of interest by allowing DWS to engage in certain transactions with affiliates that may create conflicts of interest that could harm Covered Plans' participants; (2) undermine fiduciary obligations potentially leading to breaches of fiduciary duty by plan fiduciaries; and (3) expose plans to additional risk if affiliates engage in risky investment strategies or transactions. The Consultant urged the Department to conduct thorough reviews of DWS' conflicts of interest policies and procedures, impose robust conditions to prevent fiduciary breaches, and require regular reporting and monitoring to ensure compliance with the exemption.

*Department's Response:* The Department believes that its extensive review of the record developed in connection with the Applicant's exemption request, including the Department's extensive review of the audits submitted by the Applicant pursuant to prior exemptions, and the protective conditions that the DB QPAMs must adhere to, address the Consultant's concerns described above. Section III(h)(1) of the exemption, which is a mainstay of exemptions providing relief from Section I(g) of PTE 84–14, generally requires the DB QPAMs to maintain, adjust, implement, and follow written policies and procedures designed to avoid conflicts of interest in asset management decisions; comply with ERISA's fiduciary duties; avoid engaging in prohibited transactions under ERISA and the Code; and avoid participating in any other person's violation of ERISA or the Code with respect to Covered Plans.

The exemption requires an annual audit performed by an independent auditor, and the auditor must determine whether each DB QPAM has developed, implemented, maintained, and followed the Policies in accordance with the conditions of this exemption. The results of each audit are reduced to a written audit report that is delivered to, and reviewed by, the Department to ensure that the audit and the auditor's determinations are consistent with the requirements of the exemption. The Department reviewed and considered each audit received by the Applicant prior to determining whether to grant this exemption.

The exemption is also subject to the DB QPAMs' adherence to Section III(j), which requires the QPAMs to indemnify and hold harmless their Covered Plan clients for any actual losses resulting directly from a DB QPAM's violation of ERISA's fiduciary duties, the prohibited transaction provisions of ERISA and the Code, and a breach of contract; 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. The Department included the protections of Section III(j) in order to ensure that Covered Plans were adequately protected in the event the DB QPAMs violated applicable laws or their contractual obligations to their clients. Section III(j) also makes it easier for Covered Plan clients to change managers if Covered Plan fiduciaries determine it is prudent to do so, given Deutsche Bank's long history of corporate malfeasance.

Finally, the exemption requires additional reporting and notice obligations designed to create a culture of compliance and transparency. Section III(m) requires Deutsche Bank to designate a compliance officer responsible for ensuring compliance with the policies and procedures and training requirements of the exemption, and for performing an annual review to determine the effectiveness of the policies and procedures and training. The compliance officer is required to produce an annual report setting forth, among other things, instances of noncompliance and the correcting action taken to address them. The exemption also requires the DB QPAMs to provide notice of the exemption and the conduct leading to disqualification under Section I(g) to all Covered Plans, and to maintain the records required in order to prove the QPAMs' compliance with the conditions for relief. The independent auditor's reports, the compliance officer's annual reports, and

the records required to be maintained by QPAMs, are a part of the public record available to interested persons by contacting the Public Disclosure Room of the Employee Benefits Security Administration.

*Applicant's Comment:* The Applicant submitted several comments, as well as responses to requests the Department made in the proposed exemption, for additional information.

*Applicant's Response Regarding Costs to Covered Plans.* In response to the Department's request for additional information regarding potential costs and harm to Covered Plan clients from denial of the exemption, the Applicant submitted reports from NERA Economic Consulting (the NERA Report) and Mr. Lawrence Davanzo, an independent pension consultant (Davanzo Statement), respectively. These reports were also previously submitted by the Applicant in connection with PTE 2021-01.<sup>30</sup> According to the Applicant, the reports are still valid, as there have not been any material changes in how managers are selected, retained, and terminated by plan investors and the associated costs with such decisions.<sup>31</sup>

The NERA Report lists various adverse impacts of the costs and harms associated with the denial of the exemption, with estimates ranging as high as 20.68 percent for certain investments. The NERA Report concludes that it could not identify any benefits to Covered Plans from the denial of the exemption that would outweigh the costs associated with such denial. The Davanzo Statement provides a list of the direct and indirect costs that may be incurred when an investment manager's portfolio is transitioned to another replacement manager, and the less liquid the asset class involved in the termination, the higher the costs, which will directly impact Covered Plans' participants. The Davanzo Statement distinguishes between a criminal conviction of the asset manager and that of its affiliated entity, noting that the majority of asset management subsidiaries of financial institutions operate with significant autonomy from the parent company, and such asset management subsidiaries, which frequently have separate risk and control functions, are structured among other things to demonstrate their independence from their parent companies. Lastly, the Davanzo Statement concludes that Covered Plans

(and their beneficiaries) would incur significant costs associated with the investment manager's termination despite that it was an affiliate's illegal actions and not the manager's conduct that caused the denial of the QPAM Exemption.

*Applicant's Response Regarding "Opportunity Cost."* In its request for an exemption, the Applicant had represented that an investment fund's investing in cash pending a client plan's reinvestment of those assets with a new manager is an "opportunity cost" to the client plan. In the proposed exemption, the Department requested additional information regarding these "opportunity costs."

In its comment, the Applicant states that the exemption application's mention of the opportunity costs of investing in cash pending reinvestment with a new manager was merely intended to differentiate such costs from costs such as consulting fees, legal fees, liquidation costs, and similar transaction costs. The NERA Report expounds on opportunity costs generally, explaining that opportunity costs due to a change in investment managers refer to the loss of value that could have been gained during the transition between managers, such as potential return lost due to not being fully invested in desired asset classes, which the NERA Report estimates to be up to 3.75 percent.

*Department's Note:* The Department stresses that each DB QPAM has the fiduciary duty to manage the assets of each Covered Plan prudently, at all times, and in such plan's best interests, including when the Covered Plan is transitioning assets to a new manager.

*Applicant's Response Regarding Disclosures of Adverse Actions.* In the proposed exemption, the Department requested 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.

The Applicant states that the granting of the exemption should not depend upon regulatory actions, other than the conviction that necessitated the request for relief. According to the Applicant, doing so is an unwarranted expansion of the QPAM Exemption as currently existing, as well as inconsistent with the Department's stated objectives in creating the QPAM Exemption. The Applicant states that the named fiduciaries for Covered Plans are responsible for selecting an investment manager after a careful and rigorous

diligence process, and that material regulatory investigations and settlements are disclosed to shareholders in Deutsche Bank's Annual Reports as appropriate. DIMA states that plans' fiduciaries and their consultants receive, and have access to, information from multiple sources: they are provided with presentations and ask questions during the due diligence phase and during regular update meetings, they receive Form ADV and Form BD, they have access to Deutsche Bank's Form 20-F and Annual Reports, and they have access to news reports.<sup>32</sup> The Applicant states that Form ADV Part 1, which mentions both the DPA and the U.S. Conviction, is provided to plan fiduciaries every year.

In addition, the Applicant disagrees that regulatory actions such as civil settlements should prevent applicants from obtaining individual QPAM exemptions. Although the Applicant notes that the disclosure of such regulatory actions is now required by the Department in its amended procedural regulation, such disclosure is not applicable to DIMA with respect to this particular application because the application for this exemption was filed with the Department prior to April 8, 2024.

The Department's position is that the mere existence of such a regulatory action, the target of which is a DB QPAM or an affiliate of the DB QPAM, will not necessarily preclude a finding by the Department that exemptive relief from Section I(g) meets the statutory standard under ERISA Section 408(a). The Department notes that, pursuant to its exemption procedure regulation, during the pendency of an application for exemption with the Department, an applicant must promptly notify the Department if they discover that any fact or representation changes during this period, anything occurs that may affect the continuing accuracy of any such fact or representation, or if a material fact or representation has been omitted from the exemption application.<sup>33</sup> If the Applicant has reason to believe that information

<sup>32</sup> Although the Applicant did not provide an explanation for the forms it mentioned in its comment, the Department clarifies for the public that Forms ADV, BD, and 20-F are forms under the jurisdiction of the U.S. Securities and Exchange Commission (SEC). To this extent, while the exemption uses the singular term Annual Report for certain conditions thereunder, SEC Form 20-F is also used for Annual Reports disclosures that are separate from the Annual Report required by this exemption.

<sup>33</sup> 29 CFR 2570.37(a), found at 76 FR 66650. The Applicant submitted its application under the Exemption Procedure Regulation published at 76 FR 66637 (October 7, 2011).

<sup>30</sup> 86 FR 9376 (February 12, 2021).

<sup>31</sup> The reports from NERA Economic Consulting and Mr. Lawrence Davanzo are available in their entirety as part of the public record for this exemption and may be requested from the Office of Public Disclosure.

regarding an adverse regulatory action (e.g., fine, censure, penalty, civil lawsuit, settlement of civil or criminal lawsuit), taken by other regulators (e.g., the IRS, SEC, OCC, UK FCA) may constitute a material fact or representation that should be considered by the Department in connection with an exemption application, the Applicant should contact the Department for guidance.

*Applicant's Comment Regarding Sections III(a) and III(b).* Section III(a) of the notice of proposed exemption provides in pertinent part that [italics added]:

*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 . . .*

Section III(b) of the notice of proposed exemption provides in pertinent part that [italics added]:

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 . . .

The Applicant states that none of the Prior Exemptions contained the italicized language relating to a single individual and a non-fiduciary business within Deutsche Bank, and that the language to added to Sections III(a) and (b) of the proposed exemption is in error. Furthermore, the Applicant states that the italicized language is not supported by the facts of the U.S. Conviction or the DPA and should be deleted.

*Department's Response:* The Department concurs and has revised both Section III(a) and Section III(b) in the final exemption, by deleting the italicized language above and capitalizing "the" at the beginning of each section.

*Applicant's Comment Regarding Revision to Section III(a).* Section III(a) of the notice of proposed exemption provides in pertinent part that:

. . . [T]he 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 [italics added] . . .

The Applicant states that the condition suggests that "the subject of . . . the 2021 DPA" was criminal conduct of DB Group Services even though the DPA was entered into between the Department of Justice and Deutsche Bank.

*Department's Response:* The Department concurs and has revised Section III(a) by modifying the italicized language to read as follows: "or the criminal conduct of Deutsche Bank that is the subject of the 2021 DPA."

*Applicant's Comment Regarding Revisions to Sections III(i)(7), III(i)(8), and III(m)(1).* The Applicant states that the notice of proposed exemption prohibits certain actions by individuals who knew of, should have known of, or participated in the "misconduct underlying the U.S. Conviction or the 2021 DPA." The Applicant requests the Department to replace the language that "misconduct underlying the U.S. Conviction or the 2021 DPA" with "the criminal conduct that is the subject of the U.S. Conviction or the 2021 DPA," for consistency with the formulation used in the notice of proposed exemption and in all of the Prior Exemptions.

*Department's Response:* The Department concurs and has revised Sections III(i)(7), III(i)(8), and III(m)(1) accordingly.

*Applicant's Comment Regarding Revision to Section III(g).* Section III(g) of the notice of proposed exemption provides:

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).

The Applicant requests that the language, "or because DB Group Services employees may be double-hatted, seconded, supervised or otherwise subject to the control of a DB QPAM, including in a discretionary fiduciary capacity with respect to the DB QPAM clients" be added to the end of Section III(g) of the proposed exemption, above. According to the Applicant, the quoted language appears at the end of Section III(g) in PTE 2021–01 and it should have been included in Section III(g) of the proposed exemption

as well. The Applicant explains that like many foreign banks, Deutsche Bank uses foreign service companies, like DB Group Services, to hire and pay employees who then work for, and are supervised by, other entities in the Deutsche Bank controlled group. According to the Applicant, DB Group Services provides employees to the DB QPAMs, which are then responsible for the employees' training, supervision, compliance, etc., as if they were employed by such affiliates.

The Applicant submitted to the Department its definition for the term double-hatted, which the Applicant defines as ". . . the process of employing a person in one company, such as a service company, but actually having the person perform functions and duties for another affiliated company, which supervises such person's performance." Further, the Applicant submitted to the Department its definition for the term seconded employees, which the Applicant defines as "a person who is seconded from one company to another is on the payroll of the first company but performs job duties and is supervised by the second company."

*Department's Response:* The Department crafted the condition in Section III(g) of the Prior Exemptions and the proposed exemption in order to ensure the separation of the convicted entity's employees, including such employees' management oversight and compliance structure, from any discretionary management activity by the DB QPAMs. Upon reviewing the definitions of "dual-hatted" and "seconded" employees provided by the Applicant, the Department's position is that the exact employment relationship of such employees needs to be specified, including but not limited to, information pertaining to matters such as hiring, firing, discipline, conditions of employment, promulgation of work rules, assignment of day-to-day job duties, and issuance of operating instructions. Accordingly, the Department has revised Section III(g) as follows:

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 (1) they acted as investment advice fiduciaries within the meaning of ERISA Section 3(21)(A)(ii) or Code Section 4975(e)(3)(B); or (2) DB Group Services employees perform work on behalf

of a DB QPAM that is solely responsible for the management and oversight of the DB Group Services employees' day to day activities performed on behalf of such QPAM, including the employee's performance, training, and terms of employment (including compensation, promotions, and benefits), including any such employees acting in a discretionary fiduciary capacity with respect to the DB QPAM clients.

*Applicant's Comment Regarding Revision to Section III(i)(9).* Section III(i)(9) of the notice of proposed exemption requires delivery of the certified Audit Report to the Department's Office of Exemption Determinations within 30 days following completion of the Audit Report. The Applicant requests that the period for delivery be extended to 45 days, because, according to the Applicant, 45 days was provided to provide delivery of the audit report in PTE 2017-04 and PTE 2021-01, and in the majority of other recent exemptions. The Applicant explains that "the certification process can be lengthy, especially for an organization as large and as globally diverse as Deutsche Bank, and the Applicant respectfully submits that the additional time will ensure that the Applicant encounters no logistical hurdles in fulfilling the requirements of the exemption."

*Department's Response:* The Department concurs and has revised Section III(i)(9) to reflect that the required delivery of the certified Audit Report to the Department's Office of Exemption Determinations is 45 days following completion of the Audit Report.

*Revision to Section III(j)(7).* Section III(j)(7) of the notice of proposed exemption provides in pertinent part that: "[w]ithin 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." The obligations under Section III(j) include the DB QPAM's obligation to, in general, provide indemnification to Covered Plans for violations of ERISA and the Code, breaches of contract and failure to comply with PTE 84-14; 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; and not to restrict the ability of such Covered Plan to terminate or withdraw from its arrangement with the DB QPAM with the exception of reasonable restrictions; not to impose any fees, penalties, or charges for such termination or

withdrawal with the exception of reasonable fees, etc.

The Applicant requests the Department to replace the sixty calendar days requirement with a four-month period for the provision of such notices, as the Department provided in PTE 2017-04 and PTE 2021-01. The Applicant's request is based on its view that this exemption must be consistent with the soon to expire PTE 2021-01, and the "inevitable delivery difficulties that must be corrected . . . to ensure proper and complete delivery of notices."

*Department's Response:* The Department declines to revise the sixty (60) calendar days requirement that Section III(j)(7) mandates. In the Department's view, Covered Plans should receive the notice of the contractual undertakings from the DB QPAMs as soon as possible so that (among other things) Covered Plan fiduciaries are made aware of their rights to, and are able to, withdraw from their arrangement with the DB QPAM as soon as possible without the imposition of any restrictions or fees if they determine that such action is prudent, in light of the Applicant's numerous instances of misconduct. Balanced against the important need for Covered Plans fiduciaries to understand the modifications to their contractual rights as soon as possible, the Applicant did not meet its burden to support a finding by the Department that four months' time to delivery notice of the DB QPAMs' contractual obligations in Section III(j) is as protective as 60 days' notice.

*Applicant's Comment Regarding Revision to Section III(u).* Section III(u) of the notice of proposed exemption provides, in pertinent part, that "[t]he 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."

The Applicant requests that this condition be deleted or amended to delete the 30-day requirement, because: (1) The condition in Section III(u) has not been imposed upon any previous applicant; (2) the requirement poses significant logistical difficulties in practice; (3) whether a record is necessary to demonstrate fulfillment of the exemption is a subjective determination, requiring knowledgeable personnel to collect, review, and organize all potentially relevant documents; (4) the breadth of potential relevancy could render the document request extremely voluminous; (5) depending on the nature of the

documents, there could be privacy, confidentiality, or similar concerns to consider and address before production; (6) and the necessary diversion of resources from normal operations for such an undertaking is not in the best interest of Covered Plans or their participants or beneficiaries. Furthermore, according to the Applicant, the proposed exemption already requires retention of records pertaining to exemption transactions, and as such the exemption's relief becomes unavailable if Section III(u) is not met.

*Department's Response:* The Department declines to remove the 30-day requirement in Section III(u). The Department notes that Section III(n) already mandates that each DB QPAM must maintain all records necessary to demonstrate that the conditions of this exemption have been met, for a period of six years after a related transaction is executed. The Department's position is that the records necessary to demonstrate compliance with the conditions of this exemption should be maintained by the DB QPAMs in a manner consistent with the requirement in Section III(n). DB QPAMs should have systems in place to avoid unnecessary delays and expenses in connection with a records request. However, in light of the possibility that unforeseen administrative complexities may arise in the production of records within 30 days of a request by the Department, the Department is revising Section III(u) to permit the Department to extend the 30-day period upon a showing of necessity by the DB QPAM, as follows:

"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 except that the Department may extend the 30-day deadline, in its sole discretion, upon the submission of a written extension request by the DB QPAM(s) that specifically describes why additional time is necessary to submit the records."

*Applicant's Comment Regarding Summary of Facts and Representations.* The Applicant represents that the following language in paragraph 19 in the Summary of Facts and Representations section of the notice of proposed exemption (the Summary), is inaccurate and should be clarified. Paragraph 19 in the Summary provides:

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 . . .

The Applicant states that Deutsche Bank agreed to pay \$87,091,424 to the U.S. Department of Justice in connection with the DPA rather than \$130 million—the \$130 million amount included the settlement with the U.S. Securities and Exchange Commission of \$43 million, which did not involve a civil penalty.

*Department’s Response:* The Department notes the Applicant’s clarification, and further notes that Section III(s) of the exemption requires that all the material facts and representations set forth in the Summary of Facts and Representations are true and accurate.

#### *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) As required by ERISA section 408(a), the Department hereby finds that the exemption is: (a) Administratively feasible for the Department; (b) in the interests of Covered Plans and their participants and beneficiaries; and (c) protective of the rights of the Covered Plans’ participants and beneficiaries.

(3) This exemption is supplemental to, and not in derogation of, any other ERISA provisions, 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 for determining whether the transaction is in fact a prohibited transaction.

(4) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describe all material terms of the transactions that are the subject of the exemption and are true at all times.

Accordingly, after considering the entire record developed in connection with the Applicant’s exemption application, the Department has determined to grant the following exemption under the authority of ERISA section 408(a) in accordance with the Department’s exemption procedures set forth in 29 CFR part 2570, subpart B.<sup>34</sup>

#### *Exemption*

##### 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.

<sup>34</sup> 76 FR 66637, 66644 (October 27, 2011).

## 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>35</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>36</sup>

## Section III. Conditions

(a) 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 criminal conduct of Deutsche Bank that is the subject of 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) 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 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;

(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: (1) they acted as investment advice fiduciaries within the meaning of ERISA Section 3(21)(A)(ii) or Code Section 4975(e)(3)(B); or (2) DB Group Services’ employees perform work on behalf of a DB QPAM that is solely responsible for the management and oversight of the DB Group Services’ employee’s day to day activities performed on behalf of such QPAM, including the employee’s performance, training, and terms of employment

(including compensation, promotions, and benefits), including any such employees acting in a discretionary fiduciary capacity with respect to the DB QPAM clients;

(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

<sup>35</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>36</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.

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, should have known of, or participated in the criminal conduct that is the subject of the U.S. Conviction or the 2021 DPA 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, the criminal conduct that is the subject of 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 forty-five (45) 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 the criminal conduct that is subject of 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 criminal conduct that is subject of 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 except that the Department may extend the 30-day deadline, in its sole discretion, upon the submission of a written extension request by the DB QPAM(s) that specifically describes why additional time is necessary to submit the records.

*Effective Date:* The exemption will be in effect for a period of three years, beginning on April 18, 2024, and ending on April 17, 2027.

Signed at Washington, DC, this 15th day of April 2024.

**George Christopher Cosby,**

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

[FR Doc. 2024–08337 Filed 4–17–24; 8:45 am]

**BILLING CODE 4510–29–P**

## DEPARTMENT OF LABOR

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Senior Community Service Employment Program (SCSEP)

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that the agency receives on or before May 20, 2024.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Michael Howell by telephone at 202–693–6782, or by email at [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

**SUPPLEMENTARY INFORMATION:** The Senior Community Service Employment Program (SCSEP), is a community service and work-based training program for older workers. The program provides subsidized, work-experience training for low-income persons 55 or older who are unemployed and have poor employment prospects. SCSEP

national grants are awarded through a competitive process; State and territorial grants are awarded through a formula outlined in the OAA–2016 section 506 (b–c). The dual goals of the program are to promote useful community service employment activities and to move SCSEP participants into unsubsidized employment, so that they can achieve economic self-sufficiency.

The Department is required to collect the information in order to comply with the OAA statutory and regulatory requirements. The information is also necessary for grantee performance accountability and program management. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on August 4, 2023 (88 FR 51858).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency’s estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

*Agency:* DOL–ETA.

*Title of Collection:* Senior Community Service Employment Program (SCSEP).

*OMB Control Number:* 1205–0040.

*Affected Public:* Private Sector.

*Total Estimated Number of Respondents:* 18,832.