

Martin J. Walsh
Secretary of Labor
Office of Regulations and Interpretations Employee Benefits Security
Administration Room N-5655 U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

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

Dear Secretary:

As an individual retail investor, I fully support the proposal by the U.S. Department of Labor's Employee Benefits Security Administration (EBSA) to amend the Qualified Professional Asset Manager (QPAM) Exemption to protect benefits plans, participants, and beneficiaries. Reasons for my support are as follows.

Non-Prosecution and Deferred Prosecution Agreements

QPAMs enjoy a blanket exemption from prohibited transactions when managing the retirement savings of their clients when they "are expected to maintain a high standard of integrity." Unfortunately, this exemption has been abused to protect QPAMs from prosecution, giving them free rein to enact in misconduct. The non-prosecution and deferred prosecution agreements is clearly a "get-out-of-jail free card" that financial institutions use as a shield for unscrupulous behavior and continue doing so since there are no criminal repercussions. Proverbial slaps on the wrist are not enough to deter criminal activity, we need loss of licenses along with fines and jail time for senior executives. Our financial and retirement accounts should not be in the hands of people who committed a crime. In order to restore trust in the financial system, crimes must be punished appropriately. In October 2021, the US DOJ announced that Credit Suisse AG and its UK subsidiary CSSEL were

guilty of yet another major felony in a US federal court. In a 2019 study of non-prosecution and deferred prosecution agreements by Public Citizen, they found that these agreements did not deter criminal activity^[1]. It is clear that these exemptions do not deter financial instructions from criminal behavior. If appropriate punishments were in place we would see such extensive criminal activity. We cannot suffer another 2008 crisis and have people walk away without repercussions and this amendment will allow EBSA to fulfill its mission “to ensure the security of the retirement, health, and other workplace-related benefits of America’s workers and their families.”

Indemnification

In order for the QPAM exemption framework to be properly protective of plans and their beneficiaries, asset managers that lose their QPAM status due to misconduct must make their clients whole. If not, retirees are unfairly penalized for their asset managers’ misconduct. It is not fair to place retirees in this position of having to either bear the costs associated with transitioning their plans to another asset manager, or stick with an asset manager that has been deemed ineligible for the QPAM exemption due to criminal activity or misconduct. I strongly support the EBSA’s proposed requirement that QPAMs include an indemnification provision in their contractual agreements with clients.

Costs

Financial institutions may argue about the cost of implementing this amendment, but the costs would pale in comparison to the amount lost in criminal activity. Archegos and founder of Infinity Q^[2] have lost billions in their reckless trading. These losses are multiples of what the cost would be required when this amendment passes, and would be a responsible use of our tax payer money.

The proposed amendment to to Prohibited Transaction Class Exemption 84-14 (the QPAM Exemption) should be passed. The criminal financial elements should be held accountable with fines and jail time to deter other would be criminals. This will protect investors and restore the faith in the US financial system.

Thank you for your time.

Sincerely,

A Concerned Individual Investor

- 1) <https://www.citizen.org/article/soft-on-corporate-crime-deferred-and-non-prosecution-repeat-offender-report/>.
- 2) <https://www.reuters.com/business/finance/infinity-q-founder-once-claiming-3-bln-assets-pleads-guilty-fraud-2022-11-21/>