SF SHARTSIS FRIESE LLP
425 Market Street • Eleventh Floor
San Francisco, California 94105-2496

June 5, 2024

VIA EMAIL

To Our Investment Adviser Clients and Other Friends:

Re: New QPAM Exemption Requirements

Many SEC-registered investment advisers that provide services to, and transact on behalf of, employer-sponsored retirement plans, individual retirement accounts and certain private funds with retirement investors (collectively, "Plan Clients") rely on the Department of Labor's Prohibited Transaction Exemption 84-14, commonly referred to as the "QPAM Exemption." The Department of Labor amended the QPAM Exemption effective June 17, 2024 (the "Amendment"), and advisers relying on the QPAM Exemption should consider the Amendment's implications on their business operations, as proactive steps will be required for any adviser to continue to rely on it.

QPAM Exemption Overview

A "QPAM" is a qualified professional asset manager. The QPAM Exemption permits SEC-registered advisers and other financial institutions to engage in certain transactions on behalf of their Plan Clients that otherwise would be subject to the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") or Section 4975 of the Internal Revenue Code of 1986, as amended ("Code"). The QPAM Exemption is not the only exemption available from such ERISA and Code prohibited transaction restrictions, but it is a frequently used exemption. It is a common request by prospective ERISA investors for an SEC-registered investment adviser to represent that the adviser will rely on the QPAM Exemption. Trading agreements with counterparties may also include QPAM representations (for example, it is a common representation in prime brokerage agreements and ISDA Schedules that an adviser to Plan Clients can satisfy the QPAM Exemption).

QPAM Exemption Amendment Implications

SEC-registered advisers with Plan Clients who are uncertain if the Amendment will affect them should review their investment management agreements, private fund offering materials and counterparty trading agreements to confirm whether the adviser has represented to clients or counterparties that the firm relies on the QPAM Exemption or that the firm is a QPAM. SEC-registered advisers that do not currently rely on the QPAM Exemption but that may do so in the future (for example, if the adviser manages a private fund that may grow to have a class of equity interests of more than 25% ownership by Plan Clients) should develop policies to ensure that they can identify when QPAM Exemption reliance is advisable and, at such time, complete necessary steps to rely on the QPAM Exemption.

Key revised QPAM Exemption conditions under the Amendment:

- *Require a one-time notice to Department of Labor via email that an eligible QPAM is relying on the QPAM Exemption.* Existing QPAMs should submit a notice to the Department of Labor setting forth the legal and operating names of the QPAM no later than September 15, 2024 (to: QPAM@dol.gov). If an entity's name changes, or if the QPAM wishes to end its reliance on the QPAM Exemption, it will need to update its notice within 90 days. A list of entities relying on the QPAM Exemption will be published on the Department of Labor's website.

- *Raise the amount of assets under management (AUM) and equity thresholds an SEC-registered investment adviser QPAM must meet in order to qualify as a QPAM.* Currently, an SEC-registered investment adviser that is a QPAM is required to have client assets in excess of $85,000,000 under management and shareholder or partner equity in excess of $1,000,000. Effective as of the last day of an SEC-registered adviser's fiscal year ending no later than December 31, 2024, the QPAM AUM threshold is US $101,956,000 and the equity threshold is US $1,346,000. These thresholds will increase in subsequent years.

- *Clarify that a QPAM must act independently with respect to investment decisions and retain sole authority with respect to planning, negotiating, and initiating the transactions covered by the QPAM Exemption*. QPAMs using sub-advisers should consider ensuring such an arrangement clearly identifies the QPAM as having ultimate responsibility for certain transactions.

- *Expand the scope of what bad acts can trigger QPAM ineligibility, including participating in certain "prohibited misconduct"(such as any conduct that forms the basis of a domestic non-prosecution agreement that otherwise would have resulted in a disqualifying criminal act) and certain foreign criminal convictions.* If a QPAM, its affiliates or a 5% or more owner of the QPAM participates in certain prohibited misconduct or is convicted of certain domestic or foreign crimes, the QPAM will lose eligibility. In particular, "participating in" prohibited misconduct includes not only actively participating, but also failing to take proactive steps to prevent the misconduct (such as reporting it to compliance personnel). Large QPAMs with extensive operations and foreign affiliates may have more difficulty complying with this expanded provision and should consider reviewing their operations to ensure continued eligibility.

- *Require maintenance of certain records that demonstrate compliance with the QPAM Exemption for six years.* Such records must be available for examination by the DOL, the IRS, other federal and state regulators and, with certain exceptions, plan fiduciaries and plan participants.

This high-level summary does not describe all changes to the QPAM Exemption, and advisers should confer with counsel, as needed, to confirm that if the adviser currently relies on the QPAM Exemption, it can continue to meet the new and revised Amendment conditions. If you have any questions about the Amendment to the QPAM Exemption or your firm's compliance with ERISA and Code restrictions with respect to Plan Clients, please contact one of the Shartsis Friese attorneys in the Investment Funds & Advisers Group.

Previous letters to our investment advisory clients and friends and discussions of other topics relevant to private fund managers, investment advisers and private investment funds can be found at our insights page: www.sflaw.com/blog/investment-funds-advisers-insights.

SHARTSIS FRIESE LLP