

Citigroup Inc. (Citigroup or the Applicant) Located in New York, New York

[Prohibited Transaction Exemption (PTE) 2017–05; Exemption Application No. D–11909]

Discussion

On December 29, 2017, the Department published PTE 2017–05 in the **Federal Register** at 82 FR 61864. PTE 2017–05 is an administrative exemption from the prohibited transaction provisions of the Employee Retirement Income Security Act of 1974 (the Act), and the Internal Revenue Code of 1986, that permits certain entities with specified relationships to Citigroup to continue to rely upon the relief provided by PTE 84–14⁷ for a period of five years,⁸ notwithstanding Citicorp’s criminal conviction (the Conviction). The Department granted PTE 2017–05 to ensure that Covered Plans⁹ whose assets are managed by a Citigroup Affiliated QPAM or Citigroup Related QPAM may continue to benefit from the relief provided by PTE 84–14.

The Department has decided to make certain technical and clarifying corrections to the exemption, as described below.

Technical Corrections

Preamble

The Department is replacing the term “Citicorp” with “Citicorp” on page 61876 of the preamble to the exemption.

Section I(i)(1)

The Department is revising its discussion of the entities subject to the Section I(i) Audit requirement. On page 61869 of the exemption, the Department is replacing the sentence that reads: “The Department notes that Section I(i) requires the audit of each Citigroup entity that relies upon QPAM status, or expressly represents to ERISA-covered plan or IRA clients that it qualifies as a

⁷ 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), hereinafter referred to as PTE 84–14 or the QPAM Exemption.

⁸ PTE 2017–05 is effective from January 10, 2018 through January 9, 2023.

⁹ A “Covered Plan” is a plan subject to Part 4 of Title 1 of ERISA (“ERISA-covered plan”) or a plan subject to Section 4975 of the Code (“IRA”), with respect to which a Citigroup Affiliated QPAM relies on PTE 84–14, or with respect to which a Citigroup Affiliated QPAM (or any Citigroup affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84–14). A Covered Plan does not include an ERISA-covered Plan or IRA to the extent the Citigroup Affiliated 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.

QPAM,” with the following: “The Department notes that Section I(i) requires the audit of each Citigroup Affiliated QPAM.”

Section I(i)(10)

Section I(i)(10) of the exemption states: “(10) Each Citigroup Affiliated QPAM and the auditor must submit to [the Office of Exemption Determinations] OED: 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.”

The Department is revising Section I(i)(10) of the exemption to clarify the timing requirements for submission of the auditor agreements. As revised, Section I(i)(10) of the exemption now states: “(10) Any engagement agreement with an auditor to perform the audits required under the terms of this exemption must be submitted to OED by March 9, 2018 if the agreement was executed on or prior to January 10, 2018. Any engagement agreement(s) entered into subsequent to January 10, 2018 must be submitted to OED no later than two (2) months after the execution of such engagement agreement.”

Section I(j)(7)

Section I(j)(7) of the exemption states: “(7) By July 9, 2018, each Citigroup Affiliated QPAM must provide a notice of its obligations under this Section I(j) to each Covered Plan. For all other prospective Covered Plans, the Citigroup Affiliated QPAM will agree to its obligations under this Section I(j) in an updated investment management agreement between the Citigroup Affiliated QPAM and such clients or other written contractual agreement.”

The Department notes that the term “prospective Covered Plan,” as used in Section I(j)(7), means a Covered Plan that enters into a written asset or investment management agreement with a Citigroup Affiliated QPAM on or after July 10, 2018.

Section I(k)

Section I(k) of the exemption states: “(k) By March 10, 2018, each Citigroup Affiliated QPAM will provide a notice of the exemption, along with a separate summary describing the facts that led to the Conviction (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that the 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 Citigroup Affiliated

QPAM acts as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests. Any prospective clients for which a Citigroup Affiliated QPAM relies on PTE 84–14 or has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class 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 or investment management agreement from the Citigroup Affiliated QPAM. Disclosures may be delivered electronically.”

The Department notes that “prospective clients,” as referred to in Section I(k), means Covered Plans that enter into a written asset or investment management agreement with a Citigroup Affiliated QPAM on or after March 10, 2018. The Department also notes that the disclosure materials required to be provided to prospective clients under Section I(k) do not need to be provided to such clients prior to March 10, 2018. Such disclosures, rather, must be made, “prior to, or contemporaneously with, the client’s receipt of a written asset or investment management agreement from the Citigroup Affiliated QPAM.” Finally, the Department notes that the disclosure materials required to be provided to prospective clients under the second sentence of Section I(k) are the same materials referenced in the first sentence of Section I(k).

Section I(p)

The discussion of the Right to Copies of Policies and Procedures on page 61876 of the exemption states: “The Department has also modified Section I(p) to require that the Citigroup Affiliated QPAMs provide notice regarding the information on the website within 60 days of the effective date of this exemption, and thereafter to the extent certain material changes are made to the Policies.”

The Department is revising the discussion of the Right to Copies of Policies and Procedures to conform with the language of Section I(p). As revised, the discussion on page 61876 now states: “The Department has also modified Section I(p) to require that the Citigroup Affiliated QPAMs provide notice regarding the information on the website by July 9, 2018. 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.”

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Brennan of the Department, telephone (202) 693-8456. (This is not a toll-free number).

Barclays Capital Inc. (BCI or the Applicant), Located in New York, New York

[Prohibited Transaction Exemption (PTE) 2017-06; Exemption Application No. D-11910]

Discussion

On December 29, 2017, the Department published PTE 2017-06 in the **Federal Register** at 82 FR 61881. PTE 2017-06 is an administrative exemption from the prohibited transaction provisions of the Employee Retirement Income Security Act of 1974 (the Act), and the Internal Revenue Code of 1986, that permits certain entities with specified relationships to Barclays PLC (BPLC) to continue to rely upon the relief provided by PTE 84-14 for a period of five years,¹⁰ notwithstanding certain criminal convictions (the Convictions). The Department granted PTE 2017-06 to ensure that Covered Plans¹¹ with assets managed by an asset manager within the corporate family of BPLC may continue to benefit from the relief provided by PTE 84-14. The effective date of PTE 2017-06 is January 10, 2018, and the exemption is effective from January 10, 2018, through January 9, 2023 (the Exemption Period).

The Department has decided to make certain technical and clarifying corrections to the exemption, as described below.

Technical Corrections

Section I(b)

Section I(b) of the exemption states: “Apart from a non-fiduciary line of business within BCI, the Barclays Affiliated QPAMs and the Barclays Related QPAMs (including their officers, directors, and agents other than BPLC, and employees of such Barclays

¹⁰ 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), hereinafter referred to as PTE 84-14.

¹¹ A “Covered Plan” is a plan subject to Part 4 of Title 1 of ERISA (“ERISA-covered plan”) or a plan subject to section 4975 of the Code (“IRA”) with respect to which a Barclays Affiliated QPAM relies on PTE 84-14, or with respect to which a Barclays Affiliated QPAM (or any BPLC affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84-14). A Covered Plan does not include an ERISA-covered plan or IRA to the extent the Barclays Affiliated 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.

Affiliated QPAMs) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the Conviction.” This Section is revised by replacing “within BCI” with “of a BPLC subsidiary.” In addition, the phrase, “who had responsibility for or exercised authority in connection with the management of plan assets” now appears after “Barclays Affiliated QPAMs” in the parenthetical. As revised, Section I(b) reads, in pertinent part, “Apart from a non-fiduciary line of business of a BPLC subsidiary, the Barclays Affiliated QPAMs and the Barclays Related QPAMs (including their officers, directors, and agents other than BPLC, and employees of such Barclays Affiliated QPAMs who had responsibility for or exercised authority in connection with the management of plan assets) did not receive direct compensation”

Section I(j)

Section I(j) of the exemption states, in relevant part:

“As of January 10, 2018 and throughout the Exemption Period, with respect to any arrangement, agreement, or contract between a Barclays Affiliated QPAM and a Covered Plan, the Barclays Affiliated QPAM agrees and warrants”

For clarity, the phrase, “As of January 10, 2018 and throughout the Exemption Period,” is revised to read, “Effective on the date that a Barclays Affiliated QPAM enters into any arrangement, agreement, or contract, after January 10, 2018, with any Covered Plan, and throughout the Exemption Period,”

Section I(j)(7)

Section I(j)(7) states: “Prior to a Barclays Affiliated QPAM’s engagement with an ERISA-covered plan or IRA for the provision of asset management or other discretionary fiduciary services” The Department is replacing the phrase, “an ERISA-covered plan or IRA” with “a Covered Plan.”

Section I(k)

Section I(k) states: “Any client for which a Barclays Affiliated QPAM relies on PTE 84-14 or has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption must receive the proposed and final exemptions, along with a separate summary describing the facts that led to the Conviction (the Summary), which have been submitted to the Department, and a prominently

displayed statement (the Statement) that the Conviction results in a failure to meet a condition in PTE 84-14, prior to, or contemporaneously with, the client’s receipt of a written asset management agreement from the Barclays Affiliated QPAM. Disclosures may be delivered electronically.”

The Department is replacing the term “client” with “Covered Plan.” As revised, “Covered Plan,” as used in Section I(k), means a Covered Plan that enters into a written asset or investment management agreement with a Barclays Affiliated QPAM.

Section I(m)(1)(iv)

Section I(m)(1)(iv) states: “(iv) Each Annual Report must be provided to the appropriate corporate officers of BPLC and each Barclays Affiliated QPAM to which such report relates; the head of compliance and the General Counsel (or their functional equivalent) of the relevant Barclays Affiliated QPAM and the General Counsel (or their functional equivalent) of BPLC; and must be made unconditionally available to the independent auditor described in Section I(i) above.”

Comment Section 37 of the exemption at 82 FR 61896 states that the Department intended to revise Section I(m)(1)(iv) by deleting the phrase, “the appropriate corporate officers of BPLC and each Barclays Affiliated QPAM to which such report relates” from the condition. Such revision did not appear in the text. Therefore, the Department is now revising Section I(m)(1)(iv) to read, “(iv) Each Annual Report must be provided to the head of compliance and the General Counsel (or their functional equivalent) of the relevant Barclays Affiliated QPAM and the General Counsel (or their functional equivalent) of BPLC; and must be made unconditionally available to the independent auditor described in Section I(i) above.”

Section II(d)¹²

Section II(d) states, “The term “Conviction” means the judgment of conviction against BPLC for violation of the Sherman Antitrust Act, 15 U.S.C. 1, which is scheduled to be entered in the District Court for the District of Connecticut (the District Court), Case Number 3:15-cr-00077-SRU-1.”

Section II(d) is revised to reflect that the Conviction occurred prior to the effective date of the exemption. Section II(d) now reads, in pertinent part,

¹² In the final grant notice, the Department renumbered Section II(d), which was previously Section II(e) in the proposed exemption.