SEI Trust Company Interim Update
June 2024

LEGAL/REGULATORY UPDATE

In an effort to keep you updated on changing regulations, requirements and/or litigation that may affect our industry, we are providing you with a summary of recent legislation, legal decisions and/or regulatory guidance that may impact collective investment trusts ("CITs") and their service providers, such as banks and investment managers.

REGULATORY UPDATE

QPAM Update

On April 3, 2024, the U.S. Department of Labor (the "Department") published amendments (the "Amendments") to Prohibited Transaction Class Exemption 84-14 (the "QPAM Exemption"), which provides relief from certain prohibited transaction restrictions of Title I and Title II[1] of the Employee Retirement Income Security Act of 1974 ("ERISA"). The Amendments, which become effective on June 17, 2024, bring about important changes to the QPAM Exemption by amending or adding requirements related to the scope of a QPAM's oversight over transactions, notification of its status as a QPAM, recordkeeping, the availability of the QPAM Exemption after certain crimes or misconduct, clarity on the Department's "sole authority" requirement, and more changes that may affect asset managers.

Reporting Requirements

The Amendments now require that any QPAM relying on the QPAM Exemption to deliver a one-time notification to the Department via email at QPAM@dol.gov. Such notification requires a QPAM to report its legal name to the Department within ninety (90) calendar days of its reliance on the QPAM Exemption, or a change to its legal or operating name. If a QPAM fails to report within this initial 90-day period, to retain access to the QPAM Exemption, it will have an additional 90 days to cure such failure to report by completing the notification accompanied by an explanation for the QPAM's initial failure to report. A QPAM may notify the Department if it is no longer relying upon the QPAM Exemption at any time.

Ineligibility due to Criminal Conviction

Given the heightened sensitivity to the importance of protecting retirement assets, a QPAM is beholden to high standards of integrity. In emphasizing these standards, the Amendments provide new circumstances under which a QPAM will lose its eligibility for the QPAM Exemption. A QPAM will be unable to rely on the QPAM Exemption for a period of ten (10) years if:

- The QPAM, or any affiliate of the QPAM, is convicted of a crime pursuant to Section VI(r)[i]; or

[1] Per the Department: Title I, which contains rules for reporting and disclosure, vesting, participation, funding, fiduciary conduct, and civil enforcement, is administered by the U.S. Department of Labor. Title II of ERISA, which amended the Internal Revenue Code to parallel many of the Title I rules, is administered by the Internal Revenue Service.

- The QPAM, or any affiliate of the QPAM, or any direct or indirect owner of 5% or more interest in the QPAM, participates in "prohibited misconduct"[ii] as outlined in the amendments.

The Amendments also clarify ambiguity related to foreign criminal convictions, while leaving some room for Department interpretation, by explicitly recognizing that a QPAM will become ineligible for the QPAM Exemption if it is convicted by a foreign court if it is convicted of a crime that is substantially equivalent to a domestic crime (excluding convictions and imprisonments that occur within a foreign country designated a "foreign adversary" by the Department of Commerce). In upholding its commitment to assessing QPAM Exemption applications on an individual basis, however, the Department declined to standardize criteria for an assessment of whether a foreign crime is "substantially equivalent" to a domestic crime, and indicated that the Department's Office of Exemption Determinations would assess these types of questions on a case-by-case basis.

A QPAM rendered ineligible as a result of a criminal conviction as described by the Amendments must provide to its clients a one-year transition period during which the now ineligible QPAM can continue to rely on the QPAM Exemption (provided that it continues to comply with each condition of the QPAM Exemption) with respect to pre-existing client plans with written management agreements, a term defined by the final rule. During this transition period, such a QPAM:

(1) may not restrict the ability of a plan to terminate or withdraw from its arrangement with the QPAM;
(2) may not impose penalties, fees or charges on plans in connection with the process of terminating/withdrawing the plan from an investment fund managed by the QPAM (except for reasonable fees disclosed in advance, and that are subject to other criteria outlined in the final rule);
(3) must agree to indemnify, hold harmless and restore actual losses incurred by client plans directly resulting from a violation of applicable laws, a breach of contract or a claim arising out the conduct that is the subject of such ineligibility; and
(4) may not employ or knowingly engage any individual that participated in the conduct that is the subject of such ineligibility.

The Amendments make it clear that a now ineligible QPAM cannot use the one-year transition to bring on new business during that period. Also, if there are investment products that contain a lock up, or otherwise impose certain levels of illiquidity, the Department makes it clear in the preamble of the Amendments that the QPAM will need to seek an individual exemption in order to manage the scenario without violating the terms of the Amendments.

Recordkeeping Requirements

The Amendments now require that a QPAM maintain the records necessary to enable the following persons[iii] to determine whether the conditions of the QPAM Exemption are met with respect to a transaction for a period of six (6) years from the date of the transaction:

1. the Department or the Internal Revenue Service (or other state/federal regulator);
2. any fiduciary of a plan invested in an investment fund managed by the QPAM;
3. any contributing employer and any employee organization whose assets are covered by a plan invested in an investment fund managed by the QPAM; and
4. any participant or beneficiary of a plan invested in an investment fund managed by the QPAM.

Multiple Investment Managers

The Amendments make an important clarification as it pertains to a QPAM that utilizes sub-advisers in the context of collective investment trusts (CITs). To the Department, it is paramount that a QPAM retain fiduciary responsibility when overseeing transactions. In bolstering that requirement, the Amendments include the following language in Section I(c):

No relief is provided under this exemption for any transaction that has been planned, negotiated, or initiated by a Party in Interest, in whole or in part, and presented to a QPAM for approval to the extent the QPAM would not have sole responsibility with respect to the transaction as required by this Section I(c).

The Department, however, in response to commenter concerns as to how such language may impact QPAMs that rely on sub-adviser input, clarifies in the final rule that a QPAM may rely on the specific expertise of a prudently selected and monitored entity to assist the QPAM in prudently managing plan assets. Further, a QPAM's delegation of certain investment-related responsibilities to a sub-adviser will not, by itself, violate Section I(c) *as long as the QPAM retains sole authority with respect to planning, negotiating and initiating the transactions covered by the QPAM exemption*. Although the final rule clarifies that the use of sub-advisers is permitted in the CIT context, it also simultaneously strengthens the Department's commitment to ensuring that a QPAM is the ultimate decision-maker in a transaction, while also making the parameters of the QPAM/sub-adviser relationship ambiguous.

Even further, while it is not entirely certain, the Amendments do not explicitly prohibit the scenario where the trustee and an investment adviser to the CIT are both QPAMs. The Department includes language in the Amendments clarifying that "[t]he terms of the transaction, commitments, and investment of fund assets, and any associated negotiations are determined by the QPAM (*or under the authority and direction of the* QPAM) which represents the interests of the Investment Fund." Accordingly, this can arguably be read to suggest that an investment adviser/QPAM can act in a discretionary capacity with respect to buying and selling securities as an investment adviser, under the supervision of a trustee/QPAM who serves in an oversight capacity and ultimately retains the sole authority over the transaction. As a result, the scenario whereby both SEI Trust Company as trustee, and an investment adviser to a collective fund, both represent that they are a QPAM appears to be permissible by the Department.

<u>Assets Under Management Thresholds</u>

The Amendments change the definition of a QPAM by increasing the assets under management thresholds required for eligibility, as according to the Department, the changes are necessary to continue to ensure that QPAMs are indeed large enough to maintain their independence:

1. A bank, as defined in section 202(a)(2) of the Investment Advisers Act ("Advisers Act"), a savings and loan association, or an insurance company must have equity capital (as defined by the final rule), equity capital or net worth, and net worth (as defined by the final rule), respectively, in excess of (i) $1,000,000 as of the end of its most recent fiscal year (ii) $1,570,300 as of December 31, 2024; (iii) $2,140,600 as of the last day of December 31, 2027; and (iv) $2,720,000 as of December 31, 2030;
2. Among other requirements, an investment adviser registered under the Advisers Act must have total client assets under its management and control in excess of (i) $85,000,000 as of the last day of its most recent fiscal year,(ii) $101,956,000 effective as of the last day of the fiscal year ending no later than December 31, 2024 (iii) $118,912,000 effective as of the last day of the fiscal year ending no later than December 31, 2027 (iv) $135,868,000 effective as of the last day of the fiscal year ending no later than December 31, 2030.

<u>STC Commentary</u>

As an important part of the CIT compliance strategy, STC will be filing its QPAM notice with the Department in accordance with the time frames noted herein. Further, investment advisers who have confirmed to one or more investors in any CIT that it meets the QPAM requirements should also consider whether filing with the Department would be warranted, if and to the extent that it continues to meet the updated AUM thresholds and other requirements. Investment advisers should also consider whether additional modifications to its policies and procedures around ERISA compliance are warranted, especially for those that are part of large corporate families, especially those with foreign affiliates.

About SEI Trust Company
SEI Trust Company (STC) is a non-depository trust company chartered under the laws of the Commonwealth of Pennsylvania that provides trust and administrative services for various collective investment trusts. SEI Trust Company is a wholly-owned subsidiary of SEI Investments Company (SEI). For more information, visit www.seic.com/stc.

About SEI
SEI (NASDAQ:SEIC) delivers technology and investment solutions that connect the financial services industry. With capabilities across investment processing, operations, and asset management, SEI works with corporations, financial institutions and professionals, and ultra-high-net-worth families to help drive growth, make confident decisions, and protect futures. As of March 31, 2024, SEI manages, advises, or administers approximately $1.5 trillion in assets. For more information, visit seic.com.

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[i] "[C]onvict[ion] in a U.S. federal or state court or released from imprisonment, whichever is later, as a result of any felony involving abuse or misuse of such person's Plan position or employment, or position or employment with a labor organization; any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company or fiduciary; income tax evasion; any felony involving the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; conspiracy or attempt to commit any such crimes or a crime in which any of the foregoing crimes is an element; or any crime that is identified or described in ERISA section 411).

[ii] (s) "Prohibited Misconduct" means when a QPAM, any Affiliate thereof (as defined in Section VI(d)), or any owner, direct or indirect, of a five (5) percent or more interest in the QPAM:

(1) Enters into a non-prosecution (NPA) or deferred prosecution agreement (DPA) on or after June 17, 2024 with a U.S. federal or state prosecutor's office or regulatory agency, where the factual allegations that form the basis for the NPA or DPA would have constituted a crime described in Section VI(r) if they were successfully prosecuted; or

(2) Is found or determined in a final judgment, or court-approved settlement by a Federal or State criminal or civil court that is entered on or after June 17, 2024 in a proceeding brought by the Department, the Department of Treasury, the Internal Revenue Service, the Securities and Exchange Commission, the Department of Justice, the Federal Reserve Bank, the Office of the Comptroller of the Currency, the Federal Depository Insurance Corporation, the Commodities Futures Trading Commission, a state regulator, or state attorney general to have Participated In one or more of the following categories of conduct irrespective of whether the court specifically considers this exemption or its terms:

(A) engaging in a systematic pattern or practice of conduct that violates the conditions of this exemption in connection with otherwise non-exempt prohibited transactions;

(B) intentionally engaging in conduct that violates the conditions of this exemption in connection with otherwise non-exempt prohibited transactions; or

(C) providing materially misleading information to the Department, the Department of Treasury, the Internal Revenue Service, the Securities and Exchange Commission, the Department of Justice, the Federal Reserve Bank, the Office of the Comptroller of the Currency, the Federal Depository Insurance Corporation, the Commodities Futures Trading Commission, a state regulator or a state attorney general in connection with the conditions of the exemption.

[iii] None of the persons described in subsection (2)(B) through (D) above are authorized to examine records regarding an Investment Fund that they are not invested in, privileged trade secrets or privileged commercial or financial information of the QPAM, or information identifying other individuals.