

*prima facie* case. Accordingly, I will deny Respondent's application.

### Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 28 CFR 0.100(b), I order that the application of Edge Pharmacy, L.L.C., for a DEA Certificate of Registration as a retail pharmacy, be, and it hereby is, denied. This Order is effectively immediately.

Dated: October 11, 2016.

**Chuck Rosenberg,**

*Acting Administrator.*

[FR Doc. 2016-25226 Filed 10-18-16; 8:45 am]

**BILLING CODE 4410-09-P**

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

[OJP (OJP) Docket No. 1728]

#### Meeting of the Global Justice Information Sharing Initiative Federal Advisory Committee

**AGENCY:** Office of Justice Programs, Justice.

**ACTION:** Notice of meeting.

**SUMMARY:** This is an announcement of a meeting of the Global Justice Information Sharing Initiative (Global) Federal Advisory Committee (GAC) to discuss the Global Initiative, as described at [www.it.ojp.gov/global](http://www.it.ojp.gov/global).

**DATES:** The meeting will take place on Tuesday, November 29, 2016, from 9:00 a.m. to 4:00 p.m. ET, and Wednesday, November 30, 2016, from 9:00 a.m. to 11:30 a.m. ET.

**ADDRESSES:** The meeting will take place at the Office of Justice Programs (in the Main Conference Room), 810 7th Street, Washington, DC 20531; Phone: (202) 514-2000 (**Note:** This is not a toll-free number).

**FOR FURTHER INFORMATION CONTACT:** J. Patrick McCreary, Global Designated Federal Employee (DFE), Bureau of Justice Assistance, Office of Justice Programs, 810 7th Street, Washington, DC 20531; Phone: (202) 616-0532 (**Note:** This is not a toll-free number); Email: [James.P.McCreary@usdoj.gov](mailto:James.P.McCreary@usdoj.gov).

**SUPPLEMENTARY INFORMATION:** This meeting is open to the public. Due to security measures, however, members of the public who wish to attend this meeting must register with Mr. J. Patrick McCreary at the above address at least seven (7) days in advance of the meeting. Registrations will be accepted on a space available basis. Access to the meeting will not be allowed without registration. All attendees will be required to sign in at the meeting

registration desk. Please bring photo identification and allow extra time prior to the meeting.

Anyone requiring special accommodations should notify Mr. McCreary at least seven (7) days in advance of the meeting.

### Purpose

The GAC will act as the focal point for justice information systems integration activities in order to facilitate the coordination of technical, funding, and legislative strategies in support of the Administrations justice priorities.

The GAC will guide and monitor the development of the global information sharing concept. It will advise the Assistant Attorney General, OJP; the Attorney General; the President (through the Attorney General); and local, state, tribal, and federal policymakers in the executive, legislative, and judicial branches. The GAC will also advocate for strategies for accomplishing a global information sharing capability.

Interested persons whose registrations have been accepted may be permitted to participate in the discussions at the discretion of the meeting chairman and with approval of the DFE.

**J. Patrick McCreary,**

*Global DFE, Bureau of Justice Assistance, Office of Justice Programs.*

[FR Doc. 2016-25217 Filed 10-18-16; 8:45 am]

**BILLING CODE 4410-18-P**

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

#### Exemptions From Certain Prohibited Transaction Restrictions

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Grant of Individual Exemptions.

**SUMMARY:** This document contains exemptions 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 notice includes the following: 2016-03, The Michael T. Sewell, M.D., P.S.C. Profit Sharing Plan, D-11813; 2016-04, Plumbers' Pension Fund, Local 130, U.A., D-11822; 2016-05, Sears Holdings 401(k) Savings Plan and the Sears Holdings Puerto Rico Savings Plan, D-11846 and D-11847; 2016-06, Sears Holdings 401(k) Savings Plan and the Sears Holdings Puerto Rico Savings Plan, D-11851 and D-11852;

2016-07, Liberty Media 401(k) Savings Plan, D-11858; 2016-08, Baxter International Inc., D-11866; and 2016-09, Sears Holdings 401(k) Savings Plan and the Sears Holdings Puerto Rico Savings Plan, D-11871 and D-11872.

**SUPPLEMENTARY INFORMATION:** A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

### Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011)<sup>1</sup> and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

<sup>1</sup> The Department has considered exemption applications received prior to December 27, 2011 under the exemption procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

**The Michael T. Sewell, M.D., P.S.C. Profit Sharing Plan (the Plan), Located in Bardstown, Kentucky**

[Prohibited Transaction Exemption 2016–03; Exemption Application No. D–11813]

*Exemption*

The restrictions of section 406(a)(1)(A) and (D) and section 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975, by reason of section 4975(c)(1)(A), (D) and (E) of the Code,<sup>2</sup> shall not apply to the cash sale (the Sale) by the individually-directed account (the Account) in the Plan of Michael T. Sewell, M.D. (Dr. Sewell) of a parcel of unimproved real property (the Property), to Dr. Sewell, a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(a) The Sale is a one-time transaction for cash;

(b) The sales price for the Property is the greater of: \$916,501; or the sum of the fair market value of the Property, as established by a qualified independent appraiser, and the fair market value of timber on the Property, as determined by a qualified independent timber appraiser, in separate, updated appraisals reports on the date of the Sale;

(c) The Account pays no real estate fees or commissions in connection with the Sale;

(d) The terms of the Sale are no less favorable to the Account than the terms the Account would receive under similar circumstances in an arm's length transaction with an unrelated party; and

(e) Michael T. Sewell, M.D., P.S.C. bears 100% of the costs of obtaining this exemption.

*Written Comments*

In the notice of proposed exemption (the Notice), the Department invited all interested persons to submit written comments and/or requests for a public hearing within 30 days of the publication, on April 28, 2016, of the Notice in the **Federal Register**. All comments were due by May 28, 2016. During the comment period, the Department received no comments or hearing requests from interested persons.

Accordingly, after giving full consideration to the entire record, the Department has decided to grant the exemption. The complete application file (Exemption Application No. D–

11813), including all supplemental submissions received by the Department, is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice published in the **Federal Register** on April 28, 2016 at 81 FR 25433.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Blessed Chuksorji-Keefe of the Department, telephone (202) 693–8567. (This is not a toll-free number.)

**Plumbers' Pension Fund, Local 130, U.A. (the Plan, or the Applicant), Located in Chicago, IL**

[Prohibited Transaction Exemption 2016–04; Exemption Application No. D–11822]

*Exemption*

The restrictions of section 406(a)(1)(A) and (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) and (E) of the Code,<sup>3</sup> shall not apply to the proposed sale (the Sale) of two commercial buildings (the Properties), by the Plan to the Plumbers' Pension Fund, Local 130, U.A. (the Union), a party in interest with respect to the Plan, provided that the following conditions are satisfied:

(a) The Sale is a one-time transaction for cash;

(b) The price paid by the Union to the Plan is equal to the greater of: (1) \$1,640,000, or (2) the fair market value of the Properties, as determined by a qualified independent appraiser (the Independent Appraiser) as of the date of the Sale;

(c) The Plan does not pay any appraisal fees, real estate fees, commissions, costs or other expenses in connection with the Sale;

(d) The Plan trustees appointed by the Union (the Union Trustees) recuse themselves from: (1) Discussions and voting with respect to the Plan's decision to enter into the Sale; and (2) all aspects of the selection and engagement of the Independent Appraiser for the purposes of determining the fair market value of the Properties on the date of the Sale;

(e) The Plan trustees appointed by the employer associations (the Employer Trustees), who have no interest in the

Sale: (1) Determine, among other things, whether it is in the interest of the Plan to proceed with the Sale; (2) review and approve the methodology used by the Independent Appraiser in the independent appraisal report (the Appraisal Report) that is being relied upon; and (3) ensure that such methodology is applied by the Independent Appraiser in determining the fair market value of the Properties on the date of the Sale; and

(f) The Sale is not part of an agreement, arrangement, or understanding designed to benefit the Union.

*Written Comments*

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption, published on April 28, 2016, at 81 FR 25435. All comments and requests for a hearing were due by May 28, 2016.

During the comment period, the Department received one written comment and no requests for a public hearing. In a comment letter, dated May 19, 2016, a Plan participant suggests that the Sale price of the Properties be no less than the average of three different appraisals of the Properties, rather than based on a single appraisal. The commenter asserts that this is the standard practice for bids and should be used in this exemption because it is fair and equitable.

The Department acknowledges the participant's comment, but wishes to emphasize that the procedures (the Procedures) governing the filing and the processing of administrative exemptions from the prohibited transaction provisions of the Act, as amended, and the Code, as amended, (29 CFR 2570, October 27, 2011), do not require that an applicant obtain multiple appraisals of a property from different qualified independent appraisers. Specifically, section 2570.34(c)(4) of the Procedures refers to the preparation of a single appraisal report for a property by a qualified independent appraiser, who is acting solely on behalf of the affected plan. Moreover, section 2570.34(c)(4) of the Procedures describes the content of such appraisal report in subparagraphs (i)–(iii).

Accordingly, in the exemption request under consideration, the Department is of the view that the Independent Appraiser of the Properties has fulfilled the requirements mandated by Section 2570.34(c) of the Procedures.

In addition, the Department notes that the Sale is subject to several conditions that are meant to protect the Plan and

<sup>2</sup> For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

<sup>3</sup> For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

its participants and beneficiaries. In this regard, the Independent Appraiser will render an updated appraisal of the Properties, as of the date of the Sale. In addition, the price paid by the Union to the Plan will be equal to the greater of: (1) \$1,640,000, or (2) the fair market value of the Properties, as determined by the Independent Appraiser as of the date of the Sale. Further, the Employer Trustees, who have no interest in the Sale, will review and approve the methodology used by the Independent Appraiser, and will ensure that such methodology is properly applied.

Accordingly, after giving full consideration to the entire record, the Department has decided to grant the exemption. The complete application file (Application No. D-11822), including all supplemental submissions received by the Department, is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1515, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on April 28, 2016, at 81 FR 25435.

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

**Sears Holdings 401(k) Savings Plan (the Savings Plan) and the Sears Holdings Puerto Rico Savings Plan (the PR Plan) (Collectively, the Plans), Located in Hoffman Estates, IL**

[Prohibited Transaction Exemption 2016-05; Exemption Application Nos. D-11846 and D-11847]

*Exemption*

Section I. Covered Transactions

(a) The restrictions of sections 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code,<sup>4</sup> shall not apply to the acquisition and holding by the Savings Plan of certain subscription rights (the Rights) to purchase shares of common stock (the SC Stock) in Sears Canada Inc. (Sears Canada) in connection with an offering (the Offering) by Sears Holdings

<sup>4</sup> For purposes of this exemption, unless indicated otherwise, references to section 406 of the Act should be read to refer as well to the corresponding provisions of section 4975 of the Code.

Corporation (Holdings) of shares of SC Stock, provided that the conditions as set forth, below, in Section II of this exemption were satisfied for the duration of the acquisition and holding; and

(b) The restrictions of sections 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act<sup>5</sup> shall not apply to the acquisition and holding of the Rights by the PR Plan in connection with the Offering of the SC Stock by Holdings, provided that the conditions as set forth in Section II of this exemption were satisfied for the duration of the acquisition and holding.

Section II. Conditions for Relief

(a) The receipt of the Rights by the Plans occurred in connection with the Offering, in which all shareholders of the common stock of Holdings (Holdings Stock), including the Plans, were treated in the same manner;

(b) The acquisition of the Rights by the Plans resulted from an independent act of Holdings, as a corporate entity;

(c) Each shareholder of Holdings Stock, including each of the Plans, received the same proportionate number of Rights based on the number of shares of Holdings Stock held by each such shareholder;

(d) All decisions with regard to the holding and disposition of the Rights by the Plans were made by a qualified independent fiduciary (the Independent Fiduciary) within the meaning of 29 CFR 2570.31(j);<sup>6</sup>

(e) The Independent Fiduciary determined that it would be in the interest of the Plans to sell all of the Rights received in the Offering by the

<sup>5</sup> The Applicant represents that there is no jurisdiction under Title II of the Act with respect to the PR Plan. Accordingly, the Department is not providing any exemptive relief from section 4975(c)(1)(E) of the Code for the acquisition and holding of the Rights by the PR Plan.

<sup>6</sup> 29 CFR 2570.31(j) defines a "qualified independent fiduciary," in relevant part, to mean "any individual or entity with appropriate training, experience, and facilities to act on behalf of the plan regarding the exemption transaction in accordance with the fiduciary duties and responsibilities prescribed by ERISA, that is independent of and unrelated to any party in interest engaging in the exemption transaction and its affiliates;" in general, a fiduciary is presumed to be independent "if the revenues it receives or is projected to receive, within the current federal income tax year from parties in interest (and their affiliates) [with respect] to the transaction are not more than 2% of such fiduciary's annual revenues based upon its prior income tax year. Although the presumption does not apply when the aforementioned percentage exceeds 2%, a fiduciary nonetheless may be considered independent based upon other facts and circumstances provided that it receives or is projected to receive revenues that are not more than 5% within the current federal income tax year from parties in interest (and their affiliates) [with respect] to the transaction based upon its prior income tax year."

Plans in blind transactions on the NASDAQ Global Select Market;

(f) No brokerage fees, commissions, subscription fees, or other charges were paid by the Plans with respect to the acquisition and holding of the Rights, or were paid to any affiliate of Holdings, Sears Canada, or the Independent Fiduciary, with respect to the sale of the Rights.

Section III. Definitions

(a) The term "affiliate" of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with such person;

(2) Any officer, director, partner, employee, or relative, as defined in section 3(15) of the Act, of such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

*Effective Date:* This exemption is effective for the period beginning October 16, 2014, and ending November 7, 2014 (the Offering Period).

*Written Comments*

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption (the Notice), published on May 12, 2016, at 81 FR 29705. All comments and requests for hearing were due by July 3, 2016. During the comment period, the Department received two comments from interested persons and no requests for a public hearing. A Savings Plan participant submitted a written comment and Holdings requested a clarification to the Notice. Furthermore, during the comment period, the Department received several phone inquiries that generally concerned matters outside the scope of the exemption.

Participant's Comment

In his comment letter of June 20, 2016, the participant represents that he is a Holdings' shareholder, who held a balance in the Savings Plan at the time of the Offering.<sup>7</sup> The participant states that "it appears I did not benefit from

<sup>7</sup> The participant also submitted the same comment to the Department in D-11851 and D-11852, involving the Sears Notes Offering, 81 FR 29709 (May 12, 2016); and in D-11871 and D-11873, involving the Seritage Growth Offering, 81 FR 29713 (May 12, 2016).

[the Offering] as I should have” because the price of Holdings Stock decreased following the Offering. The participant inquires whether the exemption should reverse this loss.

In response to the participant’s comment, Holdings explains that while there have been fluctuations in the price of Holdings Stock during the relevant period, the Independent Fiduciary’s decision to sell the Rights generated a positive gain for the Sears Holdings 401(k) Savings Plan Master Trust Stock Fund (the Stock Fund), of \$200,557.36, net of fees and expenses. According to Holdings, changes in the value of a publicly-traded company’s stock occur due to many factors, including the company’s performance. Depending on the measurement period used, Holdings represents that it is possible that a contemporaneous decline in the price of Holdings Stock negated the positive gain for the Stock Fund. However, according to Holdings, the performance of Holdings Stock around the time of the Offering was beyond the control of the Plans and the Independent Fiduciary, and it was independent of any actions such fiduciary took with respect to the Rights received by the Plans.

Holdings also represents that it made the decision to commence the Offering, which was a corporate decision, and this decision was not fiduciary in nature. Further, Holdings states that no shareholder, including the Plans, had the ability to prevent the Offering. Therefore, the only decision presented to the shareholders, including the Plans’ fiduciaries, was how to dispose of the Rights that were distributed during the Offering. Holdings represents that the Independent Fiduciary’s decision to sell the Rights resulted in a significant deposit in the Stock Fund.

#### Holdings’ Comment

The Applicant states that it originally requested relief from the restrictions of sections 406(a)(1)(A), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act in the exemption application. However, the Applicant notes that the Department decided not to provide exemptive relief from section 406(a)(1)(A) of the Act in the Notice.

The Applicant believes the Plans’ acquisition of the Rights to purchase Sears Canada Stock did not involve a prohibited “sale or exchange, or leasing, of any property between the plan and a party in interest,” as described in section 406(a)(1)(A) of the Act. The Applicant states that it provided the Rights automatically to all of its shareholders, including the Plans, in a manner similar to a stock dividend. The Applicant also points out that the

Department has clarified that it “does not view an acquisition of stock by means of a stock dividend or stock split as a prohibited transaction,” in the Preamble to Final Regulation, Fiduciary Responsibility; Statutory Exemption for Certain Acquisitions, Sales, or Leases of Property, 45 FR 51194, 51196 (August 1, 1980). Therefore, the Applicant does not believe an exemption from section 406(a)(1)(A) is required in the subject case. Sears Holdings requests confirmation that the Department shares this view.

In response, the Department concurs that exemptive relief from section 406(a)(1)(A) of the Act is not applicable to the Plans’ acquisition of the Rights.

#### Technical Correction

Section III(c) of the proposed exemption is redesignated as Section III(b) of this exemption.

Accordingly, after giving full consideration to the entire record, the Department has decided to grant the exemption. The complete application file (Application Nos. D–11846 and D–11847), including all supplemental submissions received by the Department, is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department’s decision to grant this exemption, refer to the notice of proposed exemption published on May 12, 2016, at 81 FR 29705.

**FOR FURTHER INFORMATION CONTACT:** Mr. Scott Ness of the Department, telephone (202) 693–8561. (This is not a toll-free number.)

#### **Sears Holdings 401(k) Savings Plan (the Savings Plan) and the Sears Holdings Puerto Rico Savings Plan (the PR Plan) (Collectively, the Plans), Located in Hoffman Estates, IL**

[Prohibited Transaction Exemption 2016–06; Exemption Application Nos. D–11851 and D–11852]

#### *Exemption*

##### Section I. Covered Transactions

(a) The restrictions of sections 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code,<sup>8</sup> shall not apply to the acquisition

<sup>8</sup> For purposes of this exemption, unless indicated otherwise, references to section 406 of the Act should be read to refer as well to the

and holding of certain subscription rights (the Rights) issued by Sears Holdings Corporation (Holdings) by the Savings Plan in connection with an offering (the Offering) by Holdings of unsecured obligations issued by Holdings (Notes) and warrants to purchase the common stock of Holdings (Warrants)(together referred to as Units), provided that the conditions as set forth, below, in Section II of this exemption were satisfied for the duration of the acquisition and holding; and

(b) The restrictions of sections 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act<sup>9</sup> shall not apply to the acquisition and holding of the Rights by the PR Plan in connection with the Offering of the Units by Holdings, provided that the conditions as set forth in Section II of this exemption were satisfied for the duration of the acquisition and holding.

#### Section II. Conditions for Relief

(a) The receipt of the Rights by the Plans occurred in connection with the Offering, in which all shareholders of the common stock of Holdings (Holdings Stock), including the Plans, were treated in the same manner;

(b) The acquisition of the Rights by the Plans resulted from an independent act of Holdings, as a corporate entity;

(c) Each shareholder of Holdings Stock, including each of the Plans, received the same proportionate number of Rights based on the number of shares of Holdings Stock held by each such shareholder;

(d) All decisions with regard to the holding and disposition of the Rights by the Plans were made by a qualified independent fiduciary (the Independent Fiduciary) within the meaning of 29 CFR 2570.31(j);<sup>10</sup>

corresponding provisions of section 4975 of the Code.

<sup>9</sup> The Applicant represents that there is no jurisdiction under Title II of the Act with respect to the PR Plan. Accordingly, the Department is not providing any exemptive relief from section 4975(c)(1)(E) of the Code for the acquisition and holding of the Rights by the PR Plan.

<sup>10</sup> 29 CFR 2570.31(j) defines a “qualified independent fiduciary,” in relevant part, to mean “any individual or entity with appropriate training, experience, and facilities to act on behalf of the plan regarding the exemption transaction in accordance with the fiduciary duties and responsibilities prescribed by ERISA, that is independent of and unrelated to any party in interest engaging in the exemption transaction and its affiliates;” in general, a fiduciary is presumed to be independent “if the revenues it receives or is projected to receive, within the current federal income tax year from parties in interest (and their affiliates) [with respect] to the transaction are not more than 2% of such fiduciary’s annual revenues based upon its prior income tax year. Although the presumption does not apply when the aforementioned percentage exceeds 2%, a fiduciary

Continued

(e) The Independent Fiduciary determined that it would be in the interest of the Plans to sell all of the Rights received in the Offering by the Plans in blind transactions on the NASDAQ Global Select Market;

(f) No brokerage fees, commissions, subscription fees, or other charges were paid by the Plans with respect to the acquisition and holding of the Rights, or were paid to any affiliate of Holdings or the Independent Fiduciary, with respect to the sale of the Rights.

### Section III. Definitions

(a) The term “affiliate” of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with such person;

(2) Any officer, director, partner, employee, or relative, as defined in section 3(15) of the Act, of such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(b) The term “control” means the power to exercise a controlling influence over the management or policies of a person other than an individual.

*Effective Date:* This exemption is effective for the period beginning October 30, 2014, and ending November 18, 2014 (the Offering Period).

### Written Comments

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption (the Notice), published on May 12, 2016, at 81 FR 29709. All comments and requests for hearing were due by July 3, 2016. During the comment period, the Department received two comments from interested persons and no requests for a public hearing. A Savings Plan participant submitted a written comment, and Holdings requested a clarification to the Notice. Furthermore, during the comment period, the Department received several phone inquiries that generally concerned matters outside the scope of the exemption.

### Participant’s Comment

In his comment letter of June 20, 2016, the participant represents that he

nonetheless may be considered independent based upon other facts and circumstances provided that it receives or is projected to receive revenues that are not more than 5% within the current federal income tax year from parties in interest (and their affiliates) [with respect] to the transaction based upon its prior income tax year.”

is a Holdings’ shareholder, who held a balance in the Savings Plan at the time of the Offering.<sup>11</sup> The participant states that “it appears I did not benefit from [the Offering] as I should have” because the price of Holdings Stock decreased following the Offering. The participant inquires whether the exemption should reverse this loss.

In response to the participant’s comment, Holdings explains that while there have been fluctuations in the price of Holdings Stock during the relevant period, the Independent Fiduciary’s decision to sell the Rights generated a positive gain for the Sears Holdings 401(k) Savings Plan Master Trust Stock Fund (the Stock Fund), of \$3,637,509.54, net of fees and expenses. According to Holdings, changes in the value of a publicly-traded company’s stock occur due to many factors, including the company’s performance. Depending on the measurement period used, Holdings represents that it is possible that a contemporaneous decline in the price of Holdings Stock negated the positive gain for the Stock Fund. However, according to Holdings, the performance of Holdings Stock around the time of the Offering was beyond the control of the Plans and the Independent Fiduciary, and it was independent of any actions such fiduciary took with respect to the Rights received by the Plans.

Holdings also represents that it made the decision to commence the Offering, which was a corporate decision, and this decision was not fiduciary in nature. Further, Holdings states that no shareholder, including the Plans, had the ability to prevent the Offering. Therefore, the only decision presented to the shareholders, including the Plans’ fiduciaries, was how to dispose of the Rights that were distributed during the Offering. Holdings represents that the Independent Fiduciary’s decision to sell the Rights resulted in a significant deposit in the Stock Fund.

### Holdings’ Comment

The Applicant states that it originally requested relief from the restrictions of sections 406(a)(1)(A), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act in the exemption application. However, the Applicant notes that the Department decided not to provide exemptive relief from section 406(a)(1)(A) of the Act in the Notice.

<sup>11</sup> The participant also submitted the same comment to the Department in D-11846 and D-11847, involving the Sears Canada Offering, 81 FR 29705 (May 12, 2016); and in D-11871 and D-11873, involving the Seritage Growth Offering, 81 FR 29713 (May 12, 2016).

The Applicant believes the Plans’ acquisition of the Rights to purchase Sears Notes and Warrants did not involve a prohibited “sale or exchange, or leasing, of any property between the plan and a party in interest,” as described in section 406(a)(1)(A) of the Act. The Applicant states that it provided the Rights automatically to all of its shareholders, including the Plans, in a manner similar to a stock dividend. The Applicant also points out that the Department has clarified that it “does not view an acquisition of stock by means of a stock dividend or stock split as a prohibited transaction,” in the Preamble to Final Regulation, Fiduciary Responsibility; Statutory Exemption for Certain Acquisitions, Sales, or Leases of Property, 45 FR 51194, 51196 (August 1, 1980). Therefore, the Applicant does not believe an exemption from section 406(a)(1)(A) is required in the subject case. Sears Holdings requests confirmation that the Department shares this view.

In response, the Department concurs that exemptive relief from section 406(a)(1)(A) of the Act is not applicable to the Plans’ acquisition of the Rights.

### Technical Correction

Section III(c) of the proposed exemption is redesignated as Section III(b) of this exemption.

Accordingly, after giving full consideration to the entire record, the Department has decided to grant the exemption. The complete application file (Application Nos. D-11851 and D-11852), including all supplemental submissions received by the Department, is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1515, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department’s decision to grant this exemption, refer to the notice of proposed exemption published on May 12, 2016, at 81 FR 29709.

**FOR FURTHER INFORMATION CONTACT:** Mr. Erin Hesse of the Department, telephone (202) 693-8546. (This is not a toll-free number.)

### Liberty Media 401(k) Savings Plan (the Plan), Located in Englewood, CO

[Prohibited Transaction Exemption 2016-07; Exemption Application No. D-11858]

### Exemption

#### Section I. Covered Transactions

The restrictions of sections 406(a)(1)(E), 406(a)(2), and 407(a)(1)(A)

of the Act shall not apply to: (1) The acquisition by the Plan of certain stock subscription rights (the Rights) to purchase shares of Liberty Broadband Series C common stock (LB Series C Stock), in connection with a rights offering (the Rights Offering) held by Liberty Broadband Corporation (Liberty Broadband), a party in interest with respect to the Plan; and (2) the holding of the Rights by the Plan during the subscription period of the Rights Offering, provided that the conditions described in Section II below have been met.

#### Section II. Conditions for Relief

(a) The Plan's acquisition of the Rights resulted solely from an independent corporate act of Liberty Broadband;

(b) All holders of Liberty Broadband Series A common stock and Liberty Broadband Series C common stock (collectively, the LB Stock), including the Plan, were issued the same proportionate number of Rights based on the number of shares of LB Stock held by each such shareholder;

(c) For purposes of the Rights Offering, all holders of LB Stock, including the Plan, were treated in a like manner;

(d) The acquisition of the Rights by the Plan was made in a manner that was consistent with provisions of the Plan for the individually-directed investment of participant accounts;

(e) The Liberty Media 401(k) Savings Plan Administrative Committee (the Committee) directed the Plan trustee to sell the Rights on the NASDAQ Global Select Market, in accordance with Plan provisions that precluded the Plan from acquiring additional shares of LB Stock;

(f) The Committee did not exercise any discretion with respect to the acquisition and holding of the Rights; and

(g) The Plan did not pay any fees or commissions in connection with the acquisition or holding of the Rights, and did not pay any commissions to Liberty Broadband, Liberty Media Corporation, TruePosition, Inc., or any affiliates of the foregoing in connection with the sale of the Rights.

*Effective Date:* This exemption is effective for the period beginning on December 15, 2014, the date that the Plan received the Rights, until December 17, 2014, the date the Rights were sold by the Plan on the NASDAQ Global Select Market.

#### Written Comments

The Department invited all interested persons to submit written comments and/or requests for a public hearing

with respect to the notice of proposed exemption, published on April 28, 2016, at 81 FR 25438. Liberty Media completed delivery of the notice of proposed exemption and accompanying notice to interested persons on May 3, 2016. However, the Department determined that certain elements of the notice of proposed exemption as published in the **Federal Register** were omitted from the materials sent to interested persons. Liberty Media represented, under penalty of perjury, that a corrected version of the notice of proposed exemption was provided to all interested persons on May 27, 2016. All comments and requests for hearing were due under the corrected version of the notice by June 26, 2016, 30 days following the date on which Liberty Media certified delivery was completed. During the comment period, the Department received no comments and no requests for a hearing from interested persons. Accordingly, after giving full consideration to the entire record, the Department has decided to grant the exemption. The complete application file (Application No. D-11858), including all supplemental submissions received by the Department, is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1515, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 28, 2016, at 81 FR 25438.

**FOR FURTHER INFORMATION CONTACT:** Mr. Scott Ness of the Department, telephone (202) 693-8561. (This is not a toll-free number.)

#### **Baxter International Inc. (Baxter or the Applicant), Located in Deerfield, IL**

[Prohibited Transaction Exemption 2016-08; Exemption Application No. D-11866]

#### *Exemption*

##### Section I. Transaction

The restrictions of sections 406(a)(1)(A) and (D) and sections 406(b)(1) and (2) of ERISA and sections 4975(c)(1)(A), (D), and (E) of the Code<sup>12</sup> shall not apply to the contribution of publicly traded common stock of Baxalta (the Contributed Stock) by Baxter (the Contribution) to the Baxter

International Inc. and Subsidiaries Pension Plan (the Plan), provided:

(a) Fiduciary Counselors Inc. (the Independent Fiduciary) will represent the interests of the Plan, the participants, and beneficiaries with respect to the Contribution, including but not limited to, taking the following actions:

(i) Determining whether the Contribution is in the interests of the Plan and of its participants and beneficiaries, and is protective of the rights of participants and beneficiaries of the Plan;

(ii) Determining whether and on what terms the Contribution should be accepted by the Plan;

(iii) If the Contribution is accepted by the Plan, establishing and administering the process (subject to such modifications as the Independent Fiduciary may make from time to time) for liquidating the Contributed Stock, as is prudent under the circumstances;

(iv) Determining the fair market value of the Contributed Stock as of the date of the Contribution;

(v) Monitoring the Contribution and holding of Contributed Stock on a continuing basis and taking all appropriate actions necessary to safeguard the interests of the Plan; and

(vi) If the Contribution is accepted by the Plan, voting proxies and responding to tender offers with respect to the Contributed Stock held by the Plan;

(b) Solely for purposes of determining the Plan's minimum funding requirements (as determined under section 412 of the Code), adjusted funding target attainment percentage (AFTAP) (as determined under Treas. Reg. section 1.436-1(j)(1)), and funding target attainment percentage (as determined under section 430(d)(2) of the Code), the Plan's actuary (the Actuary) will not count as a contribution to the Plan any shares of Contributed Stock that have not been liquidated;

(c) For purposes of determining the amount of any Contribution, the Contributed Stock shall be deemed contributed only at the time it is sold, equal to the lesser of: (1) The proceeds from the sale of such Contributed Stock; or (2) the value of such Contributed Stock on the date of the initial contribution as determined by the Independent Fiduciary;

(d) The Contributed Stock represents no more than 20% of the fair market value of the total assets of the Plan at the time it is contributed to the Plan;

(e) The Plan pays no commissions, costs, or other expenses in connection with the Contribution, holding, or subsequent sale of the Contributed

<sup>12</sup> For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

Stock, and any such expenses paid by Baxter will not be treated as a contribution to the Plan;

(f) Baxter makes cash contributions to the Plan to the extent that the cumulative proceeds from the sale of the Contributed Stock at each contribution due date (determined under section 303(j) of ERISA) are less than the cumulative cash contributions Baxter would have been required to make to the Plan, in the absence of the Contribution. Such cash contributions shall be made until all of the Contributed Stock is sold by the Plan; and

(g) Baxter contributes to the Plan cash amounts needed for the Plan to attain an AFTAP (determined under Treas. Reg. section 1.436-1(j)(1)) of at least 80% as of the first day of each plan year during which the Plan holds Contributed Stock, as determined by the Actuary, without taking into account any unsold Contributed Stock as of April 1 of the plan year.

*Effective Date:* This exemption is effective as of May 9, 2016, the date the Contribution was received by the Plan.

#### *Written Comments*

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption, published on April 28, 2016, at 81 FR 25441. All comments and requests for hearing were due by June 3, 2016. During the comment period, the Department received one substantive written comment, one substantive phone comment, and a variety of written and telephonic inquiries requesting information outside the scope of the proposed exemption. The Department did not receive any requests for a hearing from interested persons. A description of the comments and the Applicant's responses is below.

#### *Participant Comments and Applicant's Responses*

Among other things, the commenter expressed concern about exposing participants to additional risk from holding Baxalta stock in a transaction intended to benefit Baxter. The Applicant responds that participants in the Plan will not be subject to any additional risk from holding Baxalta stock because the value of the Baxalta stock at the time of the contribution was approximately \$700 million, and the plan subsequently sold the stock for approximately \$760 million, under the direction of the Independent Fiduciary. Accordingly, the Applicant represents that this transaction added about \$760 million in cash to the pension plan.

Furthermore, the Applicant notes that if Baxter had sold the stock and then put the cash into the Plan, it would have been required to pay taxes on the proceeds of the sale, which would have reduced the amount available to be contributed to the plan by approximately \$266 million. Putting the stock into the Plan first and then selling the stock under the supervision of the Independent Fiduciary yielded significantly more money for the Plan and its participants.

The commenter also stated that the contribution of the Baxalta Stock would exceed the Plan's allocation for large cap stocks. In response, the Applicant explains that the Baxter Investment Committee has amended the investment policy to permit the 24% target allocation to be exceeded temporarily to allow the plan to accept the contribution of the Baxalta stock, which as described above was sold by the plan shortly after the contribution. Thereafter, the proceeds from the sale of the Baxalta stock will be invested in accordance with the investment policy.

Finally, the commenter expressed concern about potential IRS challenges to the transaction and litigation risk to the Plan from Baxalta shareholders if the stock price was depressed as a result of this transaction. The Applicant notes that prior to seeking this individual exemption, Baxter obtained a ruling from the IRS that specifically allows it to contribute the Baxalta stock to the Plan (a copy of which was also provided to the Department as part of the application process) on a tax-free basis. The Applicant further explains that, if for any reason there were an IRS challenge, it would be Baxter's responsibility to respond to the IRS challenge, and it would not affect the funding of the Plan. Similarly, according to the Applicant, there is very little risk of litigation from Baxalta shareholders because during the spin-off, shareholders were made aware that such a disposition of Baxalta stock was possible and the Independent Fiduciary who has been retained to sell the Baxalta stock on behalf of the Plan is required under the terms of its agreement to sell the stock in such a manner as to minimize the impact of the sales on the market for Baxalta shares.

The Department received one other comment from a plan participant who inquired into Baxter's financial ability to continue funding the Plan after spinning off half the company into Baxalta. The Applicant represents that Baxter does not anticipate that the spin-off of Baxalta will reduce Baxter's financial ability to continue funding the Plan. Although Baxter is now a smaller

company, the Plan is also slightly smaller, because the portion of the Plan that benefits Baxalta employees was transferred to Baxalta, and Baxalta is responsible for funding that portion of the Plan (a new and distinct plan) after the spin-off. Finally, the Applicant states that the proposed exemption, if approved, would allow Baxter to make a one-time contribution to the plan of approximately \$760 million. This contribution increased the assets of the Plan by over 20%, significantly improving the funded status of the Plan. The Applicant explains that this means that Baxter's cost of funding the Plan in the future will be reduced.

#### *Applicant's Comment*

The Applicant also submitted the Final Report from the Independent Fiduciary (the Final Report), detailing the Contribution and subsequent liquidation of the Baxalta Stock. Fiduciary Counselors represents that on May 9, 2016, State Street, the Plan's trustee, received the Baxalta Contribution from Baxter. The Final Report provides that, while the Baxalta Contribution skewed the Large Cap weighting above the targeted 24.0%, this was a temporary deviation and the allocation will return to pre-Baxalta Contribution levels once the Baxalta Stock is sold. Fiduciary Counselors started liquidating the Baxalta Stock on May 10, 2016, and completed the liquidation on June 2, 2016. The Plan realized \$762,118,481.31 in gross proceeds. The Plan incurred \$188,070.01 of fees and expenses as part of the liquidation program, with a net gain to the Plan of \$761,930,411.30. Baxter reimbursed the Plan for such fees and expenses as well as additional portfolio accounting fees (\$208.33), custody fees (\$2,879.49), and trading fees (\$203.00) for a total reimbursement to the Plan of \$191,360.83.

After giving full consideration to the entire record, including all comments from interested persons and the responses from the Applicant, the Department has decided to grant the exemption, as described above. The complete application file (Application No. D-11866) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1515, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 28, 2016, at 81 FR 25441.

**FOR FURTHER INFORMATION CONTACT:** Mr. Erin S. Hesse of the Department, telephone (202) 693-8546. (This is not a toll-free number.)

**Sears Holdings 401(k) Savings Plan (the Savings Plan) and the Sears Holdings Puerto Rico Savings Plan (the PR Plan) (Together, the Plans), Located in Hoffman Estates, IL**

[Prohibited Transaction Exemption 2016-09; Exemption Application Nos. D-11871 and D-11872, respectively]

*Exemption*

Section I. Transactions

The restrictions of sections 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code,<sup>13</sup> shall not apply, effective for the period beginning June 11, 2015, and ending July 2, 2015, to the acquisition and holding by the Savings Plan of certain subscription rights (the Rights) to purchase shares of common stock (Seritage Growth Stock) in Seritage Growth Properties (Seritage Growth), in connection with an offering (the Offering) by Sears Holdings Corporation (Holdings or the Applicant) of Seritage Growth Stock, provided that the conditions, as set forth below, were satisfied for the duration of the acquisition and holding; and

(b) The restrictions of sections 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act<sup>14</sup> shall not apply, effective for the period beginning June 11, 2015, and ending July 2, 2015, to the acquisition and holding of the Rights by the PR Plan in connection with the Offering of Seritage Growth Stock by Holdings, provided that the conditions, as set forth below, were satisfied for the duration of the acquisition and holding.

Section II. Conditions

(a) The receipt of the Rights by the Plans occurred in connection with the Offering, in which all shareholders of the common stock of Holdings

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

<sup>14</sup> The Applicant represents that there is no jurisdiction under Title II of the Act with respect to the PR Plan because the PR Plan fiduciaries have not made an election under section 1022(i)(2) of the Act, whereby the PR Plan would be treated as a trust created and organized in the United States for purposes of tax qualification under section 401(a) of the Code. Accordingly, the Department is not providing exemptive relief from section 4975(c)(1)(E) of the Code for the acquisition and holding of the Rights by the PR Plan.

(Holdings Stock), including the Plans, were treated in the same manner;

(b) The acquisition of the Rights by the Plans resulted solely from an independent act of Holdings, as a corporate entity;

(c) Each shareholder of Holdings Stock, including each of the Plans, received the same proportionate number of Rights based on the number of shares of Holdings Stock held by each such shareholder;

(d) All decisions with regard to the holding and disposition of the Rights by the Plans were made by a qualified independent fiduciary (the Independent Fiduciary) within the meaning of 29 CFR 2570.31(j);<sup>15</sup>

(e) The Independent Fiduciary determined that it would be in the interest of the Plans to sell all of the Rights received in the Offering by the Plans in blind transactions on the New York Stock Exchange; and

(f) No brokerage fees, commissions, subscription fees, or other charges were paid by the Plans with respect to the acquisition and holding of the Rights; or were paid to any affiliate of the Independent Fiduciary or Holdings, in connection with the sale of the Rights.

*Effective Date:* This exemption is effective for the Offering period, beginning June 11, 2015, and ending July 2, 2015.

*Written Comments*

In the notice of proposed exemption (the Notice), the Department invited all interested persons to submit written comments within 52 days of the publication, on May 12, 2016, of the Notice in the **Federal Register**. All comments were due by July 3, 2016. During the comment period, the Department received three comments from interested persons and no requests for a public hearing. Two Savings Plan

<sup>15</sup> 29 CFR 2570.31(j) defines a "qualified independent fiduciary," in relevant part, to mean "any individual or entity with appropriate training, experience, and facilities to act on behalf of the plan regarding the exemption transaction in accordance with the fiduciary duties and responsibilities prescribed under the Act, that is independent of and unrelated to any party in interest engaging in the exemption transaction and its affiliates;" in general, a fiduciary is presumed to be independent "if the revenues it receives or is projected to receive, within the current federal income tax year from parties in interest (and their affiliates) [with respect] to the transaction are not more than 2% of such fiduciary's annual revenues based upon its prior income tax year. Although the presumption does not apply when the aforementioned percentage exceeds 2%, a fiduciary nonetheless may be considered independent based upon other facts and circumstances provided that it receives or is projected to receive revenues that are not more than 5% within the current federal income tax year from parties in interest (and their affiliates) [with respect] to the transaction based upon its prior income tax year."

participants submitted written comments. One participant supported the granting of the exemption, while the other did not. The third comment, which was submitted by the Applicant, requests several minor revisions and clarifications to the Notice.

Following is a discussion of the comment received by the Department from the objecting participant, and the one submitted by the Applicant. Also presented are the responses made by the Applicant to the participant's comment, as well as the Department's responses to the Applicant's comment.

Participant's Comment

In his comment letter of June 20, 2016, the participant represents that he is a Holdings' shareholder, who held a balance in the Savings Plan at the time of the Offering.<sup>16</sup> The participant states that "it appears I did not benefit from [the Offering] as I should have" because the price of Seritage Growth Stock decreased following the Offering. The participant inquires whether the exemption should reverse this loss.

In response to the participant's comment, the Applicant explains that while there have been fluctuations in the price of Holdings Stock during the relevant period, the Independent Fiduciary's decision to sell the Rights generated a positive gain for the Sears Holdings 401(k) Savings Plan Master Trust Stock Fund (the Stock Fund), of \$4,106,921.19, net of fees and expenses. According to the Applicant, changes in the value of a publicly-traded company's stock occur due to many factors, including the company's performance. Depending on the measurement period used, the Applicant represents that it is possible that a contemporaneous decline in the price of Holdings Stock negated the positive gain for the Stock Fund. However, according to the Applicant, the performance of Holdings Stock around the time of the Offering was beyond the control of the Plans and the Independent Fiduciary. It was also independent of any actions such as fiduciary took with respect to the Rights received by the Plans.

The Applicant also represents that Holdings made the decision to commence the Offering, which was a corporate decision, and was not fiduciary in nature. Further, the Applicant explains that no shareholder, including the Plans, had the ability to

<sup>16</sup> The participant also submitted the same comment to the Department in D-11851 and D-11852, involving the Sears Notes Offering, 81 FR 29709 (May 12, 2016); and in D-11846 and D-11847 involving the Sears Canada Offering, 81 FR 29705 (May 12, 2016).

prevent the Offering. Therefore, the only decision presented to the shareholders, including the Plans' fiduciaries, was how to dispose of the Rights that were distributed during the Offering. Because the Independent Fiduciary decided to sell the Rights, the Applicant represents that this event resulted in a significant deposit in the Stock Fund.

#### Applicant's Comment

1. *Scope of Exemptive Relief.* The Applicant states that it originally requested relief from the restrictions of sections 406(a)(1)(A), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act in the exemption application. However, the Applicant explains that the Department decided not to provide exemptive relief from section 406(a)(1)(A) of the Act in the Notice.

The Applicant believes the Plans' acquisition of the Rights to purchase Seritage Growth Stock did not involve a prohibited "sale or exchange, or leasing, of any property between the plan and a party in interest," as described in section 406(a)(1)(A) of the Act. The Applicant states that it provided the Rights automatically to all of its shareholders, including the Plans, in a manner similar to a stock dividend. The Applicant also points out that the Department has clarified that it "does not view an acquisition of stock by means of a stock dividend or stock split as a prohibited transaction," in the Preamble to Final Regulation, Fiduciary Responsibility; Statutory Exemption for Certain Acquisitions, Sales, or Leases of Property, 45 FR 51194, 51196 (August 1, 1980). Therefore, the Applicant does not believe an exemption from section 406(a)(1)(A) is required in the subject case. Therefore, the Applicant requests confirmation that the Department shares this view.

The Department concurs that exemptive relief from section 406(a)(1)(A) of the Act is not applicable to the Plans' acquisition of the Rights and that the scope of relief set forth in Section I of the proposed exemption, and this exemption, is appropriate for the transactions covered herein.

2. *Purchase of Units in Stock Funds.* Page 29714 of the Notice states that the Plans allow participants to "purchase units in certain stock funds which invest in Holdings Stock." The Applicant wishes to clarify that only one investment option in the Plans exists for the purpose of investment in Holdings Stock. The Stock Fund is held in the Sears Holdings 401(k) Savings Plan Master Trust, and participants in both the Savings Plan and the PR Plan

own Holdings Stock through this one Stock Fund.

The Department notes this clarification to the Notice.

3. *Entities Adopting the Savings Plan.* Page 29714 of the Notice states that "Sears, Roebuck and Co. (Sears Roebuck) and all of its wholly-owned (direct and indirect) subsidiaries (except Lands' End Inc. (Lands' End), Sears de Puerto Rico, Inc., Kmart Holding Corporation (Kmart), and its wholly-owned (direct and indirect) subsidiaries (excluding employees residing in Puerto Rico), and Sears Holdings Management Corporation, with respect to certain employees, have adopted the Savings Plan and are employers under such plan." The Applicant clarifies that Kmart Holding Corporation and its wholly-owned subsidiaries have adopted the Savings Plan and are employers under such plan (excluding employees residing in Puerto Rico). Also, the Applicant clarifies that employees of Sears de Puerto Rico, Inc. who reside in the United States participate in the Savings Plan.

The Department notes this clarification to the Notice.

4. *PR Plan and Holdings Stock.* Page 29715 of the Notice states that the PR Plan held "39,782,55" shares as of the record date. The Applicant clarifies that the number of shares held by the PR Plan has a misplaced decimal mark and should be revised to "39,782.55" shares.

The Department notes this clarification to the Notice.

5. *Holdings Description.* Page 29715 of the Notice states that Holdings "is a retail merchant with full-line and specialty retail stores in," among other places, Canada. The Applicant points out that in October and November of 2014, Holdings entered into a series of transactions, including a rights offering, to de-consolidate Sears Canada Inc. As a result of these transactions, Sears Holdings no longer maintains a controlling interest in Sears Canada Inc. and no longer itself, maintains stores in Canada.

The Department notes this clarification to the Notice.

6. *Role of the Independent Fiduciary.* Page 29716 of the Notice states that the Plans' Independent Fiduciary, Evercore Trust Company N.A., conducted a due diligence process evaluating the rights offering, including discussions and correspondence, that enabled it "to improve certain elements related to the Offering." The Applicant explains that, in pertinent part, Evercore's Independent Fiduciary Report states that its due diligence process enabled it to "better understand a number of

important elements related to the Rights Offering."

The Department notes this clarification to the Notice.

Accordingly, after giving full consideration to the entire record, the Department has decided to grant the exemption. The complete application file (Exemption Application Nos. D-11871 and D-11872) and the written comments are available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1515, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice published in the **Federal Register** on May 12, 2016 at 81 FR 29713.

**FOR FURTHER INFORMATION CONTACT:** Ms. Blessed Chukorsji-Keefe of the Department, telephone (202) 693-8567. (This is not a toll-free number.)

#### 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 section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 14th day of October 2016.

**Lyssa E. Hall,**

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

[FR Doc. 2016-25279 Filed 10-18-16; 8:45 am]

**BILLING CODE 4510-29-P**

## **NATIONAL ARCHIVES AND RECORDS ADMINISTRATION**

**[NARA-2017-004]**

### **Records Schedules; Availability and Request for Comments**

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when agencies no longer need them for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives of the United States and to destroy, after a specified period, records lacking administrative, legal, research, or other value. NARA publishes notice in the **Federal Register** for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

**DATES:** NARA must receive requests for copies in writing by November 18, 2016. Once NARA finishes appraising the records, we will send you a copy of the schedule you requested. We usually prepare appraisal memoranda that contain additional information concerning the records covered by a proposed schedule. You may also request these. If you do, we will also provide them once we have completed the appraisal. You have 30 days after we send to you these requested documents in which to submit comments.

**ADDRESSES:** You may request a copy of any records schedule identified in this notice by contacting Records Appraisal and Agency Assistance (ACRA) using one of the following means:

*Mail:* NARA (ACRA); 8601 Adelphi Road, College Park, MD 20740-6001.

*Email:* [request.schedule@nara.gov](mailto:request.schedule@nara.gov).

*FAX:* 301-837-3698.

You must cite the control number, which appears in parentheses after the name of the agency that submitted the schedule, and a mailing address. If you would like an appraisal report, please include that in your request.

#### **FOR FURTHER INFORMATION CONTACT:**

Margaret Hawkins, Director, by mail at Records Appraisal and Agency Assistance (ACRA); National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001, by phone at 301-837-1799, or by email at [request.schedule@nara.gov](mailto:request.schedule@nara.gov).

**SUPPLEMENTARY INFORMATION:** Each year, Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing records retention periods and submit these schedules for NARA's approval. These schedules provide for timely transfer into the National Archives of historically valuable records and authorize the agency to dispose of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless otherwise specified. An item in a schedule is media neutral when an agency may apply the disposition instructions to records regardless of the medium in which it creates or maintains the records. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is expressly limited to a specific medium. (See 36 CFR 1225.12(e).)

Agencies may not destroy Federal records without Archivist of the United States' approval. The Archivist approves destruction only after thoroughly considering the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value.

In addition to identifying the Federal agencies and any subdivisions requesting disposition authority, this notice lists the organizational unit(s) accumulating the records (or notes that the schedule has agency-wide

applicability when schedules cover records that may be accumulated throughout an agency); provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction); and includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it also includes information about the records. You may request additional information about the disposition process at the addresses above.

#### **Schedules Pending**

1. Department of Defense, National Guard Bureau (DAA-0168-2016-0003, 3 items, 2 temporary items). Records relating to legislative inquiries to agency leadership including routine or administrative information. Proposed for permanent retention are records relating to questions of policy, budget, appropriations and similar records.

2. Department of Defense, Office of the Secretary of Defense (DAA-0330-2016-0015, 1 item, 1 temporary item). Master files of an electronic information system used to track nominators and candidates of a program for business and community leaders to gain a greater awareness of national defense issues.

3. Department of Defense, Office of the Secretary of Defense (DAA-0330-2016-0016, 1 item, 1 temporary item). Records relating to employers who have pledged to provide a supportive work environment for members of the National Guard and Reserves.

4. Department of Energy, Agency-wide (DAA-0434-2016-0007, 2 items, 1 temporary item). Records relating to the Ombudsman program including case files. Proposed for permanent retention are the charter, mission statement, and statistical analysis.

5. Department of Health and Human Services, Office of the Secretary (DAA-0468-2016-0002, 8 items, 4 temporary items). Records of the Office of the Inspector General including routine correspondence, regulation support records, testimonies, and working papers. Proposed for permanent retention are substantive Congressional correspondence and mandated reports, policy records, and press releases.

6. Department of Homeland Security, Immigration and Customs Enforcement (DAA-0567-2015-0008, 8 items, 8 temporary items). Protective equipment records including incident case files, annual incident reports, proficiency and instructor certifications, body armor