

**DEPARTMENT OF LABOR****Employee Benefits Security Administration****Proposed Exemptions From Certain Prohibited Transaction Restrictions**

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

**ACTION:** Notice of proposed exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions 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 proposed exemptions: D-11895, The Grossberg, Yochelson, Fox & Beyda LLP Profit Sharing Plan; L-11867, Toledo Electrical Joint Apprenticeship & Training Fund; and D-11929 and D-11930, Health Management Associates, Inc. Retirement Savings Plan (the HMA Plan) and The Mooresville Retirement Savings Plan (the Mooresville Plan).

**DATES:** All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice.

**ADDRESSES:** Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, U.S. Department of Labor, 200 Constitution Avenue NW., Suite 400, Washington, DC 20210. Attention: Application No. \_\_\_\_, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via email or FAX. Any such comments or requests should be sent either by email to: [moffitt.betty@dol.gov](mailto:moffitt.betty@dol.gov), or by FAX to (202) 693-8474 by the end of the scheduled comment period. The applications for exemption and the

comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1515, 200 Constitution Avenue NW., Washington, DC 20210.

**Warning:** All comments will be made available to the public. Do not include any personally identifiable information (such as Social Security number, name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

**SUPPLEMENTARY INFORMATION:****Notice to Interested Persons**

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).<sup>1</sup> 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 requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

<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 Grossberg, Yochelson, Fox & Beyda LLP Profit Sharing Plan (the Plan or Applicant) Located in Washington, DC**

[Application D-11895]

**Proposed Exemption**

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011). If the exemption is granted, 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 of the Code, by reason of section 4975(c)(1)(A), (D) and (E) of the Code,<sup>2</sup> will not apply to the proposed sale (the Sale) by the Plan of a limited liability company interest (the LLC Interest) to GYFB-Commons, LLC (GYFB-Commons), an entity that will be owned by the current partners of the law firm, Grossberg, Yochelson, Fox & Beyda, LLP (the Plan Sponsor).

**Summary of Facts and Representations***The Plan Sponsor*

1. The Plan Sponsor is a commercial real estate law firm located in Washington, DC. Founded in 1930, the Plan Sponsor is organized as a general partnership. The Plan Sponsor's fourteen attorneys provide legal services in commercial real estate law through their focus on the acquisition, sale, financing, leasing and taxation of real property. In addition, the Plan Sponsor advises its clients on corporate and general business law, tax, estate planning and other areas of the law. The current Owners of the Plan Sponsor are: C. Richard Beyda, Lawrence A. Miller, Gerald P. Grossberg, Linton W. Hengerer, Richard F. Levin, Brett D. Orlove, and Michael D. Ravitch.

*The Plan*

2. The Plan is a defined contribution plan having 24 participants as of December 31, 2016. As of December 31, 2015, the Plan had total assets of approximately \$13,540,000.

The Plan is comprised of a salary reduction source (401(k)), a non-elective source (profit sharing), and a money purchase pension source (resulting from a prior plan merger). Messrs. Beyda, Miller, Grossberg, Levin, and Orlove are the Plan trustees (the Trustees), and in

<sup>2</sup> For purposes of this proposed exemption, references to section 406 of Title I of the Act, unless otherwise specified, should be read to refer as well to the corresponding provisions of section 4975 of the Code.

this capacity, they have investment discretion over certain of the Plan's assets. The Trustees are also owners of the Plan Sponsor.

3. Participants direct the investments in the employee-funded, salary reduction portion of the Plan into their respective individual accounts. TD Ameritrade serves as the custodian of the participant-directed accounts under a 401(k) platform. As of December 31, 2015, the employee-funded portion of the Plan held total assets of \$2,502,000.

4. The Trustees direct the investments in the employer-funded, non-elective and money purchase portions of the Plan. As of December 31, 2015, the assets in the employer-funded portion of the profit sharing and the former money purchase plan assets totaled \$11,038,000. The assets in the employer-funded portion of the Plan consist of \$10,461,000 in cash, and the LLC Interest described herein, with a book value of \$577,000. Further, the assets of the employer-funded portion of the Plan are allocated \$6,207,000 to near-retiring partners of the Plan Sponsor, and \$4,831,000 to other Plan participants.

#### *The LLC Interest*

5. On October 19, 2000, the Trustees acquired a 2.59067% membership interest in the LLC for the employer-funded portion of the Plan. The business purpose of the LLC is to own, develop and operate a 30% tenants-in-common interest initially in a multifamily residential apartment project in McLean, Virginia, known as "The Commons of McLean" (The Commons). The LLC has a termination date of December 31, 2090, unless terminated earlier under the terms of the Articles of Organization of Common Investors, LLC (the Articles of Organization).

6. The Plan paid \$250,000, in cash, for the LLC Interest. At the time of the investment, the Plan was one of approximately fifty investors in the LLC (the LLC Members). The remaining 97.40933% LLC Interests were held by individuals, non-retirement plans and individual retirement accounts. According to the Applicant, none of the other LLC Members were or are currently affiliated with or related to the Plan or the Plan Sponsor.

7. Investments from all LLC Members totaled \$9,850,000. During 2000, the LLC used the funds to complete its purchase of The Commons from an unrelated party. Also to complete the purchase, the LLC borrowed \$13,690,500 from an unrelated commercial lender.

8. During 2001, additional investors (unrelated to the Plan) were admitted to the LLC as LLC Members. As a result, the Plan's investment became diluted and was re-calculated by the Manager at 1.903553% of the LLC.

9. Since its inception, the LLC has engaged in multiple real estate transactions, which have included selling The Commons, and acquiring various commercial and residential buildings in Washington, DC and Northern Virginia. Through 2016, the LLC has distributed \$256,535.08 to the Plan.

10. Pursuant to the LLC's Articles of Organization, a Member "may not transfer, assign or encumber all or any part of his Membership Interest in the [LLC] without first obtaining the written consent of the Manager." The Trustees sought approval from the Manager to sell the LLC interest to an unrelated party. In a letter to the Trustees, dated December 22, 2015, the Manager refused to allow such sale, and also refused to purchase the LLC Interest. According to the Applicant, as a compromise, the Manager agreed to allow a sale of the LLC Interest by the Plan to an entity comprised of the Plan Sponsor's Owners.

#### *Proposed Sale of the LLC Interest*

11. To improve the Plan's liquidity, the Trustees have decided to sell the LLC interest to GYFB-Commons, an entity, that will be formed and funded by the Owners as a limited liability company under the laws of the District of Columbia, when the exemption is granted. The Applicant represents that three Owners of the Plan Sponsor, Messrs. Beyda, Miller, Grossberg, anticipate retiring in the near future. According to the Applicant, following the payouts to the "near-retiring" Owners, the remaining pooled investments (\$4,772,000) will consist of \$4,254,000 (89%) of cash securities, and the LLC Interest.

12. The proposed Sale will be a one-time transaction for cash, whereby the Plan receive no less than the fair market value of the LLC Interest as determined by qualified independent appraiser (the Independent Appraiser) in an updated appraisal on the date of the Sale. Further, the terms and conditions of the Sale are no less favorable to the Plan than the terms the Plan would receive under similar circumstances in an arm's-length transaction with an unrelated third party. Finally, the Plan will not pay any commissions, fees, or other costs or expenses associated with the Sale, including the fees of the Independent Appraiser and the costs of obtaining the exemption, if granted.

#### *Analysis*

13. Section 406(a)(1)(A) and (D) of the Act states that a fiduciary with respect to a plan shall not cause a plan to engage in a transaction if he knows or should know that such transaction constitutes a direct or indirect sale or exchange of any property between the Plan and a party in interest, or a transfer to, or use by or for the benefit of, a party in interest, of any assets of the Plan.

GYFB-Commons is a party in interest with respect to the Plan under section 3(14)(G) of the Act because once it is formed, it will be an entity that is more than 50% owned by the Owners of the Plan Sponsor. In addition, as Trustees of the Plan, Messrs. Beyda, Miller, Grossberg, Levin and Orlove are parties in interest with respect to the Plan under section 3(14)(A) of the Act because they are fiduciaries. Therefore, in the absence of a statutory or an administrative exemption, the Sale by the Plan of the LLC Interest to GYFB-Commons would violate section 406(a)(1)(A) and (D) of the Act.

Section 406(b)(1) of the Act prohibits a plan fiduciary from dealing with the assets of the plan in his own interest or for his own account. Moreover, section 406(b)(2) of the Act prohibits a plan fiduciary, in his or her individual or in any other capacity, from acting in any transaction involving the plan on behalf of a party whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries.

The Sale by the Plan of the LLC Interest to GYFB-Commons, would violate section 406(b)(1) of the Act because the Trustees, as fiduciaries, would be causing the Plan to sell the LLC Interest to themselves. In addition, the Sale would violate section 406(b)(2) of the Act because the Trustees, in approving the Sale, would be acting on both sides of the transaction.

#### *Appraisal of LLC Interest*

14. In an engagement letter dated August 25, 2015, the Trustees retained Berlin, Ramos & Company, P.A. of Rockville, Maryland (the Appraiser), to determine the fair market value of the LLC Interest. Joseph K. Speicher, a principal and shareholder of the Appraiser, was responsible for appraising the LLC Interest, and issuing an appraisal report (the Appraisal Report) to the Trustees. Mr. Speicher represents that he is a Certified Public Accountant and a Certified Valuation Analyst. In addition, Mr. Speicher represents that he, and the Appraiser, do not have a relationship with any party in interest involved in the proposed transaction that would allow

those individuals to control or materially influence him or the Appraiser, to provide an independent and accurate determination of the fair market value of the LLC Interest. In this regard, Mr. Speicher states that during 2016, the Appraiser's revenues of \$42,787.19 that were derived from parties in interest with respect to the Plan represented approximately 0.42% of the Appraiser's total gross revenues of \$10,100,000.

In an Appraisal Report dated May 25, 2016, Mr. Speicher determined the fair market value of LLC Interest as of September 15, 2015. Mr. Speicher limited his calculation to the "Guideline Company Method" under the Market Approach. In accordance with the Guideline Company Method, sales and other statistics of similar investments and sales transactions are analyzed to determine pricing multiples to be applied to the Company. Mr. Speicher represented that the multiple derived from the comparable company data is applied to the Net Asset Value of the LLC. Because each of the properties associated with the LLC was recently acquired, Mr. Speicher also stated that the fair market values of the properties and the balance of associated liabilities could be readily determined.

As of September 30, 2015, Mr. Speicher determined that the net asset values of the LLC and the LLC Interest were \$46,649,682 and \$888,001, respectively. After applying a Price/Net Asset Value percentage of 73% to the net asset value of the LLC Interest, Mr. Speicher decided that the value of the Plan's non-controlling, marketable interest in the LLC was \$648,000. Mr. Speicher next concluded that the \$648,000 estimated value of the LLC Interest should be reduced by 20% (or \$129,000) due to lack of marketability, and he ultimately placed the fair market value of the LLC Interest at \$518,400, as of September 30, 2015. Based on Mr. Speicher's valuation, the LLC Interest would represent approximately 4% of the Plan's assets.

In an addendum to the Appraisal Report dated November 30, 2016, Mr. Speicher concluded that there had been no material change in the value of the LLC Interest since September 30, 2015. He will update the Appraisal Report on the date of the Sale, and will provide the updated Appraisal Report to the Department, where it will be included in, and available, as part of the record developed under D-11895.

#### *Statutory Findings*

14. The Applicant represents that the proposed transaction is administratively feasible because it is a one-time, all cash

transaction. In addition, no borrowing or payment terms are necessary, and the Manager of the LLC (who has sole authority to approve or deny such a transaction) has approved the proposed purchase.

The Applicant represents that the proposed transaction is in the interests of the Plan and its participants and beneficiaries because the Sale will: (a) Reduce the Plan's future administrative costs associated with its owning the LLC Interest; (b) allow the Plan to more completely diversify its investments, as appropriate; and (c) not require the Plan to pay any commissions, costs, or other expenses in connection with the proposed transaction. The Applicant also represents that the proposed transaction is protective of the rights of the Plan's participants and beneficiaries because the Sale will be for no less than the current fair market value of the LLC Interest, as determined by a qualified independent appraiser.

#### *Summary*

15. Given the conditions described below, the Department has tentatively determined that the relief sought by the Applicant satisfies the statutory requirements for an exemption under section 408(a) of the Act.

#### **Proposed Exemption Operative Language**

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011). If the exemption is granted, 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 of the Code, by reason of section 4975(c)(1)(A), (D) and (E) of the Code,<sup>3</sup> will not apply to the proposed sale (the Sale) by the Plan of a limited liability company interest (the LLC Interest) to GYFB-Commons, LLC (GYFB-Commons), an entity that will be owned by the current partners of the law firm, Grossberg, Yochelson, Fox & Beyda, LLP (the Plan Sponsor), if the following conditions are met:

(a) The Sale of the LLC Interest is a one-time transaction for cash;

(b) The Sale price for the LLC Interest is the greater of: \$518,400; or the fair market value of the LLC Interest as

<sup>3</sup> For purposes of this proposed exemption, references to section 406 of Title I of the Act, unless otherwise specified, should be read to refer as well to the corresponding provisions of section 4975 of the Code.

determined by a qualified independent appraiser (the Independent Appraiser) in an updated appraisal on the date of the Sale. The updated appraisal must be submitted to the Department within 30 days of the Sale and will be included as part of the record developed under D-11895;

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

(d) The Plan pays no commissions, fees, or other costs or expenses associated with the Sale, including the fees of the Independent Appraiser and the costs of obtaining the exemption, if granted.

#### **Notice to Interested Persons**

The Applicant will provide notice of the proposed exemption to all interested persons by either hand delivery (active participants) or via U.S. mail, certified return receipt (inactive participants and/or beneficiaries) within 10 days of the date of publication of this notice of proposed exemption in the **Federal Register**. Such notice will include a copy of the proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2). The supplemental statement will inform interested persons of their right to comment on and/or to request a hearing with respect to the proposed exemption. Comments and requests for a hearing are due forty (40) days after publication of this notice in the **Federal Register**.

All comments will be made available to the public.

**Warning:** Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

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

Blessed Chuksorji-Keefe of the Department, telephone (202) 693-8567. (This is not a toll-free number.)

#### **Toledo Electrical Joint Apprenticeship & Training Fund (the Training Plan or the Applicant) Located in Rossford, Ohio**

[Application No. L-11867]

#### **Proposed Exemption**

The Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and in accordance with the

procedures set forth in 29 CFR part 2570, subpart B (76 FR 46637, 66644, October 27, 2011). If the exemption is granted, the restrictions of sections 406(a)(1)(A), 406(a)(1)(D), and 406(b)(1) and 406(b)(2) of the Act, shall not apply to the Purchase (the Purchase) by the Training Plan of certain unimproved real property (the Property) from the International Brotherhood of Electrical Workers Local Union No. 8 Building Corporation (the Building Corporation), a party in interest with respect to the Training Plan.

#### Summary of Facts and Representations<sup>4</sup>

##### *The Training Plan*

1. The Training Plan was established in November 1992 pursuant to a trust agreement (the Trust Agreement) entered into between the Toledo Chapter of the National Electrical Contractors Association, Inc. (the Contractors Association)<sup>5</sup> and Local Union No. 8 of the International Brotherhood of Electrical Workers (the Union). The Training Plan was established to finance education and training programs sponsored by the Joint Apprenticeship Training Committee (the JATC).

The Training Plan provides training programs in electrical, rigging and other electrical construction skills to members of the Union. The Training Plan currently carries out its training functions in a 32,000 square foot training facility located at 803 Lime City Road, Rossford, Ohio (the Existing Training Facility).

The Training Plan is jointly administered by a board of trustees (the Trustees), consisting of equal representation from Employer Trustees that are affiliated with the Contract Association (the Employer Trustees) and Union Trustees that are affiliated with the Union (the Union Trustees). Pursuant to the Trust Agreement, the Trustees have the discretionary authority to manage, control and invest the assets of the Training Plan. As of December 31, 2015, the Training Plan covered 1,179 participants and had approximately \$6,765,000 in total assets, which included approximately \$3,760,000 in cash and cash equivalents and \$3,005,000 in other assets, such as property, equipment and deposits.

<sup>4</sup> The Summary of Facts and Representations is based on the Applicant's representations and does not reflect the views of the Department, unless indicated otherwise.

<sup>5</sup> The Applicant represents that the Toledo Chapter of the National Electrical Contractors Association, Inc. is an association of contractors that negotiates with unions to set wages, hours and terms of conditions of apprentices and journeymen.

##### *The Building Corporation*

2. The Building Corporation is a non-profit corporation, wholly-owned by the Union. The Building Corporation was formed to hold title to real property and collect and hold income on behalf of the Union. The Building Corporation is managed by an eleven member board of trustees, which is comprised of officers of the Building Corporation and the Union.

##### *The Property*

3. Among the assets of the Building Corporation is a 2.5 acre parcel of vacant and unimproved land that is located at 1129 Electrical Industrial Court, Rossford, Ohio. The Property is adjacent to the Training Plan's Existing Training Facility. The Building Corporation acquired the Property on August 26, 2011, from the Labor Management Cooperation Committee, Inc. (the LMCC), an entity affiliated with both the Union and the Building Corporation for an unknown acquisition price. The Building Corporation currently holds title to the Property, which is free and clear of any mortgage or other encumbrance.

##### *Exemption Request*

4. The Training Plan seeks to purchase the Property from the Building Corporation. In this regard, if this exemption is granted, the Training Plan intends to utilize the Property to expand the size of its Existing Training Facility from 32,000 square feet to approximately 40,000 square feet. Pursuant to its stated expansion plans, the Training Plan will construct a 7,500 square foot pre-engineered building that will include 17 classrooms, 2 shop areas, a multipurpose room, and an administrative office area (the New Training Facility). The New Training Facility will accommodate training in rigging, cranes, forklifts, and other skills that the Existing Training Facility cannot provide. Based on preliminary cost estimates from local construction companies, the Applicant represents that the New Training Facility will cost approximately \$240,000.

The Training Plan also intends to install a solar energy field (the Solar Field) on the Property to train Training Plan participants in solar panel installation and maintenance. The Applicant represents that Solar Field will cost approximately \$760,000 to construct. The Applicant also represents that the seller of the solar panels will not be a party in interest with respect to the Training Plan, and that electricity generated by the solar panels will be for the sole use and benefit of the Training

Plan. Further, the Applicant represents that installation work for the Solar Field will be undertaken by electrical apprentices and journeypersons, as part of their respective training.

##### *The Purchase*

5. In connection with the request for an exemption, the Training Plan has submitted a Real Estate Purchase Agreement which will govern the terms of the Purchase (the Purchase Agreement). As stated in the Purchase Agreement, the Training Plan will pay cash to acquire the Property and will not finance any portion of the purchase price. As also stated in the Purchase Agreement, the Training Plan will not pay any real estate fees, commissions or other expenses in connection with the Purchase, with the exception of the fees noted above.

A qualified independent fiduciary (the Independent Fiduciary) will represent the interests of the Training Plan with respect to the proposed transaction. The Independent Fiduciary will base the fair market value of the Property on an appraisal report (the Appraisal Report) that has been prepared of the Property by a qualified independent appraiser (the Independent Appraiser) on the date of the Purchase. The purchase price for the Property will be reduced by the total fees paid by the Training Plan for: (a) Independent Fiduciary services; (b) Independent Appraiser services; (c) environmental assessments of the Property; (d) feasibility studies of the Property; (e) closing costs associated with the Purchase; and (f) attorney's fees.<sup>6</sup>

As reflected in meeting minutes, the Union Trustees recused themselves from participation in the decision to acquire the Property on behalf of the Training Plan. Only the Employer Trustees voted in favor of proceeding with the proposed Purchase.

Finally, the Purchase will not be part of an agreement, arrangement, or understanding that is designed to benefit the Union. Further, the terms and conditions of the Purchase will be at least as favorable to the Training Plan as those obtainable in an arm's-length transaction with an unrelated party.

##### *Analysis*

6. The Applicant represents that the proposed Purchase violates sections 406(a)(1)(A), 406(a)(1)(D), 406(b)(1), and

<sup>6</sup> The Applicant represents that as of March 24, 2017, the Training Plan has incurred expenses totaling \$13,255.75 in connection with the proposed Purchase. These expenses include fees for the Independent Appraiser, the Independent Fiduciary and for legal services rendered in connection with the proposed Purchase.

406(b)(2) of the Act. Section 406(a)(1)(A) of the Act provides, in part, that a fiduciary with respect to a plan shall not cause a plan to engage in a transaction if the fiduciary knows or should know that such transaction constitutes a direct or indirect sale of any property between a plan and a party in interest. Section 406(a)(1)(D) of the Act provides that a fiduciary with respect to a plan shall not cause a plan to engage in a transaction if the fiduciary knows or should know that such transaction constitutes a direct or indirect transfer to, or use by or for the benefit of, a party in interest, of any assets of the plan.

In addition, Section 3(14)(A) of the Act defines the term “party in interest” to include a fiduciary, such as the Trustees. Section 3(14)(D) of the Act defines the term “party in interest” to include an employee organization whose members are covered by a plan, such as the Union. Section 3(14)(G) of the Act defines the term “party in interest” to include a corporation of which 50% or more of the combined voting power of all classes of stock entitled to vote are owned directly or indirectly or held by an employee organization, such as the Building Corporation. Thus, in the absence of a statutory or administrative exemption, the proposed Purchase would violate section 406(a)(1)(A) and section 406(a)(1)(D) of the Act.

Section 406(b)(1) of the Act prohibits a fiduciary from dealing with the assets of the plan in such fiduciary’s own interest or for such fiduciary’s personal account. Section 406(b)(2) of the Act prohibits a fiduciary from acting in such fiduciary’s individual or other capacity in any transaction involving the plan on behalf of a party (or from representing a party) whose interests are adverse to the interests of the Plan, or the interests of the Plan participants and beneficiaries.

Section 406(b)(2) of the Act prohibits a fiduciary from acting in such fiduciary’s individual or other capacity in any transaction involving the plan on behalf of a party (or from representing a party) whose interests are adverse to the interests of the Plan, or the interests of the Plan participants and beneficiaries. As Trustees to the Training Plan and Union officers, the Union Trustees would be engaged in a prohibited act of self-dealing by causing the Training Plan to purchase the Property from the Union. The Union Trustees would also have divided loyalties in representing both the interests of the Training Plan and the Union with respect to the transaction. Therefore, the proposed Purchase would

also violate section 406(b)(1) and section 406(b)(2) of the Act.

#### *The Independent Fiduciary*

7. The Trustees have retained Bennett Speyer and Reed Hauptman of the law firm, Shumaker, Loop and Kendrick, LLP of Toledo, Ohio, to serve as the Independent Fiduciary for the Training Plan. The Independent Fiduciary represents that it has extensive experience in representing sponsors and fiduciaries of employee benefit plans. Further, the Independent Fiduciary represents that it has substantial knowledge and experience in real estate transactions and the due diligence customarily associated with such transactions.

Mr. Hauptman, who is a member of the Independent Fiduciary’s management committee, is admitted to practice law in Ohio and Michigan and has 16 years of experience in real estate finance and development, land use planning, and business law. Mr. Speyer, who is also admitted to practice law in Ohio, has 25 years of experience in employee benefits law, including ERISA.

8. Messrs. Hauptman and Speyer represent that they are independent of and unrelated to the Union and the Building Corporation, and that they will not directly or indirectly receive any compensation or other consideration for their own account in connection with the Purchase, except for fees received in connection with their Independent Fiduciary duties. In addition, Messrs. Hauptman and Speyer represent that the annual compensation received by their law firm in connection with the Purchase is less than 0.5% of the firm’s annual revenues for the year 2015.

9. In representing the interests of the Training Plan, the Independent Fiduciary will: (a) Determine whether the Purchase is in the interests of, and protective of, the Training Plan and the Training Plan participants; (b) review, negotiate, and approve the terms and conditions of the Purchase; (c) review and approve the methodology used by the Independent Appraiser in the Appraisal Report to ensure such methodology is consistent with sound principles of valuation, prior to the consummation of the Purchase; (d) ensure that the appraisal methodology is properly applied by the Independent Appraiser in determining the fair market value of the Property on the date of the Purchase, and determine whether it is prudent to proceed with such transaction; (e) represent the Training Plan’s interests for all purposes with respect to the Purchase; and (f) not later than 90 days after the Purchase is

completed, submit a written statement to the Department confirming that the purchase price paid by the Training Plan for the Property met the requirements of the exemption.

#### *The Independent Fiduciary Report*

10. In the Independent Fiduciary Report, the Independent Fiduciary concludes that the proposed Purchase will provide the Training Plan with the opportunity to expand and improve its training offerings, which will help Training Plan participants remain competitive in the electrical construction industry. The Independent Fiduciary also concludes that Training Plan participants will benefit from the ease and accessibility of a campus arrangement by consolidating a variety of training opportunities into a single location.

11. The Independent Fiduciary represents that an expansion of the Existing Training Facility is necessary and in the best interest of Training Plan participants because the Training Plan is currently limited in its training capacity and offerings due to the limited size of the Existing Training Facility. The Independent Fiduciary represents that the Purchase will allow the Training Plan to expand the Existing Training Facility with minimal difficulty or hardship to the Training Plan’s participants. The Independent Fiduciary explains that characteristics of the Property make it uniquely suited to the Training Plan’s needs because: (a) The 2.5 acres of land comprising the Property are vacant, unimproved, nearly level and unshaded; (b) there are no recognized environmental conditions affecting the Property; and (c) zoning on the Property permits the construction of a solar field. The Independent Fiduciary also notes that a feasibility study of the Property concluded that the Property is the most desirable location for the Training Plan’s construction of the Solar Field.

12. The Independent Fiduciary represents that the terms and conditions of the proposed Purchase are at least as favorable to the Training Plan as those obtainable in an arm’s-length transaction with an unrelated party. In this regard, the Independent Fiduciary notes that the Building Corporation will pay all real estate taxes and assessments due and payable as of the closing date of the proposed Purchase, as well as all applicable transfer taxes and conveyance fees.

13. The Independent Fiduciary represents that it has reviewed the title commitment for the Property and has confirmed ownership of the Property by the Building Corporation. The

Independent Fiduciary also represents that it has verified with the City of Rossford Zoning Inspector that the current zoning of the Property allows for the construction of the Solar Field and the New Training Facility.

14. The Independent Fiduciary represents that the Training Plan has sufficient assets to pay for the acquisition of the Property and the planned improvements. In this regard, the Independent Fiduciary states that: (a) The Training Plan's operations are adequately funded through employer contributions on an ongoing basis; (b) the acquisition cost of the Property will involve approximately 1.4% of the Training Plan's total assets; and (c) the planned improvements will involve approximately 16.2% of the Training Plan's total assets. The Independent Fiduciary concludes that these costs will not have a material effect on the operation of the Training Plan.

#### *The Independent Appraiser*

15. The Independent Fiduciary has retained Martin + Wood Appraisal Group of Toledo, Ohio to render an opinion of the fair market value of the Property. The Independent Appraiser is a professional real estate appraisal and consulting firm located in Toledo, Ohio. Hubert L. Winegardner and Kenneth Wood have undertaken the specific duties of the Independent Appraiser. Mr. Winegardner is a Certified General Real Estate Appraiser with approximately 11 years of appraisal experience. Mr. Wood, a Review Appraiser and a Certified General Real Estate Appraiser with approximately 23 years of appraisal experience, is the President/CEO of the Independent Appraiser.

16. The Independent Appraiser represents that its fee for appraisal services provided in connection with the proposed Purchase represents less than 0.5% of its annual revenues in 2014 and 2015, which are the years it has provided such services.

17. In valuing the Property, the Independent Appraiser utilized the Sales Comparison Approach to valuation. As the Independent Appraiser explains in the Appraisal Report, "the Sales Comparison Approach is frequently considered the most reliable indicator of value, as it directly reflects prices currently being paid for comparable properties within the local market. This approach, according to the Independent Appraiser, typically provides a highly supportable estimate of value for relatively homogeneous properties where adjustments are few and relatively simple to compute." After taking four

comparable sales and one listing into consideration, the Independent Appraiser estimated the value of the Property to be \$110,000, as of February 9, 2015. The Independent Appraiser will update the Appraisal Report on the date of the Purchase.

#### *The Environmental Assessment*

18. To further examine the appropriateness of the Property for the Training Plan's desired use, the Independent Fiduciary commissioned a Phase I Environmental Site Assessment to identify recognized environmental conditions on the Property. On September 4, 2013, Watterson Environmental & Facilities Management of Sylvania, Ohio, an unrelated party, completed a Phase I Environmental Site Assessment of the Property (the Environmental Assessment) which revealed no evidence of any Recognized Environmental Conditions in connection with the Property. The Environmental Assessment also noted that there were no visual indications of aboveground or underground storage tanks or any indication of historic underground storage tanks on the Property.

#### *Statutory Findings*

19. The Applicant states that the proposed Purchase will involve a one-time transaction that will require no financing, as the Training Plan will pay for the purchase and subsequent construction of the New Training Facility and the Solar Field using available cash. Additionally, the Applicant emphasizes that the proposed Purchase will be carried out under the supervision and direction of the Independent Fiduciary, who will represent the Plan in all aspects of the transaction.

20. The Applicant represents that the proposed Purchase is in the interest of the Plan and its participants and beneficiaries and are protective of their rights. In this regard, the Applicant states that the Training Plan's acquisition of the Property and the subsequent construction of the New Training Facility and the Solar Field will provide Training Plan participants with an expanded, updated, modernized and fully owned training facility which will allow participants to train and develop their electrical tradesmen skills and to adapt with changes in the electrical construction industry. In addition, due to the proximity of the Property to the Training Plan's Existing Training Facility, the Applicant represents that Training Plan participants will benefit from the ease and accessibility of a campus

arrangement in which they will have access to a variety of training opportunities at a single location.

#### *Summary*

21. Given the conditions described below, the Department has tentatively determined that the relief sought by the Applicant satisfies the statutory requirements for an exemption under section 408(a) of the Act.

#### **Proposed Exemption Operative Language**

The Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 46637, 66644, October 27, 2011). If the exemption is granted, the restrictions of sections 406(a)(1)(A), 406(a)(1)(D), 406(b)(1) and 406(b)(2) of the Act, shall not apply to the Purchase by the Training Plan of the Property from the Building Corporation, a party in interest with respect to the Training Plan, provided that the following conditions are satisfied:

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

(b) The purchase price paid by the Training Plan to the Building Corporation is equal to the fair market value of the Property, as determined by a qualified independent fiduciary (the Independent Fiduciary), based upon an appraisal of the Property (the Appraisal Report) by a qualified independent appraiser (the Independent Appraiser) on the date of the Purchase, less the total fees paid by the Training Plan for: (i) Independent Fiduciary services; (ii) Independent Appraiser services; (iii) environmental assessments of the Property; (iv) feasibility studies of the Property; (v) closing costs associated with the Purchase; and (vi) attorney's fees.

(c) The Training Plan trustees appointed by the Union (the Union Trustees) recuse themselves from all aspects relating to the decision to purchase the Property on behalf of the Training Plan;

(d) With respect to the Purchase, the Independent Fiduciary undertakes the following duties on behalf of the Training Plan:

(1) Determines whether the Purchase is in the interests of, and protective of the Training Plan and the Training Plan participants;

(2) Reviews, negotiates, and approves the terms and conditions of the Purchase;

(3) Reviews and approves the methodology used by the Independent Appraiser in the Appraisal Report to

ensure such methodology is consistent with sound principles of valuation, prior to the consummation of the Purchase;

(4) Ensures that the appraisal methodology is properly applied by the Independent Appraiser in determining the fair market value of the Property on the date of the Purchase, and determines whether it is prudent to proceed with such transaction;

(5) Represents the Training Plan's interests for all purposes with respect to the Purchase; and

(6) Not later than 90 days after the Purchase is completed, submits a written statement to the Department demonstrating that the Purchase has satisfied the requirements of Condition (b), above;

(e) The Training Plan does not incur any fees, costs, commissions or other charges as a result of the Purchase, with the exception of the fees reimbursed by the Building Corporation, as set forth in Condition (b);

(f) The Purchase is not part of an agreement, arrangement, or understanding designed to benefit the Union; and

(g) The terms and conditions of the Purchase are at least as favorable to the Training Plan as those obtainable in an arm's-length transaction with an unrelated party.

#### Notice to Interested Persons

The persons who may be interested in the publication in the **Federal Register** of the Notice of Proposed Exemption (the Notice) include all individuals who are participants in the Plan. It is represented that such interested persons will be notified of the publication of the Notice by first class mail to such interested person's last known address within 15 days of publication of the Notice in the **Federal Register**. Such mailing will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(b)(2), which will advise all interested persons of their right to comment on and/or to request a hearing. All written comments or hearing requests must be received by the Department from interested persons within 45 days of the publication of this proposed exemption in the **Federal Register**.

All comments will be made available to the public.

**Warning:** Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want

publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

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

#### **Health Management Associates, Inc. Retirement Savings Plan (the HMA Plan) and The Mooresville Retirement Savings Plan (the Mooresville Plan) (together, the Plans or the Applicants) Located in Naples, FL**

[Application Nos. D-11929 and D-11930, respectively]

#### **Proposed Exemption**

The Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407(a)(1)(A) of the Act, shall not apply, effective January 27, 2014 (the Effective Date), to: (1) The acquisition by the Plans of contingent value rights (CVRs) received by the Plans in connection with the merger (the Merger Transaction) of FWCT-2 Acquisition Corporation (Merger Sub), a wholly-owned subsidiary of Community Health Systems, Inc. (CHS), with and into Health Management Associates, Inc. (HMA), with HMA surviving as a wholly owned subsidiary of CHS; and (2) the holding of the CVRs by the Plans.

#### **Summary of Facts and Representations<sup>7</sup>**

##### *HMA*

1. HMA, a Delaware corporation, operates general acute care hospitals and other health care facilities in 15 states. As of December 31, 2013, HMA had total assets of approximately \$6,384,651 and total stockholders' equity of approximately \$776,281. As of the same date, there were approximately 264,495,000 shares of common stock of HMA (HMA Common Stock) issued and outstanding.

##### *The Plans*

2. HMA sponsors the HMA Plan and the Mooresville Plan. The Plans are individual account plans that are intended to qualify under section 401(a)

of the Internal Revenue Code of 1986, as amended (the Code), and include a qualified cash or deferred arrangement described in section 401(k) of the Code. The Plans allow participants to direct the investment of their accounts under such Plans in various available investment alternatives that included, prior to the Merger Transaction, HMA Common Stock.

As of January 27, 2014, the date of the Merger Transaction, the HMA Plan had approximately 45,160 participants and beneficiaries and total assets of \$824,529,117.14. As of the same date, the Mooresville Plan had 742 participants and total assets of \$17,135,730.98.

As of January 24, 2014, the last trading day of the Shares prior to the closing of the Merger Transaction, 4,622,384.871 Shares of HMA Common Stock were held by the HMA Plan in accounts maintained for 15,824 participants, representing approximately 35% of the participants in such Plan. These Shares had an aggregate fair market value of \$61,523,577.97, or approximately 7.46% of the aggregate fair market value of the HMA Plan's total assets, and represented approximately 1.75% of the 264,136,278.34 Shares that were issued and outstanding as of that date.

Similarly, as of January 24, 2014, 144,854.422 Shares of HMA Common Stock were held by the Mooresville Plan in accounts maintained for 288 participants, representing approximately 39% of the participants in such Plan. These Shares had an aggregate fair market value of \$1,927,964.29, or approximately 11.25% of the aggregate fair market value of the Mooresville Plan's total assets, and represented approximately 0.05% of the 264,136,278.34 Shares that were issued and outstanding as of that date.

Prior to the closing of the Merger Transaction, Prudential Bank and Trust, FSB, served as the Plans' trustee, and the Plans were administered by the HMA Retirement Committee. Following the Merger Transaction, Delaware Charter Guarantee and Trust Company (d/b/a "Principal Trust Company") began serving as the Plan's directed trustee, and the CHS Committee administers the Plans.

##### *CHS*

3. CHS, a Delaware corporation, provides healthcare services in non-urban and selected urban markets throughout the United States. CHS's common stock is listed on the NYSE under the symbol "CYH." As of the end of the most recent accounting period prior to the Merger Transaction, CHS

<sup>7</sup> The Summary of Facts and Representations is based on the Applicants' representations and does not reflect the views of the Department, unless indicated otherwise.



had total assets of \$17,117,295,000 and total stockholders' equity of \$3,067,827,000.

#### *The Merger Agreement*

4. On July 29, 2013, the Boards of Directors of HMA and CHS each approved the Merger Agreement, which was entered into on the same date by HMA, CHS and Merger Sub.<sup>8</sup> The Merger Agreement, as amended on September 24, 2013, provided for Merger Sub to merge with and into HMA, with HMA surviving as an indirect, wholly owned subsidiary of CHS. In addition, the Merger Agreement provided that upon the closing of the Merger Transaction, each Share outstanding of HMA Common Stock, immediately prior to the effective time of the Merger Transaction, would be cancelled and converted into an HMA shareholder's right to receive: (a) \$10.50 in cash, without interest; (b) 0.06942 shares of CHS Common Stock; and (c) one CVR (together, the Merger Consideration).

The terms of the Merger Transaction were negotiated at arm's-length and approved by the HMA and CHS Boards.

#### *HMA's Pre-Merger Steps*

5. HMA took certain steps prior to the Merger Transaction in preparation for the acquisition of CVRs by the Plans. In this regard, certain provisions of the Plans and the Trust Agreements relating to the employer securities were amended to accommodate the acquisition and holding of the CVRs. In addition, notice of the Merger (the Notice), dated November 22, 2014, was provided to HMA shareholders (HMA Shareholders) who held HMA Common Stock as of the close of business on November 22, 2013 (the Record Date), including participants of the Plans.<sup>9</sup>

In addition to the Notice, a separate notice (the Supplemental Notice) was sent to participants and beneficiaries of the Plans on January 10, 2014. The Supplemental Notice explained that participants in the Plans had the opportunity until 2:00 p.m. (Eastern time) on the business day immediately preceding the time of the Merger Transaction, to elect to move any portion of their accounts in the Plans that was invested in HMA Common Stock from that investment into other

investment alternatives under the applicable Plan if the participants did not wish to receive the Merger Consideration.

#### *The Merger Transaction*

6. A special meeting to vote on the Merger Transaction was held on January 8, 2014. As of the Record Date (*i.e.*, November 22, 2013), there were 264,495,187 Shares of HMA Common Stock outstanding and entitled to vote on the proposed Merger Transaction. The Plans' trustee, which held 5,198,842 Shares of HMA Common Stock on behalf of 15,824 participants in the HMA Plan, and 159,854 Shares of HMA Common Stock on behalf of 288 participants in the Mooresville Plan. The HMA Common Stock held by the HMA Plan represented 1.95% of the outstanding Shares. The HMA Common Stock held by the Mooresville Plan represented 0.06% of the outstanding Shares.

More than 99% of the votes, or 216,027,614 votes cast, were in favor of the Merger Transaction, and on January 27, 2014, HMA became a wholly-owned subsidiary of CHS. The acquisition of the CVRs by the Plans occurred on the same terms, and in the same manner, as the acquisition of CVRs by all other shareholders of HMA Common Stock who acquired CVRs. Shares held by participants in the HMA Plan were converted into the HMA Plan participants' right to receive collectively: (a) \$48,535,041.15 in cash; (b) 320,885.958 shares of CHS common stock (valued at \$40.48 per Share, or an aggregate value of \$12,989,463.57, as of the close of trading on January 27, 2014); and (c) 4,622,384.871 CVRs (with a value of \$0.05 per Share, or an aggregate value of \$231,119.24, as of the close of trading on January 27, 2014).

Shares held by Mooresville Plan participants were converted into the right by such participants to receive collectively: (a) \$1,520,971.43 in cash; (b) 10,055.794 shares of CHS common stock (valued at \$40.48 per Share, or an aggregate value of \$407,058.54, as of the close of trading on January 27, 2014); and (c) 144,854.422 CVRs (with a value of \$0.05 per Share, or an aggregate value of \$7,242.72, as of the close of trading on January 27, 2014).

#### *The CVRs*

7. The CVRs are unsecured, contingent payment obligations of CHS that are subordinated in right of payment to the prior payment in full of all senior obligations of CHS. They were issued by CHS pursuant to a CVR Agreement that was executed on January 27, 2014 by and between CHS

and American Stock Transfer & Trust Company, LLC (the CVR Trustee), an unrelated party, and filed with the Securities Exchange Commission by CHS on January 28, 2014.

CHS is obligated under the CVR Agreement to use reasonable best efforts to ensure that the CVRs are traded on a national securities exchange, and they are currently listed on the NASDAQ Stock Market under the symbol "CYHHZ." The issuance of the CVRs was registered under the Securities Act of 1933 and the Securities Exchange Act of 1934, as amended.

8. Under the CVR Agreement, CHS is required to pay to the CVR Trustee, and the CVR Trustee is required to pay to the CVR holders, \$1.00 per CVR (the CVR Payment Amount) promptly upon the final resolution (Final Resolution)<sup>10</sup> of certain existing litigation (the Existing Litigation),<sup>11</sup> subject to certain reductions. CHS will keep the CVR Trustee and the CVR holders informed with respect to the status of the Existing Litigation, which may be accomplished

<sup>10</sup> According to the CVR Agreement, the term "Final Resolution" refers to CHS's: (a) Receipt of written confirmation from a court, or a governmental or regulatory entity that such entity has closed its investigation into HMA with respect to certain Existing Litigation, as discussed in the footnote below; or (b) resolution of the Existing Litigation through a written settlement agreement, consent decree or other final non-appealable court judgment.

<sup>11</sup> According to the CVR Agreement, the term "Existing Litigation" refers to any litigation, investigation, or other action involving the U.S. Department of Health and Human Services Office of Inspector General, the U.S. Department of Justice, the SEC or any other domestic (federal or state) or foreign court, commission, governmental body, regulatory or administrative agency or other political subdivision thereof, relating to whether HMA or any of its affiliates (other than, for the avoidance of doubt, CHS and its subsidiaries) violated any law, and any civil litigation or other action, arising out of or relating to the foregoing, in each case existing on or prior to the date of the Merger Agreement. However, the Existing Litigation does not include any litigation, investigation or other action or proceeding involving only individuals or entities other than HMA, unless HMA is required to indemnify losses (Losses) incurred by those individuals or entities.

In addition, the CVR Agreement defines the term "Losses" to mean the amount of all losses, damages costs, fees and expenses, fines, penalties, settlement amounts, or indemnification obligations and other liabilities arising out of or relating to the Existing Litigation that are paid by CHS or any of its affiliates (including HMA) prior to the date of the CVR Payment Amount. However, Losses do not include: (a) The costs associated with any change to HMA's policies, procedures or practices; or (b) the loss of any (1) licenses or (2) rights and privileges to participate in government sponsored programs, even if required under a settlement agreement, consent decree, or other final non-appealable court judgment. The amount of any Losses will be net of any amounts actually recovered by CHS or any of its wholly-owned subsidiaries under insurance policies.

<sup>8</sup> FWCT-2 Acquisition Corporation (*i.e.*, Merger Sub), a Delaware corporation, was created as an indirect, wholly-owned subsidiary of CHS. Merger Sub existed solely for the purpose of engaging in the Merger Transaction.

<sup>9</sup> The Applicants have confirmed that the Plan participants with HMA Common Stock allocated to Plan accounts were allowed to vote on the Merger Transaction, just as were all of the other holders of HMA Common Stock.



through its public reporting requirements.

On a date established by CHS that is not later than thirty (30) days after the date on which Final Resolution of the Existing Litigation occurs, CHS will deliver the CVR Payment Amount to the CVR Trustee and provide notice of the calculation made to determine the CVR Payment Amount to the CVR holders.<sup>12</sup> The CVR Trustee, acting as the paying agent, will then pay to each CVR holder the amount in cash equal to the CVR Payment Amount multiplied by the number of CVRs held by such holder.

According to the Applicants, there is no set date for when the Final Resolution of the Existing Litigation must occur, and thus there is no termination date for payment of the CVRs. In the event CHS fails to make timely payment, the CVR Trustee may, by written notice to CHS, or upon the written request by thirty percent (30%) or more of the CVR holders to CHS and to the CVR Trustee, bring suit to obtain payment for any amounts due and payable. Interest will accrue on unpaid amounts at a rate equal to the prime rate plus three percent.

In addition, the CVR Trustee will certify to the Department that the CVR Payment Amount has been properly calculated for each affected participant in the Plans. The CVR Trustee will also certify to the Department that no excess portion of the CVR Payment Amount reverts to CHS, its successors, or their affiliates.

9. The CVR Agreement also provides that each CVR holder has the right to sell his or her CVRs at any time. The rights of a CVR holder will remain in effect until all payment obligations under the CVR Agreement are satisfied or have terminated. Such rights will not lapse by reason of a failure on the part of the CVR holder to take timely action.

10. The Applicants state that holders of CVRs, including participants in the Plans, have exercised their rights under the CVR Agreement to sell CVRs. The Applicants state that of the approximately 4,767,239 CVRs received by the Plans, approximately 2,763,642 CVRs were still held by the Plans as of May 15, 2017. As such, the Applicants state that approximately 2,003,597 of the CVRs had been sold as of the same date.<sup>13</sup> The Applicants state that all such sales of CVRs have been

exclusively on the open market and initiated by the Participants in such Plans, rather than by CHS. The Applicants state that CVRs are routinely traded in open market transactions through the NASDAQ Stock Market under the symbol "CYHHZ."

#### *Fairness Opinions*

11. In a letter dated July 29, 2013, Morgan Stanley & Co. LLC (Morgan Stanley), a global financial services firm engaged in the securities, investment management and individual wealth management businesses, advised HMA that the Merger Consideration to be received by HMA Shareholders pursuant to the Merger Agreement was "fair," from a financial point of view. Also, in letters dated November 12, 2013, Lazard Frères & Co. LLC (Lazard), an independent financial advisory and asset management firm, and UBS Securities LLC (UBS), a global investment bank, advised HMA that the Merger consideration to be received by the holders of HMA common stock in the Merger Transaction was "fair," from a financial point of view, to such holders.

Morgan Stanley, Lazard, and UBS (together, the Fairness Advisers), among other things, (a) reviewed certain publicly available business and financial information of HMA and CHS, respectively; (b) reviewed certain financial projections prepared by the managements of HMA and CHS, respectively; (c) reviewed the projected synergies anticipated by the management of CHS from the Merger Transaction; (d) held discussions with senior executives of HMA and CHS with respect to the businesses and prospects of HMA and CHS, respectively; (e) reviewed the reported prices and trading activity for HMA Common Stock and CHS Common Stock; (f) reviewed the potential pro forma financial impact of the Merger Transaction on CHS based on certain financial studies; and (g) performed such other review and analyses and considered such other factors as deemed appropriate. The Fairness Advisers issued their opinions to the HMA Board, and made no recommendations as to how the HMA Shareholders should vote with respect to the Merger Transaction.

#### *Requested Relief/Analysis*

12. The Applicants have requested an administrative exemption from the Department for: (a) The acquisition by the Plans of CVRs in connection with the Merger Transaction; and (b) the holding of the CVRs by the Plans. If granted, the exemption would be effective as of January 27, 2014, and it

would also apply to successor plans to the current Plans.

Section 406(a)(1)(E) of the Act prohibits the acquisition on behalf of a plan of any "employer security" in violation of section 407(a). Section 406(a)(2) of the Act prohibits a fiduciary who has authority or discretion to control or manage the assets of a plan to permit such plan to hold any "employer security" if he knows or should know that the holding of such security violates section 407(a) of the Act. Section 407(a) of the Act prohibits a plan from acquiring or holding employer securities that are not "qualifying employer securities." Section 407(d)(5) defines the term "qualifying employer securities," in relevant part, as an employer security which is stock or a marketable obligation.

The Applicants represent that, as registered securities issued by CHS, the CVRs constitute "employer securities" under section 407(d)(1)<sup>14</sup> of the Act. However, the CVRs are not stock and may not constitute "marketable obligations" within the meaning of section 407(e)<sup>15</sup> of the Act. Accordingly, the Plans' acquisition of the CVRs from CHS and their holding of the CVRs may constitute an acquisition and holding by the Plans of employer securities that are not qualifying employer securities, in violation of sections 406(a)(1)(E), 406(a)(2), and 407(a)(1)(A) of the Act.

#### *Rationale for the Transactions*

13. In light of the foregoing prohibitions, the Applicants represent that HMA considered whether it would better serve the interests of participants and beneficiaries in the Plans to remove HMA Common Stock from the Plans prior to the Merger Transaction or to retain HMA Common Stock in the Plans and apply for exemptive relief covering the CVRs received by the Plans in the Merger. According to the Applicants, HMA determined that a decision to eliminate HMA Common Stock from the Plans would deprive participants and beneficiaries with interests in HMA Common Stock of the ability to realize the full value of the consideration that would be paid to other shareholders, by forcing a pre-closing sale and effectively depriving participants of investment

<sup>12</sup> The Applicants state that, pursuant to Section 3.1(e) of the CVR Agreement, if the CVR Payment Amount is greater than zero, CHS will deliver cash to the paying agent within sixty (60) days of the date on which Final Resolution occurs.

<sup>13</sup> The Applicants state that a breakdown of the sale of CVRs sold by each Plan is not readily available.

<sup>14</sup> Section 407(d)(1) of the Act defines the term "employer security" to mean, in relevant part, a security issued by an employer of employees covered by the plan, or by an affiliate of such employer.

<sup>15</sup> Section 407(e) of the Act defines the term "marketable obligation" to mean, in relevant part, a bond, note, or certificate, or other evidence of indebtedness.

discretion, including the discretion to retain an investment in CVRs.

#### *Statutory Findings*

14. The Applicants represent that the proposed exemption is administratively feasible because the acquisition of the CVRs by the Plans was a one-time transaction. The Applicants represent that the proposed exemption is in the interest of the Plans' participants and beneficiaries because it maximizes their ability to realize the full value of the consideration offered in exchange for their interests in HMA Common Stock by continuing to give them the discretionary ability to hold or sell the employer securities allocated to their accounts. The Applicants represent that a pre-closing sale of HMA Common Stock by the Plans would preclude the Plans' participants from choosing to hold CVRs within the Plans and thereby retain the possibility of substantial future payouts, and would instead force them to settle for the current implied market value of the CVRs.

Finally, the Applicants represent that the proposed exemption is protective of the rights of the Plans' participants and beneficiaries because it permits them to realize the same benefits as other shareholders in connection with the Merger Transaction. The Applicants state that the conditions of the exemption ensure that participants have the same rights with respect to CVRs allocated to their accounts under the Plans as other holders of CVRs.

#### *Summary*

15. Given the conditions described below, the Department has tentatively determined that the relief sought by the Applicants satisfies the statutory requirements for an exemption under section 408(a) of the Act.

### **Proposed Exemption Operative Language**

#### *Section I. The Transactions*

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407(a)(1)(A) of the Act, shall not apply, effective January 27, 2014, to:

(1) The acquisition by the Plans of contingent value rights (CVRs) received by the Plans in connection with the merger (the Merger Transaction) of FWCT-2 Acquisition Corporation (the Merger Sub), a wholly-owned subsidiary of Community Health Systems, Inc. (CHS), with and into Health Management Associates, Inc. (HMA), with HMA surviving as a wholly owned subsidiary of CHS; and

(2) The holding of the CVRs by the Plans.

#### *Section II. General Conditions*

(a) The receipt of the CVRs by the Plans occurred in connection with the Merger Transaction, which was approved by ninety-nine percent (99%) of the shareholders of common stock of HMA (HMA Common Stock);

(b) For purposes of the Merger Transaction, all HMA Common Stock shareholders, including the Plans, were treated in the same manner;

(c) The acquisition of the CVRs by the Plans occurred on the same terms, and in the same manner, as the acquisition of CVRs by all other shareholders of HMA Common Stock who acquired CVRs;

(d) The terms of the Merger Transaction were negotiated at arm's-length;

(e) No fees, commissions or other charges are paid by the Plans with respect to the acquisition and holding of the CVRs by the Plans;

(f) Morgan Stanley & Co. LLC (Morgan Stanley), Lazard Frères & Co. LLC (Lazard) and UBS Securities LLC (UBS) advised HMA that the consideration received by HMA shareholders (HMA Shareholders), including participants of the Plans, in exchange for their Shares was "fair," from a financial point of view;

(g) The Plans have not and will not acquire or hold CVRs other than those acquired in connection with the Merger Transaction;

(h) Participants in the Plans may direct the Plans' trustee to sell CVRs allocated to their respective participant accounts in the Plans, at any time;

(i) The Plans do not sell a CVR to CHS or any of its subsidiaries or affiliates, including HMA, in a non-"blind" transaction;

(j) For so long as the CVRs remain a permissible investment for each Plan, the retention or disposition of CVRs allocated to a participant's account has been and will be administered in accordance with the provisions of each Plan that are in effect for individually-directed investments of participant accounts;

(k) The CVR Trustee will certify to the Department that the CVR Payment Amount has been properly calculated for each affected participant in the Plans; and

(l) The CVR Trustee will certify to the Department that no excess portion of the CVR Payment Amount reverts to CHS, its successors, or their affiliates.

*Effective Date:* If granted, this proposed exemption will be effective as of January 27, 2014.

#### **Notice to Interested Persons**

Within thirty (30) days of the date of publication of the proposed exemption in the **Federal Register**, the Applicants will provide notice of the proposed exemption (consisting of a copy of the proposed exemption, as published in the **Federal Register**, and the supplemental statement required by 29 CFR 2570.43(b)(2), (together, the Notice)) to all current participants and beneficiaries of the Plans. The Applicants will provide interested persons with a copy of the Notice, as well as an explanatory cover letter, by first class mail, at their own expense. The Notice will specify that the Department must receive all written comments and requests for a hearing no later than thirty (30) days from the last date of the mailing of such Notice. Therefore, interested persons will have sixty (60) days to provide their written comments and/or hearing requests to the Department.

All comments will be made available to the public.

*Warning:* Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

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

Anna Mpras Vaughan of the Department, telephone (202) 693-8565. (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 of the Act and/or the Code, including any prohibited transaction 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) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional 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

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 21st day of June, 2017.

**Lyssa E. Hall,**

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

[FR Doc. 2017-13509 Filed 6-27-17; 8:45 am]

**BILLING CODE 4510-29-P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (17-041)]

### NASA Astrophysics Advisory Committee; Meeting.

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Astrophysics Advisory Committee. This Committee reports to the Director, Astrophysics Division, Science Mission Directorate, NASA Headquarters. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

**DATES:** Wednesday, July 19, 2017, 8:30 a.m.–5:00 p.m.; and Thursday, July 20, 2017, 8:30 a.m.–5:00 p.m., Eastern Daylight Time (EDT).

**ADDRESSES:** On July 19: NASA Headquarters, Room 6H42, 300 E Street SW., Washington, DC 20546. On July 20: Residence Inn Capitol, Senate Room, 333 E Street SW., Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Ms. KarShelia Henderson, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358-2355, fax (202) 358-2779, or [khenderson@nasa.gov](mailto:khenderson@nasa.gov).

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the capacity of the room. The meeting will be available telephonically and by WebEx. You must use a touch-tone phone to participate in this meeting. Any interested person may dial the USA toll free conference call number 1-888-469-3018 or toll number 1-210-234-0113, passcode 6295733, to participate in this meeting by telephone on both days. The WebEx link is <https://nasa.webex.com/>; the meeting number on July 19 is 996 101 861, password is APAC@1920; and the meeting number on July 20 is 994 706 096, password is APAC@1920.

The agenda for the meeting includes the following topics:

- Astrophysics Division Update
- Updates on Specific Astrophysics Missions
- Reports from the Program Analysis Groups
- Reports from Specific Research & Analysis Programs

The agenda will be posted on the Astrophysics Advisory committee Web page: <https://science.nasa.gov/researchers/nac/science-advisory-committees/apac>.

Attendees will be requested to sign a register and to comply with NASA Headquarters security requirements, including the presentation of a valid picture ID to Security before access to NASA Headquarters. Due to the Real ID Act, any attendees with driver's licenses issued from non-compliant states must present a second form of ID. Non-compliant states are: Minnesota and Missouri. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 days prior to the meeting: Full name; gender; date/place of birth; citizenship; passport information (number, country, telephone); visa information (number, type, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees with

U.S. citizens and Permanent Residents (green card holders) can provide full name and citizenship status 3 working days in advance. Information should be sent to Ms. KarShelia Henderson, via email at [khenderson@nasa.gov](mailto:khenderson@nasa.gov) or by fax at (202) 358-2779. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

**Patricia D. Rausch,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 2017-13501 Filed 6-27-17; 8:45 am]

**BILLING CODE 7510-13-P**

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-458; NRC-2017-0141]

### Entergy Operations, Inc.; River Bend Station, Unit 1

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** License renewal application; receipt.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has received an application for the renewal of operating license NPF-47, which authorizes Entergy Operations, Inc. (the applicant) to operate River Bend Station, Unit 1 (RBS). The renewed license would authorize the applicant to operate RBS for an additional 20-year period beyond the period specified in the current license. The current operating license for RBS expires at midnight on August 29, 2025.

**DATES:** The license renewal application referenced in this document was available on June 2, 2017.

**ADDRESSES:** Please refer to Docket ID NRC-2017-0141 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- **Federal Rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2017-0141. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly-available documents online in the