4510-29-P

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-11825, ABARTA, Inc. Pension Plan; D-11846 and D-11847, Sears Holdings 401(k) Savings Plan (the Savings Plan) and the Sears Holdings Puerto Rico Savings Plan (the PR Plan); D-11851 and D-11852, Sears Holdings 401(k) Savings Plan (the Savings Plan) and the Sears Holdings Puerto Rico Savings Plan (the PR Plan); and D-11871 and D-11872, Sears Holdings 401(k) Savings Plan (the Savings Plan) and the Sears Holdings Puerto Rico Savings Plan (the PR 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, Room N-5700, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 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 e-mail or FAX. Any such comments or requests should be sent either by e-mail to: moffitt.betty@dol.gov, or by FAX to (202) 219-0204 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, N.W., Washington, D.C. 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).[1] 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.

[1] 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).

ABARTA, Inc. Pension Plan

(the Plan or the Applicant)

Located in Pittsburgh, PA

[Application No. D-11825]

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 46637, 66644, October 27, 2011).**2**

SECTION I. COVERED TRANSACTIONS

If the exemption is granted, provided that the conditions and the definitions set forth below are satisfied, the restrictions of sections 406(a)(1)(A), 406(a)(1)(B), 406(a)(1)(D), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (B), (D) and (E) of the Code, shall not apply to

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

the following proposed transactions (the Covered Transactions):

(a) The in-kind contribution by ABARTA Inc. (ABARTA) to the Plan (the Contribution) of ABARTA's 100% ownership interests (the LLC Interests) in two special purpose entities: Delabarta Pennsylvania Real Estate, LLC (Delabarta Pennsylvania LLC); and Delabarta New York Real Estate, LLC (Delabarta New York LLC) (together, the LLCs): each of which owns, as its only asset, a parcel of improved real property (a Property);

(b) Following the Contribution: (1) the Plan's leasing of the Property owned 100% by the Delabarta Pennsylvania LLC to an ABARTA subsidiary, Coca-Cola Bottling Company of Lehigh Valley, Inc. (Coca-Cola Lehigh Valley), and a one-time renewal of that lease; and (2) the Plan's leasing of the Property owned 100% by the Delabarta New York LLC to another ABARTA subsidiary, Coca-Cola Bottling Company of Buffalo, Inc. (Coca-Cola Buffalo), and a one-time renewal of that lease. Hereinafter, these two leases are referred to as the Leases, and the two renewals of those Leases are referred to as the Lease Renewals;

(c) The guarantees by Coca-Cola Buffalo and Coca-Cola Lehigh Valley (the Tenants) to the Plan in connection with a make whole obligation (the Make Whole Obligation), and any payments to the

Plan in fulfillment of that obligation;

(d) Each Tenant's indemnification of the Plan (the Indemnification) in connection with a Leases and a Lease Renewal; and

(e)(1) The Plan's granting of a right of first offer (the Right of First Offer) to each Tenant, whereby the Tenant may purchase a Property or LLC interest from the Plan; and (2) a sale by the Plan of a Property or LLC Interest to a Tenant in connection with a Tenant's exercise of that Right of First Offer.

SECTION II. CONDITIONS REGARDING THE IN-KIND CONTRIBUTION DESCRIBED IN SECTION I(a)

(a) The Independent Fiduciary, as defined in Section X(c) of this proposed exemption, negotiates the terms and conditions of the Contribution, and approves the Contribution as being in the interest of the Plan;

(b) The LLC Interests are contributed to the Plan at their current fair market value, as determined by the Independent Fiduciary, following the Independent Fiduciary's review of an appraisal report (the Appraisal Report) prepared by the Independent Appraiser, as defined in Section X(d) of this proposed exemption;

(c) On the date of the Contribution, the aggregate

contributed value of the LLC Interests is no less than the current fair market value of the Properties underlying the LLC Interests, as verified by the Independent Fiduciary;

(d) On the date of the Contribution, ABARTA contributes to the Plan a cash amount that is no less than $500,000;

(e) Immediately following the Contribution, the aggregate fair market value of employer real property and employer securities held by the Plan represents less than 20% of the Plan's assets;

(f) As long as the Properties and/or LLC interests are owned by the Plan, the Properties are not altered in any way that: (1) diminishes the fair market value or remaining useful life of the Property; (2) affects the structure or systems of any building existing on the Property; or (3) affects an expansion of any building existing on the Property, without the prior written approval of the Independent Fiduciary; and

(g) Following the Contribution, the Plan does not transfer a portion of its ownership interests in the LLCs or in the Properties to a party in interest to the Plan.

SECTION III. CONDITIONS REGARDING THE PLAN'S LEASING OF THE PROPERTIES TO THE TENANTS DESCRIBED IN SECTION I(b)

(a) The Independent Fiduciary negotiates the terms and

conditions of the each Lease and Lease Renewal, and approves the Plan's entering into each Lease and Lease Renewal, as being in the interest of, and protective of, the Plan;

(b) Each Lease and Lease Renewal remains, at all times, a bondable triple net lease, such that all costs attributable to a Property (including, among other things, taxes, insurance, utilities, and non-capital maintenance, repair, and capital improvements) are the responsibility of the Tenant, until the earlier of: (1) the date on which the Property or LLC Interest is first transferred to any person or entity that is not wholly-owned by the Plan; (2) the date on which the Plan sells a controlling interest in the LLC to an entity that is not wholly-owned by the Plan; or (3) the date the Lease or Lease Renewal terminates by operation of law;

(c) Any amendment to a Lease or Lease Renewal must be negotiated and approved by the Independent Fiduciary; however, in no event may any amendment be inconsistent with the terms of this exemption, if granted; and

(d) For each Lease Renewal, all provisions of the Lease on which the Lease Renewal is based, with the exception of the specific rent amount and any escalator provision, remain in effect.

SECTION IV. THE MAKE WHOLE OBLIGATION DESCRIBED IN SECTION I(c)

(a) After the Contribution, as of the earlier of: (1) the date of a sale by the Plan of a Property (or an LLC Interest) (a Sale Date); or (2) the date that is five years from the date of the Contribution (hereinafter, a First Calculation Date), if (A)(i) the proceeds received from the fair market value sale of a Property (or LLC interest), in the case of a sale, or (ii) the current fair market value of the Property (or the LLC interest) as of the First Calculation Date, in the case in which there has not been a sale, plus (B) any income generated by the Property during that period, less (C) any expenses attributable to the Property (or the LLC Interest) paid by the Plan during that period, is less than (D) the fair market value of such Property (or the LLC Interest) at the time of the Contribution, plus (E) an amount equal to a 5% percent rate of return on such Contributed Value during that period, compounded annually; then the Tenant must contribute an amount of cash to the Plan equal to any such difference, within 60 days of the Sale Date or First Calculation Date;

(b) If the Plan continues to hold a Property or LLC Interest during all or a portion of any of the three consecutive five year periods that follow the First Calculation Date (each, a Lookback Period), with respect to any of these three Lookback Periods, as

of the earlier of: (1) a Sale Date; or (2) a date that is five years from the first day of the Lookback Period (a Subsequent Calculation Date), if (A)(i) the proceeds received from the fair market value sale of a Property (or LLC interest), in the case of a sale, or (ii) the current fair market value of the LLC interest as of the applicable Subsequent Calculation Date, in the case in which there has not been a sale, plus (B) any income generated by the Property during that period, (C) less any expenses paid by the Plan during that period regarding the LLC interest or Property, is less than (D) the fair market value of such LLC Interest as of the first day of the applicable Lookback Period, plus (E) an amount equal to a 5% percent rate of return on such Contributed Value during that period, compounded annually; then the Tenant must contribute to the Plan an amount of cash equal to any such difference, within 60 days of the Sale Date or Subsequent Calculation Date; and

(c) The Plan receives the full amount that the Plan may be due under the Make Whole Obligation within 60 days of the applicable Sale Date, Calculation Date, or Subsequent Calculation Date, as verified by the Independent Fiduciary.

SECTION VI. TENANTS' INDEMNIFICATION OF THE PLAN DESCRIBED IN SECTION I(d)

(a) In connection with each Lease and Lease Renewal, and as set forth in writing therein, the Tenant indemnifies, defends upon request, and holds the Plan harmless from any, and against all, losses, penalties and court costs related to: (1) the Tenant's use, repair, management, lease, sublease, maintenance or operation of a Property, (2) any violation of any applicable environmental laws, the Americans with Disabilities Act (the ADA), and other health and/or safety laws; and (3) any default by the Tenant under the Lease or Lease Renewal; and

(b) Any amount owed the Plan in connection with a Tenant's indemnification of the Plan, as described in the preceding paragraph, is negotiated and approved by the Independent Fiduciary, and paid to the Plan within the timeframe set forth by the Independent Fiduciary.

SECTION VII. THE RIGHT OF FIRST OFFER AND THE SALE BY THE PLAN OF A PROPERTY OR AN LLC INTEREST DESCRIBED IN SECTION I(e)

(a) During the term of the Lease and any Lease Renewal, the Independent Fiduciary is solely responsible for determining whether, when, and under what terms the Plan may prudently sell one or both of: (1) the LLCs; or (2) the Properties;

(b) During the term of the Lease and any Lease Renewal, the Independent Fiduciary must approve any sale by the Plan of one or

both of: (1) the Properties; or (2) the LLC Interests, as being in the interest of, and protective of, the Plan;

(c) The Independent Fiduciary may not implement the Right of First Offer unless the Independent Fiduciary has first negotiated the terms and conditions of a proposed sale of an LLC Interest (or a Property) to a party that is unrelated to ABARTA or any of its affiliates (the Unrelated Proposed Sale);

(d) Any sale of an LLC Interest or Property to ABARTA or any of its affiliates (hereinafter, ABARTA) pursuant to the Right of First Offer, must equal the greater of: (1) the price negotiated by the Independent Fiduciary, as between the Plan and the party that is unrelated to ABARTA; or (2) the current fair market value of the Property, as determined by the Independent Appraiser; and

(e) If ABARTA does not purchase the Property or LLC Interest under the same terms as the terms associated with the Unrelated Proposed Sale, the Plan may sell the Property or LLC Interest to the unrelated third party within 360 days without triggering a new Right of First Offer.

SECTION VIII. THE INDEPENDENT FIDUCIARY

(a) The Independent Fiduciary represents the interests of the Plan for all purposes with respect to the Covered Transactions;

(b) The Independent Fiduciary must:

(1) Review, negotiate and approve the terms and conditions of each Covered Transaction;

(2) Review and approve the terms of the transfer agreement (the Transfer Agreement) that evidences the Contribution;

(3) Monitor and enforce the Plan's rights and interests with respect to the Properties;

(4) Monitor ABARTA's compliance with the terms of this exemption, including all obligations set forth under the Leases; and

(5) Take all steps that are necessary and proper to protect the Plan in the event of any non-compliance by ABARTA.

SECTION IX. GENERAL CONDITIONS

(a) The Plan does not pay any real estate fees, commissions, costs or other expenses in connection with the proposed transactions, including any fees that are currently charged, or any fees which accrue in the future; and

(b) The terms and conditions of the proposed transactions are no less favorable to the Plan than those obtainable under similar circumstances when negotiated at arm's-length with unrelated third parties.

SECTION X. DEFINITIONS

(a) The term ABARTA means ABARTA, Inc., and any of its affiliates.

(b) The term "affiliate" means: (1) any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person; (2) any officer, director, employee, relative, or partner in any such person; or (3) any corporation or partnership of which such person is an officer, director, partner, or employee.

For the purposes of clause (a)(1) above, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term "Independent Fiduciary" means Evercore Trust Company (Evercore), or another fiduciary of the Plan who: (1) is independent of or unrelated to ABARTA and the Tenants, and has the appropriate training, experience, and facilities to act on behalf of the Plan regarding the Covered Transactions in accordance with the fiduciary duties and responsibilities prescribed by the Act (including, if necessary, the responsibility to seek the counsel of knowledgeable advisors to assist in its compliance with the Act); and (2) if relevant, succeeds Evercore in its capacity as Independent Fiduciary to the Plan in connection with the Covered Transactions. The Independent Fiduciary will not be deemed to be

independent of and unrelated to ABARTA and the Tenants if: (1) such Independent Fiduciary directly or indirectly controls, is controlled by or is under common control, with ABARTA or the Tenants; (2) such Independent Fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this exemption other than for acting as Independent Fiduciary in connection with the transactions described herein, provided that the amount or payment of such compensation is not contingent upon, or in any way affected by, the Independent Fiduciary's ultimate decision; and (3) the annual gross revenue received by the Independent Fiduciary, during any year of its engagement, from ABARTA and the Tenants, exceeds 2% of the Independent Fiduciary's annual gross revenue from all sources (for federal income tax purposes) for is prior tax year.

(d) The term "Independent Appraiser" means an individual or entity meeting the definition of a "Qualified Independent Appraiser" under Department Regulation 25 CFR 2570.31(i) retained to determine, on behalf of the Plan, the fair market value of the Properties as of the date of the Contribution.

SUMMARY OF FACTS AND REPRESENTATIONS[3]

The Parties

1. ABARTA, which was founded in 1933 by Rolland Adams, currently maintains its headquarters in Pittsburgh, Pennsylvania. ABARTA is privately-owned and operates in the oil and gas, soft-drink bottling, and frozen food industries. Within its soft-drink bottling division, ABARTA owns and operates four Coca-Cola bottling companies, two of which are Coca-Cola Buffalo and Coca-Cola Lehigh Valley. As of March 31, 2015, ABARTA held assets totaling $238,824,000 and liabilities totaling $182,748,000.

Coca-Cola Lehigh Valley, which was purchased by ABARTA in 1963, owns the exclusive franchise rights in perpetuity to distribute products of the Coca-Cola Company throughout Lancaster, Northampton, and Lehigh counties, in Pennsylvania, and part of Warren County, in New Jersey. Coca-Cola Lehigh Valley has generated $3 million in average annual Earnings Before Interest, Tax, Depreciation, and Amortization (EBITDA) since 2010.

Coca-Cola Buffalo, which was purchased by ABARTA in 1980, owns the exclusive franchise rights in perpetuity to distribute products of the Coca-Cola Company throughout eight counties in

[3] 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.

and around Buffalo, New York. Coca-Cola Buffalo has generated $2.5 million in average annual EBITDA since 2010.

2. The Plan, which was adopted by ABARTA on January 1, 1981, is a noncontributory, defined benefit pension plan which covers approximately 4,000 non-union employees of ABARTA. As of January 1, 2015, the Plan had 1,265 participants. As of July 31, 2015, the Plan held assets totaling $36,737,158. The Plan Administrator is a Committee, the members of which are designated by ABARTA's Board of Directors. Contributions required to fund the Plan are remitted to and held under the ABARTA, Inc. Defined Benefit Master Trust (the Master Trust), the custodian of which is Fidelity Management Trust Company (Fidelity). In addition to ABARTA, seven other companies, including Coca-Cola Lehigh Valley and Coca-Cola Buffalo, participate in the Master Trust.

The Plan's trustees are John F. Blitzer III, Katherine W. Fedor, and William F. Holtz (the Trustees). Each of the Trustees serves concurrently as an officer of ABARTA: Mr. Blitzer, as Director, President and CEO; Ms. Fedor, as Secretary; and Mr. Holtz as Vice President, Treasurer, and Secretary. In addition, two Trustees, Mr. Holtz and Ms. Fedor, serve as officers for the LLCs, but, if this exemption is granted, they will not receive compensation from the Plan as officers of the LLCs following the Contribution.

The Trustees have delegated investment management discretion over Plan assets to Fidelity, subject to a written investment policy approved by the Trustees which specifies ranges for asset allocations (the Investment Policy Statement). The Investment Policy Statement expressly permits the in-kind contribution of employer real property to the Plan.

The LLCs

3. ABARTA is the sole member and 100% owner of both Delabarta New York LLC and Delabarta Pennsylvania LLC. The Applicant represents that the LLCs do not have any employees and there are no significant costs associated with ownership, other than a nominal annual administrative filing fee required by the State of New York, which ABARTA will continue to pay following the Contribution.

Each LLC owns, as its only asset, a parcel of unencumbered real property, as well as certain buildings situated on each. The sole asset of Delabarta Lehigh Valley LLC consists of unencumbered title to approximately 10.615 acres of land and one improvement thereon, located at 2150 Industrial Drive Bethlehem, Pennsylvania (the Pennsylvania Property). Coca-Cola Lehigh Valley purchased the Pennsylvania Property as a vacant parcel of land in 1980 and subsequently constructed a 116,751-square foot warehouse/distribution facility on the Property in 1981.

Currently, the Pennsylvania Property is 100% occupied by Coca-Cola Lehigh Valley.

The sole asset of Delabarta New York LLC consists of unencumbered title to approximately 9.21 acres of land and two improvements thereon, located at 150 and 200 Milens Road in the Town of Tonawanda, New York (the New York Property). Coca-Cola Buffalo purchased the New York Property in 1959 and subsequently constructed the two warehouse facilities in 1960 and 1967. Currently, the New York Property is 100% occupied by Coca-Cola Buffalo.

Hereinafter, Coca-Cola Lehigh Valley and Coca-Cola Buffalo are referred to as the Tenants.

The Contribution

4. ABARTA has requested an administrative exemption from the Department in order to contribute the LLC Interests to the Plan. To evidence the Contribution, ABARTA and the Plan will enter into a written transfer agreement (the Transfer Agreement), which will govern the terms upon which the LLC Interests will be contributed to and held by the Plan.

As will be stated in the Transfer Agreement, the Independent Fiduciary must act on behalf of the Plan in connection with the Contribution, and must negotiate and approve the terms upon which the Plan will accept the LLC Interests. As also stated in the

Transfer Agreement, the value of the Properties will be determined by the Independent Fiduciary based upon an appraisal of the Properties performed by the Independent Appraiser, as of the date of the Contribution.

The Plan will not pay any commissions, costs or other expenses in connection with the Contribution, including any fees that are currently charged, or any fees which are charged in the future, by the Independent Appraiser or the Independent Fiduciary.

5. In addition to the Contribution and in connection therewith, ABARTA will make a one-time, cash contribution of $500,000 to the Plan. Taken together with the appraised fair market value of the Properties underlying the LLC Interests (see Representations 18 and 19), the estimated aggregate value of the Contribution amounts to $6,900,000, and is in excess of ABARTA's 2015 minimum funding obligation under section 302 of the Act.

The Leases

6. The Plan, through the LLCs, will enter into bondable, triple-net leases (the Leases) of the Properties with each Tenant. Each Lease will be substantially identical in all respects, other

than the name of the Tenant, the name of the LLC Landlord,[4] and the rent amount to be paid. Each Lease will also have an initial term of 10 years with the respective Tenant.

The bondable, triple-net lease structure will ensure that all operating costs related to the Properties, including taxes, insurance, utilities, and non-capital maintenance, repair, and capital improvements will be the responsibility of the Tenants. Additionally, the triple-net lease structure ensures that the rent payable by the Tenants to the Plan will remain payable under all circumstances, with the exception of a partial condemnation of the underlying Properties.

The Leases will remain bondable until the earlier of: (a) the date on which Property or LLC Interest is first transferred to any person or entity that is not wholly owned by the Plan; (b) the date on which the Plan sells a controlling interest in the applicable LLC to an entity that is not wholly owned by the Plan; or (c) the date the Lease or Lease Renewal terminates by operation of law.

With regard to alterations to the Properties by the Tenants, the Tenants must secure consent from the Independent Fiduciary prior to affecting any alteration which would: (a) diminish the fair market value or remaining useful life of the Properties; (b)

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4 References to the Plan as the Landlord under the Leases are meant to include the LLCs which hold title to the Properties.

affect the structure or systems of any building existing on the Properties, or (c) effect an expansion of any building existing on the Properties.

Further, any amendment to a Lease or Lease Renewal must be negotiated and approved by the Independent Fiduciary. However, in no event may an amendment be inconsistent with the terms of this exemption, if granted. Finally, each Lease or Lease Renewal prohibits the Plan from transferring a fractional part of its LLC Interests to ABARTA or a Tenant.

7. Under the Pennsylvania Property Lease, Coca-Cola Lehigh Valley will pay the Plan a base rental amount of $379,441, due in equal monthly installments of $31,620. In addition, on the first day of each Lease Year from and after the second Lease Year, the base rental amount under the Pennsylvania Property Lease will be increased by an amount equal to the product of the Base Rent then in effect multiplied by a 2.0% escalator adjustment.**5** In effect, the Plan will receive an annualized 9.44% rate of return under such Lease.

Under the New York Property Lease, Coca-Cola Buffalo will pay

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5 The annual escalator under the Pennsylvania Property Lease is based upon a market rent analysis performed by the Independent Appraiser. The Independent Fiduciary has confirmed that the rental rate under the Pennsylvania Property Lease is consistent with the fair market rental value in the Erie, Pennsylvania market.

the Plan a base rental amount of $348,563, due in equal monthly installments of $29,047. The New York Property Lease does not provide for annual rent escalations from and after the second lease year.[6] However, it is anticipated that this Lease will generate a 13.94% annual rate of return to the Plan.

8. Over the initial 10 year term of the Leases, the Plan will receive aggregate rental income totaling $7,640,403.05 ($4,154,773.05 in aggregate income under the Pennsylvania Lease and $3,485,630.00 in aggregate income under the New York Lease).

The Applicant represents that the rental rates under the Leases represent fair market value, as (a) they were agreed upon following arm's length negotiations between the Independent Fiduciary and the Tenants, and (b) are supported by a market rent analysis performed by the Independent Appraiser.

The Lease Renewals

9. With respect to each Lease, the Tenant has the right to renew the term of the Lease for an additional Renewal Term of ten

[6] The absence of an annual rent escalator under the New York Property Lease is based upon the Independent Appraiser's conclusion that rent escalators are not prevalent in commercial leases in the New York Property's market. The Independent Fiduciary has confirmed that the rental rate under the New York Property Lease is consistent with the fair market rental value in the Buffalo, New York market.

years by giving the Plan written notice (the Renewal Notice) not later than the last day of the ninth Lease year. During such time, the Plan will be represented by the Independent Fiduciary. Within 90 days of its receipt of the Tenant's Renewal Notice, the Independent Fiduciary will provide such Tenant with the Independent Fiduciary's determination of the fair market annual base rent, and the escalation factor which it desires to be applicable during the Renewal Term. The Independent Fiduciary and the Tenant will then have thirty days to agree upon a base rent amount and escalation factor for the purposes of the Renewal Term.[7] In no event, however, will the Independent Fiduciary be under any obligation to agree to a base rent for the first year of the Renewal Term which is less than the annual base rent in effect during the Lease Year immediately preceding the commencement of the Renewal Term.

The Make Whole Obligation

10. The Lease Agreements and any Lease Renewal Agreement will include a Make Whole Obligation, whereby each Tenant will ensure that the Plan receives at least a five percent annualized rate of

[7] In the event the Plan and Tenant are unable to agree upon a base rent amount and escalation factor, each will appoint an independent appraiser to determine a fair market base rent amount and escalation factor.

return in connection with the Plan's ownership of the LLC Interests. After the Contribution, as of the earlier of: (i) a Sale Date; or (2) a First Calculation Date, if (A)(i) the proceeds received from the fair market value sale of a Property (or LLC interest), in the case of a sale, or (ii) the current fair market value of the Property (or the LLC interest) as of the First Calculation Date, in the case in which there has not been a sale, plus (B) any income generated by the Property during that period, less (C) any expenses attributable to the Property (or the LLC Interest) paid by the Plan during that period, is less than (D) the fair market value of such Property (or the LLC Interest) at the time of the Contribution, plus (E) an amount equal to a 5% percent rate of return on such Contributed Value during that period, compounded annually; then the Tenant must contribute an amount of cash to the Plan equal to any such difference, within 60 days of the Sale Date or First Calculation Date;

Additionally, if the Plan continues to hold a Property or LLC Interest during all or a portion of the three consecutive five year Lookback Periods that follow the First Calculation Date, with respect to any of these Lookback Periods, as of the earlier of: (1) a Sale Date; or (2) a Subsequent Calculation Date, if (A)(i) the proceeds received from the fair market value sale of a Property (or LLC interest), in the case of a sale, or (ii) the

current fair market value of the LLC interest as of the applicable Subsequent Calculation Date, in the case in which there has not been a sale, plus (B) any income generated by the Property during that period, (C) less any expenses paid by the Plan during that period regarding the LLC interest or Property, is less than (D) the fair market value of such LLC Interest as of the first day of the applicable Lookback Period, plus (E) an amount equal to a 5% percent rate of return on such Contributed Value during that period, compounded annually; then the Tenant must contribute to the Plan an amount of cash equal to any such difference, within 60 days of the Sale Date or Subsequent Calculation Date; and

The Make Whole Obligation will remain in effect for up to twenty years, which is the maximum term of this proposed exemption, if granted, unless the Properties or LLC Interests are sold before then. The Independent Fiduciary will represent the interests of the Plan with respect to the Make Whole Obligation, and will ensure that the Plan receives any amount due under the Make Whole Obligation, within 60 days of the date that triggers the payment of such amount.

The Indemnification

11. The Lease Agreements provide that each Tenant reimburse the Plan, and indemnify, defend upon request, and hold harmless

the Plan from any, and against all losses, penalties and court costs related to: (a) the Tenant's use, repair, management, lease, sublease, maintenance or operation of a Property; (b) any violation of any applicable environmental laws, the ADA, and other health and/or safety laws; and (c) any default by a Tenant under the Lease. Any reimbursement paid to the Plan by a Tenant in connection with the Tenant's Indemnification, will be negotiated and approved by the Independent Fiduciary.

The Right of First Offer

12. The Lease Agreements provide a Right of First Offer to the Tenants, which states that, in the event that the Plan desires to sell either a Property or an LLC Interest during the initial ten-year Lease term or during any Lease Renewal period, the Plan must first offer such Property or LLC Interest to the Tenant at terms the Plan intends to offer such Property or LLC Interest to an unrelated third party (the Unrelated Proposed Sale). Any sale of an LLC Interest or Property to ABARTA pursuant to the Right of First Offer must equal the greater of: (a) the price negotiated by the Independent Fiduciary, as between the Plan and the party that is unrelated to ABARTA; or (b) the current fair market value of the Property, as determined by the Independent Appraiser, as described herein in Representations 16-19.

If ABARTA does not purchase the Property or LLC Interest under the same terms as the terms associated with the Unrelated Proposed Sale, the Plan may sell the Property or LLC Interest to the unrelated third party within 360 days without triggering a new Right of First Offer.

During the term of the Lease and any Lease Renewal, the Independent Fiduciary is solely responsible for: (a) determining whether, when, and under what terms the Plan may prudently sell one or both of: (i) the LLC Interests; or (ii) the Properties; and (b) approving any such sale as being in the interest of, and protective of, the Plan. In addition, the Independent Fiduciary may not implement the Right of First Offer unless the Independent Fiduciary has first negotiated the terms and conditions of an Unrelated Proposed Sale.

Legal Analysis

13. The Act prohibits a wide range of transactions involving a plan. In this regard, section 406(a)(1)(A) 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 sale or exchange, or leasing, of any property between a plan and a party in interest. Section 406(a)(1)(B) of the Act states that a

fiduciary with respect to a plan shall not cause a plan to engage in a transaction if the fiduciary knows or has reason to know that such transaction constitutes a direct or indirect extension of credit 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. 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.

14. The term "party in interest" is defined in section 3(14)(A) and (C) of the Act to include a fiduciary with respect to a plan, and an employer, any of whose employees are covered by such Plan. In addition, section 3(14)(G) of the Act defines the term "party in interest" to include any corporation of which 50% or more of the combined voting power of all classes of stock

entitled to vote or the total value of shares of all classes of stock of such corporation is owned directly or indirectly, or held by such employer. As fiduciaries to the Plan, the Trustees are parties in interest with respect to the Plan pursuant to section 3(14)(A) of the Act. ABARTA, as an employer whose employees are covered by the Plan, and the Tenants, as wholly-owned subsidiaries of ABARTA, are parties in interest with respect to the Plan pursuant to section 3(14)(C) and (G) of the Act, respectively.

If this proposed exemption is granted, the Contribution, the Leases and the Lease Renewals would violate section 406(a)(1)(A), 406(b)(1) and (b)(2) of the Act. The Right of First Offer would violate section 406(a)(1)(A), 406(b)(1) and (b)(2) of the Act. A sale back of a Property or LLC interest by the Plan to ABARTA pursuant to the Right of First Offer would violate section 406(a)(1)(A) and (D) of the Act, as well as section 406(b)(1) and (b)(2) of the Act. In addition, the Indemnification and the Make Whole Obligation would violate section 406(a)(1)(C) of the Act, and section 406(b)(1) and (b)(2) of the Act.

15. In addition to the prohibited transaction provisions described above, sections 406(a)(1)(E) and 406(a)(2) of the Act prohibit a plan from acquiring or holding employer real property in

violation of section 407(a) of the Act.[8] Section 407(a) of the Act provides that a plan may not acquire or hold employer real property unless such property is "qualifying employer real property." Section 407(d)(2) of the Act defines the term "employer real property" as real property that is leased to an employer or to an affiliate of such employer. Section 407(d)(4) of the Act defines the term "qualifying employer real property" to mean parcels of employer real property: (a) if a substantial number of the parcels are dispersed geographically; (b) if each parcel of real property and the improvements thereon are suitable (or adaptable without excessive cost) for more than one use; and (c) if the acquisition and retention of such property complies with the provisions of sections 406 and 407 of the Act. Section 407(a)(2) of the Act further prohibits a plan from acquiring or holding qualifying employer real property where "immediately after such acquisition the aggregate fair market value of employer securities and employer real property held by the plan exceeds 10% of the fair market value of the assets of the plan."

Given that: the acquisition and retention of the Properties by the Plan would not comply with the provisions of section 406 and 407 of the Act; and fair market values of the Properties

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8 According to the Applicant, the LLC Interests are pass-through entities, owning 100% of the underlying Properties. Therefore, the Applicant asserts that the LLC Interests are not considered securities, or for that matter, "employer securities" or "qualifying employer securities" under section 407(d)(1)or section 407(d)(5) of the Act.

immediately after acquisition would constitute approximately 18.7% of the fair market value of the Plan's assets, the Plan's acquisition and holding of the Properties would violate sections 406(a)(1)(E), 406(a)(2), and 407(a) of the Act.

The Qualified Independent Appraiser

16. The Independent Fiduciary has retained CBRE, Inc. (CBRE) to render an opinion as to the fair market value of the Properties. CBRE is a real estate appraisal firm that provides real estate financial advisory services and employs personnel with extensive experience providing valuation and appraisal services for real estate classified as warehouse/distribution.

Thomas H. Myers, Jr. and John B. Rush of CBRE's Valuation and Advisory Services prepared the appraisal report for the Pennsylvania Property (the Pennsylvania Property Appraisal Report) in November, 2014, and will update that report for purposes of this exemption, if granted. Mr. Myers is a Certified General Real Estate Appraiser in Pennsylvania and New Jersey, and an Affiliate Member of the Appraisal Institute (MAI). Mr. Myers has 43 years of relevant real estate experience, with a primary focus on major industrial properties. Mr. Rush is a Certified General Real Estate Appraiser in Delaware, New Jersey, and Pennsylvania, and has over 39 years of relevant real estate experience, including

experience that encompasses a wide variety of property types including office, retail, and industrial. Mr. Rush also holds an MAI designation from the Appraisal Institute and a CRE designation from the Counselors of Real Estate.

Robert J. DiFalco and Joseph V. Ferranti of CBRE's Valuation and Advisory Services prepared an appraisal report for the New York Property (the New York Appraisal Report) in November, 2014, and will update that report for purposes of this exemption, if granted. Mr. DiFalco is a Certified General Real Estate Appraiser in New York, New Jersey, and Connecticut and an MAI.

17. As represented by CBRE, each Appraisal Report is self-contained and intended to comply with the reporting requirements set forth under Standards Rule 2-2(a) of USPAP. Additionally, CBRE represents that the intended use of the Appraisal Report is to assist the Independent Fiduciary appointed to oversee the proposed transactions to comply with its responsibilities under the Act in connection with the proposed transactions. Finally, CBRE represents that its fee for appraisal services provided in connection with the proposed transactions represents less than 0.5% of its annual revenues in 2014 and 2015, which are the years it has provided such services.

Pennsylvania Property Appraisal Report

18. In the Pennsylvania Property Appraisal Report, CBRE describes the Pennsylvania Property as a 10.615 acre parcel of land improved by a 116,751 square foot warehouse/distribution facility. CBRE notes that the Property is located in the Lehigh Valley region, an area with a relatively diverse economic base which protects the region from the effects of wide swings in the economy. CBRE also notes that the Pennsylvania Property lies in Bethlehem, which is the most populous city in the Lehigh Valley, and that the long-term trends of the region should exert positive influences on the Property's value.

CBRE states that modern warehouse/distribution facilities, like the Pennsylvania Property, are a desirable commodity in the current marketplace. As explained by CBRE, this desirability is due to the general versatility of such facilities and a heightened demand for just-in-time delivery of products. CBRE also emphasizes that warehouse/distribution facilities are generally perceived to be a relatively stable asset class.

Pursuant to analysis based upon the Sales Comparison Approach and Income Capitalization Approach, CBRE concluded that the fair market value of the Pennsylvania Property was $4,400,000 as of November 7, 2014, in an appraisal report dated November 10, 2014. In addition, within its Income Capitalization analysis of

the Pennsylvania Property, CBRE completed a market rent analysis and estimated that a base rental amount of $3.25 per square foot, or $379,441 per year was appropriate for the space.

New York Property Appraisal Report

19. In the New York Property Appraisal Report, CBRE describes the New York Property as a 9.05 acre parcel of land improved by two adjacent warehouse buildings which cover a combined 107,250 square feet of space. CBRE notes that the structures are in average overall condition and that there are no known factors that impact their marketability. CBRE determined that the New York Property's location in the Town of Tonawanda in Erie County, New York is suitable for the Property's current industrial use. In the Appraisal Report, CBRE notes that the New York Property's location places it in a stable industrial market, within an extensive transportation network near the United States-Canada border.

Pursuant to analysis based upon the Sales Comparison Approach and the Income Capitalization Approach, CBRE concluded that the fair market value of the New York Property was $2,500,000, as of November 3, 2014, in an Appraisal Report dated November 4, 2014. In addition, within its Income Capitalization analysis of the New York Property, CBRE completed a market rent analysis and estimated that a base rental amount of $3.25 per square foot on a triple-net

basis, or $348,563 per year was appropriate for the space, as of November 4, 2014.

The Qualified Independent Fiduciary

20. For the purposes of the Covered Transactions, the Trustees have retained Evercore Trust Company (Evercore) to serve as the Independent Fiduciary for the Plan. Evercore represents that it has provided independent fiduciary services to employee benefit plans since 1987, and that it has extensive experience in making and evaluating investment decisions and with transactions implicating the prohibited transaction provisions of the Act. Evercore also represents that it has significant experience with the management and disposition of Plan assets and transactions involving real estate.

In its Engagement Letter, Evercore represents that it is independent of and unrelated to ABARTA, and that it does not directly or indirectly control, is not controlled by, and is not under common control with ABARTA. Evercore also represents that it will not directly or indirectly receive any compensation or other consideration for its own account in connection with the Covered Transactions, except for fees received in connection with its duties as Independent Fiduciary. Further, Evercore represents that its annual compensation received as Independent

Fiduciary has been less than 0.5% of its annual revenues in each of the years it has been working on this engagement.

Evercore states that it will perform the following duties as Independent Fiduciary of the Plan: (a) determine whether the Covered Transactions are in the interest of the Plan and its participants and beneficiaries; (b) negotiate the terms and conditions of the Covered Transactions on behalf of the Plan, including the Transfer Agreements, the Leases, the Lease Renewals, the Make Whole Obligation, the Indemnification, and the Right of First Offer thereunder, and other documents which Evercore, together with its legal counsel, deems necessary and in the Plan's interest to proceed with the proposed transactions; (c) determine whether and on what terms the Plan should agree to the Covered Transactions; (d) determine whether the Plan will enter into the Covered Transactions; (e) determine, together with the Independent Appraiser, the fair market value of the Properties to be contributed to the Plan, as well as the fair market rental values of the Properties under the Leases; and (e) prepare a written report for submission to the Department in connection with the exemption, if it determines that the Covered Transactions are in the interest of the Plan.

Evercore will continue to serve as Independent Fiduciary to the Plan following the Contribution of the LLC Interests to the

Plan. In this regard, Evercore will: (a) review, negotiate, and approve the terms and conditions of such Covered Transactions; (b) ensure, for purposes of the Contribution, that the Appraisal Reports of the Properties are consistent with sound principles of valuation, and that the LLC interests are valued at fair market value as of the date of the Contribution, as determined by the the Independent Appraiser; (c) review and examine all aspects of the Properties and the LLC Interests under the provisions of the Transfer Agreement, and have the right to terminate such agreement on behalf of the Plan by providing appropriate written notice to ABARTA; (d) monitor and enforce the Plan's rights and interests with respect to the Properties under the terms of the Leases, the Lease Renewals, the Make Whole Obligation, the Indemnification, and the Right of First Offer, and any other agreements regarding the Properties or the LLCs; (e) propose, negotiate, and decide whether to enter into any agreements on behalf of the Plan to amend the Leases; (f) evaluate and decide whether to grant requests for alterations to the Properties, to the extent that such alterations would: (i) diminish the fair market value or remaining useful life of the Properties; (ii) affect the structure or systems of any building existing on the Properties, or (iii) effect an expansion of any building existing on the Properties; (g) ensure compliance with all of the terms of the Leases

throughout the initial term of such Leases and throughout the duration of any renewal of such Leases; (h) arrange for appraisals of the Properties as may be necessary to satisfy the Plan's responsibilities under ERISA and the terms of this exemption; (i) manage the disposition of the Properties or the LLC Interests in connection with the Right of First Offer, and ensure that the Plan does not transfer any portion of its LLC Interests to a party in interest, such as ABARTA or the Tenants; (j) determine whether the continued ownership of the LLC Interests or the Properties is in the interests of the Plan's participants and beneficiaries and whether, when and on what terms to seek prudently to sell one or both of the LLCs or to cause the respective LLCs to sell one or both of the Properties; (k) negotiate the terms and conditions of, and consummate such sale and disposition, in the event such fiduciary determines to sell one or both of the LLCs or to cause the respective LLCs to sell or otherwise dispose of one or both Properties; and (l) monitor and enforce compliance with the conditions of this exemption, if granted.

To assist with the negotiation of the Leases and Transfer Agreements, Evercore engaged the law firms of Pillsbury Winthrop Shaw Pittman LLP (Pillsbury) and Chernow Kapustin LLC (Chernow). The fees and expenses of Evercore, as well as all fees and expenses of Pillsbury and Chernow, will be paid by ABARTA.

The Independent Fiduciary Report

21. In the preliminary Independent Fiduciary Report, Evercore concludes that the Covered Transactions are prudent and in the interest of the Plan's participants and beneficiaries. In support of this conclusion, Evercore emphasizes that the Covered Transactions will immediately improve the Plan's actuarial position, diversify the Plan's overall portfolio of assets, and reduce the Plan's reliance on future cash contributions from ABARTA.

Specifically, Evercore notes that, absent receipt by the Plan of the LLC Interests and a $500,000 cash contribution, and assuming the Plan's future receipt of required minimum contributions, the Plan's AFTAP funding percentage would be 80.54% for Plan year 2016 and 83.14% for Plan year 2017. Evercore concludes that, with the acquisition of the LLC Interests and the $500,000 cash contribution from ABARTA, the Plan's projected funding levels will improve, on a MAP-21/HAFTA basis, to 83.37% for 2016 and 85.27% for 2017.

In further support of this conclusion, Evercore asserts that the Covered Transactions will improve the diversification of the Plan's investments. Evercore emphasizes that the Plan currently holds no real estate, and that its current investments consist

entirely of liquid, marketable equity and fixed income securities. Evercore explains that the Plan's ownership and leasing of the Properties to creditworthy tenants will enhance the diversification of its portfolio in view of the low correlation of returns between real estate and other asset classes, such as the equity and fixed income securities in which the Plan's assets are currently invested. Based upon its analysis of the Plan's current investments, Evercore concludes that adding real estate exposure to the Plan's asset allocation can be expected to improve the Plan's overall risk adjusted return.

Evercore asserts that the terms of the Covered Transactions, as set forth in the Transfer Agreements and Leases, are both reasonable and consistent with terms negotiated between unrelated parties in a similar arm's-length transaction. Evercore emphasizes that its own representatives, as well as expert real estate counsel were directly involved in negotiations with ABARTA regarding the terms of the Transfer Agreements and the Leases. Evercore also emphasizes that the bondable structure of the Leases is advantageous to the Plan, as it (a) provides additional assurances that rent due under the Leases will be paid to the Plan; and (b) relieves the Plan of any obligation to expend Plan assets on the Properties for any purpose, including repairs and

capital improvements.

Evercore concludes that the Covered Transactions do not place any financial burden on the Tenants. Evercore notes that the annual rent of $379,441 under the Pennsylvania Property Lease represents only 12.6% of the $3.0 million average EBITDA generated by Coca-Cola Lehigh Valley, and that the annual rent of $348,563 under the New York Lease represents only 13.9% of the $2.5 million average EBITDA generated by Coca-Cola Buffalo.

Evercore concludes that the rental rates and escalator clauses under the Leases are consistent with the Independent Appraiser's determination of fair market rental value in the Properties' respective markets. In this regard, Evercore asserts that the bondable structure of the Leases make them more marketable and financeable than a standard, non-bondable lease. With respect to the New York Lease, Evercore states that the bondable lease structure serves to mitigate the absence of an escalator clause.

Finally, Evercore concludes that there is no marketability limitation attributable to the LLC Interests, other than as provided generally by applicable law. In this regard, Evercore asserts that the Right of First Offer will not impair the Plan's ability to sell the LLC Interests or the Properties at fair market value. Evercore cites to the fact that the Right of First

Offer is exercisable only at either: (a) each Property's fair market value; or (b) the value of an unsolicited offer from an unrelated party. Evercore also emphasizes that ABARTA has agreed that if it declines to exercise the Right of First Offer and the Plan proceeds with a sale to an unrelated party, the purchaser will not have any Right of First Offer obligation with respect to ABARTA.

Environmental Assessments of the Properties

22. The Independent Fiduciary retained CBRE to render a Limited Subsurface Environmental Site Assessment Reports for the Properties. CBRE conducted a Phase II Limited Subsurface Environmental Site Assessment of the Pennsylvania Property on January 5, 2015 (the Pennsylvania Assessment). To complete the Pennsylvania Assessment, CBRE engaged EnviroProbe Service, Inc., a Pennsylvania-licensed drilling contractor, to collect seven soil borings from the Pennsylvania Property. Once collected, CBRE submitted the soil samples to TestAmerica Laboratories, Inc. for an analysis of volatile organic compounds (VOCs) and semi-volatile organic compounds (SVOCs). Following its analysis, TestAmerica, Inc. concluded that no concentrations of VOCs or SVOCs were detectable at concentrations exceeding the most stringent soil standards established by the Pennsylvania Department of Environmental Protection. At the conclusion of the

Pennsylvania Assessment, CBRE notes that no further assessment, remediation, or reporting to the state of Pennsylvania is recommended.

On December 29, 2014, CBRE performed a Phase I Environmental Site Assessment of the New York Property (the New York Assessment). To complete the New York Assessment, CBRE engaged Nature's Way Environmental, a New York-licensed drilling contractor, to collect five soil borings from the Pennsylvania Property. Once collected, CBRE submitted the soil samples to ESC Lab Sciences, a New York-certified laboratory, for an analysis of VOCs and SVOCs. Following its analysis, ESC Lab Sciences concluded that concentrations of both VOCs and SVOCs were well below the commercial and industrial soil cleanup objectives promulgated by the New York State Department of Environmental Conservation. At the conclusion of the New York Assessment, CBRE states that no further assessment, remediation, or reporting to the state of New York is recommended.

Statutory Findings

23. The Applicant represents that Covered Transactions are administratively feasible because they will be carried out under the supervision and direction of the Independent Fiduciary. The Applicant emphasizes that the Independent Fiduciary will

represent the Plan in all aspects of the transactions, including with respect to the Contribution of the LLC Interests, as well as all aspects of the Leases, including the ROFO and any renewal of the Leases.

The Applicant represents that the Covered Transactions are in the interest of the Plan and its participants and beneficiaries and are protective of their rights. In this regard, the Applicant emphasizes that the Contribution, which is well in excess of ABARTA's minimum required contribution amount, will significantly improve the Plan's funding status, as well as reduce the Plan's reliance on future cash contributions from ABARTA. Additionally, the Applicant emphasizes that the Plan will receive valuable, appreciating real property assets that will produce a steady stream of future income for the Plan.

24. The Applicant also represents that, in the event the exemption is denied, the Plan and its Participants will incur certain hardships. The Applicant asserts that a denial of the proposed exemption would cause the Plan to forego the benefit of a voluntary contribution that is in excess of the minimum required amount, and as such, would leave the Plan at a less-advantageous funding level. The Applicant further represents that a denial of the proposed exemption would deprive the Plan of two appreciating real property assets which produce a steady

stream of reliable rental income.

Summary

25. In summary, it is represented that the Covered Transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Independent Fiduciary will negotiate the terms and conditions of the Contribution, and approve the Contribution as being in the interest of the Plan;

(b) The LLC Interests will be contributed to the Plan at their current fair market value, as determined by the Independent Fiduciary following its review of the Appraisal Report that has been prepared by the Independent Appraiser;

(c) On the date of the Contribution, the aggregate contributed value of the LLC Interests will be no less than the current fair market value of the Properties underlying the LLC Interests, as verified by the Independent Fiduciary;

(d) On the date of the Contribution, ABARTA will contribute to the Plan a cash amount that is no less than $500,000;

(e) Immediately following the Contribution, the aggregate fair market value of employer real property and employer securities held by the Plan will represent less than 20%

of the Plan's assets;

(f) As long as the Properties and/or LLC Interests are owned by the Plan, the Properties will not be altered in any way that would: (i) diminish their fair market value or remaining useful life; (ii) affect the structure or systems of any building existing on the Properties; or (iii) affect an expansion of any building existing on the Properties, without the prior written approval of the Independent Fiduciary;

(g) Following the Contribution, the Plan will not transfer a portion of its ownership interests in the LLCs or in the Properties to a party in interest to the Plan;

(h) The Independent Fiduciary will negotiate the terms and conditions of the each Lease and Lease Renewal, and approve the Plan's entering into each Lease and Lease Renewal, as being in the interest of, and protective of, the Plan;

(i) Each Lease and Lease Renewal will remain, at all times, a bondable triple net lease, such that all costs attributable to a Property (including, among other things, taxes, insurance, utilities, and non-capital maintenance, repair, and capital improvements) are the responsibility of the Tenant, until the earlier of: (i) the date on which the Property or LLC Interest is first transferred to any person or entity that is not wholly-owned by the Plan; (ii) the date on which the Plan sells a

controlling interest in the LLC to an entity that is not wholly-owned by the Plan; or (iii) the date the Lease or Lease Renewal terminates by operation of law;

(k) Any amendment to a Lease or Lease Renewal will be negotiated and approved by the Independent Fiduciary; however, in no event will any amendment be inconsistent with the terms of this exemption, if granted;

(l) For each Lease Renewal, all provisions of the Lease on which the Lease Renewal is based, with the exception of the specific rent amount and any escalator provision, will remain in effect;

(m) After the Contribution, as of the earlier of: (i) a Sale Date; or (ii) a First Calculation Date, if (A)(1) the current fair market value of a Property (or LLC interest), in the case of a sale, or (2) the current fair market value of the Property (or the LLC interest) as of the First Calculation Date, in the case in which there has not been a sale, plus (B) any income generated by the Property during that period, less (C) any expenses attributable to the Property (or the LLC Interest) paid by the Plan during that period, is less than (D) the fair market value of such Property (or the LLC Interest) at the time of the Contribution, plus (E) an amount equal to a 5% percent rate of return on such Contributed Value during that period, compounded

annually; then the Tenant will contribute an amount of cash to the Plan equal to any such difference, within 60 days of the Sale Date or First Calculation Date;

(n) If the Plan continues to hold a Property or LLC Interest during all or a portion of any of the three consecutive Lookback Periods, within 60 days of the earlier of: (i) a Sale Date; or (ii) a Subsequent Calculation Date, if (A)(1) the proceeds received from the fair market value sale of a Property (or LLC interest), in the case of a sale, or (2) the current fair market value of the LLC interest as of the applicable Subsequent Calculation Date, in the case in which there has not been a sale, plus (B) any income generated by the Property during that period, (C) less any expenses paid by the Plan during that period regarding the LLC interest or Property, is less than (D) the fair market value of such LLC Interest as of the first day of the applicable Lookback Period, plus (E) an amount equal to a 5% percent rate of return on such Contributed Value during that period, compounded annually; then the Tenant will contribute to the Plan an amount of cash equal to any such difference, within 60 days of the Sale Date or Subsequent Calculation Date;

(o) The Plan will receive the full amount that the Plan may be due under the Make Whole Obligation within 60 days of the applicable Sale Date, Calculation Date, or Subsequent Calculation

Date, as verified by the Independent Fiduciary;

(p) In connection with each Lease and Lease Renewal, and as set forth in writing therein, the applicable Tenant will indemnify, defend upon request, and hold the Plan harmless from any, and against all, losses, penalties and court costs related to: (i) the Tenant's use, repair, management, lease, sublease, maintenance or operation of a Property, (ii) any violation of any applicable environmental laws, the ADA, and other health and/or safety laws; and (iii) any default by the Tenant under the Lease or Lease Renewal;

(q) Any amount owed the Plan in connection with a Tenant's Indemnification of the Plan, as described in the preceding paragraph, will be negotiated and approved by the Independent Fiduciary, and will be paid to the Plan within the timeframe set forth by the Independent Fiduciary;

(r) During the term of the Lease and any Lease Renewal, the Independent Fiduciary will be solely responsible for determining whether, when, and under what terms the Plan may prudently sell one or both of: (i) the LLCs; or (ii) the Properties;

(s) During the term of the Lease and any Lease Renewal, the Independent Fiduciary will approve any sale by the Plan of one or both of: (i) the Properties; or (ii) the LLC, as being in

the interest of, and protective of, the Plan;

(t) The Independent Fiduciary will not implement the Right of First Offer unless the Independent Fiduciary has first negotiated the terms and conditions of a proposed sale of an LLC Interest (or a Property) to a party that is unrelated to ABARTA or any of its affiliates;

(u) Any sale of an LLC Interest or Property to ABARTA pursuant to the Right of First Offer, will equal the greater of: (1) the price negotiated by the Independent Fiduciary, as between the Plan and the party that is unrelated to ABARTA; or (2) the current fair market value of the Property, as determined by the Independent Appraiser;

(v) If ABARTA does not purchase the Property or LLC Interest under the same terms as the terms associated with the Unrelated Proposed Sale, the Plan may sell the Property or LLC Interest to the unrelated third party within 360 days without triggering a new Right of First Offer;

(w) The Independent Fiduciary will represent the interests of the Plan for all purposes with respect to the Covered Transactions;

(x) The Independent Fiduciary will: (i) review, negotiate and approve the terms and conditions of each Covered Transaction; (ii) review and approve the terms of the Transfer

Agreement that evidences the Contribution; (iii) monitor and enforce the Plan's rights and interests with respect to the Properties; (iv) monitor ABARTA's compliance with the terms of this exemption, including all obligations set forth under the Leases; and (v) take all steps that are necessary and proper to protect the Plan in the event of any non-compliance by ABARTA;

(y) The Plan will does not pay any real estate fees, commissions, costs or other expenses in connection with the proposed transactions, including any fees that are currently charged, or any fees which accrue in the future; and

(z) The terms and conditions of the Covered Transactions will be no less favorable to the Plan than those obtainable under similar circumstances when negotiated at arm's-length with unrelated third parties.

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 fifteen (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.)

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

Exemption Application Nos. D-11846 and D-11847

PROPOSED EXEMPTION

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act), and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011).

SECTION I. TRANSACTIONS

(a) If the proposed exemption is granted, 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,[9] shall not apply to the acquisition

[9] For purposes of this proposed 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.

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

(b) If the proposed exemption is granted, 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[10] 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 proposed exemption 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 (Holdings Stock), including the Plans,

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10 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.

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 C.F.R. 2570.31(j);**11**

(e) The Independent Fiduciary determined that it would be in

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11 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."

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, 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.

(c) 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 proposed exemption, if granted, will

be effective for the period beginning October 16, 2014, and ending November 7, 2014 (the Offering Period).

SUMMARY OF FACTS AND REPRESENTATIONS

Background

1. Sears Holdings Corporation (Holdings), is the parent company of Kmart and Sears, Roebuck, & Co. (Sears Roebuck). Holdings was formed as a Delaware corporation in 2004 in connection with the merger of Kmart and Sears Roebuck on March 24, 2005. In August 2014, Sears Holdings operated a national network of stores with 1,870 full-line and specialty retail stores in the United States operating through Kmart and Sears Roebuck as well as full-line and specialty retail stores in Canada operating through Sears Canada, Inc. (Sears Canada). As of October 15, 2015, Holdings owned approximately 51% of Sears Canada.

2. Common stock issued by Holdings (Holdings Stock), par value $0.01 per share, is publicly-traded on the NASDAQ Global Select market under the symbol, "SHLD." As of October 16, 2014, there were 12,293 shareholders of record and approximately 106,484,024 shares of Holdings Stock issued and outstanding.

ESL Investments, Inc. and its affiliates (ESL), including

Edward S. Lampert (Mr. Lampert) owned approximately 48.5 percent of the Holdings Stock, issued and outstanding, as of October 16, 2014. Mr. Lampert is the Chairman of the Board of Directors and Chief Executive Officer of Holdings. He is also the Chairman and Chief Executive Officer of ESL.

3. Holdings and certain of its affiliates sponsor the Sears Holdings Savings Plan (the Savings Plan) and the Sears Holdings Puerto Rico Savings Plan (the PR Plan)(collectively the Plans). Each Plan is a participant-directed account plan that permits participants to invest in equity, fixed income, balanced funds, and an investment fund (the Stock Fund) comprised of Holdings Stock. The Plans are designed and operated to comply with the requirements of section 404(c) of the Act. The Savings Plan and the PR Plan assets are held together within the Sears Holdings 401(k) Savings Plan Master Trust (the Master Trust), which also holds the Stock Fund and consequently, shares of Holdings Stock.**12** The Plans' participants, therefore, indirectly own shares of Holdings Stock, through investments in the Stock Fund.

4. Sears Roebuck and all of its wholly-owned (direct and indirect) subsidiaries and Sears Holdings Management Corporation (SHMC), a wholly-owned subsidiary of Holdings, with respect to

12 State Street Bank and Trust Company serves as the master trustee and custodian for the Master Trust.

certain employees, have adopted the Savings Plan and are employers under that Plan.

As of October 16, 2014 (the Record Date), there were 60,260 participants in the Savings Plan, and the Savings Plan's share of the total assets of the Master Trust was $2,825,371,014. Also, as of the Record Date, the Savings Plan's allocable share of the Holdings Stock held in the Stock Fund under the Master Trust was 1,515,803 shares, and the approximate percentage of the fair market value of the total assets of the Savings Plan invested in Holdings Stock was two percent, which amount constituted approximately one percent of the 106 million shares of Holdings Stock issued and outstanding.

The Savings Plan is administered by the Sears Holding Corporation Administrative Committee (the Administrative Committee), whose members are officers and/or employees of SHMC. The Sears Holdings Corporation Investment Committee (the Investment Committee), whose members are officers and/or employees of SHMC, has authority over decisions relating to the investment of the Savings Plan's assets.

5. The PR Plan was established by Holdings for employees of Sears Roebuck de Puerto Rico (Sears Roebuck PR) who reside in the Commonwealth of Puerto Rico. The Applicant represents that the fiduciaries of the PR Plan have not made an election under

section 1022(i)(2) of the Act, whereby such 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. Therefore, according to the Applicant, there is no jurisdiction under Title II of the Act. There is, however, jurisdiction under Title I of the Act.

As of December 31, 2014, there were 7,550 participants in the PR Plan. As of the Record Date there were 1,765 participants in the PR Plan with account balances, and the PR Plan's share of the total assets of the Master Trust was $17,023,422. Also, as of the Record Date, the PR Plan's allocable share of the Holdings Stock held in the Stock Fund under the Master Trust was 46,880 shares, and the approximate percentage of the fair market value of the total assets of the PR Plan invested in Holdings Stock was eight percent, which amount constituted less than one tenth of one percent of the 106 million shares of Holdings Stock issued and outstanding.

The PR Plan is administered by the Administrative Committee, and the Investment Committee makes investment decisions for the PR Plan. Banco Popular de Puerto Rico serves as the trustee of the PR Plan.

Sears Canada

6. Sears Canada was incorporated in Canada in 1952 and its headquarters are in Toronto, Ontario. It is a multi-format retailer and, as of October 14, 2014, had a total network of 113 full-line department stores, 307 specialty stores, 1,378 catalogue merchandise pick-up locations, and 96 Sears Travel offices.

As of October 16, 2014, approximately 51% of SC Stock was held by Holdings. Prior to the Offering, SC Stock traded on the Canadian Toronto Stock Exchange (TSX) under the symbol "SCC" and, as of October 8, 2014, it was also listed and trading on the U.S. NASDAQ under the symbol "SRSC."

The Offering

7. On October 2, 2014, Holdings announced its intent to conduct a rights offering to shareholders (the Offering) as a means of disposing of a non-core asset (its Sears Canada holdings) and raising substantial cash proceeds for Holdings. Furthermore, in the opinion of Holdings, the Offering gave shareholders of Holdings Stock the ability to avoid dilution by retaining their ownership percentage in Holdings and in Sears Canada. On October 15, 2014, Holdings issued the final prospectus describing the Offering to shareholders of record,

including the Plans, as of the Record Date.

Under the terms of the Offering, on October 16, 2014, all shareholders of record of Holdings Stock, including the Plans, automatically received one Right for each whole share of Holdings Stock held by each such shareholder. The Applicant represents that the Master Trust (the Trust) acquired 1,562,683 Rights through the Offering.

8. Each Right permitted the holder thereof to purchase 0.375643 shares of SC Stock from Holdings at a subscription price of $9.50 per whole share.**13** Each Right also contained an over-subscription privilege permitting the holder to subscribe for additional shares of SC Stock, up to the number of shares of SC Stock that were not subscribed for by the other holders of the Rights. The Plans were not eligible to participate in the over-subscription privilege because a qualified, independent fiduciary acting on behalf of the Plans, sold the Rights received by the Plans, as discussed more fully below.

9. All shareholders of Holdings Stock held the Rights until such Rights expired, were exercised, or were sold. With regard

13 The subscription price was determined by Holdings and is the U.S. dollar equivalent of the closing price of Sears Canada Stock on the TSX on September 26, 2014, the last trading day before Holdings requested Sears Canada's cooperation with the filing of a prospectus qualifying the shares deliverable upon exercise of the Rights.

to the exercise of the Rights, the Applicant represents that the Rights could only be exercised in whole numbers. Each shareholder of Holdings Stock needed to have at least three Rights to purchase a share of SC Stock, because only whole shares could be purchased by the exercise of the Rights. Fractional shares or cash in lieu of fractional shares were not issued in connection with the Offering.

10. With regard to the sale of the Rights, the Applicant represents that the Rights were transferable. Further, the Applicant represents that the Rights were traded on the NASDAQ Global Select Market under the symbol, "SHLDR." The allocation of the Rights to shareholders was handled by Depository Trust Company (DTC). The Applicant represents that the public trading of Rights (the Trading Period) began on October 16, 2014, and continued until the close of business on November 4, 2014, the third business day prior to the close of the Offering. The Applicant further represents that this deadline applied uniformly to all holders of the Rights.

11. While the Plans generally permit participants to direct the investment of their own accounts, including their investments in Holdings Stock, all decisions regarding the holding and disposition of the Rights by each Plan were made, in accordance with the Plan provisions, by a qualified independent fiduciary

acting solely in the interest of Plan participants.[14] Participants in the Plans who were invested in Holdings Stock as of the Record Date were notified of the Offering, the engagement of the independent fiduciary, the fact that the Rights would be held in the Stock Fund, that the independent fiduciary would determine whether the Rights should be exercised or sold, and the means by which a participant could obtain more information. Holdings also communicated generally with employees regarding the Offering and with the public through public releases at www.searsholdings.com.

12. The Offering closed at 5 P.M. eastern standard time on November 7, 2014. The Applicant represents that 40,000,000 shares of SC Stock were subscribed for by shareholders or their transferees at a price of $9.50 per whole share. During the Trading Period, the price of the SC Stock on the NASDAQ ranged from $9.06 to $10.00 with a volume-weighted average price (VWAP) of $9.75.

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[14] Each of the Plans was amended to: (i) permit the Plan to temporarily acquire and hold the Rights (and any Sears Canada stock acquired through the exercise of the Rights) pending their orderly disposition; (ii) confirm that participants were not entitled to direct the holding, exercise, sale, or other disposition of the Rights received by the Plan; and (iii) authorize the designated independent fiduciary to exercise discretionary authority with respect to the holding, exercise, sale, or other disposition of the Rights and any shares of Sears Canada stock acquired through the exercise of the Rights.

Following the Offering, Holdings' interest in Sears Canada was reduced to approximately 11.7 percent. Accordingly, the Applicant states that following the closing of the Offering, Sears Canada became independent of Holdings. The Applicant represents that the gross proceeds payable to and received by Holdings from the sale of the SC Stock pursuant to the Offering, net of any selling expenses, was approximately $380 million.

The Independent Fiduciary

13. Fiduciary Counselors Inc. (FCI) was retained by the Investment Committee pursuant to an agreement (the Agreement), dated October 16, 2014, to act as the independent fiduciary on behalf of the Plans, in connection with the Offering and an exemption application. Pursuant to the terms of the Agreement, FCI's responsibilities were to determine whether or not and when to exercise or sell the Rights received by each Plan in the Offering.**15**

The Applicant represents that hiring an independent fiduciary to manage the holding and disposition of the Rights was appropriate in this case for the following reasons: (i) There

15 Because the Rights were automatically issued to all shareholders including the Plans and there was no option to decline them, the independent fiduciary was not asked to determine whether the Plans should acquire the Rights.

would have been a significant cost to developing and implementing a process under each Plan to administer a pass-through of the Rights to participants; (ii) It was not practicable to initiate and implement a pass-through of the Rights to participants given the limited notice provided to shareholders of the Offering and the short subscription period (16 days), because such process would have included establishment of a "rights fund" and a Sears Canada fund within each Plan, the design and testing of procedures for allocating the Rights among participant accounts, soliciting participant directions on the exercise or sale of the Rights and identifying the source of funding (e.g., which investment account is to be liquidated) for each participant who chose to exercise the Rights, and the short Offering period meant that there would have been insufficient time to adequately educate participants regarding their rights and obligations; (iii) There would have been a loss of value that participants might otherwise have gained, because participants' unfamiliarity with rights offerings as well as general participant inertia would have resulted in a significant percentage of participants allowing their Rights to expire without selling or exercising them; (iv) It was not in the interest of participants to require the Plans to offer and hold for participant investment a single stock (SC Stock) that had not been selected by the plan fiduciary

as an investment option appropriate for the Plan; and (v) The Rights are most appropriately viewed as a non-cash dividend payable to owners of Holdings Stock such as the Plans, so that the fiduciary of the Stock Fund is the appropriate person to manage the "proceeds" of the Plans' investment in Holdings Stock. The Applicant represents that, in this case, the independent fiduciary appointed to manage the Rights took responsibility for realizing the value in the Rights by selling them. The cash proceeds of that sale were then reinvested in Holdings Stock pursuant to the terms of the plan.

The Applicant represents that FCI is qualified to serve as the independent fiduciary for the Plans in connection with the Offering, because FCI is a registered investment adviser under the Investment Advisers Act of 1940, and FCI is an independent company whose primary focus is providing independent fiduciary services for employee benefit plans. FCI has served as an independent fiduciary to employee benefit plans since 2001.

In its "Report of Independent Fiduciary Regarding Sears Canada Rights Offering," dated February 23, 2015 (The IF Report), FCI represents and warrants that it is independent and unrelated to Holdings. FCI further represents that it did not directly or indirectly receive any compensation or other consideration for its own account in connection with the Offering, except

compensation from Holdings for performing services described in the Agreement. The percentage of FCI's 2014 revenue derived from any party in interest involved in the subject transaction or its affiliates was less than five percent of FCI's 2013 revenue.

FCI represents further that it understands and acknowledges its duties and responsibilities under the Act in acting as a fiduciary on behalf of the Plans in connection with the Offering. In the IF Report, FCI represents that it conducted a due diligence process in evaluating the Offering on behalf of the Plans. This process included numerous discussions and correspondence with representatives of the Plans and Holdings, Holdings' counsel, broker-dealers and representatives of the Plans' trustee enabling FCI to better understand a number of important elements related to the Offering. In addition, FCI reviewed publicly available information and information provided by Holdings.

As detailed in the IF Report, with regard to the Offering, FCI considered the following four options: (i) Continue holding the Rights within the Stock Fund; (ii) Exercising all of the Rights and acquiring SC Stock; (iii) Selling a portion of the Rights and using the proceeds to exercise the remaining Rights to acquire SC Stock; or (iv) Selling all of the Rights on the NASDAQ Global Select Market at the prevailing market price. Acting as

the independent fiduciary on behalf of the Plans, FCI chose to sell all of the Rights on the NASDAQ Global Select Market.

In determining to sell all of the Plans' Rights, FCI represents that the proceeds from the sale would be invested in Holdings Stock, as per the governing documents of the Stock Fund. As described in the IF Report, FCI determined that the benefits of selling the Rights included simplicity, lower transaction costs, and less exposure to risk than the options that involved exercising any of the Rights. According to FCI, this option allowed the Plans to realize the benefits of the Rights in a timely manner while maintaining maximum exposure to shares of Sears Holdings within the Stock Fund, consistent with the purpose of the Stock Fund. FCI understood that the Plans would incur some transactions costs through this option, estimated at $0.015 to $0.05 per Right traded. Accordingly, FCI concluded that this sale of the Rights was in the interest of the Plans and the Plans' participants and beneficiaries and was protective of such participants and beneficiaries of the Plans.

14. The Trading Period ended on November 4, 2014. According to the IF Report, over the sixteen-day period that the Rights traded on the NASDAQ, the volume-weighted average price for the 58,546,218 Rights traded was $0.1239 according to data reported by Bloomberg. The IF Report provides that FCI completed

the sale of the Plans' 1,562,683 Rights in blind transactions on the NASDAQ Global Select Market between October 22 and October 31, 2014, realizing an average selling price of $0.1333 per Right.

According to the Applicant, as a result of the Rights sale, the total net proceeds generated for the Savings Plan and the PR Plan was $200,557.36. These proceeds were credited to each Plan and the unit value of each participant's account balance reflected the addition of assets credited to the Plan.

15. The Applicant represents that 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 broker affiliated with FCI, Holdings, or Sears Canada in connection with the sale of the Rights. In this regard, FCI represents that it selected State Street Global Markets as the broker for the sale of the Plans' Rights, based on FCI's confidence in the broker's execution ability and an attractive fee schedule of 0.005 cents per Right traded. In connection with the sale of the Rights, the Plans paid $7,813.42 in commissions to independent, third parties and $4.66 in SEC fees.

Requested Relief

16. The Applicant represents that the subject transactions have already been consummated. In this regard, the Plans acquired the Rights pursuant to the Offering, and held such Rights until the Rights were sold by the independent fiduciary. The Applicant states that, because there was insufficient time between the dates when the Plans acquired the Rights and when such Rights were sold, to apply for and be granted an exemption, Holdings was required to request retroactive relief, effective as of October 16, 2014, the Record Date.

17. Section 406(a)(1)(E) of the Act prohibits a fiduciary from causing a plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect acquisition, on behalf of a plan, of any employer security or employer real property 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 from permitting a plan to hold any employer security or employer real property if he knows or should know that holding such security or real property violates section 407(a). The Applicant represents that because the Rights are non-qualifying employer securities, the acquisition and holding of the Rights violated sections 406(a)(1)(E), 406(a)(2), and 407(a) of the Act.

Furthermore, section 406(b)(1) of the Act prohibits a fiduciary from dealing with the assets of a plan in his own interest or for his own account. Section 406(b)(2) of the Act prohibits a fiduciary, in his individual or in any other capacity, from acting in any transaction involving the plan on behalf of a party (or representing a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries. The Applicant states that, although Holdings retained an independent fiduciary to represent the Plans in connection with the disposition of the Rights, by causing the participation of the Plans in the Offering, Holdings may have dealt with the assets of the Plans for its own account, and also may have acted in a transaction on behalf of itself and the Plans.

Therefore, the Applicant requests an administrative exemption from sections 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act and section 4975 of the Code by reason of 4975(c)(1)(E) of the Code, with regard to the Savings Plan, and from sections 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act with regard to

the PR Plan.**16**

Statutory Findings

18. The Applicant represents that the requested exemption is administratively feasible because the acquisition, holding, and sale of the Rights by the Plans was a one-time transaction which will not require continued monitoring or other involvement by the Department.

19. The Applicant represents that the transactions which are the subject of this proposed exemption are in the interest of the Plans, because the Rights were automatically issued at no cost to all shareholders of Holdings Stock as of a specified Record Date, including the Plans. The Plans were then able to realize value through their sale.

20. The Applicant represents that the transactions were protective of the Plans and their respective participants and beneficiaries, as the Plans obtained the Rights as a result of an independent act of Holdings as a corporate entity. In addition, the acquisition of the Rights by the Plans occurred on the same

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16 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.

terms made available to other holders of Holdings Stock and the Plans received the same proportionate number of Rights as other owners of Holdings Stock. The Plans were also protected in that all decisions regarding the holding and disposition of the Rights by the Plans were made, in accordance with Plan provisions, by the independent fiduciary. Furthermore, 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.

Summary

21. In summary, the Applicant represents that the proposed exemption satisfies the statutory criteria for an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code for the reasons stated above and for the following reasons:

(a) The receipt of the Rights by the Plans occurred in connection with the Offering, in which all shareholders of 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, and without any participation on the part of the Plans;

(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 within the meaning of 29 C.F.R. 2570.31(j);

(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; 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 Holdings, Sears Canada, or the independent fiduciary with respect to the sale of the Rights.

NOTICE TO INTERESTED PERSONS

Notice of the proposed exemption will be given to all interested persons within 22 days of the publication of the notice of proposed exemption in the Federal Register, by first class U.S. mail to the last known address of all such individuals. Such notice will contain a copy of the notice of proposed exemption, as published in the Federal Register, and a

supplemental statement, as required pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on and to request a hearing with respect to the pending exemption. Written comments and hearing requests are due within 52 days of the publication of the notice of proposed exemption in the Federal Register. All comments will be made available to the public.

Warning: If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) 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: 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

Exemption Application Nos. D-11851 and D-11852

PROPOSED EXEMPTION

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act), and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011).

SECTION I. 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,[17] shall not apply to the acquisition and holding of certain subscription

[17] For purposes of this proposed 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.

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 proposed 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[18] shall not apply to the acquisition and holding of the Rights by the PR Plan in connection with the Offering by Holdings, provided that the conditions as set forth in Section II of this proposed exemption 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 (Holdings Stock), including the Plans,

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18 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.

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 C.F.R. 2570.31(j);

(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 in connection with 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.

(c) 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 proposed exemption, if granted, will be effective for the period beginning October 30, 2014, and ending November 18, 2014 (the Offering Period).

SUMMARY OF FACTS AND REPRESENTATIONS

Background

1. Sears Holdings Corporation (Holdings), is the parent company of Kmart and Sears, Roebuck, & Co. (Sears Roebuck). Holdings was formed as a Delaware corporation in 2004 in connection with the merger of Kmart and Sears Roebuck on March 24, 2005. By August 2014, Holdings operated a national network

of stores with 1,870 full-line and specialty retail stores in the United States operating through Kmart and Sears Roebuck. In October 2014, Holdings completed the spin-off of a substantial portion of Sears Canada, Inc., which allowed it to dispose of a non-core asset and raise substantial cash proceeds.

2. Common stock issued by Holdings (Holdings Stock), par value $0.01 per share, is publicly-traded on the NASDAQ Global Select market under the symbol, "SHLD." As of October 30, 2014, there were 12,236 shareholders of record and approximately 106.5 million shares of Holdings Stock issued and outstanding.

3. ESL Investments, Inc. and its affiliates (ESL), including Edward S. Lampert (Mr. Lampert) owned approximately 48.5 percent of the Holdings Stock, issued and outstanding, as of October 30, 2014. Mr. Lampert is the Chairman of the Board of Directors and Chief Executive Officer of Holdings. He is also the Chairman and Chief Executive Officer of ESL.

4. Holdings and certain of its affiliates sponsor the Sears Holdings 401(k) Savings Plan (the Savings Plan) and the Sears Holdings Puerto Rico Savings Plan (the PR Plan)(collectively the Plans). Each Plan is a participant-directed account plan that permits participants to invest in equity, fixed income, balanced funds, and an investment fund (the Stock Fund) comprised of Holdings Stock. The Plans are designed and operated to comply

with the requirements of section 404(c) of the Act. The Savings Plan and the PR Plan assets are held together within the Sears Holdings 401(k) Savings Plan Master Trust (the Master Trust), which also holds the Stock Fund and consequently, shares of Holdings Stock.**19** The Plans' participants, therefore, indirectly own shares of Holdings Stock through investments in the Stock Fund.

5. Sears Roebuck and all of its wholly-owned (direct and indirect) subsidiaries and Sears Holdings Management Corporation (SHMC), a wholly-owned subsidiary of Holdings, with respect to certain employees, have adopted the Savings Plan and are employers under that Plan.

6. As of October 30, 2014 (the Record Date), there were 60,260 participants in the Savings Plan, and the Savings Plan's share of the total assets of the Master Trust was approximately $2.95 billion. Also, as of the Record Date, the Savings Plan's allocable share of the Holdings Stock held in the Stock Fund under the Master Trust was 1,411,133 shares, and the approximate percentage of the fair market value of the total assets of the

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19 State Street Bank and Trust Company serves as the master trustee and custodian for the Master Trust. As of October 30, 2014, the Master Trust had approximately $2.95 billion in total assets. As of October 30, 2014, the Stock Fund within the Master Trust held 1,451,783 shares of Holdings Stock with a fair market value of $53,338,507.40.

Savings Plan invested in Holdings Stock was 1.79 percent, which amount constituted approximately one percent of the 106.5 million shares of Holdings Stock issued and outstanding.

7. The Savings Plan is administered by the Sears Holding Corporation Administrative Committee (the Administrative Committee), whose members are officers and/or employees of SHMC. The Sears Holdings Corporation Investment Committee (the Investment Committee), whose members are officers and/or employees of SHMC, has authority over decisions relating to the investment of the Savings Plan's assets.

8. The PR Plan was established by Holdings for employees of Sears Roebuck de Puerto Rico (Sears Roebuck PR) who reside in the Commonwealth of Puerto Rico. The Applicant represents that the fiduciaries of the PR Plan have not made an election under section 1022(i)(2) of the Act, whereby such 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. Therefore, according to the Applicant, there is no jurisdiction under Title II of the Act. There is, however, jurisdiction under Title I of the Act.

9. As of December 31, 2014, there were 7550 participants in the PR Plan. As of the Record Date, there were 1,766 participants with account balances, and the PR Plan's share of

the total assets of the Master Trust was $17,859,181.57. Also, as of the Record Date, the PR Plan's allocable share of the Holdings Stock held in the Stock Fund under the Master Trust was 40,650 shares, and the approximate percentage of the fair market value of the total assets of the PR Plan invested in Holdings Stock was 8.36 percent, which amount constituted 0.04 percent of the 106.5 million shares of Holdings Stock issued and outstanding.

10. The PR Plan is administered by the Administrative Committee, and the Investment Committee makes investment decisions for the PR Plan. Banco Popular de Puerto Rico serves as the trustee of the PR Plan.

The Offering

11. By late October 2014, Holdings had reduced its stake in Sears Canada, Inc. and raised significant cash through a rights offering. On October 20, 2014, Holdings announced its intent to conduct an additional rights offering to shareholders (the Offering) as a means of further evolving Holdings' capital structure and enhancing its financial flexibility. On October 20, 2014, Holdings issued a prospectus describing the Offering to shareholders of record, including the Plans, as of the Record Date. The prospectus was supplemented on October 30, 2014.

12. Under the terms of the Offering, on October 30, 2014, each shareholder of record of Holdings Stock, including the Plans, automatically received one (1) Right for every 85.1872 shares of Holdings Stock held by such shareholder. The Applicant represents that only whole Rights were distributed to shareholders, including the Plans, and the Master Trust acquired 17,189 Rights through the Offering. The allocation of the Rights to shareholders was handled by Depository Trust Company.

13. Each Right permitted the holder thereof to purchase for $500, one "Unit," consisting of (a) a note issued by Holdings in the principal amount of $500 (Note),**20** and (b) 17.5994 warrants (Warrants), each entitling the holder to purchase one share of Holdings Stock.**21** Each Right also contained an over-

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20 The Notes are unsecured obligations and bear interest at a rate of 8% per annum, which is paid semi-annually. The Notes mature on December 15, 2019. While the Notes are transferable, they are not listed on any exchange and can only be sold in a private transaction. Holdings issued $625 million aggregate original principal amount of the Notes in the Offering.

21 Each Warrant is initially exercisable for one share of Holdings stock at an exercise price per share of $28.41. Subject to applicable laws and regulations, the Warrants may be exercised at any time starting on their date of issuance until 5:00 p.m., New York City time, on December 15, 2019. The exercise price may be paid with cash or Notes, provided that Holdings maintains an effective registration statement for the Holdings Stock issuable upon exercise of the Warrants. If the exercise of a Right would result in the delivery of a fractional Warrant, the number of Warrants would be rounded down to the nearest whole number. The Warrants are transferable and listed on the Nasdaq Global Select Market under "SHLDW."

subscription privilege permitting the holder to subscribe for additional Units, up to the number of Units that were not subscribed for by the other holders of the Rights. The Plans were not eligible to participate in the over-subscription privilege because a qualified, independent fiduciary acting on behalf of the Plans, sold the Rights received by the Plans, as discussed more fully below.

14. All shareholders of Holdings Stock held the Rights until such Rights expired, were exercised, or were sold. With regard to the exercise of the Rights, the Applicant represents that the Rights could only be exercised in whole numbers. Furthermore, each shareholder of Holdings Stock needed to have at least eighty-six Rights to purchase a Unit, because only whole Units could be purchased through the exercise of the Rights. Fractional Units or cash in lieu of fractional Units were not issued in connection with the Offering.

15. With regard to the sale of the Rights, the Applicant represents that the Rights were transferable and that they traded on the NASDAQ Global Select Market under the symbol "SHLDZ." The Applicant represents that the public trading of Rights (the Trading Period) began on or around October 31, 2014, and continued until the close of business on November 13, 2014, the third business day prior to the close of the Offering. The

Applicant further represents that this deadline applied uniformly to all holders of the Rights.

16. While the Plans generally permit participants to direct the investment of their own accounts, including their investments in Holdings Stock, all decisions regarding the holding and disposition of the Rights by each Plan were made, in accordance with the Plan provisions, by a qualified independent fiduciary acting solely in the interest of Plan participants.[22] Participants in the Plans who were invested in Holdings Stock as of the Record Date were notified of the Offering, the engagement of the independent fiduciary, the fact that the Rights would be held in the Stock Fund, that the independent fiduciary would determine whether the Rights should be exercised or sold, and the means by which a participant could obtain more information. Holdings also communicated generally with employees regarding the Offering and with the public through public releases at www.searsholdings.com.

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22 Each of the Plans was amended as required to: (i) permit the Plan to temporarily acquire and hold the Rights (and any Notes or Warrants acquired through the exercise of the Rights) pending their orderly disposition; (ii) confirm that participants are not entitled to direct the holding, exercise, sale or other disposition of the Rights received by the Plan; and (iii) authorize the designated independent fiduciary to exercise discretionary authority with respect to the holding, exercise, sale or other disposition of the Rights and any Notes or Warrants acquired through the exercise of the Rights.

17. The Offering expired at 5 P.M. eastern standard time on November 18, 2014. The Applicant represents that Holdings issued 1,250,000 Units, including $625 million aggregated principal amount of Notes and Warrants to purchase 21,999,296 shares of Holdings Stock. Over the 10-day period that the Rights traded on the Nasdaq, the volume weighted average price per Right for the 751,041 Rights traded was $201.1554, according to data reported by Bloomberg. The Applicant represents that the gross proceeds payable to and received by Holdings from the sale of the Units pursuant to the Offering, net of any selling expenses, was approximately $625 million.

The Independent Fiduciary

18. Fiduciary Counselors Inc. (FCI) was retained by the Investment Committee pursuant to an agreement (the Agreement), dated November 3, 2014, to act as the independent fiduciary on behalf of the Plans, in connection with the Offering and an exemption application. Pursuant to the terms of the Agreement, FCI's responsibilities were to determine: (a) whether or not and when to exercise or sell the Rights received by each Plan in the Offering; or (b) if it determined to exercise any of a Plan's Rights to purchase the Units, to manage the investment in the Notes and Warrants within that Plan's Stock Fund, and determine

when to liquidate or exercise the Notes and Warrants for the purpose of reinvesting the proceeds in Holdings Stock.**23**

19. The Applicant represents that hiring an independent fiduciary to manage the holding and disposition of the Rights was appropriate in this case for the following reasons: (a) There would have been a significant cost to each Plan to develop and implement a process to administer a pass-through of the Rights to participants; (b) It was not practicable to initiate and implement a pass-through of the Rights to participants given the limited notice provided to shareholders of the Offering and the short subscription period (15 days); (c) Participants' unfamiliarity with rights offerings as well as general participant inertia may have resulted in a significant percentage of participants allowing their Rights to expire without selling or exercising them; (d) The Notes and Warrants had not been previously selected by the plan fiduciary as an investment option appropriate for the Plan; and 5) The Rights are most appropriately viewed as a non-cash dividend payable to owners of Holdings Stock such as the Plans, so that the fiduciary of the Stock Fund is the appropriate person to manage the "proceeds" of

23 Because the Rights were automatically issued to all shareholders including the Plans and there was no option to decline them, the independent fiduciary was not asked to determine whether the Plans should acquire the Rights.

the Plans' investment in Holdings Stock. The Applicant represents that, in this case, the independent fiduciary appointed to manage the Rights took responsibility for realizing the value in the Rights by selling them. The cash proceeds of that sale were then reinvested in Holdings Stock pursuant to the terms of the plan.

20. The Applicant represents that FCI is qualified to serve as the independent fiduciary for the Plans in connection with the Offering, because FCI is a registered investment adviser under the Investment Advisers Act of 1940, and over the past 13 years, FCI has served or is serving as an independent fiduciary on behalf of employee benefit plans in connection with more than 14 prohibited transaction exemption applications, not counting applications involving the Plans. Additionally, FCI represents that it is an independent company whose primary focus is providing independent fiduciary services for employee benefit plans.

21. In its "Report of Independent Fiduciary Regarding Sears Rights Offering for Debt and Warrants," dated February 23, 2015 (the IF Report), FCI represents and warrants that it is independent and unrelated to Holdings. FCI further represents that it did not directly or indirectly receive any compensation or other consideration for its own account in connection with the

Offering, except compensation from Holdings for performing services described in the Agreement. The percentage of FCI's 2014 revenue derived from any party in interest involved in the subject transaction or its affiliates was less than five percent of FCI's 2013 revenue.

22. FCI represents further that it understands and acknowledges its duties and responsibilities under the Act in acting as a fiduciary on behalf of the Plans in connection with the Offering. In the IF Report, FCI represents that it conducted a due diligence process in evaluating the Offering on behalf of the Plans. This process included numerous discussions and correspondence with representatives of the Plans and Holdings, Holdings' counsel, broker-dealers, and representatives of the Plans' trustee, enabling FCI to better understand a number of important elements related to the Offering. In addition, FCI reviewed publicly available information and information provided by Holdings.

23. As detailed in the IF Report, with regard to the Offering, FCI considered the following four (4) options: (a) Continue holding the Rights within the Stock Fund; (b) Exercising all of the Rights and acquiring the Notes and Warrants, then sell the Notes or use them to exercise Warrants, sell or exercise the Warrants, and use any remaining cash to acquire Holdings Stock in

the market; (c) Selling all of the Rights on the NASDAQ Global Select Market at the prevailing market price; or (d) Selling a portion of the Rights and using the proceeds to exercise the remaining Rights, so as to acquire Notes and Warrants (then sell the Notes or use them to exercise Warrants, then sell or exercise the Warrants and use any remaining cash to acquire Holdings Stock in the market). Acting as the independent fiduciary on behalf of the Plans, FCI chose to sell all of the Rights on the NASDAQ Global Select Market.

24. In determining to sell all of the Plans' Rights, FCI represents that the proceeds from the sale would be invested in Holdings Stock, as per the governing documents of the Stock Fund. As described in the IF Report, FCI determined that the benefits of selling the Rights included simplicity, lower transaction costs, and less exposure to risk than the options that involved exercising any of the Rights. According to FCI, this option allowed the Plans to realize the benefits of the Rights in a timely manner at the best available market prices so that cash raised through the sale could be reinvested in Holdings Stock, consistent with the purpose and intent of the Stock Fund. FCI understood that the Plans would incur some transactions costs through this option, estimated at $0.015 to $0.05 per Right traded. Accordingly, FCI concluded that this sale of the Rights

was in the interest of the Plans and the Plans' participants and beneficiaries and was protective of such participants and beneficiaries of the Plans.

25. At FCI's direction, the Plans sold the Rights over a period of days while trying not to be too high a percentage of the daily volume so as to avoid putting downward pressure on the price of the Rights. The Trading Period ended on November 13, 2014. According to the IF Report, and as noted above, over the ten-day period that the Rights traded on the NASDAQ, the volume-weighted average price for the 751,041 Rights traded was $201.1554 according to data reported by Bloomberg. The IF Report provides that FCI completed the sale of the Plans' 17,189 Rights in blind transactions on the NASDAQ Global Select Market between November 4 and November 7, 2014, realizing an average selling price of $211.6283 per Right.

26. According to the Applicant, as a result of the Rights sale, the total net proceeds generated for the Savings Plan and the PR Plan was $3,637,509.54. These proceeds were credited to each Plan and the unit value of each participant's account balance reflected the addition of assets credited to the Plan.

27. The Applicant represents that 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 broker affiliated with FCI or Holdings in connection with the sale of the Rights. In this regard, FCI represents that it selected State Street Global Markets as the broker for the sale of the Plans' Rights, based on FCI's confidence in the broker's execution ability and an attractive fee schedule of 0.015 cents per Right traded. In connection with the sale of the Rights, the Plans paid $257.84 in commissions to independent, third parties and $80.42 in SEC fees.

Requested Relief

28. The Applicant represents that the subject transactions have already been consummated. In this regard, the Plans acquired the Rights pursuant to the Offering, and held such Rights until the Rights were sold by the independent fiduciary. The Applicant states that, because there was insufficient time before the Plans acquired the Rights to apply for and be granted an exemption, Holdings was required to request retroactive relief, effective as of October 30, 2014, the Record Date.

29. Section 406(a)(1)(E) of the Act prohibits a fiduciary from causing a plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect acquisition, on behalf of a plan, of any employer

security or employer real property 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 from permitting a plan to hold any employer security or employer real property if he knows or should know that holding such security or real property violates section 407(a). The Applicant represents that because the Rights are non-qualifying employer securities, the acquisition and holding of the Rights violated sections 406(a)(1)(E), 406(a)(2), and 407(a) of the Act.

30. Furthermore, section 406(b)(1) of the Act prohibits a fiduciary from dealing with the assets of a plan in his own interest or for his own account. Section 406(b)(2) of the Act prohibits a fiduciary, in his individual or in any other capacity, from acting in any transaction involving the plan on behalf of a party (or representing a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries. The Applicant states that, although Holdings retained an independent fiduciary to represent the Plans in connection with the disposition of the Rights, by causing the participation of the Plans in the Offering, Holdings may have dealt with the assets of the Plans for its own account, and also may have acted in a transaction on behalf of itself and

the Plans.

31. Therefore, the Applicant requests an administrative exemption from sections 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act and section 4975 of the Code by reason of 4975(c)(1)(E) of the Code, with regard to the Savings Plan, and from sections 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act with regard to the PR Plan.**24**

Statutory Findings

32. The Applicant represents that the requested exemption is administratively feasible because the acquisition, holding, and sale of the Rights by the Plans was a one-time transaction which will not require continued monitoring or other involvement by the Department.

33. The Applicant represents that the transactions which are the subject of this proposed exemption are in the interest of the Plans, because the Rights were automatically issued at no cost to all shareholders of Holdings Stock as of a specified

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24 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.

Record Date, including the Plans. The Plans were then able to realize value through their sale.

34. The Applicant represents that the transactions were protective of the Plans, and their respective participants and beneficiaries, as the Plans obtained the Rights as a result of an independent act of Holdings as a corporate entity. In addition, the acquisition of the Rights by the Plans occurred on the same terms made available to other holders of Holdings Stock and the Plans received the same proportionate number of Rights as other owners of Holdings Stock. The Plans were also protected in that all decisions regarding the holding and disposition of the Rights by the Plans were made, in accordance with Plan provisions, by the independent fiduciary. Furthermore, 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.

Summary

35. In summary, the Applicant represents that the proposed exemption satisfies the statutory criteria for an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code for the reasons stated above and for the following reasons:

(a) The receipt of the Rights by the Plans occurred in

connection with the Offering, in which all shareholders of 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, and without any participation on the part of the Plans;

(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 within the meaning of 29 C.F.R. 2570.31(j);

(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; 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 Holdings or the independent fiduciary in connection with the sale of the Rights.

NOTICE TO INTERESTED PERSONS

Notice of the proposed exemption will be given to all interested persons within 22 days of the publication of the notice of proposed exemption in the Federal Register, by first class U.S. mail to the last known address of all such individuals. Such notice will contain a copy of the notice of proposed exemption, as published in the Federal Register, and a supplemental statement, as required pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on and to request a hearing with respect to the pending exemption. Written comments and hearing requests are due within 52 days of the publication of the notice of proposed exemption in the Federal Register. All comments will be made available to the public.

Warning: If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) 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: 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

[Application Nos. D-11871 and D-11872, respectively]

PROPOSED EXEMPTION

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

SECTION I. TRANSACTIONS

(a) If the proposed exemption is granted, 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,[25] shall not apply,

[25] For purposes of this proposed exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

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 in Section II of this proposed exemption were satisfied for the duration of the acquisition and holding; and

(b) If the proposed exemption is granted, 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[26] 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 in Section II of this proposed exemption were satisfied for the duration of

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26 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.

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 (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);**27**

27 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

(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 (NYSE); 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.

SECTION III. DEFINITIONS

(a) The term "Holdings" refers to Sears Holdings Corporation and its affiliates.

(b) 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;

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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."

(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.

(c) 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 proposed exemption, if granted, will be effective for the Offering period, beginning June 11, 2015, and ending July 2, 2015 (the Offering Period).

SUMMARY OF FACTS AND REPRESENTATIONS[28]

The Plans

1. Employees of certain affiliates of Holdings participate in the Plans. The Plans consist of the Savings Plan and the PR Plan. The Plans are defined contribution, eligible individual account plans that are designed and operated to comply with the

[28] The Summary of Facts and Representations is based solely on the representations of the Applicant and does not reflect the views of the Department, unless indicated otherwise.

requirements of section 404(c) of the Act. The Plans allow participants to purchase units in certain stock funds which invest in Holdings Stock. In this regard, the Savings Plan and the PR Plan share a single stock fund (the Stock Fund) within the Sears Holdings 401(k) Savings Plan Master Trust (the Master Trust) to hold shares of Holdings Stock. As of June 11, 2015, the Master Trust held approximately $2.8 billion in total assets. State Street Bank and Trust Company (State Street) serves as the Master Trustee and Custodian for the Master Trust.

2. 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.

As of June 11, 2015, (the Record Date), there were 53,831 participants in the Savings Plan, and the Savings Plan's share of the total assets of the Master Trust was $2,820,235,014. Also, as of the Record Date, the Savings Plan's allocable portion of Holdings Stock held in the Stock Fund on behalf of 14,476 participants under the Master Trust was 1,286,302.45 shares,

which constituted approximately 1.2% of the 106,603,021 shares of Holdings Stock issued and outstanding. The approximate percentage of the fair market value of the total assets of the Savings Plan invested in Holdings Stock was 1.3%.

The Savings Plan is administered by the Sears Holding Corporation Administrative Committee (the Administrative Committee), whose members are employees of Holdings. The Sears Holdings Corporation Investment Committee (the Investment Committee), whose members are officers and/or employees of Holdings and/or its subsidiaries, has authority over decisions relating to the investment of the Plans' assets.

3. The PR Plan, which is sponsored and maintained by Holdings, was originally established by Sears Roebuck for employees of Sears Roebuck de Puerto Rico Inc. (Sears Roebuck de Puerto Rico) and Kmart, who reside in the Commonwealth of Puerto Rico, upon the merger of the Kmart Corporation Retirement Savings Plan for Puerto Rico employees with and into the prior Sears Roebuck de Puerto Rico Savings Plan, as of March 31, 2012. According to the Applicant, the PR Plan has not made an election under section 1022(i)(2)of the Act, whereby such 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. Therefore, according to the Applicant, there is no jurisdiction

under Title II of the Act. There is, however, jurisdiction under Title I of the Act.

As of the Record Date, there were 1,696 participants in the PR Plan, and the PR Plan's share of the total assets of the Master Trust was $17,324,339. Also, as of the Record Date, the PR Plan's allocable portion of Holdings Stock held in the Stock Fund under the Master Trust on behalf of 629 participants was 39,782,55 shares, which constituted approximately 0.04% of the 106,603,021 shares of Holdings Stock issued and outstanding, on June 11, 2015. The approximate percentage of the fair market value of the total assets of the PR Plan invested in Holdings Stock was 6.5%,

The PR Plan is administered by the Administrative Committee, and the Investment Committee makes investment decisions for such plan. Banco Popular de Puerto Rico serves as the PR Plan trustee.

Holdings

4. Holdings, the sponsor of each of the Plans, is a retail merchant with full-line and specialty retail stores in the United States, Guam, Puerto Rico, the U.S. Virgin Islands, and Canada. Holdings was formed as a Delaware corporation in 2004 in connection with the merger of Kmart and Sears Roebuck, which took

place on March 24, 2005. Holdings is the parent company of Kmart Holding Company and Sears Roebuck. The principal executive office of Holdings is located in Hoffman Estates, Illinois. According to the Form 10-K for the fiscal year ending January 31, 2015, Holdings and its subsidiaries had total assets of approximately $11.3 billion. Also as of January 31, 2015, Holdings and its subsidiaries employed approximately 196,000 employees.

Holdings Stock/Ownership

5. Common stock issued by Holdings (i.e., Holdings Stock), with a par value $0.01 per share, is publicly-traded on the NASDAQ Global Select Market under the symbol, "SHLD." There were 11,659 shareholders of record, as of June 11, 2015.

ESL Investments, Inc. and its affiliates, (ESL), including Edward S. Lampert (Mr. Lampert) owned approximately 53.2% of Holdings Stock issued and outstanding as of June 9, 2015. Mr. Lampert is the Chairman of the Board of Directors and Chief Executive Officer of Holdings. He is also the Chairman and Chief Executive Officer of ESL.

Seritage Growth

6. Seritage Growth is a publicly traded, self-administered,

self-managed real estate investment trust that is primarily engaged in the real property business through its investment in its operating partnership, Seritage Growth Properties, L.P. Seritage Growth's portfolio contains 235 wholly-owned properties and 31 joint venture properties, consisting of approximately 42 million square feet of building space, which is broadly diversified by location across 49 states and Puerto Rico. Pursuant to a master lease, 224 of Seritage Growth's wholly-owned properties are leased to Holdings and are operated under either the Sears Roebuck or K-Mart brand. The master lease provides Seritage with rights to recapture certain space from Sears Holdings at each property.

Prior to the Offering described below, Seritage Growth Stock was owned exclusively by Benjamin Schall, the Chief Executive Officer of Seritage Growth. Immediately following the Offering, ESL owned 4% of Seritage Growth Stock, 100% of Seritage Growth's Class B non-economic shares, 9.8% of Seritage Growth's voting power, 43.5% of Seritage Growth (Operating Partnership) units, and 45.3% of the consolidated economics of Seritage Growth and the Operating Partnership.**29**

29 To clarify the relationship between Seritage Growth and the Operating Partnership, the Applicant represents that Seritage Growth is the general partner of the Operating Partnership and owns the majority of the Operating Partnership units.

The Offering

7. On April 1, 2015, Holdings announced its intention to conduct a Rights Offering of 53,298,899 shares of Seritage Growth Stock to Holdings shareholders. Holdings issued a prospectus describing the Offering of certain subscription Rights to shareholders of record, including the Master Trust, as of June 11, 2015, the Record Date. The Holdings Board of Directors determined that the Offering was in the best interest of Holdings and its stockholders. According to the Applicant, the purpose of the Offering was to allow Seritage Growth to purchase a portfolio of Holdings real properties from Holdings using the proceeds obtained from the Offering.

Under the terms of the Offering, all shareholders of Holdings Stock automatically received the Rights, at no charge. Specifically, each shareholder as of the Record Date, received one Right for every whole share of Holdings Stock it held. Each Right entitled the holder to purchase one half of one share of Seritage Growth Stock at the subscription price of $29.58 per whole share. According to the Applicant, the Rights were distributed as practicable as possible after the June 11, 2015 Record Date.

8. Each Right also contained an over-subscription privilege permitting the holder to subscribe for additional Seritage Growth

Stock, up to the number of common shares that were not subscribed for by the other holders of the Rights. The Plans were not eligible to participate in the over-subscription privilege because the Independent Fiduciary sold the Rights received by the Plan, as discussed more fully below.

9. All shareholders of Holdings Stock held the Rights until such Rights expired, were exercised, or were sold. A shareholder had the right to exercise some, all, or none of its Rights. However, its election to exercise the Rights had to be received by the subscription agent, Computershare Trust Company, N.A., by July 2, 2015. The election to exercise any of the Rights was irrevocable.

All shareholders of Holdings Stock held the Rights until such Rights expired, were exercised, or were sold. Each shareholder of the Holdings Stock needed to have at least two Rights to purchase one whole share of Seritage Growth Stock, because only whole shares could be purchased by the exercise of the Rights. Fractional shares or cash in lieu of fractional shares were not issued in connection with the Offering. Fractional shares of the Seritage Growth Stock resulting from the exercise of basic Rights, as to any holder of such Rights were rounded down to the nearest whole number.

10. With regard to the sale of the Rights, the Applicant

represents that the Rights were transferable. The Applicant also represents that the Rights began to trade on the NYSE under the symbol "SRGRT" on or around June 12, 2015, and continued to trade until the trading deadline at the close of business on June 26, 2015. Further, the Applicant explains that the trading deadline applied uniformly to all holders of the Rights.

11. The Offering expired at 5 p.m. New York City time on July 2, 2015. The Applicant represents that the Offering was oversubscribed and all of the Rights were exercised at a price of U.S. $29.58 per share of Seritage Growth Stock. Accordingly, in connection with the Offering, Seritage Growth offered and issued up to 106,603,021 Rights to purchase up to 53,298,899 shares of Seritage Growth Stock.

12. All of the gross proceeds from the exercise of the Rights to purchase Seritage Growth Stock, approximately $1,576,581,444, net of any selling expenses, were payable to and received by Seritage Growth. The Applicant asserts that the proceeds were or will be used by Seritage Growth to purchase a portfolio of real properties from Holdings.

13. Based on the ratio of one Right for each share of Holdings Stock held, the Applicant explains that the Master Trust acquired 1,326,085 Rights as a result of the Offering. While the Plans generally permit participants to direct the investment of

their own accounts, including their investments in Holdings Stock, the Applicant represents that all decisions regarding the holding and disposition of the Rights by each Plan were made, in accordance with the Plan provisions, by the Independent Fiduciary acting solely in the interest of Plan participants. According to the Applicant, participants in the Plans who were invested in Holdings Stock as of the Record Date were notified of the Offering, the engagement of the Independent Fiduciary, the fact that the Rights would be held in the Stock Fund, that the Independent Fiduciary would determine whether the Rights should be exercised or sold, and the means by which a participant could obtain more information. The Applicant further represents that Holdings communicated generally with employees regarding the Offering and with the public through public releases at www.searsholdings.com.

Role of the Independent Fiduciary

14. Evercore Trust Company, N.A. (Evercore) was retained by the Investment Committee, pursuant to an agreement (the Agreement) dated June 5, 2015, to act as the Independent Fiduciary on behalf of the Plans, in connection with the Offering and with the application for exemption submitted to the Department. Pursuant to the terms of the Agreement, Evercore's

responsibilities were: (a) to determine whether and when to exercise or sell each of the Plan's Rights; and (b) if it determined to exercise any of a Plan's Rights to purchase Seritage Growth Stock, to manage the investment within that Plan's Stock Fund, and determine when to liquidate or exercise the shares for the purpose of reinvesting the proceeds in Holdings Stock.

The Applicant represents that hiring an Independent Fiduciary to manage the holding and disposition of the Rights was appropriate in this case for the following reasons: (a) there would have been a significant cost to develop and implement a process under each Plan to administer the pass-through of the Rights to participants; (b) it was not practicable to initiate and implement a pass-through of the Rights to participants given the limited notice provided to shareholders of the Offering and the short subscription period (21 days), because such process would have included the establishment of a "rights fund" and a Seritage Growth fund within each Plan, the design and testing of procedures for allocating the Rights among participant accounts, soliciting participant directions on the exercise or sale of the Rights and identifying the source of funding (e.g., which investment account is to be liquidated) for each participant who chose to exercise the Rights, and the short Offering Period meant

that there would have been insufficient time to adequately educate participants regarding their rights and obligations; (c) there would have been a loss of value that participants might otherwise have gained, because participants' unfamiliarity with rights offerings as well as general participant inertia would have resulted in a significant percentage of participants allowing their Rights to expire without selling or exercising them; (d) it was not in the interest of participants to require the Plans to offer and hold for participant investment a single stock (i.e., Seritage Growth Stock) that had not been selected by the plan fiduciary as an investment option appropriate for the Plans; and (e) the Rights are most appropriately viewed as a non-cash dividend payable to owners of Holdings Stock, such as the Plans, so that the fiduciary of the Stock Fund is the appropriate person to manage the "proceeds" of the Plans' investment in Holdings Stock. The Applicant represents that, in this case, the Independent Fiduciary appointed to manage the Rights on behalf of the Plans took responsibility for realizing the value in the Rights by selling them. The cash proceeds of the sale were then reinvested in Holdings Stock pursuant to the terms of the Plans.

In the Agreement, Evercore represents that it is qualified to serve as the Independent Fiduciary for the Plans in connection with the Offering because it is a national trust bank chartered

by the Office of the Comptroller of the Currency. Evercore states that it has provided specialized investment management, independent fiduciary, and trustee services to employee benefit plans since 1987. Evercore also represents that it has served or is serving as an independent fiduciary on behalf of employee benefit plans in connection with more than 50 prohibited transaction exemption applications that have been filed with the Department.

In the Agreement, Evercore further represents that it is independent and unrelated to Holdings, and that it did not directly or indirectly receive any compensation or other consideration for its own account in connection with the Offering, except compensation from Holdings for performing services described in the Agreement. According to the Agreement, Evercore states that the gross revenue it received (or expected to receive) in 2015 that was derived from any party in interest or an affiliate of such party in interest involved in the Seritage Growth transaction, would represent less than 2% its 2014 gross revenue. Also, in the Agreement, Evercore represents that it understood and acknowledged its duties and responsibilities under the Act in acting as a fiduciary on behalf of the Plans in connection with the Offering.

In addition, Evercore represents that it conducted a due

diligence process in evaluating the Offering on behalf of the Plans. This process included discussions and correspondence with representatives of the Plans, Holdings, Holdings' counsel, broker-dealers, and representatives of the trustee of the Master Trust, enabling Evercore to improve certain elements related to the Offering. Evercore also states that it reviewed publicly available information and information provided by Holdings.

With regard to the Offering, Evercore explains that it considered four options on behalf of the Plans: (a) to continue holding the Rights within the Stock Fund; (b) to exercise all of the Rights to acquire Seritage Growth Stock; (c) to sell all of the Rights on the NYSE at the prevailing market price; or (d) to sell a portion of the Rights and use the proceeds to exercise the remaining Rights to acquire Seritage Growth Stock.

In determining to sell all of the Plans' Rights, Evercore represents that the proceeds from the sale would be invested in Holdings Stock, in accordance with the governing documents of the Stock Fund. Evercore reasoned that, although the Plans would incur some transaction costs by selling the Rights, estimated at $0.01 per Right traded, plus a similar expense in connection with the reinvestment of the proceeds into shares of Holdings Stock, the benefits of selling the Rights included the fact that the proceeds could be quickly redeployed into shares of Holdings

Stock, lower transaction costs, and less exposure to risk than the options that involved exercising any of the Rights. Accordingly, Evercore concluded that the sale of the Rights was in the interest of the Plans and the Plans' participants and beneficiaries and was protective of such participants and beneficiaries of the Plans.

15. As a result of the sale of 1,326,085 Rights that were acquired by the Master Trust during the Offering, the total net proceeds generated for the Savings Plan and the PR Plan was $4,106,921.19. These proceeds were credited to the Stock Fund, and thus, to each Plan. The unit value of each participant's account balance in each Plan reflected the addition of the proceeds to the Stock Fund (as applicable).

The trading period for the sale of the Rights on the NYSE ended on June 26, 2015. Evercore sold the Plans' 1,326,085 Rights in blind transactions on the NYSE between June 16 and June 19, 2015, realizing an average selling price of $3.10 per Right. According to the Applicant, the volume-weighted average price for a total of 46,699,673 Rights that were sold during the trading period was $3.66, according to data reported by Factset.

16. Evercore represents that, as noted in the Independent Fiduciary Report, its goal in selling the Rights was to dispose of them in a timely manner at the best available market prices so that

cash raised through the sale could be reinvested in shares of Holdings Stock as soon as possible and at the discretion of State Street, the Master Trustee and Custodian of the Master Trust. This, according to Evercore was consistent with the purpose and intent of the Stock Fund.

Evercore explains that it also believed it was prudent to take advantage of available liquidity early in the Offering Period, given the typical decline in trading volume experienced over the course of a rights offering period. Evercore states that it promptly began to sell the Rights once it was informed that the Rights had been delivered to the Stock Fund account. The liquidation lasted four days, beginning on June 16, 2015, and ending on June 19, 2015. The Rights continued to trade over five more days (June 22 to June 26), during which time the price of the Rights rose. This rise in price, Evercore asserts, was entirely unpredictable beforehand. Waiting for such a potential outcome, Evercore explains, would have been at odds with its goal of promptly realizing and reallocating proceeds, and further would have exposed the Plans to the risk of a significant decline in the price of the Rights over the course of the offering period.

17. In the opinion of Evercore, the actions outlined above in which it was engaged on behalf of the Plans, were in the interest of the Plans and the Plans' participants and beneficiaries, and were protective of the rights of such participants and beneficiaries of the Plans.

18. 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 broker affiliated with Evercore, or Holdings, in connection with the sale of the Rights. In this regard, it is represented that Evercore selected State Street Global Markets to execute the trades for the sale of the Rights issued to the Master Trust, based on Evercore's confidence in that broker's execution ability and an attractive fee schedule of 0.01 cent per Right traded. In connection with the sale of the Rights, the Plans (through the Master Trust) paid $13,260.85 in commissions and $75.83 in SEC fees.**30**

30 The Applicant represents that the brokerage services and the fees that were received by State Street Global Markets in connection with the sale of the Rights by the Plans, are exempt under section 408(b)(2) of the Act. The Department, herein, is not providing any relief for the receipt of any commissions, fees, or expenses in connection with the sale of the Rights in blind transactions to unrelated third parties on the NYSE, beyond that provided pursuant to section 408(b)(2) of the Act. In this regard, the Department is not opining as to whether the conditions as set forth in section 408(b)(2) of the Act and the Department's regulations, pursuant to 29 CFR 2550.408(b)(2) have been satisfied.

Requested Relief

19. The application was filed by Holdings on behalf of itself and its affiliates. In this regard, Holdings has requested an exemption for the acquisition and holding of the Rights by the Plans in connection with the Offering of Seritage Growth Stock by Holdings. The Applicant represents that the subject transactions have already been consummated. In this regard, the Plans acquired the Rights pursuant to the Offering, and held such Rights until they were sold by the Independent Fiduciary. The Applicant states that, because there was insufficient time between the dates the Plans acquired the Rights and when the Rights were sold to apply for and be granted an administrative exemption by the Department, Holdings requested retroactive exemptive relief for the period June 11, 2015, through July 2, 2015.

20. Section 406(a)(1)(E) of the Act prohibits a fiduciary from causing a plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect acquisition, on behalf of a plan, of any employer security or employer real property 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 from permitting a plan to hold any employer security or

employer real property if he knows or should know that holding such security or real property violates section 407(a). The Applicant represents that because the Rights are non-qualifying employer securities, the acquisition and holding of the Rights by the Plans violated sections 406(a)(1)(E), 406(a)(2), and 407(a) of the Act.

Furthermore, section 406(b)(1) of the Act prohibits a fiduciary from dealing with the assets of a plan in his own interest or for his own account. Section 406(b)(2) of the Act prohibits a fiduciary, in his individual or in any other capacity, from acting in any transaction involving the plan on behalf of a party (or representing a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries. The Applicant states that, although Holdings retained the Independent Fiduciary to represent the Plans in connection with the disposition of the Rights, by causing the participation of the Plans in the Offering, Holdings may have dealt with the assets of the Plans for its own account, and also may have acted in a transaction on behalf of itself and the Plans.

Therefore, the Applicant requests an administrative exemption from sections 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act and section 4975 of the

Code by reason of 4975(c)(1)(E) of the Code, with regard to the Savings Plan, and from sections 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act with regard to the PR Plan.

Statutory Findings

21. The Applicant represents that the proposed transactions are administratively feasible because the acquisition and holding of the Rights by the Plans were one-time transactions that involved an automatic distribution of the Rights to all shareholders, that would not require any continuing oversight by the Department.

The Applicant also represents that the subject transactions were in the interest of the Plans and their respective participants and beneficiaries, because the Rights were automatically issued at no cost to the shareholders of Holdings Stock, including the Plans, as of the Record Date.

Finally, the Applicant represents that the transactions were protective of the rights of the participants and beneficiaries of the respective Plans because the Plans obtained the Rights as a result of an independent act of Holdings as a corporate entity. In addition, the acquisition of the Rights by the Plans occurred on the same terms made available to other holders of Holdings

Stock, and the Plans received the same proportionate number of Rights as other owners of Holdings Stock. The Plans were also protected in that all decisions regarding the holding and disposition of the Rights by the Plans were made, in accordance with Plan provisions, by the Independent Fiduciary. Furthermore, the Applicant represents that 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 NYSE.

Summary

22. In summary, Holdings represents that the subject transactions satisfy the statutory criteria for an exemption under of section 408(a) of the Act because:

(a) The receipt of the Rights by the Plans occurred in connection with the Offering in which all shareholders of 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 the Independent Fiduciary on behalf of the Plans;

(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 NYSE;

(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 broker affiliated with the Independent Fiduciary or Holdings, in connection with the sale of the Rights; and

(g) The acquisition of the Rights by the Plans occurred on the same terms made available to other shareholders of Holdings Stock.

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 participants whose accounts in the Plans were invested on the Record Date through the Master Trust in the Stock Fund which held the Holdings Stock.

It is represented that all such interested persons will be notified of the publication of the Notice by first class mail, to each such interested person's last known address within 22 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(a)(2), which will advise all interested persons of their right to comment and to request a hearing. A11 written comments and/or requests for a hearing must be received by the Department from interested persons within 52 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: Ms. Blessed Chuksorji-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 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 **6th** day of **May,** 2016.

Lyssa E. Hall,
Director,
Office of Exemption Determinations,
Employee Benefits Security Administration,
U.S. DEPARTMENT OF LABOR.

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