DEPARTMENT OF LABOR

Employee Benefits Security Administration

Exemptions From Certain Prohibited Transaction Restrictions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following: 2018–01, Health Management Associates, Inc. Retirement Savings Plan and The Mooresville Retirement Savings Plan, D–11929 and D–11930; 2018–02, Liberty Mutual Insurance Company, D–11869; 2018–03, Russell Investment Management, LLC (RIM), Russell Investments Capital, LLC (RiCap), and Their Affiliates, D–11916; 2018–04, Toledo Electrical Joint Apprenticeship & Training Fund, D–11867; 2018–05, EXCO Resources, Inc. 401(k) Plan, D–11821; 2018–06, The Grossberg, Yochelson, Fox & Beyda LLP Profit Sharing Plan, D–11895.

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

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

Statutory Findings

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

(a) The exemption is administratively feasible;

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

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

Health Management Associates, Inc. Retirement Savings Plan and The Mooresville Retirement Savings Plan (Together, the Plans) Located in Naples, FL

[Prohibited Transaction Exemption 2018–01; Exemption Application Nos. D–11929 and D–11930, respectively]

Written Comments

On June 28, 2017, the Department of Labor (the Department) published a notice of proposed exemption in the **Federal Register** at 82 FR 29340 for: (1) The acquisition by the Plans of contingent value rights (CVRs) received by the Plans in connection with the merger (the Merger Transaction) of FWCT–2 Acquisition Corporation, a wholly-owned subsidiary of Community Health Systems, Inc. (CHS), with and into Health Management Associates, Inc. (HMA), with HMA surviving as a wholly-owned subsidiary of CHS; and (2) the holding of the CVRs by the Plans, subject to certain conditions described herein.

The proposed exemption invited all interested persons, including current participants and beneficiaries of the Plans, to submit comments or requests for a hearing to the Department by August 28, 2017. During the comment period, the Department received one written comment from CHS that requested certain changes to the operative language and the Summary of Facts and Representations of the proposed exemption. CHS's comments and the Department's responses are discussed below.

[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).

Revisions to Operative Language

1. *Condition (k).* On page 29343 of the proposed exemption, Condition (k) of the operative language states that: ''The CVR Trustee will certify to the Department that the CVR Payment Amount has been properly calculated for each affected participant in the Plans.''

CHS requests that the Department revise this condition to read as follows:

''(k) CHS will exercise its option under Section 3.1(d) of the CVR Agreement to retain an Independent Advisor to assist with the calculation of the CVR Payment Amount. The Independent Advisor retained by CHS (and any successor) will be an advisor that: (1) Has the appropriate training, experience, and facilities to perform such calculation; (2) does not directly or indirectly control, is not controlled by and is not under common control with, CHS; (3) does not directly or indirectly receive any compensation or other consideration in connection with any transaction described in this exemption other than for acting as Independent Advisor in the manner described in the CVR Agreement, and provided that the compensation payable is not contingent upon, or in any way affected by, the Independent Advisor's ultimate determination of the CVR Payment Amount; and (4) does not receive annual gross revenue from CHS, during any year of its engagement, that exceeds three percent (3%) of such Independent Advisor's annual gross revenue from all sources (for federal income tax purposes) for its prior tax year. CHS will deliver to the Department copies of the reports and calculations of such Independent Advisor used to determine the CVR Payment Amount.''

The Department concurs with the comment and has revised the condition, accordingly.

2. *Condition (l).* On page 29343 of the proposed exemption, Condition (l) states that: ''The CVR Trustee will certify to the Department that no excess portion of the CVR Payment Amount reverts to CHS, its successors, or their affiliates.'' CHS requests that the Department remove the reference to the CVR Trustee from this condition because CHS states that it has no way to require that the CVR Trustee provide such certification to the Department. Therefore, CHS requests that Condition (l) be modified to read as follows: ''(l) No excess portion of the CVR Payment Amount will revert to CHS, its successors, or their affiliates.''

CHS represents that since it neither holds nor intends to buy any CVRs, there is no circumstance under which it

will receive a reversion of any portion of the CVR Payment Amount. CHS represents that instead of engaging a third party to certify this result to the Department, CHS is willing to have the final exemption conditioned on CHS not receiving any such reversion.

After considering this comment, the Department has revised the condition in the manner requested by CHS.

Revisions to Summary of Facts and Representations

1. *Clarifications to Paragraph 1 of Representation 8.* On pages 29341 and 29342 of the proposed exemption, in the Summary of Facts and Representations, the first sentence of paragraph one of Representation 8, states (without the footnotes) that, ''Under the CVR Agreement, CHS is required to pay to the CVR Trustee, and the CVR Trustee is required to pay to the CVR holders, $1.00 per CVR (the CVR Payment Amount) promptly upon the final resolution (Final Resolution) of certain existing litigation (the Existing Litigation), subject to certain reductions.''

CHS requests that the Department clarify that the reference to ''certain reductions'' relates to fees and expenses associated with the Existing Litigation.

The Department concurs with CHS's comments and notes the foregoing revision to the first paragraph of Representation 8.

2. *Revisions to Paragraph 2 of Representation 8.* On pages 29341 and 29342 of the proposed exemption, in the Summary of Facts and Representations, the first sentence of the second paragraph of Representation 8 states: ''On a date established by CHS that is not later than thirty (30) days after the date on which Final Resolution of the Existing Litigation occurs, CHS will deliver the CVR Payment Amount to the CVR Trustee and provide notice of the calculation made to determine the CVR Payment Amount to the CVR holders.''

CHS requests that the Department revise this sentence to read as follows: ''On a date established by CHS that is not later than thirty (30) days after the date on which Final Resolution of the Existing Litigation occurs, CHS will deliver notice of the CVR Payment Amount to the CVR Trustee, in the form of a Payment Certificate, that will provide notice of the calculation made to determine the CVR Payment Amount.''

After consideration of CHS's comment, the Department notes the foregoing revisions to the second paragraph of Representation 8.

3. *Revisions to Footnote 12.* On page 39342 of the proposed exemption, in Summary of Facts and Representations, Footnote 12 reads as follows: ''The Applicants state that, pursuant to Section 3.1(e) of the CVR Agreement, if the CVR Payment Amount is greater than zero, CHS will deliver cash to the paying agent within sixty (60) days of the date on which Final Resolution occurs.''

CHS requests that Footnote 12 be revised to reflect the fact that under the CVR Agreement: (a) CHS is responsible calculating the CVR Payment Amount; (b) CHS has the option of selecting the Independent Advisor to assist it in calculating the CVR Payment Amount; (c) any reports and calculations of such Independent Advisor are binding on the third-party holders of the CVRs; and (d) that, pursuant to Section 3.1(e) of the CVR Agreement, if the CVR Payment Amount is greater than zero, the Payment Certificate will specify the date that CHS will deliver cash to the CVR Trustee, which will be within sixty (60) days of the date on which Final Resolution occurs.

After considering CHS's comment, the Department notes the foregoing revisions to Footnote 12.

4. *Revisions to Second Sentence of Paragraph 2 of Representation 8.* In the Summary of Facts and Representations, the second sentence of paragraph two of Representation 8 states that: ''The CVR Trustee, acting as the paying agent, will then pay to each CVR holder the amount in cash equal to the CVR Payment Amount multiplied by the number of CVRs held by such holder.'' CHS requests that the Department revise this sentence to read as follows: ''Once the CVR Payment Amount has been made, the CVR Trustee, acting as the paying agent, will then pay to each CVR holder the amount in cash equal to the CVR Payment Amount multiplied by the number of CVRs held by such holder.'' CHS explains that this revision is intended to clarify the actual process called for under the CVR Agreement for notice of the calculation of the CVR Payment Amounts and the subsequent delivery of the CVR Payment Amount to the CVR Trustee.

After considering CHS's comment, the Department notes this clarification to Representation 8.

5. *Deletion of Paragraph 4 of Representation 8.* In the Summary of Facts and Representations, the fourth paragraph of Representation 8 states that: ''In addition, the CVR Trustee will certify to the Department that the CVR Payment Amount has been properly calculated for each affected participant in the Plans. The CVR Trustee will also certify to the Department that no excess portion of the CVR Payment Amount reverts to CHS, its successors, or their affiliates.'' CHS requests that this sentence be deleted to correspond with requested revisions to Conditions (k) and (l) of the operative language, as discussed above.

After considering CHS's comment, the Department notes this clarification to Representation 8.

Accordingly, after giving full consideration to the entire record, including the CHS comment, the Department has determined to grant the exemption as modified herein.

For further information regarding the CHS comment and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application files (Exemption Application Nos. D–11929 and D–11930) the Department is maintaining in this case. The complete application files, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 28, 2017, at 82 FR 29340.

Exemption

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

This exemption is subject to the following conditions:

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

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

(c) The acquisition of the CVRs by the Plans occurred on the same terms, and in the same manner, as the acquisition

of CVRs by all other shareholders of HMA Common Stock who acquired CVRs;

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

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

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

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

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

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

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

(k) CHS will exercise its option under Section 3.1(d) of the CVR Agreement to retain an independent advisor (the Independent Advisor) to assist with the calculation of the CVR Payment Amount. The Independent Advisor retained by CHS (and any successor) will be an advisor that: (1) Has the appropriate training, experience, and facilities to perform such calculation; (2) does not directly or indirectly control, is not controlled by and is not under common control with, CHS; (3) does not directly or indirectly receive any compensation or other consideration in connection with any transaction described in this exemption other than for acting as Independent Advisor in the manner described in the CVR Agreement, and provided that the compensation payable is not contingent upon, or in any way affected by, the Independent Advisor's ultimate determination of the CVR Payment Amount; and (4) does not receive annual gross revenue from CHS, during any year of its engagement, that exceeds three percent (3%) of such Independent Advisor's annual gross revenue from all sources (for federal income tax purposes) for its prior tax year. CHS will deliver to the Department copies of the reports and calculations of such Independent Advisor used to determine the CVR Payment Amount; and

(l) No excess portion of the CVR Payment Amount will revert to CHS, its successors, or their affiliates.

Effective Date: This exemption is effective as of January 27, 2014.

FOR FURTHER INFORMATION CONTACT: Anna Mpras Vaughan of the Department, telephone (202) 693–8565. (This is not a toll-free number.)

Liberty Mutual Insurance Company (Liberty Mutual or the Applicant) Located in Boston, MA

[Prohibited Transaction Exemption 2018–02; Exemption Application No. D–11869]

Exemption

The Department is 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).[2] The restrictions of sections 406(a)(1)(A), 406(a)(1)(B), and 406(a)(1)(D) of ERISA and the sanctions resulting from the application of sections 4975(a) and 4975(b) of the Code, by reason of sections 4975(c)(1)(A), 4975(c)(1)(B), and 4975(c)(1)(D) of the Code, shall not apply to a transaction between a party in interest with respect to an employee benefit plan sponsored by Liberty Mutual or its affiliates (the Liberty Mutual Plan) and such Liberty Mutual Plan, as described in Part I of Prohibited Transaction Exemption 96–23 (PTE 96–23),[3] provided that the in-house asset manager (INHAM) for the Liberty Mutual Plan has discretionary control with respect to plan assets involved in the transaction, and certain conditions are satisfied.

Written Comments

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption (the Notice), published on August 3, 2017, at 82 FR 36214. The Notice, along with an accompanying supplemental notice, was distributed: (1) By email to those interested persons who agreed to receive electronic communication regarding the Retirement Plan; and (2) by first-class mail to interested persons who had not agreed to receive electronic communications. Although all comments and requests for hearing were initially due by September 17, 2017, the Applicant advised the Department that due to a printer error, distribution of the Notice was delayed by three days past the distribution period set forth therein. Therefore, the Department extended the comment period by three calendar days, to September 20, 2017.

During the comment period, the Department received numerous telephone inquiries from Plan participants that generally concerned matters outside the scope of the exemption, and 27 written comments. The Department did not receive any requests for a public hearing from any of the commenters.

Of the written comments the Department received, many of the commenters expressed concern that the exemption might adversely affect the payment of their benefits. Therefore, they urged the Department not to approve the exemption and allow Liberty Mutual to engage in investments on behalf of the Plan that would not be in the best interests of Plan participants or could be motivated by conflicts of interest.

Many of the commenters also expressed confusion about the intent, scope, and/or impact of the proposed exemption.

In response to the commenters' concerns, the Applicant states that the proposed exemption imposes duties, obligations and conditions on the conduct of Liberty Mutual when acting as a discretionary fiduciary on behalf of the Plan. The Applicant states that the proposed exemption does not in any way authorize Liberty Mutual to make inappropriate investments, to commingle the Plan's assets with Liberty Mutual's own accounts, or to use Plan assets to finance Liberty Mutual's corporate transactions. The Applicant represents that the proposed exemption is intended to enable professional asset managers to effect transactions that they have concluded meet their fiduciary obligations to make investments prudently and in the best interests of Plan participants. Coupled with the generally applicable duties and responsibilities that ERISA imposes on fiduciaries, and the conditions and limitations contained in the proposed exemption to protect the interests of Plan participants, the Applicant states

[2] For purposes of this exemption, references to the provisions of section 406 of Title I of ERISA, unless otherwise specified, should be read to refer as well to the corresponding provisions of section 4975 of the Code.

[3] 61 FR 15975 (April 10, 1996), as amended at 76 FR 18255 (April 1, 2011).

that adequate safeguards are in place to ensure that the Plan's assets are invested prudently and in the best interests of the Plan participants.

The Applicant acknowledges that many of the commenters noted their reliance on income from the Plan and fear of changes that could jeopardize their benefits, and represents that it understands these apprehensions. The Applicant states that it shares the commenters' views that the assets of the Plan need to be invested prudently and in a manner that will enable the Plan to meet its obligations to Plan participants. The Applicant further states that, without the benefit of the exemption, certain investments that would be made to protect or enhance the assets of the Plan might otherwise be prohibited or could only be made with greater expense and/or complexity due to reliance on third-party service providers.

Accordingly, after giving full consideration to the entire record, the Department has decided to grant the exemption. The complete application file (Application No. D–11869), including all supplemental submissions received by the Department, is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on August 3, 2017, at 82 FR 36214.

Final Exemption Operative Language

Section I. Covered Transactions

The restrictions of sections 406(a)(1)(A), 406(a)(1)(B), and 406(a)(1)(D) of ERISA and the sanctions resulting from the application of sections 4975(a) and 4975(b) of the Code, by reason of sections 4975(c)(1)(A), 4975(c)(1)(B), and 4975(c)(1)(D) of the Code, shall not apply to a transaction between a party in interest with respect to a Liberty Mutual Plan (as defined in Section II(h)) and such Liberty Mutual Plan, provided that the Liberty Mutual Asset Manager (as defined in Section II(a)) has discretionary authority or control with respect to the assets of the Liberty Mutual Plan involved in the transaction and the following conditions are satisfied:

(a) The terms of the transaction are negotiated on behalf of the Liberty Mutual Plan by, or under the authority and general direction of, the Liberty Mutual Asset Manager, and either the Liberty Mutual Asset Manager or, so long as the Liberty Mutual Asset Manager retains full fiduciary responsibility with respect to the transaction, a sub-adviser acting in accordance with written guidelines established and administered by the Liberty Mutual Asset Manager, makes the decision on behalf of the Plan to enter into the transaction;

(b) The transaction is not described in—

(1) Prohibited Transaction Exemption 2006–16 (71 FR 63786, October 31, 2006) (relating to securities lending arrangements) (as amended or superseded);

(2) Prohibited Transaction Exemption 83–1 (48 FR 895, January 7, 1983) (relating to acquisitions by plans of interests in mortgage pools) (as amended or superseded); or

(3) Prohibited Transaction Exemption 88–59 (53 FR 24811, June 30, 1988) (relating to certain mortgage financing arrangements) (as amended or superseded);

(c) The transaction is not part of an arrangement, agreement, or understanding designed to violate or evade compliance with ERISA or the Code;

(d) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of the Liberty Mutual Asset Manager, the terms of the transaction are at least as favorable to the Liberty Mutual Plan as the terms generally available in arm's length transactions between unrelated parties;

(e) The party in interest dealing with the Liberty Mutual Plan:

(1) Is a party in interest with respect to the Liberty Mutual Plan (including a fiduciary); either

(A) Solely by reason of providing services to the Liberty Mutual Plan, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H) or (I) of ERISA; or

(B) Solely by reason of being a 10-percent or more shareholder, partner or joint venturer, in a person, which is 50 percent or more owned by an employer of employees covered by the Liberty Mutual Plan (directly or indirectly in capital or profits), or the parent company of such an employer, provided that such person is not controlled by, controlling, or under common control with such employer; or

(C) By reason of both (A) and (B) only; and

(2) Does not have discretionary authority or control with respect to the investment of the Liberty Mutual Plan assets involved in the transaction and does not render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets;

(f) The party in interest dealing with the Liberty Mutual Plan is neither the Liberty Mutual Asset Manager nor a person related to the Liberty Mutual Asset Manager (within the meaning of Section II(d));

(g) The Liberty Mutual Asset Manager adopts, maintains, and follows written policies and procedures (the Policies) that:

(1) Are designed to assure compliance with the conditions of the exemption and its fiduciary responsibilities and avoid any conflicts of interest or risk exposure, including an investment allocation policy and best execution policy, and ensure that the Liberty Mutual Asset Manager and its personnel operate within an impartial conduct standard in accordance with a duty of loyalty and prudence pursuant to section 404 of the Act with respect to the Liberty Mutual Plan when conducting business with, or on behalf of, the applicable Liberty Mutual Plan;

(2) Describe the objective requirements of the exemption, and describe the steps adopted by the Liberty Mutual Asset Manager to assure compliance with each of these requirements:

(A) The requirements of Section I of the exemption, including Section I(a) regarding the discretionary authority or control of the Liberty Mutual Asset Manager with respect to the plan assets involved in the transaction, in negotiating the terms of the transaction, and with regard to the decision on behalf of the Liberty Mutual Plan to enter into the transaction;

(B) That any procedure for approval or veto of the transaction meets the requirements of Section I(a);

(C) For a transaction described in Section I:

(i) That the transaction is not entered into with any person who is excluded from relief under Section I(e)(1), Section I(e)(2), or Section I(f); and

(ii) That the transaction is not described in any of the class exemptions listed in Section I(b);

(3) Are reasonably designed to prevent the Liberty Mutual Asset Manager or its personnel from violating ERISA or other federal or state laws or regulations applicable with respect to the investment of the assets of the applicable Liberty Mutual Plan (Applicable Law);

(4) Cover, at a minimum, the following areas to the extent applicable to the Liberty Mutual Asset Manager:

(A) Portfolio management processes, including allocation of investment opportunities among any Liberty Mutual Plan and Liberty Mutual's proprietary investments, taking into account the investment objectives of the applicable Liberty Mutual Plan and any restrictions under Applicable Law;

(B) Trading practices, including procedures by which the Liberty Mutual Asset Manager satisfies its best execution obligation, and allocates aggregated trades among all Liberty Mutual Plans and/or Liberty Mutual proprietary accounts for which it provides investment management services;

(C) Personal trading activities of any employee of Liberty Mutual and its subsidiaries who has personal involvement and responsibility for investment decisions regarding the investment of the assets of the applicable Liberty Mutual Plan (an LM Advisory Employee);

(D) The Liberty Mutual Asset Manager's policies regulating conflicts of interest;

(E) The accuracy of disclosures, including account statements, made to the trustee(s) or fiduciaries of any Liberty Mutual Plan or to any regulators;

(F) Safeguarding of Liberty Mutual Plan assets from conversion or inappropriate use by any LM Advisory Employee;

(G) The accurate creation of required records and their maintenance in a manner that secures them from unauthorized alteration or use and protects them from untimely destruction;

(H) Processes to value holdings of any Liberty Mutual Plan, to the extent, if any, that such valuation is within the control of the Liberty Mutual Asset Manager;

(I) Safeguards for the privacy protection of records and information pertaining to each Liberty Mutual Plan; and

(J) Business continuity plans; and

(5) Any violations of or failure to comply with items (1) through (4) above are corrected promptly upon discovery and any such violations or compliance failures not promptly corrected are reported, upon discovering the failure to promptly correct, in writing to appropriate corporate officers, the Chief Compliance Officer (as described below in Section I(j)) of the Liberty Mutual Asset Manager, and the independent auditor described in Section I(h) below, and a fiduciary of the relevant Liberty Mutual Plan; the Liberty Mutual Asset Manager will not be treated as having failed to adopt, maintain, or follow the Policies, provided that it corrects any instances of noncompliance promptly when discovered or when they reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this item (5);

(h)(1) The Liberty Mutual Asset Manager submits to an audit conducted annually by an independent auditor, who has been prudently selected and who has the appropriate technical training or experience and proficiency with ERISA's fiduciary responsibility provisions and applicable securities laws to evaluate the adequacy of, and compliance with, the Policies described herein, and compliance with the requirements of the exemption, and so represents in writing. Upon the Department's request, the auditor must demonstrate its qualifications as required by this paragraph and its independence from Liberty Mutual. The audit must be incorporated into the Policies and cover a consecutive twelve-month period beginning on the effective date of the exemption. Each annual audit must be completed within six months following the end of the twelve-month period to which the audit relates;

(2) To the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, and as permitted by law, the Liberty Mutual Asset Manager and, if applicable, Liberty Mutual, will grant the auditor unconditional access to its business, including, but not limited to: its computer systems, business records, transactional data, workplace locations, training materials, and personnel;

(3) The auditor's engagement must specifically require the auditor to determine whether the Liberty Mutual Asset Manager has complied with the conditions for the exemption, including the requirement to adopt, maintain, and follow Policies in Section I(g);

(4) The auditor's engagement shall specifically require the auditor to test the Liberty Mutual Asset Manager's operational compliance with the exemption, including the Policies in Section I(g). In this regard, the auditor must test a sample of the Liberty Mutual Asset Manager's transactions involving the Liberty Mutual Plan sufficient in size and nature to afford the auditor a reasonable basis to determine the operational compliance with the Policies;

(5) For each audit, the auditor shall issue a written report (the Audit Report) to Liberty Mutual and the Liberty Mutual Asset Manager that describes the procedures performed by the auditor during the course of its examination, to be completed within six months following the end of the twelve-month period to which the audit relates. The Audit Report shall include the auditor's specific determinations regarding the compliance with the conditions for the exemption; the adequacy of, and compliance with, the Policies; the auditor's recommendations (if any) with respect to strengthening such Policies; and any instances of noncompliance with the conditions for the exemption or the Policies described in paragraph (g) above. Any determinations made by the auditor regarding the adequacy of the Policies and the auditor's recommendations (if any) with respect to strengthening the Policies shall be promptly addressed by the Liberty Mutual Asset Manager, and any actions taken by the Liberty Mutual Asset Manager to address such recommendations shall be included in an addendum to the Audit Report. Any determinations by the auditor that the Liberty Mutual Asset Manager has adopted, maintained, and followed sufficient Policies shall not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that the Liberty Mutual Asset Manager has complied with the requirements under this subsection must be based on evidence that demonstrates the Liberty Mutual Asset Manager has actually adopted, maintained, and followed the Policies required by this exemption;

(6) The auditor shall notify the Liberty Mutual Asset Manager and Liberty Mutual of any instances of noncompliance with the conditions for the exemption or the Policies identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) With respect to each Audit Report, the General Counsel or the Chief Compliance Officer (described in Section I(j)) of the Liberty Mutual Asset Manager certifies in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption; addressed, corrected, or remedied any inadequacies identified in the Audit Report; and determined that the Policies in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code;

(8) A senior executive officer with a direct reporting line to the highest ranking compliance officer of Liberty Mutual reviews the Audit Report and certifies in writing, under penalty of

perjury, that such officer has reviewed each Audit Report; and

(9) The Liberty Mutual Asset Manager makes its Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, other relevant regulators, and any participant in a Liberty Mutual Plan;

(i) The Liberty Mutual Asset Manager will prepare and make available to all participants of, and beneficiaries entitled to receive benefits under, the Liberty Mutual Plans (the Eligible Recipients) a plain English, narrative brochure (the Brochure) that contains all substantive information, comparable to that required by Part 2A of Form ADV filed under the Investment Advisers Act of 1940, but modified such that the disclosure is relevant to Eligible Recipients with respect to the management of the applicable Liberty Mutual Plan;

(1) The Brochure shall include, among other things:

(A) The Liberty Mutual Asset Manager's investment strategy with respect to the applicable Liberty Mutual Plan;

(B) The Liberty Mutual Asset Manager's policies regarding conflicts of interest;

(C) Any disciplinary information related to employees of the Liberty Mutual Asset Manager; and

(D) A prominent statement that the Eligible Recipients may request a copy of the Policies, with instructions on how to make such request and receive such copy;

(2) The Liberty Mutual Asset Manager must make the Brochure available to the Eligible Recipients: (1) With respect to any Liberty Mutual Plan for which Liberty Mutual or its affiliate is then acting as an investment manager, within 90 days of the effective date of this exemption; and (2) with respect to any other Liberty Mutual Plan for which any Liberty Mutual Asset Manager thereafter becomes an investment manager, within ten (10) business days of the date that the applicable Investment Management Agreement or Sub-Adviser Agreement with a Liberty Mutual Plan becomes effective;

(3) Liberty Mutual annually updates such brochure (the Updated Brochure), containing or accompanied by a summary of material changes. Each Updated Brochure that is made available following the completion of the first audit required with respect to any Liberty Mutual Asset Manager in accordance with this exemption must include a prominently displayed statement indicating that the Liberty Mutual Asset Manager has completed the required audit, and must also provide clear instructions for obtaining a copy of the audit;

(4) The Liberty Mutual Asset Manager will be deemed to have met the requirements pertaining to the provision of the Brochure and the Updated Brochure if it makes such documents available to the Eligible Recipients through a prominently displayed link on a website (the Plan Benefits website) where it makes available information to the Eligible Recipients about their benefits and rights under the applicable Liberty Mutual Plan (Plan Information), and contact information for an appropriate representative of Liberty Mutual to direct inquiries from the Eligible Recipients, which is readily available to such Eligible Recipients. Notwithstanding the above, the Liberty Mutual Asset Manager will not be deemed to have met the requirements of this subparagraph unless it provides notice of the Plan Benefits website, and the link to the Brochure and Updated Brochure at least once annually, to all Eligible Recipients;

(5) For any such Eligible Recipient to whom Liberty Mutual makes Plan Information available by hard copy or other means (Supplemental Delivery), the Brochure and the Updated Brochure must be provided to such Eligible Recipient at the same time and by the same means that Plan Information is provided;

(6) The Liberty Mutual Asset Manager will also provide supplements to the Brochure (each, a Brochure Supplement) that contain information about any LM Advisory Employee, including the LM Advisory Employee's educational background, business experience, other business activities, and disciplinary history;

(7) Each Brochure Supplement must be made available in the same manner as the Brochure, and must be posted to the Plan Benefits website, not later than 90 days following the date that any such LM Advisory Employee begins to provide advisory services to that Liberty Mutual Plan. Such Brochure Supplement must be included with the next Updated Brochure included in the material provided to any Eligible Recipient receiving such Updated Brochure by Supplemental Delivery;

(8) With respect to any individuals who become Eligible Recipients with respect to any Liberty Mutual Plan for which Liberty Mutual or its affiliate is then acting as an investment manager (the New Eligible Recipients) after the delivery of the Brochure to the Eligible Recipients with respect to the Liberty Mutual Plan, the Liberty Mutual Asset Manager will provide a copy of the Brochure as well as the most recent Updated Brochure, if applicable, and any Brochure Supplements related to LM Advisory Employees employed by the Liberty Mutual Asset Manager at the time the New Eligible Recipients became Eligible Recipients, within 90 days of the New Eligible Recipients becoming Eligible Recipients with respect to the Liberty Mutual Plan. The Liberty Mutual Asset Manager will be deemed to have met the disclosure requirements pertaining to the New Eligible Recipients if it makes the applicable documents available to the New Eligible Recipients through a prominently displayed link on the Plan Benefits website described in section I(i)(4) of this exemption. Notwithstanding the above, the Liberty Mutual Asset Manager will not be deemed to have met the requirements of this subparagraph unless it provides notice of the Plan Benefits website, and the link to the Brochure, Updated Brochure, and Brochure Supplements to all New Eligible Recipients. For any such New Eligible Recipient to whom Liberty Mutual makes Plan Information available by Supplemental Delivery, the Brochure and the Updated Brochure must be provided to such New Eligible Recipient at the same time and by the same means that Plan Information is provided;

(j) Each Liberty Mutual Asset Manager must establish an internal compliance program that addresses the Liberty Mutual Asset Manager's performance of its fiduciary and substantive obligations under ERISA (the Compliance Program);

(1) Each Liberty Mutual Asset Manager must designate a Chief Compliance Officer (the CCO), who must be knowledgeable about ERISA and have the authority to develop and enforce appropriate compliance policies and procedures for the Liberty Mutual Asset Manager;

(2) As part of the Compliance Program, each Liberty Mutual Asset Manager must adopt and enforce a written code of ethics that, among other things, will reflect the Liberty Mutual Asset Manager's fiduciary duties to the Liberty Mutual Plans. At a minimum, the Liberty Mutual Asset Manager's code of ethics must:

(A) Set forth a minimum standard of conduct for all LM Advisory Employees and any other employees of the Liberty Mutual Asset Manager whose responsibilities include assisting the LM Advisory Employees in managing the investments of any Liberty Mutual Plan (the LM Facilitating Employees);

(B) Require LM Advisory Employees and LM Facilitating Employees to comply with Applicable Law in

fulfilling their investment management duties to the Liberty Mutual Plans;

(C) Require each LM Advisory Employee to report his or her securities holdings at the later of the time that the person becomes an LM Advisory Employee or within 90 days after this exemption becomes effective and at least once annually thereafter and to make a report at least once quarterly of all personal securities transactions in reportable securities to the Liberty Mutual Asset Manager's CCO or other designated person;

(D) Require the CCO or other designated persons to pre-approve investments by any LM Advisory Employee in IPOs or limited offerings;

(E) Require each LM Advisory Employee or LM Facilitating Employees to promptly report any violation of Applicable Law to the Liberty Mutual Asset Manager's CCO or other designated person;

(F) Require the Liberty Mutual Asset Manager to provide training on applicable law and to obtain a written acknowledgment from each LM Advisory Employee documenting his/her agreement to abide by the code of ethics, the Policies, and applicable law; and

(G) Require the Liberty Mutual Asset Manager to keep records of any violations of applicable law and of any actions taken against the violators;

(k) The Liberty Mutual Asset Manager must act in the Best Interest of the Liberty Mutual Plan at the time of the transaction. For purposes of this paragraph, a Liberty Mutual Asset Manager acts in the ''Best Interest'' of the Liberty Mutual Plan when the Liberty Mutual Asset Manager acts with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, based on the investment objectives, risk tolerance, financial circumstances, and needs of the Liberty Mutual Plan, without regard to the financial or other interests of the Liberty Mutual Asset Manager, any affiliate or other party;

(l) The Liberty Mutual Asset Manager's statements about material conflicts of interest and any other matters relevant to the Liberty Mutual Asset Manager's relationship with the Liberty Mutual Plan, are not materially misleading at the time they are made. For purposes of this paragraph, a ''material conflict of interest'' exists when a Liberty Mutual Asset Manager has a financial interest that a reasonable person would conclude could affect the exercise of its best judgment as a Liberty Mutual Asset Manager; and

(m) The Liberty Mutual Asset Manager will not charge any asset management fees or receive any fee in connection with transactions covered by this exemption.

Section II. Definitions

(a) The term ''Liberty Mutual Asset Manager'' means Liberty Mutual or any organization that is either a direct or indirect 80 percent or more owned subsidiary of Liberty Mutual, or a direct or indirect 80 percent more owned subsidiary of a parent organization of Liberty Mutual, provided that such Liberty Mutual Asset Manager:

(1) Is an insurance company which is qualified under the laws of more than one State to manage, acquire, or dispose of any assets of a plan, which company has, as of the last day of its most recent fiscal year, net worth (capital, paid-in and contributed surplus, unassigned surplus, contingency reserves, group contingency reserves, and special reserves) in excess of $1,000,000;

(2) Is subject to supervision and examination by a State authority having supervision over insurance companies and is subject to periodic audits by applicable State insurance regulators in accordance with the requirements of applicable state law, which, under current law, would be no less than once every five years;

(3) Has any arrangements between it and any Liberty Mutual Plan reviewed by the applicable State insurance regulators, including any investment management agreements (or revisions thereto) with the Liberty Mutual Plan and sub-advisor agreements with any other Liberty Mutual Asset Managers, the results of which will be made available without limitation to the independent auditor conducting the audit required under Section I(i);

(4) As of the last day of its most recent fiscal year, has under its management and control total assets in excess of $1 billion; and

(5) Together with its affiliates, maintains Liberty Mutual Plans holding aggregate assets of at least $500 million as of the last day of each Liberty Mutual Plan's reporting year;

(b) For purposes of Sections II(a) and II(h), an ''affiliate'' of a Liberty Mutual Asset Manager means a member of either (1) a controlled group of corporations (as defined in section 414(b) of the Code) of which the Liberty Mutual Asset Manager is a member, or (2) a group of trades or businesses under common control (as defined in section 414(c) of the Code) of which the Liberty Mutual Asset Manager is a member; provided that ''50 percent'' shall be substituted for ''80 percent'' wherever ''80 percent'' appears in section 414(b) or 414(c) of the Code or the rules thereunder;

(c) The term ''party in interest'' means a person described in section 3(14) of ERISA and includes a ''disqualified person'' as defined in section 4975(e)(2) of the Code;

(d) A Liberty Mutual Asset Manager is ''related'' to a party in interest for purposes of Section I(f) of this exemption, if, as of the last day of its most recent calendar quarter: (i) The Liberty Mutual Asset Manager (or a person controlling, or controlled by, the Liberty Mutual Asset Manager) owns a ten percent or more interest in the party in interest; or (ii) the party in interest (or a person controlling, or controlled by, the party in interest) owns a 10 percent or more interest in the Liberty Mutual Asset Manager.

For purposes of this definition:

(1) The term ''interest'' means with respect to ownership of an entity—

(A) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation,

(B) The capital interest or the profits interest of the entity if the entity is a partnership, or

(C) The beneficial interest of the entity if the entity is a trust or unincorporated enterprise; and

(2) A person is considered to own an interest if, other than in a fiduciary capacity, the person has or shares the authority—

(A) To exercise any voting rights or to direct some other person to exercise the voting rights relating to such interest, or

(B) To dispose or to direct the disposition of such interest; and

(3) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual;

(e) For purposes of this exemption, the time as of which any transaction occurs is the date upon which the transaction is entered into. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. Nothing in this paragraph shall be construed as exempting a transaction entered into by a plan which becomes a transaction described in section 406 of ERISA or section 4975 of the Code while the transaction is continuing, unless the conditions of the exemption were met either at the time the transaction was entered into or at the time the transaction would have become

prohibited but for this exemption. In determining compliance with the conditions of the exemption at the time that the transaction was entered into for purposes of the preceding sentence, Section I(e) will be deemed satisfied if the transaction was entered into between a Liberty Mutual Plan and a person who was not then a party in interest;

(f) The term ''LMGAMI'' means Liberty Mutual Group Asset Management Inc., a separate investment management subsidiary of Liberty Mutual;

(g) The term ''Liberty Mutual'' means Liberty Mutual Insurance Company; and

(h) The term ''Liberty Mutual Plan'' means the Liberty Mutual Retirement Benefit Plan and any other employee benefit plan subject to the fiduciary responsibility provisions of Part IV of Title I of ERISA maintained by Liberty Mutual or an affiliate of Liberty Mutual, and covering the employees of such entities.

Effective Date: This exemption is effective as of the date that a final notice of granted exemption is published in the **Federal Register**.

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

Russell Investment Management, LLC (RIM), Russell Investments Capital, LLC (RiCap), and Their Affiliates (Collectively, Russell Investments or the Applicants) Located in Seattle, WA

[Prohibited Transaction Exemption 2018–03; Exemption Application No. D–11916]

Written Comments

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption, published on August 3, 2017, at 82 FR 36224. All comments and requests for public hearing were due by September 18, 2017.

Subsequent to the publication of the proposed exemption, the Applicants informed the Department, in a memorandum dated October 26, 2017, that there were no interested persons to whom notice of the proposed exemption could be provided. Therefore, this final exemption is now effective as of the date this grant notice is published in the **Federal Register**. The Department has also clarified subparagraphs (j)(1)(3)(ii), (k)(3), and (l)(2) of Section II to more clearly express the requirement that negative consent will not occur until at least thirty days have passed from the date that Russell Investments provides certain required notices or information to the Second Fiduciary.

Accordingly, after giving full consideration to the entire record, the Department has decided to grant the exemption. The complete application file (Application No. D–11916), including all supplemental submissions received by the Department, is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on August 3, 2017, at 82 FR 36224.

Exemption

Section I: Covered Transactions

The restrictions of sections 406(a)(1)(D) and 406(b) of the Act (or ERISA) and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(D) through (F) of the Code,[4] shall not apply to: (a) The receipt of a fee by Russell Investments, from an open-end investment company or open-end investment companies (Affiliated Fund(s)), in connection with the direct investment in shares of any such Affiliated Fund, by an employee benefit plan or by employee benefit plans (Client Plan(s)), where Russell Investments serves as a fiduciary with respect to such Client Plan, and where Russell Investments: (1) Provides investment advisory services, or similar services to any such Affiliated Fund; and (2) provides to any such Affiliated Fund other services (Secondary Service(s)); and (b) In connection with the indirect investment by a Client Plan in shares of an Affiliated Fund through investment in a pooled investment vehicle or pooled investment vehicles (Collective Fund(s)), where Russell Investments serves as a fiduciary with respect to such Client Plan, the receipt of fees by Russell Investments from: (1) An Affiliated Fund for the provision of investment advisory services, or similar services by Russell Investments to any such Affiliated Fund; and (2) an Affiliated Fund for the provision of Secondary Services by Russell Investments to any such Affiliated Fund.

[4] For purposes of this exemption reference to specific provisions of Title I of the Act, unless otherwise specified, should be read to refer as well to the corresponding provisions of the Code.

Section II: Specific Conditions

(a)(1) Each Client Plan which is invested directly in shares of an Affiliated Fund either:

(i) Does not pay to Russell Investments, for the entire period of such investment, any investment management fee, any investment advisory fee, or any similar fee at the plan-level (the Plan-Level Management Fee), as defined below in Section IV(m), with respect to any of the assets of such Client Plan which are invested directly in shares of such Affiliated Fund; or

(ii) Pays to Russell Investments a Plan-Level Management Fee, based on total assets of such Client Plan under management by Russell Investments at the plan-level, from which a credit has been subtracted from such Plan-Level Management Fee, where the amount subtracted represents such Client Plan's pro rata share of any investment advisory fee and any similar fee (the Affiliated Fund Level Advisory Fee), as defined below in Section IV(o), paid by such Affiliated Fund to Russell Investments.

If, during any fee period, in the case of a Client Plan invested directly in shares of an Affiliated Fund, such Client Plan has prepaid its Plan Level Management Fee, and such Client Plan purchases shares of an Affiliated Fund directly, the requirement of this Section II(a)(1)(ii) shall be deemed met with respect to such prepaid Plan-Level Management Fee, if, by a method reasonably designed to accomplish the same, the amount of the prepaid Plan-Level Management Fee that constitutes the fee with respect to the assets of such Client Plan invested directly in shares of an Affiliated Fund:

(A) Is anticipated and subtracted from the prepaid Plan-Level Management Fee at the time of the payment of such fee; or

(B) Is returned to such Client Plan, no later than during the immediately following fee period; or

(C) Is offset against the Plan-Level Management Fee for the immediately following fee period or for the fee period immediately following thereafter.

For purposes of Section II(a)(1)(ii), a Plan-Level Management Fee shall be deemed to be prepaid for any fee period, if the amount of such Plan-Level Management Fee is calculated as of a date not later than the first day of such period.

(2) Each Client Plan invested in a Collective Fund the assets of which are not invested in shares of an Affiliated Fund:

(i) Does not pay to Russell Investments for the entire period of such

investment any Plan-Level Management Fee with respect to any assets of such Client Plan invested in such Collective Fund.

The requirements of this Section II(a)(2)(i) do not preclude the payment of a Collective Fund-Level Management Fee by such Collective Fund to Russell Investments, based on the assets of such Client Plan invested in such Collective Fund; or

(ii) Does not pay to Russell Investments for the entire period of such investment any Collective Fund-Level Management Fee with respect to any assets of such Client Plan invested in such Collective Fund.

The requirements of this Section II(a)(2)(ii) do not preclude the payment of a Plan-Level Management Fee by such Client Plan to Russell Investments, based on total assets of such Client Plan under management by Russell Investments at the plan-level; or

(iii) Such Client Plan pays to Russell Investments a Plan-Level Management Fee, based on total assets of such Client Plan under management by Russell Investments at the plan-level, from which a credit has been subtracted from such Plan-Level Management Fee (the ''Net'' Plan-Level Management Fee), where the amount subtracted represents such Client Plan's pro rata share of any Collective Fund-Level Management Fee paid by such Collective Fund to Russell Investments.

The requirements of this Section II(a)(2)(iii) do not preclude the payment of a Collective Fund-Level Management Fee by such Collective Fund to Russell Investments, based on the assets of such Client Plan invested in such Collective Fund.

(3) Each Client Plan invested in a Collective Fund, the assets of which are invested in shares of an Affiliated Fund:

(i) Does not pay to Russell Investments for the entire period of such investment any Plan-Level Management Fee (including any ''Net'' Plan-Level Management Fee, as described, above, in Section II(a)(2)(ii)), and does not pay directly to Russell Investments or indirectly to Russell Investments through the Collective Fund for the entire period of such investment any Collective Fund-Level Management Fee with respect to the assets of such Client Plan which are invested in such Affiliated Fund; or

(ii) Pays indirectly to Russell Investments a Collective Fund-Level Management Fee, in accordance with Section II(a)(2)(i) above, based on the total assets of such Client Plan invested in such Collective Fund, from which a credit has been subtracted from such Collective Fund-Level Management Fee, where the amount subtracted represents such Client Plan's pro rata share of any Affiliated Fund-Level Advisory Fee paid to Russell Investments by such Affiliated Fund; and does not pay to Russell Investments for the entire period of such investment any Plan-Level Management Fee with respect to any assets of such Client Plan invested in such Collective Fund; or

(iii) Pays to Russell Investments a Plan-Level Management Fee, in accordance with Section II(a)(2)(ii) above, based on the total assets of such Client Plan under management by Russell Investments at the plan-level, from which a credit has been subtracted from such Plan-Level Management Fee, where the amount subtracted represents such Client Plan's pro rata share of any Affiliated Fund-Level Advisory Fee paid to Russell Investments by such Affiliated Fund; and does not pay directly to Russell Investments or indirectly to Russell Investments through the Collective Fund for the entire period of such investment any Collective Fund-Level Management Fee with respect to any assets of such Client Plan invested in such Collective Fund; or

(iv) Pays to Russell Investments a ''Net'' Plan-Level Management Fee, in accordance with Section II(a)(2)(iii) above, from which a further credit has been subtracted from such ''Net'' Plan-Level Management Fee, where the amount of such further credit which is subtracted represents such Client Plan's pro rata share of any Affiliated Fund-Level Advisory Fee paid to Russell Investments by such Affiliated Fund.

Provided that the conditions of this proposed exemption are satisfied, the requirements of Section II(a)(1)(i)–(ii) and Section II(a)(3)(i)–(iv) do not preclude the payment of an Affiliated Fund-Level Advisory Fee by an Affiliated Fund to Russell Investments under the terms of an investment advisory agreement adopted in accordance with section 15 of the Investment Company Act of 1940 (the Investment Company Act). Further, the requirements of Section II(a)(1)(i)–(ii) and Section II(a)(3)(i)–(iv) do not preclude the payment of a fee by an Affiliated Fund to Russell Investments for the provision by Russell Investments of Secondary Services to such Affiliated Fund under the terms of a duly adopted agreement between Russell Investments and such Affiliated Fund.

For the purpose of Section II(a)(1)(ii) and Section II(a)(3)(ii)–(iv), in calculating a Client Plan's pro rata share of an Affiliated Fund-Level Advisory Fee, Russell Investments must use an amount representing the ''gross'' advisory fee paid to Russell Investments by such Affiliated Fund. For purposes of this paragraph, the ''gross'' advisory fee is the amount paid to Russell Investments by such Affiliated Fund, including the amount paid by such Affiliated Fund to sub-advisers.

(b) The purchase price paid and the sales price received by a Client Plan for shares in an Affiliated Fund purchased or sold directly, and the purchase price paid and the sales price received by a Client Plan for shares in an Affiliated Fund purchased or sold indirectly through a Collective Fund, is the net asset value per share (NAV), as defined below in Section IV(f), at the time of the transaction, and is the same purchase price that would have been paid and the same sales price that would have been received for such shares by any other shareholder of the same class of shares in such Affiliated Fund at that time.[5]

(c) Russell Investments, including any officer and any director of Russell Investments, does not purchase any shares of an Affiliated Fund from, and does not sell any shares of an Affiliated Fund to, any Client Plan which invests directly in such Affiliated Fund, and Russell Investments, including any officer and director of Russell Investments, does not purchase any shares of any Affiliated Fund from, and does not sell any shares of an Affiliated Fund to, any Collective Fund in which a Client Plan invests indirectly in shares of such Affiliated Fund.

(d) No sales commissions, no redemption fees, and no other similar fees are paid in connection with any purchase and in connection with any sale by a Client Plan directly in shares of an Affiliated Fund, and no sales commissions, no redemption fees, and no other similar fees are paid by a Collective Fund in connection with any purchase, and in connection with any sale, of shares in an Affiliated Fund by a Client Plan indirectly through such Collective Fund. However, this Section II(d) does not prohibit the payment of a redemption fee, if:

(1) Such redemption fee is paid only to an Affiliated Fund; and

(2) The existence of such redemption fee is disclosed in the summary prospectus for such Affiliated Fund in effect both at the time of any purchase of shares in such Affiliated Fund and at the time of any sale of such shares.

(e) The combined total of all fees received by Russell Investments is not in excess of reasonable compensation

[5] The selection of a particular class of shares of an Affiliated Fund as an investment for a Client Plan indirectly through a Collective Fund is a fiduciary decision that must be made in accordance with the provisions of section 404(a) of the Act.

within the meaning of section 408(b)(2) of the Act, for services provided:

(1) By Russell Investments to each Client Plan;

(2) By Russell Investments to each Collective Fund in which a Client Plan invests;

(3) By Russell Investments to each Affiliated Fund in which a Client Plan invests directly in shares of such Affiliated Fund; and

(4) By Russell Investments to each Affiliated Fund in which a Client Plan invests indirectly in shares of such Affiliated Fund through a Collective Fund.

(f) Russell Investments does not receive any fees payable pursuant to Rule 12b–1 under the Investment Company Act in connection with the transactions covered by this proposed exemption;

(g) No Client Plan is an employee benefit plan sponsored or maintained by Russell Investments.

(h)(1) In the case of a Client Plan investing directly in shares of an Affiliated Fund, a second fiduciary (the Second Fiduciary), as defined below in Section IV(h), acting on behalf of such Client Plan, receives, in writing, in advance of any investment by such Client Plan directly in shares of such Affiliated Fund, a full and detailed disclosure via first class mail or via personal delivery of (or, if the Second Fiduciary consents to such means of delivery, through electronic email, in accordance with Section II(q), as set forth below) information concerning such Affiliated Fund, including but not limited to the items listed below:

(i) A current summary prospectus issued by each such Affiliated Fund;

(ii) A statement describing the fees, including the nature and extent of any differential between the rates of such fees for:

(A) Investment advisory and similar services to be paid to Russell Investments by each Affiliated Fund;

(B) Secondary Services to be paid to Russell Investments by each such Affiliated Fund; and

(C) All other fees to be charged by Russell Investments to such Client Plan and to each such Affiliated Fund and all other fees to be paid to Russell Investments by each such Client Plan and by each such Affiliated Fund;

(iii) The reasons why Russell Investments may consider investment directly in shares of such Affiliated Fund by such Client Plan to be appropriate for such Client Plan;

(iv) A statement describing whether there are any limitations applicable to Russell Investments with respect to which assets of such Client Plan may be invested directly in shares of such Affiliated Fund, and if so, the nature of such limitations; and

(v) Upon the request of the Second Fiduciary acting on behalf of such Client Plan, a copy of the notice of proposed exemption, a copy of the final exemption, if granted, and any other reasonably available information regarding the transactions which are the subject of this proposed exemption.

(2) In the case of a Client Plan whose assets are proposed to be invested in a Collective Fund after such Collective Fund has begun investing in shares of an Affiliated Fund, a Second Fiduciary, acting on behalf of such Client Plan, receives, in writing, in advance of any investment by such Client Plan in such Collective Fund, a full and detailed disclosure via first class mail or via personal delivery (or, if the Second Fiduciary consents to such means of delivery, through electronic email, in accordance with Section II(q), as set forth below) of information concerning such Collective Fund and information concerning each such Affiliated Fund in which such Collective Fund is invested, including but not limited to the items listed, below:

(i) A current summary prospectus issued by each such Affiliated Fund;

(ii) A statement describing the fees, including the nature and extent of any differential between the rates of such fees for:

(A) Investment advisory and similar services to be paid to Russell Investments by each Affiliated Fund;

(B) Secondary Services to be paid to Russell Investments by each such Affiliated Fund; and

(C) All other fees to be charged by Russell Investments to such Client Plan, to such Collective Fund, and to each such Affiliated Fund and all other fees to be paid to Russell Investments by such Client Plan, by such Collective Fund, and by each such Affiliated Fund;

(iii) The reasons why Russell Investments may consider investment by such Client Plan in shares of each such Affiliated Fund indirectly through such Collective Fund to be appropriate for such Client Plan;

(iv) A statement describing whether there are any limitations applicable to Russell Investments with respect to which assets of such Client Plan may be invested indirectly in shares of each such Affiliated Fund through such Collective Fund, and if so, the nature of such limitations;

(v) Upon the request of the Second Fiduciary, acting on behalf of such Client Plan, a copy of the Notice, a copy of the final exemption, if granted, and any other reasonably available information regarding the transactions which are the subject of this proposed exemption; and

(vi) A copy of the organizational documents of such Collective Fund which expressly provide for the addition of one or more Affiliated Funds to the portfolio of such Collective Fund.

(3) In the case of a Client Plan whose assets are proposed to be invested in a Collective Fund before such Collective Fund has begun investing in shares of any Affiliated Fund, a Second Fiduciary, acting on behalf of such Client Plan, receives, in writing, in advance of any investment by such Client Plan in such Collective Fund, a full and detailed disclosure via first class mail or via personal delivery (or, if the Second Fiduciary consents to such means of delivery through electronic email, in accordance with Section II(q), as set forth below) of information, concerning such Collective Fund, including but not limited to, the items listed below:

(i) A statement describing the fees, including the nature and extent of any differential between the rates of such fees for all fees to be charged by Russell Investments to such Client Plan and to such Collective Fund and all other fees to be paid to Russell Investments by such Client Plan, and by such Collective Fund;

(ii) Upon the request of the Second Fiduciary, acting on behalf of such Client Plan, a copy of the Notice, a copy of the final exemption, if granted, and any other reasonably available information regarding the transactions which are the subject of this proposed exemption; and

(iii) A copy of the organizational documents of such Collective Fund which expressly provide for the addition of one or more Affiliated Funds to the portfolio of such Collective Fund.

(i) On the basis of the information, described above in Section II(h), a Second Fiduciary, acting on behalf of a Client Plan:

(1) Authorizes in writing the investment of the assets of such Client Plan, as applicable:

(i) Directly in shares of an Affiliated Fund;

(ii) Indirectly in shares of an Affiliated Fund through a Collective Fund where such Collective Fund has already invested in shares of an Affiliated Fund; and

(iii) In a Collective Fund which is not yet invested in shares of an Affiliated Fund but whose organizational document expressly provides for the addition of one or more Affiliated Funds to the portfolio of such Collective Fund; and

(2) Authorizes in writing, as applicable:

(i) The Affiliated Fund-Level Advisory Fee received by Russell Investments for investment advisory services and similar services provided by Russell Investments to such Affiliated Fund;

(ii) The fee received by Russell Investments for Secondary Services provided by Russell Investments to such Affiliated Fund;

(iii) The Collective Fund-Level Management Fee received by Russell Investments for investment management, investment advisory, and similar services provided by Russell Investments to such Collective Fund in which such Client Plan invests;

(iv) The Plan-Level Management Fee received by Russell Investments for investment management and similar services provided by Russell Investments to such Client Plan at the plan-level; and

(v) The selection by Russell Investments of the applicable fee method, as described above in Section II(a)(1)–(3).

All authorizations made by a Second Fiduciary pursuant to this Section II(i) must be consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act;

(j)(1) Any authorization, described above in Section II(i), and any authorization made pursuant to negative consent, as described below in Section II(k) and in Section II(l), made by a Second Fiduciary, acting on behalf of a Client Plan, shall be terminable at will by such Second Fiduciary, without penalty to such Client Plan (including any fee or charge related to such penalty), upon receipt by Russell Investments via first class mail, via personal delivery, or via electronic email of a written notification of the intent of such Second Fiduciary to terminate any such authorization;

(2) A form (the Termination Form), expressly providing an election to terminate any authorization, described above in Section II(i), or to terminate any authorization made pursuant to negative consent, as described below in Section II(k) and in Section II(l), with instructions on the use of such Termination Form, must be provided to such Second Fiduciary at least annually, either in writing via first class mail or via personal delivery (or if such Second Fiduciary consents to such means of delivery through electronic email, in accordance with Section II(q), as set forth below). However, if a Termination Form has been provided to such Second Fiduciary pursuant to Section II(k) or pursuant to Section II(l) below, then a Termination Form need not be provided pursuant to this Section II(j), until at least six (6) months, but no more than twelve (12) months, have elapsed, since the prior Termination Form was provided;

(3) The instructions for the Termination Form must include the following statements:

(i) Any authorization, described above in Section II(i), and any authorization made pursuant to negative consent, as described below in Section II(k) or in Section II(l), is terminable at will by a Second Fiduciary, acting on behalf of a Client Plan, without penalty to such Client Plan, upon receipt by Russell Investments via first class mail or via personal delivery or via electronic email of the Termination Form, or some other written notification of the intent of such Second Fiduciary to terminate such authorization;

(ii) As of the date that is at least thirty (30) days from the date that Russell Investments sends the Termination Form to such Second Fiduciary, the failure by such Second Fiduciary to return such Termination Form or the failure by such Second Fiduciary to provide some other written notification of the Client Plan's intent to terminate any authorization, described in Section II(i), or intent to terminate any authorization made pursuant to negative consent, as described below in Section II(k) or in Section II(l), will be deemed to be an approval by such Second Fiduciary;

(4) In the event that a Second Fiduciary, acting on behalf of a Client Plan, at any time returns a Termination Form or returns some other written notification of intent to terminate any authorization, as described above in Section II(i), or intent to terminate any authorization made pursuant to negative consent, as described below in Section II(k) or in Section II(l);

(i)(A) In the case of a Client Plan which invests directly in shares of an Affiliated Fund, the termination will be implemented by the withdrawal of all investments made by such Client Plan in the affected Affiliated Fund, and such withdrawal will be effected by Russell Investments within one (1) business day of the date that Russell Investments receives such Termination Form or receives from the Second Fiduciary, acting on behalf of such Client Plan, some other written notification of intent to terminate any such authorization;

(B) From the date a Second Fiduciary, acting on behalf of a Client Plan that invests directly in shares of an Affiliated Fund, returns a Termination Form or returns some other written notification of intent to terminate such Client Plan's investment in such Affiliated Fund, such Client Plan will not be subject to pay a pro rata share of any Affiliated Fund-Level Advisory Fee and will not be subject to pay any fees for Secondary Services paid to Russell Investments by such Affiliated Fund, or any other fees or charges;

(ii)(A) In the case of a Client Plan which invests in a Collective Fund, the termination will be implemented by the withdrawal of such Client Plan from all investments in such affected Collective, and such withdrawal will be implemented by Russell Investments within such time as may be necessary for withdrawal in an orderly manner that is equitable to the affected withdrawing Client Plan and to all non-withdrawing Client Plans, but in no event shall such withdrawal be implemented by Russell Investments more than five business (5) days after the day Russell Investments receives from the Second Fiduciary, acting on behalf of such withdrawing Client Plan, a Termination Form or receives some other written notification of intent to terminate the investment of such Client Plan in such Collective Fund, unless such withdrawal is otherwise prohibited by a governmental entity with jurisdiction over the Collective Fund, or the Second Fiduciary fails to instruct Russell Investments as to where to reinvest or send the withdrawal proceeds; and

(B) From the date Russell Investments receives from a Second Fiduciary, acting on behalf of a Client Plan, that invests in a Collective Fund, a Termination Form or receives some other written notification of intent to terminate such Client Plan's investment in such Collective Fund, such Client Plan will not be subject to pay a pro rata share of any fees arising from the investment by such Client Plan in such Collective Fund, including any Collective Fund-Level Management Fee, nor will such Client Plan be subject to any other charges to the portfolio of such Collective Fund, including a pro rata share of any Affiliated Fund-Level Advisory Fee and any fee for Secondary Services arising from the investment by such Collective Fund in an Affiliated Fund.

(k)(1) Russell Investments, at least thirty (30) days in advance of the implementation of each fee increase (Fee Increase(s)), as defined below in Section IV(l), must provide in writing via first class mail or via personal delivery (or if the Second Fiduciary consents to such means of delivery through electronic email, in accordance with Section II(q), as set forth below), a

notice of change in fees (the Notice of Change in Fees) (which may take the form of a proxy statement, letter, or similar communication which is separate from the summary prospectus of such Affiliated Fund) and which explains the nature and the amount of such Fee Increase to the Second Fiduciary of each affected Client Plan. Such Notice of Change in Fees shall be accompanied by a Termination Form and by instructions on the use of such Termination Form, as described above in Section II(j)(3);

(2) Subject to the crediting, interest-payback, and other requirements below, for each Client Plan affected by a Fee Increase, Russell Investments may implement such Fee Increase without waiting for the expiration of the 30-day period, described above in Section II(k)(1), provided Russell Investments does not begin implementation of such Fee Increase before the first day of the 30-day period, described above in Section II(k)(1), and provided further that the following conditions are satisfied:

(i) Russell Investments delivers, in the manner described in Section II(k)(1), to the Second Fiduciary for each affected Client Plan, the Notice of Change of Fees, as described in Section II(k)(1), accompanied by the Termination Form and by instructions on the use of such Termination Form, as described above in Section II(j)(3);

(ii) Each affected Client Plan receives from Russell Investments a credit in cash equal to each such Client Plan's pro rata share of such Fee Increase to be received by Russell Investments for the period from the date of the implementation of such Fee Increase to the earlier of:

(A) The date when an affected Client Plan, pursuant to Section II(j), terminates any authorization, as described above in Section II(i), or terminates any negative consent authorization, as described in Section II(k) or in Section II(l); or

(B) The 30th day after the day that Russell Investments delivers to the Second Fiduciary of each affected Client Plan the Notice of Change of Fees, described in Section II(k)(1), accompanied by the Termination Form and by the instructions on the use of such Termination Form, as described above in Section II(j)(3).

(iii) Russell Investments pays to each affected Client Plan the cash credit, as described above in Section II(k)(2)(ii), with interest thereon, no later than five (5) business days following the earlier of:

(A) The date such affected Client Plan, pursuant to Section II(j), terminates any authorization, as described above in Section II(i), or terminates, any negative consent authorization, as described in Section II(k) or in Section II(l); or

(B) The 30th day after the day that Russell Investments delivers to the Second Fiduciary of each affected Client Plan, the Notice of Change of Fees, described in Section II(k)(1), accompanied by the Termination Form and instructions on the use of such Termination Form, as described above in Section II(j)(3);

(iv) Interest on the credit in cash is calculated at the prevailing Federal funds rate plus two percent (2%) for the period from the day Russell Investments first implements the Fee Increase to the date Russell Investments pays such credit in cash, with interest thereon, to each affected Client Plan;

(v) An independent accounting firm (the Auditor) at least annually audits the payments made by Russell Investments to each affected Client Plan, audits the amount of each cash credit, plus the interest thereon, paid to each affected Client Plan, and verifies that each affected Client Plan received the correct amount of cash credit and the correct amount of interest thereon;

(vi) Such Auditor issues an audit report of its findings no later than six (6) months after the period to which such audit report relates, and provides a copy of such audit report to the Second Fiduciary of each affected Client Plan; and

(3) As of the date that is at least thirty (30) days from the date that Russell Investments sends to the Second Fiduciary of each affected Client Plan the Notice of Change of Fees and the Termination Form, the failure by such Second Fiduciary to return such Termination Form and the failure by such Second Fiduciary to provide some other written notification of the Client Plan's intent to terminate the authorization, described in Section II(i), or to terminate the negative consent authorization, as described in Section II(k) or in Section II(l), will be deemed to be an approval by such Second Fiduciary of such Fee Increase.

(l) Effective upon the date that the final exemption is granted, in the case of (a) a Client Plan which has received the disclosures detailed in Section II(h)(2)(i), II(h)(2)(ii)(A), II(h)(2)(ii)(B), II(h)(2)(ii)(C), II(h)(2)(iii), II(h)(2)(iv), II(h)(2)(v), and II(h)(2)(vi), and which has authorized the investment by such Client Plan in a Collective Fund in accordance with Section II(i)(1)(ii) above, and (b) a Client Plan which has received the disclosures detailed in Section II(h)(3)(i), II(h)(3)(ii), and II(h)(3)(iii), and which has authorized investment by such Client Plan in a Collective Fund, in accordance with Section II(i)(1)(iii) above, the authorization pursuant to negative consent in accordance with this Section II(l), applies to:

(1) The purchase, as an addition to the portfolio of such Collective Fund, of shares of an Affiliated Fund (a New Affiliated Fund) where such New Affiliated Fund has not been previously authorized pursuant to Section II(i)(1)(ii), or, as applicable, Section II(i)(1)(iii), and such Collective Fund may commence investing in such New Affiliated Fund without further written authorization from the Second Fiduciary of each Client Plan invested in such Collective Fund, provided that:

(i) The organizational documents of such Collective Fund expressly provide for the addition of one or more Affiliated Funds to the portfolio of such Collective Fund, and such documents were disclosed in writing via first class mail or via personal delivery (or, if the Second Fiduciary consents to such means of delivery, through electronic email, in accordance with Section II(q)) to the Second Fiduciary of each such Client Plan invested in such Collective Fund, in advance of any investment by such Client Plan in such Collective Fund;

(ii) At least thirty (30) days in advance of the purchase by a Client Plan of shares of such New Affiliated Fund indirectly through a Collective Fund, Russell Investments provides, either in writing via first class or via personal delivery (or if the Second Fiduciary consents to such means of delivery through electronic email, in accordance with Section II(q)) to the Second Fiduciary of each Client Plan having an interest in such Collective Fund, full and detailed disclosures about such New Affiliated Fund, including but not limited to:

(A) A notice of Russell Investments' intent to add a New Affiliated Fund to the portfolio of such Collective Fund, where such notice may take the form of a proxy statement, letter, or similar communication that is separate from the summary prospectus of such New Affiliated Fund to the Second Fiduciary of each affected Client Plan;

(B) Such notice of Russell Investments' intent to add a New Affiliated Fund to the portfolio of such Collective Fund shall be accompanied by the information described in Section II(h)(2)(i), II(h)(2)(ii)(A), II(h)(2)(ii)(B), II(h)(2)(ii)(C), II(h)(2)(iii), II(h)(2)(iv), and II(2)(v) with respect to each such New Affiliated Fund proposed to be

added to the portfolio of such Collective Fund; and

(C) A Termination Form and instructions on the use of such Termination Form, as described in Section II(j)(3); and

(2) As of the date that is at least thirty (30) days from the date that Russell Investments sends to the Second Fiduciary of each affected Client Plan the information described above in Section II(l)(1)(ii), the failure by such Second Fiduciary to return the Termination Form or to provide some other written notification of the Client Plan's intent to terminate the authorization described in Section II(i)(1)(ii), or, as appropriate, to terminate the authorization, described in Section II(i)(1)(iii), or to terminate any authorization, pursuant to negative consent, as described in this Section II(l), will be deemed to be an approval by such Second Fiduciary of the addition of a New Affiliated Fund to the portfolio of such Collective Fund in which such Client Plan invests, and will result in the continuation of the authorization of Russell Investments to engage in the transactions which are the subject of this proposed exemption with respect to such New Affiliated Fund.

(m) Russell Investments is subject to the requirement to provide within a reasonable period of time any reasonably available information regarding the covered transactions that the Second Fiduciary of such Client Plan requests Russell Investments to provide.

(n) All dealings between a Client Plan and an Affiliated Fund, including all such dealings when such Client Plan is invested directly in shares of such Affiliated Fund and when such Client Plan is invested indirectly in such shares of such Affiliated Fund through a Collective Fund, are on a basis no less favorable to such Client Plan, than dealings between such Affiliated Fund and other shareholders of the same class of shares in such Affiliated Fund.

(o) In the event a Client Plan invests directly in shares of an Affiliated Fund, and, as applicable, in the event a Client Plan invests indirectly in shares of an Affiliated Fund through a Collective Fund, if such Affiliated Fund places brokerage transactions with Russell Investments, Russell Investments will provide to the Second Fiduciary of each such Client Plan, so invested, at least annually a statement specifying:

(1) The total, expressed in dollars, of brokerage commissions that are paid to Russell Investments by each such Affiliated Fund;

(2) The total, expressed in dollars, of brokerage commissions that are paid by each such Affiliated Fund to brokerage firms unrelated to Russell Investments;

(3) The average brokerage commissions per share, expressed as cents per share, paid to Russell Investments I by each such Affiliated Fund; and

(4) The average brokerage commissions per share, expressed as cents per share, paid by each such Affiliated Fund to brokerage firms unrelated to Russell Investments;

(p)(1) Russell Investments provides to the Second Fiduciary of each Client Plan invested directly in shares of an Affiliated Fund with the disclosures, as set forth below, and at the times set forth below in Section II(p)(1)(i), II(p)(1)(ii), II(p)(1)(iii), II(p)(1)(iv), and II(p)(1)(v), either in writing via first class mail or via personal delivery (or if the Second Fiduciary consents to such means of delivery, through electronic email, in accordance with Section II(q) as set forth below):

(i) Annually, with a copy of the current summary prospectus for each Affiliated Fund in which such Client Plan invests directly in shares of such Affiliated Fund;

(ii) Upon the request of such Second Fiduciary, a copy of the statement of additional information for each Affiliated Fund in which such Client Plan invests directly in shares of such Affiliated Fund which contains a description of all fees paid by such Affiliated Fund to Russell Investments;

(iii) With regard to any Fee Increase received by Russell Investments pursuant to Section II(k)(2), a copy of the audit report referred to in Section II(k)(2)(v) within sixty (60) days of the completion of such audit report;

(iv) Oral or written responses to the inquiries posed by the Second Fiduciary of such Client Plan, as such inquiries arise; and

(v) Annually, with a Termination form, as described in Section II(j)(1), and instructions on the use of such form, as described in Section II(j)(3), except that if a Termination Form has been provided to such Second Fiduciary, pursuant to Section II(k) or pursuant to Section II(l), then a Termination Form need not be provided again pursuant to this Section II(p)(1)(v) until at least six (6) months but no more than twelve (12) months have elapsed since a Termination Form was provided.

(2) Russell Investments provides to the Second Fiduciary of each Client Plan invested in a Collective Fund, with the disclosures, as set forth below, and at the times set forth below in Section II(p)(2)(i), II(p)(2)(ii), II(p)(2)(iii), II(p)(2)(iv), II(p)(2)(v), II(p)(2)(vi), II(p)(2)(vii), and II(p)(2)(viii), either in writing via first class mail or via personal delivery (or if the Second Fiduciary consents to such means of delivery, through electronic email, in accordance with Section II(q), as set forth below:

(i) Annually, with a copy of the current summary prospectus for each Affiliated Fund in which such Client Plan invests indirectly in shares of such Affiliated Fund through each such Collective Fund;

(ii) Upon the request of such Second Fiduciary, a copy of the statement of additional information for each Affiliated Fund in which such Client Plan invests indirectly in shares of such Affiliated Fund through each such Collective Fund which contains a description of all fees paid by such Affiliated Fund to Russell Investments;

(iii) Annually, with a statement of the Collective Fund-Level Management Fee for investment management, investment advisory or similar services paid to Russell Investments by each such Collective Fund, regardless of whether such Client Plan invests in shares of an Affiliated Fund through such Collective Fund;

(iv) A copy of the annual financial statement of each such Collective Fund in which such Client Plan invests, regardless of whether such Client Plan invests in shares of an Affiliated Fund through such Collective Fund, within sixty (60) days of the completion of such financial statement;

(v) With regard to any Fee Increase received by Russell Investments pursuant to Section II(k)(2), a copy of the audit report referred to in Section II(k)(2)(v) within sixty (60) days of the completion of such audit report;

(vi) Oral or written responses to the inquiries posed by the Second Fiduciary of such Client Plan as such inquiries arise;

(vii) For each Client Plan invested indirectly in shares of an Affiliated Fund through a Collective Fund, a statement of the approximate percentage (which may be in the form of a range) on an annual basis of the assets of such Collective Fund that was invested in Affiliated Funds during the applicable year; and

(viii) Annually, with a Termination Form, as described in Section II(j)(1), and instructions on the use of such form, as described in Section II(j)(3), except that if a Termination Form has been provided to such Second Fiduciary, pursuant to Section II(k) or pursuant to Section II(l), then a Termination Form need not be provided again pursuant to this Section II(p)(2)(viii) until at least six (6) months but no more than twelve (12) months

have elapsed since a Termination Form was provided.

(q) Any disclosure required herein to be made by Russell Investments to a Second Fiduciary may be delivered by electronic email containing direct hyperlinks to the location of each such document required to be disclosed, which are maintained on a website by Russell Investments, provided:

(1) Russell Investments obtains from such Second Fiduciary prior consent in writing to the receipt by such Second Fiduciary of such disclosure via electronic email;

(2) Such Second Fiduciary has provided to Russell Investments a valid email address; and

(3) The delivery of such electronic email to such Second Fiduciary is provided by Russell Investments in a manner consistent with the relevant provisions of the Department's regulations at 29 CFR 2520.104b-1(c) (substituting the word ''Russell Investments'' for the word ''administrator'' as set forth therein, and substituting the phrase ''Second Fiduciary'' for the phrase ''the participant, beneficiary or other individual'' as set forth therein).

(r) The authorizations described in Sections II(k) or II(l) may be made affirmatively, in writing, by a Second Fiduciary, in a manner that is otherwise consistent with the requirements of those sections.

(s) All of the conditions of PTE 77–4, as amended and/or restated, are met. Notwithstanding this, if PTE 77–4 is amended and/or restated, the requirements of paragraph (e) therein will be deemed to be met with respect to authorizations described in Section II(l) above, but only to the extent the requirements of Section II(l) are met. Similarly, if PTE 77–4 is amended and/or restated, the requirements of paragraph (f) therein will be deemed to be met with respect to authorizations described in Section II(k) above, if the requirements of Section II(k) are met.

(t) *Standards of Impartial Conduct.* If Russell Investments is a fiduciary within the meaning of section 3(21)(A)(i) or (ii) of the Act, or section 4975(e)(3)(A) or (B) of the Code, with respect to the assets of a Client Plan involved in the transaction, Russell Investments must comply with the following conditions with respect to the transaction: (1) Russell Investments acts in the Best Interest (as defined below, in Section IV(q)) of the Client Plan, at the time of the Transaction; (2) all compensation received by Russell Investments in connection with the transaction in relation to the total services the fiduciary provides to the Client Plan does not exceed reasonable compensation within the meaning of section 408(b)(2) of the Act; and (3) Russell Investments' statements about recommended investments, fees, material conflicts of interest,[6] and any other matters relevant to a Client Plan's investment decisions are not materially misleading at the time they are made.

For purposes of this section, Russell Investments acts in the ''Best Interest'' of the Client Plan when Russell Investments acts with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person would exercise based on the investment objectives, risk tolerance, financial circumstances, and needs of the plan or IRA, without regard to the financial or other interests of the fiduciary, any affiliate or other party.

Section III. General Conditions

(a) Russell Investments maintains for a period of six (6) years the records necessary to enable the persons, described below in Section III(b), to determine whether the conditions of this proposed exemption have been met, except that:

(1) A prohibited transaction will not be considered to have occurred, if solely because of circumstances beyond the control of Russell Investments, the records are lost or destroyed prior to the end of the six-year period; and

(2) No party in interest other than Russell Investments shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained or are not available for examination, as required below by Section III(b).

(b)(1) Except as provided in Section III(b)(2) and notwithstanding any provisions of section 504(a)(2) of the Act, the records referred to in Section III(a) are unconditionally available at their customary location for examination during normal business hours by:

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service, or the Securities & Exchange Commission;

(ii) Any fiduciary of a Client Plan invested directly in shares of an Affiliated Fund, any fiduciary of a Client Plan who has the authority to acquire or to dispose of the interest in a Collective Fund in which a Client Plan invests, any fiduciary of a Client Plan invested indirectly in an Affiliated Fund through a Collective Fund where such fiduciary has the authority to acquire or to dispose of the interest in such Collective Fund, and any duly authorized employee or representative of such fiduciary; and

(iii) Any participant or beneficiary of a Client Plan invested directly in shares of an Affiliated Fund or invested in a Collective Fund, and any participant or beneficiary of a Client Plan invested indirectly in shares of an Affiliated Fund through a Collective Fund, and any representative of such participant or beneficiary; and

(2) None of the persons described in Section III(b)(1)(ii) and (iii) shall be authorized to examine trade secrets of Russell Investments, or commercial or financial information which is privileged or confidential.

Section IV. Definitions

For purposes of this exemption:

(a) The term ''Russell Investments'' means RIM (f/k/a Russell Investment Management Company), RICap, and any affiliate thereof, as defined below, in Section IV(c).

(b) The term ''Client Plan(s)'' means a 401(k) plan(s), an individual retirement account(s), other tax-qualified plan(s), and other plan(s) as defined in the Act and Code, but does not include any employee benefit plan sponsored or maintained by Russell Investments, as defined above in Section IV(a).

(c) An ''affiliate'' of a person includes:

(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; and

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

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

(e) The term ''Affiliated Fund(s)'' means Russell Investment Company, a series of mutual funds managed by RIM, and any other diversified open-end investment company or companies registered with the Securities and Exchange Commission under the Investment Company Act, as amended, established and maintained by Russell Investments now or in the future for

[6] A ''material conflict of interest'' exists when a fiduciary has a financial interest that could affect the exercise of its best judgment as a fiduciary in rendering advice to a Client Plan. For this purpose, the failure of Russell Investments to disclose a material conflict of interest relevant to the services it is providing to a Client Plan, or other actions it is taking in relation to a Client Plan's investment decisions, is deemed to be a misleading statement.

which Russell Investments serves as an investment adviser.

(f) The term ''net asset value per share'' and the term ''NAV'' mean the amount for purposes of pricing all purchases and sales of shares of an Affiliated Fund, calculated by dividing the value of all securities, determined by a method as set forth in the summary prospectus for such Affiliated Fund and in the statement of additional information, and other assets belonging to such Affiliated Fund or portfolio of such Affiliated Fund, less the liabilities charged to each such portfolio or each such Affiliated Fund, by the number of outstanding shares.

(g) The term ''relative'' means a relative as that term is defined in section 3(15) of the Act (or a member of the family as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(h) The term ''Second Fiduciary'' means the fiduciary of a Client Plan who is independent of and unrelated to Russell Investments. For purposes of this proposed exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to Russell Investments if:

(1) Such Second Fiduciary, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with Russell Investments;

(2) Such Second Fiduciary, or any officer, director, partner, employee, or relative of such Second Fiduciary, is an officer, director, partner, or employee of Russell Investments (or is a relative of such person); or

(3) Such Second Fiduciary, directly or indirectly, receives any compensation or other consideration for his or her personal account in connection with any transaction described in this proposed exemption.

If an officer, director, partner, or employee of Russell Investments (or relative of such person) is a director of such Second Fiduciary, and if he or she abstains from participation in:

(i) The decision of a Client Plan to invest in and to remain invested in shares of an Affiliated Fund directly, the decision of a Client Plan to invest in shares of an Affiliated Fund indirectly through a Collective Fund, and the decision of a Client Plan to invest in a Collective Fund that may in the future invest in shares of an Affiliated Fund;

(ii) Any authorization in accordance with Section II(i), and any authorization, pursuant to negative consent, as described in Section II(k) or in Section II(l); and

(iii) The choice of such Client Plan's investment adviser, then Section IV(h)(2) above shall not apply.

(i) The term ''Secondary Service(s)'' means a service or services other than an investment management service, investment advisory service, and any similar service which is provided by Russell Investments to an Affiliated Fund, including, but not limited to, custodial, accounting, administrative services, and brokerage services. Russell Investments may also serve as a dividend disbursing agent, shareholder servicing agent, transfer agent, fund accountant, or provider of some other Secondary Service, as defined in this Section IV(i).

(j) The term ''Collective Fund(s)'' means a separate account of an insurance company, as defined in section 2510.3–101(h)(1)(iii) of the Department's plan assets regulations,[7] maintained by Russell Investments, and a bank-maintained common or collective investment trust maintained by Russell Investments.

(k) The term ''business day'' means any day that:

(1) Russell Investments is open for conducting all or substantially all of its business; and

(2) The New York Stock Exchange (or any successor exchange) is open for trading.

(l) The term ''Fee Increase(s)'' includes any increase by Russell Investments in a rate of a fee previously authorized in writing by the Second Fiduciary of each affected Client Plan pursuant to Section II(i)(2)(i)–(iv) above, and in addition includes, but is not limited to:

(1) Any increase in any fee that results from the addition of a service for which a fee is charged;

(2) Any increase in any fee that results from a decrease in the number of services and any increase in any fee that results from a decrease in the kind of service(s) performed by Russell Investments for such fee over an existing rate of fee for each such service previously authorized by the Second Fiduciary, in accordance with Section II(i)(2)(i)–(iv) above; and

(3) Any increase in any fee that results from Russell Investments changing from one of the fee methods, as described above in Section II(a)(1)–(3), to using another of the fee methods, as described above in Section II(a)(1)–(3).

(m) The term ''Plan-Level Management Fee'' includes any investment management fee, investment advisory fee, and any similar fee paid by a Client Plan to Russell Investments for any investment management services, investment advisory services, and similar services provided by Russell Investments to such Client Plan at the plan-level. The term ''Plan-Level Management Fee'' does not include a separate fee paid by a Client Plan to Russell Investments for asset allocation service(s) (Asset Allocation Service(s)), as defined below in Section IV(p), provided by Russell Investments to such Client Plan at the plan-level.

(n) The term ''Collective Fund-Level Management Fee'' includes any investment management fee, investment advisory fee, and any similar fee paid by a Collective Fund to Russell Investments for any investment management services, investment advisory services, and any similar services provided by Russell Investments to such Collective Fund at the collective fund level.

(o) The term ''Affiliated Fund-Level Advisory Fee'' includes any investment advisory fee and any similar fee paid by an Affiliated Fund to Russell Investments under the terms of an investment advisory agreement adopted in accordance with section 15 of the Investment Company Act.

(p) The term ''Asset Allocation Service(s)'' means a service or services to a Client Plan relating to the selection of appropriate asset classes or target-date ''glidepath'' and the allocation or reallocation (including rebalancing) of the assets of a Client Plan among the selected asset classes. Such services do not include the management of the underlying assets of a Client Plan, the selection of specific funds or manager, and the management of the selected Affiliated Funds or Collective Funds.

(q) The term ''Best Interest'' means acting with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, based on the investment objectives, risk tolerance, financial circumstances, and needs of the plan or IRA, without regard to the financial or other interests of Russell Investments, any affiliate or other party.

Effective Date: This exemption is effective as of the date the notice granting the final exemption is published in the **Federal Register**.

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

[7] 51 FR 41262 (November 13, 1986).

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

[Prohibited Transaction Exemption 2018–04; Exemption Application No. L–11867]

Written Comments

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption, published on June 28, 2017, at 82 FR 29336. All comments and requests for hearing were due by August 14, 2017. During the comment period, the Department received no written comments and no requests for a public hearing.

Accordingly, after giving full consideration to the entire record, the Department has decided to grant the exemption. The complete application file (Application No. L–11867), including all supplemental submissions received by the Department, is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on June 28, 2017, at 82 FR 29336.

Exemption

Section I: Covered Transaction

The restrictions of sections 406(a)(1)(A), 406(a)(1)(D), and 406(b)(1) and 406(b)(2) of the Act (or ERISA) shall not apply to the Purchase (the Purchase) by the Training Plan of certain unimproved real property (the Property) from the International Brotherhood of Electrical Workers Local Union No. 8 Building Corporation (the Building Corporation), a party in interest with respect to the Training Plan, provided that the conditions set forth below in Section II are satisfied.

Section II: Conditions

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

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

(c) The Training Plan trustees, appointed by Local Union No. 8 of the International Union of Electrical Workers (the Union), recuse themselves from all aspects relating to the decision to purchase the Property on behalf of the Training Plan;

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

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

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

(3) Reviews and approves the methodology used by the Independent Appraiser in the Appraisal Report to ensure such methodology is consistent with sound principles of valuation, prior to the consummation of the Purchase;

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

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

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

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

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

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

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

EXCO Resources, Inc. 401(k) Plan (the Plan) Located in Dallas, TX

[Prohibited Transaction Exemption 2018–05; Exemption Application No. D–11821]

Written Comments

In the Notice of Proposed Exemption published in the **Federal Register** on December 30, 2014 at 79 FR 78489 (the Notice), the Department invited all interested persons to submit written comments and requests for a hearing within forty-five (45) days of the date of the publication. All comments and requests for a hearing were due by February 13, 2015.

During the comment period, the Department received one comment letter, dated February 10, 2015, and no requests for a public hearing. The comment letter was submitted by EXCO (the Applicant). In the letter, the Applicant requests certain clarifications and corrections to the operative language and the Summary of Facts and Representations (the Summary) of the Notice. The Department concurs with all of the Applicant's clarifications and corrections, which are discussed below.

1. *Modification of the Operative Language.* Section II(h) of the operative language states that the Applicant did not *influence* any Invested Participant's election with respect to the Rights.'' In its letter, the Applicant states that, while it understands the purpose of this language, it believes that the term ''influence'' can be read too broadly without any qualifiers as to its scope and breadth. The Applicant believes a more narrowly tailored representation is more appropriate, and proposes the following revised Section II(h): ''(h) EXCO did not direct or advise any Invested Participant with respect to such Invested Participant's election with respect to the Rights.''

The Department agrees with this comment and has revised Section II(h) of the operative by substituting the word ''regarding'' for the second reference to the phrase ''with respect to.'' Therefore, the revised condition reads as follows: ''(h) EXCO did not direct or advise any Invested Participant regarding such Invested Participant's election with respect to the Rights.''

2. *Record Date.* Representation 6 of the Summary includes footnote 16, which states, ''[i]t is represented that there was no material impact to the Accounts of Invested Participants as a result of the Record Date being set two (2) days after the commencement of the Offering.'' The Applicant clarifies that it believes there was no material impact.

3. *Stock Price as of the Commencement Date of the Offering.*

Representation 7 of the Summary states that, on the Commencement Date of the Offering, the Common Stock was trading on the NYSE at $4.83 per share. The Applicant explains that due to a scrivener's error with respect to this representation, the correct price should be $4.88 per share.

4. *Shares Purchased and Gross Proceeds.* The last paragraph of Representation 8 of the Summary states, ''It is represented that there were valid exercises to purchase an aggregate of 28,248,049 shares of Common Stock, pursuant to directions from holders of the Rights. The exercise of the Rights resulted in gross proceeds for EXCO of approximately $141.2 million.'' The Applicant asserts that a technical correction is needed to this portion of Representation 8, because the amount of shares of Common Stock purchased and the gross proceeds listed in these sentences actually exclude the number of shares purchased by and the gross proceeds received from the Investors (i.e WL Ross & Co., LLC and its affiliates and Hamblin Watson Investment Counsel Ltd. and its affiliates, as referred to in Representation 5 and Footnote 16 of the Summary). Therefore, the Applicant suggests that Representation 8 should be clarified as follows: ''It is represented that there were valid exercises to purchase an aggregate of 28,248,049 shares of Common Stock, pursuant to directions from holders of the Rights (other than the Investors). The exercise of the Rights (by holders other than the Investors) resulted in gross proceeds for EXCO of approximately $141.2 million.''

5. *Processing Time for Invested Participants.* The Applicant states that, with regard to Representation 9, the Department omitted a representation which the Applicant had provided in its submission, relating to the process by which Invested Participants elected to exercise their Rights, and which clarifies that an extra three days of processing time was necessary for Invested Participants (which otherwise did not apply to individual shareholders (*i.e.,* non-Plan participants)).

6. *Exercise Price.* The first sentence of the third paragraph of Representation 11 states, ''the Rights held by these accounts were all exercised on January 7, 2014, at an exercise price of $5.07 per share.'' The Applicant notes that the Rights were exercised at a subscription price (*i.e.,* the exercise price) of $5.00 per share on January 7, 2014, while the fair market value of such shares was $5.07 per share.

The Make Whole Payment

To ensure that the Rights Offering was in the interests of the Plan, the Applicant has agreed to contribute $6,359.87 to the Plan on behalf of three Invested Participants who exercised their rights to purchase shares of EXCO Common Stock in connection with the Rights Offering. The Invested Participants collectively exercised a total of 9,952 Rights to acquire a total of 2,970 shares of EXCO Common Stock at a subscription price of $5.00 per share. The Invested Participants subsequently sold their acquired shares of the EXCO Common Stock and sustained investment losses. To make the Invested Participants ''whole,'' as if they had sold their Rights during the Rights Offering and had not incurred any loss on such sale, EXCO will contribute, within 30 days of the granting of this exemption, a total of $6,359.87 to the Plan. The Make Whole Payment will be equal to: (1) The amount of the investment loss incurred by the Invested Participant on the sale of EXCO Common Stock acquired, plus (2) the amount the Invested Participant would have received had their Rights been sold during the Rights Offering.

Accordingly, after full consideration and review of the entire record, including the comment letter filed by the Applicant, the Department has determined to grant the exemption, as set forth above. The Applicant's comment letter has been included as part of the public record of the exemption application. The complete application file (D–11821) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue NW, Washington DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on November 26, 2014, at 79 FR 78489.

Exemption

Section I: Transactions

Effective for the period beginning December 17, 2013, and ending on January 9, 2014, 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,[8] shall not apply:

(a) To the acquisition of certain transferable subscription right(s) (the Right or Rights) by the individually-directed account(s) (the Account or Accounts) of certain participant(s), (the Invested Participant(s)) in the Plan, in connection with an offering (the Offering) of shares of the common stock (the Common Stock) of EXCO Resources, Inc. (EXCO) by EXCO, the plan sponsor (the Plan Sponsor) and a party in interest with respect to the Plan; and

(b) To the holding of the Rights received by the Accounts during the subscription period of the Offering;

provided that the conditions set forth in Section II of this exemption were satisfied for the duration of the acquisition and holding of such Rights.

Section II: Conditions

(a) The acquisition of the Rights by the Accounts of the Invested Participants occurred in connection with the Offering, and the Rights were made available by EXCO on the same material terms to all shareholders of record of the Common Stock of EXCO, including the Accounts of Invested Participants;

(b) The acquisition of the Rights by the Accounts of Invested Participants resulted from an independent corporate act of EXCO;

(c) Each shareholder of the Common Stock of EXCO, including each of the Accounts of Invested Participants, received the same proportionate number of Rights, and this proportionate number of Rights was based on the number of shares of Common Stock held by each such shareholder, as of 5:00 p.m. New York City time, on December 19, 2013 (the Record Date);

(d) The Rights were acquired pursuant to, and in accordance with, provisions under the Plan for individually-directed investment of the Accounts by the Invested Participants, all of whose Accounts in the Plan held the Common Stock;

(e) The decision with regard to the holding and the disposition of the Rights by an Account was made by the Invested Participant whose Account received the Rights;

(f) If any of the Invested Participants failed to give instructions as to the exercise of the Rights received in the Offering, or gave instructions to the Plan trustee to sell the Rights, such Rights were automatically sold in blind transactions on the New York Stock Exchange and the proceeds from such sales were distributed *pro-rata* to the

[8] For purposes of this proposed exemption, references to specific provisions of Title I of the Act, unless otherwise specified, should be read to refer as well to the corresponding provisions of the Code.

Accounts in the Plan of such Invested Participants whose Rights were sold;

(g) No brokerage fees, no commissions, no subscription fees, and no other charges were paid by the Plan or by the Accounts of Invested Participants with respect to the acquisition and holding of the Rights, and no commissions, no fees, and no expenses were paid by the Plan or by the Accounts of Invested Participants to any related broker in connection with the sale or exercise of any of the Rights, or with regard to the acquisition of the Common Stock through the exercise of such Rights;

(h) EXCO did not direct or advise any Invested Participant regarding such Invested Participant's election with respect to the Rights;

(i) The terms of the Offering were described to the Invested Participants in clearly written communications, including, but not limited to, the prospectus for the Rights Offering; and

(j) Within 30 days of the granting of the exemption, EXCO contributes a make whole payment (the Make Whole Payment) to the Plan totaling $6,359.87 on behalf of three Invested Participants who exercised their rights to purchase EXCO Common Stock in connection with the Rights Offering but sustained losses in connection with the sale of their shares of EXCO Common Stock. The Make Whole Payment will be equal to:

(1) The amount of the investment loss incurred by the Invested Participants on the sale of EXCO Common Stock acquired, plus

(2) The amount the Invested Participants would have received had their Rights been sold during the Rights Offering.

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

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

[Prohibited Transaction Exemption 2018–06; Exemption Application No. D–11895]

Written Comments

In the notice of proposed exemption (the Notice), the Department invited all interested persons to submit written comments and/or requests for a public hearing within 40 days of the publication, on June 28, 2017, of the Notice in the **Federal Register**. All comments were due by August 7, 2017. During the comment period, the Department received no comments or hearing requests from interested persons.

Accordingly, after giving full consideration to the entire record, the Department has decided to grant the exemption. The complete application file (Exemption Application No. D–11895), including all supplemental submissions received by the Department, is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice published in the **Federal Register** on June 28, 2017 at 82 FR 29334.

Exemption

The restrictions of section 406(a)(1)(A) and (D) and section 406(b)(1) and (b)(2) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (D) and (E) of the Code,[9] will not apply to the sale (the Sale) by the Plan of a limited liability company interest (the LLC Interest) to GYFB-Commons, LLC (GYFB-Commons), an entity that will be owned by the current partners of the law firm, Grossberg, Yochelson, Fox & Beyda, LLP (the Plan Sponsor); provided that the following conditions are satisfied:

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

(b) The Sale price for the LLC Interest is the greater of: $518,400; or the fair market value of the LLC Interest as determined by a qualified independent appraiser (the Independent Appraiser) in an updated appraisal on the date of the Sale. The updated appraisal must be submitted to the Department within 30 days of the Sale and will be included as part of the record developed under D–11895;

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

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

FOR FURTHER INFORMATION CONTACT: 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 to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

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

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

Signed at Washington, DC, this 29th day of March, 2018.

Lyssa E. Hall,

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

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[9] For purposes of this exemption, references to section 406 of Title I of the Act, unless otherwise specified, should be read to refer as well to the corresponding provisions of section 4975 of the Code.