



DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2023-18; Exemption Application No. D-12023]

Exemption from Certain Prohibited Transaction Restrictions Involving the Liberty Media 401(k) Savings Plan and the Liberty Media 401(k) Savings Plan Trust Located in Englewood, Colorado

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of exemption.

SUMMARY: This document contains a notice of an exemption 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). The exemption permits: the Liberty Media 401(k) Savings Plan's (the Plan) acquisition of certain stock subscription rights (the Rights) to purchase shares of the Series C Liberty SiriusXM common stock (the Series C Liberty SiriusXM Stock), in connection with a rights offering (the Rights Offering) by Liberty Media Corporation (the Applicant or LMC); and the Plan's holding of the Rights during the subscription period of the Rights Offering.

DATES: This exemption will be in effect from May 18, 2020, the date that the Plan received the Rights, through June 5, 2020, the last date the Rights were sold on the NASDAQ.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Gonzalez of the Department at (202) 693-8553. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Applicant requested an exemption pursuant to ERISA section 408(a) and supplemented the request with certain additional information (collectively, this information is referred to as the Exemption Application).¹ On February 9, 2023, the Department published a notice of proposed exemption in the *Federal Register* at 88 FR 8469 (the Proposed Exemption).

Based on the record, the Department has determined to grant the proposed exemption. This exemption provides only the relief specified herein. It provides no relief from violations of any law other than the prohibited transaction provisions of ERISA, as expressly stated herein.

The Department makes the requisite findings under ERISA section 408(a) based on the Applicants' adherence to all the conditions of the exemption. Accordingly, affected parties should be aware that the conditions incorporated in this exemption are, taken individually and as a whole, necessary for the Department to grant the relief requested

¹ The procedures for requesting an exemption are set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).

by the Applicants. Absent these conditions, the Department would not have granted this exemption.

Background

LMC sponsors the Plan, which is a defined contribution plan. The Plan is administered by a committee (the Administrative Committee), and Fidelity Management Trust Company (Trustee or Fidelity) serves as the Plan's trustee. Plan participants can direct the investment of their Plan accounts into one of 27 investment alternatives, and these alternatives include LMC's issued securities. As of May 13, 2020, the Plan held a total of \$7,186,824 in Series C Liberty SiriusXM Stock shares, which represented 6 percent of the Plan's total assets.

On May 15, 2020, LMC conducted the Rights Offering with holders of shares of Series C Liberty SiriusXM Stock. The Series A, B, or C Liberty SiriusXM Stock is LMC's stock that is intended to track and reflect the separate economic performance of the business, assets, and liabilities of Sirius XM Holdings. Under the Rights Offering, each holder of Series A Liberty SiriusXM Stock, Series B Liberty SiriusXM Stock, and Series C Liberty SiriusXM Stock received 0.0939 of a Right for each share of Series A Liberty SiriusXM Stock, Series B Liberty SiriusXM Stock, and Series C Liberty SiriusXM Stock held on May 13, 2020, which is the record date (rounded up to the nearest whole

Right(s)). Each Right entitled the holder to purchase one share of Series C Liberty SiriusXM Stock at a subscription price of \$25.47, which was equal to an approximate 20% discount to the volume weighted average trading price of Series C Liberty SiriusXM Stock for the three-day trading period ending on and including May 9, 2020.

The Rights Offering for 231,861,714 shares of Series C Liberty SiriusXM Stock commenced on May 18, 2020, and remained open until June 5, 2020. The market closing price for each share of Series C Liberty SiriusXM Stock was \$32.59 on May 18, 2020 and \$38.88 on June 5, 2020.

In connection with the Rights Offering, Plan participants were notified of the Rights Offering and the procedure for instructing Fidelity of the participant's desires with respect to the Rights. Plan participants received the following documents: (a) Questions and Answers, which explained the Rights issuance and participant's option to exercise or sell the Rights attributable to the employer securities allocated to the participant's Plan account; (b) the Rights Offering Instructions, which explained the steps required for participants to exercise or sell the Rights;² and (c) the Prospectus (within LMC's Form S-3 as filed with the Securities and Exchange Commission on May 14, 2020), which

² All involved Plan participants were notified in advance of the procedure for instructing Fidelity of the participants' desires with respect to the Rights.

was made available to all shareholders explaining the Rights Offering.

Under the terms of both the Plan and the Trust, the Trustee passed through its right to vote or act on LMC's securities to the Plan's participants. Each Plan participant was given the opportunity to decide whether to exercise or sell the Rights that were attributable to the shares of employer securities allocated to each participant's account. Due to securities law restrictions, certain Plan participants who were reporting persons under Rule 16(b) of the Securities Exchange Act of 1934 (Rule 16(b)) did not have the right to instruct Fidelity to either sell or exercise the Rights credited to their Plan accounts, and Fidelity sold the Rights credited to these Rule 16(b) participant accounts, along with the Rights of other participants who did not elect to sell or exercise the Rights credited to their accounts, during the last few days of the Rights Offering period.³

The Plan established two temporary investment funds to accommodate the Rights. The first fund, the "Rights Holding Fund," was a separate fund established to hold the Rights when they were issued. Rights were credited to participants' accounts based on their respective holdings of Series C Liberty SiriusXM Stock as of May 13, 2020. The

³ Rule 16(b) requires an officer, director, or any shareholder holding more than 10% of the outstanding shares of a publicly traded company to disgorge any profit made on a purchase and sale, or sale and purchase, of the company's stock within any period of less than six months.

second fund, the "Rights Receivable Fund," received the Series C Liberty SiriusXM Stock shares following the exercise of the Rights on June 5, 2020 (the last day of the Rights Offering period), as the Plan participants directed. Plan participants ended up exercising 3,219 rights. In addition, on or about June 2 through June 5, 2020, Fidelity sold 17,808 unexercised Rights on the NASDAQ Global Market (the NASDAQ) on behalf of Plan participants in blind transactions for an average price of \$11.79 per Right for a total price \$209,956.32. The proceeds from the sales were allocated proportionally to the relevant participants' accounts. Thus, all unexercised Rights were sold by Fidelity, and no Rights expired.

Lastly, if a Plan participant wanted to sell the Rights allocated to that participant's account, such individual was required to contact Fidelity (including through Fidelity's website for the Plan), and specify the whole percentage of the Rights that participant desired to sell. The selling period for participants ran from May 26, 2020, through June 1, 2020. At the directions of Plan participants, Fidelity sold a total of 1,506 Rights (rounded to the nearest whole Right). LMC represents that it filed the Exemption Application after the last day of the Rights Offering period to provide current information.

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

hearing with respect to the Proposed Exemption. The Department did not receive any written comments, and it did not receive any requests for a public hearing.

The complete application file (D-12023) 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 N.W., Washington, D.C. 20210. For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, please refer to the notice of proposed exemption published in the *Federal Register* on February 9, 2022, at 88 FR 8469.

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 ERISA section 408(a) does not relieve a fiduciary or other party in interest from certain requirements of other ERISA provisions, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA section 404, which, among other things, require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion in accordance with ERISA section 404(a)(1)(B).

(2) As required by ERISA section 408(a), the Department hereby finds that the exemption is (1) administratively feasible, (2) in the interests of affected plans and of their participants and beneficiaries, and (3) protective of the rights of participants and beneficiaries of such plans;

(3) The exemption is supplemental to, and not in derogation of, any other ERISA provisions, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of determining whether the transaction is in fact a prohibited transaction; and

(4) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describe all material terms of the transaction that are the subject of the exemption.

Accordingly, the following exemption is granted under the authority of ERISA Section 408(a) and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011).

Exemption

Section I. Covered Transactions

The restrictions of ERISA sections 406(a)(1)(E), 406(a)(2), and 407(a)(1)(A) shall not apply, to:

(a) The acquisition by the Liberty Media 401(k) Savings Plan's (the Plan) of certain stock subscription rights (the Rights), pursuant to a stock right offering (the Offering) by Liberty Media Corporation (LMC) to purchase shares of Series C Liberty SiriusXM common stock; and

(b) The holding of the Rights by the Plan during the subscription period of the Offering, provided the conditions set forth below in Section II are satisfied.

Section II. Conditions

(a) The Plan's acquisition of the Rights resulted solely from an independent corporate act of LMC's Board of Directors;

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

(c) For purposes of the Rights Offering, all holders of Series A, B, or C Liberty SiriusXM Stock, including the Plan, were treated in a like manner, with two exceptions:

(1) The oversubscription option available under the Rights Offering was not available to participants in the Plan; and

(2) Certain participants deemed to be reporting persons under Rule 16(b) of the Securities Exchange Act of

1934 (Rule 16(b)) with respect to LMC did not have the right to instruct Fidelity to either sell or exercise the Rights credited to their Plan accounts;

(d) The acquisition of the Rights by the Plan was consistent with provisions of the Plan for the individually directed investment of participant accounts;

(e) The Liberty Media 401(k) Savings Plan administrative committee did not exercise any discretion with respect to the acquisition, holding or sale of the Rights by the Plan;

(f) The Plan fiduciary or fiduciaries responsible for overseeing the Plan's participation in the Rights offering prudently and loyally determined on behalf of the Plan that: (1) the Plan's acquisition, holding and sale of the Rights could proceed on the terms established by such fiduciaries, and (2) the Plan's participants received all they were entitled to under the Rights arrangement (i.e., the Participants got at least the fair market value for the exercise and sales of the Rights);

(g) Each Plan participant made an independent decision whether to liquidate his or her account assets in the Rights Holding Fund to purchase additional shares of Series C Liberty SiriusXM common stock at a discount;

(h) The Plan did not pay any fees or commissions to LMC and/or its affiliates in connection with the acquisition, holding, or sale of the Rights;

(i) The Plan did not pay any fees in connection with the exemption request; and

(j) All material facts and representations set forth in the Summary of Facts and Representations are true and accurate.

Effective Date: This exemption will be in effect from May 18, 2020, the date that the Plan received the Rights, through June 5, 2020, the last date the Rights were sold on the NASDAQ.

Signed at Washington, DC, this 7th day of August 2023.

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

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