

## PENSION BENEFIT GUARANTY CORPORATION

### Pendency of Request for Exemption From the Bond/Escrow Requirement Relating to the Sale of Assets by an Employer Who Contributes to a Multiemployer Plan; Baseball Expos, L.P.

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of pendency of request.

**SUMMARY:** This notice advises interested persons that the Pension Benefit Guaranty Corporation has received a request from the Baseball Expos, L.P., for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended, with respect to the Major League Baseball Players Benefit Plan. Section 4204(a)(1) provides that the sale of assets by an employer that contributes to a multiemployer pension plan will not constitute a complete or partial withdrawal from the plan if certain conditions are met. One of these conditions is that the purchaser post a bond or deposit money in escrow for the five-plan-year period beginning after the sale. The PBGC is authorized to grant individual and class exemptions from this requirement. Before granting an exemption the PBGC is required to give interested persons an opportunity to comment on the exemption request. The purpose of this notice is to advise interested persons of the exemption request and solicit their views on it.

**DATES:** Comments must be submitted on or before August 25, 2003.

**ADDRESSES:** Comments may be mailed to the Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026, or delivered to Suite 340 at the same address. Comments also may be sent by Internet e-mail to [reg.comments@pbgc.gov](mailto:reg.comments@pbgc.gov). The PBGC will make the comments received available on its Web site, <http://www.pbgc.gov>. Copies of the comments and the non-confidential portions of the request may be obtained by writing the PBGC's Communications and Public Affairs Department (CPAD) at Suite 240 at the above address or by visiting or calling CPAD during normal business hours (202-325-4040).

**FOR FURTHER INFORMATION CONTACT:** Jason E. Wolf, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026; 202-326-4020. (For TTY/TDD users, call the Federal Relay Service toll-free at 1-800-

877-8339 and ask to be connected to 202-326-4020).

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 4204 of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980, ("ERISA" or "the Act"), provides that a bona fide arm's-length sale of assets of a contributing employer to an unrelated party will not be considered a withdrawal if three conditions are met. These conditions, enumerated in section 4204(a)(1)(A)-(C), are that—

(A) The purchaser has an obligation to contribute to the plan with respect to the operations for substantially the same number of contributions base units for which the seller was obligated to contribute;

(B) The purchaser obtains a bond or places an amount in escrow, for a period of five plan years after the sale, in an amount equal to the greater of the seller's average required annual contribution to the plan for the three plan years preceding the year in which the sale occurred or the seller's required annual contribution for the plan year preceding the year in which the sale occurred (the amount of the bond or escrow is doubled if the plan is in reorganization in the year in which the sale occurred); and

(C) The contract of sale provides that if the purchaser withdraws from the plan within the first five plan years beginning after the sale and fails to pay any of its liability to the plan, the seller shall be secondarily liable for the liability it (the seller) would have had but for section 4204.

The bond or escrow described above would be paid to the plan if the purchaser withdraws from the plan or fails to make any required contributions to the plan within the first five plan years beginning after the sale.

Additionally, section 4204(b)(1) provides that if a sale of assets is covered by section 4204, the purchaser assumes by operation of law the contribution record of the seller for the plan year in which the sale occurred and the preceding four plan years.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B) when warranted. The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into

normal business transactions. Senate Committee on Labor and Human Resources, 96th Cong., 2nd Sess., S.1076, The Multiemployer Pension Plan Amendments Act of 1980: Summary and Analysis of Considerations 16 (Comm. Print, April 1980); 128 Cong. Rec. S10117 (July 29, 1980). The granting of an exemption or variance from the bond/escrow requirement does not constitute a finding by the PBGC that a particular transaction satisfies the other requirements of section 4204(a)(1).

Under the PBGC's regulation on variances for sales of assets (29 CFR part 4204), a request for a variance or waiver of the bond/escrow requirement under any of the tests established in the regulation (sections 4204.12 & 4204.13) is to be made to the plan in question. The PBGC will consider waiver requests only when the request is not based on satisfaction of one of the four regulatory tests or when the parties assert that the financial information necessary to show satisfaction of one of the regulatory tests is privileged or confidential financial information within the meaning of 5 U.S.C. § 552(b)(4) (Freedom of Information Act).

Under section 4204.22 of the regulation, the PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of Title IV of the Act; and

(2) Would not significantly increase the risk of financial loss to the plan.

Section 4204(c) of ERISA and section 4204.22(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or exemption in the **Federal Register**, and to provide interested parties with an opportunity to comment on the proposed variance or exemption.

#### The Request

The PBGC has received a request from the Baseball Expos, L.P. (the "Buyer") for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) with respect to its purchase of the Montreal Expos Baseball Team from the Florida Marlins, L.P. (fka Montreal Expos, L.P.) (the "Seller") on February 15, 2002. In the request, the Buyer represents among other things that:

1. The Seller was obligated to contribute to the Major League Baseball Players Benefit Plan (the "Plan") for certain employees of the sold operations.

2. The Buyer has agreed to assume the obligation to contribute to the Plan for

substantially the same number of contribution base units as the seller.

3. The Seller has agreed to be secondarily liable for any withdrawal liability it would have had with respect to the sold operations (if not for section 4204) should the Buyer withdraw from the Fund within the five plan years following the sale and fail to pay its withdrawal liability.

4. The estimated amount of the unfunded vested benefits allocated to the seller with respect to the operations subject to the sale could be as high as \$11,200,000.

5. The amount of the bond/escrow established under section 4204(a)(1)(B) is \$1,254,904.

6. The major league clubs have established the Major League Central Fund (the "Central Fund") pursuant to the Major league Constitution. Under this agreement, contributions to the plan for all participating employers are paid by the Office of the Commissioner of Baseball from the Central Fund on behalf of each participating employer in satisfaction of the employer's pension liability under the Plan's funding agreement. The monies in the Central Fund are derived directly from (i) gate receipts from All-Star games; (ii) radio and television revenue from World Series, League Championship Series, Division Series, All-Star Games, and (iii) certain other radio and television revenue, including revenues foreign broadcasts from regular, spring training and exhibition games.

7. In support of the waiver request, the requester asserts that:

"The Plan is funded directly from Revenues which are paid from the Central Fund directly to the Plan without passing through the hands of any of the clubs. Therefore, the Plan enjoys a substantial degree of security with respect to contributions on behalf of the clubs. A change in ownership of a club does not affect the obligation of the Central Fund to fund the Plan out of the Revenue. As such, approval of this exemption request would not significantly increase the risk of financial loss to the Plan."

8. During the 2000 Plan year, approximately \$29.3 million was paid into the Plan on behalf of all major league clubs.

9. A complete copy of the request was sent to the Plan and to the Major League Baseball Players Association by certified mail, return receipt requested.

#### Comments

All interested persons are invited to submit written comments on the pending exemption request to the above address. All comments will be made a

part of the record. The PBGC will make the comments received available on its Web site, <http://www.pbgc.gov>. Copies of the comments and the non-confidential portions of the request may be obtained by writing the PBGC's Communications and Public Affairs Department (CPAD) at Suite 240 at the above address or by visiting or calling CPAD during normal business hours (202-325-4040).

Issued at Washington, DC, on this 2nd day of July, 2003.

**Steven A. Kandarian,**

*Executive Director, Pension Benefit Guaranty Corporation.*

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