



[Billing Code 7709-02]

**PENSION BENEFIT GUARANTY CORPORATION**

**Approval of Exemption from the Bond/Escrow Requirement Relating to the Sale of Assets by an Employer that Contributes to a Multiemployer Plan: Marlins Holdings LLC and the Miami Marlins Major League Baseball Franchise**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of Approval.

**SUMMARY:** The Pension Benefit Guaranty Corporation received a request from Marlins Holdings LLC for an exemption from the bond/escrow requirement relating to a sale of assets with respect to the Major League Baseball Players Pension Plan. PBGC published a notice of the request for exemption from the requirement. PBGC is now advising the public that the agency has granted the exemption request.

**FOR FURTHER INFORMATION CONTACT:** Bruce Perlin, Assistant General Counsel (*Perlin.Bruce@PBGC.gov*), 202-326-4020, ext. 6818, Jon Chatalian, Acting Assistant General Counsel (*Chatalian.Jon@PBGC.gov*), ext. 6757, or Mary A. Petrovic, Attorney (*Petrovic.Mary@PBGC.gov*), ext. 4638, Office of the General Counsel, Suite 340, 1200 K Street NW, Washington, DC 20005-4026; (TTY users may call the Federal relay service toll-free at 1800-877-8339 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 contribution 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 PBGC that a particular transaction satisfies the other requirements of section 4204(a)(1).

Under 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 (§§ 4204.12 & 4204.13) is to be made to the plan in question. PBGC will consider waiver requests only when the request is not based on satisfaction of one of the three 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) of the Freedom of Information Act.

Under § 4204.22 of the regulation, 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 § 4204.22(b) of the regulation require 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. PBGC received no comments on the request for exemption.

### **The Decision**

On June 6, 2018, PBGC published a notice of the pendency of a request by Marlins Holdings LLC (the “Purchaser”) for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) with respect to its purchase of the Miami Marlins Major League Baseball franchise from Miami Marlins, L.P., LLC (the “Seller”). According to the request, the Purchaser 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 Purchaser 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 Purchaser withdraw from the Plan and fail to pay its withdrawal liability.
4. The estimated amount of the withdrawal liability of the Seller with respect to the operations subject to the sale is \$19,169,342.
5. The amount of the bond/escrow established under section 4204(a)(1)(B) is \$4,781,000.

6. Major League Baseball has a unique structure in which the Plan is funded from the Major League Central Fund (the “Central Fund”), maintained and administered by the Commissioner of Baseball. Under this structure, 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 common revenues related to the All-Star Game, post-season games, certain media rights and other common revenues (collectively, the “Revenues”).

7. In support of the exemption request, the requester asserts that, “the Plan is funded from the Central Fund that is maintained and administered by the Commissioner of Baseball.” Major League Baseball pays contributions directly to the Plan from the Central Fund. Further, the requester asserts that, “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. As such, approval of this exemption request would not increase the risk of financial loss to the Plan.”

8. 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.

Based on the facts of this case and the representations and statements made in connection with the request for an exemption, PBGC has determined that an exemption from the bond/escrow requirement is warranted, in that it would more effectively carry out the purposes of title IV of ERISA and would not significantly increase the risk of financial loss to the Plan. Therefore, PBGC hereby grants the request for an exemption for the bond/escrow requirement. The granting

of an exemption or variance from the bond/escrow requirement of section 4204(a)(1)(B) does not constitute a finding by PBGC that the transaction satisfies the other requirements of section 4204(a)(1). The determination of whether the transaction satisfies such other requirements is a determination to be made by the Plan sponsor.

Issued in Washington, DC by

**William Reeder,**

*Director,*

*Pension Benefit Guaranty Corporation.*

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