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Submission for Approval of the Standard Practice and Procedures Plan (SPPP) Revision for Global Laser Enrichment Headquarters, dated July 16, 2024.	ML24199A106
SPPP Update Revision, dated September 12, 2024	ML24261B962

Dated: October 15, 2024.

For the Nuclear Regulatory Commission.

James Downs,

Acting Chief, Fuel Facilities Licensing Branch, Division of Fuel Management, Office of Nuclear Material Safety and Safeguards.

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PENSION BENEFIT GUARANTY CORPORATION

Approval of Special Withdrawal Liability Rules: Motion Picture Laboratory Technicians and Film Editors Local 780 Pension Fund

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of approval.

SUMMARY: The Pension Benefit Guaranty Corporation (“PBGC”) received a request from the Motion Picture Laboratory Technicians and Film Editors Local 780 Pension Fund for approval of a plan amendment providing special withdrawal liability rules. PBGC published a Notice of Pendency of the Request for Approval of this amendment. PBGC is now advising the public of PBGC’s approval of the amendment.

FOR FURTHER INFORMATION CONTACT: John Ginsberg, Assistant General Counsel, Multiemployer Law Division (*ginsberg.john@pbgc.gov*; 202-229-3714), Benjamin Kelly, Deputy Assistant General Counsel, Multiemployer Law Division (*kelly.benjamin@pbgc.gov*; 202-229-4097), Office of the General Counsel, 445 12th Street SW, Washington, DC 20024-2101. If you are deaf or hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION:

Background

The Employee Retirement Income Security Act of 1974, as amended (“ERISA”), provides, in section 4203(a), that a complete withdrawal from a multiemployer plan generally occurs when an employer permanently ceases to have an obligation to contribute under the plan or permanently ceases all covered operations under the plan. Under section 4205 of ERISA, a partial withdrawal generally occurs when an

employer: (1) has a 70% decline in its contribution base units (“CBUs”); (2) permanently ceases to have an obligation under one or more but fewer than all collective bargaining agreements (“CBAs”) under which it has been obligated to contribute to the plan, while continuing to perform work in the jurisdiction of the CBA of the type for which contributions were previously required, or transfers such work to another location; or (3) permanently ceases to have an obligation to contribute for work performed at one or more but fewer than all of its facilities, while continuing to perform work at such facility of the type for which its obligation to contribute ceased.

ERISA provides contingent exemptions from withdrawal liability for the building and construction industry and the entertainment industry. In plans to which the building and construction industry exemption under section 4203(b) of ERISA applies, a building and construction industry employer completely withdraws only if it ceases to have an obligation to contribute and continues to perform previously covered work in the jurisdiction of the CBA or resumes such work within 5 years without renewing the obligation to contribute at the time of resumption. (In the case of a plan terminated by mass withdrawal, section 4203(b)(3) provides that the 5-year period is reduced to 3 years.) Section 4203(c)(1) of ERISA provides a substantially similar exemption from complete withdrawal to an employer contributing to an entertainment-industry plan on a temporary or project-by-project basis, except that the pertinent jurisdiction is the jurisdiction of the plan rather than the jurisdiction of the CBA.

ERISA also provides a contingent exception to partial withdrawal liability for these industries. Under section 4208(d)(1) of ERISA, an employer to which the building and construction industry exemption under section 4203(b) applies is liable for a partial withdrawal “only if the employer’s obligation to contribute under the plan is continued for no more than an insubstantial portion of its work in the craft and area jurisdiction of the collective bargaining agreement of the type for which contributions are

required.” Under section 4208(d)(2) of ERISA, “[a]n employer to whom section 4203(c) (relating to the entertainment industry) applies shall have no liability for a partial withdrawal except under the conditions and to the extent prescribed by [PBGC] by regulation.”

Sections 4203(f)(1) and 4208(e)(3) of ERISA authorize PBGC to prescribe regulations under which plans in other industries may be amended to adopt special withdrawal liability rules similar to those for the building and construction industry and the entertainment industry. PBGC’s regulations on Extension of Special Withdrawal Liability Rules (29 CFR part 4203) prescribe procedures for a multiemployer plan to request PBGC approval of a special withdrawal liability rule.

Under 29 CFR 4203.5(b), PBGC must publish notice of the pendency of a request for approval of special withdrawal liability rules in the **Federal Register** and provide interested parties an opportunity to comment on the request. Under 29 CFR 4203.5, PBGC will approve a special withdrawal liability rule if it determines the rule (1) will apply only to an industry that has characteristics that would make use of the special withdrawal rule appropriate, and (2) will not pose a significant risk to the insurance system.

The Request

The Motion Picture Laboratory Technicians and Film Editors Local 780 Pension Fund (the “Plan”) is a multiemployer pension plan jointly maintained by Local Union No. 780 of the International Alliance of Theatrical Stage Employees (the “Union”) and employers that have CBAs with the Union. The Plan covers approximately 2,000 participants. According to the Plan, most of the employers that contribute to the Plan have contracts or subcontracts to provide non-military support services at military bases and other federal facilities—mainly commissary services.

On October 14, 2021, the Plan adopted an amendment to its plan document providing a special withdrawal liability rule (as revised by further amendment executed on June 6, 2024, the “Special Rule”). The effectiveness of the Special Rule is, by its terms and under 29 CFR 4203.3(a),

subject to PBGC approval. On December 1, 2021, PBGC received the Plan's request for approval of the Special Rule. A copy of the Plan's submission, including the Special Rule, can be requested from the PBGC Disclosure Division via email to disclosure@pbgc.gov, via physical mail to PBGC Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024, or by calling 202-229-4040 during normal business hours. If you are deaf or hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

The Plan asserts that, in the Plan-specific industry covered by the Special Rule, employees and a facility generally remain the same when a contractor is replaced. The employers:

use the same "pool" of workers at the facility regardless of which Employer currently is awarded the contract. Contributions supporting future benefit accruals and satisfying any unfunded past liabilities are made on behalf of the same pool of employees and the same number of [CBUs]. Consequently, the change in the signatory Employer under a new contract has little or no effect on the funded position of the Pension Fund.

The Plan asserts that the Special Rule may induce new employers to bid on covered work, and that this, in turn, will promote the health of the Plan and reduce risk to the insurance system.

The Plan submitted all information required under 29 CFR 4203.4(d) and supplemental information that PBGC required under 29 CFR 4203.4(e).

Notice and Comment

On January 18, 2023, PBGC published notice of pendency of the Plan's request in the **Federal Register**.¹ Comments were due on March 6, 2023. PBGC received no comments.

Summary of the Special Rule

The Special Rule would apply: (1) only to each employer obligated to contribute to the Plan for work performed under a contract or subcontract to provide services to a federal government agency (an "Original Employer"); (2) only when an Original Employer loses one or more such contracts ("Federal Contracts") to an unrelated "Successor Employer" that has an obligation to contribute to the Plan meeting certain requirements designed to ensure a stable contribution base, as described below.

Complete Withdrawals

A complete withdrawal will not occur if an Original Employer ceases to have an obligation to contribute to the Plan because it loses all Federal Contracts under which it performed work for which contributions were required, and is performing no other work for which contributions are required, if:

(1) Substantially all the employees for whom the Original Employer was obligated to contribute continue to perform work under one or more Federal Contracts with a Successor Employer (which may include a Successor Employer subsequent to the initial Successor Employer); and

(2) For the 5 plan years following that in which the Original Employer lost all its Federal Contracts, the Successor Employer has an obligation to contribute to the Plan for the work that had been performed under the Original Employer's Federal Contract(s):

(a) At the same or a higher contribution rate as the highest contribution rate of the Original Employer; and

(b) For substantially the same number of CBUs as those for which the Original Employer had an obligation to contribute in the final plan year preceding that in which it lost all its Federal Contracts.

Notwithstanding these rules, the Original Employer does completely withdrawal as of the date it ceased to have an obligation to contribute to the Plan or ceased all covered operations under the Plan if, within the 5 plan years following that in which the Original Employer lost all its Federal Contracts, either:

(i) The Federal Contract of the Successor Employer is terminated, and no subsequent Successor Employer is obligated to contribute to the Plan under the conditions described in paragraphs 2(a) and (b); or

(ii) The Successor Employer ceases contributions to the Plan for the work performed under the Federal Contract, or fails to meet the contribution conditions described in paragraphs 2(a) and (b).

Partial Withdrawals

If an Original Employer loses one or more but not all its Federal Contracts to a Successor Employer, or loses all its Federal Contracts to a Successor Employer but continues to have an obligation under a CBA to contribute to the Plan for other operations, the following rules apply.

The CBUs attributable to the work performed under the Federal Contract are excluded in determining whether

the Original Employer has experienced a partial withdrawal under section 4205(a)(1) of ERISA, and the loss of the Federal Contract is not considered a facility closing, if:

(1) For the 5 plan years following that in which the Original Employer lost a Federal Contract to a Successor Employer, the Successor Employer has an obligation to contribute to the Plan for work formerly performed under the Original Employer's Federal Contract:

(a) At the same or a higher contribution rate as the highest contribution rate of the Original Employer; and

(b) For substantially the same number of CBUs as those for which the Original Employer had an obligation to contribute in the final plan year preceding the plan year in which the Original Employer lost the Federal Contract.

Notwithstanding these rules, the Original Employer will experience a partial withdrawal if:

(i) Within the 5 plan years following that in which the Original Employer lost one or more but not all its Federal Contracts, the Successor Employer's Federal Contract is terminated and no subsequent Successor Employer is obligated to contribute to the Plan under the conditions described in paragraphs 1(a) and (b);

(ii) Within the 5 plan years following that in which the Original Employer lost one or more but less than all its Federal Contracts, the Successor Employer ceases contributions to the Plan or does not contribute to the Plan under the conditions described in paragraphs 1(a) and (b); or

(iii) The Original Employer either loses a Federal Contract to a Successor Employer or bargains out of a Federal Contract and there is no Successor Employer with an obligation to contribute to the Plan under the conditions described in paragraphs 1(a) and (b).

Bona Fide Sale of Assets

As originally adopted on October 14, 2021, the Special Rule provided that, if an Original Employer engages in a bona fide, arm's-length sale of assets to an unrelated purchaser ("Buyer"), the Buyer would be treated as a Successor Employer. That provision was inconsistent with applicable law under section 4204 of ERISA. On June 6, 2024, the Plan adopted an amendment removing this provision of the Special Rule.

Effective Date

The Special Rule would be effective for (i) complete withdrawals under

¹ See 88 FR 2974.

section 4203(a) of ERISA on or after January 1, 2021; (ii) partial withdrawals under section 4205(a)(1) of ERISA during any three-year testing period beginning on or after January 1, 2019; and (iii) partial withdrawals under section 4205(a)(2) of ERISA on or after January 1, 2021. Under 29 CFR 4203.3(a), a special withdrawal liability may not be put into effect until it is approved by PBGC.

Determinations Regarding the Special Rule

Under section 4203(f) of ERISA and 29 CFR 4203.5(a), PBGC must make two determinations before approving a plan amendment that provides a special withdrawal liability rule. First, based on a showing by the plan, PBGC must determine that the special withdrawal liability rule will apply only to an industry with characteristics that would make it appropriate to exempt employers from withdrawal liability under the rule. Second, PBGC must determine that the special withdrawal liability rule will not pose a significant risk to the insurance system. After review of the information submitted by the Plan, and having received no public comments, PBGC has made the determinations required to approve the Special Rule.

The Special Rule would apply only to a narrow, Plan-specific industry consisting of Original Employers obligated to contribute to the Plan for work performed under a Federal Contract, and only when an Original Employer loses its contract to a Successor Employer that signs an agreement with the Union requiring contributions to the Plan. PBGC determined that the characteristics of this narrowly defined industry make it appropriate to exempt employers from withdrawal liability under the terms of the Special Rule.

Those terms limit the risk of loss to PBGC. The Special Rule only applies if a Successor Employer contributes at the same or a higher contribution rate as the highest contribution rate, and for a comparable number of CBUs, as the Original Employer. The Plan has demonstrated a history of stable or increasing aggregate contributions notwithstanding employer withdrawals, which is consistent with the amount of covered work being undiminished when one federal contractor providing commissary services at a federal facility is replaced by another obligated to contribute to the Plan at the same rate for the same work at the facility.

The Plan is a green-zone plan. Its annual reports for plan years 2011 through 2022 show increasing active

participants and contributions, despite at least a dozen employer withdrawals over that period. The Plan reports that it was 103 percent funded on an actuarial basis as of January 1, 2022.

Conclusion

Based on the Plan's submissions and representations in connection with the request for approval, PBGC has determined that the Special Rule: (1) will apply only to an industry that has characteristics that would make the use of the Special Rule appropriate; and (2) will not pose a significant risk to the insurance system. Therefore, under 29 CFR 4203.5, PBGC approves the plan amendment describing the Special Rule. PBGC's approval is specific to the Plan and to the plan amendment submitted for PBGC's approval. Any plan amendment revising the Special Rule, other than to eliminate it entirely, must be submitted for PBGC's approval.

Issued in Washington, DC.

Ann Y. Orr,

Acting Director, Pension Benefit Guaranty Corporation.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101340; File No. SR-FICC-2024-009]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Partial Amendment No. 1 to Proposed Rule Change To Modify the GSD Rules Relating to the Adoption of a Trade Submission Requirement

October 15, 2024.

On June 12, 2024, Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR-FICC-2024-009 ("Proposed Rule Change") pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Exchange Act")¹ and Rule 19b-4² thereunder to modify FICC's Government Securities Division ("GSD") Rulebook ("GSD Rules") as it relates to the adoption of a requirement for its direct participants to submit for clearance and settlement all eligible secondary market transactions in U.S. Treasury securities to which such direct participant is a counterparty. The Proposed Rule Change was published for comment in

the **Federal Register** on July 1, 2024.³ The Commission has received comments regarding the substance of the changes proposed in the Proposed Rule Change.⁴

On August 16, 2024, pursuant to Section 19(b)(2) of the Exchange Act,⁵ the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.⁶

On September 26, 2024, pursuant to Section 19(b)(2)(B) of the Exchange Act,⁷ the Commission instituted proceedings to determine whether to approve or disapprove the Proposed Rule Change.⁸

On September 24, 2024, FICC filed Partial Amendment No. 1 to the Proposed Rule Change.⁹ Pursuant to Section 19(b)(1) of the Act¹⁰ and Rule 19b-4 thereunder,¹¹ the Commission is publishing notice of this Partial Amendment No. 1 to the Proposed Rule Change as described in Item I below. The Commission is publishing this notice to solicit comment on Partial Amendment No. 1 from interested persons.

I. Summary of the Terms of Substance of Partial Amendment No. 1 to the Proposed Rule Change

FICC filed Partial Amendment No. 1 to its previously submitted Proposed Rule Change, which would make several changes to FICC's GSD Rules to (1) adopt a membership requirement that all Netting Members submit to FICC for clearance and settlement eligible secondary market transactions to which they are a counterparty and defines the scope of such trade submission requirement; (2) adopt ongoing membership requirements to enable FICC to identify and monitor Netting

³ Securities Exchange Act Release No. 100417 (June 25, 2024), 89 FR 54602 (July 1, 2024) (File No. SR-FICC-2024-009) ("Notice of Filing").

⁴ Comments on the Proposed Rule Change are available at <https://www.sec.gov/comments/sr-ficc-2024-009/sr-ficc2024009.htm>.

⁵ 15 U.S.C. 78s(b)(2).

⁶ Securities Exchange Act Release No. 100693 (Aug. 12, 2024), 89 FR 66746 (Aug. 16, 2024) (File No. SR-FICC-2024-009).

⁷ 15 U.S.C. 78s(b)(2).

⁸ Securities Exchange Act Release No. 101194 (Sep. 26, 2024), 89 FR 80296 (Oct. 02, 2024) (File No. SR-FICC-2024-009).

⁹ Text of the proposed changes made by the Partial Amendment No. 1 to the Proposed Rule Change is available at <https://www.sec.gov/comments/sr-ficc-2024-009/sr-ficc2024009-524075-1504142.pdf>. The GSD Rules are available at https://www.dtcc.com/-/media/Files/Downloads/legal/rules/ficc_gov_rules.pdf. Terms not otherwise defined herein are defined in the GSD Rules or in the Proposed Rule Change.

¹⁰ 15 U.S.C. 78s(b)(1).

¹¹ 17 CFR 240.19b-4.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.