

## The Decision

On June 23, 2015, PBGC published a notice of the pendency of a request by Harrington Air Systems, LLC (“HAS”) and its sister company J.C. Cannistraro, LLC (“JCC”, and collectively with HAS, the “Buyer”) for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) with respect to the purchase of Harrington Brothers Corporation (“HBC” or the “Seller”). According to the request, the Seller was obligated to contribute to the Sheet Metal Workers National Pension Fund (the “Fund”), a multiemployer defined benefit pension plan. According to the Buyer’s representations, the Buyer acquired under an asset sale agreement effective February 24, 2014, most of the business assets of the Seller. The parties structured the transaction to comply with section 4204 of ERISA. HAS is an entity set up by JCC to effectuate the purchase of HBC’s assets. In the request, the Buyer represents that HAS and JCC are businesses under common control pursuant to 26 CFR § 1.414(c)-2 and therefore treated as one employer under ERISA. Additionally, the Buyer represents, among other things, that:

1. Under the terms of the asset purchase agreement, the Buyer paid the Seller approximately \$5.1 million in the form of an unsecured promissory note that may be adjusted post-closing based on the performance of certain construction contracts in place at the time of the transaction.

2. The Buyer is obligated to contribute to the Fund for the purchased operations for substantially the same contribution base units for which the Seller had an obligation to contribute.

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

4. The estimated amount of unfunded vested benefits allocable to the Seller with respect to the operations sold is about \$23.4 million.

5. The amount of the bond/escrow required under § 4204(a)(1)(B) is \$1.68 million.

6. After the close of the transaction, the Buyer requested that the trustees of the Fund waive the bond/escrow requirements of ERISA § 4204. The Fund denied the request on the grounds that the Buyer did not satisfy the net income or net tangible assets tests under PBGC’s regulations for an exemption from the bond/escrow requirement of § 4204(a)(1)(B).

7. To satisfy the net income test under 29 CFR 4204.13(a)(1), the Fund determined that the average annual net income required for the three-year period prior to the transaction needed to be approximately \$440,000 greater than the amount reported.

8. The Buyer asserts that the three-year average net income of JCC was lowered due

to an “aberrantly poor year” in the construction industry in Massachusetts in 2011. The Buyer states that JCC’s average annual net income for the years between 2011–2014 was approximately \$1 million more than what was required to meet the net income test under 29 CFR 4204.13(a)(1), and that its net income for the 3 years between 2012–2014 was approximately \$1.5 million more than what was required.

9. The Buyer further asserts that, in denying the Buyer’s request for a waiver, the Fund looked only at the average net income of JCC. It contends that aggregating the net incomes of JCC and HAS, two businesses under common control under 26 CFR 1.414(c)-2, shows that there “can be no serious argument that a waiver will create risk for the Fund, let alone substantial risk.”

10. The Buyer’s request additionally states that a variance of the bond/escrow requirement in this instance furthers the purposes of Title IV of ERISA because Congress, in enacting Title IV, sought to minimize intrusions into normal business operations while protecting plans. The Buyer asserts that HBC had previously been a “struggling enterprise” and that the transaction has “resulted in a more stable and financially secure contributing employer to the Fund.”

Based on the facts of this case and the representations and statements made in connection with the request for an exemption, including JCC’s updated 2014 financial information, PBGC has determined that an exemption from the bond/escrow requirement of section 4204(a)(1)(B) 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, the PBGC hereby grants the request for an exemption from the bond/escrow requirement.

The granting of a variance or an exemption from the bond/escrow requirement of section 4204(a)(1)(B) does not constitute a finding by the 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, on this 8th day of December 2015.

**W. Thomas Reeder,**

*Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 2015–31357 Filed 12–11–15; 8:45 am]

**BILLING CODE 7709–02–P**

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## POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016–28 and CP2016–34; Order No. 2858]

### New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing concerning the addition of Parcel Select Contract 11 negotiated service agreement to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* December 16, 2015.

**ADDRESSES:** Submit comments electronically via the Commission’s Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

### SUPPLEMENTARY INFORMATION:

#### Table of Contents

- I. Introduction
- II. Notice of Commission Action
- III. Ordering Paragraphs

#### I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*, the Postal Service filed a formal request and associated supporting information to add Parcel Select Contract 11 to the competitive product list.<sup>1</sup>

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. Request, Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors’ Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

#### II. Notice of Commission Action

The Commission establishes Docket Nos. MC2016–28 and CP2016–34 to consider the Request pertaining to the proposed Parcel Select Contract 11 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service’s filings in

<sup>1</sup> Request of the United States Postal Service to Add Parcel Select Contract 11 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors’ Decision, Contract, and Supporting Data, December 8, 2015 (Request).

the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than December 16, 2015. The public portions of these filings can be accessed via the Commission's Web site (<http://www.prc.gov>).

The Commission appoints Derrick D. Dennis to serve as Public Representative in these dockets.

### III. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket Nos. MC2016–28 and CP2016–34 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Derrick D. Dennis is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than December 16, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Stacy L. Ruble,**

*Secretary.*

[FR Doc. 2015–31373 Filed 12–11–15; 8:45 am]

**BILLING CODE 7710–FW–P**

## POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016–29 and CP2016–35; Order No. 2859]

### New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Contract 160 negotiated service agreement to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* December 16, 2015.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

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### I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*, the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 160 to the competitive product list.<sup>1</sup>

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. Request, Attachment B. To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

### II. Notice of Commission Action

The Commission establishes Docket Nos. MC2016–29 and CP2016–35 to consider the Request pertaining to the proposed Priority Mail Contract 160 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than December 16, 2015. The public portions of these filings can be accessed via the Commission's Web site (<http://www.prc.gov>).

The Commission appoints Kenneth R. Moeller to serve as Public Representative in these dockets.

### III. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket Nos. MC2016–29 and CP2016–35 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Kenneth R. Moeller is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than December 16, 2015.

<sup>1</sup> Request of the United States Postal Service to Add Priority Mail Contract 160 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, December 8, 2015 (Request).

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Stacy L. Ruble,**

*Secretary.*

[FR Doc. 2015–31374 Filed 12–11–15; 8:45 am]

**BILLING CODE 7710–FW–P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76590; File No. SR–NYSEArca–2015–93]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Listing and Trading of Shares of Cumberland Municipal Bond ETF Under NYSE Arca Equities Rule 8.600

December 8, 2015.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b–4 thereunder,<sup>3</sup> notice is hereby given that, on November 24, 2015, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the following under NYSE Arca Equities Rule 8.600 ("Managed Fund Shares"); Cumberland Municipal Bond ETF. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b–4.