

Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

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If a person other than Accurate NDE requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained. *An answer or a request for hearing shall not stay the immediate effectiveness of this order.*

Dated this 20th day of February, 2008.

For the Nuclear Regulatory Commission.

**Elmo E. Collins,**

*Regional Administrator.*

[FR Doc. E8-4025 Filed 2-29-08; 8:45 am]

**BILLING CODE 7590-01-P**

## **PENSION BENEFIT GUARANTY CORPORATION**

### **Approval of Variance From the Bond/Escrow Requirement Relating to the Sale of Assets by an Employer Who Contributes to a Multiemployer Plan: P&O Ports Florida, Inc.**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of approval.

**SUMMARY:** The Pension Benefit Guaranty Corporation has granted a request from the P&O Ports Florida, Inc., ("P&O Ports") for a variance 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 Tampa Maritime Association-International Longshoremen's Association Pension Plan. A notice of the request for a variance from the requirement was published on August 3, 2007 (72 FR 43297). The effect of this notice is to advise the public of the decision on the request.

**ADDRESSES:** The non-confidential portions of the request for a variance and any PBGC response to the request may be obtained by writing PBGC's Communications and Public Affairs Department (CPAD) at Suite 1200, 1200 K Street, NW., Washington, DC 20005-4026, or by visiting or calling CPAD during normal business hours (202-326-4040).

**FOR FURTHER INFORMATION CONTACT:** Eric Field, Attorney, Office of the Chief Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026; telephone 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**

Under 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"), a complete or partial withdrawal of an employer from a multiemployer plan does not occur solely because, as a result of a bona fide arm's-length sale of assets to an unrelated party, the seller ceases covered operations or ceases to have an obligation to contribute for such operations, if the following conditions under section 4204(a)(1)(A)-(C) of ERISA are met:

(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 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, under section 4204(b)(1), 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 asset sale 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 a variance or an exemption from the bond/escrow requirement under section 4204(a)(1)(B) 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 or exemptions from the requirements of section 4204(a)(1)(B) and (C) with respect to sales of assets (29 CFR Part 4204), a request for a

variance of the bond/escrow requirement under any of the tests established in the regulation (sections 4204.12 & 4204.13) is made to the plan in question. The PBGC will consider variance or exemption 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 section 552(b)(4) of the Freedom of Information Act, 5 U.S.C. 552.

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, based on the following reasons:

(1) The approval of a variance or exemption would more effectively or equitably carry out the purposes of Title IV of ERISA; and

(2) The approval of a variance or exemption 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 PBGC received no comments on P&O Ports' request for a variance.

#### Decision

On August 3, 2007, the PBGC published a notice of the pendency of a request by P&O Ports (the "Purchaser") for a variance or exemption ("variance") from the bond/escrow requirement of section 4204(a)(1)(B) regarding its purchase of SSA Gulf, Inc., d/b/a Harborside Refrigeration and Garrison (the "Seller") (72 FR 4538). According to the request, the Seller was obligated to contribute to Tampa Maritime Association-International Longshoremen's Association Pension Plan (the "Plan"), a multiemployer defined benefit pension plan, pursuant to a collective bargaining agreement with Local 1402 of the International Longshoremen's Association.

According to the Purchaser's representations, the Purchaser acquired, under an asset sale agreement effective May 26, 2006, the business assets of the Seller's stevedoring and related businesses in the Port of Tampa. The parties structured the transaction to comply with section 4204 of ERISA, and the Purchaser represents the following:

(1) The purchase agreement expressly obligates the Purchaser to contribute to the Plan for substantially the same contribution base units for which the Seller was obligated,

(2) The Seller agrees to be secondarily liable for any withdrawal liability it would have had with respect to the sold operations, but for section 4204, should the Purchaser withdraw from the Plan within the five plan years following the sale and fail to pay its withdrawal liability, and,

(3) The Purchaser agrees to post a bond, establish an escrow, or seek a variance from the bond/escrow requirement.

The amount of the bond/escrow required under section 4204(a)(1)(B) of ERISA is \$421,864. On April 9, 2007, the Purchaser established on behalf of the Plan an escrow account through Bank of America in that amount. The estimated amount of the withdrawal liability of the Seller with respect to the operations subject to the sale is \$1,191,462. The Purchaser asserts that certain financial information to support its request for a variance from the bond/escrow requirement is privileged and confidential. Consequently, as permitted by the PBGC regulation in these circumstances, the request is directed to the PBGC, rather than the Plan. Accordingly, the Purchaser submitted to the PBGC financial statements showing that the amount of the net tangible assets of the Purchaser's controlled group significantly exceed the Seller's estimated withdrawal liability of \$1,191,462.

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 a variance 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, the PBGC hereby grants the request for a variance 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 at Washington, DC, on this 21st day of February, 2008.

**Charles E. F. Millard,**

*Director, Pension Benefit Guaranty Corporation.*

[FR Doc. E8-3990 Filed 2-29-08; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28170; 812-13481]

### Eaton Vance Mutual Funds Trust, et al.; Notice of Application

February 26, 2008.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from rule 12d1-2(a) under the Act.

*Summary of Application:* Applicants request an order to permit funds of funds relying on rule 12d1-2 under the Act to invest in certain financial instruments.

*Applicants:* Eaton Vance Mutual Funds Trust, Eaton Vance Special Investment Trust (the "Trusts"), Eaton Vance Management ("EVM"), Boston Management and Research ("BMR," together with EVM, the "Advisers"), and Eaton Vance Distributors, Inc. (the "Distributor").

*Filing Dates:* The application was filed on January 18, 2008, and amended on January 30, 2008.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 24, 2008 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 100 F Street, NE., Washington, DC 20549-1090; Applicants, 255 State Street, Boston, MA 02109.

**FOR FURTHER INFORMATION CONTACT:** Lewis Reich, Senior Counsel, at (202) 551-6919, or Nadya B. Roytblat,