UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ANDREW SNITZER and PAUL LIVANT, individually and as representatives of a class of similarly situated persons, on behalf of the American Federation of Musicians and Employers' Pension Plan,

Plaintiffs,

v.

THE BOARD OF TRUSTEES OF THE AMERICAN FEDERATION OF MUSICIANS AND EMPLOYERS' PENSION FUND, THE INVESTMENT COMMITTEE OF THE BOARD OF TRUSTEES OF THE AMERICAN FEDERATION OF MUSICIANS AND EMPLOYERS' PENSION FUND, RAYMOND M. HAIR, JR., AUGUSTINO GAGLIARDI, GARY MATTS, WILLIAM MORIARITY, BRIAN F. ROOD, LAURA ROSS, VINCE TROMBETTA, PHILLIP E. YAO, CHRISTOPHER J.G. BROCKMEYER, MICHAEL DEMARTINI, ELLIOT H. GREENE, ROBERT W. JOHNSON, ALAN H. RAPHAEL, JEFFREY RUTHIZER, BILL THOMAS, JOANN KESSLER, MARION PRESTON,

Defendants.

No. 1:17-cv-5361 (VEC)

DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS

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I. PRELIMINARY STATEMENT

In seeking preliminary approval of the settlement, and then requesting nearly $10 million in attorneys' fees, costs, and service awards, Plaintiffs claimed that the settlement constitutes a "clear" or "unambiguous" victory for them. Dkt No. 138 at 1, 28. The Trustees support approval of the settlement, as it will put some desperately needed money into the American Federation of Musicians and Employers' Pension Plan (the "Plan"), remove the distractions associated with a long trial, and enable the Trustees to focus on the important issues confronting the Plan.[1] But, as Plan fiduciaries, the Trustees believe it is important to set the record straight with respect to the merits of the underlying claims and the degree of success that Plaintiffs achieved in settlement. This should inform the Court in evaluating both the objections to the settlement received from several class members,[2] and Plaintiffs' application for attorneys' fees, costs, and service awards, which come out of the settlement proceeds.

The objections reflect the misguided belief that the Plan has been mismanaged, and thus that more draconian measures should be required as a condition for a settlement. That belief has been fueled by the manner in which Plaintiffs have argued their case, both in court and in public. Plaintiffs have repeatedly made outlandish unsupported assertions about the Trustees' "doubling down" on investment risk and investing like "drunken sailors." Plaintiffs figured that someone would start believing them, and some participants eventually did. But the extensive record of robust Trustee deliberations exposed this tactic for what it was – a mere charade.

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[1] As is evident from the letters to the Court submitted by the International Conference of Symphony and Opera Musicians ("ICSOM") and other individual class members, there are thousands of participants who, for similar reasons, would like to see the settlement approved. *See* Dkt No. 180 at ECF p. 16 (Namkung), p. 21 (Cutler); Dkt No. 183 at ECF p. 18 (ICSOM).

[2] Defendants reserve the right to respond to other objections received after this brief is filed.

Plaintiffs' inability to prove their case was brought into focus during expert discovery. Plaintiffs' principal claim was that the Trustees took on too much investment risk in response to the Plan's funding shortfall by targeting higher rates of return. Yet, remarkably, Plaintiffs presented this claim without the benefit of an expert actuary – the one professional who could competently assess and balance the risks of increasing the targeted investment returns against the risks of maintaining the status quo. The Trustees, by contrast, presented a report from a renowned actuary with extensive experience in the Taft-Hartley fund arena, Cary Franklin. His report demonstrated why the Trustees' decisions to increase the Plan's targeted rates of return were precisely the right decisions at the right time. Following receipt of Mr. Franklin's report, Plaintiffs were left scrambling for a rebuttal expert, but he could not identify any alternative plan of action that was calculated to fare better than the actions taken by the Trustees.

The Trustees' expert reports likewise demonstrated the procedural prudence underlying the investment decisions targeted in the lawsuit, including the decisions to increase the Plan's investments in international emerging markets equities ("EMEs") and private equity ("PE"), and to invest and remain with certain active managers. Phyllis Borzi, the former Assistant Secretary of Labor for the U.S. Department of Labor's Employee Benefits Security Administration division, the agency responsible for setting and enforcing fiduciary standards, concluded that the Trustees engaged in processes that equaled – and in many respects exceeded – the standards maintained by prudent Taft-Hartley fund trustees. Here, too, Plaintiffs had to scramble to come up with a response to Ms. Borzi. Their rebuttal expert, Dr. Susan Mangiero, lacked any relevant experience in the Taft-Hartley plan arena and never even attended an investment committee meeting.[3] And she based her opinions on erroneous assertions about the record evidence – including the completely unfounded assertion that the Trustees did not follow the advice of the Plan's professionals.

Even if Plaintiffs could somehow have prevailed on their claims, moreover, the reports of the parties' damages experts revealed there was little or no monetary relief to be had. *See* Dkt No. 138 at 2. Plaintiffs admitted as much in their attorneys' fee application. In fact, they cited this shortcoming as proof of how successful they were in settling this case. Dkt No. 167 at 23-24. Yet, when the case began, they were claiming damages of nearly a quarter billion dollars.

If success is measured against Plaintiffs' likelihood of prevailing at trial, then the Trustees would agree that the settlement was a good outcome for the class – as it was for the Plan – given the weakness of the claims. But relative to what Plaintiffs proclaimed about their case – and what they unfortunately led class members to believe about the merits of their claims – the results are decidedly modest. Contrary to their assertion, Plaintiffs did not recover most of the available insurance money. Some $15 million in insurance proceeds were left on the table. The so-called "Governance Provisions" similarly fell short of expectations. Plaintiffs originally demanded the replacement of Trustees, even while now conceding that this relief was legally unobtainable. Dkt No. 167 at 22. Yet they eventually settled instead for the removal of the Plan's investment consultant – whose primary responsibilities had already been eliminated because of the Trustees' earlier retention of an Outsourced Chief Investment Officer ("OCIO") to play the principal role in managing Plan investments. The settlement also calls for the retention of an experienced independent fiduciary to participate in Investment Committee

[3] As is evident from Ms. Borzi's expert report, before taking on her position with the Department of Labor, she spent her legal career representing Taft-Hartley funds.

meetings, where he undoubtedly will make a helpful contribution. Dkt No. 138 at 3. The Trustees welcome his arrival, in fact, since, in the destructive environment Plaintiffs have helped create, he will confirm that the Trustees have been engaged in a vital and productive decision-making process with respect to the Plan's investments, as Ms. Borzi already concluded after evaluating the record in this case.

When all is said and done, Plaintiffs have needlessly extended this lawsuit for years and, in the process, tarnished the reputations of conscientious and well-meaning Trustees, and discouraged other union and industry leaders from volunteering to take on the responsibilities of being a trustee. For this, Plaintiffs' counsel now seek millions of dollars in attorneys' fees, based on a percentage calculation that exceeds the norm for common fund attorneys' fee awards. Plaintiffs' counsel could not possibly have justified this large a fee if Plaintiffs had acknowledged the weaknesses in their case and agreed to a reasonable settlement sooner, instead of dragging this case out to the eve of trial. It is hoped that the Court will take these realities into consideration and reduce the attorneys' fee award accordingly – to an amount below, rather than above, their claimed lodestar. At the same time, it is hoped that, by evaluating the settlement against the fundamental weaknesses in Plaintiffs' claims, the Court will reject the misguided participant objections and find that the settlement achieves for the Plan and its participants a much better result than Plaintiffs could ever have achieved at trial.

II. APPLICABLE LEGAL STANDARD

Plaintiffs pay lip service to the factors developed in *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 50 (2d Cir. 2000), for evaluating common fund fee applications, but then rely on a handful of cherry-picked – and totally inapposite – ERISA settlements where courts awarded a 33.33% fee. Dkt No. 167 at 4-7. A proper review of the legal standards and a more fulsome review of the applicable case law point to a much lower award.

As this Court recently explained in *Espinal v. Victor's Cafe 52nd Street, Inc.*, No. 16-cv-8057, 2019 WL 5425475 (S.D.N.Y. Oct. 23, 2019), courts in this Circuit have applied the *Goldberger* factors in accordance with a three-step approach. *Id.*, at *2 (citing *McGreevy v. Life Alert Emergency Response, Inc.*, 258 F. Supp. 3d 380 (S.D.N.Y. 2017); *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 348 (S.D.N.Y. 2014)). *See also Grice v. Pepsi Beverages Co.*, 363 F. Supp. 3d 401, 406 (S.D.N.Y. 2019). First, they determine a baseline reasonable fee, by considering empirical evidence of other common fund settlements of a similar size and complexity. *Espinal*, 2019 WL 5425475, at *2.[4] The size of the settlement is particularly important in setting a baseline fee, since courts apply a "sliding scale" approach, awarding a smaller percentage as the size of the settlement fund increases. *Id.*

Second, courts determine whether any adjustments to the baseline fee – up or down – are warranted under the *Goldberger* factors of risk, quality of the representation, and public policy concerns. *Id.*, at *3.

Third, courts cross-check the fee award against the lodestar amount. *Id.*, at *4. Depending on the surrounding circumstances, courts may award a multiplier of the lodestar, but may also reduce the lodestar. *See Quaratino v. Tiffany & Co.*, 166 F.3d 422, 425 (2d Cir. 1999) ("[T]he district court should exclude excessive, redundant or otherwise unnecessary hours"); *Kirsch v. Fleet St., Ltd.*, 148 F.3d 149, 173 (2d Cir. 1998) (same).

When these factors are properly applied, they demonstrate that Plaintiffs' counsel is entitled to no more than about 25% of the Settlement Amount, or $6,700,000 (plus costs), rather

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[4] *See also Colgate-Palmolive*, 36 F. Supp. 3d at 349-52 (examining empirical studies in setting attorneys' fee percentage in ERISA case); *In re GSE Bonds Antitrust Litig.*, No. 19-cv-1704, 2020 WL 3250593, at *5 n.2 and n.3 (S.D.N.Y. June 16, 2020) (antitrust); *James v. China Grill Mgmt., Inc.*, No. 18 Civ. 455, 2019 WL 1915298 (S.D.N.Y. Apr. 30, 2019) (FLSA); *Grice*, 363 F. Supp. 3d at 406 (FCRA).

than the one-third they are seeking; and potentially less, depending on what an evaluation of the backup information on counsel's actual time charges reveals.

III. THE ONE-THIRD FEE REQUESTED BY PLAINTIFFS' COUNSEL IS FAR ABOVE THE REASONABLE BASELINE ESTABLISHED BY OTHER ERISA SETTLEMENTS OF SIMILAR SIZE

Plaintiffs' request for one-third of the Settlement Amount should be rejected under the first step of the *Goldberger* test because it far exceeds the average percentage award for other ERISA settlements in the same range. Empirical studies show that, for all class action settlements in the $23.5-67.5 million range (representing the ninth decile), the average percentage award is just above 24%. Theodore Eisenberg, Geoffrey Miller, and Roy Germano, *Attorneys' Fees in Class Actions: 2009–2013*, 92 N.Y.U. L. Rev. 937, 948 (2017) (cited in *Grice*, 363 F. Supp. 3d at 407). There is no reason to assume that the percentage awarded here should be greater just because this is an ERISA case. To the contrary, both the mean and median percentage award for all ERISA cases, irrespective of amount, is 26%, which is actually 1% lower than the average fee percentage for all other common fund settlements. *Id*. at 947, 952. *See also Colgate-Palmolive*, 36 F. Supp. 3d at 349-52 (concluding, based on earlier data, that ERISA fee percentage awards did not differ significantly from percentage awards in other common fund settlements). Accordingly, a 25% award would be eminently reasonable here in light of the size of the settlement and the fact that ERISA settlements carry no premium.

Plaintiffs attempt to justify a higher percentage award by cherry-picking ten ERISA cases in which courts awarded one third of the settlement fund in fees. Dkt No. 167 at 6-7. But for every case awarding one-third, there is an ERISA case awarding a lower amount.[5] Not

[5] *See*, *e.g.*, *Figas v. Wells Fargo & Co.*, No. 08-cv-04546 (D. Minn. 2011), ECF No. 295 (Order on Attorney's Fees) & ECF No. 264 (Motion for Attorney's Fees) (awarding fee of 25% from a $17.5 million settlement fund); *In re Healthsouth Corp. ERISA Litig.*, No. 03-cv-1700,

surprisingly, courts in this Circuit have rejected such efforts to gerrymander the results with such a small, and hand-selected, sampling. *See Colgate-Palmolive*, 36 F. Supp. 3d at 349-50 (rejecting reliance on hand-picked cases and requiring class counsel to prepare report showing percentage fee award in 100 ERISA settlements). Instead, as one court in this Circuit explained in declining to rely on select settlements to identify a baseline, "empirical studies . . . paint a far more comprehensive picture of the average percentage awarded to counsel in common fund settlements, thereby minimizing any potential sampling biases." *Grice*, 363 F. Supp. 3d at 407. And, as noted, the empirical studies here point to a much lower baseline.

Moreover, even in the cases Plaintiffs cite, the awards – if anything – support a lower fee either because (1) the settlements were much smaller than the one here, thereby warranting a higher percentage award;[6] (2) the requested fee represented only a portion of class counsel's lodestar;[7] or (3) participants received substantial monetary value from the settlement's injunctive relief, which was not factored into the percentage-of-award calculation.[8] None of those

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2006 WL 2109484, at *6 (N.D. Ala. June 28, 2006) (awarding fee of 25% from a $28.875 million settlement fund).

[6] *Leber v. Citigroup 401(k) Plan Inv. Comm.*, No. 07-cv-9329, 2019 U.S. Dist. LEXIS 23593, at *12 (S.D.N.Y. Jan. 3, 2019) ($6.9 million); *Andrus v. New York Life Ins. Co.*, No. 16-cv-05698, (S.D.N.Y. June 15, 2017), ECF No. 83 at 2 ($3 million); *Spann v. AOL Time Warner, Inc.*, No. 02-cv-8238, 2005 WL 1330937, at *4 (S.D.N.Y. June 7, 2005) ($2.9 million).

[7] *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 146-50 (S.D.N.Y. 2010) (awarding 33% of a $35 million settlement where case involved a novel area of ERISA law, increasing risk of dismissal, and fee requested was only 88% of the lodestar); *Beesley v. Int'l Paper Co.*, No. 06-cv-703, 2014 WL 375432, at *3 (S.D. Ill. Jan. 31, 2014) (awarding one third of $30 million settlement, where fee requested was more than $2 million less than lodestar).

[8] *Kruger v. Novant Health, Inc.*, No. 14-cv-208, 2016 WL 6769066, *1-5 (M.D.N.C. Sept. 29, 2016) (awarding 33.33% of $32 million settlement where settlement also provided for redesign of plan's fee mechanism estimated to generate direct cost-savings for participants of up to $70 million in future fees); *Tussey v. ABB, Inc.*, No. 06-cv-04305, 2019 WL 3859763, *1-5 and n.1 (W.D. Mo. Aug. 16, 2019) (awarding 33.33% of $55 million settlement that provided an additional 18.6% to class members in tax savings and where class counsel obtained injunctive relief pre-settlement that translated into $83 million in savings for participants); *Ramsey v.*

circumstances exist here, where Class Counsel's requested fee is $1 million *more* than their lodestar and participants will receive no monetary benefit from the Governance Provisions.

IV. PLAINTIFFS HAVE NOT PROFFERED GROUNDS FOR AN UPWARD ADJUSTMENT OF THE BASELINE PERCENTAGE

Plaintiffs have provided no grounds for upwardly adjusting the baseline percentage under the *Goldberger* factors of risk, quality of representation, and public policy issues.

Plaintiffs' arguments with respect to risk and public policy considerations deserve short shrift. Dkt No. 167 at 15-18, 19. Plaintiffs have identified no risk that Class Counsel assumed beyond the typical litigation and contingency risk that all plaintiffs' lawyers face, and which courts have discounted in awarding fees. *Espinal*, 2019 WL 5425475, at *3. Likewise, Plaintiffs' contention that an enhanced award will serve the public policy of protecting participants is no different than in any other ERISA case. *Colgate-Palmolive*, 36 F. Supp. 3d at 352-53 (declining to adjust fee percentage based on public policy factor because of alleged importance of ERISA's goals and policies). If anything, public policy interests militate against an enhanced award. It is undisputed that these Trustees worked hard, at no personal gain, to try to restore the Plan's financial well-being. This protracted litigation, and the public manner in which it has been conducted in an effort to embarrass or discredit the Trustees, has likely served to discourage other industry and union leaders from volunteering for the seemingly thankless and unpaid, but essential, job of serving on employee benefit plan boards.

Philips N. Am. LLC, No. 18-cv-1099, 2018 U.S. Dist. LEXIS 226672, at *7 (S.D. Ill. Oct. 15, 2018) (explaining that injunctive relief translated into an additional circa $20 million value to class members, such that fee percentage awarded was actually 14%, rather than one-third); *Spano v. Boeing Co.*, No. 06-cv-743, 2016 WL 3791123, at *2 (S.D. Ill. Mar. 31, 2016) (noting that injunctive relief translated into millions of dollars of savings in recordkeeping and investment fees, making the requested fee "far less than one-third of the benefit to the Class").

Plaintiffs fare no better when considering the quality of Class Counsel's representation. "Quality of representation is 'best measured by results.'" *Espinal*, 2019 WL 5425475, at *3 (quoting *Goldberger*, 209 F.3d at 55). Plaintiffs might have been entitled to an upward adjustment of the 25% baseline percentage if they had in fact achieved the "complete victory" they have been crowing about; and if they had done so by presenting a strong case on the merits. But a comparison of what Plaintiffs originally sought to achieve in this case to what they actually achieved, and of what they sought to prove in this case and what they actually proved, paints a much different picture and shows why Class Counsel are not entitled to any premium over the baseline. If anything, the evaluation points in the other direction, insofar as it shows that Plaintiffs needlessly prolonged this litigation in pursuit of a larger recovery than they could ever reasonably have hoped to obtain. In the process, they forced the Trustees to consume many millions of dollars in insurance proceeds for their defense that would otherwise have been available to settle the case sooner, while substantially increasing the portion of the recovery that their attorneys are now claiming for themselves.

A. The Relief Achieved in Settlement is Anything but a "Complete Victory"

Plaintiffs want the Court to believe that the monetary and nonmonetary relief they obtained through the Settlement Agreement proves that they were completely victorious in pursuing their claims. Because Plaintiffs are trying to parlay this assertion into their claimed entitlement to $9 million in attorneys' fees (plus costs), a corrective response is warranted.

1. The Settlement Did Not Achieve the Monetary Recovery Plaintiffs Sought in Their Complaint or Exhaust Available Insurance Proceeds

Plaintiffs originally sought recovery of investment losses that they claimed approached a quarter billion dollars. *See* Dkt. No. 54 at ¶¶ 12-14, 117. As Plaintiffs' brief concedes, they abandoned all hope of recovering even a fraction of that figure well before trial. *See* Dkt No.

138 at 2, 36. They had little choice since, for the reasons demonstrated below, they could neither prove their claims on the merits nor could they connect them to any viable theory of damages. Thus, Plaintiffs' monetary recovery can be viewed as a "success" only if success is measured against the precarious claim for monetary relief they were left with as the case approached trial.

In an effort to put a better spin on the results, Plaintiffs direct the Court to the percentage recovery available from the Plan's insurance policies. But this math does not work for them either. Of the three layers of coverage comprising the $50 million in insurance that was originally available: a significant portion of the first layer ($25 million) was consumed by defense costs; only about two thirds of the second lawyer ($15 million) will be recovered in the settlement; and not one dollar will be taken from the third layer ($10 million). It would have been better for all concerned if Plaintiffs had been more willing to settle this case at the outset, when the first layer of coverage was largely intact and available to satisfy a reasonable settlement demand.

In short, while Plaintiffs' litigation strategy may have enabled Plaintiffs' counsel to rack up many billable hours which they now are using to prop up their claim for close to $9 million in attorneys' fees alone, it did not serve the Plan participants particularly well.

2. The Settlement Did Not Achieve the Changes in Governance That Plaintiffs Claimed Were Necessary

Plaintiffs make much of the changes in Plan "governance" agreed to in settlement. But these changes bear little resemblance to the relief Plaintiffs originally were seeking. As with their backtracking on their inflated monetary claims, Plaintiffs were made to eventually realize that their claims were not strong enough to warrant holding out for the more intrusive governance changes they sought in the Complaint.

As a preliminary matter, it is important to remember that, well before suit was even commenced, the Trustees had already decided to retain an OCIO to assume the principal decision-making responsibilities with respect to Plan investments, including the decisions that were alleged to have been made imprudently. *See* Ex. 1 at 27-28; Dkt. No. 139-1 at ECF p. 42.[9] The decisions whether and when to retain active investment managers, and when to replace them, now rest in the hands of the OCIO. *See* Ex. 2 at 4. Likewise, the determination as to what percentage of Plan assets should be invested in, *e.g.*, EMEs and PE, rests with the OCIO. While the Trustees still retain some responsibility for setting broad parameters on asset allocation,[10] the OCIO determines the allocations within these broad parameters. For example, as of December 31, 2019, the OCIO could invest anywhere from 0 to 25% in PE, and the only guidelines relating to EMEs were those authorizing anywhere between 25% and 65% in global equities generally. *See* Dkt. 139-1 at ECF p. 79. Thus, if the motivation for bringing this lawsuit was to avoid repeating or continuing the type of investment decisions that the Complaint took issue with, there really was no need to pursue the Complaint at all, as the processes pursuant to which those decisions were made had already been fundamentally changed.

In any event, there can be no dispute that the Settlement Agreement did not accomplish what Plaintiffs set out to do: kick off and replace targeted Trustees. *See* Dkt No. 54 ¶ 192(E). As Plaintiffs' brief in support of preliminary approval of the settlement conceded, this effort was designed to bolster efforts to replace the Union Trustees at the union membership Convention – an effort that failed resoundingly when put up to a vote. The litigation effort was no more

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[9] Expert reports, deposition transcripts, and other documents annexed as exhibits to the supporting Declaration of Myron D. Rumeld are referred to hereinafter as "Ex. __".

[10] Pursuant to the Settlement Agreement, the asset allocation targets will be determined by the new OCIO monitor, based on the Trustees' input on investment return and risk objectives, and subject to Trustee veto. Dkt. No. 139-1 at ECF p. 13

successful. The only departing Trustees on the Investment Committee will be those who planned to retire before the settlement, and they will be replaced through the normal process.

Having failed to achieve their principal goal of replacing Trustees, Plaintiffs settled for having an independent fiduciary participate at Investment Committee meetings, but without voting power. Given the credentials of the independent fiduciary, and his ability to be a voice in the room, his presence should be welcomed by all concerned. He is certainly welcomed by the Trustees, as they fully expect that he will validate the prudence of the process that the Trustees have been engaged in all along.

The other categories of nonmonetary relief consist of: (i) publication of information on Plan investments and Trustee appointments; and (ii) replacement of Meketa Investment Group ("Meketa") as OCIO monitor. The information required is not materially different from the information the Trustees have provided all along. And while the Trustees regret having to replace a consultant who performed admirably, its replacement is immaterial given Meketa's limited role since the retention of the OCIO, and the retention of the independent fiduciary to help monitor the Plan's investments.

B. The Results Achieved in Settlement Were Modest Because Plaintiffs Were Unable to Prove That the Trustees Breached Their Fiduciary Duties, Let Alone That the Plan Suffered Any Monetary Damages

Plaintiffs' inability to achieve greater results in settlement is directly attributable to their inability to prove their case. Notwithstanding the extensive discovery, Plaintiffs were unable to put even a dent in five essential and unassailable truths that were fatal to their claims.

First, the decision to target higher rates of return was objectively prudent because it was consistent with a reasonable actuarial projection of the relative risks and rewards to the Plan of adopting this approach, as opposed to maintaining the status quo or choosing any other approach.

The Trustees' expert actuary, Cary Franklin, demonstrated that point, and Plaintiffs could not offer a competing analysis militating in favor of any other course of action.

Second, the specific asset allocation policies that were developed as a means to achieve the higher targeted rates of return – including the increases in the Plan's holdings in EMEs and PE – were based on extensive vetting with the Plan's investment consultant, Meketa. The Trustees' decision to follow that advice was the product of a procedurally prudent process, as found by Ms. Borzi. Given that Ms. Borzi's job at the Department of Labor was to determine whether trustee conduct was imprudent, her conclusions are compelling.

Third, the decision to retain actively managed investments was likewise made pursuant to a prudent process that included extensive vetting with Meketa – one that Ms. Borzi found to be the best she had ever seen. Ex. 1 at 21-22. The same was true with respect to the Trustees' evaluation of underperforming managers. *Id.* at 22.

Fourth, in addition to failing to make out the merits of Plaintiffs' claims, Plaintiffs' experts failed to present a viable theory for recoverable damages attributable to their claims.

Finally, although Plaintiffs did not assert a free-standing claim for imprudent communications, the record showed that the Trustees consistently advised participants of the financial condition of the Plan

1. The Evidence Established the Prudence of the Trustees' Decision to Adopt New Asset Allocation Policies with Higher Targeted Rates of Return

Plaintiffs' theory was that the Trustees imprudently addressed the funding shortfall that the Plan confronted following the Financial Crisis of 2008 and 2009 by taking on too much investment risk, and, specifically, by increasing the Plan's investments in EMEs and PE. In so contending, Plaintiffs conflated two distinct decisions: first, the decision to target higher investment returns for the Plan portfolio as a whole; and second, the decision to adopt a particular asset allocation model designed to achieve the targeted returns. Once these decisions are separated out and evaluated distinctly, it becomes readily apparent that Plaintiffs had no basis to challenge either of them as imprudent.

a. **The Trustees Prudently Decided to Target Higher Rates of Return**

ERISA's prudence standard is an objective one, which requires plaintiffs to show not only that the decision-making process was inadequate, but also that a hypothetical prudent fiduciary would have made a different decision. *See Pension Benefit Guar. Corp. ex rel. Saint Vincent Catholic Med. Ctrs. Ret. Plan v. Morgan Stanley Inv. Mgt. Inc.*, 712 F.3d 705, 718 (2d Cir. 2013) ("Under this objective standard, whether an ERISA fiduciary's investment decision is improvident depends on what a prudent man in like circumstances would do."). Thus, even before turning to the voluminous record of the Trustees' deliberations over the Plan's decision to target higher levels of return, Plaintiffs could not sustain a fiduciary breach claim based on allegations of excessive investment risk-taking unless they could demonstrate that a prudent fiduciary would have pursued a different course of action. Plaintiffs made no effort to do so, nor could they since they did not proffer an expert actuary in their case in chief who could evaluate the relative rewards and risks associated with the Trustees' chosen course of action and of potential alternative courses of action. And the actuary they retained to rebut the Trustees' actuarial expert admitted that he did not perform this task. Ex. 9 at 5.

The Trustees offered the report of an impeccably credentialed actuarial expert: Cary Franklin, a career advisor to Taft-Hartley Funds who for the last twelve years has worked for one of the leading actuarial firms in the country. Ex. 3 at 29. Franklin explained that the precarious financial condition facing the Plan in 2011 and thereafter did not result from adverse investment decisions, but rather was brought about by the Financial Crisis of 2008-2009, coupled with the

Plan's ever-increasing costs of paying benefits to its aging participant population. The cost of paying benefits had risen to the point where it exceeded the Plan's income, and this deficit was projected to grow larger. *Id.* at 1, 9-12.

Franklin opined that the decisions made to confront these circumstances – including the decision in 2011 to increase the Plan's targeted investment returns to 8%, and the decision in 2015 to increase the targeted returns to 9% – were consistent with a proper weighing of the potential risks and rewards associated with these decisions. With the use of stochastic modeling – the same technique that the Trustees themselves used in 2015 – Franklin determined that "the Plan had a better chance of recovery by seeking the higher targeted investment return under the revised asset allocations and that the increased investment return volatility was not a valid reason to avoid making either change." *Id.* at 21.[11] Relatedly, he concluded that the changes in the Plan's targeted investment returns in 2011 and 2015 created "a higher likelihood of improving" the Plan's solvency over the long term when compared to not making the changes, "while bearing no materially increased risk of short term insolvency." Ex. 6 at 2-3. Overall, Franklin concluded that the changes made were the right decisions and were made at precisely the right times. Ex. 3 at 26-27. Thus, what Plaintiffs had characterized as excessive risk taking was, in fact, a calculated strategy to *reduce* risk. *Id*. at 20.

Once in receipt of Mr. Franklin's report, Plaintiffs scrambled to come up with an actuary, David Pitts, to rebut Mr. Franklin's opinion. Pitts had no experience advising Taft-Hartley plans, aside from "a couple smaller union plans" that he "worked on" in the early part of his career

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[11] Stochastic modeling is a projection method that "[Q]uantifies the probabilities of specific investment and funding outcomes under alternative scenarios by generating a large number of simulations (e.g., 5,000 or 10,000) and then sorting the results to determine the probability of the outcome under study, such as the probability of insolvency or the probability of achieving a funding percentage goal." Ex. 3 at 15 n.20.

(about 40 years ago), no experience doing stochastic modeling for multiemployer plans, and no familiarity with the Pension Protection Act of 2006's rules for underfunded plans. Ex. 12 at 23:4-22, 52:4-18, 54:21-23. Pitts agreed, however, that "if under a current asset allocation policy, the plan's funded status is projected to decline, it would be appropriate to consider other asset allocation policies" so long as "the risk-reward tradeoffs were rational." *Id.* at 141:5-12. He also conceded that stochastic modeling, the methodology employed by both the Trustees and Franklin, would be "the way to go" for purposes of making investment policy changes. *Id.* at 142:2-3. Relatedly, the prudence and damages expert supporting Plaintiffs' case in chief, David Witz, acknowledged at his deposition that it makes sense to take a plan's critical status into consideration when making investment decisions, and to take on "more risk" in order to try to "boost returns" in such a situation. Ex. 11 at 119:25-120:5.

Although Pitts offered some criticisms of the manner in which Franklin conducted his stochastic modeling, based on experiences with single employer plans that were not relevant or persuasive,[12] he could "not identif[y] an alternative asset allocation policy that . . . the trustees should have adopted" and had no opinion on "whether starting in 2011, the trustees should have stuck with their preexisting asset allocation policy." Ex. 12 at 68:22-69:6.

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[12] Pitts' lack of experience with Taft-Hartley plans compromised his opinions. For example, one of his principal criticisms of the Plan's stochastic modeling was its failure to make adjustments in projected interest rates in different market conditions. Ex. 9 at 13. Pitts conceded, however, that he was not in a position to comment as to how likely it was for an actuary of a Taft-Hartley plan to change the interest rate assumption. Ex. 12 at 80:13-18. In fact, these plans typically do *not* adjust their interest rate assumptions based on changing market conditions. Ex. 3 at 26.

b. The Trustees' Investment Strategy Was Consistent with Professional Advice

Plaintiffs' experts attempted to cast doubt as to the prudence of the decisions to increase the targeted rates of return by questioning whether these decisions were consistent with the advice received from the Plan's professionals. In so contending, Plaintiffs' experts, like Plaintiffs' counsel, completely misstated the record.

Insofar as Plaintiffs and their experts claimed that, by increasing the targeted rates of return, the Trustees countered Meketa's advice, they both confused the role of the investment consultant and the actuarial consultant and also mischaracterized Meketa's advice. The primary basis for the decision to target higher rates of return was the analysis provided by the actuary, Milliman, who advised on the reasonably anticipated impact of various targeted returns on the Plan's funding level. Meketa's role was limited to proposing allocation policies and providing analyses of the volatility of policies under consideration and of the likelihood that the policies could generate favorable or adverse results for the Plan. These analyses did not militate against the strategies adopted by the Trustees. To the contrary, the analyses provided in advance of the 2011 asset allocation decision confirmed that, by adopting policies targeting a higher rate of return, the Trustees would not be taking on a materially greater risk of short term losses, but would be materially increasing the likelihood that the Plan would achieve returns in the long run that equaled or exceeded the Plan's 7.5% interest rate assumption. Ex. 3 at 2, 15, 20.

The argument that the Trustees countermanded the advice of the Plan's actuary – Milliman – was based on Milliman's decision to keep the interest rate assumption at 7.5%, notwithstanding the changes in the Plan's targeted investment return. Ex. 7 at 10-11. The adverse inference drawn from this by Plaintiffs' experts merely betrayed their lack of experience with Taft-Hartley plans.[13] As the record made clear, and as Mr. Franklin explained, the decision to retain the interest rate assumption was consistent with sound actuarial practice, which favors retaining assumptions to "consistently measure[] funding objectives." Ex. 3 at 26. And as Ms. Borzi explained, "actuaries are governed by their own professional standards in setting the actuarial assumptions," and therefore "it is common . . . for there to be a gap between the actuarial assumptions and targeted investment returns" used by Taft-Hartley plans. Ex. 4 at 6

Plaintiffs' experts also repeatedly seized on an isolated statement in a multi-page slide presentation from another actuarial firm, the Mercer Company, that made its way into the Plan records in 2010. On one page, deep into the report, Mercer stated that increasing the Plan's targeted investment returns would be a "risky roll of the dice." Ex. 7 at 8, 27; Ex. 8 at 23; Ex. 9 at 11, 18; Ex. 10 at 20, 46. As is evident from a contextual review of the materials, the slides were generated, not for the Plan's Trustees, but for an organization of contributing employers in the orchestra industry. As Ms. Borzi observed,

> The principal purpose of the report was to alert these employers of the precarious funded condition of the Plan and the risks of significant liability for employers withdrawing therefrom; the report does not purport to comment on the Plan's specific investments or investment strategy. Additionally, the "roll of the dice" comment is nothing more than an acknowledgment that more aggressive investment strategies carry greater volatility. The report does not purport to rule out

[13] Witz admitted, *inter alia*, that he lacked any Taft-Hartley experience (Ex. 11 at 148:1-6); that he had no experience advising plans on how to emerge from critical status (*id.* at 76:2-8); that he could not even describe what "critical status" or what "critical and declining status" means (*id.* at 74:16-75:15, 304:24-305:18); that he had no idea what the industry activity assumption was – even though it is a critical assumption in calculating a plan's funded status (*id.* at 156:19-22); that he was not an actuary and had not interpreted an actuarial report in over a decade (*id.* at 73:5-16); and that he hadn't observed a plan committee meeting in over a decade (*id.* at 62:9-63:11). Likewise, Mangiero admitted, *inter alia*, that she has never performed a study that evaluates the risk of a particular asset allocation (Ex. 13 at 30:10-13); she has never even attended an investment committee meeting of an ERISA plan, much less a multiemployer plan (*id.* at 35:21-36:6); that she had never been retained by a plan as an investment advisor or consultant and thus had no experience providing investment recommendations (*id.* at 40:3-8).

> more aggressive investing as a possible course of action; to the contrary, it is specifically identified as one course of action to consider.

Ex. 4 at 3-4.

There is no indication whether, at the time, Mercer was even aware of the Plan's current investment strategy and thus no indication of what alternative "risky" strategy Mercer was referring to. Moreover, as Pitts conceded, Mercer would be in no position to evaluate the relative merits of pursuing stronger returns without conducting a stochastic analysis, which it lacked the information to perform. Ex. 12 at 72:6-75:24. When all was said and done, the isolated comment cited from the report was entitled to no weight in evaluating the prudence of the deliberative process that the Trustees engaged in with the Plan's well-qualified professionals.

2. <u>The Decision to Increase Holdings in EMEs and PE Was Prudent</u>

Having failed to demonstrate that there was anything objectively or procedurally imprudent about the Plan's overall investment allocation strategy, Plaintiffs reverted to the argument that the Trustees imprudently took on too much risk by investing in EMEs and PE. To begin with, the notion that the Trustees could be taking on too much investment risk with respect to a particular security within the Plan's investment line-up entirely misses the point of holding a portfolio of investments. As Mr. Franklin pointed out in his report, and as Plaintiffs' rebuttal actuary Pitts conceded, risk is evaluated based on the portfolio as a whole, rather than isolated investments within the portfolio. Ex. 3 at 22-23; Ex. 6 at 4-5; Ex. 12 at 182:14-183:14); *see also PBGC*, 712 F.3d at 717 ("[T]he prudence of each investment is not assessed in isolation but, rather, as the investment relates to the portfolio as a whole"). Thus, absent any basis for challenging the Trustees' decision to target 8% returns in the aggregate in 2011, and 9% returns in the aggregate in 2015, there was no basis for challenging isolated investments that, when combined with the Plan's other investments, were designed to achieve those targets.

In any event, there was no basis for contending that the Trustees' decision to invest in these securities was imprudent. As Ms. Borzi concluded, the Trustees' asset allocation decisions, including their decisions to increase the Plan's investments in EMEs and PE, were the product of an extensive vetting process – one that "exceeded that followed by trustees of other Taft-Hartley plans investing in new asset classes in terms of the enthusiasm with which the Trustees investigated the new asset classes before making their decision." Ex. 1 at 20.

Significantly, Ms. Borzi took into account the same evidence of Trustee misgivings that Plaintiffs' experts tried to weaponize by citing and quoting out of context. Conscious of the increased volatility risks they were taking by increasing the Plan's targeted returns and increasing their holdings in EMEs and PE to achieve these targets, the Trustees engaged in extensive soul-searching, some of which was expressed in sarcastic remarks as to whether they were "gambling" with the Plan's assets. Ms. Borzi correctly interpreted these remarks as reflective of the conscientiousness with which the Trustees addressed their responsibilities. *Id.* at 11 (concluding that the disagreement memorialized in e-mails and meeting minutes "actually increased the vigor with which the Trustees addressed issues and helped facilitate a healthy process of questioning contemplated decisions before they were adopted"). No decisions were made until the Plan professionals had been repeatedly asked whether the Plan was taking on too much risk and had responded with assurances that the risks taken were reasonable under the circumstances. *See* Ex. 4 at 2-3, 5. Insofar as Plaintiffs' experts concluded to the contrary, once again their opinions were tainted by a complete misreading of the record.

a. <u>Meketa Consistently Recommended Increasing EME Holdings</u>

Both Witz and Mangiero contended that the decision to increase the Plan's holdings in EMEs was contrary to the advice of Meketa. *See* Ex. 7 at 9-11, 32-33, 38; Ex. 10 at 20-23. The record demonstrated directly to the contrary – it showed that Meketa: repeatedly endorsed a shift away from domestic equities, which it viewed to be overvalued, to international equities, which it viewed to be undervalued; and specifically recommended the percentage allocations chosen by the Trustees in 2011. When confronted with this evidence at their depositions, each of Plaintiffs' experts tried in vain to argue that the evidence somehow was not a clear enough statement that Meketa was recommending the precise allocation, but they were eventually forced to abandon their position. For example, when shown notes reflecting that Meketa stated "I'd adopt Policy A," which contained an allocation of 11% to EMEs, Witz conceded that this "would seem to be a recommendation." Ex. 11 at 301:4-17. And when confronted with the same notes, Mangiero, after first purporting to be "a little stuck on the word recommendation," inevitably acknowledged that "I see here that they have made recommendations." Ex. 13 at 205:23-25, 206:14-23.

b. The Trustees Did Not Lack Education About the Challenged Investments

Witz and Mangiero contended that the Trustees had insufficient education about PE and EMEs to justify their decisions to invest in them. *See* Ex. 7 at 7-8, 37; Ex. 10 at 33-35. Here too, the record shows the opposite. As summarized by Ms. Borzi, during "the period at issue in this case, the Plan provided two New Trustee Trainings in August 2010 (one by Meketa and one by Milliman) and one in 2014 for a later appointed Trustee; one Special Investment Retreat (September 10-11, 2013) focusing, in part, on PE and EME investments; and two other Investment Committee Retreats (January 12-14, 2015 and February 8-10, 2016)." Ex. 1 at 14. Ms. Borzi was "not aware of many multiemployer plans that set aside as much time for training and deep-dive investment retreats as the Plan" and that "the amount of in-house training/education the Trustees of the Plan received was substantially greater than in most other plans" with which she was familiar. *Id.*

c. PE Investments Did Not Result in Insufficient Liquidity

In his report, Witz argued that the illiquidity of PE investments "makes a large private equity bet a questionable investment decision for [a] Trustee of a pension with a funding shortage like AFM." Ex. 7 at 47-48. But during his deposition, Witz conceded these were just abstract remarks, and that the Plan had "sufficient assets to cover the liquidity needs. Ex. 11 at 200:2-3.

d. Advice Received from OCIO Candidates and Other Investors Not Retained by the Plan Did Not Call Into Question the Trustees' Investment Decisions

Similarly misplaced was the effort by Plaintiffs and their experts to seize on information obtained from firms that applied to serve as Outsourced Chief Investment Officer in the fall of 2016 as a basis for challenging the Trustees' asset allocation decisions. Because the candidates initially proposed more conservative asset allocation policies, Plaintiffs and their experts inferred that there must have been something imprudent about the asset allocation policies selected by the Trustees. But as the expert deposition testimony revealed, Plaintiffs' experts had been provided incomplete information, consisting only of recommendations made *before* the candidates were informed about the Plan's funding challenges. Ex. 11 at 305:19-307:18. The candidates' revised submissions adopted allocation strategies with risk profiles that closely resembled those adopted by the Trustees. *See id.* at 309:1-312:20.

Other assertions made by Plaintiffs' experts similarly mischaracterized the record. For example, Witz referred to two investment managers who stated at different points in time that they were "underweight" in EMEs for their other clients, as a basis for opining that the Trustees' actions ran contrary to prevailing industry trends. Ex. 7 at 39, 44-45. Witz conveniently failed to mention, however, that other managers contemporaneously offered positive forecasts for EMEs and recommended that the Plan increase its EME exposure. Ex. 4 at 5-6.

In short, Plaintiffs' reliance on advice allegedly rendered by other professionals who were not even retained by the Trustees to advise them on allocation policies was not only misplaced, but based on blatant misstatements of the record.

3. The Trustees' Investments in Actively Managed Products Were Prudent

In his report, Witz purported to challenge the Trustees' decision to invest with active managers **(**Ex. 7 at 55-65**)**, notwithstanding what Ms. Borzi found to be a record of consistent questioning of Meketa by the Trustees and their other professionals as to the reasons for recommending such investments. Ex. 1 at 20. Witz later conceded at his deposition that there was not in fact anything imprudent about the retention of active managers in inefficient markets (Ex. 11 at 90:23-25) – which was precisely the reasoning offered by Meketa. Ex. 1 at 21. Witz also specifically confirmed that there was nothing imprudent about investing with active managers in several of the key sectors in which the Plan was so invested, including: (i) small caps (Ex. 11 at 204:22-205:1); (ii) EMEs (*id.* at 210:23-211:4); (iii) PE (*id.* at 214:7-19); and (iv) any other sectors that lack an investable index (*id.* at 91:11-19).

Witz ultimately limited his criticism of the Trustees to their alleged failure to remove active managers who were underperforming. Ex. 8 at 25-34; Ex. 11 at 86:25-88:24. But the record did not support this assertion either. As Ms. Borzi observed, the Trustees responded to Meketa's manager presentations "with pointed questions and pushback directed" at whether to retain managers who appeared to be underperforming for a period of time. Ex. 1 at 24. Meketa's typical response was that it was inappropriate, and potentially disserving, for the Plan to replace managers based on short periods of underperformance. *Id.* Once again, Ms. Borzi found the decision-making process "reflected substantially more attention to their due diligence obligation than Trustees of other funds that I have observed." *Id.*

Plaintiffs' experts countered that the Trustees failed to use adequate metrics to evaluate the performance of the active managers and remove managers that consistently unperformed. Ex. 7 at 62-64; Ex. 10 at 40-44. Here again, their lack of any relevant experience with Taft-Hartley plans renders these opinions unreliable. One can always come up with some other tool that plan fiduciaries could have utilized. But doing so does not demonstrate that the fiduciaries breached their fiduciary duty. As Ms. Borzi explained, "Meketa's philosophy of taking a long-term approach to investment manager performance, and rejection of inflexible rules to evaluate when a manager should be removed, is typical of investment consultants for multiemployer defined benefit plans." Ex. 1 at 23. In fact, the investment managers that Ms. Borzi worked with during her career advising multiemployer plans "consistently expressed the view that the fact that a manager may underperform its benchmark for several years, without more, may not be cause for removal." *Id.* In any event, Plaintiffs' experts made no effort to show how any additional metrics would have altered the decisions on whether to retain or replace underperforming managers, given the extensive discussions that were had with Meketa.

4. **Plaintiffs Failed to Present a Viable Theory of Damages**

Separate and apart from their failure to present a winnable claim on the merits, Plaintiffs failed entirely to present a basis for finding monetary damages attributable to the stripped-down theories of liability that remained after their experts were deposed.

Even though Witz's attack on the riskiness of the Plan's investments was directed specifically at what he considered to be excessive PE and EME investments, Witz failed to provide a damages model that measured what the Plan's returns would have been had it refrained from these investments. He also made no effort to measure damages attributable to the asset allocation decision in 2015, which increased the Plan's holdings in PE and EMEs, and did not dispute the report of the Trustees' damages expert, Dr. Andrew Carron, insofar as it demonstrated that there were no damages attributable to that decision.

Witz's only damages analysis consisted of a variety of models that seemingly were designed to demonstrate what would have happened had the Plan not adopted the new asset allocation model in 2011. Ex. 5 at 7-8. These calculations were fatally flawed since they failed to measure but/for losses as of the date the asset allocation policy was adopted in November 2011, and failed to compare the Plan's performance to what the performance would have been had the prior policy been fully implemented. Ex. 5 at 8-11. Dr. Carron showed that, when Witz's models were adjusted to correct for these inaccuracies, there in fact were no losses attributable to the decision to adopt the 2011 asset allocation policy – to the contrary, the Plan wound up ahead of where it would have been otherwise. *Id.* at 8-12.

With respect to the retention of active managers, Witz purported to show how much better the Plan's return would have been if all the Plan assets had been invested in index funds. Ex. 7 at 65-71. But as noted above, Witz conceded there was nothing imprudent about the decision to use active managers in many of the sectors in which the Plan was so invested. His only complaint was about the retention of certain underperforming managers. Ex. 11 at 86:25-88:24. But Witz did not measure damages attributable to the retention of those managers.[14]

In short, as the case approached trial, Plaintiffs had no means to demonstrate that there were any damages attributable to the fiduciary breach claims they advanced.

[14] Dr. Carron demonstrated that there was in fact only one manager that consistently underperformed but was not replaced. Ex. 5 at 16. The other managers at issue had periods of both underperformance and strong performance, which would explain Meketa's reluctance to recommend that they be terminated.

5. The Trustees Prudently Kept Participants Informed of the Plan's Financial Status

One of the principal arguments raised by class members who have filed objections to the Settlement is that the Trustees misled them with respect to the health of the Plan and the performance of its investments and that the Settlement does not adequately compensate them for this conduct. *See, e.g.*, Dkt No. 180 at ECF p. 11 (Yanagita), p. 12 (Buchanan), p. 37 (Stoner). This is yet another instance where Plaintiffs' strategy of litigating by hyperbole and in the public forum has come back to haunt them. In response, Plaintiffs claim that the principal spokesman for this objection, Mr. Stoner, is "delusional." Dkt No. 167 at 26. A better characterization would be to say that he and other class members are confused by some of the misplaced arguments Plaintiffs made. A corrective response is warranted here too.

Although Plaintiffs presented no independent cause of action for imprudent communications, and alleged no harm resulting from such alleged communications, the Complaint included accusations that the Trustees failed to keep the participants apprised of the deteriorating financial condition of the Plan. It is hard to understand how these Plaintiffs could even be making such an assertion since the lead Plaintiff, Andrew Snitzer, admitted that, for the entire period between 2010 and 2016, he did not once open a piece of mail from the Plan. In any event, the record shows that any claim for improper communications is pure fiction; the materials that Mr. Snitzer neglected to read contained fulsome information about the Plan's financial condition, consistent with the Trustees' legal responsibilities.

In accordance with applicable legal requirements, the Plan issued each year an Annual Funding Notice and a Notice of Critical Status, which reported on the funded status of the Plan and projected the Plan's ability to pay promised benefits into the future. *See* ERISA § 101(f), 29 U.S.C. § 1021(f); ERISA § 305(b)(3)(D)(i)-(ii), 29 U.S.C. § 1085(b)(3)(D)(i)-(ii). In addition, because the Plan was in "critical status," a condition associated with underfunded plans, *see* ERISA § 305(b)(2), 29 U.S.C. § 1085(b)(2), the Trustees were also required by the Pension Protection Act ("PPA") to come up with a Rehabilitation Plan, the details of which were also reported to the participants. *See* ERISA § 305(a)(2), 29 U.S.C. § 1085(a)(2). The Rehabilitation Plan, along with Notices of Critical Status mailed to participants each year, showed – contrary to the assertions made in the Complaint and by Plaintiffs' experts – that the Trustees had addressed the Plan's funding shortfall through a variety of measures independent of changes to the Plan's targeted investment returns. These measures included reducing future benefit accruals, reductions in or elimination of various other forms of benefits that were permitted by ERISA, and increasing contributions owed by participating employers. *See* Ex.14 at DEF0102655-60; Ex. 15 at DEF0087543-44. In other words, the Trustees and the Plan sponsors repeatedly made the "hard decisions" that Witz contended needed to be made by a plan confronting a funding shortfall. Ex. 11 at 270:4-7; *see also id.* at 118:23-119:7.[15]

The Annual Funding Notices and Notices of Critical Status were accompanied by cover letters, which are not required by ERISA and which boiled down the relevant information into plain English. Among other things, the cover letters reported that the Plan was in critical status, listed the Plan's funded percentage for the prior year, and provided a projection for the following year. *See, e.g.*, Ex. 15 at DEF0087534; Ex. 16 at DEF0147904. Each letter also provided a

[15] It bears noting that Witz's misstatement that the Trustees failed to adopt these changes was mimicked by Plaintiffs' counsel in publicly touting to the press the success that they achieved in connection with the settlement of this litigation. *See* Joseph N. DiStefano, *The musicians' pension fund lost big on risky bets. A Cheltenham-born saxophonist led a suit that won a $27 million settlement*, THE PHILADELPHIA INQUIRER, Mar. 28, 2020, https://www.inquirer.com/news/pension-musicians-gamble-20200328.html.

forecast of how long the Plan could be expected to remain solvent. *See, e.g.*, Ex. 15 at DEF0087533; Ex. 16 at DEF0147904.

A review of these documents confirms that the participants were put on notice of the funding challenges facing the Plan, consistent with the information provided by the Plan's actuaries. For example, between 2011 and 2015, the cover letters consistently explained that the Plan was in critical status because "future contributions are projected to be less than that the amount required by law to meet minimum funding requirements." *See id.* The Annual Funding Notices and letters also advised that, while the Plan was not projected to emerge from critical status for ten years (*see, e.g.*, Ex. 16 at DEF0147877), the Plan was projected by the actuaries to remain solvent for the next twenty years, which was as far out as the actuaries could reliably make such projections. *See, e.g.*, *id.* at DEF0147904.

In July 2016, when it became clear that the Plan was no longer projected to ever emerge from critical status, participants were advised that the Trustees had updated the Rehabilitation Plan to reflect the same. Ex. 17 at DEF0080988. Whereas, before, the Rehabilitation Plan had been designed to employ reasonable measures to eventually emerge from critical status, the Rehabilitation Plan was now designed to "employ reasonable measures to forestall insolvency." *Id.* Tellingly, the cover letter explained that, although the Plan was still projected to remain solvent for the next twenty years, "[l]onger-term projections show that insolvency may occur." *See id.* at DEF0081027. The letter also explained that the Plan's continued solvency "over the long term depend[ed] most on its investment performance over time and also on the total amount of contributions made to the Plan." *See id.* The letter closed by warning participants that if the Plan were to "reach[] a point where insolvency is projected within 20 years," under the law that status would "allow benefits to be restructured for the purpose of avoiding insolvency and continuing to pay benefits for the indefinite future." *See id.*; *see also id.* at DEF0080988. Subsequently, in December 2016, the Plan sent a letter advising that it was "possible that [the Plan] w[ould] be in critical and declining status in the future, even as early as next year." Dkt. No. 64-6 at 3. The letter explained that, under legislation passed by Congress in 2014, "critical and declining status" means that a plan is "projected to be insolvent and unable to pay benefits within a 15 to 20 year period," and that the plan could apply to the Treasury Department to reduce earned benefits as a measure to ensure long-term solvency. *Id.* As it turned out, the Plan did not enter into critical and declining status until 2019.

In short, the Plan participants were consistently advised of the Plan's funded status based on the contemporaneous information available from the Plan's actuaries. Although participants were understandably concerned when learning in late 2016 that the Plan could be applying for benefit cuts, it is not true that they were not forewarned of these circumstances.[16]

V. A REDUCTION IN THE LODESTAR IS WARRANTED IN THIS CASE

The discussion above establishes why Class Counsel should not receive fees of any more than 25% of the Settlement Amount, or about $6.7 million, in addition to costs. The fact that Class Counsel's lodestar is allegedly about $7.9 million, does not compel a different conclusion.

To begin with, Plaintiffs have not provided this Court with sufficiently detailed records to perform a lodestar cross-check. In support of their motion, Class Counsel submitted a single-

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[16] In his objections, Mr. Stoner made unsupported allegations about Plan counsel's advising or collaborating with the Trustees on making misrepresentations to Plan participants or failing to keep them adequately informed about the Plan's investments. Dkt No. 170 at ECF p. 38. As previously explained, these assertions are based on a misreading or mischaracterization of the available record; Plaintiffs admit that the Trustees posted quarterly investment summaries on the Plan's website and provided copies of the full Meketa investment reports to anyone who requested them. Dkt No. 174 at 3-4 n.4. Mr. Stoner's contention that counsel is somehow conflicted from representing the Trustees because they represent the Plan is likewise misplaced, as the Trustees' counsel stated in their letter to the Court on April 27, 2020. Dkt No. 153 at 2.

page chart that lists, for each attorney, only the hourly rate, the total hours, and the cumulative lodestar, and then aggregates those figures to come up with a lodestar calculation of over $7.94 million. *See* Dkt No. 168-1. While it is true that the Court need not "exhaustively scrutinize the hours documented by class counsel," where the lodestar is used as a cross-check, *Espinal*, 2019 WL 5425475, at *4, the single-page chart submitted by Class Counsel is wholly inadequate and deprives this Court of the opportunity to perform a meaningful cross-check. *See Lacovara v. Hard Rock Cafe Int'l (USA), Inc.*, No. 10-cv-7821, 2012 WL 603996, at *3 (S.D.N.Y. Feb. 24, 2012) (while recognizing that "the lodestar acts merely as a cross-check" court concluded that summary showing attorney names, rates, and total hours spent was inadequate to show reasonableness of request for 33%); *Pla v. Renaissance Equity Holdings LLC*, No. 12-cv-5268, 2014 WL 113721, at *2 (S.D.N.Y. Jan. 13, 2014) (finding "a one-page summary" inadequate because it "undermine[d] the Court's ability to evaluate the reasonableness of the fee request"). In fact, Class Counsel's failure to properly document the time they spent litigating this matter "provides an independent basis to reduce the fee award." *Pla*, 2014 WL 113721, at *2.

Had the detailed time records been provided, they might well have demonstrated that a reduction in lodestar is warranted here to adjust for excessive hours spent on fruitless activities. *Quaratino*, 166 F.3d at 425 ("The district court should exclude excessive, redundant or otherwise unnecessary hours"). By way of example, they might have shown that Plaintiffs pursued a time-intensive, politically motivated – but completely baseless – witch-hunt of Trustee and former Local 802 President Tino Gagliardi in an effort to establish that he had deleted relevant emails, notwithstanding the prompt issuance of a litigation hold. This took the shape of (1) requests for thousands of emails from all Trustees containing the term "delete" (which appears in boilerplate in most emails); (2) demands for statements from all the Trustees that no spoliation had occurred; and (3) the deposition of Local 802's IT Director, who testified that she had uncovered no evidence of any deletions by Trustee Gagliardi. Trustee Hair was also targeted by an absurd and baseless assertion that the decision to replace Plan counsel in 2016 was prompted by a romantic relationship between him and someone in the firm. Ironically, even though Plaintiffs eventually were made to realize there was no truth to this laughable assertion, the strategy has spawned class member objections that Plaintiffs now seek to quell. Dkt No. 182.[17] The Plan should not have to fund these failed – yet destructive – smear campaigns.

The most substantial waste of time is attributable to Plaintiffs' professed strategy of turning down earlier settlement offers that did not exhaust the lion's share of the available insurance proceeds. For the reasons stated above, this strategy served merely to divert to defense costs insurance proceeds that could have funded an earlier, reasonable settlement. By Plaintiffs' own admission, the amount they obtained in settlement was limited by the amount of insurance proceeds that remained. Plaintiffs' counsel should not be permitted to unduly raid these limited settlement proceeds because their failed strategy caused them to generate a high lodestar.

VI. CLASS COUNSEL HAS NOT PROVIDED SUPPORT FOR THE EXPENSES THEY SEEK TO RECOVER

Class Counsel also seeks $863,811.37 in expenses, including expert, travel, and photocopying expenses. "Counsel is entitled to reimbursement of reasonable litigation expenses from the settlement fund when the expenses are 'necessary and were directly related to the

[17] In his objection filed on July 24, class member Martin Stoner complained that the depositions posted on the Settlement Website on July 15, including Mr. Hair's, contained unauthorized redactions. Dkt No. 183, at ECF pp. 6-7. Mr. Stoner's complaint is misplaced. The parties alerted the Court that, consistent with past practice, they would redact confidential information from the transcripts before they were posted. Dkt Nos. 174, 176. Consistent with that notification, the testimony redacted involved either personal information or confidential information relating to other clients/plans. If the Court requires further details, Defendants would be pleased to provide them.

results achieved.'" *Merryman v. JPMorgan Chase Bank, N.A.*, No. 15-cv-9188 (VEC), 2019 WL 6245396, at *7 (S.D.N.Y. Nov. 22, 2019) (citation omitted). Although they have offered to provide backup to the Court upon request, their papers do not presently have any detail that would permit the Trustees, Class Members or the Court to assess these sizeable expenses. In the absence of such support – which should have been provided in the first instance – the Trustees invite the Court to reduce the expenses by 20%, and thereby increase the Plan's recovery by a corresponding amount. *See id.*, at *7-8 (reducing travel expenses by 20% in the absence of detail regarding expenses incurred during depositions); *Volpe v. Nassau County*, No. 12-cv-2416, 2016 WL 6238525, at *10 (E.D.N.Y. Oct. 24, 2016) ("Courts in this Circuit regularly reduce attorneys' fees by 50 percent for travel time.") (Citation omitted).

VII. PLAINTIFFS SHOULD NOT RECEIVE A SERVICE AWARD

Because the service awards requested by Plaintiffs are modest, relative to the amount of the Settlement, and Class Counsel has agreed to pay them from any award they receive, the Trustees do not wish to dwell on why their request is inappropriate. But it should be noted that service awards are ordinarily awarded to compensate plaintiffs for their time and effort, and that purpose will not be achieved here. *See Melito v. Am. Eagle Outfitters, Inc.*, No. 14-cv-2440, 2017 WL 3995619, at *16 (S.D.N.Y. Sept. 11, 2017). Plaintiffs have gone on record stating that they will donate the awards to an organization with a political agenda that they support. Dkt No. 167 at 30. These collateral objectives should not serve as grounds for awarding service awards.[18]

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[18] The Court should give no credence to the completely unsubstantiated, and offensive, assertions that Plaintiffs risked retaliation from union leaders by bringing this lawsuit.

CONCLUSION

For the reasons discussed above, this Court should reduce the percentage fee award and expenses requested by Class Counsel, and disallow the service awards to Plaintiffs.

Dated: July 27, 2020
New York, NY

Respectfully submitted,

By: */s/ Myron D. Rumeld*

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ANDREW SNITZER and PAUL LIVANT, individually and as representatives of a class of similarly situated persons, on behalf of the American Federation of Musicians and Employers' Pension Plan, Plaintiffs, v. THE BOARD OF TRUSTEES OF THE AMERICAN FEDERATION OF MUSICIANS AND EMPLOYERS' PENSION FUND, THE INVESTMENT COMMITTEE OF THE BOARD OF TRUSTEES OF THE AMERICAN FEDERATION OF MUSICIANS AND EMPLOYERS' PENSION FUND, RAYMOND M. HAIR, JR., AUGUSTINO GAGLIARDI, GARY MATTS, WILLIAM MORIARITY, BRIAN F. ROOD, LAURA ROSS, VINCE TROMBETTA, PHILLIP E. YAO, CHRISTOPHER J.G. BROCKMEYER, MICHAEL DEMARTINI, ELLIOT H. GREENE, ROBERT W. JOHNSON, ALAN H. RAPHAEL, JEFFREY RUTHIZER, BILL THOMAS, JOANN KESSLER, MARION PRESTON, Defendants.	No. 1:17-cv-5361 (VEC) **DECLARATION OF MYRON D. RUMELD**

I, Myron D. Rumeld, hereby declare and state as follows:

1. I am a partner at the law firm of Proskauer Rose LLP and counsel for Defendants in the above-captioned matter.

2. I submit this Declaration in support of Defendants' Opposition to Plaintiffs' Motion for Attorneys' Fees, Costs, and Service Awards, and specifically in order to attach the expert reports, excerpts of deposition transcripts, and participant disclosures referenced below.

3. The expert reports and deposition transcripts referenced in **paragraphs 4 to 16** are publically available on the settlement website at http://www.afm-epfsettlement.com/Pages/CourtDocuments.html.

4. Attached as **Exhibit 1** is a true and correct copy of the expert report of Phyllis Borzi, dated April 9, 2019.

5. Attached as **Exhibit 2** is a true and correct copy of the expert report of Dr. Andrew Carron, dated April 9, 2019.

6. Attached as **Exhibit 3** is a true and correct copy of the expert report of Cary Franklin, dated April 7, 2019.

7. Attached as **Exhibit 4** is a true and correct copy of the rebuttal expert report of Phyllis Borzi, dated May 20, 2019.

8. Attached as **Exhibit 5** is a true and correct copy of the rebuttal expert report of Dr. Andrew Carron, dated June 5, 2019.

9. Attached as **Exhibit 6** is a true and correct copy of the supplemental expert report of Cary Franklin, dated May 17, 2019.

10. Attached as **Exhibit 7** is a true and correct copy of the expert report of David Witz, dated April 9, 2019, which was amended on June 1, 2019 (although it still bears the April 9 date).

11. Attached as **Exhibit 8** is a true and correct copy of the rebuttal expert report of David Witz, dated June 5, 2019.

12. Attached as **Exhibit 9** is a true and correct copy of the rebuttal expert report of David Pitts, dated May 31, 2019.

13. Attached as **Exhibit 10** is a true and correct copy of the rebuttal expert report of Susan Mangiero, dated May 31, 2019.

14. Attached as **Exhibit 11** is a true and correct copy of excerpts of the transcript from the deposition of David Witz, taken on June 25, 2019.

15. Attached as **Exhibit 12** is a true and correct copy of excerpts of the transcript from the deposition of David Pitts, taken on July 2, 2019.

16. Attached as **Exhibit 13** is a true and correct copy of excerpts of the transcript from the deposition of Susan Mangiero, taken on July 22, 2019.

17. Attached as **Exhibit 14** is a true and correct copy of the American Federation of Musicians and Employers' Pension Plan's (the "Plan") Rehabilitation Plan, dated April 15, 2010 (Bates labeled DEF0102654-63).

18. Attached as **Exhibit 15** is a true and correct copy of the Annual Funding Notice for the Plan for the Plan Year Beginning April 1, 2010 and Ending March 31, 2011, and Notice of Critical Status for the Plan Year beginning April 1, 2011 and Ending March 31, 2012, and the accompanying cover letter, dated July 29, 2011 (Bates labeled DEF0087533-34, DEF0087537-42, DEF0087543-44).

19. Attached as **Exhibit 16** is a true and correct copy of the Annual Funding Notice for the Plan for the Plan Year Beginning April 1, 2014 and Ending March 31, 2015, and Notice of Critical Status for the Plan Year Beginning April 1, 2015 and Ending March 31, 2016, and the accompanying cover letter, dated July 29, 2015 (Bates labeled DEF0147904, DEF0147876-80, DEF0147863-64).

20. Attached as **Exhibit 17** is a true and correct copy of the Annual Funding Notice for the Plan for the Plan Year Beginning April 1, 2015 and Ending March 31, 2016, and Notice of Critical Status for the Plan Year Beginning April 1, 2016 and Ending March 31, 2017, and the accompanying cover letter, dated July 29, 2016 (Bates labeled DEF0081027, DEF0080987-91, DEF0081039-40).

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: July 27, 2020

/s/ Myron D. Rumeld
Myron D. Rumeld

EXHIBIT 1 TO EXHIBIT 13 ARE PUBLICALLY AVAILABLE ON THE SETTLEMENT WEBSITE

EXHIBIT 14

Fund

American Federation of Musicians & Employers' Pension Fund

One Penn Plaza - Suite 3115
New York, NY 10119
(212) 284-1200
Fax (212) 284-1300

AMERICAN FEDERATION OF MUSICIANS AND EMPLOYERS' PENSION PLAN

REHABILITATION PLAN

April 15, 2010

I. INTRODUCTION

The Pension Protection Act of 2006 ("PPA") requires an annual actuarial status determination for multiemployer pension plans including the American Federation of Musicians and Employers' Pension Plan (the "Plan"). On April 15, 2010, the Plan was certified by its actuary, Milliman Inc. ("Milliman"), to be in critical status, also known as the "red zone", for the plan year beginning on April 1, 2010 and ending on March 31, 2011 (the "2010 Plan Year"). The certification of critical status was based upon the Plan actuary's determination that the Plan is projected to have an accumulated funding deficiency for the plan year ending March 31, 2011.

The PPA requires that the board of trustees of a multiemployer pension plan that has been certified by its actuary as being in critical status develop a rehabilitation plan that is intended to improve the plan's funding over a period of years. A rehabilitation plan sets forth the actions to be taken by the pension plan's trustees, as well as the collective bargaining parties, to enable the plan to emerge from critical status or forestall possible insolvency. The rehabilitation plan must be based on reasonably anticipated experience and reasonable actuarial assumptions regarding investment income and other experience of the plan over a period of future years.[1]

II. REHABILITATION PLANS GENERALLY

A rehabilitation plan consists of either (i) actions (including increases in employer contributions to, and/or reductions in benefits under, the plan) that, based on reasonably anticipated experience and reasonable actuarial assumptions, are formulated to enable the plan to emerge from critical status no later than the end of a 10-year "rehabilitation period"; or (ii) reasonable measures implemented by the plan's trustees that are expected to enable the plan to emerge from critical status after such 10-year period, or to forestall possible plan insolvency, if the trustees determine that, based on reasonable actuarial assumptions and upon exhaustion of all reasonable measures, the plan cannot reasonably be expected to emerge from critical status by the end of the 10-year rehabilitation period.[2]

After extensive deliberations and consultations with Milliman and Plan legal counsel, as well as an in-depth review of a variety of possible alternatives, the Board of Trustees of the Plan (the "Board") has concluded that, based on reasonable actuarial assumptions and upon exhaustion of all reasonable measures, the Plan cannot reasonably be expected to emerge from critical status by the end of a 10-year rehabilitation period. Further information regarding that conclusion is described in greater detail below.

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1 All of these requirements are set forth in Section 305(e)(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and Section 432(e)(3) of the Internal Revenue Code of 1986, as amended (the "Code").

2 The 10-year rehabilitation period begins with the first plan year that begins two years after adoption of the rehabilitation plan or, if earlier, the first plan year after expiration of collective bargaining agreements (in effect when the actuarial certification for the first critical year was due) covering at least 75% of the plan's active participants, although the rehabilitation plan may be effective before the 10-year rehabilitation period begins. In the case of the Plan, the 10-year rehabilitation period begins April 1, 2013.

EXHIBIT 108
PENGAD 800-631-6989

Accordingly, the Board adopted this rehabilitation plan (the "Rehabilitation Plan") on April 15, 2010 as the best long-term option for improving the funded status of the Plan and determined that it is in the best interest of the Plan and its participants and beneficiaries. The Rehabilitation Plan consists of a single schedule, known as the "default schedule" required by the PPA, and employs reasonable measures to enable the Plan to emerge from critical status.

III. Overview of Rehabilitation Plan

The Rehabilitation Plan consists of a single schedule that sets forth both benefit modifications and the employer contribution requirements. Under the PPA, the collective bargaining parties are responsible for adopting a contribution schedule consistent with the Rehabilitation Plan.

The main elements of the Rehabilitation Plan are as follows:

1. Effective April 1, 2010, the Board will seek approval, from the Internal Revenue Service (the "IRS"), for the Plan to obtain a 5-year extension of the period for amortizing unfunded liabilities of the Plan. This provision is described in more detail in Section IV below.

2. In addition to the reduction in the Plan's "Benefit Multiplier" that was effective January 1, 2010, the following benefits and benefit alternatives currently available under the Plan will be eliminated: (i) early retirement subsidies; (ii) benefit guarantees for the single life annuity; (iii) "pop-up" and benefit guarantee features of the 50% joint and survivor annuity; (iv) post-normal retirement age subsidies; (v) certain forms of benefit for merged plans; and (vi) the lump-sum form of benefit offered by the Plan (not including lump sums with an actuarial present value of $5,000 or less.). These changes, which generally become effective as of June 1, 2010, are described in more detail in Section V below.

3. The Rehabilitation Plan will require additional employer contributions to the Plan. Additional employer contributions are necessary to enable the Plan to emerge from critical status after future benefit accruals and other benefits have been reduced to the maximum extent permitted by law. The employer contribution requirements are described in more detail in Section VI below.

IV. Extension of Amortization

Section 431(d) of the Code and Section 304(d) of ERISA generally permit multiemployer plans to apply for IRS approval to extend (by up to five years) the period over which the plan's unfunded liability is amortized. Such applications, properly submitted, are automatically granted by law. The Rehabilitation Plan provides that the Board will apply to the IRS for this automatic extension of amortization effective April 1, 2010.

V. Benefit Modifications

A. *Recent Change in Future Benefit Accruals*

The monthly pension benefit payable to participants in the form of a single life annuity generally is computed by multiplying each $100 of employer contributions earned by a participant by a specified dollar amount (the "Benefit Multiplier"). In anticipation of the need to develop a Rehabilitation Plan, and to facilitate what the Board hopes will be the Plan's ultimate financial recovery, the Board decided in October 2009 to reduce the Benefit Multiplier for benefits earned under the Plan on and after January 1, 2010 from $2.00 to $1.00 for benefits beginning at age 65. Corresponding revisions were made to the Benefit Multiplier for benefits commencing between the ages of 55 and 64.

While it is not technically part of the Rehabilitation Plan, the $1.00 Benefit Multiplier was adopted in anticipation of the Plan entering critical status.[3] The $1.00 Benefit Multiplier is the equivalent of a 1% monthly benefit accrual, which is the minimum rate permitted by a default schedule under the PPA. The Board considered the possibility of adopting an alternative schedule reducing the Benefit Multiplier below $1.00 in order to enable the Plan to emerge from critical status more rapidly. However, after lengthy deliberations, the Board ultimately concluded that the same likely effects of reducing the Benefit Multiplier to $1.00 that had made that decision so difficult – primarily, the wholly inadequate retirement benefits resulting from the reduction, and the consequent incentive for bargaining parties to withdraw from the plan and turn to alternative retirement vehicles that provide greater benefits for their contribution dollars – were of even greater concern when considering an even further reduction. These concerns were exacerbated by the fact that an alternative schedule would be extremely costly, if not impossible, to administer, given the large number of employers contributing to the Plan and the freelance nature of much of the covered employment.

B. *Description of Additional Benefit Modifications*

The Rehabilitation Plan requires the additional modifications set forth below effective for pension benefit payments with an annuity starting date on or after June 1, 2010, including participants with respect to whom contributions are not currently required to be made. However, these benefit reductions will not apply to pension benefit payments with an annuity starting date of June 1, 2010 if the initial application for benefits was postmarked (or received in the Fund Office, in the case of applications delivered by fax or by hand) on or before February 24, 2010.

These reductions will include the following:

1. Elimination of the Early Retirement Subsidy

For benefits commencing prior to June 1, 2010, the portion of early retirement benefits earned by the participant before 2004 includes a subsidy from the Plan that is costly. The Rehabilitation Plan eliminates the subsidy. Thus, the Benefit Multiplier for benefits beginning at ages prior to 65 (expressed as a single life annuity) will be the actuarial equivalent of the Benefit Multiplier for benefits beginning at age 65, without any subsidy.

Accordingly, under the Rehabilitation Plan, all benefits will be based on the applicable Benefit Multiplier per $100 of contributions (rounded to the nearest $100) set forth in the chart below. Benefit Multipliers for early retirement benefits (ages 55 to 64) for amounts earned beginning in 2004 were never subsidized, so only the shaded Benefit Multipliers reflected in column A are being adjusted by the Rehabilitation Plan.

3 By way of historical background, the Trustees began to discuss reducing the Benefit Multiplier in late 2008 in view of the effect of the substantial investment losses affecting the Plan and most other U.S. retirement plans, but could not initially agree on the amount of the reduction. The Union Trustees were deeply concerned, based on their experiences negotiating collective bargaining agreements and their understanding of the various bargaining parties, that a reduction below $2.00 would cause many bargaining parties to decide to leave the Plan. The Employer Trustees believed that it was necessary to take that risk in view of the Plan's funding problems. The Board ultimately agreed to reduce the Benefit Multiplier to $2.00 effective May 1, 2009, and deadlocked over whether to reduce the Benefit Multiplier still further to $1.00. The Board was able to reach agreement on this matter only shortly before an arbitration to resolve it was scheduled to occur, when the Union Trustees reluctantly concluded that the Plan's funding problems were unlikely to be remedied solely by market gains, at least in the short term.

	A *modified*	B unchanged	C unchanged	D unchanged	E unchanged
Age at Annuity Starting Date	Benefits earned before January 1, 2004	Benefits earned on or after January 1, 2004 and before April 1, 2007	Benefits earned on or after April 1, 2007 and before May 1, 2009	Benefits earned on or after May 1, 2009 and before January 1, 2010	Benefits earned on or after January 1, 2010
65 or older	$4.65	$3.50	$3.25	$2.00	$1.00
64	$4.16	$3.13	$2.91	$1.79	$0.90
63	$3.75	$2.82	$2.62	$1.61	$0.80
62	$3.36	$2.53	$2.35	$1.45	$0.72
61	$3.04	$2.29	$2.13	$1.31	$0.65
60	$2.75	$2.07	$1.92	$1.18	$0.59
59	$2.48	$1.87	$1.74	$1.07	$0.53
58	$2.26	$1.70	$1.58	$0.97	$0.49
57	$2.05	$1.54	$1.43	$0.88	$0.44
56	$1.86	$1.40	$1.30	$0.80	$0.40
55	$1.70	$1.28	$1.19	$0.73	$0.37

2. Elimination of the Benefit Guarantee for Single Life Annuity

For pension benefits payable in the form of a single life annuity, there is currently a guaranteed payment of 100 times the portion of the monthly pension benefit as of the participant's annuity starting date for accruals earned prior to 2004. Under the guarantee, if a participant dies before receiving a total of 100 times the portion of the monthly benefit earned prior to 2004, the designated beneficiary receives the balance of that amount. The Rehabilitation Plan eliminates the guaranteed payment. Thus, the single life annuity will provide for monthly payments for the life of the retired participant and will cease at the participant's death.

3. Elimination of the "Pop-Up" Feature of the 50% Joint and Survivor Annuity

For pension benefits payable in the form of a 50% joint and survivor annuity, if the joint annuitant dies before the participant, and within five years of the participant's annuity starting date, the portion of the benefit earned prior to 2004 currently increases to what it would have been if the participant had elected a single life annuity form of benefit. The Rehabilitation Plan eliminates this "pop-up" feature. Accordingly, the death of the joint annuitant after the annuity starting date will no longer have any effect on the participant's monthly benefit.

4. Elimination of the Benefit Guarantee for 50% Joint and Survivor Annuity

For pension benefits payable in the form of a 50% joint and survivor annuity, if the participant and joint annuitant both die within five years of the participant's annuity starting date, the Plan currently pays the participant's beneficiary the balance of the five years of monthly benefit payments on the portion of the benefit earned by the participant prior to 2004. The Rehabilitation Plan eliminates this payment guarantee. Accordingly, there will no longer be any continuing payments after the death of the retired participant and his or her joint annuitant.

5. Elimination of the Post-Normal Retirement Age Subsidy

For participants who begin to receive their pension benefit after normal retirement age (generally age 65), the Plan currently pays the amount payable at normal retirement age, increased to account for the late commencement using simplified factors. This results in a benefit that is greater than if it were computed using actuarial equivalent factors. Under the Rehabilitation Plan, the benefit payable after normal retirement age will be increased using the interest and mortality assumptions that achieve actuarial equivalence.

6. Elimination of Merged Plan Forms of Benefit

Under the Rehabilitation Plan, benefits earned by individuals who participated in either the AFM Retirement Plan or the AFM-EPF Staff Retirement Plan prior to merger with the Plan will be paid to these individuals only in the same benefit forms that are generally available with respect to benefits under the Plan.

7. Elimination of Lump-Sum Form of Payment for Retirement Account Benefit

The Plan currently permits participants to receive a lump-sum payment of the amounts attributable to contributions earned before 1968, plus interest (also known as the Retirement Account Benefit). This form of payment will be eliminated under the Rehabilitation Plan.[4]

VI. EMPLOYER CONTRIBUTION INCREASES

A. Employer Contribution Increases Required under the Rehabilitation Plan

The Rehabilitation Plan requires contributing employers to increase the amount of contributions made to the Plan. As described in Section VII below, if the bargaining parties do not agree to the increased contributions in this Rehabilitation Plan by June 1, 2010, the employer will be subject to a surcharge required by law that is greater than the contribution increases.

The required increase in the employer contributions is as follows:

1. Effective for contributions earned on or after June 1, 2010 but before April 1, 2011, the contribution rate will be 104% of the contribution rate otherwise in effect under the collective bargaining agreement or expired collective bargaining agreement.[5]

2. Effective for contributions earned on or after April 1, 2011 and thereafter, the contribution rate will be 109% of the contribution rate otherwise in effect under the collective bargaining agreement or expired collective bargaining agreement (excluding the 4% increase, which is not cumulative).

3. To the extent an employer's contributions are calculated as set forth in the arbitration award of Burton Turkus (the "Turkus Award"):

    a. the 104% and 109% required contribution amount set forth in paragraphs 1. and 2. will be based on 100% of the contributions calculated as set forth in the Turkus Award (or, if greater, 100% of the minimum contribution rate set forth in the employer's collective bargaining agreement) plus an additional 4% or 9% (as applicable) of the minimum contribution rate set forth in the employer's collective bargaining agreement.

    b. However, if the employer has a complete or partial withdrawal from the Fund, or is otherwise terminated as a contributing employer by the Board, on or before March 31, 2015, the employer must pay, within ten business days of the date on which the Fund sends the employer a written invoice, contributions (retroactive to June 1, 2010) calculated based on 104% or 109% (as applicable) of the contributions calculated as set forth in the Turkus Award (or, if greater, 100% of

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4 The Plan does not provide for any other lump-sum benefits other than those benefits with an actuarial present value of $5,000 or less.

5 Contributions are considered earned in accordance with the normal Plan procedures for crediting contributions. For live work, it is generally the date of the performance.

the minimum contribution rate set forth in the employer's collective bargaining agreement), less any additional contributions already paid under subparagraph (a) above, plus interest calculated at an annual rate of 8%.

4. In the case of single engagement agreements, the contribution rate otherwise in effect under the collective bargaining agreement shall be deemed to be a rate that is no less than the average of the contribution rates in all of the agreements submitted to the Plan by the employer (or by the bandleader, if the bandleader is the payor) during calendar year 2009, where the employer or bandleader submitted five or more single engagement agreements during calendar year 2009.

5. Effective in the fifth year of any collective bargaining agreement entered into on or after May 1, 2010 that establishes pension contributions for a term of more than four years (including extensions), the contribution rate will increase an additional 25% above the contribution rate otherwise applicable to those contributions (and the portion of the increase above 9% will not generate benefit accruals).

The increased contributions are generally treated the same as all other employer contributions, so they will be payable on the same schedule as the contributions on which the increase is based and will generate benefit accruals for participants (except as noted in paragraph 5. above).

B. *Effective Date of Contribution Increases*

Unless otherwise specifically provided herein, the contribution increases required by the Rehabilitation Plan will become effective upon the *earlier of*:

1. the effective date of a collective bargaining agreement (or an amendment to that collective bargaining agreement) that adopts a contribution schedule that contains terms consistent with the Rehabilitation Plan contribution schedule, or

2. 180 days after the expiration date of a collective bargaining agreement providing for contributions to the Plan that was in effect on April 1, 2010, *if* by such date the bargaining parties have failed to adopt a contribution schedule that contains terms consistent with the contribution schedule set forth in this Rehabilitation Plan.

If the collective bargaining agreement had an expiration date before April 1, 2010 and no successor agreement was yet in effect on that date, the contribution schedule must be adopted by September 28, 2010 (180 days from April 1, 2010).

C. *No Decrease Permitted in Employer Contributions Otherwise Required*

The Board previously announced that the contribution rates in any collective bargaining agreement may not be decreased.[6] Accordingly, the contribution rate in a collective bargaining agreement may not be decreased to avoid application of the contribution rate increase under the Rehabilitation Plan.

VII. EMPLOYER SURCHARGES

The PPA requires that mandatory "surcharges" be imposed on every contributing employer beginning 30 days after the date on which the PPA-required notice of critical status is provided to the employer – in this case, it begins June 1, 2010 – and continuing until the employer's collective bargaining agreement(s) (or other agreement(s) pursuant to which it is contributing) is amended to incorporate a contribution schedule that contains terms consistent with the Rehabilitation Plan.

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6 Specifically, an employer and a collective bargaining agreement is not acceptable to the Board in the event that: (i) in the case of a collective bargaining agreement the terms of which were in effect (by agreement or operation of law) on October 15, 2009, the effective contribution rate applicable to any period of that collective bargaining agreement is reduced (by agreement or otherwise on or after October 16, 2009); or (ii) in the case of any future extension of or successor to any collective bargaining agreement the terms of which were in effect (by agreement or operation of law) on October 15, 2009, the effective contribution rate is reduced to a rate that is lower than the effective contribution rate in effect on the last day of the expiring collective bargaining agreement (based on the terms of the collective bargaining agreement as they existed on October 15, 2009).

The amount of the surcharge is as follows:

1. Effective for contributions earned on or after June 1, 2010 and before April 1, 2011, the surcharge is 5% of the employer's contributions to the Plan; and

2. Effective for contributions earned on or after April 1, 2011, the surcharge is 10% of the employer's contributions to the Plan. The 10% surcharge remains in effect for each plan year in which the Plan remains in critical status.

The surcharge is due and payable on the same schedule as the contributions on which the surcharges are based. Surcharges are over and above the required employer contributions and, consistent with law, will not generate any benefit accruals for participants.

Where the bargaining parties fail to adopt the contribution schedule in the Rehabilitation Plan by June 1, 2010, the employer remains subject to all surcharges imposed under the PPA until such time as the bargaining parties adopt provisions (or, if later, such time as those provisions take effect) in the employer's collective bargaining agreement that contain terms consistent with the Rehabilitation Plan schedule. No retroactive amendments are permitted. If there is an unreasonable delay in providing the Fund Office with an executed agreement that contains terms consistent with the Rehabilitation Plan schedule, the adoption date will be treated as the date of receipt by the Fund Office and the surcharge will be imposed through that date.

The law provides that employers on whom the Rehabilitation Plan contribution schedule is imposed (e.g., because the bargaining parties have not adopted the Rehabilitation Plan contribution schedule within 180 days after expiration of the collective bargaining agreement) will remain subject to the surcharges imposed under the PPA until such time as the collective bargaining parties adopt provisions in their collective bargaining agreements that contain terms consistent with the Rehabilitation Plan schedule. Thus, under the law, such employers would be subject to **both** the Rehabilitation Plan contribution schedule and the surcharge.

VIII. REHABILITATION PLAN OBJECTIVES

This Rehabilitation Plan consists of reasonable measures adopted by the Board which, based on reasonable actuarial assumptions, can be expected to enable the Plan to emerge from critical status.

In the absence of the benefit changes or the increases in employer contribution rates described in this Rehabilitation Plan, the Plan would not have been projected to emerge from critical status at any point during the 40-year projection period used by Milliman (although the Plan nonetheless was projected to remain solvent during this period). Under the Rehabilitation Plan adopted by the Board, the Plan is estimated to emerge from critical status no later than March 31, 2047 and also is not projected to become insolvent at any point during the projection period. These calculations were based on the Plan's actuarial assumptions, including achieving the 7.5% annual investment return assumption and, as required by law, do not take into account the possibility of investment returns achieved by the Plan in excess of that amount (which could reduce the period of time that the Plan remains in critical status).

IX. ALTERNATIVES CONSIDERED BY THE BOARD

The Board devoted a considerable amount of time and attention to considering the advantages and disadvantages of the alternatives that would enable the Plan to emerge from critical status by the end of the 10-year rehabilitation period. Some of the alternatives that were considered by the Board would have required **at least** 58% increases in employer contribution rates to emerge from critical status by the end of the 10-year rehabilitation period (even without corresponding increases in benefit accruals and with the benefit reductions described in Section V above).[7]

After considering each of these alternatives, the Board concluded that each would be unreasonable and would involve considerable risk to the long-term health (and even viability) of the Plan. In reaching this conclusion, the Board took into account various considerations, including the following:

[7] Specifically, the Board considered that a 58% contribution rate increase (or 91%, if the increase generated a benefit accrual) would have been required if the same benefit changes described in Section V, above, were adopted. In addition, the Board considered that the contribution rate increase would need to be 76.75% (120.5% if benefit accrual generating) if the benefit changes were not adopted.

1. The near-impossibility of emerging from critical status at the end of the 10-year rehabilitation period in view of the significant investment losses suffered by the Plan over the two plan years ended on March 31, 2009. The collapse of the financial markets in 2008 resulted in the Plan's experiencing the worst investment losses in its 50-year history over these two plan years. As compared to the asset level that was projected by Milliman over this period based on the Plan's assumed investment return of 7.5%, the Plan's assets declined by 40% or nearly $900 million. As a result of this decline in value, the Plan's funded percentage (using the fair market value of assets), which was 108.5% as of April 1, 2007, declined to 62.6% as of April 1, 2009 and then increased to 72.8% as of April 1, 2010.

2. The impact of the severe economic decline in 2008 and 2009 on the music industry. Overall, employer contributions to the Plan during 2009 declined by 7% from the previous year. Many of the contributing employers to the Plan are small organizations that do not have the financial resources to withstand the economic downturn. Of course, they are not alone. Larger contributors are also undergoing considerable economic stress as a result of the severe recession. As simply one example of the unprecedented problems afflicting the live music industry, many symphony orchestras, which together make up more than 40 percent of annual Plan contributions, are in significant financial distress.[8] The recorded music industry is in substantial economic distress as well. Sales of recorded music have been declining substantially for the past decade and all of the major record companies that contribute to the Plan have experienced large-scale layoffs; this downward trend is expected to continue by all accounts for the foreseeable future. The theatrical motion picture and television industries have also experienced significant restructuring and layoffs as a result of the economic downturn. On Broadway, producers have been under increased pressure to keep capitalization costs down, resulting in fewer musicals with smaller orchestras.

3. Even if certain contributing employers could financially withstand the enormous contribution increases under the alternative schedules described above, the Board believes that neither the participants nor contributing employers would find continuing value in participating at those rates in a retirement plan that has reduced accrual rates and eliminated adjustable benefits to the maximum extent permitted under the law.[9]

4. In addition, the magnitude of the employer contribution increases required by the alternative schedules would likely have resulted in lower negotiated wages for participants and/or decreased employer contributions to other benefit plans covering these participants (such as the plan providing their health benefit coverage). If participants perceive a significant decrease in value in their total overall compensation – including wages, pension benefits and health benefits – the Board concluded that they would be likely to encourage their employers to withdraw from the Plan. Thus, the Board concluded that a further reduction in benefits would be inconsistent with the goal of presenting a viable plan with ongoing value to active participants. Such action could also lead to increased employer withdrawals or reductions in contributions, as the collective bargaining parties would see less benefit to ongoing participation.

5. The Plan is maintained pursuant to thousands of collective bargaining agreements negotiated by the American Federation of Musicians of the United States and Canada (the "AFM") or one of the AFM's 145 local unions. The AFM does not have the ability to require its local unions to make ongoing participation in the Plan a core principle in contract negotiations.

6. The Board also considered other methods of calculating the Plan's liabilities. The implementation of one such method, known as the "shortfall method" of amortizing the liabilities of the Plan, could have the effect of causing the Plan not to be in critical status for the plan year beginning April 1, 2010. However, the Board concluded that entering critical status was inevitable and implementing this actuarial technique would only require even more severe benefit and contribution modifications in the future to protect the Plan's long-term viability.

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8 All orchestras are non-profit organizations and most depend on donations and endowment income for the majority of their income. These particular revenue sources have declined significantly as a result of the recent economic crisis. Many orchestras have been driven close to bankruptcy and some have gone out of business altogether. Most, including some of the nation's oldest and most prominent symphony orchestras, are negotiating wage freezes and wage reductions.

9 As merely one example, the Board concluded that it was unlikely that contributing employers will pay the required contribution increases to maintain the current plan of benefits under one of the alternative schedules considered by the Board. As employers' contribution payments are increased to levels that exceed their annual withdrawal liability payment amounts, the Board is concerned that employers would respond by completely and/or partially withdrawing from the Plan.

7. The Board also considered eliminating early retirement benefits entirely (such that participants would not be permitted to receive retirement benefits prior to age 65, even on an actuarially equivalent basis) and eliminating pre-retirement death benefits for non-spousal beneficiaries. However, the Board chose not to do so due to (i) the Plan actuary's conclusion that the actuarial impact of eliminating these benefits would be *de minimis* and (ii) the administrative costs associated with these changes.

X. DELINQUENT EMPLOYER CONTRIBUTIONS/WITHDRAWAL FROM THE PLAN

A contributing employer's failure to contribute to the Plan timely at the rates required by the Rehabilitation Plan schedule (once agreed to or imposed) will result in the deficient amounts being treated as delinquent employer contributions under the Plan. In addition, the contributing employer will be subject to excise taxes (equal to 100% of the unpaid contributions) as provided under the PPA. Additionally, this may result in a determination by the Board that the employer has failed to maintain (and thus has withdrawn from) the Plan, in which case such employer will then be subject to withdrawal liability under the terms of the Plan and Title IV of ERISA. Further, under the PPA, any failure to make a surcharge payment will also be treated as a delinquent contribution.

XI. NOTICE GIVEN BEFORE BENEFIT REDUCTIONS BECOME EFFECTIVE

Pursuant to Section 432(e)(8)(C) of the Code, this notice is being given at least 30 days before the general effective date of the reduction in adjustable benefits under the Plan.

XII. NON-COLLECTIVELY BARGAINED PARTICIPANTS

In the case of an employer that contributes to the Plan on behalf of both collectively bargained *and* non-collectively bargained participants, the contributions for, and the benefits provided to, the non-collectively bargained employees, including surcharges on those contributions, shall be determined as if those non-collectively bargained participants were covered under such employer's first-to-expire collective bargaining agreement that was in effect on April 1, 2010.

In the case of an employer that contributes to the Plan on behalf of non-collectively bargained employees *only*, the rules contained in this Rehabilitation Plan shall be applied as if the employer were the bargaining party, and its participation agreement (or other operative agreement) were a collective bargaining agreement with a term ending on the first day of the plan year beginning after the employer is provided with the Rehabilitation Plan (i.e., generally April 1, 2011).

XIII. APPLICATION OF REHABILITATION PLAN TO FUTURE AGREEMENTS

The rules contained herein shall be applied upon the expiration of (or earlier amendment to or renegotiation of) the first collective bargaining agreement that conforms to the Rehabilitation Plan (the "Initial Compliant Collective Bargaining Agreement") and each subsequent compliant collective bargaining agreement (a "Subsequent Compliant Collective Bargaining Agreement"). Furthermore, it will be applied as if the Initial Compliant Collective Bargaining Agreement or Subsequent Compliant Collective Bargaining Agreement, as the case may be, were "in effect" at the time the Plan entered critical status; provided that, the contribution surcharges imposed under the PPA and this Rehabilitation Plan shall apply prospectively only and shall be based upon the contribution rate in the expired Initial Compliant Collective Bargaining Agreement or Subsequent Compliant Collective Bargaining Agreement, as the case may be.

XIV. REHABILITATION PLAN STANDARDS

The PPA requires that a plan set forth annual standards for meeting the requirements of its rehabilitation plan. However, the PPA does not currently define the standards applicable to a rehabilitation plan, such as this Rehabilitation Plan, that is not designed to emerge from critical status at the end of the 10-year rehabilitation period.

Until such time as these standards are more clearly defined pursuant to the PPA, the annual standard for satisfying the requirements of this Rehabilitation Plan will be a determination that, based on the updated actuarial projections each year using reasonable actuarial assumptions, the Rehabilitation Plan (as updated and amended from time to time), will enable the Plan to emerge from critical status or forestall possible insolvency.

XV. Annual Review and Update of Rehabilitation Plan

In consultation with the Plan's actuary, the Board will review the Rehabilitation Plan annually and amend it, as appropriate, to meet the objective of enabling the Plan to emerge from critical status. This will include an update of the contribution rates contained in its schedules to reflect the experience of the Plan. The annual review will include a thorough review of the Plan's funding status, including projections by the actuary of whether and when the Plan is expected to emerge from critical status or become insolvent. The Board will consider whether further benefit modifications or contribution rate increases are necessary to meet the stated objectives of the Rehabilitation Plan and ensure the long-term health of the Plan.

The Rehabilitation Plan may be amended for any benefit changes that may be required for the Plan to continue to satisfy all necessary legal requirements, to maintain its tax-qualified status under the Code, and to comply with other applicable law. Collective bargaining agreements that are entered into, renewed or extended after the date of any changes to the Rehabilitation Plan will be subject to the Rehabilitation Plan then in effect at the time of such entry, renewal or extension. Notwithstanding the foregoing, under current law the schedules of contribution rates provided by the Board, and agreed to by the bargaining parties in negotiating a collective bargaining agreement, will remain in effect for the duration of that collective bargaining agreement.

XVI. Construction and Modifications to this Rehabilitation Plan

This Rehabilitation Plan is intended to present only a summary of the law, the Plan and the upcoming changes to the Plan. It is not intended to serve as an exhaustive, complete description of the law, the Plan or the modifications discussed herein.[10]

The Board reserves the right, in its sole and absolute discretion, to construe, interpret and/or apply the terms and provisions of this Rehabilitation Plan in a manner that is consistent with the PPA and other applicable law. Any and all constructions, interpretations and/or applications of the Plan (and other Plan documents) or the Rehabilitation Plan by the Board, in its sole and absolute discretion, shall be final and binding on all parties affected thereby. Subject to the PPA and other applicable law, and notwithstanding anything herein to the contrary, the Board further reserves the right to make any modifications to this Rehabilitation Plan that they, in their sole and absolute discretion, determine are necessary and/or appropriate (including, without limitation in the event of any omission or the issuance of any future legislative, regulatory or judicial guidance).

10 The terms of the official plan documents will govern in the event of any contradiction between this notice and the Plan documents as adopted to incorporate the changes to the Plan described herein.

EXHIBIT 15

American Federation
of Musicians &
Employers' Pension Fund

Fund

One Penn Plaza - Suite 3115
New York, NY 10119
(212) 284-1200
Fax (212) 284-1300
www.afm-epf.org

To: All Participants, Contributing Employers, AFM and AFM Locals

From: Board of Trustees

Re: Enclosed Documents and Update to Rehabilitation Plan

Date: July 29, 2011

In April 2010, the Board of Trustees of the American Federation of Musicians and Employers' Pension Fund (the "Plan") informed you that the Plan had been certified by its actuary to be in "critical status" (also known as the "red zone"). For this reason, as required by the Pension Protection Act of 2006 ("PPA"), the Plan's Board of Trustees adopted a rehabilitation plan requiring increases to employer contributions and reductions to certain benefits.

These changes, of course, have helped improve the Plan's funded status. There were also a number of other positive developments. For example, the Plan had investment returns of 30.14% and 12.11% in the Plan years ending March 31, 2010 and 2011, respectively, as compared to the assumed rate of return of 7.5%. In addition, as you will see from the enclosed **Notice to Participants and Beneficiaries Regarding Funding Relief**, the Board of Trustees elected to take advantage of recent "funding relief" legislation that allows the unprecedented investment losses for the Plan year ending March 31, 2009 to be taken into account over a longer period of time. (Although, as described below, funding relief changes the funded percentage of the Plan in the short term, it does not change the actual dollars in the Plan or the benefits that the Plan will have to pay over time.)

As you will note from the enclosed **Annual Funding Notice**, the Plan's funded percentage (for PPA purposes) was 94.5% as of April 1, 2010. This takes into account the funding relief described above. Without funding relief, the funded percentage would have been 88%. The funded percentage as of April 1, 2010 is significantly greater than the funded percentage as of April 1, 2009, which was 81.4% when taking into account funding relief (or 75.2% without funding relief).[1]

Nevertheless, as you will also see from the enclosed **Notice of Critical Status**, the Plan remains in critical status for the current Plan year (which began April 1, 2011). This is because a plan can be in critical status regardless of how well funded it is if, as is the case here, future contributions are projected to be less than the amount required by law to meet minimum funding requirements. Since the economic downturn in 2008, the rate of contribution growth has been less than expected, and the projections concerning future contributions have been modified to be more conservative to reflect this development. Please keep in mind that all projections are by definition based on a number of assumptions about the future that may or may not be realized. If the Plan were to outperform the assumptions that are being used, it could be in a position to emerge from critical status.

The Plan's funded percentage (for PPA purposes) as of April 1, 2011 will not be known until the actuarial valuation for the most recent plan year, ending March 31, 2011, is complete. However, the funded percentage is estimated to be 92.4% (82.9% without funding relief). This estimate reflects a slight decrease from the previous year's funded percentage because a portion of the losses from the Plan year ending March 31, 2009 is still being

[1] The funded percentage does not include investment returns after the date as of which the percentage is calculated. For example, the funded percentage of April 1, 2010 does not take into account the investment returns for the Plan year ending March 31, 2011.

taken into account under the "smoothing" method described in the attached *Notice to Participants and Beneficiaries Regarding Funding Relief*.

As was the case last year, the Plan's actuary projects that, even if the Plan meets its current assumptions without exceeding them, the Plan will *not* become insolvent over the next 40 years, which is the longest period over which the actuary has made projections. Accordingly, based on those assumptions and projections, the Plan continues to be expected to be able to pay all benefits that become due over this 40-year projection period.

As required by law, this package includes the following documents with information regarding the Plan:

- **Notice of Critical Status for Plan Year Ending March 31, 2012**: This notice advises you that, as was the case last year, the Plan was certified in critical status. It describes the legal reason for that certification and discusses the implications of it. Unlike last year, there are no additional changes being made to benefits as a result of this certification.

- **Annual Funding Notice for Plan Year Ending March 31, 2011**: All defined benefit plans like the Plan are required to provide you with this annual notice, regardless of their funded status. Please be aware that parts of this notice reflect the finances of the Plan as of April 1, 2010, rather than March 31, 2011.

- **Notice to Participants and Beneficiaries Regarding Funding Relief**: This document advises you that the Plan's Board of Trustees elected to take advantage of special rules that provide a longer period for the Plan to take into account the unprecedented investment losses in the Plan year ending March 31, 2009. The notice also discusses the implications of that election.

We also want to make you aware of certain technical changes to the Rehabilitation Plan adopted by the Board on April 15, 2010. These changes should affect very few, if any, collective bargaining agreements.

The changes are as follows:

- The Rehabilitation Plan originally provided that, effective in the fifth year of any collective bargaining agreement entered into on or after May 1, 2010 that establishes pension contributions for a term of more than four years (including extensions), the contribution rate will increase an additional 25% above the contribution rate otherwise applicable to those contributions (and the portion of the increase above 9% will not generate benefit accruals). This provision of the Rehabilitation Plan was amended to provide that the increased contribution rate will be effective in the ***sixth*** year of any collective bargaining agreement entered into on or after May 1, 2010 that establishes pension contributions for a term of more than ***five*** years (including extensions). Thus, a contract of five years or less (rather than four years or less) will not be subject to the 25% increase.

- The Rehabilitation Plan originally provided that the Plan would apply for IRS approval to extend (by up to five years) the period over which its unfunded liability is amortized. The Rehabilitation Plan was amended to remove this provision, since the Plan's Board of Trustees instead elected to take advantage of the special funding relief rules described in the enclosed notices.

As always, the Fund Office is available to answer questions regarding these notices. Questions should be directed to the Fund Office by phone to Customer Service at 1-800-833-8065 (extension 1311), by e-mail through the "Contact Us" link on our web site (www.afm-epf.org) or by mail.

Fund

American Federation
of Musicians &
Employers' Pension Fund

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www.afm-epf.org

ANNUAL FUNDING NOTICE

For Plan Year Beginning April 1, 2010 and Ending March 31, 2011

For
American Federation of Musicians and Employers' Pension Fund

Introduction

This notice includes important information about the funding status of the American Federation of Musicians and Employers' Pension Fund (the "Plan") and general information about the benefit payments guaranteed by the Pension Benefit Guaranty Corporation ("PBGC"), a federal insurance agency. All traditional pension plans (called "defined benefit pension plans") must provide this notice every year regardless of their funding status. This notice does not mean that the Plan is terminating. It is provided for informational purposes and you are not required to respond in any way. This notice is for the plan year beginning April 1, 2010 and ending March 31, 2011 (referred to hereafter as "Plan Year").

How Well Funded Is Your Plan

Under federal law, the Plan must report how well it is funded by using a measure called the "funded percentage." This percentage for any particular plan year is obtained by dividing the Plan's assets by its liabilities on the Valuation Date for that plan year. In general, the higher the percentage, the better funded the plan. The Plan's funded percentage for the Plan Year and each of the two preceding plan years is set forth in the chart below, along with a statement of the value of the Plan's assets and liabilities for the same period.

Funded Percentage			
	April 1, 2010 to March 31, 2011	April 1, 2009 to March 31, 2010	April 1, 2008 to March 31, 2009
Valuation Date	April 1, 2010	April 1, 2009	April 1, 2008
Funded Percentage	94.5%*	81.4%*	103.8%
Value of Assets	$2,057,381,538	$1,743,350,341	$2,111,932,021
Value of Liabilities	$2,176,987,337	$2,140,525,279	$2,035,349,819

**These percentages reflect the adoption of funding relief, as described more fully in the Notice to Participants and Beneficiaries Regarding Funding Relief that was sent along with this Annual Funding Notice and also available at http://www.afm-epf.org/Portals/2/AFMDocuments/FundingReliefNotice.pdf. Without funding relief, the funded percentage is 75.2% as of April 1, 2009 and 88.0% as of April 1, 2010.*

Year-End Fair Market Value of Assets

The asset values in the chart above are measured as of the Valuation Date for the plan year and are actuarial values. Because market values can fluctuate daily based on factors in the marketplace, such as changes in the stock market, pension law allows plans to use actuarial values that are designed to smooth out those fluctuations for funding purposes. The asset values below are market values and are measured as of the last day of the plan year, rather than as of the Valuation Date. Substituting the market value of assets for the actuarial value used in the above chart would show a clearer picture of a plan's funded status as of the Valuation Date. The fair market value of the Plan's assets as of the last day of the Plan Year and each of the two preceding plan years is shown in the following table:

	March 31, 2011	March 31, 2010	March 31, 2009
Fair Market Value of Assets	$1,769,453,219	$ 1,656,927,801	$ 1,341,038,724

Critical or Endangered Status

Under federal pension law a plan generally will be considered to be in "endangered" status if, at the beginning of the plan year, the funded percentage of the plan is less than 80 percent or in "critical" status if the percentage is less than 65 percent (other factors may also apply). If a pension plan enters endangered status, the trustees of the plan are required to adopt a funding improvement plan. Similarly, if a pension plan enters critical status, the trustees of the plan are required to adopt a rehabilitation plan. Rehabilitation and funding improvement plans establish steps and benchmarks for pension plans to improve their funding status over a specified period of time.

The Plan was in "critical" status for the Plan Year ending March 31, 2011 because the Plan had an accumulated funding deficiency for that Plan Year. In an effort to improve the Plan's funding situation, the Plan's Board of Trustees ("Board") adopted a rehabilitation plan on April 15, 2010. The rehabilitation plan that was adopted is expected to help the Plan emerge from critical status through various benefit reductions and employer contribution increases. Based upon projections using the Plan's actuarial assumptions as required by law and the Plan's financial status at the time of adoption, it was estimated that the Plan would emerge from critical status no later than March 31, 2047.

On February 16, 2011, the Board decided not to apply to the IRS for an automatic 5-year extension of amortization of unfunded liability which was part of the original rehabilitation plan but rather adopt funding relief that was signed into law in June 2010. On May 18, 2011, the Board amended the rehabilitation plan to change the maximum term for which pension contributions may be established under any collective bargaining agreement entered into on or after May 1, 2010 before the contribution rate increases an additional 25% from four years to five years.

You may obtain a copy of the Plan's rehabilitation plan and the actuarial and financial data that demonstrate any action taken by the Plan toward fiscal improvement by contacting the Fund Office at 1-800-833-8065 (extension 1311) or through the "Contact Us" link on Fund's website (www.afm-epf.org). You have a right to receive a copy of the rehabilitation plan, which is available on the website at http://www.afm-epf.org/Portals/2/AFMDocuments/REHABplan.pdf or by written request.

Since the Plan remains in critical status for the Plan year ending March 31, 2012, a separate notification of that status has been provided.

Participant Information

The total number of participants in the Plan as of the Plan's Valuation Date for the Plan Year was 47,475. Of this number, 21,704 were active participants, 11,485 were retired or separated from service and receiving benefits, and 14,286 were retired or separated from service and entitled to future benefits.

Funding & Investment Policies

Every pension plan must have a procedure for establishing a funding policy to carry out plan objectives. A funding policy relates to the level of assets needed to pay for benefits promised under the plan currently and over the years. The funding policy of the Plan is to provide benefits to participants at levels that are expected (based upon reasonable actuarial assumptions) to be sustained in the long term from the assets of the Plan, expected income from the investment of those assets, and future employer contributions.

Once money is contributed to the Plan, the money is invested by plan officials called fiduciaries, who make specific investments in accordance with the Plan's investment policy. Generally speaking, an investment policy is a written statement that provides the fiduciaries who are responsible for plan investments with guidelines or general instructions concerning investment management decisions. In brief summary, the investment policy of the Plan is to maximize investment returns within prudent levels of risk through portfolio diversification across different classes of assets and a variety of asset management styles. With the assistance of an investment consultant, the Board, acting through its Investment Committee, selects professional investment managers and/or commingled funds and allocates the assets of the Plan to seek to achieve the stated investment objectives and to control risk. The Board establishes guidelines for each asset class and investment account, specifying acceptable and/or prohibited investments, limits on asset and asset class exposures, risk constraints and investment return objectives. The Board has also adopted benchmarks for each manager and each asset class and regularly monitors the performance of each manager and each commingled fund, as well as their compliance with the Investment Policy.

The Plan's assets were allocated among the following categories of investments as of the end of the Plan Year. These allocations are percentages of total assets:

Asset Allocations	Percentage
1. Cash (Interest bearing and non-interest bearing)	
2. U.S. Government securities	3%
3. Corporate debt instruments (other than employer securities):	
Preferred	5%
All other	8%
4. Corporate stocks (other than employer securities):	
Preferred	
Common	24%
5. Partnership/joint venture interests	7%
6. Real estate (other than employer real property)	
7. Loans (other than to participants)	
8. Participant loans	
9. Value of interest in common/collective trusts	36%
10. Value of interest in pooled separate accounts	
11. Value of interest in master trust investment accounts	
12. Value of interest in 103-12 investment entities	10%
13. Value of interest in registered investment companies (e.g., mutual funds)	7%
14. Value of funds held in insurance co. general account (unallocated contracts)	
15. Employer-related investments:	
Employer Securities	
Employer real property	
16. Buildings and other property used in plan operation	
17. Other	

For information about the Plan's investment in any of the following types of investments as described in the chart above - common/collective trusts, pooled separate accounts, master trust investment accounts, or 103-12 investment entities - contact American Federation of Musicians and Employers' Pension Fund at 1-800-833-8065 (extension 1311), One Penn Plaza, Suite 3115, New York, New York 10119.

Events Having a Material Effect on Assets or Liabilities

Federal law requires the plan administrator to provide in this notice a written explanation of events, taking effect in the current plan year, which are expected to have a material effect on plan liabilities or assets. Material effect events are occurrences that tend to have a significant impact on a plan's funding condition. An event is material if it, for example, is expected to increase or decrease total plan assets or liabilities by five percent or more. For the plan year beginning on April 1, 2011 and ending on March 31, 2012, the adoption of funding relief, which increased the actuarial value of assets by 7.3% as of April 1, 2010 from $1,916,545,117 to $2,057,381,538, is expected to have such an effect.

Right to Request a Copy of the Annual Report

A pension plan is required to file with the US Department of Labor an annual report called the Form 5500 that contains financial and other information about the plan. Copies of the annual report are available from the US Department of Labor, Employee Benefits Security Administration's Public Disclosure Room at 200 Constitution Avenue, NW, Room N-1513, Washington, DC 20210, or by calling 202.693.8673. For 2009 and subsequent plan years, you may obtain an electronic copy of the Plan's annual report by going to www.efast.dol.gov and using the Form 5500 search function. Or you may obtain a copy of the Plan's annual report by making a written request to the plan administrator. Portions of the report are available on the Fund's website to registered participants. Individual information, such as the amount of your accrued benefit under the Plan, is not contained in the annual report. If you are seeking information regarding your benefits under the Plan, contact the plan administrator identified below under "Where to Get More Information."

Summary of Rules Governing Plans in Reorganization and Insolvent Plans

Federal law has a number of special rules that apply to financially troubled multiemployer plans. The plan administrator is required by law to include a summary of these rules in the annual funding notice. Under so-called "plan reorganization rules," a plan with adverse financial experience may need to increase required contributions and may, under certain circumstances, reduce benefits that are not eligible for the PBGC's guarantee (generally, benefits that have been in effect for less than 60 months). If a plan is in reorganization status, it must provide notification that the plan is in reorganization status and that, if contributions are not increased, accrued benefits under the plan may be reduced or an excise tax may be imposed (or both). The plan is required to furnish this notification to each contributing employer and the labor organization.

Despite these special plan reorganization rules, a plan in reorganization could become insolvent. A plan is insolvent for a plan year if its available financial resources are not sufficient to pay benefits when due for that plan year. An insolvent plan must reduce benefit payments to the highest level that can be paid from the plan's available resources. If such resources are not enough to pay benefits at the level specified by law (see Benefit Payments Guaranteed by the PBGC, below), the plan must apply to the PBGC for financial assistance. The PBGC will loan the plan the amount necessary to pay benefits at the guaranteed level. Reduced benefits may be restored if the plan's financial condition improves.

A plan that becomes insolvent must provide prompt notice of its status to participants and beneficiaries, contributing employers, labor unions representing participants, and PBGC. In addition, participants and beneficiaries also must receive information regarding whether, and how, their benefits will be reduced or affected, including loss of a lump sum option. This information will be provided for each year the plan is insolvent.

Benefit Payments Guaranteed by the PBGC

The maximum benefit that the PBGC guarantees is set by law. Only benefits that you have earned a right to receive and that cannot be forfeited (called vested benefits) are guaranteed. Specifically, the PBGC guarantees a monthly benefit payment equal to 100 percent of the first $11 of the Plan's monthly benefit accrual rate, plus 75 percent of the next $33 of the accrual rate, times each year of credited service. The PBGC's maximum guarantee, therefore, is $35.75 per month times a participant's years of credited service.

Example 1: If a participant with 10 years of credited service has an accrued monthly benefit of $500, the accrual rate for purposes of determining the PBGC guarantee would be determined by dividing the monthly benefit by the participant's years of service ($500/10), which equals $50. The guaranteed amount for a $50 monthly accrual rate is equal to the sum of $11 plus $24.75 (.75 x $33), or $35.75. Thus, the participant's guaranteed monthly benefit is $357.50 ($35.75 x 10).

Example 2: If the participant in Example 1 has an accrued monthly benefit of $200, the accrual rate for purposes of determining the guarantee would be $20 (or $200/10). The guaranteed amount for a $20 monthly accrual rate is equal to the sum of $11 plus $6.75 (.75 x $9), or $17.75. Thus, the participant's guaranteed monthly benefit would be $177.50 ($17.75 x 10).

The PBGC guarantees pension benefits payable at normal retirement age and some early retirement benefits. In calculating a person's monthly payment, the PBGC will disregard any benefit increases that were made under the plan within 60 months before the earlier of the plan's termination or insolvency (or benefits that were in effect for less than 60 months at the time of termination or insolvency). Similarly, the PBGC does not guarantee pre-retirement death benefits to a spouse or beneficiary (e.g., a qualified pre-retirement survivor annuity) if the participant dies after the plan terminates, benefits above the normal retirement benefit, disability benefits not in pay status, or non-pension benefits, such as health insurance, life insurance, death benefits, vacation pay, or severance pay.

Where to Get More Information

For more information about this notice, you may contact the Fund Office by phone to Customer Service at 1-800-833-8065 (extension 1311), by e-mail through the "Contact Us" link on our web site (www.afm-epf.org) or by mail to One Penn Plaza, Suite 3115, New York, New York 10119. For identification purposes, the official plan number is 001, the plan sponsor is the Board of Trustees of the American Federation of Musicians and Employers' Pension Fund, and the employer identification number or "EIN" is 51-6120204. For more information about the PBGC, go to PBGC's website, www.pbgc.gov.

Fund

American Federation
of Musicians &
Employers' Pension Fund

One Penn Plaza - Suite 3115
New York, NY 10119
(212) 284-1200
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www.afm-epf.org

Notice of Critical Status
American Federation of Musicians and Employers' Pension Fund
For Plan Year Beginning April 1, 2011 and Ending March 31, 2012

The purpose of this notice is to inform you that, on June 29, 2011, the actuary for the American Federation of Musicians and Employers' Pension Fund (the "Plan") certified to the U.S. Department of the Treasury, and also to the Plan's Board of Trustees ("Board"), that the Plan is in critical status for the Plan year beginning April 1, 2011. Federal law requires that you receive this notice.

Critical Status

The Plan is considered to be in critical status because it has funding problems. More specifically, the Plan's actuary determined that the Plan was in critical status last year and over the next nine years the Plan is projected to have an accumulated funding deficiency for the Plan year ending March 31, 2021.

Rehabilitation Plan and Possibility of Reduction in Benefits

Federal law requires pension plans in critical status to adopt a rehabilitation plan aimed at restoring the financial health of the plan. This is the second year the Plan has been in critical status. The law permits pension plans to reduce, or even eliminate, benefits called "adjustable benefits" as part of a rehabilitation plan. On April 30, 2010, you were notified that the Board had adopted a rehabilitation plan (the "Rehabilitation Plan") that reduced or eliminated adjustable benefits. As of June 1, 2010, the Plan is not permitted to pay lump sum benefits (or any other payment in excess of the monthly amount paid under a single life annuity) while it is in critical status. If the Board determines that further benefit reductions are necessary, you will receive a separate notice in the future identifying and explaining the effect of those reductions. Any reduction of adjustable benefits will not reduce the level of a participant's basic benefit payable at normal retirement. In addition, the reductions may only apply to participants and beneficiaries whose benefit commencement date is on or after June 1, 2010.

The Board has **not** made additional changes in benefits since the adoption of the Rehabilitation Plan.

Adjustable Benefits

The Plan previously offered the following adjustable benefits that could be reduced or eliminated as part of any rehabilitation plan adopted by the Board:

- □ Post-retirement death benefits/guarantees
- □ Early retirement benefit or retirement-type subsidy
- □ Benefit payment options other than a qualified joint-and survivor annuity (QJSA)
- □ Post-normal retirement age subsidy

As noted above, the Rehabilitation Plan eliminated adjustable benefits as described in the notice entitled Important Notice of Benefit Changes, which was sent to you April 30, 2010 and is available at http://www.afm-epf.org/Portals/2/AFMDocuments/204h%205-1-2010.pdf or by written request to the Fund Office.

Employer Surcharge

The law requires that all contributing employers pay to the Plan a surcharge to help correct the Plan's financial situation until the bargaining parties amend their collective bargaining agreement to include terms consistent with the schedules set forth in the Rehabilitation Plan. The amount of the surcharge is equal to a percentage of the amount an employer is otherwise required to contribute to the Plan under the applicable collective bargaining agreement. With some exceptions, a 5% surcharge was applicable in the initial critical year (Plan year ended March 31, 2011) and a 10% surcharge is applicable for the current Plan year (Plan year beginning April 1, 2011) and each succeeding Plan year thereafter in which the Plan is in critical status. Further information regarding the employer surcharge can be found in the Rehabilitation Plan and the Rehabilitation Plan Questions and Answers (dated April 30, 2010). These documents are available at www.afm-epf.org or by written request to the Fund Office.

Where to Get More Information

For more information about this Notice, you may contact the Fund Office at 1-800-833-8065 (extension 1311) or email us through the "Contact Us" link on the Fund's web site (www.afm-epf.org). You have a right to receive a copy of the Rehabilitation Plan which is available on the web site at http://www.afm-epf.org/Portals/2/AFMDocuments/REHABplan.pdf or by written request to the Fund Office.

EXHIBIT 16

Fund

American Federation
of Musicians &
Employers' Pension Fund

P.O. Box 2673
New York, NY 10117-0262
(212) 284-1200
Fax (212) 284-1300
www.afm-epf.org

To: All Participants and Beneficiaries Receiving Benefits

From: Board of Trustees of the American Federation of Musicians and Employers' Pension Fund (the "Plan")

Re: Annual Funding Notice and Notice of Critical Status

Date: July 29, 2015

Enclosed are (i) the Plan's **Annual Funding Notice for the Plan Year ended March 31, 2015** and (ii) the **Notice of Critical Status for the Plan Year ending March 31, 2016**. These two documents are being provided as required by applicable law. There is no action that you are required to take and there is no change to the Plan's benefits.

The **Annual Funding Notice** is for the Plan Year ended March 31, 2015. You should be aware that parts of this notice reflect the finances of the Plan as of March 31, 2014, rather than March 31, 2015. As you will note from this notice, the Plan's funded percentage (for Pension Protection Act of 2006 ("PPA") purposes) was 85.7% as of April 1, 2014.

You will also see from the enclosed **Notice of Critical Status** that the Plan remains in critical status for the current Plan year (which began April 1, 2015). This is because a plan can be in critical status regardless of how well funded it is if, as is the case here, future contributions are projected to be less than the amount required by law to meet minimum funding requirements.

The Plan's funded percentage (for PPA purposes) as of April 1, 2015 will not be known until the actuarial valuation for the most recent plan year, ending March 31, 2016, is complete, but is estimated to be 82%. This estimate reflects a decrease from the previous year's funded percentage.

As was the case last year, the Plan's actuary projects that if the Plan meets its current assumptions, the Plan will remain solvent over the actuary's 20 year projection period, providing the Plan with time to improve its funded status. Whether the Plan will continue to remain solvent over the long term depends most on its long-term investment performance. It is for this reason that the Board carefully monitors and, where appropriate, adjusts the Plan's asset allocation and investment manager roster, prudently balancing risk and reward.

As always, the Fund Office is available to answer questions regarding these notices. Questions should be directed to the Fund Office by phone to Customer Service at 1-800-833-8065 (extension 1311), by e-mail through the "Contact Us" link on our web site (www.afm-epf.org) or by mail.

Fund

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ANNUAL FUNDING NOTICE

For Plan Year Beginning April 1, 2014 and Ending March 31, 2015
For
American Federation of Musicians and Employers' Pension Fund

Introduction

This notice includes important information about the funding status of the American Federation of Musicians and Employers' Pension Fund (the "Plan") and general information about the benefit payments guaranteed by the Pension Benefit Guaranty Corporation ("PBGC"), a federal insurance agency. All traditional pension plans (called "defined benefit pension plans") must provide this notice every year regardless of their funding status. This notice does not mean that the Plan is terminating. It is provided for informational purposes and you are not required to respond in any way. This notice is for the plan year beginning April 1, 2014 and ending March 31, 2015 (referred to hereafter as "Plan Year").

How Well Funded Is Your Plan

Under federal law, the Plan must report how well it is funded by using a measure called the "funded percentage." This percentage for any particular plan year is obtained by dividing the Plan's assets by its liabilities on the Valuation Date for that plan year. In general, the higher the percentage, the better funded the plan. The Plan's funded percentage for the Plan Year and each of the two preceding plan years is set forth in the chart below, along with a statement of the value of the Plan's assets and liabilities for the same period.

	Funded Percentage		
	April 1, 2014 to March 31, 2015	April 1, 2013 to March 31, 2014	April 1, 2012 to March 31, 2013
Valuation Date	April 1, 2014	April 1, 2013	April 1, 2012
Funded Percentage	85.7%	86.9%	88.5%
Actuarial Value of Assets	$2,105,953,369	$2,076,722,515	$2,051,603,284
Actuarial Value of Liabilities	$2,457,710,230	$2,390,399,094	$2,318,649,701

Year-End Fair Market Value of Assets

The asset values in the chart above are measured as of the Valuation Date for the plan year and are actuarial values. Because market values can fluctuate daily based on factors in the marketplace, such as changes in the stock market, pension law allows plans to use actuarial values that are designed to smooth out those fluctuations for funding purposes. The asset values below are market values and are measured as of the last day of the plan year, rather than as of the Valuation Date. Substituting the market value of assets for the actuarial value used in the above chart would show a clearer picture of a plan's funded status as of the Valuation Date. The fair market value of the Plan's assets as of the last day of the Plan Year and each of the two preceding plan years is shown in the following table:

	March 31, 2015	March 31, 2014	March 31, 2013
Fair Market Value of Assets	$1,819,355,369	$ 1,823,000,326	$ 1,773,487,244

Critical or Endangered Status

Under federal pension law a plan generally will be considered to be in "endangered" status if, at the beginning of the plan year, the funded percentage of the plan is less than 80 percent or in "critical" status if the percentage is less than 65 percent (other factors may also apply). If a pension plan enters endangered status, the trustees of the plan are required to adopt a funding improvement plan. Similarly, if a pension plan enters critical status, the trustees of the plan are required to adopt a rehabilitation plan. Rehabilitation and funding improvement plans establish steps and benchmarks for pension plans to improve their funding status over a specified period of time.

The Plan was in "critical" status for the Plan Year ending March 31, 2015 because the Plan's actuary determined that the Plan is projected to have an accumulated funding deficiency over the next nine years due to a projected funding deficiency for the Plan year ending March 31, 2019. In an effort to improve the Plan's funding situation, the Plan's Board of Trustees ("Board") adopted a rehabilitation plan on April 15, 2010, which was intended to help the Plan improve its funded status through various benefit reductions and employer contribution increases. Subsequent changes were made to the rehabilitation plan as follows:

- On May 18, 2011, the Board amended the rehabilitation plan to change the maximum term for which pension contributions may be established under any collective bargaining agreement entered into on or after May 1, 2010 before the contribution rate increases an additional 25% from four years to five years, and to reflect the Board's February 16, 2011 decision not to apply to the IRS for an automatic 5-year extension of amortization of unfunded liability which was part of the original rehabilitation plan, but rather adopt funding relief that was signed into law in June 2010.
- Subsequently on February 12, 2015, the Board amended the rehabilitation Plan to provide that if a collective bargaining agreement providing for contributions to the Plan in accordance with the Rehabilitation Plan schedule expires while the Plan is still in critical status and the bargaining parties to the agreement fail to adopt a contribution schedule with terms consistent with the updated Rehabilitation Plan and its contribution schedules, then the contribution schedule under the expired collective bargaining agreement (as updated and in effect on the date the collective bargaining agreement expires) is implemented 180 days after the date on which the collective bargaining agreement expires.

The duration of the Rehabilitation Plan is currently indefinite; the Plan is not expected to emerge from critical status during the 10-year rehabilitation plan period that began April 1, 2013.

You may obtain a copy of the Plan's rehabilitation plan and the actuarial and financial data that demonstrate any action taken by the Plan toward fiscal improvement by contacting the Fund Office at 1-800-833-8065 (extension 1311) or through the "Contact Us" link on Fund's website (www.afm-epf.org). You have a right to receive a copy of the rehabilitation plan, which is available on the website at www.afm-epf.org on the Rehabilitation Plan page listed as Rehabilitation Plan or by written request.

Since the Plan remains in critical status for the Plan year ending March 31, 2016, a separate notification of that status has been provided.

Participant Information

The total number of participants in the Plan as of the Plan's Valuation Date for the Plan Year was 50,030. Of this number, 20,423 were active participants, 13,039 were retired or separated from service and receiving benefits, and 16,544 were retired or separated from service and entitled to future benefits.

Funding & Investment Policies

Every pension plan must have a procedure for establishing a funding policy to carry out plan objectives. A funding policy relates to the level of assets needed to pay for benefits promised under the plan currently and over the years. The funding policy of the Plan is to fund it in accordance with the Rehabilitation Plan.

Once money is contributed to the Plan, the money is invested by plan officials called fiduciaries, who make specific investments in accordance with the Plan's investment policy. Generally speaking, an investment policy is a written statement that provides the fiduciaries who are responsible for plan investments with guidelines or general instructions concerning investment management decisions. In brief summary, the investment policy of the Plan is to maximize investment returns within prudent levels of risk through portfolio diversification across different classes of assets and a variety of asset management styles. With the assistance of an investment consultant, the Board, acting through its Investment Committee, selects professional investment managers and/or commingled funds and allocates the assets of the Plan to seek to achieve the stated investment objectives and to control risk. The Board establishes guidelines for each asset class and investment account, specifying acceptable and/or prohibited investments, limits on asset and asset class exposures, risk constraints and investment return objectives. The Board has also adopted benchmarks for each manager and each asset class and regularly monitors the performance of each manager and each commingled fund, as well as their compliance with the Investment Policy.

The Plan's assets were allocated among the following categories of investments as of the end of the Plan Year. These allocations are percentages of total assets:

Asset Allocations	Percentage
1. Cash (Interest bearing and non-interest bearing)	1%
2. U.S. Government securities	6%
3. Corporate debt instruments (other than employer securities):	
Preferred	2%
All other	6%
4. Corporate stocks (other than employer securities):	
Preferred	
Common	19%
5. Partnership/joint venture interests	18%
6. Real estate (other than employer real property)	
7. Loans (other than to participants)	

8. Participant loans	____________
9. Value of interest in common/collective trusts	____29%_____
10. Value of interest in pooled separate accounts	____________
11. Value of interest in master trust investment accounts	____________
12. Value of interest in 103-12 investment entities	____________
13. Value of interest in registered investment companies (e.g., mutual funds)	____19%_____
14. Value of funds held in insurance co. general account (unallocated contracts)	____________
15. Employer-related investments:	
Employer Securities	____________
Employer real property	____________
16. Buildings and other property used in plan operation	____________
17. Other	____________

For information about the Plan's investment in any of the following types of investments as described in the chart above – common/collective trusts, pooled separate accounts, master trust investment accounts, or 103-12 investment entities – contact American Federation of Musicians and Employers' Pension Fund at 1-800-833-8065 (extension 1311), 14 Penn Plaza, 12th Floor, P.O. Box 2673, New York, New York 10117.

Right to Request a Copy of the Annual Report

A pension plan is required to file with the US Department of Labor an annual report called the Form 5500 that contains financial and other information about the plan. Copies of the annual report are available from the US Department of Labor, Employee Benefits Security Administration's Public Disclosure Room at 200 Constitution Avenue, NW, Room N-1513, Washington, DC 20210, or by calling 202-693-8673. For 2009 and subsequent plan years, you may obtain an electronic copy of the Plan's annual report by going to www.efast.dol.gov and using the Form 5500 search function. Or you may obtain a copy of the Plan's annual report by making a written request to the plan administrator. Portions of the report are available on the Fund's website to registered participants. Individual information, such as the amount of your accrued benefit under the Plan, is not contained in the annual report. If you are seeking information regarding your benefits under the Plan, contact the plan administrator identified below under "Where to Get More Information."

Summary of Rules Governing Insolvent Plans

Federal law has a number of special rules that apply to financially troubled multiemployer plans that become insolvent, either as ongoing plans or plans terminated by mass withdrawal. The plan administrator is required by law to include a summary of these rules in the annual funding notice. A plan is insolvent for a plan year if its available financial resources are not sufficient to pay benefits when due for that plan year. An insolvent plan must reduce benefit payments to the highest level that can be paid from the plan's available resources. If such resources are not enough to pay benefits at the level specified by law (see Benefit Payments Guaranteed by the PBGC, below), the plan must apply to the PBGC for financial assistance. The PBGC will loan the plan the amount necessary to pay benefits at the guaranteed level. Reduced benefits may be restored if the plan's financial condition improves.

A plan that becomes insolvent must provide prompt notice of its status to participants and beneficiaries, contributing employers, labor unions representing participants, and PBGC. In addition, participants and beneficiaries also must receive information regarding whether, and how, their benefits will be reduced or affected, including loss of a lump sum option.

Benefit Payments Guaranteed by the PBGC

The maximum benefit that the PBGC guarantees is set by law. Only benefits that you have earned a right to receive and that cannot be forfeited (called vested benefits) are guaranteed. Specifically, the PBGC guarantees a monthly benefit payment equal to 100 percent of the first $11 of the Plan's monthly benefit accrual rate, plus 75 percent of the next $33 of the accrual rate, times each year of credited service. The PBGC's maximum guarantee, therefore, is $35.75 per month times a participant's years of credited service.

Example 1: If a participant with 10 years of credited service has an accrued monthly benefit of $500, the accrual rate for purposes of determining the PBGC guarantee would be determined by dividing the monthly benefit by the participant's years of service ($500/10), which equals $50. The guaranteed amount for a $50 monthly accrual rate is equal to the sum of $11 plus $24.75 (.75 x $33), or $35.75. Thus, the participant's guaranteed monthly benefit is $357.50 ($35.75 x 10).

Example 2: If the participant in Example 1 has an accrued monthly benefit of $200, the accrual rate for purposes of determining the guarantee would be $20 (or $200/10). The guaranteed amount for a $20 monthly accrual rate is equal to the sum of $11 plus $6.75 (.75 x $9), or $17.75. Thus, the participant's guaranteed monthly benefit would be $177.50 ($17.75 x 10).

The PBGC guarantees pension benefits payable at normal retirement age and some early retirement benefits. In addition, the PBGC guarantees qualified preretirement survivor benefits (which are preretirement death benefits payable to the surviving spouse of a participant who dies before starting to receive benefit payments). In calculating a person's monthly payment, the PBGC will disregard any benefit increases that were made under the plan within 60 months before the earlier of the plan's termination or insolvency (or benefits that were in effect for less than 60 months at the time of termination or insolvency). Similarly, the PBGC does not guarantee benefits above the normal retirement benefit, disability benefits not in pay status, or non-pension benefits, such as health insurance, life insurance, death benefits, vacation pay, or severance pay.

Where to Get More Information

For more information about this notice, you may contact the Fund Office by phone to Customer Service at 1-800-833-8065 (extension 1311), by e-mail through the "Contact Us" link on our web site (www.afm-epf.org) or by mail to 14 Penn Plaza, 12th Floor, P.O. Box 2673, New York, New York 10117-0262. For identification purposes, the official plan number is 001, the plan sponsor is the Board, and the plan sponsor's employer identification number or "EIN" is 51-6120204. For more information about the PBGC, go to PBGC's website, www.pbgc.gov.

Fund

American Federation
of Musicians &
Employers' Pension Fund

P.O. Box 2673
New York, NY 10117-0262
(212) 284-1200
Fax (212) 284-1300
www.afm-epf.org

Notice of Critical Status
American Federation of Musicians and Employers' Pension Fund
For Plan Year Beginning April 1, 2015and Ending March 31, 2016

The purpose of this notice is to inform you that, on June 29, 2015, the actuary for the American Federation of Musicians and Employers' Pension Fund (the "Plan") certified to the U.S. Department of the Treasury, and also to the Plan's Board of Trustees ("Board"), that the Plan is in critical status for the Plan year beginning April 1, 2015. Federal law requires that you receive this notice.

Critical Status

The Plan is considered to be in critical status because it has funding or liquidity problems, or both. More specifically, the Plan's actuary has determined that the Plan is in critical status because (i) the Plan was in critical status last year and, over the next nine years, it is projected to have an accumulated funding deficiency for the Plan year ending March 31, 2019 and (ii) the sum of the Plan's normal cost and interest on the unfunded benefits for the current Plan year exceeds the present value of all expected contributions for the year, the present value of vested benefits of inactive participants is greater than the present value of vested benefits of active participants and over the next four plan years, the Plan is projected to have an accumulated funding deficiency in the Plan year noted above.

Rehabilitation Plan

Federal law requires pension plans in critical status to adopt a rehabilitation plan aimed at restoring the financial health of the plan. This is the fourth year the Plan has been in critical status. The law permits pension plans to reduce, or even eliminate, benefits called "adjustable benefits" as part of a rehabilitation plan. On April 30, 2010, you were notified that the Board had adopted a rehabilitation plan (the "Rehabilitation Plan") that reduced or eliminated adjustable benefits. As of June 1, 2010, the Plan is not permitted to pay lump sum benefits (or any other payment in excess of the monthly amount paid under a single life annuity) while it is in critical status. If the Board determines that further benefit reductions are necessary, you will receive a separate notice in the future identifying and explaining the effect of those reductions. Under current law, any reduction of adjustable benefits will not reduce the level of a participant's basic benefit payable at normal retirement, and the reductions apply only to participants and beneficiaries whose benefit commencement date is on or after June 1, 2010.

The Board has **not** made additional reductions in benefit levels since the adoption of the Rehabilitation Plan.

Adjustable Benefits

The Plan previously offered the following adjustable benefits that could be reduced or eliminated as part of any rehabilitation plan adopted by the Board:

- □ Post-retirement death benefits/guarantees
- □ Early retirement benefit or retirement-type subsidy
- □ Benefit payment options other than a qualified joint-and survivor annuity (QJSA)
- □ Post-normal retirement age subsidy

As noted above, the Rehabilitation Plan eliminated adjustable benefits as described in the notice entitled Important Notice of Benefit Changes, which was sent to you April 30, 2010 and is available on the website at www.afm-epf.org on the Rehabilitation Plan page listed as Important Notice of Changes or by written request to the Fund Office.

Employer Surcharge

The law requires that all contributing employers pay to the Plan a surcharge to help correct the Plan's financial situation until the bargaining parties amend their collective bargaining agreement to include terms consistent with the schedules set forth in the Rehabilitation Plan. The amount of the surcharge is equal to a percentage of the amount an employer is otherwise required to contribute to the Plan under the applicable collective bargaining agreement. With some exceptions, a 5% surcharge was applicable in the initial critical year (Plan year ended March 31, 2011) and a 10% surcharge was applicable for the Plan year beginning April 1, 2011 and remains applicable for each succeeding Plan year thereafter in which the Plan is in critical status. Further information regarding the employer surcharge can be found in the Rehabilitation Plan and the Rehabilitation Plan Questions and Answers (dated April 30, 2010). These documents are available at www.afm-epf.org or by written request to the Fund Office.

Where to Get More Information

For more information about this Notice, you may contact the Fund Office at 1-800-833-8065 (extension 1311) or email us through the "Contact Us" link on the Fund's web site (www.afm-epf.org). You have a right to receive a copy of the Rehabilitation Plan which is available on the web site at www.afm-epf.org on the Rehabilitation Plan page listed as Rehabilitation Plan or by written request to the Fund Office.

EXHIBIT 17

Fund

American Federation
of Musicians &
Employers' Pension Fund

P.O. Box 2673
New York, NY 10117-0262
(212) 284-1200
Fax (212) 284-1300
www.afm-epf.org

To: All Participants and Beneficiaries Receiving Benefits

From: Board of Trustees of the American Federation of Musicians and Employers' Pension Fund (the "Plan")

Re: Annual Funding Notice and Notice of Critical Status

Date: July 29, 2016

Enclosed are (i) the Plan's **Annual Funding Notice for the Plan Year ended March 31, 2016** and (ii) the **Notice of Critical Status for the Plan Year ending March 31, 2017**. These two documents are being provided as required by applicable law. There is no action that you are required to take and there is no change to the Plan's benefits.

The **Annual Funding Notice** is for the Plan Year ended March 31, 2016. You should be aware that parts of this notice reflect the finances of the Plan as of March 31, 2015, rather than March 31, 2016. As you will note from this notice, the Plan's funded percentage (for Pension Protection Act of 2006 ("PPA") purposes) was 81.6% as of April 1, 2015.

You will also see from the enclosed **Notice of Critical Status** that the Plan remains in critical status for the current Plan year (which began April 1, 2016).

The Plan's funded percentage (for PPA purposes) as of April 1, 2016 will not be known until the actuarial valuation for the most recent plan year, ending March 31, 2017, is complete, but is estimated to be 76%. This estimate reflects a decrease from the previous year's funded percentage.

As was the case last year, the Plan's actuary projects that if the Plan meets its current assumptions, the Plan will remain solvent over the actuary's 20-year projection period. Longer-term projections show that insolvency may occur after that 20-year period, but the Plan's actuary advises that projections that far into the future are less likely to be accurate. Whether the Plan will continue to remain solvent over the long term depends most on its investment performance over time and also on the total amount of contributions made to the Plan. It is for this reason that the Board carefully monitors and, where appropriate, adjusts the Plan's asset allocation and investment manager roster, prudently balancing risk and reward. If, in spite of those efforts, the Fund reaches a point where insolvency is projected within 20 years, the current law would allow benefits to be restructured for the purpose of avoiding insolvency and continuing to pay benefits for the indefinite future.

As always, the Fund Office is available to answer questions regarding these notices. Questions should be directed to the Fund Office by phone to Customer Service at 1-800-833-8065 (extension 1311), by e-mail through the "Contact Us" link on our web site (www.afm-epf.org) or by mail.

Fund

American Federation
of Musicians &
Employers' Pension Fund

P.O. Box 2673
New York, NY 10117-0262
(212) 284-1200
Fax (212) 284-1300
www.afm-epf.org

ANNUAL FUNDING NOTICE

For Plan Year Beginning April 1, 2015 and Ending March 31, 2016
For
American Federation of Musicians and Employers' Pension Fund

Introduction

This notice includes important information about the funding status of your multiemployer pension plan (the "Plan"). It also includes general information about the benefit payments guaranteed by the Pension Benefit Guaranty Corporation ("PBGC"), a federal insurance agency. All traditional pension plans (called "defined benefit pension plans") must provide this notice every year regardless of their funding status. This notice does not mean that the Plan is terminating. It is provided for informational purposes and you are not required to respond in any way. This notice is required by federal law. This notice is for the plan year beginning April 1, 2015 and ending March 31, 2016 ("Plan Year").

How Well Funded Is Your Plan

The law requires the administrator of the Plan to tell you how well the Plan is funded, using a measure called the "funded percentage." The Plan divides its assets by its liabilities on the Valuation Date for the plan year to get this percentage. In general, the higher the percentage, the better funded the plan. The Plan's funded percentage for the Plan Year and each of the two preceding plan years is shown in the chart below. The chart also states the value of the Plan's assets and liabilities for the same period.

Funded Percentage			
	April 1, 2015 to March 31, 2016	April 1, 2014 to March 31, 2015	April 1, 2013 to March 31, 2014
Valuation Date	April 1, 2015	April 1, 2014	April 1, 2013
Funded Percentage	81.6%	85.7%	86.9%
Actuarial Value of Assets	$2,066,699,976	$2,105,953,369	$2,076,722,515
Actuarial Value of Liabilities	$2,531,797,223	$2,457,710,230	$2,390,399,094

Year-End Fair Market Value of Assets

The asset values in the chart above are measured as of the Valuation Date. They also are "actuarial values." Actuarial values differ from market values in that they do not fluctuate daily based on changes in the stock or other markets. Actuarial values smooth out those fluctuations and can allow for more predictable levels of future contributions. Despite the fluctuations, market values tend to show a clearer picture of a plan's funded status at a given point in time. The asset values in the chart below are market values and are measured on the last day of the Plan Year. The chart also includes the year-end market value of the Plan's assets for each of the two preceding plan years.

	March 31, 2016	March 31, 2015	March 31, 2014
Fair Market Value of Assets	$1,703,971,000	$ 1,818,080,945	$ 1,823,000,326

Endangered, Critical, or Critical and Declining Status

Under federal pension law, a plan generally is in "endangered" status if its funded percentage is less than 80 percent. A plan is in "critical" status if the funded percentage is less than 65 percent (other factors may also apply). A plan is in "critical and declining" status if it is in critical status and is projected to become insolvent (run out of money to pay benefits) within 15 years (or within 20 years if a special rule applies). If a pension plan enters endangered status, the trustees of the plan are required to adopt a funding improvement plan. Similarly, if a pension plan enters critical status or critical and declining status, the trustees of the plan are required to adopt a rehabilitation plan. Funding improvement and rehabilitation plans establish steps and benchmarks for pension plans to improve their funding status over a specified period of time. The plan sponsor of a plan in critical and declining status may apply for approval to amend the plan to reduce current and future payment obligations to participants and beneficiaries.

The Plan was in "critical" status in the Plan Year ending March 31, 2016 because the Plan's actuary determined that (i) the Plan was in critical status last year and, over the next nine years, it is projected to have an accumulated funding deficiency for the Plan year ending March 31, 2019 and (ii) the sum of the Plan's normal cost and interest on the unfunded benefits for the current Plan year exceeds the present value of all expected contributions for the year, the present value of vested benefits of inactive participants is greater than the present value of vested benefits of active participants and over the next four plan years, the Plan is projected to have an accumulated funding deficiency in the Plan year noted above. In an effort to improve the Plan's funding situation, the Plan's Board of Trustees ("Board") adopted its initial rehabilitation plan (the "Rehabilitation Plan") on April 15, 2010, which was intended to help the Plan improve its funded status through various benefit reductions and employer contribution increases. The Rehabilitation Plan originally employed reasonable measures to enable the Plan to emerge from critical status at a later date than the 10-year rehabilitation period. As the Plan is currently not projected to emerge from critical status (either during the 10-year rehabilitation period that began April 1, 2013 or otherwise), the Rehabilitation Plan was updated to employ reasonable measures to forestall insolvency and it does not have a definite term.

You may obtain a copy of the Plan's rehabilitation plan, any update to such plan and the actuarial and financial data that demonstrate any action taken by the Plan toward fiscal improvement. You may get this information by contacting the Fund Office at 1-800-833-8065 (extension 1311) or through the "Contact Us" link on Fund's website (www.afm-epf.org). You may also obtain a copy of the rehabilitation plan on the website at http://www.afm-epf.org/Portals/2/AFMDocuments/RehabPlan6-27-16.pdf or by written request.

Since the Plan remains in critical status for the Plan year ending March 31, 2017, a separate notification of that status has been provided.

Participant Information

The total number of participants and beneficiaries covered by the Plan on the valuation date was 49,947. Of this number, 20,884 were current employees, 13,555 were retired and receiving benefits, and 15,508 were retired or no longer working for the employer and have a right to future benefits.

Funding & Investment Policies

Every pension plan must have a procedure to establish a funding policy for plan objectives. A funding policy relates to how much money is needed to pay promised benefits. The funding policy of the Plan is to fund it in accordance with the Rehabilitation Plan.

Pension plans also have investment policies. These generally are written guidelines or general instructions for making investment management decisions. In brief summary, the investment policy of the Plan is to maximize investment returns within prudent levels of risk through portfolio diversification across different classes of assets and a variety of asset management styles. With the assistance of an investment consultant, the Board, acting through its Investment Committee, selects professional investment managers and/or commingled funds and allocates the assets of the Plan to seek to achieve the stated investment objectives and to control risk. The Board establishes guidelines for each asset class and investment account, specifying acceptable and/or prohibited investments, limits on asset and asset class exposures, risk constraints and investment return objectives. The Board has also adopted benchmarks for each manager and each asset class and regularly monitors the performance of each manager and each commingled fund, as well as their compliance with the Investment Policy.

Under the Plan's investment policy, the Plan's assets were allocated among the following categories of investments, as of the end of the Plan Year. These allocations are percentages of total assets:

Asset Allocations	**Percentage**
1. Cash (Interest bearing and non-interest bearing)	1%
2. U.S. Government securities	7%
3. Corporate debt instruments (other than employer securities):	
Preferred	2%
All other	5%
4. Corporate stocks (other than employer securities):	
Preferred	
Common	18%
5. Partnership/joint venture interests	24%
6. Real estate (other than employer real property)	

7. Loans (other than to participants)	____
8. Participant loans	____
9. Value of interest in common/collective trusts	25%
10. Value of interest in pooled separate accounts	____
11. Value of interest in 103-12 investment entities	____
12. Value of interest in registered investment companies (e.g., mutual funds)	18%
13. Value of funds held in insurance co. general account (unallocated contracts)	____
14. Employer-related investments:	
Employer Securities	____
Employer real property	____
15. Buildings and other property used in plan operation	____
16. Other	____

For information about the Plan's investment in any of the following types of investments – common/collective trusts, pooled separate accounts or 103-12 investment entities – contact American Federation of Musicians and Employers' Pension Fund at 1-800-833-8065 (extension 1311), 14 Penn Plaza, 12th Floor, P.O. Box 2673, New York, New York 10117.

Right to Request a Copy of the Annual Report

Pension plans must file annual reports with the US Department of Labor. The report is called the "Form 5500." These reports contain financial and other information. You may obtain an electronic copy of your Plan's annual report by going to www.efast.dol.gov and using the search tool. Annual reports also are available from the US Department of Labor, Employee Benefits Security Administration's Public Disclosure Room at 200 Constitution Avenue, NW, Room N1513, Washington, DC 20210, or by calling 202.693.8673. Or you may obtain a copy of the Plan's annual report by making a written request to the plan administrator. Portions of the report are available on the Fund's website to registered participants. Annual reports do not contain personal information, such as the amount of your accrued benefit. You may contact your plan administrator if you want information about your accrued benefits. Your plan administrator is identified below under "Where To Get More Information."

Summary of Rules Governing Insolvent Plans

Federal law has a number of special rules that apply to financially troubled multiemployer plans that become insolvent, either as ongoing plans or plans terminated by mass withdrawal.

The plan administrator is required by law to include a summary of these rules in the annual funding notice. A plan is insolvent for a plan year if its available financial resources are not sufficient to pay benefits when due for that plan year. An insolvent plan must reduce benefit payments to the highest level that can be paid from the plan's available resources. If such resources are not enough to pay benefits at the level specified by law (see Benefit Payments Guaranteed by the PBGC, below), the plan must apply to the PBGC for financial assistance. The PBGC will loan the plan the amount necessary to pay benefits at the guaranteed level. Reduced benefits may be restored if the plan's financial condition improves.

A plan that becomes insolvent must provide prompt notice of its status to participants and beneficiaries, contributing employers, labor unions representing participants, and PBGC. In addition, participants and beneficiaries also must receive information regarding whether, and how, their benefits will be reduced or affected, including loss of a lump sum option.

Benefit Payments Guaranteed by the PBGC

The maximum benefit that the PBGC guarantees is set by law. Only benefits that you have earned a right to receive and that cannot be forfeited (called vested benefits) are guaranteed. There are separate insurance programs with different benefit guarantees and other provisions for single-employer plans and multiemployer plans. Your Plan is covered by PBGC's multiemployer program. Specifically, the PBGC guarantees a monthly benefit payment equal to 100 percent of the first $11 of the Plan's monthly benefit accrual rate, plus 75 percent of the next $33 of the accrual rate, times each year of credited service. The PBGC's maximum guarantee, therefore, is $35.75 per month times a participant's years of credited service.

Example 1: If a participant with 10 years of credited service has an accrued monthly benefit of $600, the accrual rate for purposes of determining the PBGC guarantee would be determined by dividing the monthly benefit by the participant's years of service ($600/10), which equals $60. The guaranteed amount for a $60 monthly accrual rate is equal to the sum of $11 plus $24.75 (.75 x $33), or $35.75. Thus, the participant's guaranteed monthly benefit is $357.50 ($35.75 x 10).

Example 2: If the participant in Example 1 has an accrued monthly benefit of $200, the accrual rate for purposes of determining the guarantee would be $20 (or $200/10). The guaranteed amount for a $20 monthly accrual rate is equal to the sum of $11 plus $6.75 (.75 x $9), or $17.75. Thus, the participant's guaranteed monthly benefit would be $177.50 ($17.75 x 10).

The PBGC guarantees pension benefits payable at normal retirement age and some early retirement benefits. In addition, the PBGC guarantees qualified preretirement survivor benefits (which are preretirement death benefits payable to the surviving spouse of a participant who dies before starting to receive benefit payments). In calculating a person's monthly payment, the PBGC will disregard any benefit increases that were made under a plan within 60 months before the earlier of the plan's termination or insolvency (or benefits that were in effect for less than 60 months at the time of termination or insolvency). Similarly, the PBGC does not guarantee benefits above the normal retirement benefit, disability benefits not in pay status, or non-pension benefits, such as health insurance, life insurance, death benefits, vacation pay, or severance pay.

For additional information about the PBGC and the pension insurance program guarantees, go to the Multiemployer Page on PBGC's website at www.pbgc.gov/multiemployer. Please contact your employer or plan administrator for specific information about your pension plan or pension benefit. PBGC does not have that information. See "Where to Get More Information About Your Plan," below.

Where to Get More Information

For more information about this notice, you may contact the Fund Office by phone to Customer Service at 1-800-833-8065 (extension 1311), by e-mail through the "Contact Us" link on our web site (www.afm-epf.org) or by mail to 14 Penn Plaza, 12th Floor, P.O. Box 2673, New York, New York 10117-0262. For identification purposes, the official plan number is 001, the plan sponsor is the Board, and the plan sponsor's employer identification number or "EIN" is 51-6120204.

Fund

American Federation
of Musicians &
Employers' Pension Fund

P.O. Box 2673
New York, NY 10117-0262
(212) 284-1200
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Notice of Critical Status
American Federation of Musicians and Employers' Pension Fund
For Plan Year Beginning April 1, 2016 and Ending March 31, 2017

The purpose of this notice is to inform you that, on June 29, 2016, the actuary for the American Federation of Musicians and Employers' Pension Fund (the "Plan") certified to the U.S. Department of the Treasury, and also to the Plan's Board of Trustees ("Board"), that the Plan is in critical status for the Plan year beginning April 1, 2016. Federal law requires that you receive this notice.

Critical Status

The Plan is considered to be in critical status because it has funding or liquidity problems, or both. More specifically, the Plan's actuary has determined that the Plan is in critical status because (i) the Plan was in critical status last year and, over the next nine years, it is projected to have an accumulated funding deficiency for the Plan year ending March 31, 2019 and (ii) the sum of the Plan's normal cost and interest on the unfunded benefits for the current Plan year exceeds the present value of all expected contributions for the year, the present value of vested benefits of inactive participants is greater than the present value of vested benefits of active participants and over the next four plan years, the Plan is projected to have an accumulated funding deficiency in the Plan year noted above.

Rehabilitation Plan

Federal law requires pension plans in critical status to adopt a rehabilitation plan aimed at restoring the financial health of the plan. This is the fifth year the Plan has been in critical status. The law permits pension plans to reduce, or even eliminate, benefits called "adjustable benefits" as part of a rehabilitation plan. On April 30, 2010, you were notified that the Board had adopted a rehabilitation plan (the "Rehabilitation Plan") that reduced or eliminated adjustable benefits. As of June 1, 2010, the Plan is not permitted to pay lump sum benefits (or any other payment in excess of the monthly amount paid under a single life annuity) while it is in critical status. If the Board determines that further benefit reductions are necessary, you will receive a separate notice in the future identifying and explaining the effect of those reductions. Under current law, any reduction of adjustable benefits will not reduce the level of a participant's basic benefit payable at normal retirement, and the reductions apply only to participants and beneficiaries whose benefit commencement date is on or after June 1, 2010.

The Board has **not** made additional reduction in benefit levels since the adoption of the Rehabilitation Plan.

Adjustable Benefits

The Plan previously offered the following adjustable benefits that could be reduced or eliminated as part of any rehabilitation plan adopted by the Board:

- □ Post-retirement death benefits/guarantees
- □ Early retirement benefit or retirement-type subsidy
- □ Benefit payment options other than a qualified joint-and survivor annuity (QJSA)
- □ Post-normal retirement age subsidy

As noted above, the Rehabilitation Plan eliminated adjustable benefits as described in the notice entitled Important Notice of Benefit Changes, which was sent to you April 30, 2010 and is available at http://www.afm-epf.org/Portals/2/AFMDocuments/204h%205-1-2010.pdf or by written request to the Fund Office.

Employer Surcharge

The law requires that all contributing employers pay to the Plan a surcharge to help correct the Plan's financial situation until the bargaining parties amend their collective bargaining agreement to include terms consistent with the schedules set forth in the Rehabilitation Plan. The amount of the surcharge is equal to a percentage of the amount an employer is otherwise required to contribute to the Plan under the applicable collective bargaining agreement. With some exceptions, a 5% surcharge was applicable in the initial critical year (Plan year ended March 31, 2011) and a 10% surcharge was applicable for the Plan year beginning April 1, 2011 and remains applicable for each succeeding Plan year thereafter in which the Plan is in critical status. Further information regarding the employer surcharge can be found in the Rehabilitation Plan, which is available at www.afm-epf.org or by written request to the Fund Office.

Where to Get More Information

For more information about this Notice, you may contact the Fund Office at 1-800-833-8065 (extension 1311) or email us through the "Contact Us" link on the Fund's web site (www.afm-epf.org). You have a right to receive a copy of the Rehabilitation Plan which is available on the web site at http://www.afm-epf.org/Portals/2/AFMDocuments/RehabPlan6-27-16.pdf or by written request to the Fund Office.