

June 15, 2026

Mr. Gregory Katz
Bond, Schoeneck & King, PLLC
600 Third Avenue, 22nd Floor
New York, NY 10016-1915

Dear Mr. Katz:

This is in response to your request on behalf of your client (the “Company”) for an opinion from the Pension Benefit Guaranty Corporation (“PBGC”) on whether the Company’s defined benefit pension plan (“Plan”) has experienced a reportable event under section 4043(c)(3) of the Employee Retirement Income Security Act of 1974 (“ERISA”) and § 4043.23(a) of PBGC’s regulations. For the reasons discussed herein, and based on the facts and representations you made to PBGC, PBGC concludes that annuity buyouts for the Company’s employees who are expected to remain employed in the ordinary course can be disregarded for the purpose of determining whether a reportable active participant reduction event under ERISA section 4043(c)(3) and § 4043.23(a) of the regulation has occurred.

You provided the following facts and representations in support of your request. The Plan is a calendar year plan that is frozen. As of January 1, 2026, the Plan had 162 active participants, 123 terminated vested participants, and 10 retirees. The Company intends to purchase irrevocable annuity contracts from an insurance company (“Annuity Buyout”) for approximately 112 active participants, which represents approximately 69 percent of the Plan’s active participants. After the Annuity Buyout, approximately 50 active participants will remain in the Plan. As of January 1, 2026, the Plan was over 93 percent funded. The Company has no plans to change the current employment status of active employees as part of the Annuity Buyout.

Section 4043(a) of ERISA and its implementing regulations require that plan administrators and contributing sponsors notify PBGC about the occurrence of certain “reportable events.” Such notices are designed to notify PBGC of certain events that may signal financial issues with the plan or a contributing sponsor or present a risk to a plan sponsor’s ability to continue to maintain a plan—which issues and risks could, in turn, lead to obligations for PBGC under Title IV of ERISA. Miscellaneous Corrections, Clarifications, and Improvements, 85 Fed. Reg. 6046, 6047 (Feb. 4, 2020) (preamble to final rule). In other words, the notices serve as an early warning mechanism for PBGC of facts that may create heightened risk for PBGC.

One such reportable event is the active participant reduction event, which occurs when, as a result of a single cause (such as a reorganization or mass layoff), or through employee attrition, the number of active participants in a plan is reduced below 80 percent of the number at the beginning of the plan year. *See* 29 C.F.R. § 4043.23(a).

An annuity buyout for active participants that will remain employed is not the type of event that the statute or regulation were designed to capture. Though the annuitized individuals will cease to be participants in the Plan, the change in status does not result because of a workforce reduction event of the type contemplated by PBGC's regulations, such as "a reorganization or restructuring, the discontinuance of an operation or business, a natural disaster, a mass layoff, or an early retirement incentive program." *See* 29 C.F.R. § 4043.23(a)(1)(ii).

A pension risk transfer like the Annuity Buyout does not, by itself, signal financial issues with a plan or a contributing sponsor or present a risk to a plan sponsor's ability to continue to maintain a plan.¹ Also, more fundamentally, once assets and liabilities have been transferred to an insurance company, PBGC is no longer obligated to pay pension benefits if the insurance company fails, and, relatedly, the insurance company is not required to pay premiums to PBGC. *See, e.g.*, PBGC Opinion Letter 91-1; *Beck v. PACE Int'l Union*, 551 U.S. 96, 106 (2007). So, a transaction like the Annuity Buyout tends to make it less likely, rather than more likely, for obligations of PBGC under Title IV of ERISA to arise—creating no need to provide PBGC with any sort of early warning.

Thus, absent an accompanying workforce reduction by the Company or another accompanying single-cause event or attrition event, the Annuity Buyout does not implicate the risks that the reportable event framework was designed to identify. Therefore, any individual who is expected to remain employed in the ordinary course but ceases to be an active participant solely as a result of the Annuity Buyout may be disregarded for the purpose of calculating an active participant reduction pursuant to a single-cause event or an attrition event.

Accordingly, in calculating whether an event has occurred, with respect to such annuitized individuals:

- For purposes of a single-cause event under § 4043.23(a)(1) of PBGC's regulations, the Plan may disregard such individuals in measuring the reduction in the number of active participants in the numerator.
- For purposes of an attrition event under § 4043.23(a)(2) of PBGC's regulations, the Plan may add such individuals to the number of active participants at the end of the plan year in the numerator.
- Because such individuals were active participants at the beginning of the plan year, the Plan should include them in the beginning-of-year active participant count (denominator) for both single-cause events and attrition events.

¹ These types of transactions are expressly contemplated by ERISA and may also be employed by a plan sponsor for purposes of plan termination consistent with ERISA section 4041(b)(3)(A)(i).

This letter constitutes an opinion letter and is based on the facts and representations described in your request. Accordingly, it is subject to the provisions of PBGC's Opinion Letter Program procedures, including the section relating to the effect of an opinion letter.²

Sincerely,

A handwritten signature in black ink, appearing to read "J Lund", written in a cursive style.

Jack Lund
General Counsel

² See PBGC's Opinion Letter Program Procedures, <https://www.pbgc.gov/employers-practitioners/legal-resources/opinion-letters/procedures>.