

beginning after the sale and fails to pay any of its liability to the plan, the seller shall be secondarily liable for the liability it (the seller) would have had but for section 4204.

The bond or escrow described above would be paid to the plan if the purchaser withdraws from the plan or fails to make any required contributions to the plan within the first five plan years beginning after the sale. Additionally, section 4204(b)(1) provides that if a sale of assets is covered by section 4204, the purchaser assumes by operation of law the contribution record of the seller for the plan year in which the sale occurred and the preceding four plan years.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B) when warranted. The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions. Senate Committee on Labor and Human Resources, 96th Cong., 2nd Sess., S. 1076, *The Multiemployer Pension Plan Amendments Act of 1980: Summary and Analysis of Considerations* 16 (Comm. Print, April 1980); 128 Cong. Rec. S10117 (July 29, 1980). The granting of an exemption or variance from the bond/escrow requirement does not constitute a finding by the PBGC that a particular transaction satisfies the other requirements of section 4204(a)(1).

Under the PBGC's regulation on variances for sales of assets (29 CFR part 4204), a request for a variance or waiver of the bond/escrow requirement under any of the tests established in the regulation (sections 4204.12 & 4204.13) is to be made to the plan in question. The PBGC will consider waiver requests only when the request is not based on satisfaction of one of the three regulatory tests or when the parties assert that the financial information necessary to show satisfaction of one of the regulatory tests is privileged or confidential financial information within the meaning of 5 U.S.C. 552(b)(4) of the Freedom of Information Act.

Under section 4204.22 of the regulation, the PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it:

(1) Would more effectively or equitably carry out the purposes of Title IV of the Act; and

(2) Would not significantly increase the risk of financial loss to the plan.

Section 4204(c) of ERISA and section 4204.22(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or exemption in the **Federal Register**, and to provide interested parties with an opportunity to comment on the proposed variance or exemption. The PBGC received no comments on the request for exemption.

#### Decision

On July 7, 2005, the PBGC published a notice of the pendency of a request by the LA Team Co. LLC (the "Buyer") for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) with respect to its purchase of the Los Angeles Baseball Team from the Los Angeles Dodgers, Inc. (the "Seller") (70 FR 39349). According to the request, the Major League Baseball Players Pension Plan (the "Fund") was established and is maintained pursuant to a collective bargaining agreement between the professional major league baseball teams (the "Clubs") and the Major League Baseball Players Association (the "Players Association").

According to the Buyer's representations, the Seller was obligated to contribute to the Fund for certain employees of the sold operations. Effective February 13, 2004, the Buyer and Seller entered into an agreement under which the Buyer agreed to purchase substantially all of the assets and assume substantially all of the liabilities of the Seller relating to the business of employing employees under the Fund. The Buyer agreed to contribute to the Fund for substantially the same number of contribution base units as the Seller. The Seller agreed to be secondarily liable for any withdrawal liability it would have had with respect to the sold operations (if not for section 4204) should the Buyer withdraw from the Fund within the five plan years following the sale and fail to pay its withdrawal liability. The amount of the bond/escrow required under section 4204(a)(1)(B) of ERISA is \$2,466,666.67. The estimated amount of the unfunded vested benefits allocable to the Seller with respect to the operations subject to the sale could be as high as \$32,300,000. The transaction had to be approved by Major League Baseball, which required that the debt-equity ratio of the Buyer be no more than 60 percent. While the separate major league clubs are the nominal contributing employers to the Fund, the Major League Central Fund, under the Officer of the Commissioner, receives the revenues and makes the payments for certain common expenses

including each club's contribution to the Fund. In support of the waiver request, the requester asserts that "[t]he Fund is \* \* \* funded directly from revenues which are paid from the Central Fund directly to the Fund without passing through the hands of any of the Clubs. The revenues of the Central Fund are \* \* \* not exclusively or even largely dependent on the financial viability of any one Club. [A] change in ownership of a Club does not affect the obligation of the Central Fund to fund the Fund out of the Revenue. Accordingly, the Fund enjoys a substantial degree of security with respect to contributions on behalf of the Clubs, and as such, approval of this exemption request would not significantly increase the risk of financial loss to the Fund."

Based on the facts of this case and the representations and statements made in connection with the request for an exemption, the PBGC has determined that an exemption from the bond/escrow requirement is warranted, in that it would more effectively carry out the purposes of Title IV of ERISA and would not significantly increase the risk of financial loss to the Fund. Therefore, the PBGC hereby grants the request for an exemption for the bond/escrow requirement. The granting of an exemption or variance from the bond/escrow requirement of section 4204(a)(1)(B) does not constitute a finding by the PBGC that the transaction satisfies the other requirements of section 4204(a)(1). The determination of whether the transaction satisfies such other requirements is a determination to be made by the Fund sponsor.

Issued at Washington, DC, on this 9th day of January 2006.

**Bradley D. Belt,**

*Executive Director.*

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## RAILROAD RETIREMENT BOARD

### Proposed Collection; Comment Request

**SUMMARY:** In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

*Comments are invited on:* (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including

whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

*Title and purpose of information collection:* Application for Survivor Death Benefits: OMB 3220-0031.

Under Section 6 of the Railroad Retirement Act (RRA), lump-sum death benefits are payable to surviving widow and widowers, children and certain other dependents. Lump-sum death

benefits are payable after the death of a railroad employee only if there are no qualified survivors of the employee immediately eligible for annuities. With the exception of the residual death benefit, eligibility for survivor benefits depend on whether the employee was "insured" under the RRA at the time of death. If a deceased employee was not so insured, jurisdiction of any survivor benefits payable is transferred to the Social Security Administration and survivor benefits are paid by that agency instead of the RRB. The collection obtains the information required by the RRB to determine entitlement to and amount of the survivor death benefits applied for.

The RRB currently utilizes Form(s) AA-11a (*Designation for Change of Beneficiary for Residual Lump-Sum*), AA-21cert, (*Application Summary and Certification*), AA-21 (*Application for Lump-Sum Death Payment and Annuities Unpaid at Death*), G-131 (*Authorization of Payment and Release of All Claims to a Death Benefit or Accrued Annuity Payment*), and G-273a (*Funeral Director's Statement of Burial Charges*), to obtain the necessary information. One response is requested of each respondent. Completion is required to obtain benefits.

The RRB proposes non-burden impacting, editorial and formatting changes to Form G-273a and Form G-131. No other changes are proposed.

#### ESTIMATE OF ANNUAL RESPONDENT BURDEN

[The estimated annual respondent burden is as follows:]

Form Nos.	Annual responses	Time (min.)	Burden (hrs.)
AA-11a .....	400	10	67
AA-21cert (with assistance) .....	9,700	20	3,233
AA-21 manual (without assistance) .....	300	40	200
G-131 .....	600	5	50
G-273a .....	9,600	10	1,600
Total .....	20,600	.....	5,150

*Additional Information or Comments:* To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751-3363 or send an e-mail request to [Charles.Mierzwa@RRB.GOV](mailto:Charles.Mierzwa@RRB.GOV). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092 or send an e-mail to [Ronald.Hodapp@RRB.GOV](mailto:Ronald.Hodapp@RRB.GOV). Written comments should be received within 60 days of this notice.

**Charles Mierzwa,**

*Clearance Officer.*

[FR Doc. E6-385 Filed 1-13-06; 8:45 am]

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#### SECURITIES AND EXCHANGE COMMISSION

##### **Issuer Delisting; Notice of Application of Aquacell Technologies, Inc. To Withdraw Its Common Stock, \$.001 Par Value, From Listing and Registration on the American Stock Exchange LLC File No. 1-16165**

January 9, 2006.

On December 23, 2005, Aquacell Technologies, Inc., a Delaware corporation ("Issuer"), filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 12d2-2(d) thereunder,<sup>2</sup> to withdraw its common stock, \$.001 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex").

On December 14, 2005, the Board of Directors ("Board") of the Issuer unanimously approved a resolution to withdraw the Security from listing and registration on Amex and list the Security on the OTC Bulletin Board. The Issuer stated that the Board is taking such action following discussions regarding a letter received from Amex

regarding the Issuer's listing status and the benefits of maintaining the listing and the costs associated with listing on Amex.

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the State of Delaware, in which it is incorporated, and providing written notice of withdrawal to Amex.

The Issuer's application relates solely to withdrawal of the Security from listing on Amex and from registration under section 12(b) of the Act,<sup>3</sup> and shall not affect its obligation to be registered under section 12(g) of the Act.<sup>4</sup>

Any interested person may, on or before February 2, 2006, comment on the facts bearing upon whether the application has been made in accordance with the rules of Amex, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

<sup>1</sup> 15 U.S.C. 78l(d).

<sup>2</sup> 17 CFR 240.12d2-2(d).

<sup>3</sup> 15 U.S.C. 78l(b).

<sup>4</sup> 15 U.S.C. 78l(g).