Fund

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NOTICE TO CONTRIBUTING EMPLOYERS AND LOCAL UNIONS REGARDING CHANGES IN COLLECTIVE BARGAINING AGREEMENTS REDUCING THE RATE OF FUTURE BENEFIT ACCRUALS

The Board of Trustees (the "Board") of the American Federation of Musicians and Employers' Pension Fund (the "Fund") recently adopted new procedures in cases where collective bargaining agreements are modified in a manner that affects the rate at which participants earn or "accrue" future pension benefits under the Fund. These procedures are described in further detail in this notice.

Under new regulations recently issued by the Internal Revenue Service (the "IRS") effective January 1, 2004, the Fund, like all multiemployer pension plans, is required to give participants at least 15 days' advance written notice *before* any change in the Fund's plan of benefits that "significantly reduces future benefit accruals." Changes to a collective bargaining agreement that result in a "significant reduction" in the rate at which a participant accrues a benefit under the Fund are treated as changes to the plan of benefits. Accordingly, the Fund must advise affected participants of any change to a collective bargaining agreement that significantly reduces the rate at which future benefits are earned at least 15 days in advance of the effective date of such a change.

The Board has adopted the following two new procedures in response to the regulations:

Procedure 1: Contributing employers and local unions must notify the Fund of collective bargaining agreement changes that reduce the rate of contributions that the employer makes to the Fund for any covered employee *sufficiently in advance* of the effective date of the change to allow the Fund to provide affected participants with at least 15 days' advance written notice of the change.

For your convenience, the following example illustrates a common situation in which a collective bargaining agreement change affects future benefit accruals requiring the bargaining parties to provide advance notice to the Fund.

Example: AFM Local A and the XXX Corporation have a contract that requires contributions to the Fund at a contribution rate of 12.5% of covered compensation; the contract expires on December 31, 2004. On October 20, 2004 the parties agree that, effective as of January 1, 2005, the contribution rate under the parties' successive contract will be reduced to 11%. The bargaining parties must contact the Fund as soon as practicable after they have agreed upon the reduced contribution rate so that the Fund can determine whether a notice is required and, if so, prepare and timely send the notice.

This represents only one example of a collective bargaining agreement change that would require employers and local unions to provide advance notice of the change to the Fund. Other such changes include (without limitation) changes to the definition of "covered earnings" resulting in fewer contributions being made to the Fund than under the previous definition or changes restricting the definition of covered employees for whom contributions are required.

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Again, as a result of these new regulations it is **extremely important** that notice of all contractual changes that decrease the contributions made for any employee be forwarded to the Fund **immediately** (and as far in advance as possible of their effective date) to allow the Fund an adequate opportunity to prepare, review and distribute the required notice to affected Fund participants.

Procedure 2: Employers may not obtain refunds or credits against future contributions for "overpay ments" that result from retroactive changes in the contribution obligation (whether as a result of a retroactive change to a prior collective bargaining agreement or as a result of a contract modification that is retroactive to the expiration of a prior collective bargaining agreement).

For your convenience, the following is an example of a common situation in which this procedure would be applicable.

Example: AFM Local B and the YYY Corporation have a contract that requires contributions to the Fund at a contribution rate of 12.5% of covered earnings. The contract expired on December 31, 2003, but the parties have not completed the bargaining process for a renewal agreement, and the employer continues to make contributions under the terms and conditions of the expired collective bargaining agreement. In July 2004, the parties conclude a renewal agreement that is retroactive to January 1, 2004. One of the changes made in the new contract reduces the contribution rate to 11%. The YYY Corporation will not be entitled to receive a refund or to take a credit against future contributions for the 1.5% difference between the two contribution rates for the period between January 1, 2004 and July 2004. The bargaining parties should keep this rule in mind when negotiating a future contribution rate after a contract has already expired.

As a reminder, employers have *always* been prohibited from unilaterally taking credits against future contributions to recoup overpayments. If an employer concludes that it has made a mistaken contribution and is entitled to a credit, the employer must make a written request to the Board explaining why the credit should be allowed. The Board will analyze the request in light of the legal requirements governing refunds and credits (and will, of course, confirm the calculation of the alleged overpayment). If there was, in fact, a mistake with respect to which the law permits a refund or credit, the Board will decide whether to exercise its discretion to afford a credit to the affected employer and, if so, will so advise the employer and will discuss the credit to be taken.