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ON BEHALF OF SCHNUCK MARKETS, INC.
BEFORE THE JOINT SELECT COMMITTEE ON SOLVENCY OF MULTIEMPLOYER PENSION PLANS

TESTIMONY FOR THE HEARING ON
EMPLOYER PERSPECTIVES ON MULTIEMPLOYER PENSION PLANS

JUNE 13, 2018

Co-Chairman Hatch, Co-Chairman Brown, and Members of the Joint Select Committee ("Committee"). Thank you for the opportunity to participate in today's hearing on Employer Perspectives on Multiemployer Pension Plans. I am Mary Moorkamp, Chief Legal and External Affairs Officer at Schnuck Markets, Inc., in St. Louis, Missouri. I am appearing today on behalf of Schnuck Markets and the Association of Food and Dairy Retailers, Wholesalers, and Manufacturers ("Food Association"). I also hope to provide a voice to the more than 5,400 employers who contribute to multiemployer pension plans that are projected to be insolvent in 20 years or less.[1]

My message today is simple. This committee must succeed in its mission to solve the funding crisis facing the multiemployer pension system. We understand and fully appreciate the enormous challenges facing this Committee. But the consequences of failure are both real and significant – not only to retirees, but to employers, employees, and our local communities. To quote from the movie Apollo 13, "failure is not an option."

I. WHAT IS SCHNUCK MARKETS?

Schnuck Markets is a third-generation family-owned retail grocery chain. It was founded in Anna Donovan Schnuck's kitchen in 1939 as a way to feed her family and neighbors during the Depression. Back then, as today, she was seeking a way to nourish people's lives. From those humble beginnings, the company has grown to its current size of more than 13,000 teammates serving 100 grocery stores in five states: Missouri, Iowa, Indiana, Illinois and Wisconsin. More than 75% of our workforce is unionized. Our CEO is Todd Schnuck – a proud grandson of Anna Schnuck.

The Schnuck Family believes deeply not only in providing a quality and competitive grocery experience, but also in giving back to the community – both near and far. Three illustrations highlight this commitment. First, we are proud to say that in each community in our five-state region, we partner with local food banks and pantries to ensure that the hungry in our communities are fed. In St. Louis alone, one out of every three meals served by Operation Food Search comes from Schnuck Markets. That is annually almost $12 million in food donations. Second, when Hurricane Harvey devastated the Texas Gulf Coast last year, in one day's time—and at one store alone—our teammates collected over $23,000 in cash donations, and we filled

[1] NCCMP Multiemployer Pension Facts and the National Economic Impact, slide 3 (Jan. 5, 2018)

six tractor trailer loads with supplies, which Teamster drivers took to the Houston hurricane victims. Just to be clear, the closest Schnuck store to Houston, Texas is in Jefferson City, Missouri – over 750 miles away. Finally, we are proud to partner with Folds of Honor to provide scholarships to the children and spouses of fallen and wounded service members. To date—and the program has only been going since Memorial Day week—we are on pace to raise over $1 million by July 4th, which translates to over 200 scholarships. From 1939 to present day, our mission to nourish people's lives has been unwavering.

II. THE HISTORY OF SCHNUCK MARKETS AND CENTRAL STATES

A. Contribution History

Schnuck Markets entered the Central States Teamsters Pension Fund ("Central States") in 1958. The date is important, because it was many years before Congress enacted ERISA or the withdrawal liability rules. There was no "last man standing" concept or tax deduction limitation when we entered Central States. And there was no PBGC multiemployer fund. We did not "make a bad deal." These rules were forced upon us after-the-fact. We simply wanted to provide our drivers, mechanics and grocery warehousemen with a retirement benefit for the work they did for Schnuck Markets.

Since 1958, we have made all of our required pension contributions. I want to emphasize this point, because this Committee cannot get caught in the trap of trying to place blame for the crisis. Just like the participants who say – correctly so, I would add – that they are not to blame, nor are the contributing employers. Schnuck Markets has done everything we were supposed to do. No one is to blame, which is why everyone must share in the sacrifice to solve the crisis.

In 1958, our weekly contribution rate was $3 per week. At the time, this contribution was about 3% of our Teamster teammates' total compensation package (salary, retirement, and health and welfare benefits). There was no such thing as "withdrawal liability," and our liability was limited to funding our pension obligation for our teammates under our Collective Bargaining Agreement.

Fast forward to our situation today. Our contribution rate to Central States for 2018 is $342 per week. This contribution rate amounts to between 19% and 21% of our Teamster teammates' total compensation package. This compares to a compensation percentage of around 4% to 6% for our non-Teamster teammates. (In our industry, it is typical for a retirement contribution percentage to be in a 4 to 6% range or less. Anything above that puts a company at a significant competitive disadvantage.)

The $342 per week contribution level is 114 times the contribution rate in 1958. For some historical context, in 1958, a gallon of milk cost $1, a loaf of bread was 20 cents, and a gallon of gasoline was 25 cents. What would our customers and your constituents say today if they were paying $114 for a gallon of milk, $22.80 for a loaf of bread, and $28.50 for a gallon of gas? That is what has happened to our contribution rate in a "penny margin business."

B. Unfunded Liabilities – the "Last-Man Standing" Rule

A major reason our contribution rate has increased so much is because of the unfunded liability rules. In effect, each employer in a multiemployer plan is jointly and severally liable for a plan's unfunded liabilities. When an employer leaves a plan without paying its portion of the plan's unfunded liabilities (or if a plan suffers an investment loss following the employer's withdrawal), the responsibility for the unfunded liabilities not paid by the exiting employer shifts to the remaining employers. This is referred to as the "last-man standing" rule. The shift in unfunded liabilities drives up our contribution rates, and employers such as Schnuck Markets are forced to fund the retirement of workers who never worked for us – and in fact may have worked for our competitors or, more likely, completely outside our industry and region in which we operate. What this also means is that prudent and responsible employers who followed all the rules are the ones left holding the proverbial "bag."

This point is clearly illustrated by Central States. According to Central States, 59% of the retirees are orphans, meaning that their contributing employer is no longer paying into Central States. Moreover, 54% of our contribution dollars (or $185 of the $342 we contribute) go to pay for the benefits of participants that never worked for Schnuck Markets.

It is not as though our Teamster teammates will enjoy a retirement benefit commensurate with our contribution rate. Given Central States' projected insolvency in 2025, our teammates will be fortunate to receive the maximum PBGC guarantee of $429 per year of service (or $12,870 per year for a teammate with 30 years of service) – which is only about 1/3 of the benefit they otherwise would have received. And this is only if the PBGC multiemployer program remains in existence – which at this point is projected to be insolvent in 2025. When the PBGC program goes insolvent, Central States participants will receive next to nothing.

It is for this reason that in 2017, out of concern that our Teamster teammates would have nothing at retirement – despite years of our pension contributions to Central States – we established a 401(k) plan on their behalf. The 401(k) is a 100% company match up to 4% of the teammate's salary. This is in addition to the weekly contributions we continue to make to Central States. We see this as a way for our Teamster teammates to accumulate some type of retirement income, in addition to their own personal savings – as there will be little to nothing for them once Central States goes insolvent. This is our only bargaining unit that has a pension (albeit a potentially insolvent one) and a match feature to their 401(k). The Central States situation is unfair to our Teamster teammates and to all of our other teammates – and is untenable for Schnuck Markets in our highly-competitive, penny-margin business.

C. Withdrawal Liability

The unfunded liabilities not only affect our required contribution rate, but also create a staggering withdrawal liability.

Congress enacted the withdrawal liability rules in 1980. (As a reminder, we had been in Central States for 22 years at this point.) The withdrawal liability rules require employers that terminate their participation in a plan to make payments that cover their share of any unfunded benefits. The payments are based on each employer's proportional share of a plan's underfunding.[2]

According to the latest estimate from Central States, our share of the plan's unfunded vested benefits at the end of 2016 was in excess of $281 million. We expect that this number is significantly higher today, as the amount has nearly doubled in the last five years. Bear in mind that out of our 13,000 Schnuck Markets teammates, only about 200 are covered by Central States. For some context, our total Teamster payroll last year was $16.8 million. Yet, the withdrawal liability attributable to these 200 Teamster teammates is estimated at $281 million (more than 16 times last year's Teamster payroll). That averages to $1.4 million per Teamster teammate. While we expect to pay less than this amount (the liability is limited to 20 annual payments based on a formula that takes into account contribution base units and contribution rates during the 10 preceding years – referred to as the "20-year payment cap"), we are in unchartered waters given the magnitude of a Central States insolvency. From a policy perspective, it makes no sense that an employer whose contributions have increased 114-fold and has made all of its required contributions could have a withdrawal liability that even approaches this amount.

III. IMMEDIATE IMPLICATIONS TO SCHNUCK MARKETS

The combination of burdensome contribution requirements, the withdrawal liability rules, and the projected insolvency of Central States, has created the proverbial "albatross" around Schnuck Markets' "neck." And we are feeling the effects right now. This is not a "year 2025 problem." The Central States crisis already has an impact on our current operations and strategic long-term planning decisions. Specifically:

1. A reluctance to grow our business. If we open a new store, we have to hire a driver to service the store. Per our Collective Bargaining Agreement, that Teamster driver has to become a participant in Central States. This adds to our Central States contribution base, which increases our withdrawal liability. By our calculations, each new Central States participant increases our withdrawal liability amount by approximately $200,000—which is money they will never see at retirement.

2. Recruiting problems. The Central States crisis has created recruiting issues for Schnuck Markets. When we inform a prospective Teamster driver that his or her pension will come from Central States, they lose interest in the position. They know what's going on and don't want to depend on a withering fund for their retirement savings.

3. Distorting business decisions. Business decisions that otherwise make complete business sense – such as repositioning business assets in a particular market – cannot be made because of the impact of the withdrawal liability rules.

[2] By way of example, in general, if an employer's contributions to a plan comprise 10% of the plan's contributions, the employer's withdrawal liability is calculated as 10% of the plan's unfunded benefits.

4. Impact on our capital structure and cost of capital. The April 18th submission by the NCCMP (at p. 27) notes how "the insolvency of Central States and the liabilities that would be imputed to employers will be a topic for the accounting profession, including the FASB. Withdrawal liability has been a topic that many accountants have discussed with their employer clients, and those discussions become more real when you actually have a plan insolvency." Schnuck Markets has been required to make additional disclosures on our financial statements. And the financial accounting concerns could impact our capital structure. We rely on private placement debt and bank lines of credit to augment our cash flow. As Central States positions itself for insolvency, our lenders are becoming increasingly concerned about the impact of the insolvency on our financial statements. When assessing a company's financial strength, lenders and credit rating agencies factor potential pension withdrawal liabilities into their analysis, which affects our credit rating and our cost of capital. PBGC Director Reeder, in his testimony before this Committee, indicated that "the consensus of the PBGC is that most plans facing insolvency in the near future will not terminate," implying that Central States' insolvency will not negatively impact employers. Setting aside that Director Reeder's "consensus" assumes employers such as Schnuck Markets will continue contributing over $17,700 per year to an insolvent plan on behalf of an employee who may receive next to nothing, the real story is that we do not know how our lenders and auditors will react when Central States becomes insolvent. But I am not willing to wager the future of Schnuck Markets based on a PBGC "consensus view".

In summary, Schnuck Markets is forced to continue making contributions to a plan that is projected to be insolvent within seven years, from which our teammates will be fortunate if they receive any significant portion of their anticipated benefits. Already, the pending Central States insolvency is limiting our ability to expand our business and attract new drivers. It is distorting our strategic business decisions and impacting our capital structure. This is happening right now, not in year 2025.

IV. SCOPE OF THE LOOMING CRISIS

What I have described is the Schnuck Markets story. I know each of your Districts and States have similar compelling employer stories. The recently-released PBGC Projections Report states that there are about 130 multiemployer plans that are projected to be insolvent in 20 years or less ("Critical and Declining Plans"); and data collected by the NCCMP states that about 5,400 employers contribute to these plans. I have to think that the future of many of these employers is very uncertain if the 130 pension plans go insolvent.

In quantifying the insolvency impact of Central States and other similar plans, it is certainly reasonable to expect there will be a "contagion" effect. Economists and actuaries will have differing views as to the magnitude and extent of the effect; I can only speak for Schnuck Markets and the Food Association. Schnuck Markets contributes to a total of eight multiemployer plans. In three of these plans, we account for at least 25% of the contribution base. More broadly, the Food Association compiled plan information from 15 of its companies.

The 15 Food Association companies contribute to a total of 84 multiemployer plans. Of the 84 plans, 34 plans (40%) are currently "Red Zone" (critical) plans. If Central States goes insolvent, no one, including the PBGC, can say with any certainty how this will impact other Red Zone plans. I certainly can't. But it won't be positive. And even "Green Zone" plans are not immune from this phenomenon.

The 2017 PBGC Projections Report begins its overview of the multiemployer program with the following statement: "The current multiemployer system, covering approximately 10 million participants in about 1,400 plans, remains under severe stress."[3] We agree. And the stress is bound to worsen with the insolvency of the Critical and Declining Plans.

V. <u>POSSIBLE SOLUTIONS</u>

A comprehensive reform of the multiemployer system – addressing the shortcomings of the current system – offers the greatest opportunity to ensure the retirement benefits of participants and the continued participation by employers. But this Committee has less than six months to solve the myriad of complicated issues in the multiemployer system. In the meantime, plans such as Central States and the Mineworkers continue their downward spiral toward insolvency, retirees are reacting to fears of losing their retirement benefits, and contributing employers are preparing to take desperate measures in an effort to stave off what we consider an existential threat to our businesses.

The Food Association believes that the solution to the multiemployer funding crisis will require multiple phases. The fundamental rules governing multiemployer plans date back nearly 40 years and have not kept pace with the new economy, changing demographics, and today's mobile workforce. The system needs to be overhauled.

While a new multiemployer system is needed, this Committee must focus first and foremost on adopting measures to "stabilize the patient" before undertaking reforms to "cure the patient." The Committee must address the funding problems of those plans that are heading toward insolvency. The retirees, participants and employers in these plans face daunting and uncertain futures. These plans have the fewest options and the least amount of time to plan for contingencies.

Immediate action is needed to stave off the funding crisis, and any realistic solution must necessarily involve some Federal loan structure, coupled with contributions and sacrifices by all other stakeholders. Only after this financial crisis is addressed should the Committee address the systemic problems with the current system.

As noted by members of this Committee, the Critical and Declining Plans face a math problem that can only be solved with more assets, fewer liabilities, or some combination thereof. On the asset side, the contribution rates to plans such as Central States are already straining the resources of employers such as Schnuck Markets. As to investment returns, Central States would have to earn in excess of 14% per year (every year) to avoid insolvency. No realistic,

[3] At pg. 7.

sustainable level of increased employer contributions, investment returns, and benefit reductions can solve the funding woes of a plan such as Central States. The math simply doesn't work.

The unavoidable reality is that solving this problem will require some form of a long-term, low-interest rate Federal loan. To reduce the cost associated with a loan program, it must be accompanied by equitable and compassionate reductions in participant benefits and increased employer costs (e.g., increased PBGC premiums). The cost of a loan program has to be spread among all stakeholders in a fair and equitable manner, as none of the stakeholders are to blame. The retirees provided years of service in the workforce and did what was asked of them. The contributing employers made the contributions required by their collective bargaining agreements and the funds' rehabilitation plans. Taxpayers had no involvement in these arrangements. It is precisely because no one is to blame that all stakeholders must share in the financial responsibility in an equitable and compassionate manner.

At the same time, the loan program must be structured in such a way, and include the necessary safeguards, as the Committee deems necessary to ensure that the loan is repaid.

For those who question the Federal government's participation in the loan program, the government has a role inasmuch as the current situation is partly the result of well-intentioned, but misguided Federal policies. For example, from 1986 until the Pension Protection Act of 2006, the Federal tax law deduction limitations to multiemployer plans essentially prevented plans from establishing a financial "cushion." Because these contributions were required, plans that realized significant investment gains in the 1990s were forced to increase benefits in order to avoid triggering an excise tax on contributing employers. There was no mechanism to claw back the added benefits in subsequent years following a market downturn. The tax law never contemplated the consequences of these limitations on plans that suffered significant declines. Moreover, the withdrawal liability rules have discouraged new employers from entering these plans and have motivated companies to leave the plans early without paying their full withdrawal liability.

While we are not endorsing any specific loan program, we urge the Joint Select Committee to develop a program that (i) allows Critical and Declining Status plans to recover, (ii) can be implemented quickly, (iii) ensures the continued viability of the employers that contribute to these plans, (iv) shares the cost and sacrifice among all stakeholders in a fair and equitable manner, and (v) includes adequate safeguards to ensure their repayment.

Time is of the essence, I cannot stress that enough. November 30th is less than six months from now, and designing and implementing a sound, workable, and affordable loan program will take time.

The Joint Select Committee faces some very difficult challenges. Developing a solution won't be easy, the process won't be pretty, and if structured fairly, all of the stakeholders will dislike parts of it. But keep in mind that failure is not an option.

Schnuck Markets and the Food Association stand ready to work with you and do whatever we can to assist the Committee. Thank you again for the opportunity to share our views with the Committee.