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Sent: Tuesday, January 25, 2011 7:23 PM

To: EBSA, E-ORI - EBSA

Cc: Robert W Smiley, Jr.; Linda Carlisle; Larry Goldberg

Subject: Comments on Proposed Regulation Defining the Term "Fiduciary" under Section 3(21)(A) of the Employee Retirement Income Security Act

January 25, 2011

Mr. Fred Wong
Office of Regulations and Interpretations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: Comments on Proposed Regulation Defining the Term "Fiduciary" under Section 3(21)(A) of the Employee Retirement Income Security Act

Dear Mr. Wong:

I am the Managing Partner of a firm that, among our services, provides valuation services to ESOP companies and fiduciaries. Our firm has been providing these services for well over 20 years.

We have had the opportunity to directly observe the many benefits ESOPs provide for employees in the companies that sponsor ESOPs, and take our responsibilities to the ESOP trustees (and indirectly the plan and its participants) very seriously as they relate to our providing objective, independent opinions of fair market value for ESOP purposes.

We are aware of instances in which valuations for ESOP purposes have not met the high standards which we believe to be appropriate for ESOPs, and in which the employee-owners and/or their sponsoring companies have not been served well.

We believe the Department of Labor in the proposed regulation is seeking go beyond the existing requirements that qualified plan participants be properly served by their advisors, and fully support those efforts. In those parts of the proposed regulation dealing with valuations for ESOP purposes however, we believe the proposal is counterproductive to the best interests of ESOPs in general, and certainly counterproductive to the best interests of ESOP participants. We believe this is so because:

- a. The appropriate fiduciary for the ESOP participants is the trustee. The valuation advisor for the ESOP works as an advisor to the trustee in enabling the trustee to properly determine the value of the assets held in the ESOP trust. To establish the valuation advisor as an additional fiduciary will likely interfere with the objective

nature of this relationship and may present conflicts of interest which would be to the detriment of the plan participants;

- b. The ESOP valuation advisor is to be a qualified, independent party in the work they perform for the ESOP trustee (and indirectly the plan and its participants). To establish the valuation advisor as another fiduciary to the ESOP plan will significantly undermine that independence to the detriment of the plan participants; and
- c. We believe there is a great likelihood that establishing valuation advisors as fiduciaries to the ESOPs for which they provide valuation services will only (1) serve to cause the well-established, truly qualified valuation firms to exit this market rather than risk the exposure and cost this requirement would impose, and (2) that the fees for any remaining highly qualified firms choosing to serve this market would be very high – perhaps unaffordable to most employee-owned companies, both to the detriment of ESOP plan participants.

We respectfully request that the sections of the proposal that would cause ESOP valuation firms to be established as fiduciaries to the plans for which they provide valuation services be eliminated, and believe this would clearly be in the best interests of the ESOP plan participants.

Very truly yours,

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