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February 1, 2011

VIA ELECTRONIC MAIL - e-ORI@dol.gov

Office of Regulations and Interpretations
Employee Benefits Security Administration
Attn: Definition of Fiduciary Proposed Rule
U.S. Department of Labor
200 Constitution Avenue, N.W., Room N-5655
Washington, DC 20210

Re: **Comment to Definition of Fiduciary Proposed Rule**

Dear Sir/Madam:

We are writing to comment on the Department's proposed definition of fiduciary at ERISA Regulation section 2510.3-21(c) (the "Proposed Regulation"). Specifically, we ask that the Department provide clarification as to the meaning of "management" with respect to recommendations made in connection with management decisions.

Section (c)(1)(i)(A)(3) of the Proposed Regulation provides that a person provides "investment advice" if he or she "provides advice or makes recommendations as to the **management** of securities or other property." [Emphasis Added.] This provision is discussed in the preamble as follows: "the proposal at paragraph (c)(1)(i)(A)(3) makes specific reference to advice and recommendations as to the management of securities or other property. This would include, for instance, advice and recommendations as to the exercise of rights appurtenant to share of stock (e.g., voting proxies), and as to the **selection of persons to manage plan investments.**" [Emphasis added.] However, it is not clear what is meant by the terms "management" or persons who manages plan investments. This concept is used in ERISA in several areas with different meanings and consequences. For example, ERISA section 3(38) provides the definition of an investment manager that has discretionary investment control over plan assets. ERISA section 3(21)(A)(i) also refers to management, this time in the context of an adviser providing discretionary advice with respect to the management of plan assets. However, in some SEC guidance, the term "management" appears to include non-discretionary investment advice.

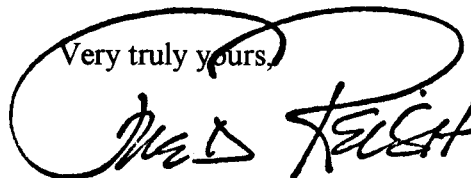
We would expect that the reference to management recommendations in the Proposed Regulation is intended to address recommendations to fiduciaries who will have discretion to make decisions to buy or sell investments and not those who merely advise plan fiduciaries when the plan fiduciaries make the ultimate investment decision. In that case, it would be helpful to specifically define "management" as discretionary, or alternatively, to cross-reference ERISA section 3(21)(A)(i).

Office of Regulations and Interpretations
February 1, 2011
Page 2

In any event, we believe that the Proposed Regulation (or at least the preamble) should be revised to clearly address the types of management recommendations constitute investment advice.

Thank you for your consideration of this issue.

Very truly yours,

A handwritten signature in black ink, appearing to read "C. Frederick Reish", written over a large, loopy circular flourish.

C. FREDERICK REISH

SXC/CFR:csk/shm