

# Egan-Jones Ratings Company

Tel. 610-642-9184 [khughes@Egan-Jones.com](mailto:khughes@Egan-Jones.com)

February 9, 2011

Office of Regulations and Interpretations  
Employee Benefits Security Administration  
Room N-5655  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210

Re: RIN: 1210-AB32, Definition of the Term "Fiduciary"

To Whom It May Concern:

Thank you for the opportunity to comment on the proposed rule changes to the definition of fiduciary under the Employment Retirement Income Security Act (ERISA) by amendment of 29 CFR 2510.3-21(c).

Egan-Jones, a Nationally Recognized Statistical Rating Organization, is also a proxy advisory firm. We provide to our institutional clients analysis and recommendations on the matters presented for shareholder vote and serves as voting agent for certain of those clients, voting as such clients direct. Egan-Jones is paid by institutional investors and does not provide corporate governance consulting services to issuers.

We strongly believe that Egan-Jones, in its role as a proxy advisory firm, does not act as a fiduciary as described in the proposed revision of the definition. Egan-Jones possesses none of the following attributes of fiduciaries: voting authority, voting responsibility, voting control, or investment authority. In our opinion, our proxy research and voting recommendations do not constitute investment advice to pension plans nor do our activities give us discretionary authority over the management of pension plans or the securities held by such plans. We do not provide investment advice, execute trades of securities or manage client money.

Egan-Jones is not a beneficial owner of securities and therefore possesses neither the responsibility nor the authority to make voting decisions nor are we subject to any ownership obligations. As voting agent for clients, we vote as those clients instruct but our clients always retain ultimate authority. In cases where the voting records of some Egan-Jones clients are similar to or consistent with Egan-Jones' recommendations, it can be explained by the congruence of such clients' corporate governance philosophies and their associated voting guidelines with those of Egan-Jones. It is our clients who cast votes based on the information and recommendations we provide, and we solely serve as their agent in the process.

Just as we in our capacity as a Nationally Recognized Statistical Rating Organization are exempt from consideration as a fiduciary, we believe that we should be similarly exempt as a proxy advisory firm. Nonetheless, should the Department of Labor believe that it is necessary to address potential conflicts of interest in the provision of proxy advice, we urge that Egan-Jones be added to the list of entities excluded from the definition of "fiduciary," on the basis that we do not provide consulting services to issuers, and are thus unconflicted.

Very truly yours,

Kent S. Hughes  
Managing Director