| Sonalysts, Inc. | P.O. Box 280 | 215 Parkway North | Waterford, CT 06385 | (860) 442-4355 | Fax (860) 447-8883 |

SONALYSTS

February 2, 2011

Via e-mail to e-ORI@dol.gov

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

Attn: Definition of Fiduciary Proposed Rule

Dear Sir or Madam:

Purpose. These comments are supplied in response to the proposed rule entitled "Definition of the Term 'Fiduciary'" published by the Department of Labor (the "DOL") in the *Federal Register* at Vol. 75, No. 204, p. 65263 on October 22, 2010 (the "Proposed Rule").

Background. I have for the last nineteen years served as Trustee for the Employee Stock Ownership Plan (the "ESOP") of Sonalysts, Inc. ("Sonalysts," or the "Company"). I am an "internal trustee." That is, in addition to my duties as Trustee I am also an employee of Sonalysts. The Company's ESOP was established in 1979, so it is among the oldest such plans in existence.

Sonalysts has been a very successful business, and there is no doubt that employee ownership is a leading reason for that success. During the period that I have been Trustee, the Company's sales have grown from $31 million to $63 million. Meanwhile, the share price has grown from $20.97 to $114.61, and the Company has achieved 100% employee ownership and debt-free status while investing millions of dollars in growth opportunities. We consider this to have been a substantial business achievement.

More than that, however, it has been a significant success for former partners (our internal term for employees is "partners"). Some 400 of them have received complete distributions of their ESOP accounts, and another smaller group has received partial distributions. In the aggregate, those individuals have collected more than $60 million in cash as a result of their participation in the Company's ESOP. In addition, the Company sponsors a second pension called the Retirement and Savings Plan (the "R&S Plan"), which is a combination of a profit sharing plan (the "retirement" element) and 401(k) (the "savings" element). The R&S Plan rivals the ESOP in size.

We at Sonalysts believe that employee ownership works, and that we are making a significant contribution to the retirement security of hundreds of partners and hundreds more of the members of their families.

We strongly desire that the Federal Government not do damage to employee ownership for existing companies, and that it not discourage others from embarking on this road that has been so successful for us. We are quite concerned that the Proposed Rule will cause both such forms of harm.

Comment One

The DOL has not provided a compelling case for changing longstanding law regarding the legal status of valuation firms that supply appraisals to ESOP trustees, nor has the DOL indicated what other solutions than making them into ERISA fiduciaries have been considered. The DOL should withdraw the Proposed Rule at least until it has accomplished both of those tasks, and it should perform those tasks in consultation with the employee ownership community.

To ensure that I remain abreast of developments affecting my responsibilities as Trustee, I have for many years regularly attended educational conferences sponsored by the National Center for Employee Ownership (the "NCEO"), the Beyster Institute, the ESOP Association, and the Employee Owned S Corporations of America ("ESCA"). I have also consulted or discussed employee ownership issues with various attorneys, accountants, valuation professionals, other trustees, plan administration firms, bankers, and so on.

At no time have I heard any intimation that anyone had made a proposal to bring within the ambit of the term "fiduciary" a firm that supplies an independent appraisal to an ESOP. Beyond that, at no time have I even heard anyone describe a systemic problem that would require a dramatic change to very longstanding interpretation of the obligations and responsibilities of valuation firms. I have from time to time read reports of judicial decisions that demonstrate one or another kind of problem, but that is the nature of any law or regulation. None of these cases individually, or collectively, has amounted to a demonstration of a systemic problem. Rather, they have shown that there really are not very many problems at all, and that the courts have been able to address within the contours of existing law and regulation those very few that do arise.

Therefore, I was quite surprised to read the following statement describing the Proposed Rule at page 65265 "...a common problem identified in the Department's recent ESOP national enforcement project involves the incorrect valuation of employer securities. Among these are cases where plan fiduciaries have reasonably relied on faulty valuations prepared by professional appraisers."

It seems odd that this "common problem" has not been described in the professional conferences of the employee ownership community. I have asked a number of professionals about this since the Proposed Rule was issued, and none of them was aware of the existence of any such "common problem." Moreover, the use by the DOL of the phrase "among these" does not quantify what portion of the unknown extent of the "common problem" is attributable to flawed valuations supplied to ESOP trustees. I know that the NCEO makes a concerted effort to track all legal issues related to employee ownership, and its analysis indicates that there are very, very few legal decisions at all regarding flawed appraisals. In fact, the very small number of such issues suggests that the valuation process has probably been a very considerable success.

Nor does the DOL indicate how the reliance of trustees in such situations could have been "reasonable" if the valuations have been so deeply flawed in so many situations as to require this draconian Proposed

Rule. Nor does the DOL indicate that it has consulted with any of the professional organizations or practitioners in the field to consider this "common problem." In this regard, it is noteworthy that the Internal Revenue Service (the "IRS") sends representatives to employee ownership conferences, and the sessions at which such representatives speak are always among the best attended. For example, last November four IRS representatives attended the ESOP Association annual conference, participating as panelists in three of the sessions. One DOL representative is listed in the attendance list, but he was not a panelist despite the fact that the Proposed Rule had been issued immediately prior to the conference and the attendees would have been extremely interested to learn more about the "common problem" and the extent of its effect on valuation of stock in ESOPs. Indeed, the brand new Proposed Rule was the topic of much speculation. We believe this was a missed opportunity by the DOL. Furthermore, we think the DOL should explicitly adopt a strategy of regularly presenting its most important concerns to the employee ownership community, and listening to the response, in such forums, just as the IRS has done.

It would seem that the DOL should present a compelling demonstration of a serious problem before it issues a regulation that changes dramatically a standard of law in effect for some 35 years now. That compelling demonstration should be arrived at in consultation with such organizations as the NCEO, the Beyster Institute, the ESOP Association, ESCA, and practitioners so that the benefit of their experience would be brought to bear. If a compelling problem so serious and widespread that it requires overturning 35 years of settled law is shown, the DOL should then go on to provide the range of solutions it has considered, supplying the pros and cons of each, so that those affected by the proposed change would be able to understand both the seriousness of the problem that requires a systemic solution as well as the range of possible approaches. Ideally, the results of this effort by the DOL would be made widely available in the employee ownership community before any change in regulation would even be proposed.

Right now, there is in the public record merely an unsupported assertion of an unquantified problem to address which the DOL proposes to apply such a startling and severe change in longstanding law without explanation of other alternatives considered.

We believe the DOL should withdraw the Proposed Rule and not propose any other rule change until after the matter has been addressed according to the process just described.

Comment Two.

The Proposed Rule will raise the cost of operating every ESOP, and would likely discourage the spread of employee ownership contrary to the intent of Congress in the enactment of ERISA and the continuing statutory improvements over the years. The Proposed Rule will also likely diminish the quality of appraisals because some leading appraisal firms are known to be giving consideration to exiting the business rather than become ERISA fiduciaries.

There is no doubt that valuation firms will raise the cost of appraisals in response to the Proposed Rule. We believe this will be a substantial increase in cost, which in turn will mean that plan assets (or assets of the plan sponsor whose stock is owned by the trust) will be diminished to pay this increased expense. Clearly, this is not in the interest of participants unless there is an extremely compelling reason. As set forth above, we have yet to learn what the scope of that problem might be, nor why increasing the costs of operating an ESOP would be the best approach if there is such an extensive problem. Moreover, those contemplating formation of an ESOP will have to consider this added cost. Some will choose not to proceed down the path of employee ownership at all, a choice at odds with what Congress intended when it strongly encouraged the concept in ERISA and in numerous improvements thereto that have been adopted over the years.

Our valuation firm, which is one of the leading and best known firms in the business, has told us that it is considering whether to withdraw from the line of work altogether rather than become an ERISA fiduciary. It cannot be in the interest of employee owners to have firms such as this withdraw, leaving behind lesser entities to perform such very important work.

Again, we believe the DOL -- in consultation with the employee ownership community -- needs to provide a compelling rationale that there is a problem requiring systemic change, and then review other options in detail, before it applies such a draconian approach as this.

We believe DOL should withdraw the Proposed Rule and not propose any other rule change until those principles have been applied.

Comment Three.

DOL should carefully review and respond in detail to the comments provided by the NCEO.

We wish to associate ourselves explicitly and in detail with the comments of the NCEO. They demonstrate the highest degree of care in consideration of the issues presented by the Proposed Rule.

We believe a starting point for DOL would be to withdraw the Proposed Rule, and then arrange an extended dialogue with the employee ownership community using the comments of the NCEO as the organizing document to begin that discussion.

Conclusion.

We at Sonalysts are very proud of our ESOP and of our role as the collective owners of our business. We extend our comments in that spirit, in the hope that damage to us and to the concept of employee ownership can be avoided.

We appreciate the opportunity to present those comments for your consideration.

Sincerely,

Lawrence F. Clark
Trustee