

February 10, 2011

By email delivery

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

Ladies and Gentlemen:

I am pleased to submit this comment letter on the Department's proposed regulation (the "Proposed Rule") regarding the term "fiduciary" under the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

I am a commercial real estate broker who transacts a significant volume of commercial real estate transactions in New York City on behalf of a Fortune 500 Commercial Real Estate firm. In this capacity, I am concerned about the implications of the Proposed Rule. I represent a number of benefit plans on the disposition and acquisition of commercial real estate, and I believe the Proposed Rule in its current form will severely limit the ability of a benefit plan to act in its best financial interest in leasing and sales transactions. For example, once a benefit plan hires a brokerage team, the benefit plan is prohibited from bidding or purchasing any property represented in the sale or managed by that brokerage firm. Additionally, if a benefit plan retains a brokerage firm to sell a building in which it has an interest, the benefit plan would not be able to consider any bidder represented by the brokerage firm. This is a significant limitation. I am employed by a full service commercial firm who has a dominant market share in the New York City marketplace. As such, it is inevitable that one line of business within my firm ends up on both sides of a deal. In these instances, our firm and our duty under our brokerage licenses impose a barrier to protect our respective clients from any conflict of interest. To preclude a benefit plan from obtaining the most economically sensible deal in these circumstances seems contrary to the protection your Proposed Rule is intended to impart. I do not believe this is the Department's intent.

Thank you for taking the time to consider my comment.

Respectfully,

Paul Leibowitz