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 dispositions and acquisitions in New York City on behalf of a Fortune 500 Commercial Real Estate firm. In this capacity, I have some major concerns over the implications of the Proposed Rule. It seems that the Proposed Rule will make brokers of all varieties ERISA fiduciaries to benefit plan they service. This is problematic because I work for a commercial real estate firm that has a dominant market share across many service lines. Frequently, I represent an owner for the sale of their building, when another leasing broker from my same firm is concurrently conducting leasing transactions on behalf of a tenant of that building. Our firm has strict practices in place to affect a "Chinese Wall" to maintain our fiduciary duties as brokers to our respective clients. However, under the Proposed Rule, we would be in violation of ERISA's rule that prohibits a fiduciary from acting on both sides of a transaction. This would result in limiting a benefit plan's opportunities and perhaps being precluded from acquiring or leasing an office space that would have otherwise been in their best financial interest.

I do you not believe this result is the intent of the Department's Proposed Rule, and I do not believe this would be in the best interests of benefit plans as it would put them at an economic disadvantage relative to other market participants

Thank you for taking the time to consider my comment.

Respectfully,

Paul Gillen