



June 16, 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.  
Attn: Comment on Public Hearing

The American Institute of Certified Public Accountants is pleased to provide additional comments to the U.S. Department of Labor on its proposed rule on Definition of the Term “Fiduciary” in follow-up to public hearings held on March 1-2, 2011. Our comments explain the role of the independent qualified public accountant (IQPA) in evaluating the valuation of an employee stock ownership plan (ESOP) in connection with the annual audit of an ESOP’s financial statements under ERISA, DOL regulations and professional auditing standards.

ERISA section 103(a) (3) (A) requires the plan administrator of an employee benefit plan (generally with over 100 participants at the beginning of the plan year) to engage an independent qualified public accountant to audit the financial statements using generally accepted auditing standards (GAAS). The auditor’s objective is to obtain sufficient appropriate audit evidence to provide the auditor with a reasonable basis for forming an opinion on the financial statements.

Authoritative guidance on auditing the fair value of investments is found in AICPA Statement on Auditing Standard (SAS) No. 101, *Auditing Fair Value Measurements and Disclosures* (AU section 328). Auditing guidance on using the work of a valuation specialist is contained in SAS No. 73, *Using the Work of a Specialist* (AU section 336) (both AU sections are attached to this letter).

#### Auditing Fair Value Measurements and Disclosures

AU section 328, *Auditing Fair Value Measurements and Disclosures*, states the auditor should obtain sufficient appropriate audit evidence to provide reasonable assurance that fair value measurements and disclosures are in conformity with generally accepted accounting principles (GAAP). In the absence of observable market prices, GAAP requires fair value to be based on the best information available in the circumstances. If observable market prices are not available, GAAP requires that valuation methods incorporate assumptions that marketplace participants would use in their estimates of fair value whenever that information is available without undue cost and effort. If information about market assumptions is not available, an entity may use its own assumptions as long

as there are no contrary data indicating that marketplace participants would use different assumptions.

When obtaining an understanding of the entity's process for determining fair value measurements and disclosures, the auditor considers, for example:

- Controls over the process used to determine fair value measurements, including, for example, controls over data and the segregation of duties between those committing the entity to the underlying transactions and those responsible for undertaking the valuations.
- The expertise and experience of those persons determining the fair value measurements.
- The extent to which the entity engages or employs specialists in determining fair value measurements and disclosures.
- The significant management assumptions used in determining fair value.
- The documentation supporting management's assumptions.
- The process used to develop and apply management assumptions, including whether management used available market information to develop the assumptions.
- The process used to monitor changes in management's assumptions.
- The integrity of change controls and security procedures for valuation models and relevant information systems, including approval processes.
- The controls over the consistency, timeliness, and reliability of the data used in valuation models.

### Using the Work of a Specialist

The auditor should consider whether to engage a specialist and use the work of that specialist as audit evidence in performing substantive tests to evaluate material financial statement assertions. If the use of a specialist is planned, the auditor should consider the guidance in AU section 336, *Using the Work of a Specialist*.

The auditor should consider the following to evaluate the professional qualifications of the specialist in determining that the specialist possesses the necessary skill or knowledge in the particular field:

- a. The professional certification, license, or other recognition of the competence of the specialist in his or her field, as appropriate;
- b. The reputation and standing of the specialist in the views of peers and others familiar with the specialist's capability or performance;
- c. The specialist's experience in the type of work under consideration.

The auditor should also evaluate the relationship of the specialist to the client, including circumstances that might impair the specialist's objectivity.

The appropriateness and reasonableness of methods and assumptions used and their application are the responsibility of the specialist. The auditor should (a) obtain an understanding of the methods and assumptions used by the specialist, (b) make

appropriate tests of data provided to the specialist, taking into account the auditor's assessment of control risk, and (c) evaluate whether the specialist's findings support the related assertions in the financial statements.

Ordinarily, the auditor would use the work of the specialist unless the auditor's procedures lead him or her to believe the findings are unreasonable in the circumstances. If the auditor believes the findings are unreasonable, he or she should apply additional procedures, which may include obtaining the opinion of another specialist.

We would be happy to discuss our comments with DOL representatives.

Sincerely,

A handwritten signature in black ink that reads "Ian MacKay". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

Ian A. MacKay  
Director  
AICPA Employee Benefit Plan Audit Quality Center