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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: Definition of ERISA Fiduciaries Under the Proposed Rule (29 CFR Part 2510) (the "Proposed Rule")

Ladies and Gentlemen:

We provide this letter to supplement the record relating to the public hearings held on March 1-2, 2011 regarding the Proposed Rule (the "**Hearings**").

Standard & Poor's Securities Evaluations, Inc. ("**SPSE**") provides its customers with values on equity securities and exchange-traded funds, which are derived from third-party, market-based sources, as well as standardized daily pricing evaluations on over three million different securities and financial instruments, derived predominantly by reference to market prices and market analyses. SPSE previously submitted a letter, dated February 3, 2011, commenting on the Proposed Rule (the "**February Letter**"). Exhibit A repeats the essential background information on our services provided in that prior comment letter.

Although pension plans do not constitute a significant part of our customer base, we expect that our valuation feeds are used by various parties to value interests (e.g., mutual fund shares) which are, in turn, owned by pension plans. Subsequent to the submission of our February Letter, SPSE and other pricing services began to appreciate that pricing information, including the daily pricing feeds generated by SPSE, may also be used to report account values for smaller plans such as Keoghs and individual retirement accounts ("**IRAs**"). Although SPSE was not represented at the Hearings, our personnel attended the Hearings where this concern was significantly highlighted by others.

During the Hearings, Mr. Tom Anderson of the Retirement Industry Trust Association noted that "the imposition of new regulations has to be carefully thought through so the intended consequences [are] achieved in a manner that is cost-effective for the intended beneficiary, the consumer"[1] and that "to eliminate fiduciary status for

[1] U.S. Department of Labor Employee Benefits Security Administration Hearing: Definition of Fiduciary Investment Advice, March 2, 2011 at 167:10-14.

mere reporters of asset values is critical to ensure the ongoing viability of self-directed IRAs and retirement plans."[2] As highlighted by Mr. Anderson, IRAs hold more than $4 trillion in retirement assets, representing one-quarter of total U.S. retirement wealth.[3]

Mr. Anderson also noted that the transmittal of valuation information is not a fiduciary function[4] and we believe that the imposition of fiduciary status on valuation services, such as SPSE, is inconsistent with ERISA's functional definition of a fiduciary.

Mr.Randy Hardock of Davis and Harman noted that the analysis on the costs imposed on IRAs by the Proposed Rule has been limited and that these costs will likely be passed on to consumers. [5]

Accordingly, we are writing to expand the record to include the following comments for the Department's consideration:

- We share Mr. Anderson's view that the valuation of securities is not, and was not intended to be, regarded as a fiduciary function, especially when such valuation is not individualized to the customer or the purpose for which it was generated. The unintended impact of classifying as fiduciary services non-individualized pricing and valuation services, is highlighted when one considers the manner in which these prices are required and used by and for small plans and IRAs that are several positions removed from the market providers of these prices.

- Valuations are fundamentally required by markets, end-users and the managers, trustees and custodians of pension plans, 401(k) plans, Keogh plans and IRAs who are required to obtain objective evaluations in order to comply with reporting requirements. The provision of objective, non-individualized valuations by third party valuation firms should not cause the provider to be deemed a fiduciary of a plan, especially when these values are often not provided to a plan directly.

- If valuation firms were deemed to be fiduciaries under the Proposed Rule, due to the broad variety of purposes for which these values are used and the lack of control valuation firms have over their customers' use of the valuation feeds, the valuation firms would not be in a position to fulfill their fiduciary responsibilities to the plans and accounts which ultimately use these values.

- Exposing valuation firms to fiduciary liability would significantly increase their cost of doing business and these increased costs would ultimately be passed on to plans and IRAs that use, directly or indirectly, these values. These increased costs would reduce retirement savings and have a disproportionate impact on small plans and IRAs which typically have small accounts and are less able to absorb these costs.

We believe that the Department of Labor shares the concern that the cost of the Proposed Rule may outweigh the intended benefits.[6] As further described in Exhibit A, we also believe that the Department did not

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[2] Ibid at 166:21-167:2.

[3] Ibid at 169:22-170:2.

[4] Ibid at 166:10-11.

[5] Ibid at 146:21-147:3.

[6] Ibid at 282:21-283:1.

intend valuation services, such as those provided by SPSE, to be deemed "investment advice" under ERISA or to cause the providers of such services to be fiduciaries for purposes of ERISA and the Internal Revenue Code (the "**Code**"). Therefore, we urge the Department to avoid the potential market upset and increase in cost to plans, particularly to the thousands of small plans and IRAs, by making clear in its final rule that valuation services, such as those provided by SPSE, will not constitute "investment advice" for purposes of ERISA or the Code. This can be accomplished, for example, by adding a provision to the rule clarifying that a party engaged in the business of publishing or providing valuations with respect to financial instruments will not be deemed to be providing "investment advice" when it publishes or provides the same valuations to multiple independent and bona fide users of those valuations, provided that such valuations are not provided or published for the purpose of influencing the pricing or other terms of any particular transaction or series of transactions.

We would be happy to provide any additional information or to discuss these issues further with you.

Sincerely,

Louis V. Eccleston

President, Standard & Poor's Securities Evaluations, Inc.

EXHIBIT A

Background Information Included in SPSE February Letter

As described in greater detail in our February Letter, SPSE provides its customers with independent, objectively determined and standardized daily pricing evaluations on over three million different securities and financial instruments, derived predominantly by reference to market prices and market analyses. SPSE also provides its customers with values on equity securities and exchange-traded funds, which are derived from third-party, market-based sources. SPSE does not provide individualized valuations to any customer, customer type or group of customers or tailor its valuations to a particular customer's investment objectives or financial situation. Rather, each of SPSE's customers receives the same value on a security for which they have subscribed to the pricing service . SPSE's customer base encompasses a wide variety of institutional investors, including banks, insurance companies and managers of mutual funds and other pooled investment vehicles, who use these values for purposes of reflecting net asset values to the market (including to pension plans and IRAs), executing purchases and redemptions of fund shares and calculating fund fees.

Under the current regulatory regime, our valuation services are not deemed to involve the provision of "investment advice" for purposes of ERISA. In light of the nature of the services we provide, we believe that the Department of Labor intended that the same treatment would be afforded these services under the Proposed Rule. However, as set forth in greater detail in our February Letter and in the accompanying letter, in light of the ambiguity of the Proposed Rule in this regard and the unintended harm to plans and IRAs that would result from deeming valuation firms fiduciaries under ERISA and the Code, we would urge the Department to include in the Proposed Rule provisions which make clear that the services provided by SPSE will not be deemed "investment advice".