GROOM LAW GROUP

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By Electronic Mail (e-ORI@dol.gov)
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

Re: Written Request to Testify and Outline of Proposed Testimony on Proposed Fiduciary Definition Rule under ERISA Section 3(21)(A)(ii).

Dear Sir or Madam:

In response to the Notice of Public Hearing on Definition of "Fiduciary," published in the Federal Register on January 12, 2011, we submit this written request on behalf of a group of providers of valuations and fairness opinions identified below (hereinafter, the "Firms")[1] to testify at the public hearing to be held on March 1st and possibly March 2nd. Mr. Jeffrey Tarbell, a Director with Houlihan Lokey, would be testifying on behalf of the firms on whose behalf we submitted a comment letter regarding the proposed regulation.

As we indicated in the Firms' letter, the Firms that have joined together provide services related to Employee Stock Ownership Plans ("ESOPs"). Some have advised companies that are considering the establishment of an ESOP, some have advised sellers of stock to ESOPs, and all have advised trustees and fiduciaries of ESOPs. Viewed collectively, they have worked on hundreds of ESOP formation transactions each year and perform annual valuations for a significant percentage, by number and value, of the

[1] The firms include: Chartwell Capital Solutions, Columbia Financial Advisors, Inc., ComStock Advisors, Duff & Phelps, LLC, Houlihan Lokey, Prairie Capital Advisors, Inc., and Stout Risius Ross.

roughly 11,500 ESOPs in the United States. The professionals in these Firms include the current chair and four former chairs of the ESOP Association's Advisory Committee on Valuation, a board member of The ESOP Association, a member of the board of directors of the National Center for Employee Ownership ("NCEO"), a member of the Business Valuation Committee of the American Society of Appraisers ("ASA"), a past President of the ASA, and a past chair of The Appraisal Foundation.

As indicated in the Notice of Public Hearing, Mr. Tarbell expects his testimony to take approximately 10 minutes, and Mr. Tarbell will be prepared to answer the Department's questions. Mr. Tarbell may remark upon any of the issues discussed in the Firms' comment letter, although time permitting, he expects to address the specific points below:

Outline of Proposed Testimony

I. The Proposed Regulation Should be Withdrawn:

A. The Long-Standing Rationale for Excluding Valuation and Fairness Opinion Providers from the Definition of ERISA Fiduciary Remains Valid Today.

B. There is a Lack of Evidence that Conflicts of Interest or "Incorrect" or "Faulty" appraisals" are a "Common Problem" for ESOP Valuations and Fairness Opinions.

C. The Proposed Regulation Would Have an Unintended Adverse Effect on the Level of Service Value in the ESOP Valuation and Fairness Opinion Market.

1. DOL's Assumption That Improvement in Service Value is Necessary to Address the Common Problem of "Incorrect" or "Faulty" ESOP Valuations Lacks Support.

2. The Proposed Regulation Would Increase Costs and Reduce the Number of Qualified Providers of Valuations and Fairness Opinions Participating in the Current ESOP Valuation and Fairness Opinion Market.

D. The Proposed Regulation is at Odds with Impartiality and Independence Requirements under the Internal Revenue Code and Professional Standards of Valuation Practice.

1. Under the Internal Revenue Code, Valuation Providers Must Provide an Impartial Opinion of Value.

2. Professional Valuation Associations and Applicable Valuation Standards Require Independence and Impartiality in Valuations.

E. The Relationship between an ESOP Trustee and a Valuation or Fairness Opinion Provider would be thrown into Confusion by Making the Provider a Co-Fiduciary.

II. If DOL Issues a Final Rule, the Firms Urge DOL to Take into Account the Following Recommendations:

A. DOL Should Carve Out a Non-Fiduciary Safe Harbor for Valuation and Fairness Opinion Providers Allowing Them to Perform Traditional ESOP-Related Services.

B. DOL Should Provide Guidance on Critical ESOP Valuation Issues.

C. DOL Should Exclude From Its Fiduciary Definition the Preparation of a Private Company ESOP Annual Valuation Used for Participant Accounting and Redemption.

D. DOL Should Expand the Sellers' Limitation to Include Providing Valuation Advice to a Sponsoring ESOP Company.

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The Firms would appreciate the opportunity for a Firm representative to share the Firms' views and concerns, as outlined above, and answer any questions concerning this important proposal.

Sincerely,

Groom Law Group, Chartered

By: _____
Edward A. Scallet

and

By: _____
Lars C. Golumbic