



April 11, 2011

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: Definition of the term "Fiduciary" under the Employee Retirement Income Security Act of 1974, as amended, Proposed Rule

Ladies and Gentlemen:

Reliance Trust Company ("Reliance") appreciates the opportunity to follow up with the Employee Benefits Security Administration ("EBSA") regarding the definition of "fiduciary" ("Proposed Regulation") under the Employee Retirement Income Security Act of 1974 ("ERISA"). We have reviewed the testimony transcript from the March 2, 2011 hearing ("Hearing") and have comments in addition to those put forth in the Reliance comment dated February 2, 2011 ("Reliance Comment"). In doing so, we are expressing our opinions as a professional ESOP trustee, a perspective we feel was not fully considered during the Hearing.

First, we reiterate our strong objection to the Proposed Regulation as stated in the Reliance Comment (Comment #84 on the DOL/EBSA website). We respectfully ask that EBSA consider the following reasons for our objection to the Proposed Regulation:

- The Proposed Regulation may result in fewer ESOP institutional trustees.
  - EBSA, relying on their vast experience in crafting regulations, expressed skepticism during the Hearing over similar arguments made by representatives of the ESOP valuation community; however, EBSA should consider that the ESOP Association website, for example, currently lists only nine institutional trust companies willing to serve as ESOP trustee. While anecdotal, the chief reason Reliance has heard for this dearth of willing trustees is the risk associated with serving as an ESOP fiduciary. As discussed more fully in the Reliance Comment, the likely increased costs (in the form of greater insurance premiums) that will impact multiple ESOP constituents (sponsors, valuers and trust companies), could very well result in even fewer ESOP trustees in the future, especially given an ever-escalating level of risk associated with ESOPs.
- Unmanageable ERISA Section 405 co-fiduciary liability.
  - Reliance has given this issue a great deal of thought and simply does not see a workable solution to divergent opinions of valuation under the Proposed



Regulation. Under the current fiduciary environment, there is generally a single person or entity, the ESOP trustee, which determines the share price of the ESOP. Including an additional fiduciary for this purpose only causes confusion and risk for both fiduciaries. Worse still is that neither fiduciary has control over the actions of the other fiduciary creating uncontrollable risk for them both. Of course, it is highly unlikely that this form of risk will go unnoticed by insurance carriers, thus exacerbating the costs mentioned above and in the Reliance Comment.

As a status-based approach, the expansion of the term “fiduciary” will likely have the intended effect on the 401(k) adviser market; however, production of an ESOP valuation is more complex than creating a 401(k) investment policy statement and associated investment lineup. Reliance agrees with other commentators that this same status-based approach, when applied to ESOPs, does little to improve valuations and that another regulatory approach should be adopted by EBSA if its goal is to improve the quality of ESOP valuations.

Finally, Reliance respectfully asks that EBSA, in the event it moves forward with implementation of the Proposed Regulation, add the limitation proposed in the Reliance Comment (“Limitation”). The Limitation offers the following advantages:

- The use of independent fiduciaries is well-established by EBSA as evidenced by various prohibited transaction exemptions in place (PTE 2003-39, for example).
- The Limitation would allow for a single third-party fiduciary for every ESOP, thus reducing or eliminating the co-fiduciary liability mentioned above.
- The Limitation would allow highly-regarded valuation firms to remain in the ESOP marketplace.

We certainly hope that this alternate approach is considered by EBSA. Please do not hesitate to contact me should you have any questions regarding this comment.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Guthrie".

Anthony A. Guthrie  
President & Managing Principal, Reliance Trust Company

A handwritten signature in black ink, appearing to read "Lance T. Studdard".

Lance T. Studdard  
Vice President, Reliance Trust Company