FIDUCIARY COUNSELORS

August 15, 2013

VIA EMAIL: e-OED@dol.gov

Employee Benefits Security Administration
Room N-5700
(Attention No. D-11681)
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Re: Proposed Amendments to Class Exemptions to Remove Credit Ratings

Ladies and Gentlemen:

Fiduciary Counselors Inc. ("Fiduciary Counselors") appreciates the opportunity to comment on the Proposed Amendments to Class Prohibited Transaction Exemptions to Remove Credit Ratings Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act. Fiduciary Counselors is a registered investment adviser whose sole line of business is providing independent fiduciary services for employee benefit plans. With our extensive knowledge of ERISA's fiduciary responsibility provisions and experience in financial and investment matters, we believe that we are in a unique position to offer some insight and thoughts on these Proposed Amendments.

We recognize that section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act requires the Department of Labor (the "Department") to remove any references to or requirement of reliance on credit ratings from its regulations and class exemptions and to substitute other standards of credit-worthiness as appropriate. We understand that the Department has conducted a thorough review of various alternatives to credit ratings and, in these Proposed Amendments, has proposed substitute language in lieu of credit ratings based, in part, upon standards developed by the Securities and Exchange Commission.

Fiduciary Counselors is not suggesting that the Department amend the proposed exemption language it developed as an alternative to credit ratings. Rather, we believe it may be useful for the Department to provide additional guidance for plan fiduciaries. In its preamble, the Department noted that "plan fiduciaries frequently do not possess the expertise or resources to engage in an analysis of the credit quality of a financial instrument or its issuer." Fiduciary Counselors notes that being a financial expert is not a precondition to becoming a plan fiduciary. As such, plan fiduciaries may not have the tools or expertise necessary to comply with these proposed changes. Additional guidance from the Department will help to ensure that plan fiduciaries are supplied with sufficient information in order to satisfactorily discharge their fiduciary responsibilities.

FIDUCIARY COUNSELORS INC.
700 12th Street NW • Suite 700 • Washington, DC 20005 • phone (202) 558-5130 • fax (202) 558-5140
www.fiduciarycounselors.com

Credit ratings, while often utilized in a simplistic fashion, are the compilation of a significant amount of data melded into a single subjective letter rating. The analysis begins with two profiles of the company: a business risk assessment and a financial risk assessment. The business risk assessment incorporates, among other factors, a review of the company's business lines, its competitors and competitive position, industry analysis, country risk (if applicable), and regulatory constraints. The financial risk assessment includes topics such as liquidity and short-term cash needs, cash flow generation, credit lines, capital structure, and corporate risk tolerance. Overlying both of these is a review of the strengths and weaknesses of the corporation's leadership. Finally, depending on whether the ultimate rating is for the issuer (i.e. the company) or a particular debt instrument, additional investigation made be necessary to determine the hierarchy of the debt instrument within the context of the overall capital structure and the resulting financial implications.

As the Department noted in the preamble to the proposal, this level of analysis may not be feasible for all plan fiduciaries. Therefore, it may be helpful for the Department to suggest consideration of certain financial ratios that are easily calculated and which plan fiduciaries can use to help guide their analysis. While these ratios may need to be supplemented by other considerations, they may assist a plan fiduciary in making its determination of credit-worthiness under the Proposed Amendments.

We note that Standard & Poor's Ratings Services ("S&P") provides certain ratios, along with their interpretation of risk, which the Department may find helpful in considering providing further guidance. These ratios are found in Table 2 of S&P's September 12, 2012 article "Methodology: Business Risk/Financial Risk Matrix Expended." (See Attachment 1) These ratios incorporate cash generation, profitability and capital structure. Specifically, the three ratios are:

> Funds from Operations ("FFO")/Debt – this ratio considers the operations ability to generate cash compared to its debt level.
>
> Debt/Earnings Before Interest, Taxes, Interest, Depreciation and Amortization ("EBITDA). EBITDA may be used as a proxy for cash from operations. This ratio compares the amount of debt to an entities' cash from operations.
>
> Debt/Capital – this ratio considers how much debt the entity holds compared to its total capital, which is normally defined as debt plus equity.

We are not suggesting that the Department formally adopt these ratios. Rather, we are suggested that ratios similar to these can be developed or referenced to assist plan fiduciaries in adhering to the new credit-worthiness requirements under the class exemptions.

As Fiduciary Counselors employs personnel that are highly proficient in credit evaluation as well as fiduciary matters, please do not hesitate to contact me at (202) 558-5135 if you would like to further explore the development of ratios that may be useful to plan fiduciaries in carrying out their fiduciary responsibilities.

Lastly, in light of Dodd-Frank's mandate that there should be less reliance on credit ratings by investors, we believe that it would be helpful to plan investors if the Department provides further guidance on whether plan fiduciaries can continue to primarily rely on credit ratings in considering investments that do not require the use of one of the class exemptions that are the subject of these proposed amendments. Specifically, can a plan fiduciary continue to rely on credit ratings in the non-exemption context and satisfy its fiduciary responsibilities under section 404 of ERISA or does the Department now contemplate a credit-worthiness analysis similar to that described in these amendments when a plan fiduciary is considering a new investment opportunity?

Thank you for your consideration this matter.

Sincerely,

Laura S. Rosenberg, CFA, CIRA, CDBV
Senior Vice President, Finance

Ivan Strasfeld
Senior Consultant