

# JONES DAY

51 LOUISIANA AVENUE, N.W. • WASHINGTON, D.C. 20001-2113  
TELEPHONE 202-879-3939 • FACSIMILE 202-626-1700

Direct Number: (202) 879-3840  
emiller@jonesday.com

JP011628  
356725-600001

July 5, 2007

## VIA E-MAIL & OVERNIGHT DELIVERY

Ms. Erin Sweeney  
Office of Regulations & Interpretations  
Employee Benefits Security Administration  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Room N5669  
Washington, D.C. 20210

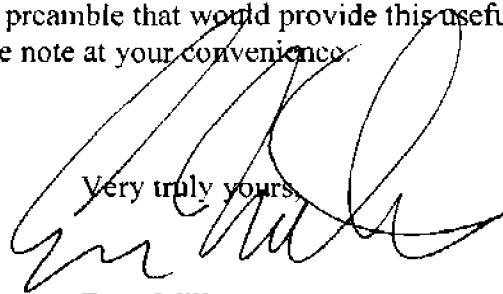
Re: Proposed Regulation § 2550.404c-5 -- Fiduciary Relief For Investments In Qualified  
Default Investment Alternatives

Dear Ms. Sweeney:

As you know, this law firm represents the National Association of Real Estate Investment Trusts (NAREIT). Under the terms of the proposed Qualified Default Investment Alternatives Regulation (the "Regulation"), each of the three forms of a qualified default investment alternative must offer either a fund product, portfolio or investment management service that is designed to achieve "long term appreciation and capital preservation through a mix of equity and fixed income exposures . . ." NAREIT believes that it would be consistent with the Regulation's objectives, and the Department's broader goal of promoting diversified investing in individual account plans, if the forthcoming Regulation's preamble were to clarify that this requirement of "a mix of equity and fixed income exposures" is not intended to prohibit fiduciaries from making available to plan participants all four of the generally-recognized investment asset classes – stocks, bonds, real estate, and cash. Indeed, readily available equity and fixed income options provide exposures to all four of these fundamental asset classes.

Accordingly, attached to this letter is a suggested footnote that NAREIT would like the Department to consider for the Regulation preamble that would provide this useful clarification. Please feel free to contact me to discuss the note at your convenience.

Very truly yours,



Evan Miller

cc: Tony Edwards (w/cnc.)

WA1-2835300v1

7/05/07

**SUGGESTED LANGUAGE FOR PROPOSED FOOTNOTE IN PREAMBLE TO  
FORTHCOMING DOL FINAL REGULATION ON QUALIFIED DEFAULT  
INVESTMENTS**

\_\_\_/ The requirement in the Final Regulation that each of the three approved types of investment products or portfolios be designed “to provide . . . long-term appreciation and capital preservation through a mix of equity and fixed income exposures” (see 29 C.F.R. § 2550.404c-5(e)(5)(i), (e)(5)(ii), (e)(5)(iii)) is not intended to restrict fiduciaries from selecting products or portfolios that include exposure to all four of the asset classes generally accepted as comprising the fundamental building blocks of a well-diversified investment portfolio – (1) stocks (2) bonds (3) real estate, and (4) cash. See Burton G. Malkiel, Ph.D., “The Random Walk Guide to Investing,” p.11, W.W. Norton & Company (2007); see also Mark J.P. Anson, “Handbook of Alternative Assets,” p.7-8, Wiley (2006). The Department notes that currently available equity investment options provide ample opportunity for exposure to real estate directly and indirectly through REITS or other real estate securities, and that currently available fixed-income options provide ample opportunity for exposure to cash-ready forms of investment. Moreover, the Department recognizes that many academic economists and industry professionals view real estate equity investment through REITs and other real estate securities as an efficient method for retirement plan participants to invest in the real estate asset class. See Jeremy Siegel, “The Future for Investors: Why the Tried and True Triumph Over the Bold and the New,” p.246, Crown Business (2005); see also William Reichenstein, “Tax-Efficient Saving and Investing,” p.13, TIAA-CREF Institute (2006). Investment products that offer exposure to all four fundamental asset classes also are consistent with the Final Regulation’s requirement that the plan itself offer the opportunity to invest in a “broad range of investment alternatives” within the meaning of 29 C.F.R. § 2550.404c-1(b)(3).