

August 2, 2006

Perspective Partners, LLC
One Grove Street, Suite 122A
Pittsford, N.Y. 14534

Dear Sir or Madam:

You have asked us to review the materials produced by Perspective Partners, LLC (“Perspective Partners”) consisting of the Retirement Check-up Report, Retirement Review Report and Plan Sponsor Report (collectively, the “Reports”) which may be used by clients of Perspective Partners, including without limitation broker-dealers and financial advisers (“PP Clients”), to provide investment assistance to participants in, and sponsors of, participant-directed defined contribution plans (each a “Plan”).¹ Specifically, you have asked us to advise you as to whether the information contained in the Reports constitutes “investment advice” for purposes of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”).

As discussed in detail below, we believe that the information contained in the Reports does not, in and of itself, constitute “investment advice” as defined in Section 3(21)(A)(ii) of ERISA and as described in Department of Labor Interpretive Bulletin 96-1 (the “IB”). Accordingly, we believe that neither Perspective Partners, nor any PP Client that provides the Reports, or otherwise makes the Reports available, to participants in, or sponsors of, Plans should be deemed to be a fiduciary under ERISA solely by reason of providing such information to participants or Plan sponsors.

The Reports

The Reports are designed to be used in connection with Plans, primarily to provide retirement savings assessment and portfolio planning tools. The Reports generally include the following:

- (1) The “Retirement Check-up Report” provides basic information to a Plan participant, including information about the participant’s current account balance and asset allocation, and, based on various assumptions, also contains projections

¹ This letter and the conclusions herein are based on the forms of the Reports reviewed by us as of the date hereof. Any changes to the content of the Reports could cause us to reach different conclusions.

Perspective Partners, LLC

August 2, 2006

Page 2

of the participant's ultimate Plan benefits and social security benefits. Based on such information and certain other assumptions, the Report provides an evaluation of the participant's financial position for retirement and makes some general recommendations (none of which relate to specific investments) for meeting retirement goals.

- (2) The "Retirement Plan Report" provides more detailed information to a Plan participant regarding the participant's projected retirement income needs and current projected retirement income (from the Plan and social security), (again, based on various assumption), and also includes more detailed information about the participant's current asset allocation within the Plan account. This report also provides a more detailed evaluation of the participant's financial position for retirement and makes some general recommendations (none of which relate to specific investments) for meeting retirement goals.
- (3) The "Plan Sponsor Report" provides information to a Plan sponsor regarding the demographics (*i.e.*, age range and years to retirement) of Plan participants, current contributions levels (viewed from various perspectives such as by age ranges or compensation ranges), and asset allocations (again, from various perspectives). The Report analyzes that information and notes potential concerns and possible solutions.

Relevant Legal Background

Under Section 3(21)(A)(ii) of ERISA, a person is a fiduciary to the extent that he or she "renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or the property of [a] plan." A person will be deemed to be rendering investment advice under this provision if (i) such person renders advice to the plan as to the value of securities or other property, or makes recommendations as to the advisability of investing in, purchasing or selling securities or other property, (ii) on a regular basis, (iii) pursuant to a mutual agreement, arrangement or understanding between such person and the plan or a plan fiduciary that (a) such advice will serve as the primary basis for investment decisions with respect to plan assets, and (b) such person will render individualized investment advice to the plan based on the particular needs of the plan. 29 C.F.R. §2510.3-21(c)(1).

The Department of Labor (the "DOL") has issued the IB describing the circumstances under which the provision of investment-related information and materials to participants in plans will not cause the provider to be rendering investment advice, in which event such provider will not be deemed a "fiduciary" of the plan within the meaning of ERISA on account of providing such information and materials. The IB specifically identifies four categories of information and materials that may be furnished to participants, either separately or in combination, that will not be considered "investment advice" within the meaning of Section

3(21)(A)(ii) of ERISA, regardless of who furnishes the information or the form of communication. These categories are:

- **Information about the plan** and the benefits of participating in the plan, and information describing the investment options under the plan, where no reference is made to the appropriateness of any particular option for a participant;
- Information designed to educate a participant about general financial and investment concepts (such as diversification, risk, and return) as well as information about estimating future retirement needs and other **general financial and investment information** which is not tied to particular investment options available under the plan or the participant's individual circumstances;
- **Asset allocation models** designed for a group of hypothetical individuals with different time horizons and risk profiles, if certain conditions are satisfied; and
- **Interactive materials** (such as questionnaires and computer software), which enable a participant to estimate future retirement income needs and assess the impact of different asset allocations on retirement income if certain conditions are satisfied.

Discussion

Each of the participant-oriented Reports is a combination of information and materials that is within the scope of an available safe harbor under the IB. The portions of these Reports that provide information about the relevant Plan (e.g., current Plan account information and the benefits of Plan participation or increasing Plan contributions) is the type of information described in the first bullet above and therefore falls within the first safe harbor of the IB. The general financial and investment information provided by these Reports (e.g., information about diversification and asset classes) and estimates of future retirement needs is the sort of information described in the second bullet above and therefore falls within the second safe harbor of the IB.²

² While these Reports are not "interactive" (i.e., recipients of the Reports do not have the ability to manipulate the information contained in the Reports), the Reports do provide a means for a participant to estimate future retirement income and analyze the level of future savings that will be required to achieve the participant's retirement goals. This information provided through the Reports is similar to that described in the fourth safe harbor.

The Plan sponsor-oriented Report is merely a compilation of statistical information based upon the current Plan demographics, participant elections and investment holding, as well as some general investment information. It is not designed to provide information regarding the value or performance of the current Plan investment options or any alternative investment options; nor does it include any recommendations regarding the selection or retention of Plan investment options by the Plan sponsor. We do not believe that this sort of statistical information constitutes investment advice for purposes of ERISA.

Conclusion

Based upon and subject to the foregoing, we believe that the information provided in the participant-oriented Reports falls within certain of the safe harbors provided by the IB. Accordingly, we believe the information provided by these Reports should not be considered to be “investment advice” under Section 3(21)(A)(ii) of ERISA. Nor do we believe that the information provided by the Plan sponsor-oriented Reports constitutes investment advice. Consequently neither Perspective Partners nor any PP Client who provides such information to participants in a Plan should be deemed to be a fiduciary under ERISA solely by reason of providing the Reports to participants or Plan sponsors.

We note that the conclusions herein relate solely to the provision of the Reports as described herein. Any additional actions taken, or additional information provided, in connection with the Reports (*e.g.*, if a PP Client were to use the Reports as one component of a broader presentation to a Plan participant) could constitute “investment advice” for purposes of ERISA, depending on all of the relevant facts and circumstances of the particular situation.

The foregoing discussion and conclusions are based upon ERISA as in effect as of the date hereof and existing administrative interpretations thereof, all of which are subject to change. No assurance can be given that our conclusions would remain the same if any of the foregoing authorities were changed in the future or if new guidance were issued. In particular, we have relied significantly on the IB; if it were to be revised, withdrawn, or superseded, our analysis and conclusion would have to be reconsidered. Further, while we believe the conclusion set forth herein is a correct interpretation of ERISA in the context of the facts presented, there can be no assurance that the DOL or a court presented with these facts would agree with our conclusion.

This letter, which is addressed to Perspective Partners, may be provided to current and prospective PP Clients, but may not be provided to any other party without our prior written consent.

IRS Circular 230 Disclosure

To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or

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Perspective Partners, LLC

August 2, 2006

Page 5

written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

Sincerely,

A handwritten signature in cursive script that reads "Goodwin Procter LLP".

Goodwin Procter LLP

LTG:kem

August 29, 2007

Perspective Partners, LLC
One Grove Street, Suite 122A
Pittsford, N.Y. 14534

Dear Sir or Madam:

As you know, we have previously provided you a letter dated August 2, 2006 (the "2006 Letter") regarding whether the information contained in the materials produced by Perspective Partners, LLC ("Perspective Partners") consisting of the Retirement Check-up Report, Retirement Review Report and Plan Sponsor Report, each in the form submitted to us in August 2006 (collectively, the "Reports"), constitutes "investment advice" for purposes of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). The 2006 Letter concluded that the information contained in the Reports does not, in and of itself, constitute "investment advice" as defined in Section 3(21)(A)(ii) of ERISA and as described in Department of Labor Interpretive Bulletin 96-1 (the "IB"). You have recently asked us whether the enactment of the Pension Protection Act of 2006 (the "PPA") would change the conclusion that we reached in the 2006 Letter.

The PPA amended ERISA to, among other things, add Sections 408(b)(14) and 408(g) which together provide a statutory exemption relating to the provision of investment advice (*i.e.*, if the conditions of Section 408(g) are satisfied, Section 408(b)(14) will provide exemptive relief from ERISA's prohibited transaction rules for the provision of investment advice and related matters). By contrast, the purpose of the 2006 Letter was to determine whether the information contained in the Reports constituted investment advice and, as described above, we concluded that it did not. Accordingly, Sections 408(b)(14) and 408(g) of ERISA do not impact our analysis in this regard. In addition, the Department of Labor (the "DOL") issued Field Assistance Bulletin No. 2007-01 in February 2007 regarding the impact of Sections 408(b)(14) and 408(g) of ERISA (the "FAB") on its prior guidance in this area. In the FAB, the DOL specified that the enactment of Sections 408(b)(14) and 408(g) of ERISA did not affect its prior guidance relating to investment advice and specifically noted that the IB (which was the basis of our conclusion in the 2006 Letter) continued to represent the views of the DOL.

Accordingly, we are of the view that the enactment of the PPA does not change the conclusion that we reached in the 2006 Letter.

GOODWIN | PROCTER

Perspective Partners, LLC
August 29, 2007
Page 2

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To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

Sincerely,

Goodwin Procter LLP
Goodwin Procter LLP