



JAN 17 2012

The Honorable Gary Gensler
The Honorable Jill Sommers
The Honorable Bart Chilton
The Honorable Scott D. O'Malia
The Honorable Mark Wetjen
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Final Business Conduct Standards Rules Adopted January 11, 2012

Dear Chairman Gensler and Commissioners Sommers, Chilton, O'Malia and Wetjen:

The Department of Labor has reviewed the final draft of the Commodity Futures Trading Commission's ("CFTC's") rules to implement Section 4s(h) of the Commodity Exchange Act pursuant to Section 731 of Title VII of the Dodd-Frank Wall Street Reform and The Consumer Protection Act of 2010. These rules prescribe external business conduct standards for swap dealers and major swap participants and will have a direct impact on ERISA-covered plans and plan fiduciaries. I very much appreciate the care that the CFTC has taken to coordinate its work on this project with the Department of Labor in light of the Department's regulatory and enforcement responsibilities with respect to ERISA fiduciaries. As we have worked with your staff, we have paid particular attention to the interaction between the original business conduct proposal and the Department's own fiduciary regulations and proposals.

The Department of Labor has reviewed these final business conduct standards and concluded that they do not require swap dealers or major swap participants to engage in activities that would make them fiduciaries under the Department of Labor's current five-part test defining fiduciary advice 29 C.F.R. § 2510.3-21(c). In the Department's view, the CFTC's final business conduct standards neither conflict with the Department's existing regulations, nor compel swap dealers or major swap participants to engage in fiduciary conduct. Moreover, the Department states that it is fully committed to ensuring that any changes to the current ERISA fiduciary advice regulation are carefully harmonized with the final business conduct standards, as adopted by the CFTC and the SEC, so that there are no unintended consequences for swap dealers and major swap participants who comply with these business conduct standards.

We look forward to continuing to work with you on these important projects and are grateful for your staff's thoughtful efforts to harmonize our work.

Sincerely,



Phyllis C. Borzi

Assistant Secretary, Employee Benefits Security Administration