



APR 12 2016

The Honorable Mary Jo White
The Honorable Kara M. Stein
The Honorable Michael S. Piwowar
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Final Business Conduct Standards Rules

Dear Chair White and Commissioners Stein and Piwowar:

Pursuant to your request, the Department of Labor (Department) reviewed the final draft of the Securities and Exchange Commission's (SEC) rules that would implement section 15F of the Securities Exchange Act of 1934. These rules prescribe external business conduct standards for security-based swap dealers and major security-based swap participants pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. The SEC's rule is similar to the final rule issued by the Commodity Futures Trading Commission (CFTC) on February 17, 2012, that implemented section 4s(h) of the Commodity Exchange Act. Both the SEC and CFTC rules would classify employee benefit plans as "special entities" under each agency's relevant version of the business conduct standards.

I appreciate the care that the SEC has taken to coordinate its work on this project with the Department 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 SEC's business conduct standards proposal and the Department's own fiduciary regulation and proposals.

It is the Department's view that the draft final business conduct standards do not require security-based swap dealers or major security-based swap participants to engage in activities that would make them fiduciaries under the Department's current five-part test defining fiduciary investment advice. 29 CFR § 2510.3-21(c). The standards neither conflict with the Department's existing regulations, nor compel security-based swap dealers or major security-based swap participants to engage in fiduciary conduct. Moreover, the Department's recently published final rule amending ERISA's fiduciary investment advice regulation was carefully harmonized with the SEC's business conduct standards so that there are no unintended consequences for security-based swap dealers and major security-based swap participants who comply with the business conduct standards. As explained in the preamble to the Department's final rule, the disclosures required under the SEC's business conduct rules do not, in the Department's view, compel counterparties to ERISA-covered employee benefit plans to make investment advice recommendations within the meaning of the Department's final rule or otherwise compel them to act as ERISA fiduciaries in swap and security-based swap transactions conducted pursuant to section 4s(h) of the Commodity

Exchange Act and section 15F of the Securities Exchange Act of 1934. See 81Fed. Reg. 20946, 20984-20986, 21000 (April 8, 2016).

We stand ready to continue to work with you on these important issues, and are grateful for your staff's thoughtful efforts to harmonize our work.

Sincerely,

A handwritten signature in blue ink that reads "Phyllis C. Borzi". The signature is written in a cursive style with a blue ink color.

Phyllis C. Borzi
Assistant Secretary