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Equal Opportunity Housing and Equal Opportunity Employment

David A. Stawick, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: RIN 3038-AD25 (Business Conduct Standards for Swap Dealers and Major Swap
Participants With Counterparties)

Dear Mr. Stawick:

The Commodity Futures Trading Commission (the "Commission") has proposed rules as required under the Dodd-Frank Act providing business conduct standards for swap dealers and major swap participants with counterparties, including "Special Entities." The Minnesota Housing Finance Agency (the "Agency") has certain concerns about the proposed rules and appreciates the opportunity to present them for consideration by the Commission.

Minnesota Housing is an agency of the State of Minnesota, established in 1971 pursuant to Minnesota Statutes, Chapter 462A, as amended, and is therefore a Special Entity for purposes of the proposed rules. The Agency is authorized to issue bonds for the purpose of acquiring mortgage loans to persons and families of low and moderate income for the purchase of residential housing and to finance multifamily housing developments for persons of low and moderate income. As of December 31, 2010, there were approximately \$2.14 billion in aggregate principal amount of the Agency's single family mortgage bonds outstanding under three bond resolutions and approximately \$171 million in aggregate principal amount of the Agency's rental housing bonds outstanding under two bond resolutions. In addition to issuing bonds, the Agency also invests substantial additional resources in affordable housing, comprising federal funds, state appropriations and its own resources. During the 2010-2011 biennium, the Agency will invest more than \$1.4 billion and address a continuum of affordable housing needs for an estimated 97,000 households or units in the state. The Agency would rank as the sixth largest bank in the state if ranked among commercial banks.

Since 2003, in connection with the issuance of certain of its single family mortgage revenue bonds, the Agency has entered into interest rate exchange swaps with three different counterparties for the purpose of converting its variable rate liability on such bonds to a fixed interest rate payable to the swap counterparty. As of January 1, 2011, the Agency had 14 swaps outstanding with original and current notional amounts of \$486,090,000 and \$411,415,000, respectively. (The variable rate indebtedness of the Agency (and corresponding current notional amount) equals approximately 19% of

the Agency's long-term indebtedness.) Because the Agency desires to match as closely as possible the current notional amount of a swap to the then outstanding principal amount of the associated bonds (which are subject to redemption upon prepayment of the underlying single family mortgage loans), and in some cases must do for federal tax purposes to preserve the tax exemption of interest on the associated bonds, the Agency has purchased various levels of optionality in each swap to address this situation. While the Agency has not entered into a swap transaction since 2009 due to market and other conditions, the Agency regards the ability to do so as an important tool in providing competitive mortgage loans to first-time homebuyers.

The Agency is concerned that the rules as proposed may discourage or prevent swap counterparties from providing the Agency with proposed swap structures and options to address the Agency's swap needs for fear of being deemed an advisor to a Special Entity and thus assuming the responsibilities and liabilities the rules propose. Under the proposed rules, a swap dealer may provide only general transaction, financial or market information or respond to a competitive bid request to avoid being deemed an advisor to a Special Entity. (75 Fed. Reg. 80650; proposed rule 23.440(a)) If the swap dealer makes a recommendation about a specific transaction, it is deemed to be an advisor to the Special Entity. An advisor to a Special Entity has obligations under Dodd-Frank and the proposed rules to act in the best interests of the Special Entity, a standard that substantially increases the compliance work and liability of the swap dealer and that may well discourage specific advice regarding potential swaps.

The Agency has never regarded proposed swap structures from a swap dealer as advice from a fiduciary to the Agency, but simply proposals to be evaluated by the Agency and its independent financial and legal advisors. The Agency has engaged and intends to continue to engage a qualified swap advisor, independent of its swap counterparties, to advise it on swap proposals. And, under Dodd-Frank and the proposed rules, each Special Entity must engage a qualified swap advisor independent of the swap dealer that will be the counterparty to the Special Entity. Consequently, to treat specific proposals from a swap dealer to a Special Entity as advice triggering a fiduciary duty is unnecessary (Special Entities do not need two qualified swap advisors) and disruptive of traditional practice in the municipal bond industry that has generally served issuers (including the Agency) well. The Commission should amend the proposed rules to provide that an advisory relationship to a Special Entity arises only when a swap dealer is formally engaged in that capacity.

Thank you for consideration of our comments.

Very truly yours,

A handwritten signature in black ink that reads "Patricia Hippe". The signature is written in a cursive, flowing style.

Patricia Hippe
Deputy Commissioner