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August 8, 2011

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

Re: CFTC Proposal on Protection of Cleared Swaps Customer Contracts and Collateral;  
Conforming Amendments to the Commodity Broker Bankruptcy Provisions; RIN 3038–AC99

Dear Mr. Stawick:

The American Council of Life Insurers (“ACLI”) is a national trade association with over 300 members that represent more than 90 percent of the assets and premiums of the life insurance and annuity industry. Life insurers actively participated in the legislative dialogue concerning regulation of derivatives markets and have provided constructive input on proposed rulemaking implementing Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”). ACLI appreciates the opportunity to address the proposed rules on protection of cleared swaps contracts and collateral.

Life insurers manage asset and liability risks by hedging with derivatives instruments, and are among the financial end users that will be affected by the proposed rules. We strongly support the legislative objectives of the Dodd-Frank Act in Title VII that are designed to ensure stability of the financial markets.

### **Summary of Proposal**

The proposal would implement provisions in Title VII of the Dodd-Frank Act that require each futures commission merchant (“FCM”) and derivatives clearing organization (“DCO”) to “segregate” customer collateral supporting cleared swaps.<sup>1</sup> The proposed rules would impose requirements on FCMs and DCOs regarding the treatment of cleared swaps customer contracts

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<sup>1</sup> The release explains that under the Dodd-Frank Act, the FCM and the DCO (i) must hold such customer collateral in an account (or location) that is separate from the property belonging to the FCM or DCO, and (ii) must not use the collateral of one customer to (A) cover the obligations of another customer or (B) the obligations of the FCM or DCO.

(and related collateral), and make conforming amendments to bankruptcy provisions applicable to commodity brokers under the Commodity Exchange Act (the “CEA”).

The CFTC has proposed that each FCM and DCO be required to enter (or “segregate”), in its books and records, the cleared swaps of each individual customer and relevant collateral. The CFTC proposal would also permit each FCM and DCO to operationally hold (or “commingle”) all relevant collateral in one account. The initiative also proposes that, in the event that an FCM defaults simultaneously with one or more cleared swaps customers, the DCO may access the collateral of the FCM’s defaulting cleared swaps customers to cure the default, but not the collateral of the FCM’s non-defaulting cleared swaps customers. The release refers to this combined approach to protecting customer collateral on cleared swaps as the “Complete Legal Segregation Model.”

### **Summary of ACLI Position**

The proposal reflects careful analysis of four different approaches to protecting customer collateral in cleared swap transactions, informed by extensive comment on the Advance Notice of Proposed Rulemaking, through the CFTC’s Roundtable on Individual Customer Collateral Protection, and through CFTC outreach in external meetings. This in-depth administrative process equitably elicited the interests of principal stakeholders in the initiative, including FCMs, DCOs and swaps customers.

ACLI supports the CFTC’s determination that the “Complete Legal Segregation Model” provides the best balance between benefits and costs in order to protect market participants and the public. Additionally, ACLI supports the ability of individual companies to optionally elect to negotiate complete physical segregation of collateral in their agreements with FCMs and DCOs, referred to in the release as the “Physical Segregation Model.” ACLI commends the CFTC’s reasoned judgment against rules based on practices in the futures markets, and referred to as the “Futures Model” in the release. The Futures Model would not achieve a proper balance of costs and benefits, nor fairly protect market participants and the public.

### **Conclusion**

ACLI supports the CFTC’s the proposed Complete Legal Segregation Model and the careful analysis explaining it. We greatly appreciate your attention to our views. Please let me know if any questions develop, or if we can provide additional information.

Sincerely,



Carl B. Wilkerson

CC: Robert B. Wasserman, Associate Director, CFTC Division of Clearing and Intermediary Oversight  
Jon DeBord, Attorney-Advisor, CFTC Division of Clearing and Intermediary Oversight  
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