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August 25, 2011

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street
Washington, DC 20549

David A. Stawick, Secretary,
Commodity Futures Trading Commission
Three Lafayette Centre, 1155 21st Street, NW
Washington, DC 20581

Re: Request for Extended Comment Period in Stable Value Contract Study

Dear Ms. Murphy and 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. ACLI actively participated in the legislative dialogue concerning regulation of derivatives markets and has 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 values the opportunity to carefully evaluate the detailed questions posed in the joint SEC and CFTC invitation of comment on a study to determine whether “stable value contracts”¹ fall within the definition of the term “swap”. The request for comment² was published in the Federal Register today, August 25, 2011, and contains a 30 day comment period that will end on September 26, 2011.³ The detailed questions posed in the release merit careful analysis, and warrant an extension of the comment period. A lengthened timeframe for input will generate more valuable and informed commentary.

¹ Section 719(d)(2) of the Dodd-Frank Act defines a “stable value contract” as “any contract, agreement, or transaction that provides a crediting interest rate and guaranty or financial assurance of liquidity at contract or book value prior to maturity offered by a bank, insurance company, or other State or federally regulated financial institution for the benefit of any individual or commingled fund available as an investment in an employee benefit plan (as defined in section 3(3) of the Employee Retirement Income Security Act of 1974, including plans described in section 3(32) of such Act) subject to participant direction, an eligible deferred compensation plan (as defined in section 457(b) of the Internal Revenue Code of 1986) that is maintained by an eligible employer described in section 457(e)(1)(A) of such Code, an arrangement described in section 403(b) of such Code, or a qualified tuition program (as defined in section 529 of such Code).”

² [76 Fed. Reg. 65](http://www.gpo.gov/fdsys/pkg/FR-2011-08-25/pdf/2011-21645.pdf) at 63162 (Aug. 25, 2011) [http://www.gpo.gov/fdsys/pkg/FR-2011-08-25/pdf/2011-21645.pdf]

³ On August 18, 2011, the Commissions circulated the [invitation for comment](#) on their respective websites in advance of publication in the Federal Register; see Release No. 34-65153; File No. S7-32-11 <http://sec.gov/rules/other/2011/34-65153.pdf>

In fulfillment of its governance procedures, ACLI circulates regulatory requests for comment to its membership, elicits input, develops a consensus, and circulates draft letters of comment before submission. This worthwhile, but time-intensive process is challenging to execute within a 30 day comment period, particularly given the significance and complexity of the questions in the release.

ACLI promptly circulated the invitation for comment to its membership and convened a meeting on August 24, 2011, of its Securities Regulation Committee, Life Insurance Investments Committee, Pension Plans Committee and Derivatives Policy Working Group. These groups will be meeting several times a week to digest and analyze the 26 detailed questions framed in the release. This process ensures broad, consensus-based policy development and provides valuable substantive feedback. It is, however, a meticulous and time consuming process. The questions must be analyzed against unique fact patterns, product designs and contractual features.

The special time burdens confronting regulated industries and large organizations in addressing regulatory proposals were explicitly recognized by the Administrative Conference of the United States in its publication entitled *A Guide to Federal Agency Rulemaking*⁴ (“*Guide*”), which notes that:

[i]nterested persons often are large organizations, which may need time to coordinate an organizational response, or to authorize expenditure of funds to do the research needed to produce informed comments.⁵

The *Guide* reviews the legislative history of the Administrative Procedure Act and emphasizes that the notice and opportunity for comment “must be sufficient to fairly apprise interested parties of the issues involved, so that they may present responsive data or argument.”⁶ The *Guide* further explains that rules developed through notice and comment procedures must be rational, and that notice and opportunity for comment under §553 of the APA should properly “give interested persons a chance to submit available information to an agency to enhance the agency’s knowledge of the subject matter of the rulemaking.”⁷ Our request for an extended comment period comports with these goals.

Need for an Extended Comment Period

Unlike some other commentators, ACLI’s submission will reflect the views of 300 life insurance companies representing 90% of the life insurance and annuities business. Our consensus-based position, therefore, will provide substantial, broad input concerning the stable value contract study. By the same token, however, the process of achieving consensus is more time consuming for a large organization representing broad interests.⁸

⁴ See, *A Guide to Federal Agency Rulemaking* (1983) at 124. The American Bar Association updated and republished this *Guide* in 1998. See Lubbers, *A Guide to Federal Agency Rulemaking*, Third Edition (1998), American Bar Association, Government and Public Lawyers Division and Section of Administrative Law and Regulatory Practice. Subsequent citations to the *Guide* are to the updated and revised ABA publication.

⁵ See *Guide* at 196.

⁶ Administrative Procedure Act: Legislative History, S. Doc. No.24879-258 (1946) [hereinafter legislative history of the APA].

⁷ See *Guide* at 197.

⁸ This sentiment is drawn directly from the *Guide* text cited in footnote 4 *supra*.

The proposal appeared in the Federal Register on August 25, 2011, and provides a 30-day comment period. Many of the 26 specific requests for comment will require substantial analysis. An extended comment period would enable more deliberative analysis and constructive input.

One of the fundamental questions in the release elicits feedback on whether the Commissions' proposed definitions of swap and security-based swap are useful in evaluating whether stable value contracts are swaps. ACLI submitted substantive comment on the definitional proposals, and recommended significantly different approaches. In their currently pending status, the rules do not provide functional touchstones about whether stable value contracts trigger the swap definitions. Commentators will be better able to address this threshold question when the definitions are in a less fluid state. Accordingly, a comment period extension is warranted until the definitions of swap and security-based swap are adopted.

The Commissions have recently taken a number of commendable, prudent actions in reopening and extending comment periods for rulemakings implementing the Dodd-Frank Act. The comment periods were extended due to the interconnected impact of other Title VII rulemakings that had crystallized after the end of the initial comment periods in related rules.⁹ For the same reasons, administrative action and comment on the stable value contract study should be postponed until the swap definitions are resolved.

The 30 day comment period on the stable value contract study is significantly shorter than quite a number of other studies mandated under the Dodd-Frank Act. For example, several different studies had comment periods ranging from 45-120 days.¹⁰ A similarly reasonable comment period should be established for input on the stable value study. We are unaware of any as short as 30 days. An extended comment period can also be justified because the comment period on the stable value study occurs coextensively with a number of other significant Dodd-Frank Act initiatives demanding the attention of life insurers' personnel. It is worth noting that the 30 day comment period occurs during the peak of the summer vacation season, including the federal holiday for Labor Day on September 5, 2011. This factor may thwart the ability of some parties to fully participate in the comment process.

Conclusion

Neither the APA¹¹ nor the Commission's rules of conduct establish a "standard" period of comment on rulemakings. Rather, the goal of robust public comment on administrative actions is best served by selecting a time period based on the unique factors and complexity of the individual initiative.

In this instance, an extended comment period of an additional 30-60 days will promote the most informed feedback given the size and diversity of ACLI's membership, as well as the complexity

⁹ *Reopening and Extension of Comment Periods for Rulemakings Implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act*, 76 FR 86 at 25274 (May 4, 2011).

¹⁰ See, e.g., SEC provided a 120 day period for input on its Dodd-Frank mandated study to determine the extent to which private rights of action under the antifraud provisions of the Securities Exchange Act of 1934 should be extended to cover transnational securities fraud. (<http://www.sec.gov/rules/other/2010/34-63174.pdf>); SEC 90 period for *Solicitation of Comment to Assist in Study on Assigned Credit Ratings*; Release No. 34-64456; File No. 4-629 (May 10, 2011) (<http://www.sec.gov/rules/other/2011/34-64456.pdf>); SEC45 day period of comment about study on the feasibility and desirability of: standardizing credit ratings terminology (<http://www.sec.gov/rules/other/2010/34-63573.pdf>);

¹¹ See Guide at 196.

and importance of the issues under examination. The depth and quality of comment is simply a higher priority than the speed of completing the project.

ACLI has actively and constructively participated in numerous SEC and CFTC rulemaking initiatives over many years. We will devote resources and time in developing policy positions and providing useful feedback on the request for comment on the stable value contract study. ACLI's consensus-based comment process implements fair, representative governance. Our request for a comment extension will allow the most useful and balanced feedback on this significant initiative.

The Commissions have successfully achieved an unprecedented volume of very complex Dodd-Frank rulemakings in an extremely compressed period. While it is commendable that the Commissions would also try to complete the stable value contract study within the 15 months referenced in the Act, there is insufficient time remaining to elicit and digest public comment in a meaningful fashion. Allowing adequate time for deliberative input is a higher priority than technical completion of the 15 month deadline, especially in light of the extreme workloads under which the Commissions have been operating. We understand that extending the comment period for a reasonable time would prevent the Commissions from meeting the tentative deadline on the study. Nonetheless, it is worthwhile to extend the period in the interest superior regulatory actions.

For all of the reasons stated above, we respectfully request that the comment period be extended for 30-60 days. We greatly appreciate the courtesy of the Commissions in evaluating our request. Please let me know if we can provide any additional background, or answer any questions that may develop.

Sincerely,



Carl B. Wilkerson

EC: Stephen A. Kane, Consultant, CFTC Office of the Chief Economist
David E. Aron, Counsel, CFTC Office of the General Counsel
Matthew A. Daigler, Senior Special Counsel, SEC Division of Trading and Markets
Donna Chambers, Special Counsel, SEC Division of Trading and Markets
Leah Drennan, Attorney-Adviser, SEC Division of Trading and Markets