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

February 15, 2013

Re: Request for Comments on Proposed Rulemaking - Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations ("Customer Protection Rules")<sup>1</sup>

Dear Mr. Stawick:

The American Council of Life Insurers ("ACLI") is a national trade association with 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 ("Dodd-Frank Act"). The ACLI respectfully submits the following response to the CFTC's request for comment on its proposed rules designed to enhance protections for customers and customer funds held by Futures Commission Merchants ("FCMs") and Derivatives Clearing Organizations.

Life insurers prudently manage asset and liability risks associated with their financial products with derivatives, including futures contracts.<sup>2</sup> Many life insurers currently use futures commission merchants to trade futures and anticipate that they will engage in cleared swaps through FCMs as the mandatory clearing requirements of the Dodd-Frank Act are implemented. In this regard, we strongly endorse the Commission's proposals to increase transparency surrounding the financial condition and regulatory compliance of FCMs. We encourage the Commission to make public as much information as possible regarding FCMs' financial condition, treatment of

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<sup>1</sup> See 77 Fed. Reg. 67866-67971 [RIN 3038-AD88].

<sup>2</sup> Life insurers' financial products protect millions of individuals, families, and businesses through guaranteed lifetime income, life insurance, long-term care insurance, and disability income insurance, among other products. These products provide consumers with financial security through various stages of life and enable them to plan for their financial future, including retirement. Many life insurer obligations to policyholders as well as the assets that are purchased to support those liabilities have durations that extend for one or more decades. Life insurers, therefore, carefully manage risks associated with long term assets and liabilities with derivatives, including futures contracts. The regulatory status of derivatives, therefore, is critically important to the life insurance industry.

customer funds, and regulatory compliance. Access to these categories of information should be straightforward and simple.

The Proposed Customer Protection Rules represent a very cost-effective means to making FCMs more accountable to their customers by providing current information that will enable customers to conduct appropriate due diligence regarding prospective FCMs and to actively monitor the financial condition and regulatory compliance of the FCMs to which they have entrusted funds.

In particular, with respect to Proposed Regulation § 1.55, life insurers support requirements that:

- FCMs disclose their Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Exchanges, Statement of Secured Amounts and Funds Held in Separate Accounts for 30.7 Customers Pursuant to Commission Regulation 30.7, and Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts Under Section 4d(f) of the Commodity Exchange Act (“Act”) on their websites on a daily basis;<sup>3</sup>
- FCMs disclose a summary schedule of their adjusted net capital, net capital, and excess net capital for the 12 most recent month end dates on their websites;<sup>4</sup>
- FCMs disclose their Statement of Financial Condition, Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Exchanges, Statement of Secured Amounts and Funds Held in Separate Accounts for 30.7 Customers Pursuant to Commission Regulation 30.7, Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts Under Section 4d(f) of the Act, and all related footnotes to the above schedules that are part of the FCM’s most current certified annual report;<sup>5</sup>
- FCMs prepare “Disclosure Documents” for disclosure on their websites with the information material to a customer’s decision to entrust funds to and otherwise do business with the FCM, including information regarding the operations, financial condition, risk profile, and affiliates of the FCM;<sup>6</sup> and,
- FCMs promptly update the Disclosure Documents “as and when necessary,” taking into account any material change to their business operation, financial condition, and other factors material to a customer’s decision to entrust its funds and otherwise do business with the FCM.<sup>7</sup>

Proposed Regulation § 1.55 could be further strengthened by:

- Requiring FCMs to each month post on their website, as part of their Disclosure Documents, the Segregation Schedule, the Secured Account Schedule, and the Cleared

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<sup>3</sup> See Proposed Reg. § 1.55(o)(i)-(iii).

<sup>4</sup> See Proposed Reg. § 1.55(o)(iv).

<sup>5</sup> See Proposed Reg. § 1.55(o)(v).

<sup>6</sup> See Proposed Reg. § 1.55(i).

<sup>7</sup> *Id.*

Swaps Segregation Schedule. The website should include these schedules for the most recent twelve months;<sup>8</sup>

- Requiring FCMs to each month post on their website, as part of their Disclosure Documents, summary balance sheet and income statement information including the balance sheet leverage ratio<sup>9</sup>. The website should include such information for the most recent twelve months; and,<sup>10</sup>
- Requiring FCMs as part of their Disclosure Documents to disclose not only the number of customers that comprise 50 percent of the FCM's customer funds balances for futures customers, Cleared Swaps Customers, and 30.7 Customers, but also the percent of fund balances pertaining to each of the top ten customers. This approach will give a clear view of risks created by large concentrations of fund balances in a few customers. In addition, we suggest that Proposed Reg. § 1.55(k)(10)(iii) be modified to state "The fewest number of futures customers, Cleared Swaps Customers, and 30.7 Customers that comprise 50 percent of the futures commission merchant's total funds" to ensure that the largest customers are included in the tally.

We note that FCMs would be required to provide the information in the first two bullet points above to the Commission and their designated self-regulatory organization ("DSRO") under Regulation § 1.10. The additional cost of making this information available to the public, therefore, should be nominal.

With respect to Proposed Regulation § 1.12, we support requirements that:

- FCMs provide notice to both the Commission and to the firm's DSRO in the event it discovers or is informed that it has invested funds held for customers in investments that are not permitted investments under § 1.25, or if the FCM holds permitted investments in a manner that is not in compliance with the provisions of § 1.25 (such as the investment concentration limits)<sup>11</sup> in the event the FCM does not hold an amount of funds in segregated accounts for futures customers or for Cleared Swaps Customers, or if the FCM does not hold sufficient funds in separate accounts for 30.7 Customers, sufficient to meet the firm's targeted residual interest in one or more of these accounts, or if its residual interest in one or more of these accounts is less than the sum of outstanding margin deficits for such accounts;<sup>12</sup> and
- FCMs provide notice to both the Commission and to the firm's DSRO in the event of a material adverse impact in the financial condition of the firm or a material change in the firm's operations.<sup>13</sup>

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<sup>8</sup> Under the Proposed Customer Protection Rules, these schedules are only available upon request to the Commission. See Fed. Reg. at 67872-67873.

<sup>9</sup> Under the Proposed Customer Protection Rules, FCMs will be required to file monthly with the Commission the balance sheet leverage ratio currently being provided to the NFA. See Proposed Reg. § 1.10(b)(5).

<sup>10</sup> Under the Proposed Customer Protection Rules, only the annual certified financial statement is required unless there has been a material change in the FCM's financial condition. See note 4, *supra*.

<sup>11</sup> See Proposed Reg. § 1.12(i).

<sup>12</sup> See Proposed Reg. § 1.12(j).

<sup>13</sup> See Proposed Reg. § 1.12(k) and (l).

Additionally, Proposed Regulation § 1.12 could be further strengthened by:

- Requiring all reportable events under Proposed Regulation § 1.12 be made public either by the Commission or the FCM to further support the Commission's goals of increased transparency surrounding the financial condition and regulatory compliance of FCMs.

ACLI strongly endorses the Commission's efforts to improve transparency of information regarding the financial condition and regulatory compliance of FCMs. The Proposed Customer Protection Rules will greatly assist customers in performing their initial and ongoing due diligence warranted in selecting and doing business with FCMs.

Thank you for your attention to our views. Please let me know if you have any questions.

Sincerely,



Carl B. Wilkerson

CC: Commissioner Jill E. Sommers  
Commissioner Bart Chilton  
Commissioner Scott D. O'Malia  
Commissioner Mark P. Wetjen

Division of Swap Dealer and Intermediary Oversight

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