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Ms. Melissa Jurgens
Secretary
Commodity Futures Trading Commission
1155 21st Street NW
Washington DC 20581

November 4, 2013

Re: RIN Number 3038–AE06: Derivatives Clearing Organizations and International Standards, 78 Fed. Reg. 50260

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. In addition to providing life insurance, annuity and employee benefit programs, many of our members are significant participants in the fixed income markets, including U.S. Treasury securities, as well as repurchase and reverse repurchase agreements. Our members manage asset and liability risks by hedging with derivatives instruments. ACLI has actively offered constructive input on numerous rules implementing Title VII of the Dodd-Frank Act.

Overview of the Proposed Rule Amendments

The CFTC proposed amendments to its regulations to establish additional standards for compliance with the derivatives clearing organization (“DCO”) core principles set forth in Section 5b(c)(2) of the Commodity Exchange Act for systemically important DCOs (“SIDCOs”) and DCOs that elect to opt-in to the SIDCO regulatory requirements (“Subpart C DCOs”).¹ SIDCOs and Subpart C DCOs would be required to comply with the requirements applicable to all DCOs, which are set forth in the Commission’s DCO regulations on compliance with core principles. The initiative is designed to ensure that DCOs in the United States are viewed to be qualified central counterparties (QCCPs) under Basel Capital Requirements.²

¹ <http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2013-19845a.pdf>

² A QCCP is defined as an entity that (i) is licensed to operate as a CCP, and is permitted by the appropriate regulator to operate as such, and (ii) is prudentially supervised in a jurisdiction where the relevant regulator has established and publicly indicated that it applies to the CCP on an ongoing basis, domestic rules and regulations that are consistent with the [Principles for Financial Market Infrastructures (“PFMI”)]. See Basel CCP Capital Requirements, Annex 4, Section I, A: General Terms.

Statement of Position

We have reviewed the submissions on this initiative from CME³ and the Futures Industry Association⁴, and support the positions in those letters concerning constraints in the rule amendments that would preclude as collateral Treasury securities and other highly liquid securities such as repurchase agreements and reverse repurchase agreements.

We respectfully submit our comments on the liquidity requirements for DCOs contained in the proposed rule amendments. We are concerned that the proposed rule amendments are unnecessarily restrictive due to the potential exclusion of U.S. Treasury securities and other highly liquid securities as collateral. It is our understanding that the CFTC and the Federal Reserve Bank have informed some market participants during private meetings that they intend to allow only cash and committed facilities. If implemented, such an approach disregards the liquidity characteristics of U.S. Treasury securities and could greatly increase costs to the marketplace by limiting the use of U.S. Treasuries and other highly liquid securities as collateral.

While the proposal does not directly govern activities of life insurers, it would have a significant, negative impact on life insurers in managing risks through derivatives hedging transactions. Our comments, therefore, principally focus on proposed Rule 39.33(c)(3), setting financial resources requirements for SIDCOs and Subpart C DCOs. The proposed rule is unnecessarily restrictive and is not required to meet the requirements of the Principles for Financial Market Infrastructures ("PFMI") or the views of other international regulators.

Proposed Rule 39.33(c)(3) provides, in relevant part:

Qualifying liquidity resources. (i) Only the following liquidity resources are eligible for the purpose of meeting the requirement of paragraph (c)(1) of this section:

- (A) Cash in the currency of the requisite obligations, held either at the central bank of issue or at a creditworthy commercial bank;
- (B) Committed lines of credit;
- (C) Committed foreign exchange swaps;
- (D) Committed repurchase agreements; or
- (E) (1) Obligations of the United States Treasury or high quality, liquid, general obligations of a sovereign nation.
- (E)(2) The assets described in paragraph (c)(3)(i)(E)(1) of this section must be readily available and convertible into cash pursuant to prearranged and highly reliable funding arrangements.

The CFTC has explained that the proposal is intended to assure that its rules are consistent with Principle 7 of the PFMI (Liquidity Risk), which provides:

An FMI should effectively measure, monitor, and manage its liquidity risk. An FMI should maintain sufficient liquid resources in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of

³ <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59342&SearchText=>

⁴ <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59346&SearchText=>

confidence under a wide range of potential stress scenarios that should include, but not be limited to, the default of the participant and its affiliates that would generate the largest aggregate liquidity obligation for the FMI in extreme but plausible market conditions. An explanatory note to Principle 7 provides the following guidance: For the purpose of meeting its minimum liquid resource requirement, an FMI's qualifying liquid resources in each currency include cash at the central bank of issue and at creditworthy commercial banks, committed lines of credit, committed foreign exchange swaps, and committed repos, as well as highly marketable collateral held in custody and investments that are readily available and convertible into cash with prearranged and highly reliable funding arrangements, even in extreme but plausible market conditions.

The PMFI is designed to provide a DCO a certain degree of flexibility in meeting its minimum liquid resource requirement. As explained elsewhere in the document:

The principles in this report provide guidance for addressing risks and efficiency in FMIs. With a few exceptions, the principles do not prescribe a specific tool or arrangement to achieve their requirements and allow for different means to satisfy a particular principle. . . . The principles are designed to be applied holistically because of the significant interaction between principles; principles should be applied as a set and not on a stand-alone basis. Some principles build upon others and some complement each other.

Recommended Solution

In view of this guidance, we encourage the CFTC to confirm that a DCO, consistent with Principle 7, may determine that US Treasury securities are prima facie qualifying liquidity resources. Alternatively, a DCO may determine that uncommitted repurchase agreements on U.S. Treasury securities meet the "prearranged and highly reliable" standard of set out in Rule 39.33(c)(3)(i)(E)(2) and the explanatory note.

Such determinations are particularly appropriate in circumstances in which U.S. Treasury securities comprise the core of highly marketable securities that a DCO holds. US Treasury securities are generally deemed to be "high quality liquid assets," as defined by the Basel Committee on Banking Supervision, i.e., unencumbered cash or assets that can be converted into cash at little or no loss of value in private markets.

Administrative and Procedural Considerations

The request for comment contained a 30 day comment period. The detailed rule proposed in the release merits careful analysis and input that will generate valuable commentary.

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 an abbreviated comment period, particularly given the significance and complexity of the proposed rule.

ACLI circulated the invitation for comment to its membership and convened a meeting of its Life Insurance Investments Committee and Derivatives Policy Working Group. This process ensures

broad, consensus-based policy development and provides valuable substantive feedback. It is, however, a meticulous and time consuming process.

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*⁵ (“*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.⁶

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.”⁷ 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.”⁸

ACLI's submission reflects the views of 300 life insurance companies representing 90% of the life insurance and annuities business. Our consensus-based position, therefore, provides broad input. The comment period was substantially shorter than most of the rules implementing Title VII of the Dodd-Frank Act. In light of the Administrative Procedure Act guideposts summarized above, we respectfully request consideration of our submission.

We greatly appreciate your attention to our views. If any questions develop, please let me know.

Sincerely,



Carl B. Wilkerson

⁵ 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.

⁶ See *Guide* at 196.

⁷ Administrative Procedure Act: Legislative History, S. Doc. No.24879-258 (1946) [hereinafter legislative history of the APA].

⁸ See *Guide* at 197.