



**Carl B. Wilkerson**  
*Vice President & Chief Counsel, Securities & Litigation*

Christopher Kirkpatrick,  
Secretary of the Commission,  
Commodity Futures Trading  
Commission, Three Lafayette Centre,  
1155 21st Street NW, Washington, DC 20581

Re: Notice of Proposed Order and Request for Comment on a Proposal To Exempt, Pursuant To Section 4(c) of the Commodity Exchange Act, the Federal Reserve Banks From Sections 4d and 22 of the Commodity Exchange Act [81 Fed. Reg. 35337 (June 2, 2016)] ("Request for Comment")<sup>1</sup>

Dear Mr. Kirkpatrick:

The American Council of Life Insurers (ACLI) is a national trade association with 280 member companies that represent 95 percent of industry assets, 92 percent of life insurance premiums, and 97 percent of annuity considerations in the United States. Our members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance that 75 million American families rely on for financial and retirement security.

Life Insurers have actively participated in the dialogue surrounding the regulation of domestic and international financial markets, and have provided constructive input on a myriad of proposed rulemaking, including the implementation of Title VII of the Dodd Frank Wall Street Reform and Consumer Protection Act (the "Dodd Frank Act" or DFA). We greatly appreciate the opportunity to share our views on the Commodity Future Trading Commission's above-captioned Request for Comment.

The proposal would facilitate Federal Reserve Banks' ability to provide depository accounts for customer segregated money, securities and property. Federal Reserve Banks were empowered to provide such accounts and ancillary account services by Section 806(a) of the Dodd-Frank Act. Under DFA and the Proposed Order described in the Request for Comment, Federal Reserve Bank accounts for customer segregated funds would only be provided to systemically important derivatives clearing organizations ("SIDCOs"), two of which have been designated to date: ICE Clear Credit LLC and the Chicago Mercantile Exchange.

According to the release, SIDCOs would be able to diminish their credit risk to commercial banks that currently hold customer segregated funds and increase their potential liquidity sources by having direct access to Federal Reserve Banks. The release further explains that under the proposal a "SIDCO would, therefore, face much lower credit and liquidity risk with a deposit at a Federal Reserve Bank than it would with a deposit at a commercial bank."<sup>2</sup> In this way, the proposed arrangement would also reduce overall systemic risk that might arise from liquidity or solvency stresses on commercial banks where SIDCOs currently must deposit their customer segregated funds.

In order to effectuate this proposed arrangement, the Commission proposes to relieve the Federal Reserve Banks from potential Commodity Exchange Act-based liability and damage claims if the

<sup>1</sup> <http://www.cftc.gov/idc/groups/public/@lfederalregister/documents/file/2016-13055a.pdf>

<sup>2</sup> *Id.* at 35342.

Banks were negligent or engaged in misconduct. Instead, according to the Commission, the rules and regulations already governing the Federal Reserve Banks should provide sufficient protection against such misdeeds and provide a legal means of making good on actual losses. The release indicates that the likelihood of any loss of customer funds due to the fault of a Federal Reserve Bank as being "remote."<sup>3</sup>

As financial end-users under the terms of DFA, life insurers are compelled to clear swaps designated by the Commission as clearing-eligible. Accordingly, life insurers support assurance that clearing houses are safe and secure against failure. Allowing clearing houses direct access to Federal Reserve Bank depository accounts and ancillary account services constructively reduces risks posed to clearing houses by commercial banks.

Therefore, subject to one caveat, we believe the proposed exemption is reasonable. We respectfully recommend, however, the Commission clarify for the benefit of public customers who are the ultimate beneficiaries of segregated accounts at commercial or federal banks, that customer segregated funds (i.e., initial margin) shall never be used for any other purpose under any circumstances, even the most exigent. In other words, the interests of customers in their segregated funds should never be subordinated for the benefit of any other party.

Thank you for your attention to our views. If any questions develop, please let me know.

Sincerely,

/S/

Carl B. Wilkerson

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<sup>3</sup> *Id.* at 35343.