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January 25, 2019

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

Re: Request for an Extended Comment Period on Proposed Post-Trade Name Give-Up on Swap Execution Facilities RIN Number 3038–AE79)

Dear Mr. Kirkpatrick:

The CFTC recently invited comment on. The initiative appeared in the Federal Register, and established a comment deadline expiring on January. The proposals will directly impact life insurers' management of asset and liability risks that are hedged with derivatives. These detailed and significant initiatives merit careful analysis that will be challenging to fully execute within the comment period. An extended comment period will generate more valuable and informed input. We understand through informal channels during the 2019 government closure that the CFTC has already considered extending the comment period.<sup>1</sup> Because the duration of the closure is indeterminate, we wanted to submit this comment request as a placeholder to effectuate the CFTC's eventual action on this matter.

## Background

Life insurers actively participated in the legislative dialogue concerning regulation of derivatives markets and have provided constructive input on numerous proposed rulemaking implementing Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). ACLI has addressed parallel regulatory initiatives by US prudential regulators, the CFTC, and international regulatory bodies on similar implementations. We are, therefore, very interested in fully commenting on the CFTC's treatment of directly analogous issues by market participants.<sup>2</sup>

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<sup>1</sup> According to an article in Politico dated January 24, 2019, CFTC Chairman Giancarlo indicated in a speech that the comment deadline for the post-trade name give-up initiative and the recent SEF rule proposal would be postponed until March 15, 2019.

<sup>2</sup> See, e.g. ACLI submissions on:

- [Supplemental Request for Comments on Proposed Margin and Capital Requirements for Covered Swap Entities](http://www.fhfa.gov/webfiles/24691/95_American%20Council%20of%20Life%20Insurers%20ACLI.pdf) ; [[http://www.fhfa.gov/webfiles/24691/95\\_American%20Council%20of%20Life%20Insurers%20ACLI.pdf](http://www.fhfa.gov/webfiles/24691/95_American%20Council%20of%20Life%20Insurers%20ACLI.pdf)] [five prudential regulators];
- [Supplemental Request for Comments on Proposed Margin Requirements Governing Uncleared swap Transactions for Swap Dealers and Major Swap Participants](http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58806&SearchText=wilkerson) [<http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58806&SearchText=wilkerson>] [CFTC];

ACLI promptly circulated the initiative to its membership and convened three meetings of our Derivatives Policy Working Group. This process ensures broad, consensus-based policy development and provides valuable substantive feedback. It is, however, meticulous and time consuming. Further, an extended comment period dovetailing with the SEF rule proposals would make good sense due the interrelated nature of the two proposals.

The important task of identifying and thoroughly analyzing the full implications of the initiative requires concentrated analytical resources. We will continue to evaluate the regulatory, structural and financial implications of the proposals for life insurers. Moreover, each of these considerations must be analyzed against unique fact patterns, business models, and organizational structures.

Industry groups like our trade association circulate regulatory proposals, elicit membership input, develop a consensus, and circulate draft letters of comment before submission. This worthwhile, but time intensive, process is difficult to execute within the stated comment period, particularly in light of the overlap of the two related rules involving SEFs.

The special time burdens confronting regulated industries and large organizations in digesting regulatory proposals were explicitly recognized by the Administrative Conference of the United States in its publication entitled *A Guide to Federal Agency Rulemaking*<sup>3</sup> (“*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.<sup>4</sup>

The *Guide* reviews the legislative history of the Administrative Procedure Act and emphasizes that the notice of proposed rulemaking “must be sufficient to fairly apprise interested parties of the issues involved, so that they may present responsive data or argument.”<sup>5</sup> 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.”<sup>6</sup> The *Guide* also points out that “informal rulemaking procedures should provide interested persons an opportunity to challenge the factual assumptions on which the agency is proceeding and to show in what respect such assumptions are erroneous.”<sup>7</sup> Our request for an extended comment period comports with these goals.

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- [CFTC Proposal on Protection of Cleared Swaps Customer Contracts and Collateral](http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=48045&SearchText=wilkerson) [<http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=48045&SearchText=wilkerson>] [CFTC]

<sup>3</sup> 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.

<sup>4</sup> See *Guide* at 196.

<sup>5</sup> Administrative Procedure Act: Legislative History, S. Doc. No.24879-258 (1946) [hereinafter legislative history of the APA].

<sup>6</sup> See *Guide* at 197.

<sup>7</sup> *Id* at 182 and 196.

## **Need for an Extended Comment Period**

Unlike some other commentators, ACLI’s submission will reflect the views of over 300 life insurance companies representing 90% of the life insurance and annuities business. Our consensus-based position, therefore, will provide substantial, broad input for the CFTC on this initiative. By the same token, however, the process of achieving consensus is more time consuming for a large organization representing diverse interests.<sup>8</sup>

In responsibly formulating comment, our members have held three meetings to digest the initiative. This high-level conceptual review of all the proposal’s features is essential, time consuming, and fundamental to any rulemaking review. Many of the specific requests for comment present valuable queries requiring substantial analytical or conceptual effort.

An extended comment period is also justified because the CFTC’s proposals occur coextensively with a number of other parallel regulatory initiatives initiated by US regulators. The outcomes and timetables for compliance with these parallel regulatory initiatives remain open. Informed regulatory treatment of similar issues among all regulators will ensure harmonized regulatory standards and prevent regulatory arbitrage. It makes sense, therefore, to elongate the proposal’s comment period for these reasons.

## **Conclusion**

Neither the APA<sup>9</sup> nor the rules of conduct establish a “standard” period of comment on rulemakings. Rather, the goal of robust public comment on administrative rulemakings is best served by selecting a time period based on the unique factors and complexity of the individual initiative, and not “routine” practices. Some proposals should properly have longer comment periods than others.

In this instance, an extended comment period until March 15, as referenced in the Chairman’s recent speech, will promote the most informed feedback given the size and diversity of ACLI’s membership, as well as the profound complexity and importance of the issues under examination. The depth and quality of comment are higher priorities than the speed of completing the project.

ACLI has actively and constructively participated in numerous CFTC rulemaking initiatives over many years. We will likewise devote substantial resources and time in developing policy positions and providing useful feedback. Our consensus-based process is neither dilatory nor obstructionist. Our request for a comment extension will allow the most useful feedback on this significant initiative.

We fully understand the CFTC’s obligation to implement rules fulfilling the Dodd-Frank Act. While it is important to implement Dodd-Frank Act rules, it is equally important to execute rulemaking within a deliberative process allowing proper identification of issues and development of recommended solutions.

For all of the reasons stated above, we respectfully request that the comment period be extended beyond the January 29, 2019 comment deadline to March 15, 2019. We greatly appreciate the courtesy of the staff and the Commission in evaluating our request.

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<sup>8</sup> This sentiment is drawn directly from the Guide text cited in footnote 3 *supra*.

<sup>9</sup> See Guide at 196.

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Please let me know if we can provide any additional background, or answer any questions that may develop.

Sincerely,

*Carl B. Wilkerson*

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