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March 15, 2019

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

Re: Comment on the CFTC's Swap Execution Facilities Initiative (RIN Number 3038–AE25)

Dear Mr. Kirkpatrick:

The CFTC recently invited comment on a regulatory proposal about swap execution facilities (SEFs) and trade execution requirements. The [initiative](#)<sup>1</sup> appeared in the Federal Register and had an extended comment deadline expiring on March 15, 2019. The proposal directly impacts life insurers' management of asset and liability risks that are hedged with derivatives. This detailed and significant initiative merits careful analysis. We greatly appreciate the opportunity to share our views on this proposal.

The CFTC's release explains that the proposed initiative "relates to the trade execution requirement under the Commodity Exchange Act ("CEA" or "Act") and amendments to existing regulations relating to swap execution facilities ("SEFs") and designated contract markets ("DCMs"). Among other amendments, the proposed rules apply the SEF registration requirement to certain swaps broking entities and aggregators of single-dealer platforms; broaden the scope of the trade execution requirement to include all swaps subject to the clearing requirement under the Act that a SEF or a DCM lists for trading; allow SEFs to offer flexible execution methods for all swaps that they list for trading; amend straight through processing requirements; and amend the block trade definition."

## Background

ACLI is a national trade association that represents 260 life insurers that hold over 95 percent of the industry's total assets. Our members serve 75 million American families that rely on life insurers' products for financial and retirement security. Our members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance. Life insurers have actively

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<sup>1</sup> <https://www.cftc.gov/sites/default/files/2018-11/2018-24642a.pdf>

participated in the important regulatory dialog leading to implementation of Title VII of the Dodd-Frank Act.<sup>2</sup>

Life insurers provide essential retirement and financial security to millions of customers through products such as life, long-term care and disability insurance and annuities. These obligations often have durations that last one or more decades. Accordingly, to meet their commitments to policyholders, life insurers invest in a broad spectrum of assets, many of which are long-dated, including government and corporate bonds, mortgage backed securities, public and private equities, commercial real estate mortgages and alternative assets.

Because of the lengthy duration of their liabilities and the accompanying asset portfolios that support them, insurers are exposed to significant risks posed by changes in interest rates, currency exchange

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<sup>2</sup> For example, ACLI submitted detailed comments on the following related and parallel regulatory proposals developed by the U.S. Prudential Regulators, the U.S. Commodity Futures Trading Commission ("CFTC"), and the U.S. Securities and Exchange Commission ("SEC") governing margin and capital requirements:

- 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)] [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>] [CFTC];
- CFTC Proposal on Protection of Cleared Swaps Customer Contracts and Collateral [<http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=48045&SearchText=wilkerson>] [CFTC];
- SEC proposal on margin, capital and segregation for security-based swap dealers and major security-based swap participants [<http://www.sec.gov/comments/s7-08-12/s70812-25.pdf>]; and,
- Request for Comments on Retroposed Rule for Margin and Capital Requirements for Covered Swap Entities [[http://www.federalreserve.gov/SECRS/2015/January/20150127/R-1415/R-1415\\_112414\\_129786\\_278794149594\\_1.pdf](http://www.federalreserve.gov/SECRS/2015/January/20150127/R-1415/R-1415_112414_129786_278794149594_1.pdf)].

ACLI also submitted comments on the initial BCBS-IOSCO Consultative Document for Non-Centrally Cleared Derivatives, published by the Basel Committee on Bank Supervision (BCBS) and the International Organization of Securities Commissions (IOSCO) (May 2012) ("BCBS-IOSCO Consultative Paper") [<http://www.bis.org/publ/bcbs226/acoli.pdf>] [BCBS-IOSCO], and the BCBS-IOSCO Second Consultative Document on Margin Requirements for Non-Centrally Cleared Derivatives (Feb. 2013) ("Second BCBS-IOSCO Consultative Paper") [<http://www.bis.org/publ/bcbs242.pdf>].

On August 4, 2015, ACLI filed [comments](#) on the Prudential Regulators' net stable funding ratio proposal. finalized by the Basel Committee on Banking Supervision as part of Basel III, as Regulatory Agencies were considering a similar proposal for entities under their authority.

On July 5, 2016, ACLI filed [comments](#) on the BCBS Revised Basel III Leverage Ratio Framework-Consultative Document published April 25, 2016. The submission explained that life insurers are among the financial end users affected by the leverage ratios under consideration in the Consultative Document. ACLI previously filed a [submission](#) dated September 20, 2013, with the Basel Committee on Banking Supervision (BCBS) on its initial consultative document that proposed a revised Basel III leverage ratio framework through a supplementary measure of the Risk Based Capital ("RBC") requirements for Banks.

ACLI filed comments on a draft ISDA Variation Margin Protocol on July 29, 2016. ACLI suggested that parties adhering to the VM Protocol should be given additional options for items such as Notification Time, Independent Amount, Transfer Timing and Collateral Eligibility, among other things.

rates, equity market performance, and credit defaults, among others. Life insurers hedge the risks inherent in their assets and liabilities through the prudent use of exchange-traded and both cleared and non-cleared over-the-counter ("OTC") swaps.<sup>3</sup> We are, therefore, interested in the CFTC's SEF rulemaking.<sup>4</sup>

### **ACLI's Position on the Initiative**

Our members carefully evaluated the SEF initiative and developed a consensus to support the positions articulated in a [submission](#)<sup>5</sup> filed with the CFTC by SIFMA Asset Management Group, dated March 15, 2019. Several of our members also participated in the formulation of commentary and recommendations in the SIFMA Asset Management Group letter. Without restating the positions in that letter, we support the Commission's efforts to re-evaluate the CFTC's current regulations in light of five years of market experience and endorse the proposals contained in the SIFMA Asset Management Group letter.

### **Conclusion**

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

Sincerely,

*Carl B. Wilkerson*

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<sup>3</sup> A 2014 NAIC Capital Markets Special Report on the Insurance Industry's Derivatives Exposure at Year-End 2012 (the "NAIC Special Report") indicated that the notional amount of insurers' derivatives holdings was almost \$1.7 trillion. There were 264 insurance companies using derivatives of which 147 were life insurance companies. Life insurance companies are the primary users of derivatives, with \$1.58 trillion notional amount or 95.4% of the outstanding notional at year-end 2012.

<sup>4</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)] [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>] [CFTC];
- [CFTC Proposal on Protection of Cleared Swaps Customer Contracts and Collateral](#) [<http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=48045&SearchText=wilkerson>] [CFTC]

<sup>5</sup> <https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=62072&SearchText=>