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

September 29, 2017

RE: ACLI Response to CFTC Project KISS-Clearing Issues

Dear Mr. Kirkpatrick:

We greatly appreciate the opportunity to share our views the CFTC's project KISS, which elicits comment about how the CFTC's existing rules, regulations, or practices could be applied in a simpler, less burdensome, and less costly manner. The CFTC seeks ideas from industry, other stakeholders and interested parties, and the broader public on where the CFTC rules can be simplified and made less costly to comply. The press release explains that the KISS project focuses on "taking the CFTC's existing rules as they are and applying them in ways that are simpler, less burdensome and less of a drag on the American economy."

The American Council of Life Insurers ("ACLI") is a national trade association. ACLI represents 290 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 participated in the important regulatory dialog leading to implementation of Title VII of the Dodd-Frank Act.[1]

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[1] 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] [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 Reproposed 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].

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

We offer comments below that highlight challenges confronting life insurers following the adoption of rules implementing the Dodd-Frank Act. While we appreciate and support many of the legislative purposes of Title VII of the Dodd-Frank Act, the confluence of regulations and practices in the marketplace have underscored the need for reasonable relief.

Reporting Challenges on Block Trades and Reporting Field Issues

Several aspects of required real-time reporting on OTC transactions are uniquely harmful to life insurers in the management of their asset and liability risks through derivatives hedging.

As a matter of perspective, a bit of background may be helpful to explaining our position. Life insurers are significant end-users of derivatives for prudent asset-liability risk management. Unlike many other financial institutions, life insurers have unusually long-term liabilities that must be matched with assets of equivalent duration. Like other commercial end-users, life insurers must hedge their risks. Life insurers' derivatives use is highly regulated by state law, and life insurers cannot, by law, engage in market speculation. Derivatives allow life insurers to prudently manage the credit and market risk of their portfolios and to fulfill their long-dated obligations to policy and contract owners.[2]

ACLI recommends that the CFTC evaluate real-time reporting regulations in light of goals of liquidity, transparency, and price discovery in the swaps market. This analysis should include ongoing issues of reporting packages, prime brokerage, allocations, risk mitigation services/compressions, EFRPs, and post-priced swaps by clarifying obligations and identifying those distinct types of transactions to increase the utility of the real-time public tape.

The Swap Data Repository ("SDR") was inspired by futures reporting. The current block trade rules for swaps were similarly drawn from the market's experience with futures. But futures and swaps have fundamentally different trading characteristics and patterns. Where futures are generic and

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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.

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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.

[2] Derivatives regulation affects how life insurers operate in the broader economy. It may be instructive, therefor, to highlight the role life insurers play in capital formation and the economy. Life insurers' collateral is drawn from their long-term portfolios, which are significant to the economy as a whole. Life insurance industry assets are invested: in corporate bonds (22%); stocks (31%); government bonds (8%); commercial mortgages (6%); other assets (22%). Life insurers are the largest institutional investor in U.S. corporate bond financing; approximately 49% of life insurers' $6.5 Trillion total assets in 2016 were held in bonds, with 33% composed of corporate bonds. Over 38% of corporate bonds purchased by life insurers have maturities exceeding 20 years (at the time of purchase).These calculations are based on data from the 2016 NAIC Annual Statement Data and ACLI calculations based on and the U.S. Federal Reserve Board, Flow of Funds Accounts of the U.S.

fungible, OTC swaps are bespoke and possess unique maturities, sizes, and in the case of swaptions, premia. As discussed below in more detail, due to OTC swaps' non-generic qualities, some entities are able to mine data fed to the SDRs (both in real time and following the block trade reporting delay) that ultimately disadvantages end-users like life insurers. In particular, some entities can detect the presence of hedge programs in the market and perhaps even identify the particular life insurer engaged in hedging. End-users' loss of anonymity increases risk and hedging costs.

As a general rule, cleared and uncleared swaps are publicly reported nearly instantaneously following their execution. An exception exists, however, for larger "block trades" that are traded over-the-counter. Because of the size and complexity of these trades, end-users and their counterparty dealers executing transactions as principals each require more time before the trade is publicly reported in order to either complete a multi-positioned hedge in the case of the end-user or to execute risk-reducing transactions in the case of the dealer.

The CFTC accommodated the need for delayed disclosure in Rule 43, which allows qualifying large trades to be reported no later than 15 minutes following execution. According to Section 2(a)(13)(C)(iii) of the Commodity Exchange Act, as amended by the Dodd-Frank Act, the CFTC's real-time public reporting rule should not "disclose the business transactions and market positions of any person." The data made available to the public should still protect the anonymity of the counterparties.

Consistent with the purposes of the Commodity Exchange Act ("CEA") and related CFTC rules, counterparties to a block trade should have at least 15 minutes of "quiet" to execute balancing or related transactions before the market "sees" the block transactions and prices adjust accordingly. Currently, however, there are two emerging trends that appear to undermine the protections that the 15-minute reporting delay are intended to accomplish.

- The Inadequacy of the 15 Minute Delay in Block Trades

Hedgers like life insurers and energy dependent companies that use the swaps markets to off-set their risks with bespoke swaps in the more thinly traded markets are paying a penalty price for their hedges because their dealers fear that they will not be able to off-set their own risks in these less liquid swap markets. Marketplace actions have shown that 15 minutes are not enough for the dealers to work themselves out of the risk and consequently are passing their anticipated costs onto their customers. Similarly, when end-users need to execute a complex hedge that might be spread between different markets and dealers, the 15-minute window is often too narrow. As a result, when the initial transactions are reported, savvy dealers have been able to identify evolving block transactions and prices have moved away from the hedger accordingly, often before the full hedge program can be completed. These developments have a unique, harmful impact on life insurers due to the nature of their hedges related to long-dated risks and the derivatives positions reported pursuant to state insurance laws.

Under state insurance laws, life insurers are required to report their existing swap positions in quarterly filings available to their regulators and to the public.[3] State insurance laws limit life insurers to hedging transactions and forbit speculative positions. Due to the combination of the required state reporting of life insurers' derivatives positions, their limitation to hedging, and the long-dated nature of the positions, dealers can intuit from the insurers' swaps what their portfolio of risk might be.

[3] Schedule DB developed by the National Association of Insurance Commissioners is the template for reporting of life insurers' quarterly derivatives positions to state regulators and the public.

Thus, it is reported that dealers are able to upload this data and can employ their computing power to rapidly identify what a specific insurer is trading when its block trade is posted after 15-minutes. Consequently, the insurer has lost its anonymity and the dealer(s) (and their customers, as well) can trade against the specific insurer and its positions. This market behavior drives up the cost of execution for the affected insurer because its immediate, counterparty dealers will price their trades defensively in anticipation of the market deducing what is going on and what is likely to happen next as the insurer continues to execute its hedge program. The public may be able to identify a big hedge program in progress via machine learning and fast computing while looking at the SDR.

- The Implications of Machine Learning on SDR Block Trade Data

From reports, we understand that some banks, dealers, "fast money" like hedge funds and other active trading firms have the capability of building machine learning system that can identify a high probability predictor for when the market is digesting a non-publicly reported block trade within the 15- minute period and before the large trade is reported and completed. These entities' computing power and software enables them to deduce from trading activities (such as below-block-sized hedging trades that are reported in real time) that there are related, yet-to-be-reported block trades that will be reported momentarily. Thus, these entities can foresee and front run the change in price that will occur when the block is reported. This foreknowledge together with the ability to obstructively identify a particular insurer's activity through machine learning and computing power outweighs the intended objectives of the required 15-minute public reporting delay.

Some entities may deduce a specific life insurers' identity using trade information available in the SDR, such as specific strikes, or maturity-dates since they have just bid on the trade (and lost). Even though the SDR may hide the true size of a trade, these entities who just bid on a transaction can identify it, given the "fingerprints" in the SDR, and they can ascertain the true size. These entities can use this knowledge that a large, market-moving trade just happened to their advantage. The prospect of that makes all sell side participants more defensive in their pricing, resulting in wider markets.[4]

As a result of these marketplace developments, end-users may be inclined to use more anonymous but less efficient hedges. This causal consequence harmfully changes some hedging program's pace of execution, thereby incurring market risk. Although life insurers support and recognize the need for real time reporting to regulators, broad SDR rule reform with respect to real time public reporting is necessary for the entire marketplace. This phenomenon reflects an unintended, but quite damaging, consequence of the current SDR real time reporting standards.

Justification for Administrative Remedy

Given the nature of life insurers' hedging programs, 30 days is required to fully execute on a particular strategy or set of trades. 30 days has been recognized as an appropriate window for commercial end-users in HR 238. In light of life insurers' risk-management hedges and trading activity, the current block sizes do not always provide the appropriate protection from advance discovery inconsistent with legislative and administrative intent.

Section 2(a)(13)(C)(iii) of the Commodity Exchange Act, as amended by the Dodd-Frank Act, states that the CTC may take into account anonymity concerns in developing its rules. As explained above, life insurers' anonymity is being compromised under the current real-time public reporting standards, which increases hedging costs and thwarts effective risk management by financial institutions with risk management hedges on long-dated liabilities and long-term assets that are uniquely exposed.

[4] *See* Miller, *The Downside of Transparency*, 37 Futures and Derivatives and Law Report 4 (April 2017)

The unequivocal breach of life insurers' anonymity warrants an amendment to the reporting rule as a long-term solution, and an interpretive or no-action letter as an interim solution until the position can be codified in a rule amendment. These solutions ensure the integrity of the market through reasonable extension of reporting delays, and preserve post-trade transparency for regulators into the swaps market.

Recommended Administrative Solutions

ACLI respectfully suggests a reexamination of the need for real-time reporting, and whether a delay of information would be appropriate for all market participants and all types of trading activity. Concerns surrounding and support for commercial end-user relief for illiquid trades is evident in HR 238[5]. If this recommendation would be challenging under the Dodd Frank Act's mandate, we would alternatively suggest a reexamination of designated block trade sizing, and a consideration of a more significant delay for block trades for all market participants.

Two policy goals were addressed by the advent of public reporting. Regulators' ability to have better insight into the swaps market. Life insurers support regulators' continued immediate access to data. An unintended consequence of broader price transparency for the marketplace, however, is that end-users are being harmed and not helped by the current public reporting transparency.

As a longer-term solution under the Joint Statement we recommend amendment of the public real-time reporting regulation to permit a 30-day delay on all block trades and a lowering of block sizes on certain trade types. This relief should be available for all end-users that are harmed through abusive, opportunistic manipulation of reporting data due to the unique nature of their block trades.

As a shorter-term interim solution, we recommend the development of interpretive or no-action relief that would permit life insurers and affiliates engaged in hedging transactions a 30-day delay on all block trades and a lowering of block sizes on certain trade types. This interim relief would remedy a harmful tangible defect in the purpose and operation of the real-time reporting requirements for OTC transactions until a permanent remedy can be codified in a rule amendment.

Parallel precedent exists for CFTC no-action relief. On November 6, 2014, the CFTC's Division of Market Oversight granted Time-Limited No-Action Relief: Further Time Delay for Public Dissemination of Long-dated Brent and WTI Crude Oil Swap and Swaption Contracts Executed by or with Southwest Airlines.[6] By way of background, Rule 43.5(h) under the CEA provides sets forth a time delay for the public dissemination of large notional off-facility swaps in all asset classes not subject to the mandatory clearing requirement in which neither counterparty is a swap dealer or a major swap participant. The Southwest Airlines no-action letter explained that

> [I]n the preamble to the rules, the Commission acknowledged that swaps transactions in the less liquid markets may be subject to a longer reporting time. In this regard, the Commission explained that "there are bespoke, off-facility transactions in which the underlying asset is a physical commodity; these transactions carry a significantly increased likelihood that the public dissemination of the underlying asset may disclose the identity, business transactions or market positions of a counterparty."

[5] https://www.congress.gov/115/bills/hr238/BILLS-115hr238ih.pdf
[6] http://www.cftc.gov/PressRoom/PressReleases/pr7050-14

The same reasoning applies with equal significance to the disruptive challenges life insurers have encountered with the completion of large block trades under the current public reporting rules.

Justification for Administrative Remedy

Given the nature of life insurers' hedging programs, 30 days is required to fully execute on a particular strategy or set of trades. 30 days has been recognized as an appropriate window for commercial end-users in HR 238. In light of life insurers' risk-management hedges and trading activity, the current block sizes do not always provide the appropriate protection from advance discovery inconsistent with legislative and administrative intent.

Section 2(a)(13)(C)(iii) of the Commodity Exchange Act, as amended by the Dodd-Frank Act, states that the CTC may take into account anonymity concerns in developing its rules. As explained above, life insurers' anonymity is being compromised under the current real-time public reporting standards, which increases hedging costs and thwarts effective risk management by financial institutions with risk management hedges on long-dated liabilities and long-term assets that are uniquely exposed.

The unequivocal breach of life insurers' anonymity warrants an amendment to the reporting rule as a long-term solution, and an interpretive or no-action letter as an interim solution until the position can be codified in a rule amendment. These solutions ensure the integrity of the market through reasonable extension of reporting delays, and preserve post-trade transparency for regulators into the swaps market.

Conclusion

The Joint Statement and DMO's *Roadmap to Achieve High Quality Swaps Data* constructively sets the stage for careful reexamination of required future steps to achieve the goal of high quality swaps data for post-trade transparency. The 15 minute delay in reporting block trades is inadequate, and should be expanded to 30 days.

Machine learning coupled with required reporting of life insurers' derivatives positions under state law allows certain market participants to identify a specific life insurers executing a large trade, and counterparties consequently price transactions adversely to life insurers. This result is contrary to marketplace fairness and legislative intent. Section 2(a)(13)(C)(iii) of the Commodity Exchange Act provides a clear indication of Congressional intent to preserve market participants' anonymity and establishes a mechanism to rectify selectively developments that thwart Congressional intent under of existing real-time reporting requirements.

We concur with the Roadmap's stated desire to "reduce the number of fields currently reported" and to "focus on minimum number of fields that allow the CFTC to perform its oversight functions, rather than capturing every data point on a swap" and the idea of working to harmonize data fields with foreign regulators generally.

We do not support the Joint Statement possibility that the buy side might be required to reconcile SDR data, having reporting fields extended to include reporting on "margin movements and discrete data points relating to risk and positions, with an eye to consistency with how this reported under ESMA rules." Neither of these potential modifications would be constructive. The detail and burden

of these changes greatly outweigh any potential benefit.

We offered similar comments dated August 21, 2017, in Response to Joint Statement of Acting Chairman Christopher Giancarlo and Commissioner Sharon Y. Bowen (July 10, 2017), and the DMO's *Roadmap to Achieve High Quality Swaps Data*. For your convenience, we have attached a copy of that submission, which is labeled as Attachment A.

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

Sincerely,

Carl B. Wilkerson

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Vice President & Chief Counsel, Securities & Litigation

Christopher J. Kirkpatrick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

By Electronic Submission

August 21, 2017

Re: Input in Response to Joint Statement of Acting Chairman Christopher Giancarlo and Commissioner Sharon Y. Bowen (July 10, 2017)

Dear Mr. Kirkpatrick:

We greatly appreciate the opportunity to share our views on the July 10, 2017, Joint Statement of Acting Chairman Christopher Giancarlo and Commissioner Sharon Y. Bowen ("Joint Statement').[1] The American Council of Life Insurers ("ACLI") is a national trade association. ACLI represents 290 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 participated in the important regulatory dialog leading to implementation of Title VII of the Dodd-Frank Act.[2]

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[1] http://www.cftc.gov/PressRoom/PressReleases/pr7585-17

[2] 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 :

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Summary of Joint Statement's Objectives

The Joint Statement indicates that the CFTC is committed to fully implementing the standards for OTC derivatives markets agreed upon at the 2009 Pittsburgh G-20 summit that were codified in the Dodd-Frank Act, and notes that continued effort on this endeavor includes post-trade transparency for regulators into the swaps market.

The Joint Statement explains that the Division of Market Oversight (DMO) has been directed to take stock of the CFTC's progress to date and assess required future steps to achieve the goal of high quality swaps data for post-trade transparency. The Joint Statement was accompanied by DMO's *Roadmap to Achieve High Quality Swaps Data*[3] for the review process, which lays out two tranches of rule changes. The Roadmap highlights steps forward to ensure the CFTC has complete, accurate, and high-quality data to fulfill its statutory responsibilities.

According to the Joint Statement, the roadmap also communicates DMO's plan to the marketplace so that it can plan and budget for the upcoming amendments. The stated timeline allows the CFTC to conduct rulemakings in regular order, including consultation with market participants and sufficient time for the public comment process. The Joint Statement also explains that the proposed timeline also allows the CFTC to leverage the international data harmonization processes.[4] The Joint Statement states that the CFTC intends to complete this process with full industry implementation by the end of 2019.

Statement of Life Insurers' Position

Life insurers commend and support the overall objectives of the Joint Statement. We concur with the Roadmap's stated desire to "reduce the number of fields currently reported" and to "focus on minimum number of fields that allow the CFTC to perform its oversight functions, rather than capturing every data point on a swap" and the idea of working to harmonize data fields with foreign regulators generally. Changes along these lines would make reporting more efficient and effective.

The Joint Statement indicates that the CFTC is also considering whether the buy side might be required to reconcile SDR data, and evaluating whether reporting fields might be extended to include reporting on "margin movements and discrete data points relating to risk and positions, with

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[3] http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/dmo_swapdataplan071017.pdf

[4] The Joint Statement also advises that Regulators, through CPMI, IOSCO, and the FSB, will be providing guidance on the harmonization of key identifiers and technical specifications for critical data elements. The Joint Statement helpfully observes that market participants and SDRs involved in swaps reporting must have time to build and test required system changes so this plan provides a reasonable implementation period.

an eye to consistency with how this reported under ESMA rules." Neither of these potential modifications would be constructive. The detail of these changes greatly outweigh any potential benefit.

Tranche 2 of the *Roadmap to Achieve High Quality Swaps Data* entitled "Reporting Workflows-Increase the Utility of the Real-Time Public Tape" directly elicits input on real-time reporting challenges.[5] Several aspects of required real-time reporting on OTC transactions are uniquely harmful to life insurers in the management of their asset and liability risks through derivatives hedging.

As a matter of perspective, a bit of background may be helpful to explaining our position. Life insurers are significant end-users of derivatives for prudent asset-liability risk management. Unlike many other financial institutions, life insurers have unusually long-term liabilities that must be matched with assets of equivalent duration. Like other commercial end-users, life insurers must hedge their risks. Life insurers' derivatives use is highly regulated by state law, and life insurers cannot, by law, engage in market speculation. Derivatives allow life insurers to prudently manage the credit and market risk of their portfolios and to fulfill their long-dated obligations to policy and contract owners.[6]

ACLI recommends that the CFTC evaluate real-time reporting regulations in light of goals of liquidity, transparency, and price discovery in the swaps market. This analysis should include ongoing issues of reporting packages, prime brokerage, allocations, risk mitigation services/compressions, EFRPs, and post-priced swaps by clarifying obligations and identifying those distinct types of transactions to increase the utility of the real-time public tape.

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[5] *Roadmap to Achieve High Quality Swaps Data* at 11.

[6] Derivatives regulation affects how life insurers operate in the broader economy. It may be instructive, therefor, to highlight the role life insurers play in capital formation and the economy. Life insurers' collateral is drawn from their long-term portfolios, which are significant to the economy as a whole. Life insurance industry assets are invested: in corporate bonds (22%); stocks (31%); government bonds (8%); commercial mortgages (6%); other assets (22%). Life insurers are the largest institutional investor in U.S. corporate bond financing; approximately 49% of life insurers' $6.5 Trillion total assets in 2016 were held in bonds, with 33% composed of corporate bonds. Over 38% of corporate bonds purchased by life insurers have maturities exceeding 20 years (at the time of purchase).These calculations are based on data from the 2016 NAIC Annual Statement Data and ACLI calculations based on and the U.S. Federal Reserve Board, Flow of Funds Accounts of the U.S.

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[7] Schedule DB developed by the National Association of Insurance Commissioners is the template for reporting of life insurers' quarterly derivatives positions to state regulators and the public.

- The Implications of Machine Learning on SDR Block Trade Data

From reports, we understand that some banks, dealers, "fast money" like hedge funds and other active trading firms have the capability of building machine learning system that can identify a high probability predictor for when the market is digesting a non-publicly reported block trade within the 15- minute period and before the large trade is reported and completed. These entities' computing power and software enables them to deduce from trading activities (such as below-block-sized hedging trades that are reported in real time) that there are related, yet-to-be-reported block trades that will be reported momentarily. Thus, these entities can foresee and front run the change in price that will occur when the block is reported. This foreknowledge together with the ability to obstructively identify a particular insurer's activity through machine learning and computing power outweighs the intended objectives of the required 15-minute public reporting delay.

Some entities may deduce a specific life insurers' identity using trade information available in the SDR, such as specific strikes, or maturity-dates since they have just bid on the trade (and lost). Even though the SDR may hide the true size of a trade, these entities who just bid on a transaction can identify it, given the "fingerprints" in the SDR, and they can ascertain the true size. These entities can use this knowledge that a large, market-moving trade just happened to their advantage. The prospect of that makes all sell side participants more defensive in their pricing, resulting in wider markets.[8]

As a result of these marketplace developments, end-users may be inclined to use more anonymous but less efficient hedges. This causal consequence harmfully changes some hedging program's pace of execution, thereby incurring market risk. Although life insurers support and recognize the need for real time reporting to regulators, broad SDR rule reform with respect to real time public reporting is necessary for the entire marketplace. This phenomenon reflects an unintended, but quite damaging, consequence of the current SDR real time reporting standards.

Justification for Administrative Remedy

Given the nature of life insurers' hedging programs, 30 days is required to fully execute on a particular strategy or set of trades. 30 days has been recognized as an appropriate window for commercial end-users in HR 238. In light of life insurers' risk-management hedges and trading activity, the current block sizes do not always provide the appropriate protection from advance discovery inconsistent with legislative and administrative intent.

Section 2(a)(13)(C)(iii) of the Commodity Exchange Act, as amended by the Dodd-Frank Act, states that the CTC may take into account anonymity concerns in developing its rules. As explained above, life insurers' anonymity is being compromised under the current real-time public reporting standards, which increases hedging costs and thwarts effective risk management by financial institutions with risk management hedges on long-dated liabilities and long-term assets that are uniquely exposed. The unequivocal breach of life insurers' anonymity warrants an amendment to the reporting rule as a long-term solution, and an interpretive or no-action letter as an interim solution until the position can be codified in a rule amendment. These solutions ensure the integrity of the market through reasonable extension of reporting delays, and preserve post-trade transparency for regulators into the swaps market.

[8] *See* Miller, *The Downside of Transparency*, 37 Futures and Derivatives and Law Report 4 (April 2017)

Recommended Administrative Solutions

ACLI respectfully suggests a reexamination of the need for real-time reporting, and whether a delay of information would be appropriate for all market participants and all types of trading activity. Concerns surrounding and support for commercial end-user relief for illiquid trades is evident in HR 238[9]. If this recommendation would be challenging under the Dodd Frank Act's mandate, we would alternatively suggest a reexamination of designated block trade sizing, and a consideration of a more significant delay for block trades for all market participants.

Two policy goals were addressed by the advent of public reporting. Regulators' ability to have better insight into the swaps market. Life insurers support regulators' continued immediate access to data. An unintended consequence of broader price transparency for the marketplace, however, is that end-users are being harmed and not helped by the current public reporting transparency.

As a longer-term solution under the Joint Statement we recommend amendment of the public real-time reporting regulation to permit a 30-day delay on all block trades and a lowering of block sizes on certain trade types. This relief should be available for all end-users that are harmed through abusive, opportunistic manipulation of reporting data due to the unique nature of their block trades.

As a shorter-term interim solution, we recommend the development of interpretive or no-action relief that would permit life insurers and affiliates engaged in hedging transactions a 30-day delay on all block trades and a lowering of block sizes on certain trade types. This interim relief would remedy a harmful tangible defect in the purpose and operation of the real-time reporting requirements for OTC transactions until a permanent remedy can be codified in a rule amendment.

Parallel precedent exists for CFTC no-action relief. On November 6, 2014, the CFTC's Division of Market Oversight granted Time-Limited No-Action Relief: Further Time Delay for Public Dissemination of Long-dated Brent and WTI Crude Oil Swap and Swaption Contracts Executed by or with Southwest Airlines.[10] By way of background, Rule 43.5(h) under the CEA provides sets forth a time delay for the public dissemination of large notional off-facility swaps in all asset classes not subject to the mandatory clearing requirement in which neither counterparty is a swap dealer or a major swap participant. The Southwest Airlines no-action letter explained that

> [I]n the preamble to the rules, the Commission acknowledged that swaps transactions in the less liquid markets may be subject to a longer reporting time. In this regard, the Commission explained that "there are bespoke, off-facility transactions in which the underlying asset is a physical commodity; these transactions carry a significantly increased likelihood that the public dissemination of the underlying asset may disclose the identity, business transactions or market positions of a counterparty."

The same reasoning applies with equal significance to the disruptive challenges life insurers have encountered with the completion of large block trades under the current public reporting rules.

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[9] https://www.congress.gov/115/bills/hr238/BILLS-115hr238ih.pdf
[10] http://www.cftc.gov/PressRoom/PressReleases/pr7050-14

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Section 2(a)(13)(C)(iii) of the Commodity Exchange Act, as amended by the Dodd-Frank Act, states that the CTC may take into account anonymity concerns in developing its rules. As explained above, life insurers' anonymity is being compromised under the current real-time public reporting standards, which increases hedging costs and thwarts effective risk management by financial institutions with risk management hedges on long-dated liabilities and long-term assets that are uniquely exposed.

The unequivocal breach of life insurers' anonymity warrants an amendment to the reporting rule as a long-term solution, and an interpretive or no-action letter as an interim solution until the position can be codified in a rule amendment. These solutions ensure the integrity of the market through reasonable extension of reporting delays, and preserve post-trade transparency for regulators into the swaps market.

Conclusion

The Joint Statement and DMO's *Roadmap to Achieve High Quality Swaps Data* constructively sets the stage for careful reexamination of required future steps to achieve the goal of high quality swaps data for post-trade transparency. The 15 minute delay in reporting block trades is inadequate, and should be expanded to 30 days.

Machine learning coupled with required reporting of life insurers' derivatives positions under state law allows certain market participants to identify a specific life insurers executing a large trade, and counterparties consequently price transactions adversely to life insurers. This result is contrary to marketplace fairness and legislative intent. Section 2(a)(13)(C)(iii) of the Commodity Exchange Act provides a clear indication of Congressional intent to preserve market participants' anonymity and establishes a mechanism to rectify selectively developments that thwart Congressional intent under of existing real-time reporting requirements.

We concur with the Roadmap's stated desire to "reduce the number of fields currently reported" and to "focus on minimum number of fields that allow the CFTC to perform its oversight functions, rather than capturing every data point on a swap" and the idea of working to harmonize data fields with foreign regulators generally.

We do not support the Joint Statement possibility that the buy side might be required to reconcile SDR data, having reporting fields extended to include reporting on "margin movements and discrete data points relating to risk and positions, with an eye to consistency with how this reported under ESMA rules." Neither of these potential modifications would be constructive. The detail and burden

of these changes greatly outweigh any potential benefit.

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

Carl B. Wilkerson

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