

June 30, 2023

Submitted electronically

Mr. Christopher Kirkpatrick
Secretary
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW,
Washington, DC 20581

Re: Derivatives Clearing Organization Risk Management Regulations to Account for the
Treatment of Separate Accounts by Futures Commission Merchants
RIN 3038-AF21

Dear Mr. Kirkpatrick:

The American Council of Life Insurers¹ appreciates the opportunity to submit comments to the U.S. Commodity Futures Trading Commission (“CFTC” or “Commission”) proposed amendments to its derivatives clearing organization (“DCO”) risk management regulations to permit futures commission merchants (“FCMs”) that are clearing members to treat the separate accounts of a single customer as accounts of separate entities for purposes of certain Commission regulations.²

ACLI members broadly support the comments of SIFMA AMG in its letter to the Commission dated June 30, 2023 in response to the Proposal.

Specifically, ACLI members join SIFMA AMG members to urge the CFTC to consider codification of the interpretation of Rule 1.56 set forth in CFTC letter 20-28.³ That letter makes clear that “no specific or express language” must be contained in customer agreements to meet Rule 1.56 and, importantly, recognizes that:

¹ The American Council of Life Insurers (ACLI) is the leading trade association driving public policy and advocacy on behalf of the life insurance industry. 90 million American families rely on the life insurance industry for financial protection and retirement security. ACLI’s member companies are dedicated to protecting consumers’ financial wellbeing through life insurance, annuities, retirement plans, long-term care insurance, disability income insurance, reinsurance, and dental, vision and other supplemental benefits. ACLI’s 280 member companies represent 95 percent of industry assets in the United States.

² Derivatives Clearing Organization Risk Management Regulations To Account for the Treatment of Separate Accounts by Futures Commission Merchants, 88 Fed. Reg. 22934 (Apr. 14, 2023) (the “Proposal”); *available at* <https://www.govinfo.gov/content/pkg/FR-2023-04-14/pdf/2023-06248.pdf>.

³ CFTC Letter No. 20-28, *Supplemental Advisory and Time-Limited No-Action Relief with Respect to the Treatment of Separate Accounts by Futures Commission Merchants* (Sept. 15, 2020); *available at* <https://www.cftc.gov/csl/20-28/download>

“[T]he liability of a beneficial owner may be limited due solely to external law applicable to that beneficial owner that operates independent of contractual agreements. This would include state laws establishing separate accounts of insurance companies and cases of sovereign immunity, or similar cases. For the avoidance of doubt, an agreement between an FCM and a beneficial owner that recognizes, but does not add to, a statutory limitation of liability applicable to the beneficial owner would not violate Regulation 1.56.”⁴

ACLI’s life insurance company members serve their customers’ financial and retirement goals with variable life and annuity products (“variable products”)⁵ and utilize separate accounts to segregate assets backing these products. These variable products are legally enforceable contracts between life insurance companies and their customers. Variable products must be supported by a separate account of the issuing insurance company and must be insulated from the general account and maintain equal assets and liabilities. State insurance laws insulate insurance company separate accounts from claims of general account creditors of an insurer.

The Commission codifying of the interpretation of Rule 1.56 set forth in CFTC letter 20-28 would give certainty to variable product customers of insurance companies that the limitation in liability established under state insurance laws will be respected by DCOs and FCMs.

We stand ready to answer any questions and thank the Commission for the opportunity to present these comments for your consideration.

Very truly yours,



Patrick Reeder
Deputy General Counsel



Kristin M. Abbott
Counsel

⁴ *Id.* at 3.

⁵ A significant number of customers rely on these variable products. In 2021, there were approximately 28,731,000 variable annuity contracts in-force (16,520,000 individual; 12,211,000 group). ACLI, Annuity Product Line Report, 2022 (forthcoming).