



**Carl B. Wilkerson**  
Vice President & Chief Counsel  
Securities & Litigation  
(202) 624-2118 t (866) 953-4096 f  
carlwilkerson@acli.com

January 11, 2013

Elizabeth M. Murphy, Secretary  
Securities and Exchange Commission  
100 F Street  
Washington, DC 20549

Re: Request for an Extended Comment Period on Proposed Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers Proposed Rule (Release No. 34-68071; File No. S7-08-12)

Dear Ms. Murphy:

The SEC recently invited comment on proposed capital, margin and segregation requirements for security-based swap dealers and major swap participants. The initiative appeared in the Federal Register on November 23, 2012, and established a comment deadline expiring on January 22, 2013. 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.

## 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 margin, collateral and segregation. We are, therefore, very interested in fully commenting on the SEC's treatment of directly analogous issues by market participants.<sup>1</sup>

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<sup>1</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) [\[http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58806&SearchText=wilkerson\]](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) [\[http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=48045&SearchText=wilkerson\]](http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=48045&SearchText=wilkerson) [CFTC]

ACLI promptly circulated the SEC's 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.

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 in a 60 day comment period, particularly given the proposals' significance and complexity.

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>2</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>3</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>4</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>5</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>6</sup> Our request for an extended comment period comports with these goals.

### **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 SEC on this initiative. By the same

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<sup>2</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>3</sup> See *Guide* at 196.

<sup>4</sup> Administrative Procedure Act: Legislative History, S. Doc. No.24879-258 (1946) [hereinafter legislative history of the APA].

<sup>5</sup> See *Guide* at 197.

<sup>6</sup> *Id* at 182 and 196.

token, however, the process of achieving consensus is more time consuming for a large organization representing diverse interests.<sup>7</sup>

The proposal appeared in the Federal Register on November 23, 2012 and provided a 60-day comment period that occurred during the peak of year-end business responsibilities and over three Federal holiday breaks. The complex release spans 501 pages with 1221 substantive footnotes. The initiative is profound, and merits thorough analysis and constructive input.

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.

We would appreciate the reasonable opportunity to review and respond to the important, requirements and practical realities of the proposal. An extended comment period would enable scrutiny and input in response to these matters.

An extended comment period is also justified because the SEC's proposals occur coextensively with a number of other parallel regulatory initiatives initiated by US prudential regulators, the CFTC, and international derivatives 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 SEC's comment period for these reasons.

In addition to evaluating the initiative's substance, several other significant statutory, procedural and cost considerations merit careful analysis, such as:

- The proposal's cost-benefit analysis;
- Effects of the proposal on competition, efficiency and capital formation.
- Paperwork Reduction Act considerations; and,
- Regulatory Flexibility Act analysis.

## Conclusion

Neither the APA<sup>8</sup> nor the SEC's 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 of 60-90 days 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 SEC rulemaking initiatives over many years. We will likewise devote substantial resources and time in developing policy positions and

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<sup>7</sup> This sentiment is drawn directly from the Guide text cited in footnote 3 *supra*.

<sup>8</sup> See Guide at 196.

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 SEC'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 for 60-90 days after the January 22, 2013 comment deadline. We greatly appreciate the courtesy of the staff and the Commission in evaluating our request.

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

Sincerely,

A handwritten signature in cursive script that reads "Carl B. Wilkerson".

Carl B. Wilkerson