



**Carl B. Wilkerson**  
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March 10, 2017

Financial Stability Board  
Bank for International Settlements  
Centralbahnplatz 2  
CH-4002 Basel  
Switzerland

Re: Guidance on Central Counterparty Resolution and Resolution Planning

Dear Sirs and Madams:

The American Council of Life Insurers (ACLI) is a national trade association with 280 member companies that represent 95 percent of industry assets, 92 percent of life insurance premiums, and 97 percent of annuity considerations in the United States. Our members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance that 75 million American families rely on for financial and retirement security. We respectfully offer our comments on your Consultative Document, dated February 1, 2017, [Guidance on Central Counterparty Resolution and Resolution Planning](#)<sup>1</sup> (the “Guidance”).

Life Insurers have actively participated in the dialogue concerning the regulation of domestic and international derivatives markets, and have provided constructive input on proposed rulemaking implementing Title VII and Section 619 of the Dodd Frank Wall Street Reform and Consumer Protection Act (the “Dodd Frank Act”), and in parallel initiatives developed by global standard setters.<sup>2</sup>

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<sup>1</sup> <http://www.fsb.org/2017/02/fsb-consults-on-guidance-for-ccp-resolution-and-resolution-planning/> [last visited March 10, 2017].

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

- 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]; [last visited March 10, 2017].
- 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]; [last visited March 10, 2017].
- 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]; [last visited March 10, 2017] and,

The Guidance followed your prior Discussion Note, *Essential Aspects of CCP Resolution Planning*<sup>3</sup> (the “Discussion Note”) upon which we respectfully provided [comments](#)<sup>4</sup> in our letter dated October 14, 2016 (the “ACLI October 14 Comment.”)

## **ACLI’s October 14 Comment**

ACLI’s October 14 Comment focused on three issues as to which the FSB solicited comments: (i) the use of initial margin haircuts as a tool for achieving resolution; (ii) the potential suspension of clearing mandate in the resolution process; and, (iii) the availability of public funds as means of underwriting the costs of attaining resolution of a CCP. Now, our comments are likewise focused on the same three issues.

As we observed in ACLI’s October 14 Comment, because life insurers are compelled to use CCPs but have no voice in their governance, life insurers and other similarly situated end-users rely upon financial regulators like the FSB to create robust “guardrails” for CCPs that protect the public and the broader financial system. Accordingly, it is of the utmost importance that international regulators, generally, and each sovereign regulatory scheme, individually, provide specific and transparent rules to protect CCPs from default in the first instance and the means for their recovery if they do. The prospects for a systemically important CCP’s resolution when recovery fails or seems quixotic are obviously daunting. We appreciate the FSB’s careful consideration of the possible resolution scenarios as reflected in its Discussion Note, Guidance and other deliberations.

### **1. Initial Margin Haircuts**

ACLI’s October 14 Comment objected to initial margin haircutting of non-defaulting customers. We note that the Guidance now suggests (section 2.11) that such a recovery tool should only be applied to IM that is “not bankruptcy-remote.” While this is an improvement over the earlier suggestion that IM haircutting might be used more generally, we still believe that the IM of non-defaulting customers should be in a protected class. By suggesting that non-bankruptcy remote IM (e.g., excess IM) might be haircut, the FSB would potentially penalize market participants who are the least bit lax sweeping out their excess margin. Further, the mere threat of an IM haircut could contribute a swell of uncertainty and contention among market users in a crisis atmosphere respecting the line between minimum and excess IM. We fail to see the justification in any scenario for effectively punishing non-defaulting customers by seizing their assets however they may be characterized.

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- 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>]. [last visited March 10, 2017].
  - 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](http://www.federalreserve.gov/SECRS/2015/January/20150127/R-1415/R-1415_112414_129786_278794149594_1.pdf)] [last visited March 10, 2017]. 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>] [last visited on October 10, 2016], 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>]. [last visited on October 10, 2016].

<sup>3</sup> <http://www.fsb.org/wp-content/uploads/Essential-Aspects-of-CCP-Resolution-Planning.pdf> [last visited March 10, 2017].

<sup>4</sup> <http://www.fsb.org/wp-content/uploads/American-Council-of-Life-Insurers.pdf> [last visited March 10, 2017].

## **2. Suspension of the Clearing Mandate**

The FSB's Discussion Note specifically inquired whether market participants endorsed the idea of suspending the clearing mandate in a resolution scenario. ACLI's October 14 Comment endorsed this proposal and we noted that it could be a useful means of relieving market stresses if strong, credit-worthy financial end-users like life insurers could choose between bi-lateral or centrally cleared swaps. The Guidance does not substantively address the use of clearing mandate suspensions, except to note (section 10.3) that "where relevant, resolution authorities should [have] information sharing arrangements with the relevant domestic and foreign authorities that are competent for setting and suspending clearing mandates."

We respectfully suggest that if the FSB is not able to endorse or reject the use of clearing mandate suspensions that it least recommend that domestic authorities make clear to their constituencies whether such a suspension might or not be applicable in a crisis. In other words, market participants caught in a potential CCP resolution scenario should know beforehand whether to expect that their clearing mandate could be suspended. Such foreknowledge would be consistent with the FSB's general interest in transparency and stability.

## **3. Availability of Public Funds**

The Discussion Note and the Guidance each consider in some detail recommendations respecting assumptions that should be made about the financial resources available in a CCP resolution. In both papers, however, the FSB implies that if public funds are used in a resolution that such funds be recovered from, among others, "market participants." (Guidance at sec. 6.5.)

In response to the Discussion Note's recommendation on this point the ACLI's October 14 Comment stated, "We do not believe ... that end-users in the clearing process, such as life insurers, should be compelled to fund liabilities that they did not create. This responsibility properly lies foremost on the CCP's equity owners and clearing members responsible for the CCP's governance."

We reiterate our strong objection to the suggestion that financial end users that are compelled to use central clearing might likewise be compelled to fund a CCP's resolution. We respectfully suggest that the FSB distinguish among "market participants" in manner that more explicitly delineates between non-defaulting customers that are compelled to use the CCP and others who might more reasonably be expected to fund the CCP's resolution (e.g., its equity holders and member firms.)

## **Conclusion**

The Guidance poses several significant issues respecting CCP resolution that are very important for life insurers as end users that have no option but to use CCPs to clear the derivative trades that hedge our financial risks.

Thank you for your attention to our views. If any questions develop, please let me know.

Sincerely,

*Carl B. Wilkerson*