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March 3, 2015

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street SW.
Suite 3E–218, Mail Stop 9W–11
Washington, DC 2021

Robert E. Feldman, Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW.
Washington, DC 20429

Robert deV. Frierson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW.
Washington, DC 20551

By Electronic Submission

Re: Regulatory Capital Rules, Liquidity Coverage Ratio: Interim Final Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions

The American Council of Life Insurers ("ACLI") is a national trade association with 284 members that represent more than 90 percent of the assets and premiums of the life insurance and annuity industry. Some of our members may be affected by the substance of the above-captioned interim final rule issued by the Office of the Comptroller of the Currency ("OCC") and the Board of Governors of the Federal Reserve System ("Board") on December 16, 2014 (the "Interim Final Rule") and the Regulatory Capital Rules, Liquidity Coverage Ratio: Proposed Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions rulemaking proposed by the Federal Deposit Insurance Corporation ("FDIC") and published on January 30, 2015 in the Federal Register (the "Proposed Rule"). ACLI respectfully submits the following response to the request for comment on this regulatory matter. We greatly appreciate your attention to our views.

In an earlier letter,[1] we made clear our opposition to the imposition of a 24-hour stay which would prevent lite insurers and other counterparties from exercising contractual rights to terminate,

[1] On November 4, 2014, ACLI and a coalition of buy-side derivatives end-users filed a letter with the Financial Stability Board objecting to its actions to preclude long-standing early termination rights in uncleared over-the-counter derivatives contracts. Initially, the FSB worked privately with the International Swaps and Derivatives Association (ISDA) to impose stays on early termination rights in ISDA contracts. Subsequently, the FSB issued a consultative document entitled *Cross-border recognition of resolution action* that would require GSIFIs to utilize ISDA contracts with stays on early termination rights, among other things. *See*, https://members.acli.com/Committees/Committees%20and%20Informal%20Groups/Life%20Insurance%20Investments%20Committee/Pages/CT14-203.aspx

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liquidate, accelerate, or close out obligations under securities contracts, repurchase agreements, or swaps. While we continue to oppose any such stay, we recognize that the policy of imposing limited stays with respect to GSIFIs has the potential to be extended to include other financial entities.

Today, we reiterate[2] our concern regarding a perhaps unintended consequence of such a proposed stay. The National Association of Insurance Commissioners has issued a "Guideline for Stay on Termination of Netting Agreements and Qualified Financial Contracts" [3] that encourages states to consider amending their insurer receivership laws to adopt a 24-hour stay provision similar to that in the Federal Deposit Insurance Act (the "FDIA"), 12 U.S.C. § 1821(e)(9)-(12). We are aware of at least one state that is presently contemplating a 24-hour stay provision in its receivership laws, and we are concerned that others will follow given the push to spread this concept.

One problem with imposing a 24-hour stay through state law is that the definition of Eligible Master Netting Agreement proposed by the Commodity Futures Trading Commission ("CFTC") and the definition of Qualifying Master Netting Agreement in the Interim Final Rule and the Proposed Rule exclude any agreement that is subject to a stay from any source other than (i) the FDIA, (ii) Title II of the Dodd-Frank Act, (iii) similar laws applicable to government-sponsored enterprises, and (with respect to the Interim Final Rule and the Proposed Rule only) (iv) similar laws of foreign jurisdictions.

Since there is no exemption for similar state-based stays, any domestic insurer that would be subject to a 24-hour stay arising under state law would be penalized by its counterparties in the form of higher collateral requirements and credit charges, since those counterparties would be required by regulation to post more collateral and endure higher capital charges when dealing with counterparties whose netting agreements are not "qualified." Instead, any such domestic insurer would be treated worse than almost any other counterparty, including foreign counterparties.

Requested Relief

Given the foregoing, we request that the OCC, the Board and the FDIC broaden the list of acceptable stays under the definition of Qualifying Master Netting Agreement to include any similar stays arising under state law.

We greatly appreciate your consideration of this issue. If you have any questions, please let me know.

Sincerely,

/s/

Carl B. Wilkerson

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[2] On December 2, 2014, ACLI filed a letter with the CFTC commenting on its reproposed rule on Margin and Capital Requirements for Covered Swap Entities. One of the concerns expressed in that letter was that the definition of Eligible Master Netting Agreement did not recognize stays arising under state insurance insolvency and receivership laws. *See*, http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=60055&SearchText=

[3] A copy of the Guideline for Stay on Termination of Netting Agreements and Qualified Financial Contracts is attached hereto as Appendix A.

Appendix A

GUIDELINE FOR STAY ON TERMINATION OF NETTING AGREEMENTS AND QUALIFIED FINANCIAL CONTRACTS

Drafting Note: State receivership and insolvency laws may permit a contractual right to cause the termination, liquidation, acceleration or close out of obligations with respect to any netting agreement or qualified financial contract (QFC) with an insurer because of the insolvency, financial condition or default of the insurer, or the commencement of a formal delinquency proceeding. These laws are based upon similar provisions contained in the federal bankruptcy code and the Federal Deposit Insurance Act (FDIA). The FDIA also provides for a twenty-four hour stay to allow for the transfer of QFCs by the receiver to another entity rather than permitting the immediate termination and netting of the QFC. 12 U.S.C. § 1821(e)(9)-(12). States that permit the termination and netting of QFCs may want to consider adopting a similar stay provision following the appointment of a receiver. The following statutory language is not an amendment to the NAIC receivership models, but is intended as a Guideline for use by those states seeking to require a stay with respect to the termination of a netting agreement or QFC of an insurer in insolvency:

Stay on Termination of Netting Agreements and Qualified Financial Contracts

A person who is a party to a netting agreement or qualified financial contract under [cite to applicable state law addressing qualified financial agreements] with an insurer that is the subject of an insolvency proceeding may not exercise any right that the person has to terminate, liquidate, accelerate or close out the obligations with respect to the contract by reason of the insolvency, financial condition or default of the insurer, or by the commencement of a formal delinquency proceeding,

1) until 5:00 p.m. (eastern time) on the business day following the date of appointment of a receiver; or

2) after the person has received notice that the contract has been transferred pursuant to [cite applicable state law addressing transfer of qualified financial contracts].