

## **MEMORANDUM**

**To:** File No. S7-32-10

**From:** Rajal B. Patel, Senior Special Counsel, Office of Derivatives Policy, Division of Trading and Markets

**Re:** Meeting with representatives from the American Council of Life Insurers

On Monday, July 18, 2022, Carol McGee, Rajal Patel, and Pam Carmody (staff in the Division of Trading and Markets); Y.C. Loon and Jovan Stojkovic (staff in the Division of Economic and Risk Analysis); and Valian Afshar and Nicholas Panos (staff in the Division of Corporation Finance) held a conference call with Paul Kangas of the American Council of Life Insurers (ACLI); Teri Brunsman of TIAA; Kathleen O'Neill of New York Life; Todd Lurie and Joe Demetrick of MetLife; Ray Ramirez, Lizet Steele, and Steve Roth of Eversheds Sutherland; and Richard Miller of Richard Miller Consulting (on behalf of ACLI). The general topics discussed were the Commission's proposed rule on the Prohibition Against Fraud, Manipulation, or Deception in Connection with Security-Based Swaps and the Commission's proposed rule on Position Reporting of Large Security-Based Swap Positions.

Attachment: PowerPoint presentation discussed during meeting



**Life Insurers' Concerns Regarding  
SEC Proposed Rule 17 CFR 240,  
Prohibition Against Fraud & Deception in  
Connection With Security-Based Swaps; and  
Large Security-Based Swap Position Reporting**

American Council of Life Insurers  
Meeting With SEC Commissioners & Staff  
July 2022

# Introduction



The American Council of Life Insurers (ACLI) is a national trade association with 280 member companies representing 95% of industry assets, 92% of life insurance premiums, and 97% of annuity considerations in the United States.

ACLI's members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance that 90 million American families rely on for financial and retirement security.

## *ACLI Attendees*

**Paul Kangas, Vice President, ACLI**

**Richard Miller, Derivatives Policy Consultant, ACLI**

**Joe Demetrick, Managing Director, MetLife**

**Todd Lurie Vice President and Associate General Counsel, MetLife**

**Kathleen O' Neill, Associate General Counsel, New York Life**

**Teri Brunsman, Vice President & Associate General Counsel, TIAA**



# Agenda

Overview of Life Insurers in the broader economy.

Discussion of Life Insurers' use of SBS.

Life Insurers' concerns with SEC Proposal.

- Rule 9j-1(a) should recognize Rule 10b5-1 affirmative defenses and adopt a scienter standard of liability
- Reg SBSR should be considered
- Issues related to public reporting
- Clarification of reporting person
- Alignment of reporting with other SEC reporting

# Life Insurers In Broader Economy



- Life insurers provide long-term financial security to millions of customers.
- Given the nature of our products, our liabilities are long-dated and insurers seek to match them with long-dated assets.
- Life insurers are the largest institutional investor in U.S. corporate bond financing; a substantial percentage of those bonds have maturities exceeding 20 years at the time of purchase.
- Because of our long-dated liabilities and accompanying asset portfolios, life insurers are exposed to interest rate, currency, equity market performance, credit default and other risks. We seek to hedge those risks through the prudent use of swaps and SBS.

# Securities in Life Insurance Portfolios



Life insurers provide long-term financial security to millions of customers (e.g., life insurance, annuities and pensions.)

Life insurers are required to match their long-term product risk with long-duration assets (e.g., sovereign & corporate debt issues, typically with 20-year terms)

Life Insurers have separate public and private side investment teams that invest in private placements and public bonds and use Security Based Swaps to hedge credit risk associated with such investments

Equity-linked annuity products are supported by equity investments (e.g., bespoke options & total-return swaps).

# Rule 9j-1(a): Recognition of Rule 10b5-1 Affirmative Defenses



Affirmative defenses represent well-established compliance practices for securities trading (e.g., employment of information barriers and 10b5-1 plans) that shield a firm from insider trading conduct while furthering legitimate investment management and business activities

Failure to recognize affirmative defenses and provide operational certainty could prevent appropriate use of SBS as a risk management tool where a firm has information barriers in place to contain any sharing of material non-public information within such firm

Such affirmative defenses should be explicitly recognized for SBS trading to align with securities trading to provide certainty to the SBS market

# Rule 9j-1(a): Practical Considerations for Life Insurers



Applying a negligence standard of liability under Rule 9j-1(a) (3) and (4) with respect to affirmative actions taken in the ordinary course of a SBS (including SBS credit event settlements), would create unnecessary uncertainty and have a chilling effect on life insurers use of SBS for legitimate hedging and risk management activities

With respect to Rule 9j-1(a), the SEC should apply a scienter standard to such ordinary course events related to SBS and Underlying reference securities;



# Reg SBSR Should Be Considered



Reg SBSR requiring reporting of security-based swap information to registered security-based swap data repositories (SDRs) and the public dissemination of security-based swap transaction, volume, and pricing information is relevant.

Use experience data collected from Reg SBSR to better calibrate new Large SBS Position reporting thresholds.

Use Reg SBSR experience data to re-consider cost-benefits of new Large SBS Position reporting.



## **Reconsider Schedule 10B information public disclosure benefits**

**Schedule 10B information SBS public disclosure is unnecessary.**

**Section 13 + Reg SBSR public reporting is sufficient.**

**Overly swift public disclosure of buy-side participants will create opportunities for front-running and raise hedging costs for end users.**

# Redefine “group of persons”



The SEC should:

1. Harmonize the concept of reporting party to match Section 13 reporting;
2. Clarify that separately managed accounts of an insurer do not require aggregation where control is not shared;
3. Clarify that entities may disaggregate their SBS positions where effective information barriers exist.

# Synchronize Timing of SEC Rules



Extend Schedule 10b reporting to match Section 13 timeframes, reducing operational & compliance costs.

Reporting deadlines should reflect the role of life insurers in the marketplace.

If reporting party includes separately managed accounts not controlled by the insurer, T+1 is not feasible.

# Life Insurer Concerns With SEC Proposal



Proposed Rule 9j-1(a) should be revised to (i) explicitly include all affirmative defenses available under Rule 10b5-1 and (ii) adopt a liability standard of scienter instead of negligence

Proposed Rule 10b-1 should be reconsidered in light of data from SBSR.

The SEC should reconsider whether public reporting is necessary, considering detrimental effects on buy-side hedgers such as life insurers.

The identification of the reporting entity should better match Section 13 reporting concepts.

SBS reporting timelines should match Section 13 timelines.



**For More Information Contact  
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