June 20, 2019

Mr. Christopher J. Kirkpatrick
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, D.C. 20581

Re: Application for an Exemptive Order under Section 4(c) of the Commodity Exchange Act for Narrowly Tailored Relief from the Clearing Requirement under Section 2(h)

Dear Mr. Kirkpatrick:

Prudential Financial, Inc. ("Prudential"), Symetra Life Insurance Company ("Symetra"), and Voya Financial, Inc. ("Voya") (collectively, the "Applicants") respectfully request that the Commodity Futures Trading Commission ("Commission" or "CFTC") grant an exemptive order under Section 4(c) of the Commodity Exchange Act ("CEA" or "Act")[1] or provide similar relief from the clearing requirement under Section 2(h) of the Act[2] for life insurance companies entering into long-term interest rate ("IR") swap transactions to manage their life insurance portfolio risks, provided such swaps are for bona fide hedging purposes (as defined by state insurance regulation) with a duration of five years or longer.

Introduction

Following the 2008 financial crisis, Congress sought to reform the over-the-counter derivatives market by mandating that certain swaps be centrally cleared. Section 723 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act") sets forth this "mandatory clearing requirement" making it illegal for any person to engage in a swap unless that swap is submitted to a registered or exempt derivatives clearing organization ("DCO").[3] Exceptions are made for certain swap transactions (e.g., those where one of the counterparties is

[1] Section 4(c)(1) of the Act grants the Commission the authority to exempt any transaction or class of transactions from certain provisions of the CEA in order to "promote responsible economic or financial innovation and fair competition." 7 U.S.C. § 6(c)(1). Section 4(c)(2) of the Act provides that an exemption from a requirement may only be granted if the exemption is consistent with the public interest and the purposes of the Act, and the relevant transaction will be entered into solely between "appropriate persons" and will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the Act. 7 U.S.C. § 6(c)(2).

[2] 7 U.S.C. § 2(h); *see also* 17 CFR Part 50.

[3] 7 U.S.C. § 2(h)(1)(A).

not a financial entity and the use of the swaps is to hedge or mitigate commercial risk), but generally such swaps need to be cleared through a DCO and are subject to the DCO's requirements for initial and variation margin.

Life insurance companies are subject to the mandatory clearing requirement with respect to their IR swap transactions. While the Applicants support the financial safeguards provided by requiring margin to be posted for all swap transactions, the unintended consequences of DCO variation margin requirements has increased the costs and ability of life insurance companies to properly manage their portfolio risk in order to provide affordable protection policies and meet the financial needs of Americans in retirement, to a degree which necessitates regulatory relief. As explained in this request and subject to certain narrowly tailored conditions, the Applicants believe that a 4(c) exemption from the mandatory clearing requirement with respect to those long-term IR swaps entered into by life insurance companies that are used solely for non-speculative hedging purposes would be consistent with the CEA and the public interest.

The following request: (1) discusses the Commission's previously recognized need to mitigate the costs of clearing and associated margin requirements on "end-users";[4] (2) explains why exemptive relief is necessary for life insurers to manage long-term liability risk in a cost-efficient manner and how such relief would be beneficial for the public interest; and (3) discusses how the requested relief would be narrowly tailored and would not create systemic risk.

I. The Commission has Previously Recognized the Need to Mitigate the Costs of Clearing and Associated Margin Requirements on End-Users.

As set forth in Section 723 of the Dodd-Frank Act, which amended the CEA by adding Section 2(h)(1), the clearing requirement provides that "it shall be unlawful for any person to engage in a swap unless that person submits such swap for clearing to a derivatives clearing organization that is registered under [the Act] or a derivatives clearing organization that is exempt from registration under [the Act] if the swap is required to be cleared."[5]

While central clearing has an important role in mutualizing counterparty credit risk, it also imposes costs for certain market participants, including end-users that use swaps to hedge or mitigate commercial risks associated with their underlying businesses. Recognizing this burden, Congress included the "end-user exception" in Section 2(h)(7) of the Dodd-Frank Act, which provides that the clearing requirement of Section 2(h)(1) shall not apply to a swap if one of the counterparties to the swap: "(i) is <u>not</u> a financial entity; (ii) is using swaps to hedge or mitigate commercial risk;[6] *and* (iii) notifies the Commission . . . how it generally meets its financial

[4] As used in this Application, "end-user" means non-financial end-users.

[5] 7 U.S.C. § 2(h)(1).

[6] A swap hedges or mitigates commercial risk when the swap: (i) is "economically appropriate" to reduce certain risk in the ordinary course of business of a commercial enterprise; (ii) qualifies as a bona fide hedge for purposes of an exemption from the CFTC's position limits; <u>or</u> (iii) qualifies for hedging treatment under accounting rules. In addition to meeting one of these three criteria, the swap also must not be used for speculation, investing, or trading, <u>or</u> used to hedge or mitigate the risk of another swap or security-based swap position, unless that other position itself is used to hedge or mitigate commercial risk.

obligations associated with entering into non-cleared swaps."[7] The CEA definition of "financial entity" includes, among others, those predominately engaged in activities that are in the "business of banking," or in activities that are "financial in nature," as defined in Section 4(k) of the Bank Holding Company Act ("BCHA").[8] One example under the BCHA of an activity that may be "financial in nature" is investment activities conducted by an insurance company that is predominately engaged in underwriting life, accident and health, or property and casualty insurance (other than credit-related insurance) or providing and issuing annuities.[9]

Congress distinguished financial entities from non-financial end-users to permit non-financial companies to continue transacting in swaps to hedge risks associated with their underlying business without clearing.[10] Congress also further exempted certain entities that would otherwise meet the definition of "financial entity" from the definition for purposes of the end-user exception. These entities include: (i) certain affiliates of nonfinancial entities; (ii) captive finance companies; and (iii) certain banking institutions with less than $10 billion in assets.[11] Congress believed that the costs that these entities would incur if required to clear their swaps did not outweigh the benefits of clearing.[12]

The Commission also has recognized that the clearing mandate should only be imposed when the benefits of clearing justify the burdens of clearing.[13] Since promulgating rules pursuant to the Dodd-Frank Act end-user exception, the CFTC has further exempted from the clearing mandate swaps executed between certain affiliated entities. The Commission explained: "[i]n providing an inter-affiliate exemption from required clearing, the Commission has considered the benefits that inter-affiliate swaps offer corporate groups against the risk of allowing an exemption from required clearing for swaps entered into by separate, but affiliated, legal entities."[14] In short,

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[7] 7 U.S.C. § 2(h)(7) (emphasis added).

[8] 7 U.S.C. § 2(h)(7)(C)(i)(VIII).

[9] 12 U.S.C. § 1843(k)(4)(I).

[10] End-User Exception to the Clearing Requirement for Swaps, 77 Fed. Reg. 42559, 42560 (July 19, 2012) [hereinafter "End-User Exception"].

[11] 7 U.S.C. § 2(h)(7).

[12] *See* End-User Exception, 77 Fed. Reg. at 42581 ("Notwithstanding the benefits of clearing, Section 2(h)(7) of the CEA provides for the end-user exception if one of the swap counterparties . . . ."); *see also* J. Christopher Giancarlo and Bruce Tuckman, *Swaps Regulation Version 2.0* (White Paper), CFTC at 8 (Apr. 26, 2018) ("The Dodd-Frank Act required various market participants to clear standardized swaps and required swap dealers to collect margin on uncleared swaps. The benefits of these requirements, with respect to reducing systemic risk, were judged to be worth the concomitant costs."), *available at* https://www.cftc.gov/sites/default/files/2018-10/Whitepaper_CBSR100118_0.pdf.

[13] As explained in its 2018 White Paper, the CFTC acknowledged that "[g]iven that there are significant costs to clearing and posting margin, good policy would impose these costs only when the benefits—here in the form of reduced systemic risk—justify imposing the costs." *Id.* at 77.

[14] Clearing Exemption for Swaps Between Certain Affiliated Entities, 78 Fed. Reg. 21750, 21753 (Apr. 11, 2013) [hereinafter "Affiliated Entities Clearing Exemption"].

when the costs of clearing have been shown to outweigh the benefits, the Commission has used its 4(c) exemptive authority to act.[15]

II. Exemptive Relief from the Clearing Mandate and the Corresponding Effects of "Cash Only" Variation Margin is Necessary to Manage Insurance Companies' Long-Term Liabilities in a Cost-Efficient Manner and Would Have Beneficial Public Interest Consequences.

Due to certain costs associated with the "cash only" nature of variation margin in clearing, the imposition of the clearing mandate on life insurers has resulted in unintended consequences, adversely affecting the ability of life insurance companies to cost-effectively manage their portfolio of long-term insurance liabilities and their long-term fixed income assets. The Applicants seek relief from the mandatory clearing requirement in order to more cost-efficiently manage those portfolios, which have a direct effect on both the premiums charged to their customers and the performance of their policies. In short, this relief will provide life insurers with the flexibility to determine whether to clear IR swaps, which, in turn, allows life insurers to provide millions of U.S. consumers and their families with better-performing and more affordable financial security and retirement products and benefits.

This section: (A) discusses the Applicants' retirement products, including life insurance and annuity businesses; (B) explains the role of state regulators in overseeing life insurance and annuities companies; and (C) discusses the costs associated with the mandatory clearing requirement.

A. <u>The Applicants' Core Consumer Product Offerings and How They Manage Their Risks</u>

The Applicants primarily sell life insurance policies and annuities. A life insurance policy is a contract between the insurer and the insured policyholder to pay death benefits to the survivors of the insured.[16] Life insurance primarily takes two forms: term and permanent. A term policy provides coverage for a defined period (e.g., one to 30 years) and the policyholder makes periodic premium payments that are based on actuarial underwriting. Such a product provides the policyholder with the comfort of helping to ensure the financial security of their survivors in the event of the policyholder's death within the covered period. Permanent, or whole, life insurance policies provide that same security as long as the premiums are paid and often have features which provide growing cash value as part of the policyholder's retirement planning. Similar to a term or permanent life insurance policy, an annuity also acts as a long-term retirement security product. It is a contract between the insurer and the annuity owner that provides a steady stream of income to the annuity owner for the rest of his or her life.

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[15] *See* Affiliated Entities Clearing Exemption, 78 Fed. Reg. at 21769-21781 (demonstrating how the benefits of exempting certain inter-affiliate swaps from the clearing requirement outweigh the costs); Clearing Exemption for Certain Swaps Entered Into by Cooperatives, 78 Fed. Reg. 52286, 52299-52305 (Aug. 22, 2013) (same with respect to cooperatives).

[16] *Types of Life Insurance*, ACLI, https://www.acli.com/Consumer-Info/Life-Insurance/Types-of-Life-Insurance (last visited June 20, 2019).

In providing life insurance coverage and annuity products, life insurance companies must be able to manage their long-term liabilities in a conservative and stable manner to ensure sufficient capital to pay benefits to their policyholders. This requires them to hold portfolios of assets that, to the greatest extent possible, match their liabilities from an income and duration perspective. The bulk of these portfolios consist of long-term fixed income securities, principally high grade corporate bonds and U.S. Treasuries. To manage interest rate exposure and to manage portfolios when there are insufficient long-dated assets, life insurers enter into long-term (i.e., five years or longer) swap contracts.[17]

B. Role of State Regulators in Overseeing Life Insurance and Annuities Companies

Insurance companies operate under extensive state regulatory regimes in which they are domiciled, licensed, or where products are marketed. Many states comprehensively regulate swap activity through adoption of the National Association of Insurance Commissioners ("NAIC") Derivatives Instruments Model Regulation,[18] which sets standards for the prudent use of derivative instruments.

For example, the New York State Department of Financial Services ("NYSDFS") limits insurance companies' use of derivatives to hedging, replication, and certain limited income generation transactions.[19] Each transaction must be authorized by the insurer's board of directors through the approval of a derivatives use plan, which also must be approved by the NYSDFS superintendent, demonstrating the transaction's effectiveness.[20] The plan must "specify guidelines as to the quality, maturity and diversification of derivative investments and other specifications, including investment strategies, asset/liability management practices, its liquidity needs and its capital and surplus as they relate to the derivative use plan," and the transactions conducted pursuant to it must be reviewed quarterly by the board of directors to ensure the transactions have been made "in accordance with delegations, standards, limitations and investment objectives prescribed in the insurer's derivatives use plan."[21]

Derivative instruments are reported to state regulators on Schedule DB, a form modeled by the NAIC, as part of the insurance company's statutory accounting statements and used to detail information regarding an insurance company's derivatives exposure and activity.[22] Insurance

[17] *The Insurance Industry and Hedging with Derivative Instruments*, NAIC, https://www.naic.org/capital_markets_archive/110715.htm (last visited June 20, 2019). Insurance companies execute swap transactions in a variety of ways. While some interact directly with other market participants, others use separate affiliates of the parent company to handle all market-facing derivatives via internal, "back-to-back" or "matched book" swaps.

[18] Derivative Instruments Model Regulation (MDL-282), NAIC (July 2009), *available at* https://www.naic.org/store/free/MDL-282.pdf.

[19] New York Consolidated Laws, Insurance Law - ISC § 1410(b)(2).

[20] New York Consolidated Laws, Insurance Law - ISC § 1410(b)(3)(A)-(B), (4).

[21] New York Consolidated Laws, Insurance Law - ISC § 1410(b)(3)(C). *See also* 11 NYCRR Part 178.3.

[22] *Insights into the Insurance Industry's Derivatives Exposure*, NAIC, https://www.naic.org/capital_markets_archive/110610.htm (last visited June 20, 2019).

companies are required to report in their Schedule DB all open derivative positions on an individual transaction basis at the end of each reporting period, either quarterly or annually. In addition, intra-period derivative transactions are to be reported on an annual basis.

Schedule DB includes basic information, such as a description of the derivative instrument, the notional amount, the fair value, the maturity date, and the counterparty for each individual transaction. It also provides information with respect to derivatives that are used for hedging purposes, such as a general description of the asset or risk that is being hedged, a reference to the specific schedule where the hedged asset is reported in the statement, and a quantification of the effectiveness of the hedge at inception and at the end of the period. Specifically, Part A of Schedule DB provides positions and activity in options, caps, floors, collars, swaps and forwards. Exposure to, and activity in, futures contracts are reported in Part B. Part C provides positions and activity in replication (synthetic asset) transactions. Counterparty exposure is reported in Part D.

Derivatives positions reported on Schedule DB are organized into categories, including a category for hedging transactions. A derivatives hedging transaction, the transaction-type to which this 4(c) exemption request relates, is defined in the Statement of Statutory Accounting Principles ("SSAP") No. 86, which is cross-referenced in the instructions to Schedule DB.[23] It defines a "hedging traction" as a derivative(s) transaction which is entered into and maintained to reduce:

> (1) The risk of a change in the fair value or cash flow of assets and liabilities which the reporting entity has acquired or incurred or has a firm commitment to acquire or incur or for which the entity has forecasted acquisition or incurrence; or
>
> (2) The currency exchange rate risk or the degree of foreign currency exposure in assets and liabilities which a reporting entity has acquired or incurred or has a firm commitment to acquire or incur or for which the entity has forecasted acquisition or incurrence.

C. Costs Associated with the Mandatory Clearing Requirement

The CFTC has comprehensive rules dictating margin requirements for swaps, whether cleared or uncleared, that protect the financial integrity of derivatives markets and swap transactions.[24] For cleared swaps, cash and other assets are eligible to use as initial margin, but only cash may be used to fund variation margin payments.[25] Conversely, collateral types are not so restricted for uncleared swaps.

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[23] Statement of Statutory Accounting Principles No. 86 (finalized May 14, 2002) at 4.

[24] *See* 17 CFR Part 39; Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 Fed. Reg. 635 (Jan. 6, 2016).

[25] *See, e.g.*, LCH Regulations of the Clearing House LCH Limited Rule 47(b) ("Each Variation Settlement shall be an amount of cash . . ."); *LTD Acceptable Cash*, LCH ("**Variation Margin:** All calls for variation margin must be met in cash and in the currency of the underlying exposure."), https://www.lch.com/risk-collateral-management/ltd-collateral-management/ltd-acceptable-collateral/ltd-acceptable-cash (last visited June 20, 2019).

The requirement that variation margin of cleared swaps be comprised solely of cash has the most disruptive impact on the ability of life insurers to manage their portfolios and duration risk. As referenced earlier, to appropriately match assets and liabilities, life insurers maintain and manage a portfolio of long-term high grade corporate and U.S. Treasury bonds, and long-term IR swaps contracts are utilized to manage interest rate risk and reduce balance sheet volatility. The problem with mandatory clearing arises because of the "cash only" nature of variation margin accepted by clearing houses.

On a cleared swap, if interest rates were to rise (fall) for a swap in which the insurance company receives (pays) fixed, there will be a variation margin call to reflect the change in market value of the position. To meet that call, the life insurer would have to generate cash to cover the call on that long-term swap instead of pledging highly rated fixed income securities it already owns. Since the portfolio consists of mostly long-dated assets and the amount of margin per dollar of notional is much larger than for a short-dated swap of the same notional amount, relative to other typical end-users, a margin call would be much more likely to result in the life insurer having to divest bonds to generate the cash. This is problematic on three fronts:

(1) It disrupts the portfolio management process, which is carefully crafted to match assets and liabilities of the insurance policies;

(2) Since the margin call was likely initiated because of a significant change in interest rates, divestiture of such bonds would be happening in a non-optimal environment, likely resulting in the realization of capital losses on the trades; and

(3) Life insurers represent large holders of high-grade long-term corporate bonds, such that being forced to sell significant volumes of corporate bonds to meet the cash variation margin call could exacerbate an already negative market environment.[26]

On the other hand, margin for uncleared swaps can be both cash and non-cash (e.g., portfolio) assets. Therefore, life insurers can meet their margin requirements without forcing the disruptive and costly liquidation that would have to occur with a cleared swap.

Over the most recent five-year period, the annualized differential between the yield on a 7-10 year A-rated corporate bond and the yield on cash (as proxied by the Federal Funds Overnight Indexed Swap ("OIS") rate) is approximately 3%. Therefore, the lost income resulting from the forced liquidation of corporate bonds from the insurer's balance sheet in order to generate cash to meet variation margin requirements is substantial.

For example, a portfolio of 30-year cleared interest rate swaps with a notional of $50 billion designed to hedge a decline in interest rates would generate a variation margin requirement sufficient to produce an estimated income loss of $500 million per annum after a 2% increase in

[26] To protect against these harmful measures, insurance companies routinely hold large amounts of excess liquidity in reserve that could otherwise be invested and provide greater returns for their customers.

interest rates, presuming an initial variation margin requirement of zero. Additionally, in a rising interest rate environment, the insurer would be forced to liquidate the corporate bonds after it had incurred a substantial decline in value of over $2.5 billion owing to the same rate increase, thereby locking in such decline, while it would otherwise potentially have been avoided by holding such securities to maturity as originally intended.

In terms of the impact to the American consumer, the ultimate cost of the disruptive effect of "cash only" variation margin results in life insurance companies holding much larger cash buffers in their investment portfolios at significantly lower returns than the traditional investment grade fixed income securities it would otherwise hold. The resulting negative impact on overall investment returns then ultimately falls on products offered by such insurance companies and the millions of life insurance and annuity policyholders who could face increased premiums or reduced product performance, which, over a period of years, would make more challenging the ability of families to meet their financial security and retirement needs.

III. The Proposed Relief is Crafted to be Focused and Narrowly Tailored and Would Not Increase Systemic Risk.

The proposed relief is crafted to be focused and narrowly tailored, applying solely to long-term (i.e., five years or longer) bona fide hedge transactions by state-regulated life insurers. Importantly, it would <u>not</u> apply as a blanket exemption for an entity that simply offers life insurance products and annuities. Any IR swaps life insurers choose to not clear under this relief would have to be related directly to their hedging of the state-regulated life insurance activity and would still be subject to the Commission's uncleared swap margin requirements.

Based on the Applicants' activity in the IR swap market, the Applicants believe that the life insurance sector's share of activity in the IR swap market is relatively small. As of May 17, 2019, the CFTC's reported IR swap data indicate that the gross notional outstanding in the IR swap market is $293,522,080,000,000.[27] The *cleared* IR swap market is $235,338,088,000,000. The Applicants' combined IR swaps with a five-year or more maturity (i.e., the swaps eligible for the proposed exemption) make up only 0.05% of the total IR swap market, and 0.06% of the cleared IR swap market. Based on this data and the proposed requirement that entities eligible for the relief must comply with the uncleared swap margin rules, the Applicants believe that the proposed relief would not increase systemic risk.

The proposed relief, attached hereto as an appendix, aims to address life insurers' bona fide risk management needs for their regulated life insurance hedging activity. It is not intended to create opportunities for non-life insurance affiliates of a life insurer to access such relief and does not undermine the Congressional intent in the Dodd-Frank Act's clearing mandate.

The proposal would apply only to *eligible* life insurance companies (or treasury affiliates thereof) that meet four conditions. An eligible life insurance company is: (1) formed and

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[27] Gross Notional Outstanding by Cleared Status (Millions of USD) - Open Interest Equivalent (Single-Count), CFTC, https://www.cftc.gov/MarketReports/SwapsReports/L1GrossExpCS.html (last visited June20, 2019).

existing pursuant to federal or state license to operate as a life insurance company; (2) a "financial entity" under the Act; (3) subject to state regulation which does not permit any derivatives used for the purposes of speculation to be reported as an admitted asset of the company; and (4) obligated under state law or regulation to file a Schedule DB (as detailed within the NAIC's Accounting Practices and Procedures Manual) that reports and categorizes all derivative instruments entered into by such life insurance company.[28]

Further, such an eligible life insurance company would be able to elect not to clear an IR swap that is subject to the clearing mandate if the swap meets five conditions. The conditions are intended to confine the relief to a narrow set of transactions executed for bona fide hedging purposes. First, the swap must qualify as a "hedging transaction" as the term is defined in the relief, whose definition is from SSAP No. 86 and cross-referenced in Schedule DB. Second, the swap must be reported as a hedging transaction on the eligible life insurance company's Schedule DB. Third, the swap must be used to hedge or mitigate risk, in accordance with CFTC Rule 50.50(c).[29] Fourth, the swap must have a stated final maturity of five years or longer from the trade date as of which it is consummated. Fifth, the eligible life insurance company and its counterparties to the IR swap transaction must comply with the uncleared swap capital and margin requirements of 17 CFR Part 23 Subpart E.

For purposes of the proposed relief, the definition of hedging is borrowed from the narrowly tailored definition in SSAP No. 86 and cross-referenced in Schedule DB. Life insurers will need to meet this definition, as well as the definition of hedging as stated in the clearing requirement at CFTC Rule 50.50(c).[30]

If the entity is a treasury affiliate, the swap would need to meet the conditions above, except it would not have to be reported on Schedule DB. But to protect against this relief applying to non-life insurance swap activity, any swap subject to this relief must be able to be tied directly to a swap reported on Schedule DB.

Finally, an eligible life insurance company that elects the relief would need to comply with the reporting requirements of CFTC Rule 50.50(b).[31] For this purpose, the eligible life insurance company shall be the "electing counterparty," as such term is used in Rule 50.50(b), and for purposes of Rule 50.50(b)(1)(iii)(A), the reporting counterparty, as determined pursuant to § 45.8,[32] shall report that an exemption is being elected in accordance with this section.

While the clearing requirement is intended to reduce systemic risk, granting relief from the clearing requirement for long-term life insurance hedging in the manner proposed would not

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[28] The Applicants do not have industry-wide data to accurately predict which life insurers will choose to take advantage of the proposed relief.

[29] 17 CFR § 50.50(c).

[30] 17 CFR § 50.50(c)(1)(iii).

[31] 17 CFR § 50.50(b).

[32] 17 CFR § 45.8.

increase systemic risk. The proposed relief is narrowly tailored and entities availing themselves of such relief would still post margin for their swap activity. Any life insurer choosing not to clear under this relief would still be fully subject to uncleared swap margin requirements for uncleared swaps, which can often be higher than the margin for cleared swaps, but unlike cleared swaps, can be met with non-cash portfolio assets. Moreover, imposing the mandatory clearing requirement on hedging activities of life insurance companies may actually increase overall risk in the marketplace due to the portfolio liquidations that may be triggered by the "cash only" nature of variation margin required in clearing.

As explained above, all life insurers face the same asset-liability mismatch and time horizon necessitating the need for hedging with swaps over a longer term than most other financial entities. Furthermore, all are heavily invested in highly-rated fixed income securities, particularly corporate bonds. Unexpected variation margin calls following a market event may force life insurers to liquidate such bonds at the same time which, in addition to the losses realized by each life insurance investment portfolio, could exacerbate the market movement across the entire corporate bond market.

Conclusion

The Applicants respectfully request that the Commission grant exemptive relief, pursuant to Section 4(c) of the Act, in accordance with Section 4(c)(1) and Section 4(c)(2) of the Act, to permit eligible life insurance companies to execute long term (i.e., five years and longer) IR swaps for hedging purposes only to be done without being subject to the clearing requirement under Section 2(h) of the Act.

As set forth above, the Applicants believe that the exemption would not create systemic risk and be consistent with the public interest and the purposes of the Act. In light of the conditions and limitations described above, the Applicants further believe that the exemption would not have any material adverse effect on the ability of the Commission to discharge its regulatory duties. Accordingly, in the view of the Applicants, the requested exemption satisfies the requirements of Section 4(c)(1) and Section 4(c)(2) of the Act.

If the Commission or its staff should have any questions or require further information regarding this submission, please do not hesitate to contact Micah Green (Steptoe & Johnson LLP) at (202) 429-6290 or mgreen@steptoe.com.

Respectfully submitted,

Gary F. Neubeck	Nick Mocciolo	David Pendergrass
Vice President	Senior Vice President	Senior Vice President
Prudential Financial, Inc.	Symetra Life Insurance Company	Voya Financial, Inc.

cc: Chairman J. Christopher Giancarlo
Commissioner Brian D. Quintenz
Commissioner Rostin Behnam
Commissioner Dawn DeBerry Stump
Commissioner Dan M. Berkovitz
Brian Bussey, Esq., Director, Division of Clearing and Risk
Sarah Josephson, Deputy Director, Division of Clearing and Risk
Robert Wasserman, Esq., Chief Counsel, Division of Clearing and Risk

<u>**Appendix: Proposed Draft Rule**</u>

§ 50.53 Exemption for life insurance company hedging transactions.

Exemption. An eligible life insurance company may elect not to clear certain interest rate swaps identified in paragraph (b) of this section that are otherwise subject to the clearing requirement of section 2(h)(1)(A) of the Act if the following requirements are satisfied.

(a) For the purposes of this paragraph, an ***eligible life insurance company*** means:

(i) A life insurance company:

(1) Formed, existing and duly licensed pursuant to Federal or state law to operate as a life insurance company;

(2) That is a "financial entity," as defined in section 2(h)(7)(C)(i) of the Act, solely because of section 2(h)(7)(C)(i)(VIII) of the Act;

(3) That is subject to state regulation which does not permit derivatives used for the purposes of speculation to be reported as an admitted asset of the company; and

(4) That is obligated under state law or regulation to file a Schedule DB (as detailed within the National Association of Insurance Commissioners' Accounting Practices and Procedures Manual) that reports and categorizes all derivative instruments entered into by such life insurance company; or

(ii) A treasury affiliate of a life insurance company meeting the requirements listed above, and that is trading derivatives as an intermediary on behalf of one or more of its life insurance company affiliates.

(b) An eligible life insurance company may elect not to clear an interest rate swap that is subject to the clearing requirement of section 2(h)(1)(A) of the Act if the swap:

(1) Qualifies as a "hedging transaction," as defined in subsection (e);

(2) Shall be reported as a hedging transaction on the eligible life insurance company's Schedule DB;

(3) Hedges or mitigates commercial risk, in accordance with § 50.50(c);

(4) Has a stated final maturity of five years or longer from the trade date as of which it is consummated; and

(5) The eligible life insurance company and its counterparties to the interest rate swap transaction comply with the uncleared swap capital and margin requirements of 17 CFR Part 23 Subpart E.

(c) If the entity entering into the swap is a treasury affiliate of the life insurance company, the swap entered into by such affiliate must meet the requirements of subsection (b), except that with respect to (b)(1), the swap must be able to be tied directly to a swap reported on Schedule DB with identical terms, but for any nominal pricing spread differential.

(d) An eligible life insurance company that elects the exemption provided in this section shall comply with the requirements of § 50.50(b), Reporting. For this purpose, the eligible life insurance company shall be the "electing counterparty," as such term is used in § 50.50(b), and for purposes of § 50.50(b)(1)(iii)(A), the reporting counterparty, as determined pursuant to § 45.8, shall report that an exemption is being elected in accordance with this section.

(e) A "hedging transaction" is defined as a derivative(s) transaction which is entered into and maintained to reduce the risk of a change in the fair value or cash flow of assets and liabilities which the reporting entity has acquired or incurred or has a firm commitment to acquire or incur or for which the entity has forecasted acquisition or incurrence.

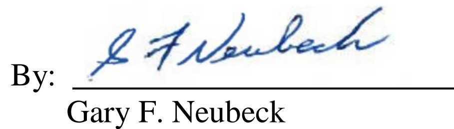
Certification Pursuant to Commission Rule 140.99(c)(3)(i)

The undersigned hereby certify that the material facts set forth in the attached letter, dated June 20, 2019, are true and complete to the best of our knowledge.

Pursuant to Commission Rule 140.99(c)(3)(ii), the Applicants hereby undertake that, if at any time prior to the issuance of such exemptive relief, any material representation made in this letter ceases to be true and complete, they will promptly inform the Commission staff in writing of any material change in facts and circumstances.

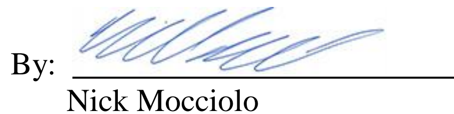
Dated: June 20, 2019

Prudential Financial, Inc.

By: 
Gary F. Neubeck

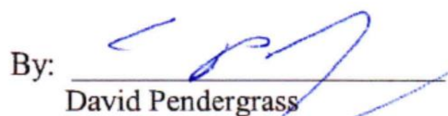
Title: Vice President

Symetra Life Insurance Company

By: 
Nick Mocciolo

Title: Senior Vice President

Voya Financial, Inc.

By: 
David Pendergrass

Title: Senior Vice President