Kirkpatrick & Lockhart LLP on Behalf of Metropolitan Life Insurance Company

April 12, 2004

By Hand and Electronic Delivery

Jonathan G. Katz, Secretary
U.S. Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: SEC File No.: S7-06-04

Dear Mr. Katz:

We are writing on behalf of Metropolitan Life Insurance Company ("MetLife") to comment on one of the two new disclosure rules proposed by the Securities and Exchange Commission (the "Commission") under the Securities Exchange Act of 1934, as amended ("Exchange Act").[1] The proposed rule, Rule 15c2-2 under the Exchange Act, would, if adopted, prescribe confirmation disclosures for customer transactions in shares of open-end management investment companies, interests in variable insurance products (*i.e.,* variable annuity contracts and variable life insurance policies), and municipal fund securities commonly referred to as 529 plans (collectively, the "covered securities"). Rule 15c2-2 would apply to all brokers, dealers, and municipal securities dealers ("broker-dealers") involved in the chain of a covered securities transaction, and would require disclosure of certain sales, fund expense, and conflicts information on an immediate (*e.g.*, at or before completion of a customer's covered securities transaction) or periodic basis.

The overall effects of the Commission's proposal are to formally rescind a no-action letter to the Investment Company Institute concerning mutual fund sales fee disclosures[2] and to refine the Commission's disclosure regime solely for covered securities transactions by shifting

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1 Securities Exchange Act Release No. 49148 (Jan. 29, 2004), 69 F.R. 6,438 (Feb. 10, 2004) ("Proposing Release"). The Commission also proposed a point-of-sale disclosure rule, Rule 15c2-3 under the Exchange Act, which would require certain disclosures to customers in covered securities transactions prior to a customer transaction. The Commission also proposed related schedules, Schedule 15C and Schedule 15D, as part of its proposal. We are not commenting on Rule 15c2-3 or the related schedules.

2 *Investment Company Institute*, SEC No-Action Letter (pub. avail. Apr. 18, 1979) (the "ICI Letter"). The ICI Letter waives confirmation disclosure of certain sales fees charged in connection with a mutual fund transaction to the extent that the fund's prospectus sets forth the precise fee information to enable fund investors to identify the amount of any sales loads or other fees charged for their mutual fund transactions.

its disclosure requirements from the Commission's longstanding confirmation rule, Rule 10b-10 under the Exchange Act,[3] to proposed Rule 15c2-2.

MetLife appreciates the opportunity to comment on the Commission's proposal. As described below, we are commenting only on certain administrative aspects of the Commission's proposed reorganization of its confirmation disclosure regime in proposed Rule 15c2-2. That is, MetLife seeks assurance from the Commission that its previous exemptive and no-action relief in the context of confirming variable annuity and variable life insurance transactions, as described in more detail below, will extend to Rule 15c2-2. This letter does not comment on the substance of the Commission's disclosure proposals, although we expect the insurance and brokerage industry to comment on the proposed point-of-sale and confirmation disclosure of expense and potential conflicts information.

I. Background

MetLife is a wholly owned subsidiary of MetLife, Inc., a publicly traded company. MetLife is a leading insurance provider in the United States and offers to individuals and institutions a broad array of financial instruments, including (but not limited to) variable annuity contracts and flexible and scheduled premium variable life insurance policies. MetLife also is registered with the Commission as a broker-dealer and is a member firm of NASD®. As the Commission is aware, broker-dealers of variable insurance products have over time received narrowly tailored dispensation from the federal securities laws in connection with the distribution of variable insurance products.[4] These positions are based on the recognition of the unique insurance characteristics and insurance regulatory overlay associated with these products.

A. <u>Allocated Group Annuity Contracts</u>

In 1995, the Commission staff, pursuant to its delegated authority, granted MetLife a conditional exemption from Rule 10b-10(a) permitting MetLife to deliver quarterly

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[3] 17 CFR § 240.10b-10.

[4] *See, e.g.,* Securities Exchange Act Release No. 8389 (Aug. 29, 1968) (permitting subsidiary of insurance company to register as a broker-dealer rather than the insurance company, providing exemptions from the Commission's net capital rule for life insurance companies that are registered as broker-dealers, providing certain relief in connection with books and records maintenance, and exempting life insurance companies that are registered as broker-dealers from filing financial statements on Form X-17A-5). The Commission staff has also issued numerous no-action positions under Section 15(a) of the Exchange Act and Rule 10b-10 under the Exchange Act in the context of variable insurance product distribution.

confirmations of mutual fund transactions associated with allocated group annuity contracts.[5] MetLife agreed to implement certain alternative procedures, as discussed below, as a condition to its reliance on the periodic confirmation delivery requirements set forth in Rule 10b-10(b). Rule 10b-10(b)(2) under the Exchange Act permits broker-dealers to deliver quarterly, rather than immediate, confirmations of mutual fund transactions associated with "investment company plans." Very generally, Rule 10b-10(d)(6)(iii) includes in the definition of "investment company plan" transactions associated with group annuity contracts under which mutual fund shares are periodically purchased for each group participant's account through a person designated for the group (*e.g.,* the employer, trust, association, or other organization). Paragraph (d)(6)(iii) sets forth the following three requirements for purposes of permitting quarterly confirmation delivery under an "investment company plan":

First, the securities purchased for the group contract must be issued by an investment company or unit investment trust that is registered with the Commission under the 1940 Act. Under the MetLife group annuity contract, purchase payments allocated to the separate account acquire shares of a registered mutual fund. Additionally, the separate account is registered as an investment company under the 1940 Act. Therefore, transactions associated with the allocated group variable annuity satisfy this element of the "investment company plan" definition.

Second, the investment company, unit investment trust, or agent must deliver to the group's designated person (at or before the completion of each transaction) written notification of the total amount paid for securities. MetLife, as agent, delivers this aggregated trade information to each group's designated person. Therefore, MetLife satisfies this element of the "investment company plan" definition.

Third, the investment company, unit investment trust, or agent must, if applicable, (i) notify each group participant within 10 days of a specified delivery date that the group's designated person failed to timely remit the participant's purchase payment; and (ii) deliver immediate confirmations to each group participant for three successive purchase payments under

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5 *Metropolitan Life Insurance Company*, SEC No-Action Letter (pub. avail. Apr. 3, 1995), 1995 SEC No-Act. LEXIS 490, (the "MetLife Exemption"). The MetLife Exemption applies to allocated group variable annuity contracts that MetLife issues in the tax-deferred market. Basically, under these contracts, an employee (participant) saves for retirement by allocating a certain portion of his or her salary through a periodic salary reduction plan to MetLife's general account and/or one or more investment divisions of a separate account. The separate account is a unit investment trust, which is registered as an investment company under the Investment Company Act of 1940, as amended ("1940 Act"). Purchase payments allocated to the separate account are invested in underlying registered mutual funds. The purchase payments are paid to MetLife by the employer as, or through, a designated person on behalf of the group of participants. The MetLife Exemption does not extend to transactions involving MetLife's general account.

the group contract. This third condition is commonly referred to as the "ten-day rule," which was the subject of the MetLife Exemption, inasmuch as MetLife is unable to implement policies satisfying all of the particulars of the "ten-day rule" of the "investment company plan" definition.

MetLife proposed alternative procedures to the "ten-day rule" that were intended to preserve the goals of the Commission's quarterly confirmation requirements on a more cost effective basis.[6] In this regard, MetLife implemented important monitoring and recordkeeping procedures to track the timeliness of purchase payment remittances under the group annuity contract, as well as communication procedures to assure the designated person's timely remittance of purchase payments. MetLife also implemented legend disclosure enabling participants to better track the timeliness of their purchase payment remittances. In short, the MetLife Exemption permits MetLife to deliver quarterly confirmations in the case of initial purchase transactions, regular periodic purchase payments of the participant, and regular periodic employer (or trust, association or other organization) contributions under the group contract.[7]

For almost a decade, MetLife has followed the alternative procedures set forth in the MetLife Exemption and has developed administrative processes and computer programs to comply with quarterly confirmation delivery, as specified in the MetLife Exemption.

B. <u>Variable Life Insurance</u>[8]

The Commission staff also has established longstanding alternative confirmation delivery procedures for transactions in variable life insurance policies. These alternative procedures to the immediate and quarterly confirmation obligations of Rule 10b-10 recognize the unique differences of variable life insurance policy transactions from typical mutual fund or, for that

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6 The MetLife Exemption noted that MetLife would recognize a cost savings of $500,000 a year by moving to a quarterly confirmation of transactions in the group variable annuity context. Today, MetLife estimates that it will recognize an annual savings of $1 million if it follows the confirmation procedures of the MetLife Exemption.

7 MetLife delivers immediate confirmations at the request of an employer or participant or in the case of rollovers, redemptions, or material adjustments or corrections to a group participant's account. Also, MetLife delivers immediate confirmations in the case of transfers between MetLife's general account and the separate account or among the investment divisions of the separate account in cases other than periodic transactions under an "investment company plan."

8 MetLife and its wholly owned subsidiary, Metropolitan Tower Life Insurance Company ("Metropolitan Tower"), issue variable life insurance policies. For convenience sake, our references to MetLife for these purposes are also intended to include Metropolitan Tower.

matter, other securities transactions. MetLife is the recipient of no-action relief from the Commission staff permitting it to confirm transactions associated with flexible and fixed premium variable life insurance policies under alternative confirmation delivery procedures.[9]

1. Flexible Premium Variable Life Insurance Transactions

In 1986, the Commission staff granted MetLife no-action relief from Rule 10b-10 to the extent it confirms transactions associated with flexible premium variable life insurance policies under alternative confirmation delivery procedures, as described below.[10] The flexible premium life insurance policies very generally permit policy owners to engage in the following transactions: (i) change death benefit options; (ii) make partial or total withdrawals from the policy's cash value; (iii) take out loans from the policy's cash value; (iv) transfer cash value amounts between the general account and the separate account or among the investment divisions of the separate account; (v) change the allocation of amounts of premium payments among the funding options underlying the policy; and (vi) cancel the policy, including cancellation during the "free-look" period. In theory, each of these transactions could effect a securities transaction triggering obligations for MetLife to send an immediate confirmation under Rule 10b-10.

The 1986 MetLife Letter permits MetLife to confirm transactions associated with flexible premium variable life insurance in accordance with the following alternative delivery procedures:

MetLife delivers a Confirmation of Transaction Statement or other form of notification within five business days of (i) the application of premium payments (other than payments made pursuant to a "check-o-matic" plan, as described below) to the general and/or separate account; (ii) a transfer between the general account and the separate account or among investment

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9 *See Metropolitan Life Insurance Company*, SEC No-Action Letter (pub. avail. July 10, 1986), 1986 SEC No-Act. LEXIS 3056, ("1986 MetLife Letter"); and *Metropolitan Life Insurance Company*, SEC No-Action Letter (pub. avail. Nov. 13, 1983), 1983 SEC No-Act. LEXIS 2997, ("1983 MetLife Letter").

10 1986 MetLife Letter. Under a flexible premium policy, a policy owner will choose a schedule of planned periodic premium payments, but will have flexibility to vary the amounts and frequency of the premium payments, provided that the policy contains sufficient cash value to keep the policy in force. MetLife also permits certain premium payments under a monthly "check-o-matic" plan, in which payments are automatically deducted from a policy owner's bank account. Premium payments are allocated to MetLife's general account and/or investment divisions of a separate account that is a unit investment trust, which is registered as an investment company under the 1940 Act. Assets in the separate account are invested in a corresponding portfolio of a registered series mutual fund.

divisions of the separate account; (iii) a surrender or partial surrender of cash value; (iv) a cancellation, including a cancellation during the "free-look" period; (v) a reinstatement; (vi) any death benefit payments; (vii) any loan and repayment; (viii) a change in the death benefit option; (ix) a change in the allocation of premium payment amounts among the underlying funding options of the policy; and (x) a termination of the policy.

Each year, MetLife delivers annual account statements within 30 business days of the policy year for so long as the policy is in effect. These statements include information regarding the policy's cash surrender value, year-end death benefit, and a summary of transactions during the year, including partial withdrawals, premium payments (including those under the "check-o-matic" plan[11]), policy loans and interest charges, and deductions for expenses and charges.

For almost two decades, MetLife has followed the alternative procedures set forth in the 1986 MetLife Letter and has developed administrative processes and computer programs to comply with the alternative confirmation delivery, as specified in the 1986 MetLife Letter.

2. Fixed Premium Variable Life Insurance Transactions

In 1983, the Commission staff granted MetLife no-action relief from Rule 10b-10 to the extent it confirms transactions associated with fixed premium variable life insurance policies in accordance with alternative delivery procedures, as described below.[12] Fixed premium variable life insurance policies contain many of the same insurance and investment features as flexible premium variable life insurance policies. Notably, they include significant insurance characteristics (*e.g.,* death benefit) and are funded either by returns from a fixed option under the MetLife general account and/or variable option based on the investment experience of a separate account.[13]

They differ from flexible premium variable life insurance policies in the manner in which premiums are paid and assets are transferred to the separate account. Under a fixed premium variable life insurance policy, a policy owner pays a fixed annual premium at the beginning of each policy year or pays via a fixed monthly payment pursuant to MetLife's "check-o-matic"

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11 Upon request, MetLife will send a policy owner year-to-date statements of transactions under the "check-o-matic" plan (as well as any other policy transaction).

12 1983 MetLife Letter.

13 The separate account is a unit investment trust, which is registered as an investment company under the 1940 Act. The assets in the separate account are invested in a corresponding portfolio of a registered series mutual fund.

plan. The premium payments are first paid into MetLife's general account but, in order to satisfy certain state insurance law reserve requirements, MetLife periodically transfers assets from the general account to the separate account as a "net annual premium," which occurs at the initial issue date of a policy and on the anniversary date of each policy year.

The 1983 MetLife Letter permits MetLife to confirm transactions associated with fixed premium variable life insurance policies in accordance with the following alternative delivery procedures:

MetLife delivers an Initial Confirmation Statement or other notification within seven business days of: (i) the first net annual premium allocation to the separate account; (ii) a partial surrender; (iii) a change in the allocation of amounts of premium payment; (iv) a transfer among investment divisions of the separate account; (v) a reinstatement; and (vi) a loan and repayment activity. The Initial Confirmation Statement confirms the issuance of the policy (a copy of the policy itself is delivered to the policy owner within 10 business days of issuance), the net annual premium allocation, and the amount of the net annual premium allocated to the investment divisions of the separate account.

Each year, MetLife delivers an Annual Confirmation Statement within seven business days of the policy anniversary date. The Annual Confirmation Statement discloses: (i) the guaranteed death benefit; (ii) the variable death benefit; (iii) the cash value; (iv) the variable cash value; (v) the loan activity; and (vi) the allocation of the net annual premium.

For over two decades, MetLife has followed the alternative procedures set forth in the 1983 MetLife Letter and has developed administrative processes and computer programs to comply with the alternative confirmation delivery, as specified in the 1983 MetLife Letter.

II. Comments to Proposed Rule 15c2-2

Proposed Rule 15c2-2 incorporates the immediate and periodic confirmation delivery requirements of Rule 10b-10. In particular, a broker-dealer effecting a covered securities transaction would be required to disclose certain sales, fund expense, and conflicts information at or before "completion of the transaction" of the customer. Similar to Rule 10b-10, "completion of the transaction" for purposes of proposed Rule 15c2-2 generally means (i) the time in which the customer pays any portion of the purchase price (or at the time a bookkeeping entry is made if the transaction is by book entry), which occurs after the transaction typically in the ordinary settlement cycle of three business days (so-called T+3); (ii) the time in which a security has been delivered to a customer if payment has been made prior to the broker-dealer's request for payment; (iii) for sales of securities not otherwise in the custody of the broker-dealer, the time in which the security has been transferred from the customer's account, which occurs after the transaction typically by T+3; and (iv) for sales of securities in which the customer has made prior delivery of the security to the broker-dealer, the time in which the sales proceeds are booked in the customer's account.[14]

Proposed Rule 15c2-2 also incorporates the quarterly confirmation delivery procedures for "investment company plans" in its entirety, adding information newly proposed under Rule 15c2-2 to the contents of the quarterly confirmation. One of the Commission's proposed modifications is to change the defined term "investment company plan" to the defined term "covered securities plan." Otherwise, the conditions of a "covered securities plan" are virtually the same as the conditions of an "investment company plan," including the obligation to observe the "ten-day rule." The Commission did not mention in the Proposing Release the extent to which its previous exemptions and no-action positions for confirming variable insurance product transactions would extend to the identical obligations under proposed Rule 15c2-2. Nor did the Commission incorporate this previous relief in the proposed rule itself.

MetLife believes that the same considerations supporting the alternative confirmation delivery procedures continue to exist under proposed Rule 15c2-2. Notably, the alternative delivery procedures specified in the MetLife Exemption provide a cost effective means of conveying important transaction information to group participants. (MetLife estimates that it will realize an annual cost saving of $1 million.) Further, the considerable insurance characteristics and insurance regulatory overlay of flexible and fixed premium variable life insurance policy transactions differentiate them from typical mutual fund or other securities transactions otherwise subject to immediate or periodic confirmation delivery requirements under current Rule 10b-10 and, if adopted for covered securities, proposed Rule 15c2-2.

These confirmation delivery procedures have worked quite well over time and continue to be necessary even in light of the Commission's proposed reorganization of its confirmation delivery requirements decades later. MetLife believes that the issues raised in this context are technical in nature but, if left un-addressed, would have practical and costly effects on the process and procedure of confirming variable insurance product transactions. Accordingly, MetLife respectfully requests that the Commission consider affirming that MetLife may continue to rely on the MetLife Exemption, 1986 MetLife Letter, and 1983 MetLife Letter should proposed Rule 15c2-2 be adopted.

[14] 17 CFR § 240.15c1-1(b).

In the absence of preserving existing relief, any changes to the confirmation delivery process in this context would require significant lead time to adapt processes and systems, which likely would need to be addressed by the Commission as part of its cost benefit analysis of proposed Rule 15c2-2. If the Commission or its staff has any questions concerning this comment letter, or requires any additional information, please do not hesitate to contact the undersigned at (202) 778-9324.

Sincerely,

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