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MetLife®

July 22, 2011

Mr. David A. Stawick, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE Washington, DC 20549-1090

Re: Further Definition of "Swap," "Security-Based Swap" and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping (the "Proposed Definitions") (Commodity Futures Trading Commission and Securities and Exchange Commission (the "Commissions") File No. S7-16-11)

Dear Mr. Stawick and Ms. Murphy:

Metropolitan Life Insurance Company and its insurance affiliates ("MetLife") welcome the opportunity to comment on the proposed definition of "insurance" and interpretive guidance contained in the Commissions' Proposed Definitions release.

For over 140 years, MetLife has been one of the country's most trusted financial institutions, and today serves more than 90 of the top 100 Fortune 500®-ranked companies with a wide variety of employee benefit plan products for qualified and nonqualified plans, including welfare and retirement benefits. For example, our major U.S. operating companies Metropolitan Life Insurance Company and MetLife Insurance Company of Connecticut manage $63 billion of group annuity assets and have assumed over $34 billion dollars in pension annuity liabilities, more than any other commercial provider in the United States. MetLife insurers provide annuity guarantees to nearly one million Americans and as of December 31, 2010 pay annuity benefits in excess of $589 million annually.

Section 722(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") adds a new section 12(h) to the Commodities Exchange Act, which provides that a swap "shall not be considered to be insurance" and "may not be regulated as an insurance contract under the law of any State." Given the confluence of this statutory provision with Title VII's broad definition of "swap," the Commissions understandably have undertaken to define what is "insurance" as opposed to a "swap." We share the Commissions' objective to ensure there are no cracks through which true swap transactions can avoid regulation. Accordingly, we have both a general comment with respect to the overall approach to defining

"insurance" and a specific comment with respect to the treatment of group annuities under the "product test" of the proposed rules and accompanying interpretive guidance.

Approach to Defining "Insurance" for Safe Harbor Purposes

The Commissions express concern in the Proposed Definitions release that a contract which is a swap could evade federal regulation by being characterized as "insurance." To avoid that result, the Commissions have included a definition of "insurance," as well as interpretive guidance, in the Proposed Definitions release. The definition of insurance includes a "product test," as well as an "issuer test." MetLife understands the concern of the Commissions for the potential of abuse and we appreciate the Commissions' efforts to set forth an inclusive definition of "insurance" through these tests and the interpretive guidance. However, we view the proposed definition, in its current form, as problematic. Because MetLife's concerns about the "insurance" definition and the interpretive guidance are discussed in detail in the letters submitted by the American Council of Life Insurers and the Committee of Annuity Insurers, we generally endorse these letters. In particular, as discussed in these letters, we are concerned that this two-pronged approach could be both over- and under-inclusive.

We recommend that an alternate approach be substituted for the proposed two-prong test. Under this approach, the basic test for determining whether a type of contract is insurance would be whether it is ***subject to regulation as insurance*** by the insurance commissioner of the applicable state(s). This approach would appropriately defer to state insurance regulators' expertise regarding the types of contracts and agreements that are recognized under state law as part of the business of insurance, while avoiding the risks inherent in trying to develop a comprehensive definition of "insurance" under Federal law. It would also address the concern that a non-insurance entity might seek to evade insurance regulation of a product that otherwise would be considered insurance if issued by an insurance company, by arguing that the product is a swap and hence insurance regulation of that product would be pre-empted under section 722(b) of Dodd-Frank.

Inclusion of Group Annuities in "Product Test" and Interpretive Guidance

Should the Commissions nonetheless seek to adopt a "product test" identifying characteristics of insurance, as well as interpretive guidance enumerating the types of products that should be excluded, we believe that there is one extremely important aspect of the proposals that should be modified in order to make clear that a wide range of products which millions of Americans rely upon for retirement security are not inadvertently mischaracterized as swaps. As proposed, neither the "product test" nor the interpretive guidance specifically addresses group annuities. In addition, the fact that the only annuity contracts identified in the interpretive guidance as excluded from the definition of a swap are annuities "the income on which is subject to tax treatment under section 72 of the Internal Revenue Code" could be read to suggest that group annuity products issued to retirement plans are not excluded.

Annuities have their modern origins in the group setting and in social insurance.[1] Indeed, the age-related annuity component of Social Security is aptly named "Old Age Insurance." The group annuity contract, pioneered by MetLife in 1921, was the first of its kind in employer efforts to provide retirement income security for employees and remains an important component of those employer efforts. The use of annuity contracts to settle pension plan liabilities is specifically permitted under federal law for terminating defined benefit pension plans and is the only legally authorized means of settling such liabilities other than in the form of a lump sum.[2] In this respect, the purchase of a private group annuity contract complements the backstop provided by the Pension Benefit Guaranty Corporation.

Both historically and currently, the group annuity contract as a means of securing retirement income is a classic example of "insurance." Group annuities' pricing depends on the employer plan participants' ages and other variables affecting longevity risk or the risk of death, which must be underwritten to determine a sound price. Annuities insure against living beyond a normal life expectancy, in contrast to life insurance policies, which insure against the possibility of a premature death.

The Commissions' proposed product test would require the beneficiary of an insurance contract to "have an insurable interest that is the subject of the agreement, contract, or transaction and thereby carry the risk of loss with respect to that interest continuously through the duration of the agreement, contract, or transaction." While one could maintain that under the proposed product test a plan participant or annuity contract holder would have an "insurable interest" in not outliving his or her resources by receiving retirement income for life, arguably, since the phrase "insurable interest" is more commonly thought of in the context of life insurance or property casualty insurance, it is not the conventional interpretation of the term "insurable interest." Accordingly, we recommend that the Commissions either modify the product test to indicate that an annuity would not need to satisfy the "insurable interest" component of the test; or use terminology other than "insurable interest" to make clear that such products would not be considered a swap.

In addition, as noted above, the Commissions' proposed interpretive guidance as presently drafted fails to specifically recognize group annuities. We suggest that rather than referencing "annuity products the income on which is subject to tax treatment under section 72 of the Internal Revenue Code" the proposed interpretive guidance should simply reference "annuity products" or "annuities," similar to how it references "life insurance" and other products. Based on our experience, we believe that this modification would capture the universe of group annuity and pension plan products (including guaranteed interest contracts) sold in the retirement plan market, both to qualified plans and nonqualified plans, that might otherwise be deemed to be swaps.

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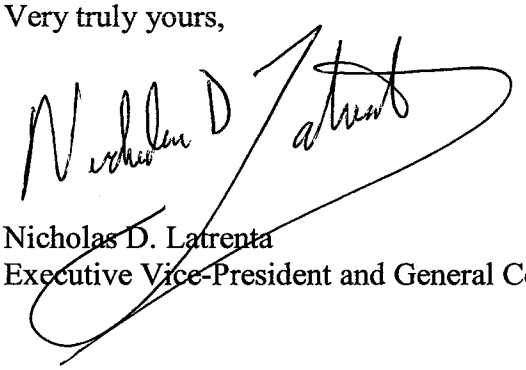
[1] *See* http://www.annuity-insurers.org/Resources/History/History-of-annuities.aspx.
[2] *See* http://www.pbgc.gov/documents/500_instructions.pdf.

MetLife appreciates the Commissions' consideration of its views. If you have any questions, please feel free to contact me at the number above, or Paul Cellupica, Chief Counsel, at 212-578-3067.

Very truly yours,



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