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MetLife®

February 22, 2011

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

Re: RIN 3038 – AC96 Reporting, Recordkeeping and Daily Trading Records Requirements for Swap Dealers and Major Swap Participants

RIN 3038 – AD25 Business Conduct Standards for Swap Dealers and Major Swap Participants with Counterparties

Dear Mr. Stawick:

MetLife welcomes the opportunity to comment on the proposed regulations establishing and governing the reporting, recordkeeping and trading requirements for swap dealers ("Swap Dealers") and major swap participants ("MSPs"), 75 Fed. Reg. 71397 (December 9, 2010) (the Trading Records Rule") and establishing Business Conduct standards for Swap Dealers and MSPs with counterparties (75 Fed Reg. 80638 (December 22, 2010) (the "Business Conduct Rule") issued by the Commodity Futures Trading Commission ("the Commission") (the "Proposed Rules"), which constitute a segment of the framework of compliance rules required to be established for Swap Dealers and MSPs registered under Section 731 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank")

Although MetLife expects, given its activities as a hedging end user, that the MSP definition finally adopted will not subject it to MSP regulation, it is providing this comment letter in light of the possibility that one or more MetLife entities may be become subject to MSP regulation. We appreciate the interactive nature of the Commission's process with market participations and the ability to continue to participation in the creation of the Dodd-Frank regulatory regime.

We have previously commented in other contexts that

- the compliance rules adopted under the Commission should be flexible and not prescriptive, given the very different business models, regulation and risk profiles of potential registrants as MSP.
- while Dodd Frank requires the establishment of a compliance regime for Swap Dealers and MSPs alike, it does not mandate that the regimes for these two types of registrants should be identical. In fact, because of the different natures and roles of these two types of registrants, different types of requirements should apply to address the statutory policies served by the

regulation of each, without creating unnecessary and burdensome over-regulation.

- Compliance requirements should allow for different organizational structures and approaches, especially given the different types of potential registrants and their differing existing corporate and control structure
- Registrants may be subject to existing prudential regulation and regulatory requirements, so that the Dodd-Frank compliance should not subject such registrants to unnecessarily burdensome and potentially overlapping and conflicting requirements.

Our brief comments in this letter relate to these core considerations.

Comments on the Trading Records Rule

Dealer Type Requirements should not be applied to Market End Users. The release proposes a broad array of document, information retention and trade information requirements on both Swap Dealers and MSPs alike. Much of this scheme relating to MSPs seems to be based on the misimpression that MSPs are necessarily some kind of market intermediary or quasi dealer. In fact, many large institutions, which may qualify for MSP treatment are not market makers, have no "trading book" and are primarily hedgers who transact solely through dealers and other registered market intermediaries. We understand Dodd-Frank to regulate MSPs principally because, unlike other end-users they are deemed large enough that their failure could harm the financial system. Consequently, we submit that procedural and compliance rules should be scrutinized and targeted to deal with the limited financial system risks that Dodd-Frank MSP provisions seek to control, without unduly burdening end-user market participants and the economy. Section 731 of Dodd-Frank does not mandate that identical rules should apply to Swap Dealers and MSPs and we believe that appropriate distinctions can and should be made.

Specifically, we believe that the Subpart F requirements with respect to Daily Trading Records in proposed §23.202(a)(1) and the similar requirements for related cash and forward transactions in proposed §23.202(b), including the requiring taping or other recording of pre-execution trade information overstep the bounds of what is appropriately required of non-dealer market participants, in particular market end-users, like MetLife, which trade exclusively through Swap Dealers and other registered market intermediaries. Given that Swap Dealers and registered intermediaries will, under this and other Commission Rules, be required to retain essentially the identical daily trading records which the Rule would require the MSPs facing them to obtain, it appears unnecessarily duplicative and burdensome to require MSPs to build the capacity to retain such information as well.

While the proposing release cites other jurisdictions such as the UK, Hong Kong and France as well as the Commission's own interpretations under Rule 1.35 with respect to futures commission merchants, introducing brokers and designated contract market members as requiring voice recordings, and while we do not dispute the potential utility of such recordings in the regulation of Swap Dealers, we are not aware that such requirements have ever been imposed on market end-users, particularly those which trade exclusively with and through registered market dealers and brokers.

Accordingly, we recommend that proposed §23.202(a)(1) and §23.202(b) be amended to

exclude MSPs which trade exclusively with Swap Dealers or through other registered market intermediaries from the application of the rules.

Duplicative Record-Keeping Requirements Should be Eliminated. Apart from the types of records addressed in the preceding section, MetLife currently retains the types of records addressed in the remainder of this Proposed Rule, as required to meet its outside and internal audit requirements and the additional regulatory provisions outlined below. We believe that a requirement that such records be retained is appropriate for the regulation of market participants who are currently **not** subject to prudential regulation or subject to other pervasive legal record retention requirements. We believe that bringing large private funds and other substantial market participants that currently operate without transparency and oversight under regulation was among the policy purposes of Dodd-Frank and that these rules should accordingly apply to such entities.

However, we do not believe that this policy is served by applying an overlay of duplicative and potentially conflicting record retention requirements to companies which are already subject to prudential oversight or pervasive legal record retention requirements. Specifically we believe that compliance with any of several additional regulatory regimes should allow potential registrants who are not subject to regulation by "prudential regulators" as defined in Dodd- Frank to be nevertheless excluded from the layer of document retention requirements, by including any additional applicable regulators as "prudential regulators" under the Proposed Rules or otherwise.

- Insurers are prudentially regulated under state insurance laws, and the state insurance laws and regulations require retention of business and financial records for specified periods
- MetLife is subject to consolidated regulation as a bank holding company and financial holding company.
- MetLife, Inc is a public company with securities registered under Section 12 of the Securities Exchange Act of 1934 . Accordingly, it is subject to all the SEC requirements relating to that status, including Sarbanes-Oxley Act of 2002 and the document retention requirements under Section 13(b)(2) of the Exchange Act.[1]

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1. [1] Under Section 13(b)(2) of the 1934 Act, "Every issuer which has a class of securities registered pursuant to section 12 and every issuer which is required to file reports pursuant to section 15(d) shall--

   A. make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer;

   B. devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that--

      i. transactions are executed in accordance with management's general or specific authorization;

      ii. transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets;

      iii. access to assets is permitted only in accordance with management's general or specific authorization; and

      iv. the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

In our opinion it would be appropriate for the Commission to exclude those MSP registrants which are subject to prudential regulation and comparable financial and business record-keeping requirements under state insurance law, bank holding company law or as 34 Act registrants from the Part F recordkeeping requirements.

Duplicative Reports To Swap Data Repositories Should be Eliminated. Proposed Rule §23.204, taken in conjunction with certain provisions of the Swap Data Recordkeeping and Reporting Requirement Proposed Rules, particularly §45.5(d) (proposed by the Commission and published at 75FR 76574 on December 8, 2010), appears to require a domestic MSP to report all information and data to a swap data repository and to have the electronic system and procedures to do so electronically if its counterparty Swap Dealer is not a U.S. person. This poses an unnecessary and burdensome requirement upon a domestic MSP that transacts swaps with a registered non-U.S. Swap Dealer, since a registered Swap Dealer, whether or not a U.S. person, should have its own obligations to create, transmit and retain this information. As a customer of such Swap Dealer, the domestic MSP should not be put to the expense of developing unnecessary electronic systems, procedures and staff to support a duplicative reporting obligation. Proposed Rule §23.205 concerning real time public reporting of a transaction and pricing data suffers the same defect as §23.204 as it relates to a domestic MSP's transactions with a non-U.S. person Swap Dealer and should be amended accordingly.

Definition of Governing Body Should Be Modified. We also note, as in several prior comment letters, that the definition of "Governing body" set forth in paragraph (g) of §23.200 for corporations should be revised to also include *a committee* of the board of directors. The Boards of many major public companies, such as MetLife, delegate particular responsibilities, for example, Audit, Finance, Investments, Risk, Compensation, to expert committees of the whole Board which then report to the full Board. In such an organization it is appropriate for supervision of major corporate functions and activities to occur at the level of the relevant Board Committee, rather than at the full Board level so that any relevant records would include records of such committees, and not necessarily records of meetings of the full Board.

Comment on the Business Conduct Rule. The proposed Business Conduct Rule in Subpart H contains a series of rules intended to apply to the conduct of Swap Dealers and MSPs vis a vis their market counterparties. By and large, these are dealer type requirements directed to assuring that dealers conduct business with their customers in a fair and open manner. We call the Commission's attention particularly to the requirements of the following Proposed Rules:

- § 23.403(c), (d) and (e) [know your counterparty requirements],
- § 23.410(b) [treatment of confidential information of counterparties],
- § 23.410 (c) [trading ahead and front-running counterparties],
- § 23.431(c) [requirement to provide a daily mark to counterparty],
- § 23.433 [communications – fair dealing with counterparties],
- § 23.434 [determination of counterparty suitability].

We believe that application of the above cited Proposed Rules to MSPs in connection with their trading with Swap Dealers or other registered market intermediaries is inappropriate and MSPs should be excluded from regulation under these rules. The MSPs are in reality customers of the

Swap Dealers or registered market intermediary in this context and should be treated as such rather than as dealers or quasi-dealers.

We also question certain of the exclusions under the Business Conduct Rule for communications between Swap Dealers and MSPs. Given the fact that MSPs remain customers of Swap Dealers despite their position size, and that MSPs may vary in their sophistication, it would be inappropriate and unfair that they would have lesser customer rights or fewer customer protections. In particular,

- Under Proposed Rule § 23.432, a MSP transacting a mandatorily cleared swap with a Swap Dealer would not have the sole option to select the derivatives clearing organization to clear the swap, nor would it be entitled to notification of its election to clear or not clear an uncleared swap.

- Under Proposed Rule § 23.431(a), the requirement to disclose material information to counterparties is disapplied to Swap Dealers dealing with MSPs.

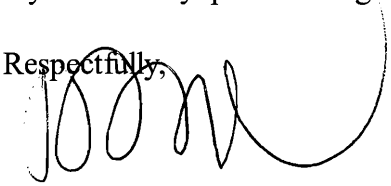
- Under Proposed Rule § 23.434, the suitability requirement is disapplied to Swap Dealers dealing with MSPs. We believe this rule should apply to Swap Dealers dealing with MSPs.

MSPs regardless of their size are not dealers and cannot be presumed to possess a level of market or product information equal to that of Swap Dealers. MSPs are also less likely than Swap Dealers to be members of designated facilities or designated clearing organizations. Further, MSPs are unlikely to have systems and personnel comparable to that of a Swap Dealer to allow them to model and value complex instruments. For these reasons, we urge the Commission to modify the above cited Proposed Rules to treat MSPs like any other customer of a Swap Dealer. MSPs should under § 23.432 be able to elect where to clear trades; under § 23.431(a) get risk disclosure, the required scenario analyses for "complex high risk bilateral swaps, information about incentives or compensation the dealer is getting, any new product analysis it does for risk management purposes, etc. from dealers; and under § 23.434 the protection of a suitability provision just as any other customer does.

Finally, we urge that Proposed Rule 155.7, concerning trade execution standards, be amended to clarify that an MSP is for purposes of that rule deemed a customer of any Swap Dealer or other registered market intermediary that it may be trading with or through.

MetLife is pleased to be able to continue to participate through the comment process in the framing of this critical new regulatory framework. Please feel free to contact me at my email address above if you have any questions regarding this comment letter.

Respectfully,



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