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Mr. David Stawick, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington D.C. 20581
RIN 3038-AC97

Re: RIN 3038–AD47; Clearing Exemption for Swaps Between Certain Affiliated Entities

Ladies and Gentlemen:

MetLife appreciates the opportunity to comment on the proposed regulations regarding the clearing exemption for swaps between certain affiliated entities (the "Proposed Rule") published by the Commodity Futures Trading Commission (the "Commission") pursuant to Title VII of the Wall Street Reform and Consumer Protection Act ("Dodd-Frank").

MetLife, Inc. is the holding company of the MetLife family of insurance companies. The MetLife organization is a leading provider of insurance, annuities and employee benefit programs, serving 90 million customers in over 60 countries. MetLife holds leading market positions in the United States (where it is the largest life insurer based on insurance in force), Japan, Latin America, Asia Pacific, Europe and the Middle East. MetLife, Inc. is a public company, registered under the Securities Act of 1934 and has securities listed on the New York Stock Exchange.

MetLife appreciates the substantial effort and consideration that the staff of the Commission has dedicated to developing the exemption for inter-affiliate swaps in the Proposed Rule. Further, MetLife fully recognizes the public policy rationale behind the Proposed Rule and supports the Commission's attempts to increase the safety and soundness of the derivatives markets while continuing to balance such public policy considerations against the need for financial end-users such as MetLife to manage the capital markets risks associated with the insurance and retirement products we offer by utilizing derivatives as a risk management tool.

We believe that transactions between affiliates do not present the issues and risks that give rise to a need for the application of the regulatory requirements applicable to swaps (particularly the mandatory clearing and execution requirements) and were not intended by Congress to be encompassed by the relevant provisions of Dodd-Frank. Therefore, we are strongly supportive of the Proposed Rule and are pleased that the Commission "recognizes these potential benefits of inter-affiliate swaps."[1] We believe that the Proposed Rules, as currently drafted, generally strike such a balance, although there are two areas where we respectfully request clarifications to the criteria for the inter-affiliate swap exemption that will provide needed flexibility for market participants and more closely reflect the variety of corporate structures utilized by financial end users and corporate groups in their derivatives hedging activities.

Under the Proposed Rule, inter-affiliate swaps would be exempted from the clearing requirement under Section 2(h) of the Commodity Exchange Act (the "CEA"), if, among other requirements, the affiliated counterparties to the swap posted variation margin if both counterparties are financial entities, except in the case of 100% commonly owned and commonly guaranteed affiliates where the common guarantor is also 100% commonly owned.[2]

With respect to the 100% common ownership and common guarantor pre-requisite, however, we would request that the Commission clarify the requirements of the Proposed Rule. We do not believe that inter-affiliate swaps must be commonly guaranteed by a 100% wholly owned affiliate to be exempt from the variation margin requirement. While any guaranty that does apply to such swaps should be from a 100% wholly owned affiliate, such a guaranty should not be a prerequisite to the exemption from the variation margin requirement. In other words, the corporate group of 100% wholly owned affiliates should be able to decide whether or not *internal* swaps need to be guaranteed by an affiliate.[3] Therefore, we believe that the Commission should not require guarantees or explicit credit support as a condition for an exemption from the variation margin requirements and rely instead on the direct or indirect common ownership requirement. Proposed Section 39.6(g)(2)(iv) states, "With the exception of 100% commonly owned and commonly guaranteed affiliates where the commonly owned guarantor is also 100% commonly owned ...." We suggest revising this Section to read, "With the exception of 100% commonly owned affiliates where the commonly owned guarantor, <u>if any</u>, is also 100% commonly owned ...."

In addition, the Proposed Rule would limit the inter-affiliate exemption to inter-affiliate swaps between two U.S.-based affiliates or between a U.S. affiliate and a non-U.S. affiliate that either (1) is located in a jurisdiction with a comparable and comprehensive clearing regime, (2) is

1 77 Fed. Reg 50427.

2 As a result of a very recent change to New York State insurance law, however, MetLife and its affiliates nonetheless may be required to post variation margin for some inter-affiliate swap transactions, regardless of the final rules adopted by the Commission.

3 We note that under proposed section 39.6(g)(4)(ii), the Commission identified several measures through which a counterparty could meet its financial obligations associated with entering into uncleared, inter-affiliate swaps, including a written credit support agreement, pledged or segregated assets, *or* a guarantee from another party. Therefore, we believe that the Commission understands the variety of options available to a corporate group, in addition to a guarantee, to address the risks associated with their internal swaps.

otherwise required to clear swaps with third parties in compliance with U.S. law, or (3) does not enter into swaps with third parties. We suggest revising the exemption in (1) to read, "(1) is located in a jurisdiction with a comparable and comprehensive clearing regime or has otherwise agreed to clear trades to the extent required in any jurisdiction with a comparable and comprehensive clearing regime," This revision will allow corporate groups the flexibility to organize their derivatives trading vehicle(s) in a regulatory and tax efficient manner without choosing its domicile for the purpose of evading the clearing requirements of Dodd-Frank. Additionally, we suggest broadening the exemption in (3) to read, "(3) does not enter into similar swaps of the same product type with unaffiliated third parties." This expansion will provide flexibility for affiliates to face an affiliated derivatives vehicle for certain products for which there is a reduction in risk without the requirement of facing the affiliated derivatives vehicle for all products and transactions, where the affiliate could obtain better terms when directly facing an unaffiliated counterparty.

Finally, we note that the Commission has requested specific comment respecting whether the proposed clearing exemption should be limited to affiliates that file consolidated tax returns. The rules for U.S. Federal consolidated tax returns do not necessarily follow the intended logic and underlying policy of the inter-affiliate exception, as currently proposed. For example, a U.S. taxpayer cannot file consolidated U.S. tax returns with its non-U.S. affiliates. Therefore, if the inter-affiliate exception hinged on tax return consolidation, we would lose its benefit for our inter-affiliate swaps between our non-U.S. affiliates and a conduit based in the U.S. Consequently, the enterprise would incur the costs and detriments of having to clear inter-affiliated swaps for affiliates in the over 60 countries in which the MetLife enterprise operates without any material reduction of systemic risk.

We appreciate the opportunity to provide our comments to the Commission on the Proposed Rule and we have responded to many of the questions posed in the Proposed Release. We continue to welcome the opportunity to discuss any questions the Commission may have with respect to our comments and/or our responses to the questions posed in the Proposed Release.

Respectfully,

Kevin M. Budd

Todd F. Lurie

Clearing Exemption for Swaps Between Certain Affiliated Entities

Background

Clearing Requirement for Swaps.

Swaps Between Affiliated Entities.

Inter-Affiliate Clearing Exemption Under CEA Section 4(c)(1)

The Commission's Section 4(c)(1) Authority.

Q1. The Commission requests comment on whether it should exercise its authority under CEA section 4(c).

We agree that it is appropriate for the Commission to exercise its authority under section 4(c) of the Commodity Exchange Act, as we believe that transactions between affiliates do not present the issues and risks that give rise to a need for the application of the Dodd-Frank regulatory requirements applicable to swaps, particularly the mandatory execution and clearing requirements.

Q2. Do inter-affiliate swaps pose risk to the corporate group? If so, what risk is posed? In particular, do inter-affiliate swaps pose less risk to a corporate group than swaps with third parties? If so, why is that the case?

We believe that the use of inter-affiliate swap for hedging activities does not pose any risk to our larger corporate group, as the offsetting swap positions across the corporate group can be more efficiently netted, reducing risk to the corporate group. Therefore, we believe that inter-affiliate swaps may pose less risk to a corporate group than swaps with third parties.

Q3. Do inter-affiliate swaps pose risk to the third parties that have entered into swaps that are related to the inter-affiliate swaps? If so, what risk is posed?

We do not believe that third parties that have entered into swaps that are related to inter-affiliate swaps would face any additional risk, as a result of the inter-affiliate relationship, due to the "pass-through" nature of such trading.

Q4. Would the proposed exemption promote responsible economic or financial innovation and fair competition?

Yes, as it allows corporate groups to engage in efficient and effective risk management activities. For example, the use of a single conduit for various affiliates within a corporate group permits the netting of affiliates' trades (e.g., one affiliate is hedging floating rates while another is hedging fixed rates). This effectively reduces the overall risk of the corporate group and the number of outstanding positions with external market participants, which reduces operational, market, counterparty credit and settlement risk.

Q5. Would the proposed exemption promote the public interest?

Yes, as it would reduce the number of outstanding risk-offsetting trades in the marketplace. It would also reduce costs and improve efficiencies for companies able to employ a "conduit" or "risk aggregation" strategy among U.S. and global affiliates.

Q6. Inter-affiliate swaps that do not meet the conditions to the proposed exemption would be subject to the clearing requirement under CEA section 2(h)(1)(A) and, potentially, the trade execution requirement under CEA section 2(h)(8) as well. What would be the costs and benefits of imposing the trade execution requirement on these inter-affiliate swaps? Should the Commission exempt some or all inter-affiliate swaps from the trade execution requirement regardless of whether the conditions to the proposed inter-affiliate clearing exemption are met?

We believe that imposing the trade execution requirement on inter-affiliate swaps would impose unnecessary and burdensome costs on market participants. A trade execution requirement (like a clearing requirement) will interfere with the efficient management of our businesses without achieving any corresponding benefit in terms of systemic safety or price discovery. Competitive execution is unnecessary in the context of pass-through transactions between affiliates generally, and particularly in the case of MetLife, because insurance law requires inter-affiliate transactions to be effected on an arms-length basis. Moreover, including transactions between affiliates in centrally executed markets and clearing houses could mislead the market, by sending an inaccurate signal of the actual level of activity in the relevant market.

Proposed Regulations

Proposed §39.6(g)(1): Definition of Affiliate Relationship.

Q7. The Commission requests comments on all aspects of the Commission's proposed requirement that the inter-affiliate clearing exemption be available to majority-owned affiliates.

While MetLife would likely limit inter-affiliate trading to commonly owned affiliates, we agree with the flexibility of including majority-owned affiliates.

Q8a. Should the Commission consider requiring a percentage of ownership greater than majority ownership to qualify for the inter-affiliate clearing exemption?

Q8b. If so, what percentage should be used and what are the benefits and burdens of such ownership requirements?

Q8c Should the Commission require a 100% ownership threshold for the inter-affiliate clearing exemption? Would a 100% ownership threshold reduce counterparty risk and protect minority owners better than the proposed threshold? Are there other means to lessen risk to minority owners, such as consent?

Q9. Should the Commission consider an 80% ownership threshold based on section 1504 of the Internal Revenue Code, which establishes an 80% voting and value test for an affiliate group? In light of the potential benefits from centralized risk management in an affiliated group, would an 80% threshold sufficiently reduce overall risk to financial system.

Proposed § 39.6(g)(2)(i): Both Counterparties Must Elect the Inter-Affiliate Clearing Exemption.

Q10. Would this requirement create any operational issues?

We do not believe this requirement will create any operational issues.

Proposed § 39.6(g)(2)(ii): Swap Documentation.

Q11. The Commission requests comment as to the burden or cost of the proposed rule requiring documentation of inter-affiliate swaps.

We do not believe that the documentation requirement will be any more burdensome or costly than our current practice, which is to document all swaps.

Q12. The Commission also requests comment as to whether its risk tracking and management and proof-of-claim concerns could be addressed by other means of documentation.

We believe that the documentation requirement is preferable to any other methods and represents the current industry best practice.

Q13. The Commission requests comment as to whether the Commission should create a specific document template. Should the industry do so?

We do not believe it is necessary for the Commission to create a Template and would suggest allowing market participants to customize their own internal, written documents.

Proposed § 39.6(g)(2)(iii): Centralized Risk Management.

Q14. The Commission requests comments that explain how current centralized risk management programs operate.

We utilize an enterprise-wide risk management system, in which all affiliates trading derivatives adhere to an affiliate specific set of guidelines and limits that are also included in enterprise-wide guidelines and limits.

Q15. The Commission requests comment on whether it should promulgate additional regulations that set forth minimum standards for a centralized risk management program. If so, what should those standards be? Is there a consistent industry practice which could be observed?

Q16. Is the proposed rule in line with industry practice?

Yes, we believe the Proposed Rule is in line with current industry practice.

Proposed § 39.6(g)(2)(iv): Variation Margin.

Q17a. The Commission requests comment as to whether it should promulgate regulations that set forth minimum standards for variation margin. If so, what should those standards be?

Q17b. The Commission requests comment as to whether it should promulgate regulations that set forth minimum standards for initial margin. If so, what should those standards be?

We do not believe the Commission should impose initial margin on inter-affiliate swap transactions. The credit risk of inter-affiliate swaps is consolidated at the corporate group. Moreover, affiliates will receive the same economics as the outward facing conduit, which reduces the utility of initial margin.

Q17c. The Commission requests comment as to whether it should promulgate regulations that set forth minimum standards for both initial and variation margin for inter-affiliate swaps. If so, what should those standards be?

Please see above.

Q17d. The Commission's proposed rule "Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants" 17 CFR Part 23 would require initial and variation margin for certain swaps that are not cleared by a registered designated clearing organization. Should inter-affiliate swaps that are not subject to the clearing requirement of CEA section 2(h)(1)(A) be subject to the margin requirements as set out in proposed Part 23 or otherwise?

No, we do not believe that inter-affiliate swaps should be subject to Part 23 margin requirements. In addition, we appreciate that as noted in footnote 38 to the proposing release, "The Commission does not propose that variation margin posted in respect of inter-affiliate swaps be required to be held in a segregated account or be otherwise unavailable for use and rehypothecation by the counterparty holding such variation margin." We agree with this approach to further support inter-affiliate netting. Moreover, restricting use of margin in inter-affiliate trades constrains liquidity without any corresponding economic benefit or risk mitigation for the corporate group.

Q18. The Commission requests comment on the costs and benefits of requiring variation margin for inter-affiliate swaps, both in general and specifically, regarding corporate groups that do not currently transfer variation margin in respect of inter-affiliate swaps.

Q19. The Commission requests comment on whether 100% commonly-owned affiliates sharing a common guarantor—that is, a guarantor that is also 100% commonly

owned—should be exempt from the requirement to transfer variation margin. Please explain the impact on the corporate group, if any, if the described affiliates are required to transfer variation margin.

We believe that 100% commonly owned affiliates sharing a common guarantor should not be required to transfer variation margin for inter-affiliate swap transactions. The requirement to transfer variation margin will decrease available liquidity, increase expenses to the affiliates, and will impose unnecessary operational demands.

The ultimate bearer of fiscal responsibility in a 100% wholly owned group of companies is the corporate parent. How the enterprise distributes risk among its affiliates should be a matter of internal risk management and financial control. As discussed in the body of our letter, we do not believe that a corporate group should be compelled to create *internal*, inter-affiliate guarantees. We are also concerned that requiring affiliates to be commonly guaranteed could weaken risk management controls and incentivize risk taking by placing undue reliance on the corporate guarantor. Rather, it is important that the outward-facing entity be subject to the clearing requirement.

Q20a. Should any other categories of entities or corporate groups, such as non-swap dealers and non-major swap participants, be exempt from the variation margin requirement for their inter-affiliate swaps? If so, which categories and why?

Q20b. Should the Commission limit the variation margin requirements to those inter-affiliate swaps for which at least one counterparty is a swap dealer, major swap participant, or financial entity, as defined in paragraph (g)(6) of the proposed rule text, that is subject to prudential regulation?

As discussed above, we may be subject to variation margin requirements under state insurance law, but we do not believe that the Commission should impose variation margin requirements as a result of the status of the affiliate.

Q21. The Commission requests comment as to whether it should eliminate the proposed exemption's variation margin condition for swaps between 100% owned affiliates.

Although we may be subject to variation margin requirements for inter-affiliate swap transactions under state insurance law, we believe that the Commission should eliminate the proposed exemption's variation margin condition for swaps between 100%-owned affiliates, for the reasons discussed above. Among 100% wholly owned affiliates, neither variation margin nor inter-affiliate guarantees should be required as a prerequisite to the clearing exemption.

Q22. The Commission requests comment as to whether it should eliminate the proposed exemption's variation margin condition for swaps between 80% owned affiliates.

Q23. The Commission requests comment on whether all types of financial entities identified in CEA section 2(h)(7)(C) should be subject to the variation margin requirement. Should entities that are part of a commercial corporate group and are

financial entities solely because of CEA section 2(h)(7)(C)(i)(VIII) be excluded from such requirement? Why?

We believe that wholly owned affiliates that enter into swap transactions should not be subject to variation margin requirements, regardless of their status as a financial entity.

Proposed § 39.6(g)(2)(v): Both Affiliates Must Be Located in the United States or in a Country with a Comparable and Comprehensive Clearing Regime or the Non-United States Counterparty is Otherwise Required to Clear Swaps with Third Parties in Compliance with United States Law or Does Not Enter into Swaps with Third Parties.

Q24a. The Commission requests comment on proposed § 39.6(g)(2)(v). Is the proposed condition that both affiliates must be located in the United States or in a country with a comparable and comprehensive clearing jurisdiction or the non-United States counterparty is otherwise required to clear swaps with third parties or does not enter into swaps with third parties a necessary and appropriate means of reducing risk and evasion concerns related to inter-affiliate swaps? If not, how should these concerns be addressed?

Q24b. Should the Commission limit the inter-affiliate clearing exemption to foreign affiliates that only enter into inter-affiliate swaps if such foreign affiliates are not located in a jurisdiction with a comparable and comprehensive clearing requirement or are otherwise required to clear swaps with third parties in compliance with United States?

No. As stated in the body of our letter, we believe that corporate groups should have the flexibility to organize their derivatives trading vehicle(s) in a regulatory and tax efficient manner without choosing its domicile for the purpose of evading the clearing requirements of Dodd-Frank.

Q24c. Should the Commission limit the inter-affiliate clearing exemption to foreign affiliates that enter into swaps with third parties on an occasional basis if such foreign affiliates are not located in a jurisdiction with a comparable and comprehensive clearing requirement or are otherwise required to clear swaps with third parties in compliance with United States. What would constitute an occasional basis? For example, would once a year be an appropriate time frame?

No. As stated in the body of our letter, we believe that affiliates should have the flexibility to face an affiliated derivatives vehicle for certain products for which there is a reduction in risk without the requirement of facing the affiliated derivatives vehicle for all products and transactions, where the affiliate could obtain better terms when directly facing an unaffiliated counterparty. We do not agree that there should be a requirement that direct transactions occur on an occasional basis.

Q25. The Commission requests comment on (1) the prevalence of cross-border inter-affiliate swaps and the mechanics of moving swap-related risks between U.S. and

non-U.S. affiliates for risk management and other purposes (including an identification of such purposes); (2) the risk implications of cross-border inter-affiliate swaps for the U.S. markets; and (3) specific means to address the risk issues potentially presented by cross-border inter-affiliate swaps.

Q26. The Commission recently adopted anti-evasion provisions relating to cross-border swap activities in its new rule 1.6. To what extent are the risk issues potentially presented by cross-border inter-affiliate swaps addressed by the anti-evasion provisions in rule 1.6?

Q27. The Commission also is considering an alternative condition to address evasion. That condition would require non-U.S. affiliates to clear all swap transactions with non-U.S. persons, provided that such transactions are related to inter-affiliate swaps which would be subject to a clearing requirement if entered into by two U.S. persons. Should the Commission adopt such a condition? Would such a condition help enable the Commission to ensure that the proposed inter-affiliate clearing exemption is not abused or used to evade the clearing requirement? Are there any other means to prevent evasion of the clearing requirement or abuse of the proposed inter-affiliate clearing exemption that the Commission should adopt?

Proposed § 39.6(g)(2)(vi): Notification to the Commission.

Proposed § 39.6(g)(3): Variation Margin Requirements.

Proposed § 39.6(g)(4): Reporting Requirements.

Q28. The Commission requests comment on whether affiliates would submit identical annual reports for most corporate groups.

While our affiliates may not submit identical annual reports, their annual reports would be substantially similar.

Q29a. The Commission requests comment as to whether reporting counterparties that would not report to an SDR should be subject to swap-by-swap reporting requirements? Should the Commission allow such entities to report all information on an annual basis? Please provide any information as to the number of reporting counterparties that would be affected by such a rule change.

We believe, and ask the Commission to clarify, that only one party should be required to report the swap transaction to the SDR. We believe that an annual reporting requirement is more efficient than a swap-by-swap reporting requirement for affiliate transactions.

Q29b. The Commission requests comment as to whether different-sized entities should be subject to the proposed reporting requirements or the reporting requirements for affiliates that elect the end-user exception, as applicable. If different sized entities should not be subject to such reporting requirements, please explain why.

Alternatively, should the Commission allow phased compliance for different sized entities?

We believe the proposed reporting requirements are acceptable to all market participants.