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MetLife®

November 7, 2011

BY EMAIL: rule-comments@sec.gov

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
Attention: Rule Comments

Re: Release No. IC–29779; File No. S7–35–11; RIN 3235-AL03

Dear Ms. Murphy:

MetLife appreciates the opportunity to comment on the SEC's advance notice of proposed rulemaking with respect to Rule 3a-7 under the Investment Company Act of 1940 (the "Rule 3a-7 Release"). Similar to the SEC's other recent proposals concerning securitizations, we believe the Rule 3a-7 Release is a valuable proposal and will help to strengthen the securitization market. As the SEC is aware, MetLife provided comprehensive comments to the Commission's 2010 ABS Proposing Release and the 2011 ABS Re-proposal (collectively, the "ABS Proposals") and the Proposed Rule on Credit Risk Retention under Section 941 of the Dodd-Frank Act.[1] As we have indicated previously, we believe the Commission's efforts will go a long way toward the continued rebuilding of investor confidence in this important sector, which is a critical source of financing in our capital markets.

Importantly, the broad reach of the Investment Company Act of 1940, as amended, and the rules and regulations promulgated thereunder (the "Investment Company Act") provides the Commission with a unique opportunity

[1] See Letter from Charles Scully, Managing Director – Structured Finance, Metropolitan Life Insurance Company, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated August 2, 2010 ("Reg AB Letter"); Letter from Jonathan L. Rosenthal, Senior Managing Director – Core Securities, Metropolitan Life Insurance Company, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, et al., dated June 27, 2011 ("Credit Risk Retention Letter"); and Letter from Jonathan L. Rosenthal, Senior Managing Director – Global Portfolio Management, Metropolitan Life Insurance Company, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated October 4, 2011 ("Reg AB Re-proposal Letter").

to develop substantive, consistent regulation for securitizations that would protect investors. Unlike changes to shelf-eligibility requirements contained in the ABS Proposals, we believe that changes to Rule 3a-7 and other Investment Company Act requirements have the potential to enhance investor protections across the entire securitization space, while reducing the possibility of regulatory arbitrage by securitization sponsors and issuers (i.e. selection of issuance paths with looser requirements than shelf registration, such as Rule 144A). We are encouraged to see the Commission evaluating this unique opportunity.

As one of the largest investors in the securitization market in the United States, MetLife, Inc. and its insurance affiliates invest in structured finance securities primarily to fund core insurance products, which provide critical financial protection for over 90 million customers worldwide. As of June 30, 2011, the general accounts of MetLife's insurance companies held approximately $77 billion of structured finance securities comprising $43 billion of RMBS, $19 billion of CMBS and $15 billion of ABS. Given the relevance of structured finance securities in our overall investment portfolio, MetLife has a vested interest in the long-term soundness of this market and the creation of higher-quality securities for this market.

MetLife, Inc.'s affiliated insurance companies issue various variable insurance products that are funded by registered separate accounts organized as unit investment trusts ("UITs") under the Investment Company Act. (Other separate accounts are not registered as UITs, based upon exemptions under the Investment Company Act). Both the registered and some of the unregistered separate accounts invest their assets in registered investment companies, some of which are managed by a MetLife affiliate. These separate accounts invest in over 85 proprietary underlying mutual funds, with aggregate assets of over $100 billion as of June 30, 2011. The unregistered separate accounts also invest in unregistered investment companies, based upon exemptions under the Investment Company Act.

MetLife Bank (collectively referred to herein with MetLife, Inc. and its insurance affiliates as "MetLife") also participates in the securitization market both as an originator and servicer of conforming and nonconforming mortgage and reverse mortgage loans. We are also responding to the SEC's request for comments as one of the largest holders and originators of real estate loans in the United States. As of June 30, 2011, MetLife's real estate loan portfolio totaled $55 billion, comprised of $39 billion of commercial mortgages, $13 billion of agricultural mortgages, and $3 billion of residential loans.

In the sections below, we discuss why MetLife believes the Commission's concerns about the ineffectiveness of the rating requirement under Rule 3a7 are well founded. We also explain why we support the alternative of replacing the rating requirement with the requirements proposed under the ABS Proposals. We

conclude with some considerations regarding the uniformity with which these requirements should be applied, and the scope of appropriate exceptions for some existing activities that we do not believe raise a potential for abuse.

Concerns regarding investor protections are justified

We agree with the Commission's concern that the current NRSRO rating requirement under Rule 3a-7 does not address the serious principal-agent conflicts that Congress was concerned with when it adopted the Investment Company Act. Unfortunately, these conflicts have promoted excessive risk taking and the erosion of collateral quality throughout the securitization market. Some of the more egregious examples of these largely unaddressed conflicts include:

- *RMBS:* Many securitization trusts have purchased assets of known poor quality at full value. Relatedly, the amount of senior securities issued has been excessive given the true value of the assets, which has resulted in pervasive losses to investors in this sector.

- *CMBS:* Buyers of the junior-most securities in these transactions (i.e., B-pieces) have had privileged access to asset information and have had the ability to direct the resolution of workout situations. These actions can potentially result in economic benefit for the junior-most investor and its affiliates, to the detriment of all other investors.

- *CDO:* Collateral managers, who have equity-like incentives, have had discretion to manage assets and amend transaction conditions in ways that increase the risk of loss to senior investors while boosting fees and compensation for the collateral manager.

In MetLife's opinion, it is not the role of NRSROs to address these conflicts. Instead, we believe that a regulatory framework that fosters fair dealing can provide the incentives for market participants to address these serious principal-agent conflicts.

While we strongly support the Commission's ABS Proposals, we are concerned that issuers and sponsors will circumvent many of the key enhancements contained therein (such as the shelf conditions requiring a credit risk manager and enhanced investor communication) by relying on Rule 144A's resale exemption. We believe this is highly likely because most investors in securitizations easily meet the definition of qualified institutional buyers. In fact, the vast majority of Rule 144A transactions have the hallmarks of public transactions – namely, offerings that are executed rapidly over the course of a few business days where there is little room for negotiation by investors of the

terms and conditions of the securitization documents (other than the price of the securities being offered).

As indicated earlier, we believe that the Investment Company Act provides the SEC with a unique opportunity to strengthen the regulatory framework for all forms of securitization. Unlike the ABS Proposals, which primarily apply to shelf registrations under the Securities Act of 1933, as amended (the "Securities Act"), we believe that the Investment Company Act can be a platform to address substantive issues across all forms of securitization, regardless of the Securities Act registration requirement or exemption that is relied upon in connection with a particular issuance.

Recommended substitute for rating requirement

MetLife believes that the principal-agent conflicts in securitization can be addressed through stronger governance and increased transparency. In fact, many of the Commission's recent initiatives under the ABS Proposals are aimed at exactly that. Specific aspects of the ABS Proposals that would help to significantly reduce conflicts-of-interest include:

- *Vertical risk retention by sponsor:* ensures alignment of incentives between sponsors and investors without creating principal-agent conflicts that would result from transaction managers holding equity positions (i.e. horizontal or L-shaped risk retention).

- *Credit risk manager:* provides the oversight of an independent third party to ensure the fairness of reviews of potential breaches of representations and warranties and the resulting put-back process (and in the case of CMBS it could serve to improve governance of workout situations).

- *Investor communication:* gives investors the ability to take collective action in instances where protecting their interests would require so – as long as it's accompanied by an effective voting mechanism.

- *Enhanced disclosure:* provides investors with the necessary tools to understand their rights, the mechanism to enforce their rights, and the adherence of agents to the agreed upon parameters of a transaction.

We believe that imposing the Reg AB requirements, such as those outlined above, as a condition to obtain the Rule 3a-7 exclusion will likely provide far superior investor protection than the rating requirement currently does(in cases where the securitizer is not selling securities that are substantially supported by the securitizer's own securities, such as trust preferred securities). Accordingly, MetLife strongly supports the Commission's suggestion to replace the rating requirement with the Reg AB requirements.

Additional considerations

Overall scope of Rule 3a-7

Except as described below, MetLife strongly believes that a Rule 3a-7 that incorporates Reg AB requirements should be the only exclusion from the investment company definition available to private label securitization issuers, unless other exclusions under the Investment Company Act incorporate similar requirements. Otherwise, we fear that not having uniform exceptions would create the opportunity for regulatory arbitrage within the Investment Company Act.

As indicated in our previous responses to the Commission's ABS Proposals, MetLife believes that these requirements should not be applicable in true privately-negotiated transactions (i.e. securities issued under Section 4(2) of the Securities Act), where each investor has the demonstrated ability to influence the material terms of the transaction, or in transactions in which the collateral consists of the securitizer's own obligations.

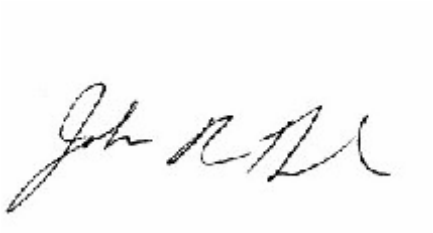
Structures in which the collateral consists of the securitizer's own obligations do not raise the same issues as transactions in which pools of assets reflecting third-party risk are aggregated and packaged for resale. Thus, for entities involved in trust preferred structures or other structures in which collateral consists of the securitizer's own obligations, a revision of Rule 3a-7 should either continue to make available a ratings-based requirement or provide a workable substitute for the ratings-based requirement that does not reflect Regulation AB concepts.

Securitizations should not be deemed investment companies

Finally, we strongly request that the Commission view these amendments as strengthening the current exclusion from the definition of an investment company. We are not advocating that the Commission lift the exclusion and treat securitization trusts as investment companies as defined under the Investment Company Act. We caution that deeming a securitization trust as an investment company would impose significant limitations on the investments that other investment companies could make in these vehicles, potentially causing disruptions in the market.

Thank you in advance for providing MetLife with the opportunity to comment on the Rule 3a-7 Release If you have any questions concerning the views or recommendations MetLife has expressed in this Comment Letter, please feel free to contact either Jonathan Rosenthal of our Investments Department (at 973.355.4777; jrosenthal@metlife.com), or James Donnellan of our Government and Industry Relations Department (at 212.578.3968; jfdonnellan@metlife.com).

Very truly yours,



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