Metropolitan Life Insurance Company
Ten Park Avenue, Morristown, NJ 07962

MetLife®

Jennifer J. Kalb
Associate General Counsel
Tel 973-355-4370 jkalb@metlife.com

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

Re: RIN 3038 – AC96 Regulations Establishing and Governing the Duties of Swap Dealers and Major Swap Participants

Dear Mr. Stawick:

MetLife welcomes the opportunity to comment on the proposed regulations establishing and governing the duties of swap dealers and major swap participants ("MSPs"), 75 Fed. Reg. 71397 (November 23, 3010) 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").:

MetLife, Inc. is the holding company of the MetLife family of insurance companies. The MetLife organization is a leading global 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.

The MetLife insurance companies are licensed and subject to regulation in their domiciliary jurisdictions, as well as in each U.S. and international jurisdiction in which they conduct business. In the U.S., state insurance laws and regulations govern the financial aspects of the insurance business, including standards of solvency, statutory reserves, reinsurance and capital adequacy, and the business conduct of insurers. Each insurance subsidiary is required to file reports, generally including detailed annual financial statements, with insurance regulatory authorities in each of the jurisdictions in which it does business, and its operations and accounts are subject to periodic examination by such authorities. Each of the MetLife U.S. insurance companies is subject to risk-based capital (RBC) requirements, and reports its RBC based on a formula calculated by applying factors to various asset, premium and statutory reserve items, as well as taking into account the risk characteristics of the insurer. The major categories of risk involved are asset risk, insurance risk, interest rate risk, market risk and business risk. The formula is used as an early warning regulatory tool to identify possible inadequately capitalized insurers for purposes of initiating regulatory

action, and not as a means to rank insurers generally. State insurance laws provide insurance regulators the authority to require various actions by, or take various actions against, insurers whose RBC ratio does not meet or exceed certain RBC levels. The investments of each of the U.S. insurance subsidiaries which back our contractual liabilities are subject to regulation under relevant state insurance laws that require diversification of the insurers' investment portfolios and limit the amount of investments in certain asset categories. The state regulation applicable to MetLife generally limits our U.S. insurers' use of derivatives to hedging, asset replication and limited writing of covered calls.

As a result of its ownership of MetLife Bank, NA, a federally chartered bank, MetLife, Inc. became subject to regulation as a bank holding company and financial holding company on February 28, 2001. As such, it is subject to regulation under the Bank Holding Company Act of 1956 and to inspection, examination, and supervision by the Board of Governors of the Federal Reserve Bank of New York. MetLife, Inc. and MetLife Bank are subject to risk–based and leverage capital guidelines issued by the federal banking regulatory agencies for banks and financial holding companies. The federal banking regulatory agencies are required by law to take specific prompt corrective actions with respect to institutions that do not meet minimum capital standards.

Finally, MetLife, Inc. is a public company, registered under the Securities Act of 1934 and has securities listed on the New York Stock Exchange.

As a highly regulated entity as well as a public company, MetLife Inc., like other such companies, has a well-established and highly elaborated system of corporate governance to support its existing business and regulatory requirements. MetLife's governance and control structures include Boards of Directors at the MetLife Inc. and Metropolitan Life Insurance Company having a majority of independent directors (currently 12 of the 13 MetLife Directors are independent of the company) as well as Enterprise Risk Management, Corporate Ethics and Compliance, Legal and Internal Audit departments which are separate and independent from MetLife's investment management and its insurance lines of business. These units have direct reporting relationships to senior management and the Board of Directors (or committees of the Board).

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.

General Comments

Time Frame for Comment on the Compliance Rules Should be Extended. Like other large end user organizations, MetLife is in the process of assimilating and analyzing the potential applicability and implications of the Commission's proposed rules defining Swap Dealer, MSP and other significant statutory terms, 75 Fed Reg. 80174 (December 21, 2010) (the "Definitional Rules"). Many serious questions are posed by the Definitional Rules which could bear on whether and how MetLife and other complex institutions will ultimately be regulated as MSPs. Given the

complexity of this review and the level of uncertainty involved and the expense and seriousness of this new regulation to all involved, we respectfully request that the time period for comment on the Compliance Rules, including the Proposed Rules that are the subject of this comment letter, be extended and remain open until some time after substantive resolution is reached on the Definitional Rules.

Compliance Rules Adopted Should Be Flexible and Not Prescriptive. The Definitional Rules potentially pull into regulation as MSPs a wide range of disparate businesses, which use swaps differently, may be subject to differing prudential business regulation, may have more or less evolved corporate governance and control structures and pose different risks to the financial system. Given the different risk profiles of different businesses, prescriptive one size fits all regulation is not appropriate. We urge the Commission to be mindful of these differences, including the following:

- **Rules for Swap Dealers and MSPs Need Not and Should Not be the Same.** In our view it is inappropriate for end-user organizations designated as MSPs to be subject to dealer type regulation. The risk profile and swap activities of an end-user, MetLife, which has no customers, transacts swaps only through dealers, and engages predominantly in hedging rather than speculative activity, is substantively different from a dealer, which among other things, has customers other than dealers with which it trades, and runs a trading book.[1] While Dodd-Frank requires a compliance regime to be established, it does not mandate that this regime be identical for all market participants.

- **Compliance Rules Should Allow for Flexibility in the Organizational Structure Utilized.** Specifically, MetLife is concerned that any final compliance related rules, including the Proposed Rules, recognize the diversity of corporate organizations. Although some entities may have minimal governance and risk infrastructure, MetLife and others currently have well-developed compliance and risk management organizations supporting their regulated and non-regulated business activities. We believe it would add no value and be inconsistent with the underlying policy of the legislation, not to mention unduly burdensome to the companies, if the Commission required entities that become regulated as MSPs or otherwise under Dodd-Frank either to create additional or parallel compliance functions solely for Dodd-Frank, when these functions and competencies already exist within the organization, or to require non-substantive changes in the MSP's pre-Dodd Frank governance structure.

- **Compliance Rules Should Provide Registrants Flexibility to Develop their Compliance Programs.** Given the differences already cited between potential registrants, a diversity of risk management and compliance approaches should be possible and permitted by the regulation, rather than a single template. Specific areas where this is recommended are further discussed below.

[1] The operations and risks of a hedging user of swaps will also differ from a hedge fund, or other non-dealer business which engages in market speculation or runs a trading book, and differing compliance requirements could be appropriate for these market participants as well.

Deferral of Time for Compliance with Compliance Rules is Imperative. In connection with the proposed Chief Compliance Officer rule, the Commission requested comment as to on how long it might take for a registrant to hire a chief compliance officer and to implement the compliance policies and procedures required under Dodd-Frank. The full Dodd-Frank derivatives rule framework is yet to be promulgated, even in proposed form, and the potential for MSP status may require quarterly reassessment by end-users. Given these realities, we believe that a period of one year from registration would be an appropriate time frame for a MSP registrant to hire and train the required human capital resources, build out the necessary information technology including for additional real-time monitoring, develop the other infrastructure and policies/procedures needed for successful implementation, and internally vet the required compliance program, including critically any Risk Management Program ultimately mandate.

Specific Comments on the Proposed Rules

The definition of "Governing body" set forth in paragraph (a)(4)(ii) of §23.600 for corporations should be revised to also include *a committee* of the board of directors. As we noted in our comment letter with respect to the proposed Chief Compliance Officer rule, 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. In our view, any required supervision or involvement under Dodd Frank should be permitted to occur at the level of the expert Board committee which already has jurisdiction over the subject matter, instead of requiring reference to the full Board.

For example, in a firm whose Board has delegated investment, risk or governance functions to a specialized Board Committee, that Committee (rather than the full Board) should be able to

- approve the firm's Risk Management Program and written risk management policies, as required under paragraph (b)(3)
- Provide the annual approval of risk limits mandated under paragraph (c)(1)
- Receive any quarterly risk exposure reports required under paragraph (c)(2)
- Approve any trading policies for the business trading unit under paragraph (d)(1)
- Receive reports of risk management program compliance audits under (e)(2)
- Receive reporting of position limit violations under paragraph (e), and of quarterly compliance reports under §23.601

This revised concept should apply throughout the Compliance Rules.

The requirement of establishing a risk management program set forth in §23.600(b) should be prudently and appropriately limited to cover only swap related business activity. In this section of the proposed rule, it is stated that "each swap dealer and [MSP] shall establish ... a system of risk management policies and procedures designed to monitor and manage the risks associated with the business of the swap dealer or major swap participant." Given that the Commission is granted jurisdiction over MSPs solely as a result of potential systemic risks posed by these entities due to their swap activities, it would be unreasonable and beyond the intended reach of Dodd Frank to require coverage of any risk management program to relate to business activities remote from the MSP (or Swap Dealer's) swap activities.[2]

Scope of the Required Risk Management Program. MetLife believes that the establishment and maintenance of a disciplined risk management program, encompassing monitoring of such risks as market risk, credit risk, foreign currency risk, liquidity risk, and legal and operational risks is an important aspect of the governance and financial control structure for a financially significant entity. MetLife has established and currently operates such programs, as described above. We are concerned, however, that proposed rule is excessively prescriptive in a number of respects, including the following:

- **Frequency of Risk Measuring**. In subparagraph (c)(4) of §23.600, the requirement of daily monitoring of various risks, daily reconciliation of profits and losses from valuations with the general ledger at least once each business day, and daily measurements of liquidity needs may be excessive in light of a particular registrant's business and could require substantial IT and human capital investments. In our view, it would be preferable if the rule were drafted to permit the risk management organization and governing body of a registrant to determine how frequently measurement of these risk exposures should occur.

- **Intraday Trader Monitoring**. The requirement of intraday monitoring of traders to prevent the traders from exceeding limits or "otherwise incurring undue risk" as set forth in paragraph (d)(4) could likewise be excessive and unnecessary in a particular business organization, for example in an insurance organization like MetLife which is a hedging user of the swap markets. The type of monitoring and its frequency should be within the purview of the risk management organization and the governing body of the registrant.

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[2] We note that in the Definitional release, the Commission has tentatively taken substantively opposite positions with respect to identifying the "person" to be regulated as a swap dealer (could be as small as a division of a corporate entity) and as a MSP (this could be an entire consolidated enterprise, encompassing potentially a large group of regulated and unregulated companies, with global operations and disparate business activities. Neither of these approaches represents a natural application of the "person" definition in the statute. Further, these different definitional approaches could result in wholly unwarranted difference in the extent of risk management programs mandated for Swap Dealers and MSPs, notwithstanding the similarity of the risks involved. We respectfully suggest that these definitional issues be clarified before the scope of the required risk management and other compliance regimes can be appropriately determined.

- **Review of Broker Statements**. Paragraph (d)(8) requires that the risk management unit review broker's statements, reconciles brokers charges to estimates, reviews and monitors broker's commissions and initiates payments to brokers. These functions need not be performed by risk managers and can be and are appropriately performed by back office staff or similar control units separate from and independent of the business trading unit .

- **Quarterly Audit Requirement**. The requirement in paragraph (e) that the Risk Management Program of a registrant be audited by internal or external audit staff on a quarterly basis appears excessive and overly expensive and burdensome. While we support compliance auditing, we recommend that the frequency and scope of the required audit be established by the registrant's risk management organization, internal audit department or governing body, at minimum intervals of one year.

- **Position Limit Procedures Testing.** With respect to position limits in §23.601, we believe that the requirement in paragraph (f) for testing of Position Limit Procedures every month for adequacy and effectiveness may be excessive and overly burdensome for certain MSPs, and that a requirement for periodic review and testing of such procedures should be adequate. MSPs which do not trade in contracts for which there have been established position limits should be excused from compliance with these requirements.

Reporting of Position Limit Violations. We concur that prompt reporting of position limit violations to the Commission is appropriate, but a requirement of immediate reporting of all such violations to a firm's governing board is excessive. An escalation process based on the materiality of the violation could appropriately be a part of the Position Limit Procedures established under this rule, including whether the violation warrants reporting to or action by the governing body.

Timeframe for Implementation. We continue to be concerned about the time frame for implementation of the Proposed Rules and other Compliance Rules. We particularly note that paragraph (b)(4) of §23.600 requires that the registrant ***"furnish a copy of its written risk management policies and procedures to the Commission upon application for registration."*** Given the lack of certainty regarding MSP status, including such status arising in the future based on the proposed quarterly evaluations, it will be virtually impossible for most institutions to meet this filing requirement, including creating the required risk management infrastructure, by the time of the initial registration filing. We believe that a period of one year after registration would be an appropriate time frame for a registrant to come into compliance with the Proposed Rule.

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,

Jennifer J. Kalb