



DIVISION OF
INVESTMENT MANAGEMENT

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

ACT SA of 1933
SECTION 5
RULE 145
PUBLIC
AVAILABILITY May 17, 1996
1996

May 17, 1996

Stephen E. Roth, Esq.
Sutherland, Asbill & Brennan
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2404

Re: Metropolitan Life Insurance Company,
New England Mutual Life Insurance Company and
New England Variable Life Insurance Company

Dear Mr. Roth:

Enclosed is our response to your letter of May 16, 1996. In any future correspondence on this matter, please refer to our Reference No. IP-5-96.

Sincerely

Susan Nash
Assistant Director

Enclosure

Sutherland, Asbill & Brennan

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May 16, 1996

BY HAND DELIVERY

Susan Nash, Esquire
Assistant Director
Office of Insurance Products
Division of Investment Management
Securities and Exchange Commission
Room 10162, Stop 10-6
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: Metropolitan Life Insurance Company, New England Mutual Life
Insurance Company and New England Variable Life Insurance Company

Dear Ms. Nash:

We are writing on behalf of Metropolitan Life Insurance Company ("MetLife") and New England Mutual Life Insurance Company ("NEMLICO") to request the staff's assurance that it would not recommend that the Securities and Exchange Commission (the "Commission") take any enforcement action against MetLife or NEMLICO under Section 5 of the Securities Act of 1933, as amended (the "1933 Act"), and Rule 145 thereunder, or Sections 8 and 11 of the Investment Company Act of 1940, as amended (the "1940 Act"), if certain variable annuity separate accounts of NEMLICO, each registered as an investment company under the 1940 Act, are transferred to MetLife (the "Transfers") in connection with the proposed merger of NEMLICO and MetLife (the "Merger"), as described below. We also are requesting the staff's assurance that it would not recommend that the Commission take any enforcement action against MetLife or NEMLICO if, after consummation of the Merger, MetLife continues to rely on exemptive orders and no-action assurances obtained on behalf of NEMLICO, its variable annuity separate accounts, and any other parties named therein, without the filing with the Commission or the staff of amended or new applications for the same exemptive orders or no-action requests for the same assurances, or for relief for the deduction of the mortality and expense risk charge from the assets of New England Variable Annuity Fund I.

We also are writing on behalf of New England Variable Life Insurance Company ("NEVLICO"), a subsidiary of NEMLICO, to request the staff's assurance that it would not recommend that the Commission take any enforcement action against

Susan Nash, Esquire
May 16, 1996
Page 2

NEVLICO under Section 5 of the 1933 Act, and Rule 145 thereunder, if NEVLICO does not file new registration statements for its variable annuity contracts and variable life insurance policies to report a change in its domicile.

I. BACKGROUND

A. Metropolitan Life Insurance Company and its Separate Accounts

MetLife. MetLife is a mutual life insurance company organized in 1866 under the laws of the State of New York, which has engaged in the life insurance business under its present name since 1868. MetLife is licensed to sell life insurance policies and annuity contracts in all 50 states and the District of Columbia. As of December 31, 1995, MetLife had total assets of over \$142 billion and adjusted capital in excess of \$9.1 billion.

MetLife Accounts. Currently, two separate accounts of MetLife (collectively, the "MetLife Accounts") are registered with the Commission as investment companies under the 1940 Act.^{1/} The MetLife Accounts are separate accounts established pursuant to New York insurance law. The MetLife Accounts are registered as unit investment trusts and consist of subaccounts, each investing exclusively in shares of a portfolio of an open-end investment company registered under the 1940 Act.

MetLife Contracts. The MetLife Accounts fund variable life insurance contracts and variable annuity contracts (collectively, the "MetLife Contracts"). Interests in the MetLife Accounts funding the MetLife Contracts are registered as securities with the Commission under the 1933 Act.^{2/} The MetLife Contracts generally permit additional payments and allow transfers among subaccounts, subject to certain conditions. A general account option is available under the MetLife Contracts; this option is not registered with the Commission in reliance on certain exemptive and exclusionary provisions in the federal securities laws.

^{1/} See Registration Statement on Form N-4 for Metropolitan Life Separate Account E, File No. 811-4001, and Registration Statement on Form N-8B-2 for Metropolitan Life Separate Account UL, File No. 811-6025.

^{2/} See Registration Statement on Form N-4 for variable annuity contracts funded by Metropolitan Life Separate Account E, File No. 2-90380, and Registration Statements on Form S-6 for variable life insurance policies funded by Metropolitan Life Separate Account UL, File Nos. 33-32813, 33-47927, 33-57320 and 33-91226.

Susan Nash, Esquire
May 16, 1996
Page 3

B. New England Mutual Life Insurance Company and its Separate Accounts

NEMLICO. NEMLICO is a mutual life insurance company organized in 1835 under the laws of the Commonwealth of Massachusetts, with its home office in Boston, Massachusetts. NEMLICO is licensed to sell life insurance policies and annuity contracts in all 50 states, the District of Columbia and Puerto Rico. As of December 31, 1995, NEMLICO had total consolidated assets of over \$17.45 billion and surplus in excess of \$1.05 billion.

NEMLICO Accounts. Currently, three separate accounts of NEMLICO (the "NEMLICO Accounts") are registered with the Commission as investment companies under the 1940 Act. Each of the NEMLICO Accounts was established as a separate account pursuant to Massachusetts insurance law. The oldest NEMLICO Account, established in 1969, is New England Variable Annuity Fund I ("VA Fund I"), which is registered with the Commission as a management investment company under the 1940 Act.^{3/} The other two separate accounts, namely, New England Life Retirement Investment Account, established in 1981, and The New England Variable Account, established in 1987, are each registered as unit investment trusts with the Commission under the 1940 Act.^{4/} Each of the latter two separate accounts consists of subaccounts, each investing exclusively in shares of a portfolio of an open-end, diversified management investment company registered under the 1940 Act (the "Underlying Funds"). Approximately \$1.3 billion in total assets was held in the NEMLICO Accounts as of December 31, 1995.

Each NEMLICO Account obtained "start-up" exemptive relief from the 1940 Act as was customary for variable annuity separate accounts at the time each was registered with the Commission. In particular, in 1970, VA Fund I obtained an order of exemption from Section 17(f) to permit the safekeeping of the account's assets in NEMLICO's vault, from Section 22(d) to permit waivers of sales load charges on the application of death proceeds to an annuity option or any apportionment of surplus to the contracts funded by VA Fund I, and from Section 27(c)(2) to permit the proceeds of all payments under such contracts to be held by NEMLICO. The application filed on behalf of VA Fund I did not explicitly request, nor did the order explicitly grant, relief from Sections 26 and 27 for the deduction of the mortality and expense risk charge.

^{3/} See Registration Statement on Form N-3, File No. 811-1930.

^{4/} See Registration Statements on Form S-6, File No. 2-74407 and N-8B-2, File No. 811-3285 for the New England Life Retirement Investment Account, and Registration Statement on Form N-4, File No. 811-5338 for The New England Variable Account.

Susan Nash, Esquire
May 16, 1996
Page 4

However, the exemptive order was expressly conditioned on NEMLICO's consent that the administrative charges under the contracts funded by VA Fund I would not exceed such reasonable amounts as the Commission shall prescribe, and that the payment of sums and charges out of the assets of the account would not be deemed to be exempted from regulation by the Commission by reason of the exemptive order.^{5/}

In 1982, New England Life Retirement Investment Account obtained an order of exemption from various provisions of the 1940 Act to permit the deduction of a sales load in the form of a contingent deferred sales load, from Sections 26(a) and 27(c)(2) to permit the safekeeping of the account's assets by NEMLICO, from Sections 26(a) and 27(c)(2) to permit the deduction of administrative fees, a mortality and expense risk charge and a premium tax charge, and from Section 11 to permit subaccount transfers.^{6/}

In 1988, The New England Variable Account obtained an order of exemption from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act for the deduction of a mortality and expense risk charge from the assets of the separate account.^{7/}

NEMLICO Contracts. Each of the NEMLICO Accounts funds variable annuity contracts ("NEMLICO Contracts"). Interests in the NEMLICO Accounts funding the NEMLICO Contracts are registered as securities with the Commission under the 1933 Act.^{8/} The NEMLICO Contracts permit additional payments and allow transfers among subaccounts, subject to certain conditions. Currently, only variable annuity contracts funded by The New England Variable Account (marketed under the name "Zenith Accumulator") are being offered for new sales to the public. The Zenith Accumulator Contracts also offer a general account option, which is not registered with

^{5/} New England Life Variable Annuity Fund I, et al., Inv. Co. Act. Rel. Nos. 6257, Nov. 25, 1970 (Notice) and 6285, Dec. 11, 1970 (Order).

^{6/} New England Mutual Life Ins. Co., et al., Inv. Co. Act Rel. Nos. 12218, Feb. 8, 1982 (Notice) and 12277, March 5, 1982 (Order).

^{7/} New England Mutual Life Ins. Co., et al., Inv. Co. Act Rel. Nos. 16484, July 18, 1988 (Notice) and 16528, Aug. 16, 1988 (Order).

^{8/} See Registration Statements on Form N-4 for variable annuity contracts funded by The New England Variable Account, File No. 33-17377, and New England Retirement Investment Account, File No. 2-74407, and on Form N-3 for variable annuity contracts funded by New England Variable Annuity Fund I, File No. 2-34420.

Susan Nash, Esquire
May 16, 1996
Page 5

the Commission in reliance on certain exemptive and exclusionary provisions in the federal securities laws.

C. New England Variable Life Insurance Company and its Separate Accounts

NEVLICO. NEVLICO is a wholly-owned subsidiary of NEMLICO.

NEVLICO was organized as a stock life insurance company under Delaware law in 1980. NEVLICO is authorized to operate in all states, the District of Columbia and Puerto Rico. NEVLICO's home office is in Wilmington, Delaware and its administrative office is in Boston, Massachusetts.

NEVLICO Accounts. Currently, two separate accounts of NEVLICO (the "NEVLICO Accounts") are registered with the Commission under the 1940 Act, each as a unit investment trust.^{9/} The NEVLICO Accounts are separate accounts established pursuant to Delaware insurance law. Each NEVLICO Account consists of subaccounts, each investing exclusively in shares of a portfolio of an open-end, diversified management investment company registered under the 1940 Act. Most of these portfolios are Underlying Funds for the Zenith Accumulator Contracts issued by NEMLICO.

NEVLICO Contracts. One NEVLICO Account funds variable annuity contracts and the other NEVLICO Account, variable life insurance policies (collectively, the "NEVLICO Contracts"). Interests in the NEVLICO Accounts funding the NEVLICO Contracts are registered as securities with the Commission under the 1933 Act.^{10/} The NEVLICO Contracts permit additional payments and allow transfers among subaccounts, subject to certain conditions. The NEVLICO Contracts also offer a general account option, which is not registered with the Commission in reliance on certain exemptive and exclusionary provisions in the federal securities laws.

^{9/} See Registration Statement on Form N-4 for the New England Variable Annuity Separate Account, File No. 811-6530, and Registration Statement on Form N-8B-2 for New England Variable Life Separate Account, File No. 811-8828.

^{10/} See Registration Statement on Form N-4 for variable annuity contracts funded by New England Variable Annuity Separate Account (File No. 33-85442) and Registration Statements on Form S-6 for variable life insurance policies funded by New England Variable Life Separate Account, File Nos. 33-88082; 33-66864; 33-64170; 33-52050; 33-19540; 33-10954; and 2-82838. In addition, a registration statement on Form N-4 is pending for New England Variable Annuity Separate Account (File No. 33-64879) and a registration statement on Form S-6 is pending for New England Variable Life Separate Account (File No. 33-65263).

Susan Nash, Esquire

May 16, 1996

Page 6

D. New England Securities. New England Securities Corporation, a wholly-owned subsidiary of NEMLICO, acts as the principal underwriter for the NEMLICO Contracts and the NEVLICO Contracts. New England Securities is an "affiliated person," as that term is defined in Section 2(a)(3) of the 1940 Act, of NEMLICO and NEVLICO.

II. THE PROPOSED TRANSACTIONS

The Merger. For certain business reasons, MetLife and NEMLICO have entered into an agreement and plan of merger dated as of August 16, 1995 (the "Merger Agreement"), pursuant to which NEMLICO will merge with and into MetLife, with MetLife the surviving corporation. MetLife and NEMLICO contemplate that the Merger will be consummated on or about May 31, 1996 (the "Effective Date"), subject to certain state insurance regulatory approvals and approvals of policyholders (as defined below).

Impact of Merger on NEMLICO, NEMLICO Accounts and NEMLICO Contracts. Upon consummation of the Merger, NEMLICO's separate corporate existence will cease by operation of law, and MetLife will assume legal ownership of all of the assets of NEMLICO, including the NEMLICO Accounts and their respective assets. By virtue of the Merger, MetLife also will become responsible for all of NEMLICO's liabilities and obligations, including those created under the NEMLICO Contracts outstanding at the time of the Merger ("Outstanding NEMLICO Contracts"). Outstanding NEMLICO Contracts will thereby become variable contracts issued through separate accounts of MetLife, and each owner of an Outstanding NEMLICO Contract will become a contractowner of MetLife by operation of law. Under the Merger Agreement, the Merger will have no effect on MetLife Contractowners, and each owner of a MetLife Contract will continue to be a contractowner of MetLife.

The Merger Agreement contemplates that the NEMLICO Accounts, as in existence on the Effective Date, will be transferred intact to MetLife in connection with the Merger, and will remain intact after the Effective Date as new separate accounts of MetLife for so long as they hold assets funding Outstanding NEMLICO Contracts. As a result of the Merger, the NEMLICO Accounts, which are registered under the 1940 Act, will continue to maintain their status as investment companies under the 1940 Act and as separate accounts under applicable state insurance law. The MetLife Accounts and the NEMLICO Accounts are not parties to the Merger Agreement, which was entered into at the insurance company (depositor or sponsor) level. No portion of the assets of any of the NEMLICO Accounts will be combined with any other separate accounts in connection with the Merger. After the Effective Date, the assets in each of the NEMLICO Accounts will remain legally segregated from MetLife's other business, just as

Susan Nash, Esquire
May 16, 1996
Page 7

they are now from NEMLICO's other business. Also, the NEMLICO Accounts will continue to consist of the same type of assets currently comprising the NEMLICO Accounts -- namely, shares of the Underlying Funds in the case of those NEMLICO Accounts registered as unit investment trusts, and portfolio securities in the case of VA Fund I. The unit value for each of the NEMLICO Accounts (or subaccounts) in effect immediately after the Merger will be identical to the unit value in effect immediately prior to the Merger. Thus, the only change to the NEMLICO Accounts resulting from consummation of the Merger is that, after the Effective Date, the NEMLICO Accounts will be separate accounts of MetLife, rather than of NEMLICO.

Moreover, except for MetLife's succession to NEMLICO's obligations and liabilities arising under Outstanding NEMLICO Contracts, the Transfers of the NEMLICO Accounts pursuant to the Merger will not affect the provisions of, or rights and obligations under, the NEMLICO Contracts, nor will the Transfers affect any values determined under the NEMLICO Contracts. The Transfers will not cause any change in any of the terms or provisions of the NEMLICO Contracts. There is no current intention to make any new investment options available to owners of the NEMLICO Contracts in connection with the Transfers, or to substitute or terminate any of the existing Underlying Funds in connection with the Transfers. No payments will be required or charges imposed under the NEMLICO Contracts in connection with the Transfers that would not otherwise be required or imposed.^{11/} Any costs or expenses relating to effecting the Transfers or consummating the Merger will be borne by MetLife and NEMLICO, and will not be borne by the NEMLICO Accounts or NEMLICO Contractowners. The Transfers will not affect the unit value of any NEMLICO Accounts (or their subaccounts); these unit values as in effect immediately after the Transfers will be identical to the unit values in effect immediately prior to the Transfers. Finally, MetLife's succession to NEMLICO's obligations and liabilities under the NEMLICO Contracts will not dilute or otherwise adversely affect the economic interests of the NEMLICO Contractowners in their contracts.

Procedural Matters Relating to the Merger Agreement. The Merger Agreement has been approved by the Boards of Directors of MetLife and NEMLICO in

^{11/} Because the Transfers would be effected as of the end of a valuation period under the NEMLICO Contracts, under the terms of the NEMLICO Contracts certain payments or deductions for charges may be required to be made, as a matter of course, during that period.

Susan Nash, Esquire
May 16, 1996
Page 8

accordance with applicable state law.^{12/} Under applicable Massachusetts laws and regulations, the Merger Agreement also must be submitted to the Massachusetts insurance commissioner. Under the regulations, the commissioner may elect to conduct a public hearing, of which notice is to be given to policyholders and others as the commissioner deems appropriate, to consider, among other things, the fairness of the terms and conditions of the proposed merger, whether the interests of policyholders are protected, and whether the merger is in the public interest. NEMLICO anticipates that the Massachusetts insurance commissioner will conduct a fairness hearing on the Merger Agreement, and that NEMLICO policyholders will be notified of the hearing and given an opportunity to appear. (As of the date of this letter, no date had been set for this hearing.) The regulations further require the commissioner to grant or withhold authorization of the merger agreement after conducting such a hearing.

Applicable Massachusetts insurance laws and regulations also require that the Merger Agreement be approved by holders of NEMLICO participating policies and others who qualify under Massachusetts law as members of NEMLICO (collectively "policyholders").^{13/} Accordingly, NEMLICO intends to give NEMLICO Contractowners, as policyholders, an opportunity to vote on the Merger at a meeting to be held for all NEMLICO policyholders. Materials relating to that meeting forwarded to policyholders will conform to applicable Massachusetts regulations for notices of a

^{12/} NEMLICO and MetLife anticipate that the Merger Agreement may be amended in connection with obtaining regulatory approvals. If the Merger Agreement is amended, the amended agreement will be submitted to the board of directors of each company, and the amended agreement, rather than the original Merger Agreement, will be the subject of the fairness hearing discussed in the paragraph above and the policyholder meeting discussed in the following paragraph.

^{13/} Under New York insurance law, the Merger Agreement must also be approved by MetLife's policyholders. As of the date of this letter, no notice of a meeting had yet been published, or a date set for the meeting.

Susan Nash, Esquire
May 16, 1996
Page 9

policyholder meeting to vote on a merger.^{14/} (As of the date of this letter, no such materials had been sent, nor had a date yet been set for such meeting.)

The adviser to VA Fund I and advisers and sub-investment advisers for certain of the Underlying Funds are affiliated with NEMLICO. The consummation of the Merger may be deemed to result in an "assignment" of their investment advisory agreements for purposes of the 1940 Act and the Investment Advisers Act of 1940. Accordingly, in order to ensure that investment advisory agreements are in effect on the Effective Date, new investment advisory agreements between VA Fund I and the Underlying Funds and their respective advisers and sub-investment advisers have been approved by the board of managers of VA Fund I and the boards of trustees of the Underlying Funds, as well as by their security holders. More particularly, at meetings held on December 28, 1995, security holders of VA Fund I approved a new investment advisory agreement for that account and security holders of the Underlying Funds approved new investment advisory agreements for the Underlying Funds. As security holders of VA Fund I, owners of NEMLICO Contracts funded by that account had an opportunity to vote in person or by proxy on the new investment advisory agreement. Owners of NEMLICO Contracts funded by the other NEMLICO Accounts had an opportunity to provide voting instructions in person or by proxy, to NEMLICO, as a security holder of the Underlying Funds, with respect to the approval of investment advisory agreements for the Underlying Funds.^{15/} Votes and voting instructions were

^{14/} It is our understanding that the solicitation of policyholders' approval of various corporate governance matters for mutual insurance companies has not been considered to be subject to the proxy rules under the Securities Exchange Act of 1934 (the "1934 Act"). For the proxy rules to be implicated, the basis for the proxy solicitation must relate to equity securities issued by the insurance company. However, the interest of policyholders of a mutual insurer has not been viewed as being an equity security interest under the 1934 Act. It has been observed that the "SEC has never had jurisdiction over *mutual* insurance companies except on their occasional issuance of debt securities, because they do not issue stock and § 3(a)(8) of the 1933 Act exempts insurance policies and annuities. . ." See IV Loss and Seligman, Securities Regulation 1796 (emphasis in original).

Of interest, since the 1964 amendments to the federal securities laws, stock insurance companies have been able to rely on an explicit exemption from the proxy rules, provided a regulatory agency of their domiciliary state provides substantially similar regulation as to proxies, consents and authorizations. See Section 12(g)(2)(G) of the 1934 Act.

^{15/} Owners of NEVLICO Contracts funded by NEVLICO Accounts investing in the
(continued...)

Susan Nash, Esquire
May 16, 1996
Page 10

solicited pursuant to proxy solicitation materials for the respective security holder meetings, which were prepared and filed in accordance with the proxy rules under the 1934 Act and 1940 Act.

Disclosure Considerations. NEMLICO has supplemented prospectuses for the NEMLICO Contracts to provide information about the Merger and related matters.^{16/} Similarly, the Underlying Funds have supplemented their prospectuses to provide information relating to new approvals of the investment advisory agreements. Copies of these supplements have been forwarded to existing NEMLICO Contractowners.^{17/} As discussed above, NEMLICO Contractowners also have received proxy materials soliciting security holder approval of various investment advisory agreements and will receive materials relating to the policyholders' meeting for consideration of the Merger Agreement (as it may be amended).

After the Effective Date, MetLife intends to accept additional payments under the Outstanding NEMLICO Contracts made in accordance with their terms, and to continue the offering of Zenith Accumulator Contracts, as variable annuity contracts of MetLife. To ensure that any payments so accepted will be covered by effective registration statements reflecting MetLife's succession to NEMLICO's obligations and liabilities under the NEMLICO Contracts, new 1933 Act registration statements for the NEMLICO Contracts funded by the NEMLICO Accounts will be filed with the Commission in a timely manner to ensure that the new registration statements will become effective on the Effective Date. (The new registration statement for the Zenith Accumulator Contracts also will cover any new contracts issued by MetLife after the Effective Date.) These registration statements will include MetLife's financial statements, but will retain the historical financial information of the NEMLICO Accounts. The prospectus information included in these registration statements relating to consummation of the Merger will be sent to existing NEMLICO Contractowners.

15/ (...continued)

Underlying Funds also had the opportunity to provide voting instructions with respect to the approval of investment advisory agreements for the Underlying Funds.

16/ Given that MetLife is to survive the Merger and that it is substantially larger than NEMLICO, MetLife did not supplement prospectuses for MetLife Contracts to provide information about the Merger.

17/ Owners of NEVLICO Contracts funded by NEVLICO Accounts investing in the Underlying Funds also have been forwarded supplements to the Underlying Funds' respective prospectuses.

Susan Nash, Esquire
May 16, 1996
Page 11

Redomestication of NEVLICO. The Merger Agreement provides that NEVLICO will become a wholly-owned subsidiary of MetLife upon consummation of the Merger. MetLife and NEMLICO anticipate that, in connection with the Merger approval process, NEVLICO may take appropriate corporate action to change its state of domicile from Delaware to Massachusetts. It has not yet been decided whether the change in domicile would be effected before or after the Merger is consummated, although it is probable that an effort will be made to effect the Redomestication on the same day as the Merger is effected. It also is likely that NEVLICO's name will be changed to "New England Life Insurance Company" at the time the Redomestication is effected. The Redomestication of NEVLICO is not a condition to consummation of the Merger. With respect to appropriate corporate action, both Delaware and Massachusetts have adopted laws ("redomestication laws")^{18/} permitting an insurer to change its state of domicile by various methods. One such method that has been used by insurers changing domicile is the filing by the insurer of appropriate "articles of redomestication" with the state in which domicile is sought. This approach ensures that there is no change in the corporate entity, as a matter of state law, resulting from the redomestication.

Under Massachusetts' redomestication law, the certificate of authority, agents' appointments and licenses, rates and other items in existence for an insurer at the time of redomestication in Massachusetts will continue in full force and effect unless the commissioner provides otherwise. Moreover, the redomestication law provides that all outstanding policies of the insurer will remain in full force and effect and need not be endorsed as to the new name of the insurer or its new location, if applicable, unless so ordered by the commissioner. In the absence of these provisions, the insurer would be required to obtain a new certificate of authority, reapply for agent appointments and licenses, and obtain new approvals of outstanding as well as new policy forms -- a significantly burdensome and time-consuming process. The redomestication laws effectively exempt an insurer changing domicile from these requirements in recognition of the fact that there is no change in the corporate entity as a result of the redomestication.

Under the Delaware and Massachusetts redomestication laws, prior approval of both the Massachusetts and Delaware insurance commissioners is required for an insurer to change its domicile from Delaware to Massachusetts. NEVLICO will not go forward with the Redomestication unless it obtains the approvals of both commissioners. NEVLICO has no reason to believe that it will not be able to obtain the approvals of both commissioners. In view of the provisions of the Massachusetts

^{18/} See Delaware Ins. Code Section 4946 and Mass. Ins. Code Section 175:49A.

Susan Nash, Esquire
May 16, 1996
Page 12

redomestication law discussed above, NEVLICO anticipates that its Redomestication will not result in any changes to outstanding NEVLICO Contracts.^{19/}

With respect to the differences between Massachusetts and Delaware insurance laws, the states' respective laws and regulations for separate accounts are substantially the same. While there are a few differences, these differences either are not relevant to the current operations of the NEVLICO Accounts or the provisions of outstanding NEVLICO Contracts, or are not expected to have any impact on the operation of the NEVLICO Accounts after the Redomestication.

III. ANALYSIS

As discussed more fully below, it is our view, with regard to the Merger, that:

1. Section 5 of the 1933 Act and Rule 145 thereunder are inapplicable to the Transfers of the NEMLICO Accounts pursuant to the Merger, and no registration statements on Form N-14 are required;
2. Section 8 of the 1940 Act is inapplicable to the Transfers of the NEMLICO Accounts pursuant to the Merger;
3. Section 11 of the 1940 Act is inapplicable to the Transfers of the NEMLICO Accounts pursuant to the Merger; and
4. Any and all exemptive orders and no-action assurances obtained before the Merger by NEMLICO, the NEMLICO Accounts, and/or any other parties named therein under the Federal securities laws with respect to the NEMLICO Accounts and the NEMLICO Contracts may continue to be relied upon by MetLife, the NEMLICO Accounts, and such other parties named therein after the Effective Date without the filing of amended or new exemptive applications or no-action requests with the Commission or its staff, or for relief for the deduction of the mortality and expense risk charge from the assets of VA Fund I.

^{19/} Upon the consummation of the Redomestication, NEVLICO will disclose the change in its domicile in a manner that complies with the 1933 Act.

Susan Nash, Esquire
May 16, 1996
Page 13

Further, it is our view, with regard to the Redomestication, that Section 5 of the 1933 Act and Rule 145 thereunder are inapplicable to the Redomestication of NEVLICO, and that no new registration statements with respect to NEVLICO Contracts are required to be filed by NEVLICO to reflect the Redomestication.

A. No-Action Relief Requested With Regard to the Merger

1. Section 5 of the 1933 Act and Rule 145 Thereunder are Inapplicable to the Transfers of NEMLICO Accounts Pursuant to the Merger

It is our view that MetLife's succession to NEMLICO's obligations and liabilities under the NEMLICO Contracts as a result of the Merger will not result in the offer or sale of any new or different security, or in the creation of a new or different investment company issuer issuing a new security, in exchange for Outstanding NEMLICO Contracts, for purposes of Section 5 of the 1933 Act or Rule 145 thereunder. Section 5 generally prohibits the offer or sale of a new security without compliance with the registration requirements of the 1933 Act. Rule 145, an interpretive rule adopted by the Commission, provides guidance on when certain corporate reorganizations may entail the offer or sale of a new security in exchange for outstanding securities of a corporation involved in the reorganization.

Rule 145 provides, in relevant part, that an "offer," "offer to sell," "offer for sale," or "sale" is deemed to occur "so far as the security holders of [a person] are concerned, where, [pursuant to state law or controlling governing documents,] there is submitted for the vote or consent of such security holders a plan or agreement for . . . a statutory merger or consolidation or similar plan of acquisition in which securities of such . . . person held by such security holders will become or be exchanged for securities of any person . . ." The release accompanying the adoption of Rule 145 emphasizes that "an offer occurs under the rule only as to security holders who are entitled to vote or consent on the matter and who hold securities which become or will be exchanged for new securities."^{20/} Thus, if the matter on which a security holder is given an opportunity to vote provides for his outstanding securities to be exchanged for new securities, the vote entails an investment decision as to the new securities.

As discussed above under "Procedural Matters Relating to the Merger Agreement," two matters relating to the Merger are expected to be or have been submitted to NEMLICO Contractowners for vote: approval of the Merger Agreement as policyholders of a mutual life insurance company, and approval of certain investment

^{20/} Sec. Act Rel. No. 5316 (Oct. 6, 1972), 14 (emphasis added).

Susan Nash, Esquire
May 16, 1996
Page 14

advisory agreements with investment advisers or sub-investment advisers to VA Fund I or the Underlying Funds. In light of Rule 145, these matters may at first appear to implicate an investment decision as to the security that NEMLICO Contractowners hold. We submit, however, that these matters do not involve a decision whether to accept a new or different security in place of the security NEMLICO Contractowners will hold as of the Effective Date. The security they will then hold is represented by the securities aspects of the NEMLICO Contracts funded by the NEMLICO Accounts, i.e., the cash values, surrender values, and other benefits based on the NEMLICO Accounts. As discussed more fully below, neither matter as to which NEMLICO Contractowners may vote (or direct votes) involves a decision related to accepting a new or different security in place of the security held by NEMLICO Contractowners on the Effective Date.

In the case of policyholder approval of the Merger Agreement as it relates to NEMLICO Contractowners, the Transfers of the NEMLICO Accounts pursuant to the Merger will not affect those aspects of the NEMLICO Contracts that cause them to be treated as securities. The Transfers will not result in any change in the NEMLICO Accounts or their operations. The assets of the NEMLICO Accounts will not be combined with those of any other separate account or other entity in connection with the Transfers. Each of the NEMLICO Accounts will remain intact after the Effective Date for so long as they hold assets funding NEMLICO Contracts. After the Effective Date, the assets of the NEMLICO Accounts will be legally segregated from MetLife's other business, just as they are now from NEMLICO's other business. The NEMLICO Accounts will continue to consist of the same pool of assets currently comprising the NEMLICO Accounts. Moreover, the Transfers will not cause any change in any of the terms or provisions of the NEMLICO Contracts or result in the imposition of any charges against the NEMLICO Accounts or NEMLICO Contract values that would not otherwise apply. Thus, there will be no change in the securities aspects of the NEMLICO Contracts as a result of the Merger that could be viewed as resulting in a security that is new or different from what those Contract owners will hold immediately before the Merger is consummated.

In the case of security holder approval of new investment advisory agreements, we do not believe that the solicitation of NEMLICO Contractowner approval and voting instructions falls within the intended scope of Rule 145. Rule 145 applies to votes solicited in connection with certain corporate reclassifications, mergers, consolidations or transfers of assets involving the issuance of new securities. The approval of an investment advisory agreement, while admittedly a material event for the investment company that is a party to the agreement, simply is not an event of the type covered by Rule 145, nor, to our knowledge, has such an event otherwise been viewed generally as changing the security issued by the investment company.

Susan Nash, Esquire
May 16, 1996
Page 15

We believe that our view is supported by substantial no-action precedent. There are a number of no-action letters providing relief from Section 5 and, in most cases, also Rule 145, for transfers of separate accounts in connection with mergers of life insurance companies.^{21/} In a good number of the no-action letters, representations were made that affected variable contract owners would not be given any opportunity to vote on any matters relating to the merger or otherwise be presented with an investment decision.^{22/}

^{21/} See Massachusetts Mutual Life Ins. Co., et al. (pub. avail. Feb. 15, 1996); Phoenix Mutual Life Ins. Co., et al. (pub. avail. Apr. 13, 1992); Intramerica Life Ins. Co. (pub. avail. Oct. 29, 1992); California-Western States Life Ins. Co. (pub. avail. Dec. 9, 1991); UNUM Life Ins. Co. (pub. avail. Oct. 24, 1991); Merrill Lynch Life Ins. Co. (pub. avail. Sept. 26, 1991); Lincoln National Pension Ins. Co. (pub. avail. Dec. 29, 1988); Hartford Life Ins. Co., et al. (pub. avail. Feb. 16, 1988) ("Hartford III"); Jefferson National Life Ins. Co. (pub. avail. Oct. 9, 1986); American General Life Ins. Co. of Delaware (pub. avail. Mar. 13, 1986); and Voyager Life Ins. Co. (pub. avail. Jan. 10, 1986) (collectively referred to herein as "merger no-action letters"). See also Hartford Variable Annuity Life Ins. Co. (pub. avail. May 31, 1977) ("Hartford II"); Variable Annuity Accounts B & C of Aetna Variable Life Ins. Co. (pub. avail. May 10, 1976); Hartford Variable Annuity Life Ins. Co. (pub. avail. Sept. 1, 1975) ("Hartford I"); and American Variable Annuity Life Assurance Co. (pub. avail. Sept. 6, 1974) (collectively referred to herein as "change in domicile no-action letters"). The foregoing merger and change in domicile no-action letters concerned intact transfers of separate accounts effected in connection with a merger of two or more insurers. There is also a long line of no-action letters concerning intact transfers of separate accounts effected pursuant to assumption reinsurance transactions. For all practical purposes, this line of letters has raised the same issues and resulted in the same no-action assurances, as has been the case for the merger no-action letters. See, e.g., Metropolitan Life Ins. Co., et al. (pub. avail. Apr. 26, 1995); Security First Life Ins. Co. (pub. avail. Jan. 17, 1992); The Great-West Life Assurance Co. (pub. avail. Dec. 27, 1991); Allegiance Life Ins. Co. (pub. avail. July 31, 1990); Mass Life Ins. Co. of New York, et al. (pub. avail. Nov. 14, 1989); Anchor National Life Ins. Co. (pub. avail. Nov. 8, 1989); and Provident Mutual Life Ins. Co. of Philadelphia (pub. avail. Feb. 2, 1987) (collectively referred to herein as "assumption reinsurance no-action letters").

^{22/} With respect to the merger no-action letters, see Intramerica Life Ins. Co.; California-Western States Life Ins. Co.; UNUM Life Ins. Co.; Merrill Lynch Life Ins. Co.; Lincoln National Pension Ins. Co.; Hartford III; and American General Life Ins. Co. of Delaware cited above, n. 21. With respect to the assumption reinsurance no-action letters, see Metropolitan Life Ins. Co., et al.; Security First Life Ins. Co.; The Great-West Life
(continued...)

Susan Nash, Esquire
May 16, 1996
Page 16

However, several no-action letters involving separate account transfers in connection with mergers indicate that contract owners would be (or were) given an opportunity to vote on matters relating to the merger or having some proximity to the merger pursuant to which the separate accounts would be (or were) transferred.^{23/} For example, in three different cases involving separate account transfers, contractowners received proxy statements for the election of new board members and/or the approval of new investment advisory agreements that also disclosed pending merger transactions.^{24/} In five other cases of separate account transfers, contract owners were also to be given the right to vote on the merger: in three cases, the companies involved in the merger were stock life insurance companies;^{25/} in two cases, the companies involved were mutual life insurance companies.^{26/}

Several no-action letters involved mergers proposed to be effected solely for the purpose of changing domicile;^{27/} other letters involved mergers proposed to be effected for purposes of merging affiliated insurers^{28/} or unaffiliated insurers.^{29/}

^{22/} (...continued)

Assurance Co.; Allegiance Life Ins. Co.; Mass Life Ins. Co. of New York, et al.; Anchor National Life Ins. Co.; and Provident Mutual Life Ins. Co. of Philadelphia, cited above, n. 21.

^{23/} See Massachusetts Mutual Life Ins. Co.; Phoenix Mutual Life Ins. Co.; Jefferson National Life Ins. Co.; Voyager Life Ins. Co.; and all of the change in domicile no-action letters, cited above, n. 21.

^{24/} See Voyager Life Ins. Co.; Jefferson National Life Ins. Co.; and Variable Annuity Accounts B & C of Aetna Variable Life Ins. Co., cited above, n. 21.

^{25/} See Hartford II; Hartford I; and American Variable Annuity Life Assurance Co., cited above, n. 21.

^{26/} See Massachusetts Mutual Life Ins. Co. and Phoenix Mutual Life Ins. Co., cited above, n. 21.

^{27/} Hartford II; Variable Annuity Accounts B & C of Aetna Variable Life Ins. Co.; Hartford I; and American Variable Annuity Life Assurance Co., cited above, n. 21.

^{28/} See Intramerica Life Ins. Co.; California-Western States Life Ins. Co.; UNUM Life Ins. Co.; Merrill Lynch Life Ins. Co.; Lincoln National Pension Ins. Co.; Hartford Life Ins. Co. et al.; Jefferson National Life Ins. Co.; and American General Life Ins. Co. of Delaware, cited above, n. 21.

Susan Nash, Esquire
May 16, 1996
Page 17

Whatever the business reason, the same result would ensue for the separate accounts involved: a change in the insurer obligated under the contracts, but no change in the separate account operations. In this regard, all of the no-action letters represented, regardless of whether a vote may have been solicited on related matters, that the assets and liabilities which comprised the funding separate account would be transferred intact pursuant to the merger, and, as separate account assets and liabilities, would remain legally segregated from the other business of the surviving insurance company, just as is to be the case for the NEMLICO Accounts after the Effective Date.

Consistent with our view that Section 5 and Rule 145 are inapplicable to the Transfers of the NEMLICO Accounts pursuant to the Merger, we believe that no registration statement on Form N-14 should be required to be filed with respect to the Transfers.^{30/} However, we acknowledge that a registration statement for the NEMLICO Contracts funded by each NEMLICO Account, as a separate account of MetLife, needs to be in effect under the 1933 Act to cover any securities issued after the Effective Date, such as any additional payments accepted on the NEMLICO Contracts outstanding at the time the Transfers are effected.

As discussed above under "Disclosure Considerations," MetLife and the NEMLICO Accounts will file new registration statements with the Commission under the 1933 Act for the NEMLICO Contracts and will request that these registration statements be declared effective on the Effective Date. The new registration statements will reflect MetLife's assumption of NEMLICO's contractual obligations and liabilities with respect to the NEMLICO Contracts pursuant to the Merger. The registration statements also will include appropriate financial information for MetLife reflecting the consummation of the Merger. We note that this approach, of filing new registration statements to cover securities issued after the merger is consummated, is consistent with relevant no-action precedent.^{31/}

29/ (...continued)

29/ See Massachusetts Mutual Life Ins. Co.; Phoenix Mutual Life Ins. Co.; and Voyager Life Ins. Co., cited above, n. 21. See also Allegiance Life Ins. Co. (transfer of separate account pursuant to assumption reinsurance transaction between unaffiliated insurers), cited above, n. 21.

30/ We note that the Form N-14 registration statement, by its terms, does not apply to separate accounts registered as unit investment trusts.

31/ See the merger no-action letters cited above, n. 21. The change in domicile no-action letters cited above, n. 21, concerned separate account transfers made in connection with mergers effected for purposes of changing the insurer's domicile. In these no-action letters, (continued...)

Susan Nash, Esquire
May 16, 1996
Page 18

For the foregoing reasons, we are of the view that neither Section 5 nor Rule 145 is applicable to the Transfers of the NEMLICO Accounts pursuant to the Merger and that no Form N-14 registration statement need be filed. Accordingly, we request assurance that the staff concurs in our view.

2. Section 8 of the 1940 Act is Inapplicable to Transfers of the NEMLICO Accounts Pursuant to the Merger

It is our view that MetLife's succession to NEMLICO's obligations and liabilities under the NEMLICO Contracts pursuant to the Merger would not result in the organization or creation of a new investment company pursuant to Section 8 of the 1940 Act. Section 8 of the 1940 Act requires the registration of an investment company with the Commission pursuant to the filing of such forms and compliance with such regulations as prescribed by the Commission. The Transfers of the NEMLICO Accounts will involve a change in the insurance company obligated under the NEMLICO Contracts, thereby causing a change in the depositor or sponsor of the NEMLICO Accounts. This change, however, will not change the registered investment company, namely, each of the NEMLICO Accounts. More particularly, as discussed above under "Impact on NEMLICO, NEMLICO Accounts and NEMLICO Contractowners," the Transfers will not change the structure or operations of the NEMLICO Accounts or the relationship of the NEMLICO Accounts to the insurance company obligated under the NEMLICO Contracts or to the NEMLICO Contractowners. The NEMLICO Accounts will continue to be treated as separate entities for all relevant purposes under the 1940 Act, including financial reporting.

However, we acknowledge that the import of the Transfers, specifically, MetLife's succession to NEMLICO as the depositor or sponsor of the NEMLICO Accounts and the transfer of contractual obligations and liabilities from NEMLICO to MetLife as of the Effective Date, should be reflected in the existing 1940 Act registration statements of the NEMLICO Accounts. Accordingly, MetLife proposes to amend the 1940 Act registration statements for the NEMLICO Accounts to reflect those changes. This procedure would obviate the filing of new notifications of registration and registration statements for the NEMLICO Accounts pursuant to Section 8 of the 1940 Act. MetLife and the NEMLICO Accounts undertake to amend the existing 1940 Act

31/ (...continued)

requestors sought assurance that they could rely on Rule 414 under the 1933 Act, which permits the successor issuer in a change in domicile merger to adopt the registration statement of the predecessor issuer by means of filing a post-effective amendment rather than a new registration statement.

Susan Nash, Esquire
May 16, 1996
Page 19

registration statements for the NEMLICO Accounts as part of the process of filing new 1933 Act registration statements discussed above for the NEMLICO Accounts.^{32/}

We note that our view, and the procedure outlined above, is supported by substantial no-action precedent.^{33/} Accordingly, we request assurance that the staff concurs in our view that no new registration statements need to be filed under the 1940 Act, and that the filing of amendments to existing 1940 Act registration statements of the NEMLICO Accounts will satisfy any updating obligations under the 1940 Act with respect to the Transfers of the NEMLICO Accounts pursuant to the Merger.

3. Section 11 of the 1940 Act is Inapplicable to the Transfers of the NEMLICO Accounts Pursuant to the Merger

Section 11 of the 1940 Act prohibits an offer to exchange one investment company security for another, unless the terms of the offer have first been approved by the Commission. In the case of investment company securities, Section 11 generally is implicated whenever consideration is being given to whether a transaction may entail the issuance of a new security in exchange for an outstanding security. However, based on the analysis set forth above relating to Section 5 of the 1933 Act and Rule 145 thereunder, it is our view that the Transfers should not be viewed as involving an exchange of securities, namely the Outstanding NEMLICO Contracts on the Effective Date, issued by an investment company for any other security of an investment company for purposes of Section 11 of the 1940 Act. Thus, Commission approval should not be required under Section 11 of the 1940 Act in connection with the Transfers of the NEMLICO Accounts pursuant to the Merger.

In the few no-action letters concerning transfers of separate accounts between unaffiliated insurers, the staff provided assurance that no exemptive order under Section 11 was required in connection with the transfers.^{34/} For the foregoing

^{32/} In this regard, we note that the NEMLICO Accounts use the same registration statement form for 1940 Act registration purposes as for 1933 Act registration purposes. Accordingly, the amendments to their respective 1940 Act registration statements would be effected by the same filing as would be made under the 1933 Act discussed above under "Disclosure Considerations."

^{33/} See the merger and assumption reinsurance no-action letters, cited above, n. 21.

^{34/} See Massachusetts Mutual Life Ins. Co. and Phoenix Mutual Life Ins. Co., cited above, n. 21. See also Allegiance Life Ins. Co., cited above, n. 21 (transfer of separate account between unaffiliated insurers pursuant to an assumption reinsurance transaction).

Susan Nash, Esquire
May 16, 1996
Page 20

reasons, we are of the view that Section 11 is inapplicable to the Transfers of the NEMLICO Accounts pursuant to the Merger, and request assurance that the staff concurs in our view.

4. Exemptive Orders and No-Action Assurances Previously Granted Should Be Continued

It is our view that the exemptive orders granted by the Commission and no-action assurances provided by the staff under the Federal securities laws to NEMLICO, the NEMLICO Accounts, and any other parties named therein^{35/} should continue to be applicable to MetLife, the NEMLICO Accounts, and any other parties named therein, after the Effective Date, to the extent that these exemptive orders and no-action assurances will continue to be relied upon, without the filing with the Commission or its staff of amended or new applications for the same exemptive orders or no-action requests for the same assurances.^{36/} The continued applicability of these exemptions and no-action assurances is appropriate because the Merger, practically speaking, will not change either the structure or operations of the NEMLICO Accounts, nor the relationship of the NEMLICO Accounts to their depositor or sponsor, or to the NEMLICO Contractowners. The only resulting change will be the succession of MetLife to NEMLICO's obligations and liabilities under outstanding NEMLICO Contracts.

In particular, it is our view that a new exemptive order should not be required for MetLife to continue deducting a charge for mortality and expense risks from the assets of VA Fund I. A charge at an annual rate of up to 0.95% is deducted from the assets of this separate account. This separate account was established in 1969 and obtained start-up relief in 1970. The application for start-up relief for this separate account, consistent with contemporaneous applications for other separate accounts, sought relief for the safekeeping of the separate account's assets in NEMLICO's vault,

35/ See New England Mutual Life Ins. Co., et al., Inv. Co. Act Rel. No. 16528, Aug. 16, 1988 (Order); New England Mutual Life Ins. Co., et al., Inv. Co. Act Rel. No. 15796, Sept. 11, 1987 (Order); New England Mutual Life Ins. Co., et al., Inv. Co. Act Rel. No. 13413, July 29, 1983 (Order); New England Mutual Life Ins. Co., et al., Inv. Co. Act Rel. No. 12277, Mar. 5, 1982 (Order); New England Mutual Life Ins. Co. (pub. avail. March 13, 1981); New England Mutual Life Ins. Co., et al., Inv. Co. Act Rel. No. 8240, Feb. 20, 1974 (Order); New England Mutual Life Ins. Co., et al., Inv. Co. Act Rel. No. 8205, Jan. 30, 1974 (Order); and New England Mutual Life Ins. Co., et al., Inv. Co. Act Rel. No. 6285, Dec. 11, 1970 (Order).

36/ Subsequent to the granting of certain of these orders, the Commission adopted several exemptive rules which may provide some, but not all, of the relief granted in these orders.

Susan Nash, Esquire
May 16, 1996
Page 21

waivers of sales load charges in certain situations, and NEMLICO's holding of the proceeds of all payments under the contracts funded by the separate account, but did not seek explicit relief for the deduction of the mortality and expense risk charge. Indeed, to our knowledge, explicit exemptive relief for the deduction of a mortality and expense risk charge from the assets of a variable annuity separate account was not required or provided for the first time until 1979.^{37/} It has been reported that the circumstance that caused the staff to require explicit exemptive relief in that case was a proposal to impose a sales load in the form of a contingent deferred sales charge; such a charge had not been imposed previously on variable annuity contracts. In this regard, the staff's primary concern was that the mortality and expense risk charge could be used to finance a shortfall in distribution expenses not recovered from collected contingent deferred sales charges.^{38/}

Generally since 1979, insurers have been required to obtain explicit exemptive relief for the deduction of mortality and expense risk charges. However, we are not aware that the Commission or its staff has requested any separate account established before 1979 to obtain explicit exemptive relief for the deduction of any mortality and expense risk charge (unless other changes were being made to the separate account operations or contracts funded by the separate account). Moreover, the NEMLICO Contracts funded by VA Fund I provide for front-end sales load charges, and do not impose any contingent deferred sales charges. These contracts, therefore, do not present any of the concerns that led the staff to require explicit exemptive relief for mortality and expense risk charges beginning in 1979. Furthermore, the fact that the ultimate recipient of the charge will change, as a matter of corporate identity, because of the Transfer of VA Fund I to MetLife pursuant to the Merger, should not be viewed as grounds for requiring MetLife to obtain a new exemptive order to permit the deduction of the charge. There is no intention to change the amount of the mortality and expense risk charge deducted from the assets of VA Fund I; indeed the terms of the NEMLICO Contracts funded by VA Fund I would not allow a unilateral increase in the charge. Moreover, under the terms of the order of exemption currently in effect, the Commission still retains jurisdiction over the charge.

^{37/} See Nationwide Life Ins. Co., Inv. Co. Act Rel. Nos. 10557, Jan. 15, 1979 (Notice) and 10590, Feb. 12, 1979 (Order).

^{38/} For a discussion of the history of Commission and staff regulatory policy concerning the mortality and expense risk charge, see the comment letter submitted by the American Council of Life Insurance dated June 5, 1987, on repropored Rule 26a-3 under the 1940 Act (File No. S7-6-87).

Susan Nash, Esquire
May 16, 1996
Page 22

In short, in our view, MetLife's succession to NEMLICO will have no impact upon, or call into question, the exemptive orders or no-action assurances that were previously granted or provided, or the justifications offered therefor. Accordingly, we are of the view that MetLife need not apply on its own for the exemptive orders and no-action assurances on which NEMLICO and the NEMLICO Accounts currently rely and, in particular, no exemptive order should be required in order for MetLife to continue deducting the mortality and expense risk charge from the assets of VA Fund I after the Effective Date. We note that our view is supported by substantial no-action precedent.^{39/} We therefore request assurance that the staff concurs in our view.

B. No-Action Relief With Regard to Redomestication of NEVLICO

It is our view that the Redomestication of NEVLICO should not be viewed as resulting in the issuance of a new or different security for purposes of Section 5 of the 1933 Act or Rule 145 and therefore that the filing of new registration statements under the 1933 Act with respect to the NEVLICO Contracts is not necessary. With regard to Rule 145, the notes to the rule provide that the rule is not intended to cover a transaction in which a corporation changes its domicile. In view of the notes to Rule 145, we believe that Rule 145 on its face is inapplicable to the Redomestication.

With regard to Section 5 generally, we do not believe that the Redomestication entails the issuance of a new or different security in exchange for NEVLICO Contracts outstanding at the time the Redomestication is effected. As a matter of applicable corporate law, NEVLICO will remain the same corporate entity, though domiciled in a different state.^{40/} As described above under "Redomestication of NEVLICO," under Massachusetts law, the Redomestication will not affect any outstanding NEVLICO Contracts. Further, the Redomestication will not have any effect on the securities aspects of the outstanding NEVLICO Contracts, since Massachusetts

^{39/} See the merger, change in domicile and assumption reinsurance letters cited above, n. 21.

^{40/} The redomestication of an insurance company needs to be distinguished from two-party or three-party corporate reorganizations in which an existing corporation achieves a change in domicile by merging itself into a newly-formed corporation incorporated in the desired state. Such reorganizations involve the issuance of new securities by a new issuer in exchange for outstanding securities of the original issuer, as a matter of corporate law. Nonetheless, the Commission has adopted rules, such as Rule 414, and the staff has given no-action assurances that provide relief from 1933 Act registration requirements for most such reorganizations. See, e.g., the change in domicile no-action letters, cited above, n. 21.

Susan Nash, Esquire
May 16, 1996
Page 23

and Delaware have substantially similar laws governing insurance company separate accounts. Moreover, we believe that the Redomestication would not necessitate the filing of a new registration statement. As discussed above under "Redomestication of NEVLICO," the intent of the Massachusetts redomestication law is to ensure that a redomestication is effected with as few consequences as possible. Indeed, the statute ordinarily does not require any notice to policyholders of the redomestication, or any changes or even endorsements to outstanding policies.

In view of the reasons discussed in the preceding paragraph, the Redomestication will not result in the issuance of a new or different security for purposes of Section 5 of the 1933 Act or Rule 145 and will not affect any outstanding NEVLICO Contracts. For the foregoing reasons, we are of the view that Section 5 of the 1933 Act, and Rule 145 thereunder, are inapplicable to the Redomestication, and that no new registration statements with respect to the NEVLICO Contracts are required to be filed by NEVLICO to reflect the Redomestication. We therefore request assurance that the staff concurs in our view.

IV. NO-ACTION REQUEST

In summary, we respectfully request that the staff issue a letter stating that the staff will not recommend that the Commission take any enforcement action against MetLife or NEMLICO in connection with the Transfers of the NEMLICO Accounts pursuant to the Merger, with respect to Section 5 of the 1933 Act and Rule 145 thereunder, and Sections 8 and 11 of the 1940 Act. In addition, we request that the staff indicate in its letter that the staff would not recommend that the Commission take any enforcement action if: (i) the Transfers of the NEMLICO Accounts to MetLife pursuant to the Merger and MetLife's succession to NEMLICO as depositor and/or sponsor of the NEMLICO Accounts are reflected in the 1940 Act registration statements for the NEMLICO Accounts through the filing of amendments thereto; and (ii) any securities issued in connection with the NEMLICO Contracts after the Effective Date are registered under new 1933 Act registration statements for the NEMLICO Contracts filed by MetLife and the NEMLICO Accounts.

Further, we request that the staff indicate in its letter that the exemptive orders and no-action assurances cited herein obtained by NEMLICO and the NEMLICO Accounts, to the extent that these exemptive orders and no-action assurances continue to be relied upon, will continue to be applicable after the Effective Date, in the manner described above, to MetLife, the NEMLICO Accounts, and any other parties named therein, without the filing with the Commission or the staff of amended or new applications for the same exemptive orders or no-action requests for the same

Susan Nash, Esquire

May 16, 1996

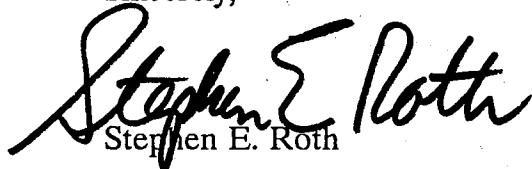
Page 24

assurances, or for relief for the deduction of the mortality and expense risk charge from the assets of VA Fund I after the Effective Date.

Lastly, with respect to NEVLICO, we request that the staff indicate in its letter that it will not recommend that the Commission take any enforcement action against NEVLICO under Section 5 of the 1933 Act, and Rule 145 thereunder, if NEVLICO does not file new 1933 Act registration statements for the NEVLICO Contracts to report a change in its domicile.

If you have any questions or require further information with respect to this matter, please call me at (202) 383-0158 or my colleague Susan Krawczyk at (202) 383-0197.

Sincerely,



Stephen E. Roth

cc: Marie Swift, Esq.

New England Mutual Life Insurance Company

Kenneth J. Bialkin, Esq.

Skadden, Arps, Slate, Meagher & Flom

Christopher Nicholas, Esq.

Metropolitan Life Insurance Company

MAY 17 1996

PUBLIC

RESPONSE OF THE OFFICE OF
INSURANCE PRODUCTS
DIVISION OF INVESTMENT MANAGEMENT File Nos. 811-1930, 811-3285, 811-5338

By letter dated May 16, 1996, you seek assurance that the staff of the Division of Investment Management will not recommend enforcement action to the Commission against Metropolitan Life Insurance Company ("MetLife") or New England Mutual Life Insurance Company ("NEMLICO") under Section 5 of the Securities Act of 1933, as amended (the "1933 Act"), and Rule 145 thereunder, or Sections 8 and 11 of the Investment Company Act of 1940, as amended (the "1940 Act"), if certain variable annuity separate accounts of NEMLICO (the "NEMLICO Accounts") are transferred to MetLife in connection with the proposed merger of MetLife and NEMLICO (the "Merger"), as described in your letter. You also request assurance that the staff will not recommend enforcement action to the Commission if: (i) the transfers of the NEMLICO Accounts to MetLife pursuant to the Merger and MetLife's succession to NEMLICO as depositor and/or sponsor of the NEMLICO Accounts are reflected in the 1940 Act registration statements for the NEMLICO Accounts through the filing of amendments thereto; and (ii) any securities issued in connection with the variable annuity contracts funded by the NEMLICO Accounts (the "NEMLICO Contracts") after the effective date of the Merger are registered under new 1933 Act registration statements for the NEMLICO Contracts filed by MetLife and the NEMLICO Accounts.

You further request assurance that the staff will not recommend enforcement action to the Commission against MetLife or NEMLICO if, after consummation of the Merger, MetLife continues to rely on the exemptive orders and no-action assurances cited in your letter and obtained on behalf of NEMLICO, the NEMLICO Accounts, and any other parties named therein, without the filing with the Commission or its staff of amended or new applications for the same exemptive orders or no-action requests for the same assurances, or for relief for the deduction of the mortality and expense risk charge from the assets of the New England Variable Annuity Fund I.

You also request assurance that the staff will not recommend enforcement action to the Commission against New England Variable Life Insurance Company ("NEVLICO") under Section 5 of the 1933 Act or Rule 145 thereunder if NEVLICO, which will become a wholly-owned subsidiary of MetLife upon consummation of the Merger, changes its state of domicile from Delaware to Massachusetts and does not file new registration statements for its variable annuity contracts and variable life insurance policies to report the change in its state of domicile.

You state that MetLife and NEMLICO are mutual life insurance companies that issue variable annuity contracts and variable life insurance policies through separate accounts organized either as unit investment trusts or management investment companies that are registered as investment companies under the 1940 Act. Interests in the variable annuity contracts and variable life insurance policies are registered as securities under the 1933 Act.

In your letter, you explain that MetLife and NEMLICO have entered into an agreement and plan of merger (the "Merger Agreement"), pursuant to which NEMLICO will be merged into MetLife, with MetLife as the surviving entity. You state that the various separate accounts of MetLife and NEMLICO are not parties to the Merger Agreement, which was entered into at the life insurance company level.

You also state that the Merger Agreement provides that NEVLICO will become a wholly-owned subsidiary of MetLife upon consummation of the Merger. You further state that MetLife and NEMLICO anticipate that, in connection with the Merger approval process, NEVLICO may take appropriate corporate action to change its state of domicile from Delaware to Massachusetts.

Based on the facts and representations in your letter, and without necessarily agreeing with your legal analysis, we would not recommend enforcement action to the Commission against MetLife or NEMLICO under Section 5 of the 1933 Act and Rule 145 thereunder or Sections 8 and 11 of the 1940 Act if the NEMLICO Accounts are transferred to MetLife in connection with the proposed Merger. 1/ In addition, we would not recommend

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- 1/ We note that your letter does not seek no-action assurance under Section 17(a) or 17(d) of the 1940 Act with respect to the transfer of the NEMLICO Accounts in connection with the Merger. On a number of previous occasions, the staff has been asked to provide no-action assurances (which it has granted) under Sections 17(a) and 17(d) in situations when insurance companies merged and transferred separate accounts in connection with the merger. See, e.g., Intramerica Life Ins. Co. (pub. avail. Oct. 29, 1992); California-Western States Life Ins. Co. (pub. avail. Dec. 9, 1991); UNUM Life Ins. Co. (pub. avail. Oct. 24, 1991); Lincoln National Pension Ins. Co. (pub. avail. Dec. 29, 1988); and American General Life Ins. Co. of Delaware (pub. avail. Mar. 13, 1986).

The staff believes that neither Section 17(a) nor Section 17(d) of the 1940 Act is applicable in the case of a transaction, like the present one, when (1) two insurance companies, whether or not affiliated, merge and a separate account is transferred from the merged company to the surviving company; (2) the transferred separate account is not a party to the merger and does not purchase or sell any security or other property in connection with the transaction; (3) the assets of the transferred separate account are not combined with those of any other separate account or other entity in connection with the transaction; (4) the transferred separate account remains intact after the transaction, as a segregated pool of assets; (5) the transaction does not result in any expenditure or receipt of funds by the transferred separate account or in the sharing by the transferred separate account in the profits or losses of any venture with any other person; and (6) the merging insurance companies bear all expenses relating to the transaction. The staff does not intend to issue further no-action letters in this area absent novel facts and circumstances.

enforcement action to the Commission if: (i) the transfers of the NEMLICO Accounts to MetLife pursuant to the Merger and MetLife's succession to NEMLICO as depositor and/or sponsor of the NEMLICO Accounts are reflected in the 1940 Act registration statements for the NEMLICO Accounts through the filing of amendments thereto; and (ii) any securities issued in connection with the NEMLICO Contracts after the effective date of the Merger are registered under new 1933 Act registration statements for the NEMLICO Contracts filed by MetLife and the NEMLICO Accounts.

We also would not recommend enforcement action to the Commission against MetLife or NEMLICO if, after consummation of the Merger, MetLife continues to rely on the exemptive orders and no-action assurances cited in your letter and obtained on behalf of NEMLICO, the NEMLICO Accounts, and any other parties named therein, without the filing with the Commission or its staff of amended or new applications for the same exemptive orders or no-action requests for the same assurances, or for relief for the deduction of the mortality and expense risk charge from the assets of the New England Variable Annuity Fund I.

Our position is based particularly on your representations that: (1) the succession of MetLife to NEMLICO's obligations and liabilities under the NEMLICO Contracts as a result of the Merger will not result in the offer or sale of any new or different security or the creation of a new or different investment company issuer issuing a new security, in exchange for a NEMLICO Contract; (2) MetLife and the NEMLICO Accounts will file an amendment to the existing registration statements of the NEMLICO Accounts under the 1940 Act to reflect the change in legal ownership of the assets of the NEMLICO Accounts from NEMLICO to MetLife; (3) MetLife and the NEMLICO Accounts will file new registration statements under the 1933 Act for the NEMLICO Contracts to reflect the transfer of contractual obligations and liabilities from NEMLICO to MetLife, which will become effective on the effective date of the Merger; and (4) the owners of NEMLICO Contracts will receive a prospectus that reflects MetLife's sponsorship of the transferred NEMLICO Accounts, but which retains the historical financial information of the NEMLICO Accounts.

Furthermore, we would not recommend enforcement action to the Commission against NEVLICO under Section 5 of the 1933 Act or Rule 145 thereunder if NEVLICO changes its state of domicile from Delaware to Massachusetts and does not file new registration statements for its variable annuity contracts and variable life insurance policies to report the change in domicile. We base our position upon your representations that: (1) there will be no change in the corporate entity of NEVLICO, as a matter of state law, resulting from the redomestication; (2) NEVLICO will effect its change in domicile in compliance with applicable state law, and NEVLICO will obtain the approvals of the Massachusetts and Delaware insurance commissioners for its change in domicile; (3) all outstanding policies of NEVLICO will remain in full force and effect upon the change in domicile, and the change in domicile will not result in any changes to outstanding NEVLICO Contracts; and (4) upon the consummation of the change in domicile, NEVLICO will disclose the change in domicile in a manner that complies with the 1933 Act.

Because our position is based on the facts and representations in your letter, you should note that different facts or representations may require a different conclusion. Further, this response expresses the Division's position on enforcement action only, and does not purport to express any legal conclusions on the issues presented.



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