10 Park Avenue, P.O. Box 1902
Morristown, New Jersey 07962

MetLife

October 4, 2011

BY EMAIL: rule-comments@sec.gov

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

Re: Release Nos. 33-9244; 34-64968; File No. S7-08-10; RIN 3235-AK37 (the "Re-Proposal")

Dear Ms. Murphy:

MetLife appreciates the opportunity to once again comment on the valuable proposals the SEC has issued to strengthen the securitization market. As the SEC is aware, MetLife provided comprehensive comments to the Commission's April 2010 proposal (the "ABS Release") regarding Regulation AB.[1] We believe the Commission's efforts will go a long way toward the continued rebuilding of investor confidence in this important sector, which is a critical source of financing in our capital markets.

As one of the largest investors in the securitization market in the United States, MetLife, Inc. and its insurance affiliates invest in structured finance securities primarily to fund core insurance products, which provide critical financial protection for over 90 million customers worldwide. MetLife Bank (collectively referred to herein with MetLife, Inc. and its insurance affiliates as "MetLife") also participates in the securitization market both as an originator and servicer of conforming and nonconforming mortgage and reverse mortgage loans. As of December 31, 2010, the general accounts of MetLife's insurance companies held approximately $79 billion of structured finance securities comprising $44 billion of RMBS, $20 billion of CMBS and $15 billion of ABS. Given the relevance of structured finance securities in our overall investment portfolio, MetLife has a vested interest in the long-term soundness of this market and the creation of higher-quality securities for this market.

[1] Letter from Charles Scully, Managing Director – Structured Finance, Metropolitan Life Insurance Company, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated August 2, 2010 ("August 2010 Letter").

We are also responding to the SEC's request for comments as one of the largest holders and originators of real estate loans in the United States. As of December 31, 2010, MetLife's real estate loan portfolio totaled $54 billion, comprised of $39 billion of commercial mortgages, $13 billion of agricultural mortgages, and $2 billion of residential loans.

In the sections below, we first provide MetLife's general comments regarding the scope of the Re-Proposal and the cost perceptions on securitization regulation. We then offer MetLife's specific views on the credit risk manager and investor communication requirements, and some thoughts on the additional disclosure requirements outlined in the Re-Proposal. To the extent there is commentary that applies only to one securitized asset class, we comment on this under a separate sub-heading. Finally, we include commentary regarding securitizations of an issuer's own liabilities.

Commentary on scope of the Re-Proposal

MetLife believes that the Re-Proposal generally helps to address two basic issues in securitizations: (a) sound governance and (b) adequate disclosure. MetLife fully supports efforts to make the much-needed improvements on these two key fronts. We note, however, that to better improve the sustainability of the securitization market and the quality of the securities issued in these transactions, more rigorous standards of governance and disclosure should be established for other securitizations – not just those that rely on shelf registration under the Securities Act of 1933, as amended.

Despite the SEC's efforts on the ABS Proposal and the Re-Proposal, we are concerned that, without a broader framework for governance and disclosure, securitization issuance will gravitate toward spaces with looser requirements. For example, if these basic requirements are limited only to shelf registrations, MetLife believes that issuance could flock to other arenas, such as the 144A market or an eventual future covered bond market, where some or all of these requirements may be absent and where investors may lack the power to negotiate their inclusion.

Significantly, between 2010 and the first half of 2011, all private label CMBS new issues were completed in the 144A market. Even though these were considered "private" transactions, the reality is that investors (other than the junior-most investors) had little or no ability to negotiate any of the deal terms aside from the price of the security being purchased. Even if the proposed shelf-eligibility requirements had been in place, investors would not have derived any benefit from such requirements because they do not apply to 144A transactions.

While MetLife generally encourages the SEC to adopt shelf eligibility requirements that improve governance and disclosure in securitization transactions, we strongly recommend that the SEC consider extending basic enhancements like those contained in the Re-Proposal to all forms of securitization issuance (except for true privately-negotiated transactions where each investor has the demonstrated ability to influence the material terms of the transaction, and transactions in which the collateral consists of the securitizer's own obligations).

In addition to adopting enhancements to governance and disclosure for shelf registration, we respectfully request that the Commission consider using the recently-issued Advanced Notice of Proposed Rulemaking and Concept Release regarding ABS issuer exclusions under Rule 3a-7 and Section 3(c)(5)(c) of the Investment Company Act, respectively, to introduce the same enhancements for all forms of securitization issuance, regardless of whether a public or private issuance of securities is made under the Securities Act.[2] In addition, if the SEC believes that a higher standard should be set for shelf registrations, we request the SEC to consider the following:

- While all securitizations will require some form of risk retention under the Dodd-Frank Act, shelf-eligible transactions could be specifically required to use the issuer-retained vertical slice form, which provides the best alignment of incentives with investors.

- As we indicated in our August 2010 Letter to the ABS Release, asset-level information is important for most securitization asset classes, regardless of the type of issuance. However, shelf registration could be held to a higher standard in terms of the form and substance of the details provided to investors.

Cost perceptions may be greatly exaggerated

In past responses from certain market participants to proposed securitization regulation, we have noted a recurring allusion to a perceived "chilling effect" that some of these regulations may have on the securitization market. In our view, given the experience of specific sectors within the securitization space, both in the US and elsewhere, we feel some of these cost perceptions may be greatly exaggerated.

For instance, certain commentators have indicated that issuer risk retention may cripple the market. Meanwhile, the global securitization market contains vibrant sectors where risk retention is already the norm. Key examples include US credit card ABS, UK Prime RMBS, and Australian RMBS. All of these active sectors have effectively implemented some form of issuer risk retention without the suggested chilling effect. Similarly, asset-level disclosures are routinely provided in various global securitization sectors, such as US CMBS and Australian RMBS without causing these markets to shut down.

[2] See *Treatment of Asset-Backed Issuers under the Investment Company Act*, Release No. IC-29779 (August 31, 2011) and *Companies Engaged in the Business of Acquiring Mortgages and Mortgage-Related Instruments*, Release No. IC-29778 (August 31, 2011).

We also see examples in the US market where initiatives similar to the ones proposed in the Re-Proposal have been implemented successfully without having costs become overly burdensome:

- *Credit Risk Manager*: during the past year, most US CMBS transactions have included an "Operating Advisor" in part to oversee the special servicer's workout process. This key role has many parallels to the proposed Credit Risk Manager, and the costs of its implementation have not impeded the strong revival of the new issue market witnessed this year.

- *Investor communications*: we have also seen the implementation of an investor registry and a deal website in the US CMBS market, which in combination can be used very effectively to facilitate investor communications. Again, this important governance enhancement has not resulted in crippling costs.

Finally, in our view, we note that deficiencies in governance and transparency have dramatically increased the costs of securitization in the current market. For example, with the loss of investor confidence, issuance spreads for the senior-most classes in CMBS have soared from around 25 basis points to nearly 200 basis points, while issuance of Non-Agency RMBS has all but evaporated. We firmly believe that the benefits of improved governance and transparency will far outweigh its costs and will result in lower net costs of securitization as improved investor confidence results in lower issuance spreads.

Support for Credit Risk Manager shelf condition

We strongly support establishing clear mechanisms for the independent review of breaches of representations and warranties, and the prompt resolution of such breaches. In our opinion, the Credit Risk Manager shelf condition contained in the Re-Proposal accomplishes these goals; however, certain asset-class-specific nuances should be considered by the Commission.

One aspect that should be applied uniformly across all asset classes is the expense allocation mechanism. We believe that, as proposed, the costs of reviewing assets (including mediation or arbitration related costs) should be borne by the losing party. Specifically, if a loan put back is successful, the proportionate cost of reviewing that loan should be borne by the seller; otherwise it should be borne by the trust.

Other general aspects that MetLife believes should apply across all asset classes are:

- *Independence and Expertise of Credit Risk Manager*: for this key shelf condition to be successful, it is imperative that the party acting as Credit Risk Manager must be completely independent from other parties in the securitization, and that its principals have a strong track record in the relevant asset class.

- *Termination and replacement provisions*: transaction documents should have clear stipulations on the conditions and the process for removal and replacement of the Credit Risk Manager.

- *Access to information*: in order for the Credit Risk Manager to be effective, it will be critical for the Credit Risk Manager to have access to all pertinent loan documentation, including the underwriting guidelines.

- *Investor-directed reviews*: in addition to reviews initiated under the triggers recommended below, the Credit Risk Manager should also conduct reviews at the request of investors through a formal investor vote process.

- *Repurchase disclosure*: disclosure of past repurchase requests and effected repurchases would help investors better evaluate the potential risks of bonds from a particular issuer.

In addition to these general aspects, the subheadings below include specific asset-class considerations.

<u>ABS</u>

One key factor to keep in mind regarding the repurchase timeframe in ABS is the nature of the assets backing the securitization. Bonds in the ABS space and the loans backing them often have much shorter durations than in RMBS or CMBS. Furthermore, the assets securing the loans may also be rapidly depreciating assets (e.g. auto loans, equipment loans, etc.). To address these timing constraints, we would recommend that the proposed repurchase period be reduced from 180 days to 90 days.

Because of the proportionately small size of loans typically backing ABS transactions, we recommend that the trigger for review by the Credit Risk Manager should be based on delinquencies as a percentage of the original subordination for the senior-most class in a transaction. For example, a review of a random sample of all 60+ days delinquent loans would be triggered once delinquencies exceed 50% of original senior subordination.

<u>RMBS</u>

In addition to the general recommendations outlined above, with respect to RMBS we strongly believe that loan files should be provided to and reviewed by the Credit Risk Manager upon a loan becoming 60-days delinquent.

CMBS

In CMBS, all loans that default or are at imminent risk of default are transferred from a master servicer to a special servicer who reviews each loan in detail and may attempt to negotiate a workout solution with the borrower or put back the loan to the sponsor. Given the usual association (either through ownership affiliation or through controlling rights) of this special servicer with the junior-most investor in a transaction ("B-piece buyer") the industry has adopted the figure of an independent "Operating Advisor" to oversee the activities of the special servicer. This Operating Advisor, if empowered with the appropriate authority, could fulfill the role of the proposed Credit Risk Manager.

The current market construct falls short on the powers granted to the Operating Advisor, particularly as it relates to:

- Ability to clearly report to investors on findings regarding the special servicer's activities (including review of breaches of representations and warranties, and repurchase requests).

- Ability to call for a general investor vote on the proposed replacement of the special servicer when its performance (including efforts to seek the repurchase of loans with breaches of representations and warranties) has been found inadequate by the Operating Advisor.

We are also concerned that the compensation structure for the special servicer in CMBS may provide a disincentive to pursue repurchases of loans with breaches of representations and warranties. In many transactions, the special servicer does not receive remuneration for loans effectively put back to the seller, or may only receive compensation if the put back takes place during a specific period of time. On the other hand, the special servicer receives full remuneration for working out a loan, which could provide the economic incentive to seek a workout, rather than a repurchase.

Finally, we observe that while the CMBS industry has made progress in drafting best-practice model representations and warranties, these have not been fully incorporated into new issues. We believe that, for the review and repurchase process to be effective, it is critical to have a sound set of representations and warranties (such as those drafted by the industry) actually implemented in a standard way across deals, with clear disclosure of all exceptions to such representations and warranties.

Despite our constructive observations above, we believe the CMBS sector has already made some meaningful progress in implementing the governance improvements sought by the Credit Risk Manager concept. From that perspective, addressing the shortcomings outlined above to fully achieve the intended goal should carry little or no cost to the securitization process in this sector. We would therefore recommend that, for the CMBS sector, the Credit Risk Manager requirement be fulfilled by the current industry construct modified only to address the shortcomings outlined in this section.

Need for enhanced investor communication and improved investor voting requirements

MetLife fully supports a clear and improved mechanism for investor communication that enhances governance in securitization transactions and would lead to higher-quality securities, such as the mechanism contained in the Re-Proposal. However, in our view, there are two key areas related to investor communication that need to be addressed in order for initiatives in this area to be meaningful and to substantially improve the quality of the securities: (a) means of investor communication, and (b) investor voting requirements.

Means of investor communication

The SEC has proposed that investor communication be carried out through 10-D or, alternatively, 8-K filings. Given the constantly evolving performance of securitization transactions, we note that, in our experience, investors typically do not review SEC filings to obtain transaction information. In this context, we would recommend that the means for investor communication be extended to those sources most integrated with investors' ongoing deal monitoring processes.

Specifically, we recommend that the SEC consider the following complementary alternatives:

- Investors should be permitted to represent to the trustee that they are a beneficial owner of securities issued in the securitization, and trustees should directly send written communications to such investors.

- To the extent transactions have a deal website (as has become standard in CMBS), this resource should be used to facilitate investor communication.

- Trustees should prominently display on their periodic report that an investor request for communication has occurred.

We believe that a combination of the alternatives outlined above will overcome the current severe limitation for investors to initiate communication given that bonds are held in "street name" through the Depository Trust Company.

Investor voting requirements

Furthermore, MetLife believes it is critical for the Commission to remove procedural barriers to the adoption of investor resolutions in securitizations. In our view, a major shortcoming of securitizations is that the voting hurdles generally required for investor resolutions to be adopted are unrealistic and often lead to investor inaction or acquiescence. Unfortunately, a practical effect of these barriers is to disenfranchise investors, which results in lower-quality securities.

For example, if a transaction stipulates that a minimum of 25% of all investors are required to call a vote on a proposal, and that 75% of all investors are then required to approve a resolution relating to the proposal, the likelihood of meeting the threshold (for or against a proposal) is slim at best. If, on top of that, the transaction documents stipulate that those investors seeking the vote bear the cost of the process, investors would be highly disincentivized from exercising this basic right, even under the most compelling circumstances.

To address these critical shortcomings, and consistent with the comments contained in our August 2010 Letter on the ABS Release, we recommend the following:

- Require a minimum 5% of investors to call a vote.
- Establish the threshold for approval to be the majority or plurality of those investors casting a vote (which is similar to the plurality voting mechanism that is used for shareholder meetings of many public companies).

In addition to our original recommendations, we would suggest that the SEC consider requiring a quorum of investors to vote (e.g. 25%) in order for a vote to be valid. This would ensure that decisions are carried out with a meaningful representation of investors. Also, we recommend that the costs associated with a vote be borne by the trust, rather than individual investors; this would eliminate important disincentives that may prevent investors from being actively engaged in the governance of their investments.

Additional disclosure requirements

Document filings

We continue to agree with the ABS Release's requirement that a prospectus and exhibits in substantially final form be provided at least five business days before the first sale in an offering. Additionally, in order for investors to conduct appropriate due diligence on transactions, we believe it is critical that the following documents are made available at the time a prospectus is filed:

- Pooling and Servicing Agreement and blackline against the original Pooling and Servicing Agreement contained in the shelf.

- Representations, Warranties and Exceptions and blackline against industry model Representations and Warranties (CMBS or other sectors that adopt these), or blackline against original Representations and Warranties contained in the shelf.

- Indenture (along with any blacklines thereto).

Broker compensation

With regard to asset-level disclosures of broker or originator compensation, we do not believe this information is needed or useful for RMBS investors. As noted in the Re-Proposal, compensation may be paid in different forms and with different calculations, which makes any comparison difficult. Additional challenges are issuer tracking requirements for loan-level reporting which may be comprised of multiple originating entities. We believe that legislative and regulatory actions regarding compensation have adequately addressed investor concerns.

Loan-level information and privacy concerns

MetLife strongly believes that, with the exception of credit card ABS, all other securitization transactions should provide standardized loan-level disclosure. Privacy concerns regarding loan-level disclosure can be addressed through the following:

- Omitting Social Security numbers.

- Omitting full address, and only providing MSA information.

- Replacing borrower name with an ID number, etc.

We also encourage the SEC to assess whether a higher disclosure standard than proposed is already in place for certain asset classes. Specifically, and as indicated in our August 2010 Letter on the ABS Release, we believe that the industry reporting standard for CMBS is superior to what the SEC has proposed. We would recommend that rather than seeking a wholesale change of this reporting standard, the current standard be used only with needed enhancements.

Securitizations involving collateral consisting of the securitizer's own obligations

MetLife has previously noted in its comments on the SEC's risk retention proposals that the asset-backed-transaction rules potentially capture transactions with risks that are substantially different from those involved in the general ABS, CMBS and RMBS markets. The 2010 Reg AB release and the current release would eliminate entirely the availability of Form S-3 for public issuance of securities that are secured by the securities of a single obligor, such as trust preferred securities, as well as securities backed by obligations uniquely issued by insurance companies, such as funding agreements and surplus notes, and issued through special purpose financing vehicles.

MetLife does not believe that the disclosure requirements or transaction-qualification requirements associated with the new forms are appropriate for such transactions, which do not involve the aggregation of pools of interests in the receivables or other obligations of third parties. MetLife would support the continued availability of the existing forms with respect to such transactions. Moreover, MetLife would not support the extension of shelf eligibility requirements such as those proposed for Form SF-3 to the to the 144A market for trust preferred securities or other securities backed by the securitizer's own obligations.

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

Very truly yours,

Jonathan L. Rosenthal
Senior Managing Director – Global Portfolio Management
Metropolitan Life Insurance Company

cc: The Honorable Mary L. Schapiro
The Honorable Elisse B. Walter
The Honorable Luis A. Aguilar
The Honorable Troy A. Paredes

Meredith Cross, Director, Division of Corporation Finance
Paula Dubberly, Deputy Director, Division of Corporation Finance