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MetLife®

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Elizabeth Murphy, Secretary
U.S. Securities and Exchange Commission
One Station Place
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Release Nos. 33-9046; 34-60089: File No. S7-10-09;
Facilitating Shareholder Director Nominations

Dear Ms. Murphy:

MetLife, Inc., through subsidiaries and affiliates, is a leading provider of insurance, employee benefits and financial services, with operations throughout the United States and the Latin America, Europe and Asia Pacific regions. MetLife reaches more than 70 million customers around the world, and MetLife is the largest life insurer in the United States (based on life insurance in-force). MetLife appreciates the opportunity to provide comments on the amendments proposed by the Securities and Exchange Commission (the "Commission") to the federal proxy rules in the above referenced release.

Respectfully, we do not believe that a mandated, one-size-fits-all approach to shareholder proxy access, as embodied in proposed Rule 14a-11, will improve corporate governance or will address the concerns that the Commission posited in its proposing release. Every company's circumstances are different, and accordingly we believe that the Commission's proxy rules should facilitate, rather than restrict, shareholders' right to determine for themselves the appropriate contours of a proxy access regime in light of all the factors that they deem relevant.

Proposed Rule 14a-11 denies shareholders of each company the right to determine the conditions of proxy access, and, as explained more fully below, the Rule as proposed would present significant technical issues and would lead to costly unintended consequences. If adopted, the proposed Rule will stifle innovation by states and companies alike in the realm of proxy access, such as the recent amendments to the Delaware General Corporation Law and the forthcoming amendments to the Model Business Corporation Act. The Commission should allow time for companies and shareholders to innovate and experiment with approaches to proxy access – as they have with other corporate governance matters such as majority voting for directors – rather than imposing an inflexible and potentially costly rule in haste. An approach that fosters innovation will result in access rights that are tailored to individual company circumstances, such as industry, size, ownership and resources. However, if the Commission determines that changes in the rules governing proxy access are required at this time, we believe that the proposed amendment to Rule 14a-8 – with an increased minimum ownership requirement for shareholders submitting proxy access proposals – is a less problematic approach.

I. Proposed Rule 14a-11 Does Not Allow Shareholders to Determine the Appropriate Approach to Proxy Access

The fundamental goal underlying proposed Rule 14a-11 is to enhance shareholders' ability to hold boards accountable through the exercise of shareholder suffrage. However, Rule 14a-11 would actually abrogate, rather than augment, the power of shareholders because it would deprive shareholders and companies of the opportunity to shape proxy access requirements that are appropriate for a company's particular circumstances.

For example, proposed Rule 14a-11 would not provide shareholders the opportunity to weigh the costs of proxy access. This is important because proxy access may entail the expenditure of considerable corporate resources (the shareholders' own money, in many ways) and potentially prove disruptive to the effective functioning of the board of directors. In addition, providing shareholder access under terms that are too permissive could lead companies to focus on short-term gains at the expense of long-term value creation. The election of shareholder nominees to a company's board may create pressures to enhance short-term performance (at the expense of long-term success), particularly if the nominee is nominated by, or even affiliated with, shareholders who are only seeking short-term gains. Companies may also be motivated to pursue short-term results just to avoid or defeat shareholder nominations. Mandatory shareholder proxy access requirements may also impact the quality of board composition. Individuals agree to serve as directors because they believe that they have the skills and experience to contribute to long-term value creation at the company, and many qualified candidates may be substantially less willing to serve if they are facing the prospect of election contests each year. Shareholders should be allowed to determine the proper balance between proxy access and risks to long-term performance. A mandatory access regime such as proposed Rule 14a-11 would deprive them of the opportunity to make that determination.

Proposed Rule 14a-11 would also deprive shareholders of their ability to select other governance structures that they believe are better suited for their company. For example, the proposed Rule would interrupt and likely reverse the substantial movement toward majority voting for directors of public companies.[1] Majority voting provides a mechanism for effecting change in the board of directors to address shareholder concerns over their company's performance or an entrenched board, and it does so without the significant collateral costs that would result from a mandatory proxy access regime, as described below. This development represents precisely the kind of change and innovation that companies and shareholders can achieve for themselves, if given the freedom to do so. Unfortunately, however, shareholder nominations may result in the demise of majority voting standards by giving rise to more contested director elections under which a simple plurality, rather than a majority, would be sufficient to elect a director. Shareholders should be allowed to determine whether that outcome, with the attendant costs, is a result they prefer for their company.

[1] The recent change to New York Stock Exchange Rule 452 will likely further enhance the effectiveness of majority voting standards, as brokers will no longer be able to vote shares in uncontested elections without shareholder instructions. In the absence of broker discretionary votes, the effectiveness of shareholders opting to withhold their votes from directors will likely be magnified.

II. Proposed Rule 14a-11 Suffers from Numerous Technical Problems and Would Produce Costly Unintended Consequences

Proposed Rule 14a-11 would also present a myriad of technical issues, as demonstrated by the Commission's own request for comments on hundreds of questions. These technical issues would make Commission-mandated proxy access costly and administratively burdensome for many companies. This section of our letter addresses several technical issues that we believe illustrate the problematic nature of a Commission-mandated across-the-board approach to proxy access. We note that this section highlights only some of the technical concerns the proposal would raise, and we anticipate that industry groups or other commenters may raise many others.

Proposed Rule 14a-11 would require a company to include in its proxy statement the nominees of the first nominating shareholder from which it receives timely notice. This feature of proposed Rule 14a-11, also known as the "mailbox" or "first in time" rule, is particularly problematic for several reasons. The "mailbox" rule encourages an unproductive race to submit director nominees. As a result, shareholders with a greater interest in the company or a longer association as a shareholder might not be able to include their candidates in the proxy, or may feel compelled to make their own nomination preemptively, just to prevent another shareholder from making an earlier submission. This could result in greater frequency of contested elections for all companies, even those for which governance or board accountability has not been a concern. Special-interest investors would likely plan in advance to submit their nominations at the earliest possible time. Other shareholders with an arguably greater or longer interest in the company, but not the same depth of interest in having a director nominee elected, would be placed at a disadvantage.

From an administrative standpoint, the "mailbox" rule fails to establish a fixed commencement date for submitting a proposal, which also may produce undesirable results. For example, a shareholder theoretically could nominate a candidate years before the annual meeting. Allowing such a significant period between director nominations and elections reduces the likelihood that the director nominee will reflect the current needs of the company or the changing interests of its shareholders. In addition, the "mailbox" rule fails to establish procedures for determining which shareholder nomination should be accepted if more than one is received on the same day. Given that a large company may receive several shareholder nominations on the same day, it would be rather arbitrary to select director nominees based on which shareholder letter was first opened by the company. Such a process would require considerably more clarity for companies to administer and significantly more transparency to retain shareholder confidence. Implementation of the "mailbox" rule as proposed therefore will likely raise numerous difficult questions of law and fact which the Commission staff will likely be expected to arbitrate within compressed time-frames during "proxy season" – in addition to the voluminous requests for no-action letters under Rule 14a-8 that the staff must already determine during the same period.

The shareholder disclosure that would be required on proposed Schedule 14N requires a certification by the nominating shareholder that the securities are not held for the purpose of, or with the effect of, changing the control of the issuer or gaining more than a limited number of seats on the board of directors. However, proposed Schedule 14N does not address what happens when a shareholder subsequently changes its intentions after its nominees are elected. In practice, a shareholder would have a significant advantage in a "change of control" effort if it already had director nominees elected to the board pursuant to proposed Rule 14a-11. This would allow shareholders to circumvent the Commission's own carefully crafted rules on proxy contests and tender offers intended to result in a change of control of a company.

Proposed Rule 14a-11 provides that a company would not be responsible for information that is provided by the nominating shareholder or group and then repeated by the company in its proxy statement, except where the company knows or has reason to know that the information is false or misleading. However, it is unclear what obligation a company has under this standard to verify the information provided by a shareholder or nominee, and whether the company may exclude or edit false or misleading information to cure any defects. The uncertainty surrounding the extent of due diligence obligations may lead to costly efforts to verify shareholder information and expensive litigation arising from allegedly misleading information supplied by a shareholder.

Proposed Rule 14a-11 would also have other costly unintended consequences, in addition to those described above and in Part I of this letter. For instance, the proposed Rule does not require a nominating shareholder to represent that its director nominees satisfy the subjective independence requirements of any applicable national securities exchange, or any internal qualification standards that the subject company may have. The New York Stock Exchange and NASDAQ, for example, both have subjective director independence standards and a requirement that a majority of the directors must be independent. The company would be exposed to the risk of breaching the majority independent board requirement, if directors nominated by shareholders are elected but fail to satisfy the subjective independence requirements of the applicable exchange. Electing directors who are not independent would also negatively impact the number of directors who are eligible to serve on committees, such as the Audit and Compensation Committees, that require independent directors.

Proposed Rule 14a-11 would also require a company to include the greater of one shareholder nominee or the number of nominees that represents 25 percent of a company's board of directors. In practice, the first shareholder to submit a director nominee would have a strong incentive to fill the entire 25 percent slate to increase its odds of having its nominees elected, leaving other shareholders without meaningful access to the company proxy. In addition, it is unclear whether a shareholder nominee for director, once elected, would count against the 25 percent cap if the company re-nominates the director in a future election. A company may be less likely to re-nominate such a director if the director would no longer count toward the 25 percent limit. The likely result is a "revolving door" for shareholder-nominated directors, who would serve one term and then leave the board if not re-nominated. It is difficult to see how this outcome would be beneficial for companies or stockholders.

It also is unclear whether a shareholder nominee would count toward the 25 percent limit if a company reaches an agreement with the nominating shareholder resulting in the withdrawal of the nomination. Shareholders frequently raise legitimate concerns through proposals submitted under the current Rule 14a-8, and companies have the opportunity and an incentive to address these concerns before incurring the expense of including the proposal in their proxy materials. However, a company will have less incentive to address shareholder concerns in a shareholder nomination context, if doing so would obligate the company to include the nominee proposed by the next shareholder who submitted a director nomination. As a result, proposed Rule 14a-11 may discourage companies from proactively seeking to address the underlying shareholder concerns that may have given rise to the director nomination.

Each of these issues would be difficult to determine on an individual company basis. When considered in the context of a one-size-fits-all approach to all publicly-held companies, they become not merely difficult but, in fact, impossible to determine efficiently. Shareholders themselves should be free to determine the right approach to these issues and all the other issues that shareholder access would raise.

III. The Proposed Amendment to Rule 14a-8, with a Modified Ownership Threshold, Would Be a Less Problematic Approach to Shareholder Access

Proposed Rule 14a-11 ignores the significant changes in the corporate governance landscape over the past decade. We have already mentioned the widespread adoption of majority voting standards and the greater voice that majority voting confers upon shareholders. We have also mentioned the requirement, adopted by the national securities exchanges in the wake of the Sarbanes-Oxley Act, that a majority of the directors of all listed companies must be independent. We also note that the State of Delaware recently adopted amendments to its General Corporation Law that expressly permit Delaware corporations (such as MetLife) to adopt by-laws giving stockholders the right to include director nominees within the corporation's proxy materials, subject to any lawful conditions. Similarly, the Committee on Corporate Laws of the American Bar Association Section of Business Law recently announced that it expects to release proposed amendments to the Model Business Corporation Act regarding proxy access for director nominations and reimbursement for shareholder expenses incurred in proxy contests for director elections. These proposed amendments are expected to provide a means for the directors or shareholders of corporations in Model Act states to establish their own procedures to allow shareholder proxy access and reimbursement of shareholders for reasonable expenses incurred in connection with proxy contests for director elections. These recent initiatives enhance shareholder democracy by enabling shareholders to decide for themselves what tailored, cost-effective approach best suits their company and its individual circumstances. Moreover, they will drive progress in the development of a practical framework for shareholder proxy access and continue to shape the corporate governance landscape.

If the Commission is certain that changes to the federal proxy rules are necessary, then amending Rule 14a-8 to empower shareholders to shape the proxy access regime that best suits their company, rather than imposing mandatory minimum proxy access requirements, would be preferable. It would be more consistent with principles of shareholder self-determination and democracy and would not impose the same costs as a mandatory, across-the-board rule. The amended Rule 14a-8 approach would permit companies and shareholders to determine if shareholder proxy access solutions can be implemented efficiently, and if so, to adopt an approach that is responsive to specific shareholder interests and appropriately tailored for the unique characteristics of each company. The proposed amendment to Rule 14a-8 also recognizes the current interest of states and individual companies in developing solutions that enhance responsiveness to shareholder concerns and avoids a massive federal intrusion into areas that traditionally have been the province of state law.

Although the Commission's proposed amendment to Rule 14a-8 is more workable than proposed Rule 14a-11, we believe that the minimum ownership requirement should be increased to ensure that proposing shareholders have a significant economic interest in the company. Presently, to submit a proposal under Rule 14a-8, a shareholder must have continuously held the lesser of $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting, for at least one year. We are concerned that this minimal requirement provides a disproportionately low threshold compared to the significant commitment of corporate resources associated with permitting director nominations by a shareholder, and the possible costs to a company's performance that could result from the election of a shareholder nominee or even the regular prospect of contested elections. Therefore, we propose that the Commission eliminate the dollar threshold and require any shareholder submitting a proposal addressing director nominations to have a net long position of at least 1% of the company's outstanding voting securities, held continuously for at least two years before the submission of the proposal. We believe a higher minimum ownership threshold would recognize the importance and corporate cost of shareholder proxy access without excluding shareholders who have made a significant long-term investment in the company.

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In sum, we believe the Commission should not adopt proposed Rule 14a-11. If the Commission feels that any change in the proxy access regime is necessary – notwithstanding the significant changes in corporate governance over the past decade – then the proposed amendment to Rule 14a-8, with an increased minimum ownership requirement for shareholders desiring to submit proxy access proposals, is preferable.

We appreciate this opportunity to comment on the Commission's proposals. If you have any questions regarding these comments, or would like to discuss further, please feel free to contact me at 212-578-2600 or via email at rcollins@metlife.com.

Very truly yours,

Richard S. Collins
Senior Chief Counsel

cc: The Honorable Mary L. Schapiro, Chairman
The Honorable Luis A. Aguilar, Commissioner
The Honorable Kathleen L. Casey, Commissioner
The Honorable Troy A. Paredes, Commissioner
The Honorable Elisse B. Walter, Commissioner
Meredith B. Cross, Director, Division of Corporation Finance
David M. Becker, General Counsel and Senior Policy Director
Kayla J. Gillan, Senior Advisor to the Chairman