



Nicholas D. Latrenta
Executive Vice President
and General Counsel
Legal Affairs

MetLife®

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

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Stable Value Contract Study, File Number S7-32-11

Dear Mr. Stawick and Ms. Murphy:

MetLife welcomes and appreciates the opportunity to respond to the Request for Comment of the Commodity Futures Trading Commission and the Securities and Exchange Commission (the “Commissions”) regarding the study of stable value contracts required by Section 719(d) of the Dodd-Frank Act.

MetLife is one of the nation’s leading issuers of stable value contracts (“SVCs”), providing stable value guarantees for over \$32 billion in participant defined contribution plan assets¹. As issuers of each of the major primary forms of SVCs, we believe we have a uniquely balanced and comprehensive perspective to offer to the Commissions about the role and performance of stable value, which we believe may contribute to the Commissions’ study.

Executive Summary

The Commissions’ study, and any recommendations that flow from it, should recognize the following key points: (1) because of the features of stable value contracts, stable value did not, and does not, pose a systemic risk to the economy; (2) stable value did not contribute to the financial crisis of 2008; and (3) stable value has significantly outperformed the other possible alternatives available as a low risk option to Defined Contribution plan sponsors, and as such has contributed importantly to the retirement security of tens of millions of plan participants. In addition, both

¹ LIMRA Stable Value and Funding Agreement Products Report 2010 First and Second Quarter (assets as of December 31, 2010). MetLife is the largest issuer of Separate Account GICs and Traditional GICs, according to this report.

stable value's regulation by solvency-oriented state insurance departments, and the nature of SVCs themselves, preclude stable value from contributing to systemic risk in the future.

Overall, subjecting stable value contracts to the swaps regulatory regime would adversely affect returns to plan participants, with no offsetting benefits to the participants or to the economic security of the United States. Even if stable value issuers were able as a group to meet such requirements, the increased costs imposed and passed through to participants would decrease retirement income and impair retirement security for millions of Americans. In the more likely event that such requirements would lead some issuers to exit the stable value market, a significant risk would exist that there would no longer be a sufficiently large and diverse base of issuers to preserve the widespread availability of stable value as an option for ERISA plans.

We first offer the following background about Stable Value, its role in qualified Defined Contribution retirement plans and related quantitative analysis to support these overall points, and then provide responses to the specific questions included in the Request for Comment.

Why Plan Sponsors Offer, and Plan Participants Elect, Stable Value

29 C.F.R. § 2550.404(c)-1(b)(2)(ii)(C)(2)(ii) requires as an element of the safe harbor available to plan sponsors with respect to participant elections that the plan must allow transfers to “an income producing, low risk, liquid fund.” Until very recently, plan sponsors universally responded to this requirement by making available to participants stable value options, money market options, or both. Recently, however, at least one plan sponsor has offered a short-duration unwrapped bond fund, and some plans are now offering FDIC-insured deposit accounts. Where plan sponsors are unwilling to take fiduciary responsibility for participant elections, a plan must offer stable value or another income producing, low risk, liquid option.

The need for plan sponsors to select investment options for their plans that consider both safety and returns has resulted in far more plan sponsors selecting stable value options than money market funds. Participant elections show the same preference, and currently an estimated 22% of DC plan assets are allocated to stable value, compared to about 1.3% allocated to money market funds.² The combination of low volatility, the ability to transact at a predictable value and an attractive return all help explain both why participants have historically allocated 15 – 20% of their retirement plan savings to stable value during periods of market calm, and why their

² Aon Hewitt 401(k) Index Observations, August 2011, available at www.aon.com/attachments/thought-leadership/401k_index/HistAssetAllocationChart_August_2011.pdf.

allocations consistently rise above this level during periods of market uncertainty or volatility.

The quantitative analysis below shows how stable value's performance has compared to that of other existing and potential "income producing, low risk, liquid" investment alternatives, and illustrates the decisive financial advantages stable value has as a retirement savings vehicle compared to the other options in this investment category.

The first table shows historical net returns for stable value contracts issued through MetLife's separate accounts, defined contribution money market funds, short-term government bond funds³, and FDIC-insured deposit accounts for periods of 5, 10 and 20 years. While we have used our own data for these illustrations, we believe they would generally be representative of the industry.

Overall Returns

	MetLife Separate Account Returns ⁴	Money Market ⁵	FDIC Insured Proxy ⁶	Short Government Bond Fund ⁷
15 Years	5.25%	3.37%	3.88%	4.75%
10 Years	4.89%	2.35%	2.90%	4.21%
5 Years	4.63%	2.56%	2.98%	4.54%

The fifteen year stable value returns exceed those for money market options by 55.8%, the FDIC proxy by 35.3% and the government short bond fund by 10.5%. With the exception of the comparison at 5 years to the short bond fund, the return differences for shorter durations are even greater on a percentage basis and in

³ We note that some ERISA counsel consider even this type of fund too volatile to meet the 404(c) requirement, and that in any case this fund may result in a reduction in returns and is not principal protected.

⁴ The returns are based on actual dollar-weighted credited rates for periods beginning July 1, 2002. Prior period returns are modeled based on a regression of the actual credited rates against rates developed by application of the MMGIC crediting rate formula to the Barclay's Intermediate Aggregate Index.

⁵ The Money Market returns are based on an average of Fidelity Cash Reserves, JPMorgan Prime Money Market Prem, Vanguard Prime Money Market Inv, BlackRock Liquidity TempFund Instl, Federated Prime Obligations Instl, Morningstar US Money Market Taxable, BarCap US Treasury Bill 1-3 Mon TR USD, and BofAML US Treasury Bill 3 Mon.

⁶ These returns are based on an average of (3 Month t-Bill + 75bps), used to model one such product, and BofAML US Treasury Bill 3-6 month, which we understand is used to model another.

⁷ The Short Bond return is an average of Vanguard Short-Term Treasury Inv, Sentinel Short Maturity Govt A, Franklin Adjustable US Govt Secs A, Goldman Sachs Short Dur Govt Instl, SSgA Intermediate U.S. Govt Bond Index, Morningstar US OE Short Government, and BarCap US Govt 1-3 Yr TR USD.

absolute terms. For example, at ten years, the MetLife stable value return is more than double that for money market, an additional 2.54%.

The return differences in the last year are even more dramatic. MetLife stable value returned over 3.4% in 2010, while money market returned less than one tenth of one percent, and the FDIC proxy just over half a percent. This also shows the extent to which stable value's ability to smooth out short term volatility is beneficial to plan participants, especially during periods of economic uncertainty.

Similarly, the table below shows the value of \$1 invested per month⁸ accumulated at the returns displayed above for each of these fund types.

Accumulation Values

	MetLife Separate Account Returns ⁹	Money Market ¹⁰	FDIC Insured Proxy ¹¹	Short Government Bond Fund ¹²
15 Years	\$270.51	\$224.15	\$233.64	\$257.07
10 Years	\$155.35	\$135.13	\$138.69	\$149.24
5 Years	\$68.18	\$63.01	\$63.78	\$67.93

The fifteen year accumulations for MetLife stable value exceed those for money market by 20.9%, those for FDIC by 15.8% and those for a short government bond fund by 5.2%. Even for a period as short as five years, the MetLife stable value accumulation exceeds that for money market by 8.2%.

The significance of these differences may also be expressed from the perspective of a retirement plan allocation option, in terms of how long the various accumulations developed above would support a continuing participant distribution. The 15 year stable value accumulation would support a payout of \$12 per year, while continuing to grow, since the interest earnings would exceed \$12 per year, unlike any of the other options. The money market fund would be exhausted in 30 years, and the FDIC option would be exhausted in 34 years, while the short bond fund after 30 years would be \$144.55 less than the stable value fund. This result demonstrates the success

⁸ Approximated as \$12 invested at the beginning of each year.

⁹ See footnote 4, above.

¹⁰ See footnote 5, above.

¹¹ See footnote 6, above.

¹² See footnote 7, above.

of the stable value design, which unlike the other options is specifically designed for the retirement plan environment.

RESPONSES TO PARTICULAR QUESTIONS

Swap Definitional and Exemptive Issues

1. Do SVCs possess characteristics that would cause them to fall within the definition of a swap? If so, please describe those characteristics.

There are no substantive similarities between stable value contracts and swaps.

2. What characteristics, if any, distinguish SVCs from swaps?

Important characteristics that distinguish stable value contracts from swaps include the restriction of the right to transfer or withdraw stable value option balances at contract value to participants, and the diffusion of that right among participants; the importance of the plan design of which the stable value option funded by one or more SVCs is a part; the need to underwrite not only plan design, but also plan sponsor finances and industry sector and participant demographics.

These “insurance” characteristics mean that stable value contracts are not tradable instruments. Further, as is further discussed below, there is no underlying tradable instrument.

3. Does the definition of the term "stable value contract" in Section 719(d)(2) of the Dodd-Frank Act encompass all of the products commonly known as SVCs?

Yes, apart from the restriction of scope to regulated banks and insurance companies as direct issuers. While we are not aware of any other types of financial institutions presently offering SVCs, in the past non-bank entities have done so in conjunction with monoline insurers.

4. Are the proposed rules and the interpretive guidance set forth in the Product Definitions Proposing Release useful, appropriate, and sufficient for persons to consider when evaluating whether SVCs fall within the definition of a swap? If not, why not? Would SVCs satisfy the test for insurance provided in the Product Definitions Proposing Release? Why or why not? Is additional guidance necessary with regard to SVCs in this context? If so, what further guidance would be appropriate? Please explain.

We believe that the Product Definitions Proposing Release reflects ambiguities related to stable value. Dodd-Frank itself provided insufficient guidance as to the appropriate classification of stable value contracts, and nothing in the Products Definitions Proposing Release resolved these ambiguities explicitly acknowledged in the Act. MetLife has in its comment letter on the Products Definitions Proposing Release stated its view that the insurance exclusion is too narrow, and does not include products traditionally, and appropriately, considered and regulated as insurance products, e.g., group annuities.¹³ As such, stable value contracts do not fit clearly within the insurance exclusion as proposed. Characteristics of stable value that in our view would make it inappropriate to regulate stable value as a swap include the following:

- *Stable Value as a Plan Option:* Participants alone can transfer and withdraw at contract value, and their rights are dictated by plan design.
- *The Stable Value Contract:* An SVC assures that funds will always be available to pay plan benefits and make transfers at contract (“book”) value, regardless of the market value of the supporting assets. In the Guaranteed Interest Contract (GIC), the actual withdrawal experience does not affect the interest credited to participants. In the alternative stable value structures, the crediting rate formulas amortize actual investment experience over time.

The SVC is the mechanism that, either by adjusting the interest rate credited to the remaining participants, or by making or receiving a payment from the SVC issuer, eliminates any book/market differential caused by a participant withdrawal. It is factually incorrect to describe the SVC itself as a “put.” Except in a catastrophic environment, the withdrawal experience of the fund does not affect the financial experience of the issuer in an experience-rated SVC, since crediting rate adjustments make continuing participants the ultimate bearers of gains and losses.

- *A Key Difference between Stable Value Contracts and Swaps is that Stable Value Contracts Diversify the Put Risk Across a Large Population of Uncoordinated Actors with Different Risk Preferences:* The desire to preserve principal among stable value option participants is not uniform. It can apply to all assets in the plan or some of them. It may be an absolute preference, ruling out investment in any option with principal volatility, or a relative preference, when a participant allocates more or less to stable value depending on volatility in other available options.

¹³ See Letter of Nicholas D. Latrenta, Executive Vice-President and General Counsel, Metropolitan Life Insurance Company, to David A. Stawick, Secretary, Commodity Futures Trading Commission and Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated July 22, 2011, available at www.sec.gov/comments/s7-16-11/s71611-45.pdf.

- *Stable Value Wrap Contracts Are Best Classified as Insurance:* “Insurance” is the term that best describes financial contracts where not only market variables, but also characteristics of the individual entity purchasing the contract, which require underwriting, determine cost. For a stable value contract, the availability of other options in the plan (above all money market), the financial health of the plan sponsor, the maturity of the industry, the age and status (active or retired) of plan participants, participant incomes, the number and dispersion by amount of participant balances, and other factors, are all material elements of the underwriting that the issuer of an SVC conducts and the risk that it assumes.

5. If the Commissions were to determine that SVCs fall within the definition of a swap, what would be their underlying reference asset'?

The lack of an apparent underlying reference asset is one of the central problems with attempting to characterize SVCs as swaps. Absent a clear underlying reference asset, the potential candidates for a “deemed” reference asset would include the rate reset formula, assuming there is one; the series of credited rates implied or created by the formula; the market value of the wrapped portfolio, where one exists; or the difference between fair value and contract value at a point in time.

Designating the reset formula itself as the underlying reference asset cannot be correct. First, in any given SVC, the formula itself does not vary. Second, even if the intent were to use “crediting rate formula” as shorthand for the actual series of crediting rates that the formula generates, that would be problematic because the series reflects not only financial market inputs, but also the independent decisions of participants to increase or decrease their stable value balances.

The most obvious candidate for an underlying reference asset is the market value of the wrapped portfolio. That value at least is determined purely by market forces and is the underlying reference asset for accepted derivatives, such as, for example, portfolio insurance.¹⁴ However, as discussed below, MetLife believes the most appropriate definition of the notional amount, using the language of derivatives, would be the difference between contract value and fair value.

While the Commissions’ question seems to presuppose that the “notional amount” for a stable value contract is the book value, even that is not as clear cut as it might initially appear. To define the book value as the “notional amount” would be to include one of the elements of the definition of a derivative in another of the elements. That is because book value is part of the calculation for both the

¹⁴ See Paul J. Donahue, *The Stable Value Wrap: Insurance Contract or Derivative? Experience Rated or Not?* 27 RISK AND REWARDS 18, 19 (Investment Section of the Society of Actuaries, July 2001) (Mr. Donahue currently works in the Law Department of MetLife, supporting stable value and other group annuity products).

crediting rate formula, and for the difference between book and market value, making this approach unworkable.

The maximum value of the SVC guarantee (the issuer's maximum liability) is the difference in two variables, book value and market value. This difference varies unpredictably from day to day, whereas notional amounts are generally constant (e.g., 10 shares or \$10 million), or are at least determinable with certainty based on a formula agreed to in advance. Even accepting the difference between book and market as a notional amount, and knowing the behavior of the underlying, whatever it might be, one would not have determined the value of the wrap, but only its maximum value. The actual value at any moment of a wrap also depends on the probability of a withdrawal and the probability distribution of withdrawal amount. It further depends on the experience-rating provision of the wrap contract. Finally, if the wrap contract is experience rated, the value also depends on the probability that the contract will mature before any book-to-market shortfall has been amortized. This is the only time that an experience-rated wrap results in an issuer payout.

6. If the Commissions were to determine that SVCs fall within the definition of a swap, what facts and considerations, policy and otherwise, would support exempting SVCs from the definition of a swap? What facts and considerations, policy and otherwise, would not support exempting SVCs from the definition of a swap?

The dispersion of the right to contract value, the prevalence of experience-rated SVCs, the difficulties in identifying a "reference asset" and a "notional amount," and non-tradability all argue against classifying a stable value contract as a swap.

7. If the Commissions were to (a) determine that SVCs fall within the definition of a swap but provide an exemption from the definition of a swap, (b) determine that SVCs fall within the definition of a swap and not provide an exemption from such definition, or (c) determine that such contracts are not swaps, what beneficial or adverse regulatory or legal consequences, if any, could result? For example, could any of such determinations lead to beneficial or adverse treatment under the Employee Retirement Income Security Act ("ERISA"), bankruptcy law, tax law, or accounting standards, as compared to the regulatory regimes applicable to SVCs, in the event that the Commissions were to determine that SVCs are not swaps or grant an exemption from the definition of a swap?

MetLife believes that there would be no beneficial consequences to determination (b), and that there would certainly be adverse consequences in the form of increased expenses borne by plan participants, resulting in lower retirement income accumulations for participants who value principal protection. Impairment of retirement income could be even more severe should regulation of stable value

contracts as swaps lead some issuers to exit the market. The advantages of (a) and (c) are that the existing stable value marketplace which serves plan participants so well would likely continue without major disruptions. MetLife does not believe that there would be any adverse consequences to (a) or (c).

Market and Product Structure Issues

8. What are the different types of SVCs, how are they structured, and what are their uses? Please describe in detail.

As described below, there are four major types of stable value contracts: 1) Guaranteed Interest Contracts (“GICs”), 2) Separate Account stable value contracts, such as MetLife’s MetManaged GIC (“MMGIC”), 3) synthetic GIC contracts, often called simply “wraps,” and 4) stable value collective investment fund participation agreements. This fourth type is a stable value contract held by the plan and issued by the sponsoring bank or trust company, but the collective investment fund must itself invest in stable value contracts, and is typically comprised of a combination of each of the other three types.¹⁵

All stable value contracts must meet the requirements of Financial Accounting Standards Board Statement of Position AAG INV-1 (SOP 94-4-1).¹⁶ Those requirements are:

- a. The investment contract is effected directly between the fund and the issuer and prohibits the fund from assigning or selling the contract or its proceeds to another party without the consent of the issuer.
- b. Either (1) the repayment of principal and interest credited to participants in the fund is a financial obligation of the issuer of the investment contract or (2) prospective interest crediting rate adjustments are provided to participants in the fund on a designated pool of investments held by the fund or the contract issuer whereby a financially responsible third party, through a contract generally referred to as a wrapper, must provide assurance that the adjustments to the interest crediting rate will not result in a future interest crediting rate that is less than zero. If an event has occurred such that realization of full contract value for a particular investment contract is no longer probable (for example, a significant decline in creditworthiness of the contract issuer or wrapper provider), the investment contract shall no longer be considered fully benefit-responsive.

¹⁵ A plan’s stable value option can be funded by any one or more of the types of stable value contracts. The “contract” value for the option is the sum of the contract values for each stable value contract.

¹⁶ Financial Accounting Standards Board, posted December 29, 2005. This statement of position replaced an earlier version SOP 94-4-1. [Hereinafter “AAG INV-1”].

- c. The terms of the investment contract require all permitted participant-initiated transactions with the fund to occur at contract value with no conditions, limits, or restrictions. Permitted participant-initiated transactions are those transactions allowed by the underlying defined-contribution plan, such as withdrawals for benefits, loans, or transfers to other funds within the plan.
- d. An event that limits the ability of the fund to transact at contract value with the issuer (for example, premature termination of the contracts by the fund, plant closings, layoffs, plan termination, bankruptcy, mergers, and early retirement incentives) and that also limits the ability of the fund to transact at contract value with the participants in the fund must be probable of not occurring.
- e. The fund itself must allow participants reasonable access to their funds.¹⁷

In accounting terms, these conditions collectively require that participants can transact at contract value according to plan provisions for all circumstances “probable of not occurring.” Participant actions in the normal course of plan operation meet this criteria. Should a circumstance that would limit the ability of the fund to transact at contract value become “probable of occurring,” then the “investment contract” must be marked to market. This is what occurred with the extraordinary Lehman bankruptcy situation.

Stable value contracts of all four types must meet these requirements. We describe these four types in more detail below.

1. GICs

GICs are group annuity contracts that are promises to pay, subject to the requirements of AAG INV-1. They are backed by the credit of the issuer, which in the case of MetLife would mean its general account. GICs may be fixed or floating rate, they may be for a fixed deposit amount or may accept contributions during a stated period of time (a “window” contract).

2. Separate Account GICs

Separate Account GICs, such as MetLife’s MMGIC, are group annuity contracts where the contract liabilities are supported by insurance company separate accounts. Like the assets of its general accounts, the assets of insurer separate accounts are owned by the insurer, and may be managed by the insurer or one or more third-party sub-advisers selected by the insurer. However, when contracts such as the MMGIC and separate accounts are established and maintained in accordance with the requirements of New York law and regulation, the liabilities under the contracts supported by those separate accounts have a first claim on the assets of those separate

¹⁷ AAG INV-1, pp. 4-5 and accompanying notes.

accounts.¹⁸ For that reason, we have found that some plan sponsors and stable value managers have a preference for the MMGIC rather than a General Account GIC.¹⁹

3. Synthetic GICs

In Synthetic GICs, or “wraps,” MetLife must provide all the assurances required by AAG INV-1 with respect to liquidity for transactions, but does so not with respect to its own assets, as in the case of the MMGIC or GIC, but with respect to assets owned by the plan and managed by an asset manager selected by the Plan. Because the requirements of the New York State Insurance Department for reserve sufficiency and cash flow testing with respect to Synthetic GICs are essentially identical to those applicable with respect to separate account contracts, in issuing a Synthetic GIC MetLife takes on many of the disadvantages of asset ownership without the advantages of ownership.²⁰

4. Collective Investment Fund (“Stable Value Fund”) Participation Agreements

Stable Value Collective Investment Funds or Stable Value Funds (“SVF”) are trust products offered by a bank or trust company issuer. Plans participate in the trust by signing participation agreements. The participation agreement must itself qualify under the requirements of AAG INV-1 to enable the plan to account for the stable value option at contract value. However, the SVF must itself purchase stable value contracts so as to be able to offer contract value to the participating plans. MetLife does not sponsor any SVFs, but provides stable value contracts to many of the leading SVFs.

9. Please describe the operation of SVCs and SVFs generally in terms of contract structure, common contract features, investments, market structure, SVC providers, regulatory oversight, investor protection, benefits and drawbacks, risks inherent in SVCs, and any other information that commenters believe the Commissions should be aware of in connection with the SVC study.

Our response below addresses the three types of contracts we have issued and currently have in force: GICs, MMGICs and synthetic GICs. First, we briefly describe the structure of each of these three types of contracts; then we describe provisions for contract termination, and provisions which would limit book value coverage for certain events.

¹⁸ See Separate Account Insurance Q&A, attached as an Exhibit.

¹⁹ For an explanation of some of the reasons why, see http://www2.standardandpoors.com/spf/pdf/media/Agreement_Backed_Notes.pdf.

²⁰ New York imposes essentially the same reserve requirements for synthetics that it does for MMGICs.

Contract Structure Types

GIC

As described in the response to Question #8 above, GIC is a promise to pay at maturity a fixed amount (or determinable amount, in the case of a floating rate GIC), subject to reduction for prior withdrawals at par. It is backed by the general account of MetLife, and the credited interest does not vary with the investment experience of the general account, or with the withdrawal experience of the stable value option. A GIC is non-participating both with respect to investment and withdrawal experience.

MMGIC (MetLife Managed GIC)

The MMGIC provides the guarantee required by AAG INV-1 and underlying investment in a single contract. The plan sponsor or the plan's stable value manager will agree with MetLife on an allocation to one or more separate accounts managed either directly by MetLife or by a subadvisor retained by MetLife to assist MetLife in the management of the assets of a separate account. The crediting rate amortizes actual investment experience into participant account balances over time.

Synthetic GIC

A synthetic GIC disaggregates the AAG INV-1 guarantee from the investment. However, a designated investment portfolio is the point of reference for calculation of the crediting rate and contract value, and the operation of the contract is essentially identical to that of the MMGIC discussed above.

Important Contract Provisions

Contract Duration and Termination at Will

AAG INV-1 imposes no requirement of minimum contract duration on a stable value contract. A contract terminable at will by the third-party guarantor can still qualify for contract value accounting.

Traditional GICs either contained no provisions at all for at-will termination by either party, or granted the buyer the right to terminate on notice, but imposed an early termination adjustment in the form of a formula-based "market value adjustment."

MMGICs provide both MetLife and the customer reciprocal rights of contract termination on notice, without assessing any termination fees. The contractholder's rights on termination are the same regardless of whether the contractholder or MetLife has given notice of termination, except in some circumstances where the contractholder has breached the contract. MetLife provides book value exits to plans that elect such an exit, via conversion to a traditional GIC, as long as the plan continues to meet the underwriting criteria that applied to the plan when the MMGIC was issued.

Termination for Cause

Termination for cause provisions are necessary in order to operate contracts in accordance with the tax and ERISA frameworks within which they function. For example, such a termination for cause provision might read:

This Wrap Agreement or the transactions contemplated hereby result or will result in a nonexempt prohibited transaction within the meaning of Section 406 of the Employee Retirement Income Security Act of 1974, as amended or Section 4975 of the Internal Revenue Code of 1986, as amended.

Section 4975(a) of the Internal Revenue Code imposes a tax of 10% of the amount involved in any prohibited transaction. In addition, Section 4975(b) imposes a tax of 100% of the amount involved if the prohibited transaction is not corrected within the taxable period. For these reasons, no party would want to remain in an SVC in the event that a prohibited transaction became apparent. Even the initial penalty (10% of the amount involved) would be material. Thus, it is necessary for SVCs to provide for correction of the transaction and the avoidance of future prohibited transactions should a prohibited transaction come to light.

Other Termination Provisions may include the following:

1. Actions under the direct or indirect control of the buyer:
 - (i) Failure of tax qualification of the plan or the stable value pool.
 - (ii) A breach of contract or warranty by the Contract holder.
 - (iii) An assignment or attempted assignment of the contract by the Contract holder.
 - (iv) Failure of the investment manager to follow the investment guidelines or upon a change in the guidelines not approved by the issuer.
 - (v) A determination that the execution of the contract or any transaction there under constitute (sic) a prohibited transaction.
 - (vi) A representation of the Contract holder becoming untrue.
 - (vii) An amendment to the plan, its documents or its administration that has or may have an adverse effect on the issuer.
2. The issuer discontinues or limits its participation in the stable value business, resulting from regulatory restriction.
3. Any change in law, regulation, ruling or administrative or judicial position, that, in the issuer's reasonable determination could result in substantial disbursements.

Limits on Book Value Coverage

There are three types of events relevant to book value coverage: plan events, employer events, and participant events. The examples described below are typical.

Plan Events: The following definition of a Plan Event is typical:

“Plan Event shall mean any event or condition the occurrence or existence of which is, in the reasonable determination of the Issuer, outside the normal operation of the Plan, and which, should it lead to any Fund Disbursements, would have a material and adverse effect on the Issuer's interests hereunder, including, but not limited to, any of the following events or conditions:

- (1) The Trust's loss of tax-exempt status under Section 501 (a) of the Internal Revenue Code,
- (2) The failure of the Plan to qualify under Section 401(a) of the Internal Revenue Code,
- (3) The establishment of a defined contribution plan by the Plan Sponsor that competes for Participant contributions with the Plan,
- (4) Any amendment, supplement or change in the documents governing the Trust or the Plan, or any change in the administration of the Plan, including, but not limited to, a change in investment options available under the Plan, investment option transfer procedures or withdrawal rights,
- (5) Any communication by or on behalf of the Plan Sponsor, Trustee or any party associated with the Fund or Trust, that is designed to induce or that induces participants to withdraw or transfer funds from the SVO [stable value option] to another investment option, or
- (6) The complete or partial termination of the Plan or the cessation or substantial reduction of employer contributions to the Plan.”

The events and conditions in this definition meet the requirements of AAG INV-1. Section A(8)(a) permits reporting at contract value a contract that limits liquidity at contract value for benefits "that are attributable to termination of the plan, a plan spin-off to a new employer plan, or amendments to plan provisions" unless it is probable that the plan will be terminated, spun off or amended.²¹

In the stable value market, the risk of losses due to plan changes is appropriately the plan sponsor's responsibility. The plan sponsor is in control of the plan; changes in the plan occur at the initiative of the sponsor. An issuer prices a contract based on the plan as it exists at the time a price is quoted and cannot be expected to give the plan

²¹ AAG INV-1, pp. 16-17.

sponsor an option to select against the contract. When the actions involved are within the limits of the plan, it is entirely plausible to suppose that the plan sponsor would seek to benefit plan participants at the expense of the issuer should circumstances permit. Indeed, it would arguably be the sponsor's fiduciary responsibility to do so. Issuers generally will insist on terms that limit selection against the issuer's contract, and according special treatment to plan events is an integral part of that strategy.

Employer Events: These would include:

1. A merger, consolidation or sale of assets involving the plan sponsor or any other entity participating in the plan,
2. A group termination, group layoff, facility closing, or the exclusion of a group from eligibility in the plan by the plan sponsor or by any other entity participating in the plan, or
3. The implementation of an early retirement program by the plan sponsor or by any other entity participating in the plan.

This classification also has its foundation in AAG INV-1 A. Section A (8)(b) permits accounting at contract value for a contract that does not guarantee liquidity at contract value with respect to benefits "attributable to the layoff of a large group of workers or an early retirement program."²²

Newer contracts have often modified the traditional treatment of employer events. The first step was the introduction of "corridors," which exempted withdrawals due to employer events (and sometimes plan events as well) from market value adjustment to the extent that they did not exceed a specified percentage of the fund balance, either cumulatively over the life of the contract, or annually.

Participant "Events", or Plan Benefit Payments: These are actions directed at the individual participant level such as reallocations within the plan or withdrawals under the terms of the plan. Unlike plan events and employer events, they generally would not impact book value coverage. The following definition is typical:

"Plan benefit payment means a payment from the stable value option made at the sole direction of the participant, in accordance with the terms and conditions of the plan, (1) to provide a benefit upon death, retirement, disability, or termination of employment; (2) to provide an in-service withdrawal; (3) to transfer funds to another noncompeting investment option available under the plan; or (4) to make a loan to the participant. However, no fund disbursement due to a plan event or to an employer event is a plan benefit payment."

²² *Ibid.*, p. 17.

10. What provisions of SVCs, if any, allow SVC providers to terminate SVCs that prevent benefit plan investors from transacting at book value? What are the trade-offs, including the costs and benefits of such provisions? Please describe in detail.

See "Plan and Employer Events" in the preceding answer.

11. Describe the benefits and risks of SVCs for SVC providers. How do SVC providers mitigate those risks? Please provide detailed descriptions. How effective are any such measures?

MetLife is in the business of insurance, which requires both underwriting and pooling of risks. SVCs are a central part of our business, and the construction of SVCs requires consideration of market variables, as well as characteristics of the individual entity purchasing the contract which require underwriting. For a stable value contract, the other options available in the plan to the participants, the financial health of the plan sponsor, the maturity of the industry, the age and status (active or retired) of plan participants, participant incomes, the number and dispersion by amount of participant balances, and other factors, are all material elements of the underwriting we conduct, and the risk we assume, for our stable value business. Underwriting, pricing, risk assessment, investment strategy, and sound plan design all serve to mitigate those risks effectively.

12. Describe the benefits and risks of SVCs for investors in SVFs. Please provide detailed descriptions.

See the Introductory Section above for the advantages to participants of stable value. No investment is entirely without risk, and risks are balanced with benefits; however, the historical record indicates that SVC risks are minimal and its benefits are substantial. Although a very few stable value participants have experienced temporary withdrawal restrictions, and even fewer some loss of reported account value for brief periods, even for these participants their reasonable expectations about stable value return have been met.

13. The Commissions' staffs understand that SVC providers sometimes negotiate so-called "immunization" provisions with SVF managers and that such provisions typically allow SVC providers (or SVF managers) to terminate the SVCs based upon negotiated triggers, which can include underperformance of the portfolio against a benchmark. The Commissions' staff also understand that, once immunization provisions have been triggered and are in effect, the SVF must be managed according to the immunization guidelines, which typically require the liquidation of all securities rated below AAA and in certain cases may require the portfolio to be invested 100% in Treasury securities. What risks, if any, do "immunization" provisions in SVCs pose to investors in SVFs? If immunization provisions in SVCs pose risks to investors

in SVFs. are these risks clearly disclosed to investors? Are these risks required to be disclosed to investors? What are the sources of such requirements? How do SVF managers or SVC providers address the risk that immunization will be exercised? How effective are any such measures?

Some SVC issuers have viewed immunization provisions as necessary to protect against inadequate performance of a wrapped investment portfolio. Immunization provisions give issuers the right in certain conditions to impose changes in investment guidelines and to set a fixed maturity date for the contract. Once the SVC has a defined ending date for any reason, it is necessary to manage the underlying investments such that 100% liquidity is available at that date, so that the sponsor can transfer to another provider or enter into a new contract term. Such immunization provisions include a planned glide path to cash over a specified period. In these cases, the benchmarks are necessarily tailored to the shift in investment strategy that takes place as a result of such provisions or actions.

Plan sponsors are responsible for the adequacy of risk disclosure to their participants, including disclosure of whatever risks they see in immunization provisions. Although the guaranteed rates credited to participants would often be lower as a result of the imposition of a more conservative investment strategy on immunization, participants would not face a risk of loss of principal or accrued interest.

14. The Commissions' staffs understand that some SVCs grant SVC providers the right to limit coverage of employer-driven events or employee benefit plan changes. Such events or changes could cause a decrease in a SVF's value and result in large scale investor withdrawals or redemptions (sometimes called a "run on the fund"). How do SVC providers and SVF managers manage this risk, if at all? How effective are any such measures?

See the discussion of Plan and Employer Events in the response to Question 9 above.

In addition, although MetLife does not give legal or investment advice to the SVFs who buy SVCs from MetLife, MetLife would have concerns about the suitability of selling a MetLife SVC with withdrawal provisions that did not align with the withdrawal provisions of the SVF and would not knowingly enter into such a contract. If the withdrawal provisions of the trust involve undue risk, MetLife would be unable to underwrite the SVF. Thus, the risks noted above generally would not be expected to materialize for a MetLife SVC sold to an SVF.

15. The Commissions' staffs understand that SVF managers infuse capital into their funds in certain instances. Please describe the circumstances under which an SVF fund manager would provide such capital support for its fund.

This is not applicable to any SVC issued by MetLife.

16. The Commissions' staffs understand that "pull to par" provisions of SVCs provide that SVCs will not terminate (absent the application of another contract termination provision) until the gap between the market value of the wrapped assets and the SVC book value is closed, however long that takes. The Commissions' staffs also understand that pull to par provisions are standard for SVCs. Are these understandings correct? Please describe pull to par provisions and how prevalent such provisions are in SVCs.

"Pull to Par" is a term used for bond investments and describes the effect in which the price of a bond converges to its par value as time passes. At the bond's maturity, its price should equal its par (or "face") value, absent some unusual circumstance. This results from the difference between the market interest rate and the coupon rate or nominal yield on the bond, which is fixed at issue and does not vary with the market. The "Pull to Par" effect is one of two factors that influence the market value of the bond and its volatility.

In a SVC context, pull to par is sometimes used as a synonym for the rate reset process on a participating separate account GIC or synthetic GIC, where the market changes are amortized over the duration of the underlying portfolio and passed through to the participants over time, because that is the mechanism that handles the mechanics of the relationship of market to book value of the SVC or SVF.

Arguably, AAG INV-1 would not permit a contract to qualify as "fully benefit responsive" if the contract did not have provisions that would allow payment at contract value under all circumstances probable of not occurring. As a result, a "book value exit," of which a "pull to par" provision is an example, may be viewed as an inherent requirement for a stable value contract. MetLife GICs mature at par for all amounts not previously withdrawn at par.

All MetLife stable value contracts mature within a determinable period, and are not subject to indefinite extension. Our MMGICs allow a plan sponsor to elect a MetLife GIC as an exit provision, as long as the underwriting characteristics of the plan have not changed for the worse to the extent that the plan would not have been underwritten originally. MetLife synthetic GICs also allow purchase by the plan of a GIC with the proceeds of the wrapped portfolio, under the same conditions. Further, the synthetic contract also allows conversion to a fixed maturity option that matures at par.

17. How have SVFs and SVCs been affected by the recent financial crisis'? How many SVC providers are in the market today? Is the number of SVC providers higher or lower than prior to the financial crisis that began in 2008? Are fees now higher or lower than prior to the financial crisis?

Based on input from managers and sponsors, there are fewer wrap providers than in 2008, and those that remain charge higher fees.

We note that some of the perceived diminished capacity is tied to plan sponsor and SVF provider experience that there are few, if any, wrappers willing today to wrap investment strategies such as core, core plus or high yield bond portfolios. This was not the case in 2008. We also note that the number of wrap providers was probably at or near an all time high at the beginning of 2008.

MetLife raised fees as a result of its experience in 2008, reversing prior years where fees were reduced due largely to competitive pressures. We would also note that current fee levels are in line with longer term average fee levels for SVCs.

18. Do investors have incentives to make a run on a SVF when its market-to-book ratio is substantially below one? What protections, if any, do SVCs provide to protect fund investors who do not redeem their fund shares amid a run on the fund? How effective are any such protections?

It is important to distinguish between individual plan options funded by the whole array of SVC types and stable value collective investment funds ("SV CIFs") sponsored by banks or trust companies.

For both stable value options and SV CIFs, participants have a right to transact at contract value. Plan design sets limits on plan participants' options, and as a result participant funds move *among* allocation options *within* the plan. It is equally important to recognize that the stable value option provided to a plan participant has a stated rate that applies irrespective of the fluctuating value of the underlying assets. As it is the nature of a stated credited rate to lag market events, so that participants are intentionally shielded from day to day and month to month variations in market to book ratios, participants would make allocation decisions based on their view of the credited rate relative to other options available within the plan's investment lineup.

Because concerns about equity volatility will generally outweigh the fixed income arbitrage opportunity, periods of rising interest rates and depressed market to book ratios are generally times of net *positive* transfers to stable value options, and these transfers will immediately begin to improve market to book ratios. We further note that this question applies differently to GICs, which don't have a market to book ratio, as compared to separate account and synthetic contracts, which do, as well as SVFs, which may hold a combination of types of SVCs.

Of course, the availability of direct transfers to a money market fund would remove concerns about equity volatility. MetLife will not underwrite individual plans with a money market option for MetLife separate account contracts, even with an equity wash,²³ and would not underwrite an SVF that allowed direct transfers to money market funds.²⁴

²³ The term "Equity Wash" refers to a provision in stable value or fixed income investment options in defined contribution plans under which transfers made from the stable value or fixed income fund or option are required to be directed to an equity fund option of the plan for a stated period of time (usually 90 days) before

Some SV CIFs allow plans themselves as well as plan participants to transact at contract value. Some stable value funds, for example, have a 12-month put provision that allows **participating plans** to exit at contract value. An exiting plan would effectively move a block of participants at the same time as a result of its action. While the 12 month timeframe is intended to provide protection against this contingency, if multiple plans elected at the same time, such SVFs could conceivably be subject to a run on the fund.

19. How do market risk measures assess the risk of a run on a SVF? To the extent that SVC providers use value-at-risk (“VaR”) models, do such VaR models adequately assess the risk of loss resulting from such events or other possible but extremely unlikely events? Do other loss models more adequately assess the risk of loss, such as the expected value of a loss or the expected value given a loss, which employs the entire loss probability distribution without excluding events in the extreme tail of the loss distribution?

Please see the response to question #18. A run requires a circumstance where the fund’s assets have to be sold at market prices that are below the book values. To the extent participants allocate out of SVCs, they typically do so during periods extraordinary times of equity rises, in which case the run conditions are not present.

In MetLife’s view, the risk of a run on a plan option is remote, and MetLife is not aware that any plan sponsors have attempted to measure that risk. As to SV CIFs with put provisions, MetLife does not sponsor any such fund and is not aware of the risk measures which their sponsors employ.

20. Are certain SVC providers more likely, as a result of credit cyclicity, to become financially distressed? If so, is such financial distress likely to occur concurrently with financial distress of SVFs? If so, can the risk of such concurrent financial distress be mitigated? How effective are any such measures?

We see nothing grounded in credit cyclicity that would tie the financial viability of a particular SVC issuer to the market value to book value ratios of an SVF. We would note that well designed programs and appropriate investment strategies, as well as diversification of SVCs, should effectively control this problem in the event of a major market disruption.

those funds may be invested in any other plan-provided competing fixed income fund (such as a money market fund).

²⁴ The quantitative analysis in the introduction shows the decisive advantage stable value has over money market funds in the DC plan environment. See also Paul J. Donahue, *Plan Sponsor Fiduciary Duty for the Selection of Options in Participant-Directed Defined Contribution Plans and the Choice Between Stable Value and Money Market*, 39 AKRON L. REV. 9 (2006).

21. Do SVC providers pose systemic risk concerns? Are there concerns with entities that may be systemically important institutions providing SVCs? What are the consequences for SVFs, employee benefit/retirement plans, and the financial system should an SVC provider fail?

No. MetLife does not believe that any SVC providers pose systemic risk concerns by virtue of their being SVC providers. We are not aware of any issuer losses on any SVCs. From a plan perspective, even the extraordinary circumstance of the failure of the issuer of a synthetic or separate account GIC would likely have a minimal effect on the plan or SVF because the assets would be available to the plan to continue to meet participant transactions, and because such events typically provide sufficient time to arrange for a successor wrapper.

In the case of a General Account GIC, the failure of the insurer would result in it entering rehabilitation through a state-coordinated process, could result in some reduction of return on GICs, and could pose some operational risk should a plan wish to transfer a separate account contract to a general account GIC on termination. However, these are well controlled operational risks limited in scope to a particular plan rather than a systemic risk to the economic system.

22. Are there issues specific to financial institutions providing SVCs, including institutions that are systemically significant, that the Commissions should consider in connection with the SVC study? If so, please describe.

As noted in the response to question # 8 above, proper reserving for solvency is a key element of SVC regulation under state insurance law, whether the issuer is systemically significant or not.

Regulatory Issues

23. What disclosures to benefit plan investors in SVFs currently are required, and what are the sources of such requirements? What additional disclosure typically is provided, either voluntarily or on request? What additional disclosure, if any, would be warranted and why would it be warranted? Please explain in detail.

As previously noted, while MetLife issues SVCs to SVFs, we do not provide, sponsor or offer an SVF.

24. What financial and regulatory protections currently exist that are designed to ensure that SVC providers can meet their obligations to investors, and what are the sources of such protections? Does the level of protection vary depending on the SVC provider? How effective are any such measures?

For MetLife, our principal regulator is the New York State Insurance Department. We believe that the Department's regulation is rigorous and highly effective, and that in

particular, its reserve requirements set an industry standard for consumer protection. As noted, the Departments' regulation extends to all three forms of SVCs including synthetic GICs. We are aware that state regulation varies from jurisdiction to jurisdiction, and note that non-insurance company issuers are not currently subject to comparable requirements with respect to the SVCs they issue.

25. Currently, do entities other than state-regulated insurance companies and federally- or state-regulated banks provide SVCs? If so, what kinds of entities do so and how are they regulated? If not, are there any barriers to the provision of SVCs by entities other than state-regulated insurance companies and federally- or state-regulated banks?

MetLife is not aware of any other types of financial institutions presently offering SVCs, although in the past non-bank entities have done so in conjunction with monoline insurers.

26. What role do SVF managers play in protecting the interests of plan participants with respect to SVFs? How effective are any such measures?

As previously noted, MetLife does not provide, sponsor or offer an SVF and as such we have no comment on this question.

Compliance Issues if the Commissions Were to Determine SVCs Were Swaps

27. If the Commissions were to determine that SVCs fall within the definition of a swap and should not be exempted from such definition, should the regulatory regime for SVCs be limited or tailored in any way? If so, how? Please explain in detail. Should any of the requirements for capital and margin for SVCs differ from those for swaps that are not SVCs? Why or why not? If the requirements for capital and margin should differ, please explain in detail what those differences should be.

Even if SVCs are subjected in part to swap regulation, the only potentially applicable element of such regulation would be with respect to capital requirements. Stable value contracts would not be suitable for clearinghouse transactions, for the reasons we cited above in suggesting that stable value contracts are insurance. Margin requirements are also unworkable and unnecessary. Even in this case, the Commissions should be mindful that higher than needed capital requirements with respect to stable value contracts will increase the charges for these contracts, reduce returns credited to plan participants, and impair retirement security. We would support consistent capital requirements for similar contracts regardless of issuer type. However, we also note that doing so is not predicated on nor does it require a determination that any SVCs are swaps.

28. If the Commissions were to determine that SVCs fall within the definition of a swap and should not be exempted from such definition, would the

requirements of any regulatory regime for swaps impact fee structures or fees charged by SVC providers? Please describe (quantitatively, if possible) the relationship of any new federal regulation under the Dodd-Frank Act to possible changes in fee structures or fees, to the extent feasible, and state any assumptions used in quantifying such relationship.

See our response to Question #27, above. Any additional costs would be passed along to participants and reduce the crediting rate. In addition, as noted previously, an attempt to regulate SVCs as swaps would likely have the effect of encouraging additional wrap providers to drop out of the SVC market entirely. A vibrant marketplace for SVC issuers is necessary to support the current usage of stable value by retirement plans, as well as protect the viability of this important and widely utilized investment by qualified plan participants.

29. If the Commissions were to determine that SVCs fall within the definition of a swap and should not be exempted from such definition, would this decision influence the availability of SVFs to investors? Would this designation affect existing SVFs and the ability of SVFs to purchase SVCs? If so, how and why?

Any increased regulation along these lines would likely reduce the number of issuers of SVCs, and the desire of the remaining issuers to take on additional stable value capacity, to the extent that the availability of the stable value option would be reduced. As the quantitative analysis in the Introduction above showed, this would be an extremely adverse development for participants and would reduce retirement income security for millions of Americans.

The continued viability of the stable value market depends on the ability of plan sponsors, and by extension, SVF providers and Defined Contribution platform providers who serve thousands of smaller plans, to be able to select among and between providers.

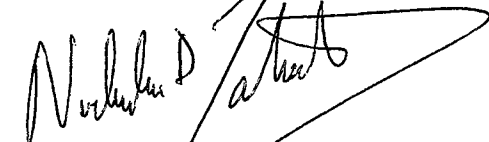
According to a 2010 study of stable value by MetLife²⁵, the average SVF uses between five and eight wrap providers to maintain sufficient diversification and stability for its operation, and many large plan sponsors arrange their stable value options similarly. The market requires some level of critical mass in order to operate, and even the relatively modest reduction of book value guarantee providers that took place following 2008 has placed the system under stress in this regard. Further, from the perspective of both large SVFs and very large plan sponsors, SVC providers generally need to be large and well capitalized, and the loss of a significant number of such providers could not easily be replaced by smaller firms.

²⁵ MetLife Stable Value Study: A Survey of Plan Sponsors and Stable Value Fund Providers, April 2010, available at www.metlife.com/assets/institutional/services/cbf/retirement/MetLife-Stable-Value-Study.pdf.

David A. Stawick
Elizabeth M. Murphy
September 26, 2011
Page 24 of 24

MetLife appreciates the Commissions' consideration of its views. If you have any questions, please feel free to contact me at the number above, or Paul Cellupica, Chief Counsel, at 212-578-3067.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Nicholas D. Latrenta", written over a large, stylized, handwritten "X" or checkmark.

Nicholas D. Latrenta
Executive Vice-President and General Counsel

CC:

David E. Aron, Counsel, Office of the General Counsel, Commodities Futures
Trading Commission

Matthew A. Daigler, Senior Special Counsel, Division of Trading and
Markets, Securities and Exchange Commission