MetLife, Inc.
1095 Avenue of the Americas
New York, NY 10036

MetLife®

Paul G. Cellupica
Chief Counsel
Securities Regulation & Corporate Services
Tel 212-578-3067 Fax: 212-743-0681

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

Re: File number SR-FINRA-2009-057
Proposed change to FINRA Personnel Assessment and Gross Income Assessment

Dear Ms. Murphy:

We appreciate the opportunity to comment on SR-FINRA-2009-057 dealing with FINRA's proposal to amend the annual Personnel Assessment ("PA") and the Gross Income Assessment ("GIA") paid by each FINRA member. MetLife Securities, Inc. ("MSI") and four affiliated broker-dealers[1] together comprise over 16,000 registered persons engaged in the sale of variable annuity and insurance products, as well as other securities. These comments are submitted on behalf of all of the MetLife affiliated broker-dealers.

I. FINRA's Proposal Does Not Represent An Equitable Allocation Of Reasonable Dues, Fees And Other Charges

Section 15A(b)(5) of the Securities Exchange Act of 1934 requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system that FINRA operates or controls. FINRA's current assessments are based upon the gross income earned by a member firm (GIA) and a per capita charge based upon the number of registered representatives associated with a firm (PA). Consequently, FINRA has proposed changes in its fee structure that are intended to reduce the volatility of assessments in years, like last year, when there is a major disruption in the revenues of member firms. As FINRA explains in its release: *"In years where industry revenues are*

1 New England Securities, Walnut Street Securities, Tower Square Securities and MetLife Investors Distribution Company.

significantly down, FINRA's operating revenues can drop precipitously: in 2009, for example, GIA revenues are down approximately 37 percent due to 2008 fourth quarter write-offs taken by members, particularly the largest securities firms." Furthermore, *"FINRA estimates that if the proposed rule change had been in effect for 2009, it would have replaced about 90% of the revenue shortfall that resulted primarily from the significant drop in GIA revenues. In general, those replacement revenues would come from several larger firms whose steep income declines in 2008 primarily account for FINRA's current revenue deficit."*

In order to address this volatility, FINRA is proposing first to compute the GIA based upon the greater of (1) the current year's GIA, or (2) a three-year average of the current and past two years' GIA. Second, FINRA is proposing to double the per capita charges for registered persons.

While we certainly understand and appreciate FINRA's desire to stabilize its revenue streams and acknowledge that the GIA is currently subject to significant year-over-year decreases and increases, it should be noted that FINRA's proposal will result in an extraordinary and disproportionate increase in assessments paid by firms such as the MetLife affiliated broker dealers that have a relatively large number of registered representatives, but a relatively low gross income per representative. Had FINRA's proposed methodology been in place for 2009, MSI's annual assessment would have increased approximately $711,000, representing a 69% increase over the actual 2009 assessment. In total, our affiliated broker-dealers would have experienced an assessment increase of $1.1 million, or 49 percent. In light of the significant expected increase in assessments paid by MSI, in our view the proposed rule does not appear to be consistent with the "equitable allocation" standard in Section 15A(b)(5) of the Act. Rather, it will result in a substantial increase in fees for the MetLife firms in order to subsidize the revenue lost due to the "steep income declines" at other firms.

Based upon FINRA's statement noted above, it appears that FINRA has already calculated what the 2009 assessment would have been had the proposed structure been effective for 2009. We would encourage the Commission to obtain from FINRA individual member data regarding actual 2009 assessments and pro forma 2009 assessments using the proposed methodology, in order to be in a position to validate whether the proposal is truly equitable.

II. Lessen The GIA Volatility Instead Of Increasing The PA Fee

As noted above, the current FINRA proposal to increase the PA fee by 100 percent will unfairly subject some members to substantial increases in their annual assessment. While such an approach might cure FINRA's volatility in fee revenue, it could create substantial fee expense volatility for FINRA members. A more preferable result would be an annual fee methodology which lessens the volatility for <u>both</u> FINRA and its individual members.

We would suggest that the Commission explore alternative methodologies along these lines. For example, under one possible approach, the PA fee structure could remain unchanged, and the annual GIA fee computation for members could be subject to both caps and floors (e.g., plus or minus 5% or 10%). Such a methodology would result in GIA fees generally tracking the assessable revenues of its members, but would afford protection to both FINRA and its members against unreasonably large increases or decreases in the annual fee.

FINRA itself implied that there is a high correlation between the costs of FINRA's regulatory programs and the number of registered persons within a firm, and FINRA noted that *"the population of registered persons has remained fairly stable, even throughout the recent economic downturn."* Such views would apparently support a fee structure that limits the increases or decreases in the assessment fees to each FINRA member and to FINRA as a whole.

If such a methodology had been in place for 2009 assessment purposes, those largest securities firms who experienced significant fourth quarter write-offs would have seen their GIA assessments decline, but only by the floor percentage. Similarly, FINRA's 2009 revenues would not have declined so dramatically. On the other hand, in years where assessable revenues are substantially increasing, such a process would lessen FINRA's windfall increase in revenues.

III. If The PA Fee Must Be Increased, Subject Any Increase To A Reasonable Annual Cap

Previous FINRA increases in GIA and PA fees were subject to limitations where the full effect of the increase was reflected in the annual assessment fees over a period of a few years. Such phase-in clauses simply lessened the increase in the year or two following the fee increase, but ultimately did not insulate any member from a short-term substantial increase. Unfortunately, the current FINRA proposal does not even have a phase-in period for the doubling of the PA fee. If the proposed 100 percent increase in the PA fee structure is approved, we request that the rule be amended to limit the annual percentage increase in PA fee to an amount that will not have a short-term disruptive impact on any individual firm, such as an annual limit of ten percent.

IV. Consider Other Risk Factors Indicative Of FINRA's Costs Relative To Any Particular Firm

Beyond the disruptive effect of the proposed assessment fee increases, we note a more fundamental limitation with the current assessment fee structure. Both the current and proposed assessment fee methodology only consider two factors in determining the assessment fees that members must pay: the number of registered persons and the amount of non-commodity revenues. Such a simplified methodology ignores many other factors that may be indicative of FINRA's regulatory costs relative to member firms, such as:

- Does the firm hold significant proprietary trading positions?
- Does the firm routinely hold customer funds or securities?
- Is the firm self-clearing?

We suggest that the Commission and FINRA explore amending the assessment fee structure so that member firms engaging in higher-risk activities would be subject to higher FINRA assessment fees, in order to reflect FINRA's presumably higher costs of oversight relative to such firms.

Thank you for the opportunity to comment on FINRA's proposal. If you have any questions regarding these comments, or would like to discuss further, please contact me at (212) 578-3067, or contact John G. Martinez, Vice-President, at (908) 253-2680.

Very truly yours,

Paul G. Cellupica
Chief Counsel, Securities Regulation & Corporate Services

cc: Nancy Burke-Sanow
Assistant Director, Division of Trading and Markets, SEC
Paula Jenson
Deputy Chief Counsel, Division of Trading and Markets, SEC
Philip Shaikun
Associate Vice-President and Associate General Counsel, FINRA