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

DIVISION OF
CORPORATION FINANCE

November 17 , 1999

James C. Scoville
Debevoise & Plimpton
875 Third Avenue
New York, New York 10022

Re: Metropolitan Life Insurance Company

Dear Mr. Scoville:

In regard to your letter of November 16, 1999, our response thereto is attached to the enclosed photocopy of your correspondence. By doing this, we avoid having to recite or summarize the facts set forth in your letter.

Sincerely,

Catherine T. Dixon

Catherine T. Dixon
Chief Counsel

[Pub. Avail.: Nov. 23, 1999]
November 17, 1999

RESPONSE OF THE OFFICES OF CHIEF COUNSEL
DIVISION OF CORPORATION FINANCE
DIVISION OF MARKET REGULATION
DIVISION OF INVESTMENT MANAGEMENT

RESPONSE OF THE OFFICE OF RISK MANAGEMENT AND CONTROL
DIVISION OF MARKET REGULATION

Re: Metropolitan Life Insurance Company
Incoming Letter dated November 16, 1999

Based on the facts presented and the representations made in your letter, the positions of the Divisions of Corporation Finance, Market Regulation and Investment Management are as follows. Except as otherwise noted, capitalized terms have the same meanings as in your letter.

Division of Corporation Finance

The Division of Corporation Finance will not recommend enforcement action to the Commission if, in reliance on your opinion of counsel that an exemption from registration under Section 3(a)(10) of the Securities Act of 1933 (the "Securities Act") is available, MetLife issues MetLife Common Stock to the Trust, the Trust exchanges such shares for shares of Common Stock, and the Trust allocates Interests to Trust Eligible Policyholders without registration under the Securities Act.

While disagreeing with your analysis, the Division concurs in your view that the issuances of MetLife Common Stock and Common Stock, and the allocation of Interests, should not be integrated with the Initial Public Offering.

The Division will not object if the Trust registers the Interests after the Initial Public Offering under Section 12(g) of the Securities Exchange Act of 1934 (the "Exchange Act") on Form 8-A and includes in the Form 8-A the disclosures described in your letter.

The Division will not object if the Trust files reports in the manner described in your letter to comply with Section 13(a) of the Exchange Act.

The Division will not object if, only with respect to Trust Shares (common stock of the Holding Company held through the Trust), and not with respect to any Common Stock acquired by a Beneficiary in open market purchases,

- neither the Trust, the Trustee, the Custodian of the Trust nor the Holding Company disseminates any proxy soliciting materials, annual and quarterly reports or information statements of the Holding Company to Beneficiaries in connection with a vote or consent of stockholders of the Holding Company, except in connection with a Beneficiary Consent Matter or upon request of any Beneficiary;

- the Trust, the Trustee, the Custodian of the Trust and the Holding Company follow the procedures described in your letter for the distribution of proxy soliciting materials, annual reports or information statements in connection with a Beneficiary Consent Matter (including the procedures that require mailing and other expenses to be reimbursed by a stockholder in certain circumstances, instead of following the reimbursement procedures outlined in Rule 14a-7 under the Exchange Act); and

- if none of the Holding Company, the Trust, the Trustee or Custodian of the Trust, inquires as to the beneficial ownership of the Trust Shares, pursuant to Rules 14a-13, 14b-2 and 14b-1 under the Exchange Act, respectively, in connection with such votes or consents of stockholders of the Holding Company, or provides information in connection with those inquiries, except in connection with a Beneficiary Consent Matter.

The Division, in reaching its position regarding compliance with Rule 14a-7 of the Exchange Act with respect to any stockholder solicitation of Trust Shares, particularly notes the Holding Company's representation that it will always elect to mail, rather than provide a shareholder list, with respect to a Beneficiary Consent Matter.

The Division will not object if the members of the Board of Directors of the Holding Company provide the information required by Schedule 13D pursuant to Section 13(d) of the Exchange Act, and by Section 16(a) of the Exchange Act as described in your letter.

The Division will not recommend enforcement action to the Commission if, in reliance on your opinion of counsel that an exemption from registration of the Securities Act is available, the Purchase and Sale Program is implemented without registration under the Securities Act.

The Division agrees that a Beneficiary's withdrawal of Trust Shares from the Trust is not an event requiring registration under the Securities Act.

Common Stock to be issued in the Reorganization will not be considered "restricted securities" within the meaning of Rule 144(a)(3). The Division's view is that the Common Stock may be resold through the Purchase and Sale Program, or otherwise, as follows:

- Persons who are unaffiliated with MetLife at the time the Plan is submitted for approval and unaffiliated with the Holding Company after the Reorganization may resell without regard to Rules 144 and 145(d);

- Persons affiliated with MetLife who become affiliates of the Holding Company after the Reorganization may resell under Rule 145(d) (1); and

- Persons affiliated with MetLife who do not become affiliates of the Holding Company after the Reorganization may resell under Rule 145(d). In computing periods for purposes of Rules 145(d)(2) and (3), such persons may not take into account the holding period for their Policyholders' Membership Interests.

Division of Market Regulation

On the basis of your representations and the facts and circumstances presented in your letter, in particular the following:

- The Purchase and Sale Program, as a component of the Plan, must be approved by the Office of the Superintendent ("Superintendent") of the New York Insurance Department after finding, among other things, that the Plan is fair and equitable to policyholders;

- The Superintendent must hold a public hearing to consider, among other things, the fairness of the terms and conditions of the Plan, the reasons and purposes for MetLife to demutualize, and whether the Reorganization is in the interest of MetLife and its policyholders and not detrimental to the public;

- Adoption of the Plan requires the affirmative vote of at least two-thirds of the votes cast in person or by proxy by Eligible Policyholders;

- Eligible Policyholders will receive a Policyholder Information Booklet and other documents that contain comprehensive disclosures that are comparable to those in a registration statement, providing all of the information required by Schedule 13E-4 under the Exchange Act that is relevant in the context of the Purchase and Sale Program;

- The consideration to be paid to Beneficiaries on whose behalf Common Stock is sold in any given day through the Purchase and Sale Program will generally be determined by a uniformly applied formula based on the market price of the subject security;

- Beneficiaries who sell Common Stock through the Purchase and Sale Program will receive the proceeds of the sales within four trading days;

- The Purchase and Sale Program will not remain open for a fixed period of time, but rather throughout the term of the Trust; and

- Any purchases of Common Stock made by the Holding Company, or the Program Agent while the Purchase and Sale Program is in effect will be made for purposes independent of the Purchase and Sale Program and no purchases will knowingly be made directly from a Beneficiary;

but without necessarily concurring in your analysis that the Purchase and Sale Program does not constitute a tender offer, the Division of Market Regulation will not recommend that the Commission take enforcement action pursuant to Rule 13e-4 under the Exchange Act if the Purchase and Sale Program is conducted in the manner described in your letter.

In addition, the Division will not recommend that the Commission take enforcement action pursuant to Rule 10b-13 under the Exchange Act in the event that the Holding Company or the Program Agent purchases Common Stock while the Purchase and Sale Program is in effect.

Furthermore, you have not asked for relief from, and we do not address, Regulation M with respect to purchases of Common Stock by the Holding Company or any other party while the Purchase and Sale Program is in effect.

The foregoing no-action positions taken under Sections 13(e) of the Exchange Act and Rules 13e-4 and 10b-13 thereunder are based solely on your representations and the facts presented to the staff, and are strictly limited to the application of those provisions to the transactions described in your correspondence. Such transactions should be discontinued, pending presentation of the facts for our consideration, in the event that any material change occurs with respect to any of those facts or representations.

In addition, your attention is directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a), 10(b), and 14(e), and Rule 10b-5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with MetLife, the Holding Company, the Program Agents, CMSS, CMFS, and their affiliated purchasers. The Division expresses no view with respect to any other questions that the proposed transactions may raise, including, but not limited to, the adequacy of disclosure concerning, and the applicability of any other federal or state laws to, the proposed transactions.

The Office of the Chief Counsel for the Division of Market Regulation, without necessarily agreeing with your analysis, will not recommend enforcement action to the Commission under Section 15(a) of the Exchange Act if the Associates recommend approval of the Plan in discussions with Eligible Policyholders without the Associates, MetLife or the Holding Company registering as broker-dealers in accordance with Section 15(b) of the Exchange Act. In reaching this position, the staff particularly notes that (1) the demutualization and the related Associates' activities are one-time extraordinary events; (2) no Associate, with the exception of call center personnel, will be compensated, directly or indirectly, for his or her efforts in connection with the activities described in the letter; (3) call

center personnel will be compensated on an hourly or salaried basis; (4) the Associates' activities will be strictly limited and supervised in accordance with the provisions set forth in the letter; (5) the Associates will not handle customer funds and securities in connection with the activities discussed; (6) excepting the call center personnel, no Associate will be hired solely for purposes of effecting the demutualization; (7) the Associates (except the call center personnel) will have substantial, full-time duties unrelated to the activities discussed in the letter, and (8) employees of the demutualization call center will not discuss the Purchase and Sale Program with Eligible Policyholders except to the extent that the questions relate to the nature of the Purchase and Sale Program and are relevant to the decision on whether or not to vote for the Plan.

Division of Investment Management

The Facts

You state that MetLife proposes to convert from a mutual life insurance company to a stock life insurance company that will be a subsidiary of the Holding Company. The Reorganization will occur through a transaction in which certain policyholders of insurance policies and contracts issued by MetLife will receive, in exchange for their membership interests in MetLife, consideration in the form of MetLife Common Stock, cash or an adjustment to their policy values, known as policy credits. MetLife's Plan[1] must be approved by, among others, the Eligible Policyholders. You state that on the Effective Date of the Plan: (1) the shares of MetLife Common Stock that will be allocated to Trust Eligible Policyholders will be issued to the Trust established for the exclusive benefit of the policyholders[2]; (2) Trust Eligible Policyholders will be allocated Interests in the Trust equal to the number of shares of stock allocated to them; and (3) by operation of the Plan, the shares of MetLife Common Stock will be immediately exchanged for an equal number of shares of Common Stock.

The Trust will be established in accordance with the terms and conditions of the Trust Agreement to hold shares of Common Stock allocated to the Trust Eligible Policyholders, each of which will be a Beneficiary of the Trust. Although the Trust Agreement provides that the Trustee will have the right to vote, assent, or consent the Trust Shares, the Trustee will have no discretion in doing so. Among other things, the Trust Agreement provides that the right to vote the shares of Common Stock held by the Trust will be exercised by the Trustee, generally

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[1] You state that, under the Plan, the Holding Company must complete an Initial Public Offering, and may also conduct one or more Other Capital Raising Transactions. You state that the Initial Public Offering is expected to occur in the first quarter of 2000, depending on market conditions and other relevant factors.

[2] You state that the Trust is a single-purpose trust and will not engage in any other business or activity other than voting and holding the Common Stock of the Holding Company and certain closely related activities, such as receiving and distributing cash dividends and registering the Trust Shares under the Securities Act.

acting upon the directions or instructions of the board of directors of the Holding Company. The Beneficiaries, however, will have the right to instruct the Trustee how to vote the Trust Shares for Beneficiary Consent Matters. You state that the Trust is designed to give the Trust Eligible Policyholders the benefits of stock ownership -- namely, the ability to participate in any appreciation of their allocated shares of Common Stock and to sell those shares or to purchase additional shares through the Purchase and Sale Program -- while helping the Holding Company efficiently manage the administration of the Beneficiaries' accounts and the costs associated with a large number of stockholders.[3]

You state also that MetLife is registered with the Commission as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"), and that MetLife directly or indirectly owns controlling interests in 29 other investment advisers that are registered with the Commission. Furthermore, you state that MetLife and these firms (collectively, the "MetLife advisers") serve as investment advisers to registered investment companies.

Investment Company Act Status of the Trust

Section 3(a)(1) of the Investment Company Act of 1940 (the "1940 Act") provides, in relevant part, that:

> "investment company" means any issuer which — (A) is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities; . . . or (C) is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis.

Section 2(a)(22) of the 1940 Act defines "issuer" as any "person who issues or proposes to issue any security, or has outstanding any security which it has issued." You state that the Interests issued by the Trust may be securities and, because the Trust primarily holds Trust Shares, it is possible that the Trust comes within the definition of "investment company."

You believe, however, that the Trust is excluded from regulation as an investment company by Section 3(c)(12) of the 1940 Act, which excepts from the definition of an investment company "any voting trust the assets of which consist exclusively of securities of a

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[3] You state that MetLife estimates that it has over 11 million policyholders, many of which will be allocated only a small number of shares of Common Stock under the Plan. If all of them were individually to hold shares of stock in the Holding Company, you assert that the Holding Company would have several times the number of stockholders as that of the largest publicly held corporation.

single issuer which is not an investment company."[4] Neither the 1940 Act nor the legislative history defines the term "voting trust" or provides any guidance regarding a definition of the term. You assert, however, that one accepted definition of the term is: a "device whereby two or more persons owning stock with voting powers divorce voting rights from ownership, retaining to all intents and purposes the latter in themselves and transferring the former to trustees in whom voting rights of all depositors in the trust are pooled."[5] You believe that this definition describes the essence of the Trust, in which Beneficiaries retain their economic ownership interest in the Trust Shares, but transfer voting rights to the Trustee. We agree that a voting trust for purposes of Section 3(c)(12) may include a single-purpose trust that is formed to allow the stockholders of a company to retain all of the economic benefits of stock ownership, while transferring their voting rights in the company to the trustee of the trust.[6]

The assets of a voting trust relying on the exception provided by Section 3(c)(12) must consist exclusively of the securities of a single issuer. You state that, in addition to the Trust Shares, the Trust will temporarily have cash to the extent that there are cash dividends paid on the Trust Shares, but that these cash dividends will be distributed promptly to the Beneficiaries. You also state that the cash dividends will not be invested pending their distribution to the Beneficiaries. We believe that the Trust is not precluded from relying on Section 3(c)(12) even though the Trust temporarily will hold cash in addition to the Trust Shares because any cash held by the Trust will relate solely to any dividends paid on the Trust Shares, will be distributed promptly and will not be invested pending its distribution to the Beneficiaries.

We agree that the Trust is excepted by Section 3(c)(12) of the 1940 Act from the definition of investment company, and is not required to register with the Commission as an investment company. Because our position is based on the facts and representations in your

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[4] You state that Delaware law does not specifically define the term voting trust. You state further that MetLife's special Delaware counsel has advised you that the Trust is valid under Delaware law, even though the Trust does not meet all of the requirements of Section 218 of Delaware General Corporation Law, which validates the use of certain forms of voting trusts. You state that Section 218 expressly provides that it does not invalidate a voting or other arrangement which is not otherwise illegal, and that, before the enactment of Section 218, Delaware case law generally recognized the validity of voting trusts.

[5] Black's Law Dictionary 1577 (6th ed. 1990).

[6] You believe that the status of the Trust as a voting trust is not affected by the fact that the Trustee has the right to vote the Trust Shares, but has no discretion over how it will vote the shares. We agree because: (1) the purpose of the Trust is to serve as a voting trust; and (2) the Trust Agreement grants the Holding Company's board of directors and the Beneficiaries the power to direct the Trustee how to vote the Trust Shares, and the Eligible Policyholders will approve the Trust Agreement in connection with their approval of the Plan.

letter, you should note that any different facts or representations may require a different conclusion.

Whether the Trust's Ownership of Trust Shares will Result in a Change in Control of MetLife

Section 15(a)(4) of the 1940 Act makes it unlawful for any person to serve or act as investment adviser of a registered investment company, except pursuant to a written contract that has been approved by a majority of the outstanding voting securities of the investment company and that provides, in substance, for its automatic termination in the event of its assignment. If the Reorganization results in an assignment of the investment advisory contracts between the MetLife advisers and the registered investment companies for which the MetLife advisers serve as investment advisers (the "Advisory Contracts"), the contracts would terminate and the MetLife advisers could not lawfully serve as investment advisers to the investment companies, unless and until a majority of the outstanding voting securities of those companies approve new advisory contracts with the MetLife advisers.

Section 2(a)(4) of the 1940 Act defines "assignment" to include any direct or indirect transfer of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor. Although the 1940 Act does not define "controlling block," Section 2(a)(9) of the 1940 Act defines "control" as the power to exercise a controlling influence over the management or policies of a company. Section 2(a)(9) also provides a rebuttable presumption of control when any person owns beneficially, either directly or through one or more controlled companies, more than 25% of the voting securities of a company. You state that as a result of the Reorganization, the Trust may initially own, on behalf of the Beneficiaries, more than 25% of the outstanding shares of the Common Stock. Due to the unique nature and purpose of the Trust and the provisions of the Trust Agreement concerning the voting of the Trust Shares, you request our concurrence that no assignment will occur by virtue of the Trust owning more than 25% of the outstanding shares of the Common Stock.

We previously stated that we will no longer respond to letters relating to the effect of proposed corporate transactions on existing investment advisory contracts of investment companies registered under the 1940 Act unless they present novel or unusual issues.[7] We believe that your letter presents a novel or unusual issue. We have not previously addressed whether the establishment of a voting trust that owns, but does not have voting discretion with respect to, more than 25% of the voting securities of a registered investment adviser would

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[7] See American Century Companies, Inc./J.P. Morgan & Co. Incorporated (pub. avail. Dec. 23, 1997). Accordingly, we take no position regarding whether other aspects of the Reorganization, including the proposed Initial Public Offering and the Other Capital Raising Transactions, may result in an assignment of the Advisory Contracts. In addition, you have not asked, and we take no position regarding, whether the eventual dissolution of the Trust would result in an assignment of the Advisory Contracts.

result in an assignment of an advisory contract between the adviser and a registered investment company.[8]

You argue that the Trust's ownership of the Common Stock will not result in an assignment of the Advisory Contracts. You argue that the Trust will have no power to exercise a controlling influence over the management or policies of the Holding Company or the MetLife advisers within the meaning of the term "control" under Section 2(a)(9) of the 1940 Act. Although the Trustee will have the right to vote, assent or consent the Common Stock, you assert that the Trustee will have no discretion in doing so. You state that the Trustee will vote in accordance with the recommendation given by the board of directors of the Holding Company to its stockholders, or, if no such recommendation is given, as directed by the board. You state that, for a Beneficiary Consent Matter, the Trustee will solicit instructions from all of the Beneficiaries and will vote, assent, or consent all of the Trust Shares in favor of or in opposition to such matter or abstain from voting on such matter in proportion to the instructions received from the Beneficiaries that give instructions.

You argue that the presumption of control in Section 2(a)(9) is not triggered by the Trust's ownership of more than 25% of the voting securities of the Holding Company, because you believe that the Trust does not beneficially own the shares. You note in this regard that Rule 13d-3 under the Exchange Act provides that beneficial ownership is determined by reference to investment power and voting power.[9] You represent that the Trustee, on behalf of the Trust, has neither investment power nor discretionary voting power with respect to the Trust Shares.

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[8] You note that in Babson Organization, Inc. (pub. avail. Apr. 26, 1973) ("Babson"), the staff disagreed with counsel's legal opinion that an assignment would not occur upon the dissolution of a voting trust that held securities of a registered investment adviser. The staff issued Babson prior to the Commission's adoption, in 1980, of Rule 2a-6 under the 1940 Act (and the corresponding provision under the Advisers Act, Rule 202(a)(1)-1). Rule 2a-6 provides that a transaction which does not result in a change of actual control or management of an investment adviser is not an assignment for purposes of Section 15(a)(4) of the 1940 Act. We believe that an adviser may rely on Rule 2a-6 to make a determination of whether an assignment will occur as a result of any transaction, including a transaction involving a voting trust. See Zurich Insurance Company (pub. avail. Aug. 31, 1998) ("Zurich").

[9] Rule 13d-3 under the Exchange Act provides generally that, for purposes of Section 13(d) and 13(g) of the Exchange Act, the beneficial owner of a security includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares: (1) voting power, which includes the power to vote or direct the voting of, such security; and/or (2) investment power, which includes the power to dispose, or direct the disposition of, such security.

We agree that the Trust's ownership of more than 25% of the Common Stock will not result in an assignment of the Advisory Contacts.[10] Because our position is based on the facts and representations in your letter, you should note that any different facts or representations may require a different conclusion.

General

The request for confidential treatment pursuant to Rule 81(b) of the Commission's Regulation Concerning Information and Requests [17 C.F.R. §200.81(b)], submitted by separate letter dated November 16, 1999, has been granted until the earlier of (a) the date MetLife's Registration Statement on Form S-1 for the initial public offering in connection with the demutualization is filed publicly; (b) 45 days from the date of this response; or (c) the date that any information contained in your letter or this response is made publicly available by MetLife.

The above positions are based on representations made to the Divisions in your letter and your opinions of counsel, and any different facts or conditions might require the Divisions

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[10] You state that you believe that, in connection with the Trust's ownership of the Trust Shares, the ability of the board of directors of the Holding Company to instruct the Trustee how to vote the Trust Shares as to matters other than Beneficiary Consent Matters, also will not result in a change of control of the MetLife advisers or an assignment of the Advisory Contracts. You state that it is your opinion that the MetLife advisers may rely on Rule 2a-6 under the 1940 Act in connection with the Reorganization. As we stated in Zurich, however, the staff will not respond to inquiries as to whether a particular transaction falls within Rule 2a-6 under the 1940 Act because of the primarily factual nature of this inquiry.

to reach different conclusions. Further, this response expresses the positions of the Divisions of Corporation Finance and Market Regulation on enforcement action only and does not express any legal conclusions on the questions presented.

Sincerely,

For the Division of Corporation Finance

Amy M. Starr
Special Counsel

For the Division of Market Regulation

Office of Risk Management and Control

James A. Brigagliano
Assistant Director

Office of the Chief Counsel

Laura Pruitt
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Securities Act of 1933
Sections 3(a)(10) and 5
Rules 144 and 145
Securities Exchange Act of 1934
Sections 3(a)(10), 10(b), 12(g), 12(h), 13(d), 13(e), 14, 15(a) and 16; Regulations 14A-E, Rules 10b-13, 13e-4, 14a-7, 14a-13, 14b-1, 14b-2 and 14c-3
Investment Company Act of 1940
Sections 2(a)(9), 2(a)(36), 2(a)(41), 3(a), 3(c)(12) and 15(a)(4)
Rule 2a-6

November 16, 1999

Confidential Treatment Requested

Catherine T. Dixon, Esq.
Division of Corporation Finance
Catherine McGuire, Esq.
Division of Market Regulation
Larry Bergmann, Esq.
Division of Market Regulation
Douglas Scheidt, Esq.
Division of Investment Management
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Metropolitan Life Insurance Company

Dear Ms. Dixon, Ms. McGuire, Mr. Bergmann and Mr. Scheidt:

We are special counsel to Metropolitan Life Insurance Company, a New York-domiciled mutual life insurance company ("MetLife"), in connection with MetLife's proposed conversion from a mutual life insurance company to a stock life insurance

company. This process, described in detail below, is referred to herein as the "Reorganization."

As a result of the Reorganization, MetLife will become a stock life insurance company that is a subsidiary of a newly-formed holding company (the "Holding Company"). The Reorganization will occur through a transaction in which certain holders of insurance policies and contracts issued by MetLife will receive consideration in the form of shares of common stock of MetLife (which will then be exchanged for an equal number of shares of common stock of the Holding Company to be held through the trust described below), cash or an adjustment to their policy values, known as policy credits. Under New York Insurance Law Section 7312 (the "New York Statute"), MetLife's Plan of Reorganization, dated September 28, 1999 (as such may be amended from time to time, the "Plan"), must be approved in advance of the effective date of the Plan (the "Effective Date") by the Superintendent (the "Superintendent") of the New York Insurance Department (the "Department") after finding, among other things, that the Plan is fair and equitable to policyholders. Under the New York Statute, the Superintendent must hold a public hearing to consider, among other things, the fairness of the terms and conditions of the Plan, the reasons and purposes for MetLife to demutualize and whether the Reorganization is in the interest of MetLife and its policyholders and not detrimental to the public. The Plan must also be approved by a vote of MetLife's policyholders whose policies were in force on September 28, 1999, the date MetLife's Board of Directors adopted the Plan ("Eligible Policyholders").

On the Effective Date MetLife, by operation of the New York Statute, will become a stock life insurance company. The membership interests of MetLife's policyholders (collectively, the "Policyholders' Membership Interests") will be extinguished and in exchange therefor Eligible Policyholders will be entitled to receive consideration in the form of shares of common stock of MetLife ("MetLife Common Stock"), which will then be exchanged for an equal number of shares of common stock of the Holding Company ("Common Stock") to be held in the trust described below, cash or policy credits. The Plan provides that on the Effective Date,

(i) the shares of MetLife Common Stock allocated to Eligible Policyholders will be issued to the MetLife Policyholder Trust (the "Trust") established for the exclusive benefit of the policyholders;

(ii) policyholders allocated stock under the Plan ("Trust Eligible Policyholders") will be allocated beneficial interests in the Trust ("Interests") equal to the number of shares of stock allocated to them; and

(iii) by operation of the Plan, the shares of MetLife Common Stock will be immediately exchanged for an equal number of shares of Common Stock to be held through the Trust.

Under the Plan the Holding Company must complete a registered, underwritten public offering of the Common Stock on the Effective Date (the "Initial Public Offering"), and may also conduct one or more other capital raising transactions ("Other Capital Raising Transactions"). These may include one or more of a public offering of mandatorily convertible preferred securities, a public offering of convertible preferred securities and up to $500 million aggregate principal amount of publicly-issued debt securities, commercial paper issuances or bank borrowings (or a combination of such offerings, issuances and bank borrowings). The Effective Date is currently expected to occur in the first quarter of 2000, depending on market conditions and other relevant factors. In connection with the Initial Public Offering, the Holding Company intends to apply for a listing of the Common Stock on the New York Stock Exchange (the "NYSE"), and in connection therewith will register the Common Stock under Section 12 of the Securities Exchange Act of 1934, as amended (the "Exchange Act").

The Trust will be established in accordance with the terms and conditions of the Policyholder Trust Agreement (the "Trust Agreement") to hold the shares of Common Stock allocated to the Trust Eligible Policyholders, each of which will become a beneficiary of the Trust (collectively, the "Beneficiaries"). The consideration payable to Eligible Policyholders in the form of cash and policy credits will be distributed as soon as reasonably practicable after the Effective Date, but in any event not later than 60 days after that date.

MetLife adopted the trust structure to address certain unique challenges arising out of its Reorganization while providing policyholders receiving stock consideration with benefits of stock ownership. The size of MetLife's Reorganization is unprecedented in the United States. MetLife estimates that it has over 11 million policyholders, many of which will be allocated only a small number of shares of Common Stock under the Plan. If all of them were individually to hold shares of stock in the new Holding Company, the Holding Company would have several times the number of stockholders as that of the largest publicly held U.S. corporation. Many of these policyholders would receive only a small amount of stock and many hold policies that, while technically in force and eligible to receive consideration under the Plan, have been issued decades earlier. MetLife expects that many of these policyholders would be inactive stockholders, making it difficult, if not impossible, to achieve a quorum for stockholder votes after the Reorganization. Such a large number of stockholders would also result in significant costs for the Holding

Company (which would be borne, indirectly, by the Holding Company's stockholders, including policyholders), including the costs of mailing proxy materials and annual reports. In addition, since many of these policyholders would be receiving small amounts of stock, it would be inconvenient for them to establish brokerage accounts in order to sell their stock, and the commissions charged to sell their shares would be relatively more burdensome on these policyholders.

The Trust is designed to give Trust Eligible Policyholders benefits of stock ownership -- namely, the ability to participate in any appreciation of their allocated shares of Common Stock and to sell those shares or purchase additional shares through the purchase and sale program described below -- while helping the Holding Company efficiently manage the administration of Beneficiary accounts and the costs associated with such a large number of stockholders. Among other things, the Trust Agreement provides that the right to vote the shares of Common Stock held by the Trust (the "Trust Shares") will be exercised by the trustee of the Trust (the "Trustee"), generally acting upon the recommendation or direction of the Holding Company's board of directors. The Beneficiaries, however, will have the right to instruct the Trustee on how to vote the Trust Shares on matters involving certain specified actions fundamental to the interests of stockholders. These matters are (each, a "Beneficiary Consent Matter"):

(i) a contested election of directors or, subject to certain conditions, the removal of a director,

(ii) a merger or consolidation, a sale, lease or exchange of all or substantially all of the assets or a recapitalization or dissolution of the Holding Company, if it requires a vote of stockholders under applicable Delaware law,

(iii) any transaction that would result in an exchange or conversion of the Trust Shares for cash, securities or other property,

(iv) issuances of Common Stock prior to the first anniversary of the Effective Date at a price materially below the prevailing market price, if a vote is required to approve the issuance under Delaware law, other than issuances in an underwritten public offering or pursuant to an employee benefit plan,

(v) before the first anniversary of the Effective Date, any matter that requires approval by a vote of more than a majority of the outstanding stock of the Holding Company entitled to vote thereon under Delaware law or the certificate of

incorporation or the by-laws of the Holding Company[1], and any amendment to the certificate of incorporation or by-laws of the Holding Company that is submitted to a vote of stockholders for approval and

(vi) proposals submitted to stockholders requiring the Board of Directors to amend the Holding Company's Stockholder Rights Plan, or redeem rights under that plan, other than a proposal with respect to which the Holding Company has received advice of nationally-recognized legal counsel to the effect that the proposal is not a proper subject for stockholder action under Delaware law.

Proxy solicitation materials, annual reports and information statements received by the Trustee in connection with any matter not involving a Beneficiary Consent Matter will be made available to Beneficiaries for their information on a website maintained by the Holding Company or by mail upon request (requested either by mail or through a toll-free number maintained by the Holding Company) and at the Holding Company's expense, but voting instructions to the Trustee will not be solicited and, if instructions are received, they will not be binding on the Trustee. Beneficiaries will also be informed annually (which is expected to be in connection with the annual dividend check mailings to Beneficiaries) of the availability of the Holding Company's annual report, proxy statement and any information statement (collectively, "Annual Stockholder Reports") on the Holding Company's website or by mail upon request at the Holding Company's expense; of the availability of the Holding Company's and the Trust's filings under the Exchange Act on the Holding Company's and the SEC's websites or by mail upon request at the Holding Company's expense; of their rights to participate in the purchase and sale program described below (the "Purchase and Sale Program") and where to obtain information about the Program; of the expected date of the Holding Company's annual meeting and the deadline for submission of stockholder proposals, and when the Annual Stockholder Reports are expected to become available; and of the aggregate amount of dividends and interest paid to all Beneficiaries in that dividend distribution. Beneficiaries that telephone the toll-free number in order to participate in the Purchase and Sale Program or to obtain further information will be informed that the Annual Stockholder Reports are available on

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1. Under the Holding Company's certificate of incorporation and by-laws, the only matters requiring super-majority approval of stockholders is the amendment of certain specified sections of the certificate of incorporation and amendment of the by-laws, which each require approval of holders of at least three-quarters of the outstanding stock of the Holding Company entitled to vote generally in the election of directors. There are no provisions in Delaware law requiring a super-majority vote.

the website or by mail upon request. Annual Stockholder Reports will generally not otherwise be disseminated to the Beneficiaries. As a consequence, the Holding Company will avoid the costs of mailing Annual Stockholder Reports to the Beneficiaries except in connection with a solicitation on a Beneficiary Consent Matter. In addition to the administrative cost savings that the Holding Company expects to realize, these voting provisions will also help ensure that a quorum is obtained on matters put to a stockholder vote.

The Plan and the Trust will give policyholders the opportunity to dispose of their allocated shares or hold their ownership interests in the Holding Company directly, instead of indirectly through the Trust, if they prefer. Under the Plan, any Eligible Policyholder may elect, at the time of the policyholder vote on the Reorganization, to receive cash in lieu of the Eligible Policyholder's allocated shares at the Effective Date, subject to limits on the amounts that are available to provide cash to group Eligible Policyholders allocated more than 25,000 shares. Beneficiaries will also be able to withdraw all, but not less than all, their allocated shares of Common Stock at any time beginning one year after the Effective Date.

In addition, the Plan provides that Beneficiaries may instruct the Trustee, subject to limited restrictions described below, to withdraw their allocated shares from the Trust for sale through the Purchase and Sale Program established by the Holding Company. Sales may be made at any time after the later of (i) termination of any stabilization arrangements and trading restrictions in connection with the Initial Public Offering and (ii) the closing of all underwriters' over-allotment options which have been exercised and the expiration of all unexercised options. Beneficiaries allocated less than 1,000 shares of Common Stock will also be entitled to purchase additional shares in the Purchase and Sale Program to bring their Interests up to 1,000 shares, subject to a minimum of $250 per purchase (or such lesser amount that would cause it to hold, at the closing price on the trading day immediately prior to the mailing of purchase funds, the 1,000 maximum number of Interests). Purchases may be made at any time beginning on the first trading day following the 90th day after the Effective Date (which will be more than 90 days after the Holding Company becomes subject to the reporting obligations under the Exchange Act).

The Purchase and Sale Program will be administered by the Program Agent. The initial Program Agent is expected to be ChaseMellon Shareholder Services, L.L.C. ("CMSS"), which will also be the initial transfer agent for the Holding Company and the initial custodian of the Trust (the "Custodian"). All purchase instructions will be processed and supervised by ChaseMellon Financial Services L.L.C. ("CMFS"), using its

employees. Many of these employees will also be employees of CMSS. CMFS is a registered broker-dealer.

Purchase and Sale Program transactions (other than purchases and sales in a batch that are offset against each other) will generally be effected in the open market in ordinary brokerage transactions. The Plan and the Trust Agreement also permit the Holding Company, in its discretion, to purchase shares withdrawn from the Trust for sale through the Purchase and Sale Program. These purchases will not be permitted so long as the Holding Company is otherwise engaged in a distribution as defined in Regulation M of the Exchange Act.

MetLife believes that, as a result of the liquidity provided by the Purchase and Sale Program, the ability to elect cash consideration under the Plan and the right to withdraw, after one year, shares from the Trust, the Trust will, after a short waiting period, be essentially a voluntary mechanism that addresses the extraordinary issues faced by MetLife while providing significant benefits to those policyholders wishing to hold their allocated shares in the Trust. As part of the Plan, the purpose, terms and effects of the Trust will be fully disclosed to policyholders and subject to extensive regulatory review by the Superintendent in connection with his consideration of whether to approve or disapprove the Plan. In particular, both the Superintendent and a minimum of two-thirds of the Eligible Policyholders that vote will need to approve the Plan, and thus the Trust, before it goes into effect. The New York Statute expressly permits the use of a trust structure in connection with a demutualization.

We are writing to request confirmation that, based upon the facts and representations below, the staff will not recommend that the Securities and Exchange Commission (the "Commission") take any enforcement action against MetLife, the Holding Company, the Program Agent, CMFS, the Trust, the Trustee, the Custodian, any of their respective affiliates, officers, directors or employees or any Associates (as defined below):

(i) if in the transaction that will result in MetLife's Reorganization, (a) MetLife issues shares of MetLife Common Stock to the Trust, (b) the Trust exchanges such shares of MetLife Common Stock (including the preferred stock purchase rights associated with the Common Stock that will be distributed pursuant to the Holding Company's Stockholder Rights Plan) for an equal number of shares of Common Stock, and (c) the Trust allocates Interests to Trust Eligible Policyholders, in each case without registering such shares and Interests under the Securities Act of

1933, as amended (the "Securities Act"), in reliance on the exemption from registration provided by Section 3(a)(10) thereunder;

(ii) if the issuance of shares of MetLife Common Stock and Common Stock and the allocation of the Interests to and on behalf of the Trust Eligible Policyholders is not integrated with the Initial Public Offering;

(iii) if the Interests are registered under the Exchange Act and the Trust files reports under that Act as described herein;

(iv) if (a) no proxy soliciting materials, annual and quarterly reports or information statements are disseminated to Beneficiaries in connection with a vote or consent of stockholders of the Holding Company, except, as described in this letter, in connection with a Beneficiary Consent Matter or upon request of Beneficiaries, (b) the procedures described in this letter for the distribution of materials in connection with a Beneficiary Consent Matter (including the procedures for requiring mailing and other expenses be reimbursed by a stockholder in certain circumstances) are followed and (c) none of the Holding Company, the Trust, the Trustee or Custodian, any of their respective affiliates, or their respective officers, directors or employees inquires as to the beneficial ownership of the Trust Shares in connection with such vote or consent, or provides information in connection with those inquiries, except in connection with a Beneficiary Consent Matter;

(v) if the Board of Directors of the Holding Company provide the information required by Schedule 13D pursuant to Section 13(d) of the Exchange Act and by Section 16 of the Exchange Act in the manner described herein;

(vi) under Section 5 of the Securities Act, Sections 13(e), 14(d) or 14(e) of the Exchange Act and Rules 10b-13 and 13e-4 under the Exchange Act, if the Purchase and Sale Program is implemented as described herein;

(vii) if Trust Shares may be withdrawn from the Trust without compliance with the registration provisions of the Securities Act;

(viii) if Beneficiaries that elect to withdraw their allocated shares may sell such shares in accordance with the resale guidelines described in Section G herein;

(ix) if the Trust is not registered under the Investment Company Act of 1940, as amended (the "Investment Company Act"); and

(x) if MetLife's insurance agency sales force, brokers, dealers and other distributors of its insurance products, its call center personnel and officers, directors and employees of MetLife and its affiliates (collectively, the "Associates"), including persons not licensed to engage in equity securities transactions, recommend approval of the Plan in discussions with Eligible Policyholders under the circumstances described in this letter without MetLife, the Holding Company or the Associates registering as broker-dealers with the Commission pursuant to Section 15(a) of the Exchange Act.[2]

In addition, we seek the staff's concurrence with our conclusion that the Trust's ownership of more than 25% of the Common Stock will not result in an assignment of any investment company advisory contracts of MetLife or its affiliated investment advisers.

We understand that the staff's positions rendered in response to this letter will be based on the representations made to you and our opinions set forth in this letter, and that any different facts or conditions (including, without limitation, any amendment to the Plan, the Trust, or the procedures for the Purchase and Sale Program described herein) might require different conclusions.

METLIFE

MetLife is a mutual life insurance company organized under the laws of the State of New York and is licensed to conduct insurance business in all U.S. states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands and Canada. MetLife estimates that it currently has more than 11 million Eligible Policyholders, some of whom hold more than one policy. As of December 31, 1998, MetLife had assets of over $215.3 billion and was the largest life insurance company in the U.S. in terms of life insurance in force.

As a mutual life insurance company, MetLife has no authorized, issued or outstanding capital stock. The policyholders of MetLife, through the purchase of

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2. MetLife and certain of its affiliates are registered with the Commission as broker-dealers under Section 15(b) of the Exchange Act in order to distribute variable insurance products, mutual fund securities and other types of securities. As required under the Exchange Act, MetLife and these affiliates are members of the National Association of Securities Dealers, Inc. (the "NASD"). Many members of MetLife's insurance agency sales force and other distributors of its products are licensed by the NASD as registered representatives of MetLife or these affiliates.

insurance policies and annuity contracts, acquire insurance coverage or annuities and, under MetLife's charter or bylaws or otherwise by law, certain membership interests in MetLife, including any right to vote and any rights that may exist with respect to the surplus of MetLife, including any right to a distribution of MetLife's surplus (if any) in the event of the liquidation of MetLife.

THE PROPOSED REORGANIZATION

MetLife proposes to convert from a mutual life insurance company to a stock life insurance company in accordance with the New York Statute. The New York Statute provides for the conversion, by operation of law, of a New York mutual life insurance company to a stock form of ownership upon the occurrence of certain events, including (i) adoption of a formal plan of reorganization by the mutual insurance company's board of directors, (ii) approval of the plan of reorganization by the Superintendent, (iii) approval of the plan of reorganization by a vote of the mutual insurance company's eligible policyholders and (iv) the satisfaction of all conditions in the plan of reorganization. For your convenience, a copy of the New York Statute is attached hereto as Exhibit A.

The Plan. The Plan will be subject to extensive regulatory review by the Department and its outside legal, financial and actuarial advisors. MetLife's Board of Directors adopted the Plan on September 28, 1999, and has subsequently amended and restated the Plan. The New York Statute requires that the Plan be submitted to the Superintendent and that the Superintendent hold a public hearing (the "Hearing") upon the fairness of the terms and conditions of the Plan, the reasons and purposes for MetLife to demutualize, and whether the Reorganization is in the interest of MetLife and its policyholders and not detrimental to the public. MetLife will mail a notice of the Hearing approved by the Superintendent not less than 30 days prior to the Hearing to all Eligible Policyholders (unless MetLife, after a reasonable effort to locate an Eligible Policyholder, has reasonable belief that the most recent mailing address of the Eligible Policyholder on the records of MetLife is no longer valid). MetLife will also give notice of the date, time, place and purpose of the Hearing by publication in three newspapers of general circulation not less than 15 days nor more than 60 days before the Hearing and will post notice of the Hearing on its website.

The Superintendent is required by the New York Statute to issue an order approving or disapproving the Plan within 60 days following the closing of the Hearing record. Under the New York Statute, the Superintendent shall approve the Plan if he or she finds that the proposed Reorganization, in whole and in part, does not violate the New York Statute, is fair and equitable to MetLife's policyholders and is not detrimental to the

public and that, after giving effect to the Reorganization, MetLife will have an amount of capital and surplus the Superintendent deems to be reasonably necessary for its future solvency. The Superintendent's approval will be final and binding, subject only to judicial review in accordance with New York law.

Under the New York Statute, the Eligible Policyholders must also approve the Plan (the "Policyholders' Vote"). The Plan requires that MetLife mail a notice of the date of the Policyholders' Vote to each Eligible Policyholder not later than 30 days before the date of the Policyholders' Vote (unless MetLife, after a reasonable effort to locate an Eligible Policyholder, has reasonable belief that the most recent mailing address of the Eligible Policyholder on the records of MetLife is no longer valid). The notice of the Policyholders' Vote must be preceded or accompanied by a copy of the Plan (or a summary thereof approved by the Superintendent) and any other explanatory information as the Superintendent may approve or require, and may be combined with the notice of the Hearing described above. MetLife anticipates mailing a Policyholder Information Booklet to Eligible Policyholders prior to the Hearing and the Policyholders' Vote. These materials were submitted to the Department and its staff for their review and comment, prior to mailing. MetLife also anticipates posting the Policyholder Information Booklet on its website. The disclosure regarding MetLife and the proposed Reorganization contained in the Policyholder Information Booklet will include information similar to that which will be included in the Form S-1 registration statement to be filed with the Commission in connection with the Initial Public Offering. Under the New York Statute, the Plan will be approved by the Eligible Policyholders if at least two-thirds of the votes cast in the Policyholders' Vote in person or by proxy are cast in favor of the Plan.

The Effective Date of the Plan is the date on which the closings of the Initial Public Offering, as well as any Other Capital Raising Transactions, occurs. The Effective Date may not be later than the first anniversary of the date the Plan is approved by the Superintendent, although this one-year period may be extended upon approval of the Superintendent for one or more additional periods if requested by MetLife's Board of Directors. On the Effective Date, (i) the Policyholders' Membership Interests will be extinguished and each Eligible Policyholder will be entitled to receive consideration in the form of shares of MetLife Common Stock (which will then be exchanged for an equal number of shares of Common Stock to be held through the Trust), cash or policy credits and (ii) MetLife will become a stock life insurance company and a wholly-owned subsidiary of the Holding Company. The consideration payable to Eligible Policyholders in the form of cash and policy credits will be distributed as soon as reasonably practicable after the Effective Date, but in any event not later than 60 days after that date.

Eligible Policyholders that will receive consideration in the form of cash include policyholders whose mailing address is outside the U.S., owners of industrial life insurance policies in reduced paid-up status that MetLife has reasonable belief (after a reasonable effort to locate the policyholder) that the address shown on MetLife's records is an address at which mail is undeliverable, other policyholders for whom MetLife determines in good faith, subject to the consent of the Superintendent, that it is not reasonably feasible or appropriate to provide consideration in the form that such policyholder would otherwise have been eligible to receive and group Eligible Policyholders that are owners of individual retirement annuities or tax sheltered annuities, and that elect to receive cash.[3] Cash will also be distributed to Eligible Policyholders that elect, at the time of the Policyholders' Vote, to receive cash for their allocated shares. If the Initial Public Offering and any Other Capital Raising Transactions are not of a sufficient size to fund the payment of cash to all Eligible Policyholders that elect to receive cash, however, it is possible that the Plan will become effective but that cash will not be paid to all Eligible Policyholders electing to receive cash. If this were to happen, cash will be paid as follows:

(i) each individual Eligible Policyholder that elects to receive cash will receive compensation in the form of cash;

(ii) each group Eligible Policyholder that elects to receive cash and is allocated not more than 25,000 shares will receive compensation in the form of cash; and

(iii) each group Eligible Policyholder that elects to receive cash and is allocated more than 25,000 shares will receive compensation in the form of:

(a) cash, with respect to the first 25,000 shares allocated to the Eligible Policyholder, and

(b) either shares of Common Stock (to be held in the Trust) or a combination of cash and shares of Common Stock (to be held in the Trust), with respect to the remaining shares allocated to the Eligible Policyholder. Such cash will be allocated to each such Eligible Policyholder on a pro rata basis based on

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3. In addition to the cash payments under the Plan, MetLife's Canadian branch will make cash payments to certain persons that were policyholders of the Canadian branch of MetLife in accordance with undertakings given to Canadian regulators when most of MetLife's Canadian business was sold to a Canadian mutual insurer.

the proportion that the total number of shares in excess of 25,000 shares allocated to such Eligible Policyholder bears to the total number of shares in excess of 25,000 shares allocated to all such Eligible Policyholders allocated more than 25,000 shares that have elected to receive cash.

Until the second year after the Effective Date, if there is an underwritten public offering of Common Stock, the Holding Company will offer to each Trust Beneficiary holding at the time more than 25,000 Interests and whose cash election was not fully satisfied the opportunity to include a number of Trust Shares equal to all of the Trust Beneficiary's Trust Interests in the offering, subject to certain limitations set forth in the Trust Agreement.

The Plan provides that Eligible Policyholders that will receive consideration in the form of policy credits include policyholders holding policies that are individual retirement annuities, tax sheltered annuities, certain tax-favored individual annuity contracts and individual life insurance policies and life and health insurance funding accounts.

Regardless of whether an Eligible Policyholder is receiving Interests, cash or policy credits, the consideration an Eligible Policyholder receives under the Plan will be based on the number of shares of MetLife Common Stock allocated to the Eligible Policyholder pursuant to the terms of the Plan (collectively, the "Allocable Common Shares"). The formula for allocating the Allocable Common Shares among the Eligible Policyholders consists of two components. A fixed number of shares of MetLife Common Stock will be allocated to each Eligible Policyholder. Additional shares will also be allocated to an Eligible Policyholder holding a "participating" policy, that is, a policy that is generally eligible for dividend payments or is considered to be a "participating policy" for purposes of the Plan. The number of additional shares will vary for each such Eligible Policyholder based upon an actuarial formula, specified in the Plan, that takes into account, among other things, the past and future contributions to MetLife's surplus from participating policies held by the Eligible Policyholder, as determined by historical experience and expected future performance.

The Plan provides that the value of the consideration to be paid to an Eligible Policyholder in the form of cash or policy credits will be equal to the number of Allocable Common Shares allocated to the Eligible Policyholder multiplied by the price per share at which Common Stock is offered to the public in the Initial Public Offering (the "IPO Price"). The IPO Price, which will be established through arm's-length negotiations with representatives of the underwriters, is an objective measure of the value of the stock

allocated to the Eligible Policyholders, and will be based on, among other things, factors related to the Holding Company and the life insurance industry and prevailing market conditions in general. The Plan provides that MetLife and the Holding Company will use their best efforts to ensure that the managing underwriters for the Initial Public Offering conduct the Initial Public Offering process in a manner that is generally consistent with customary practices for initial public offerings, and that MetLife and the Holding Company will allow the Superintendent and its financial advisors reasonable access to permit them to observe the Initial Public Offering process. Special pricing committees of the Boards of Directors of MetLife and the Holding Company will determine the price of Common Stock in the Initial Public Offering, which will also be subject to ratification by those boards. A majority of these Board committees will consist of directors who are not officers or employees of MetLife or the Holding Company, and no employees, officers or directors of or legal counsel to any of the underwriters for the Initial Public Offering may serve on these committees. The Plan also provides that the terms and provisions of the Initial Public Offering and underwriting agreement will be subject to approval of the Superintendent, and neither MetLife nor the Holding Company will enter into an underwriting agreement for the Initial Public Offering if it is notified that the Superintendent has not received confirmation from its financial advisors to the effect that MetLife, the Holding Company and the underwriters for the Initial Public Offering have complied in all material respects with the requirements of Plan. MetLife shall provide the Superintendent with a letter, dated the date of the signing of the underwriting agreement, representing that as of that date it has complied with those requirements as to the conduct of the Initial Public Offering and that it will continue to do so. On the Effective Date, MetLife will provide the Superintendent with a letter confirming these representations as of that date.

Under the New York Statute the Superintendent must find that the consideration received by Eligible Policyholders is fair and equitable to policyholders, a determination that may be based, among other things, on (a) the integrity of the security markets in pricing stock, (b) opinions rendered by MetLife's financial advisors and consulting actuaries to its Board of Directors as to certain financial and actuarial matters, as well as advice from the financial, legal and actuarial advisors engaged by the Department, and (c) the provisions relating to the Initial Public Offering process described above.

In addition to the Initial Public Offering, the Plan also permits the Holding Company to raise capital through one or more Other Capital Raising Transactions, which would be completed on the Effective Date. These may include one or more of a public offering of mandatorily convertible preferred securities, a public offering of convertible preferred securities and up to $500 million aggregate principal amount of publicly-issued

debt securities, commercial paper issuances or bank borrowings (or a combination of such offerings, issuances and bank borrowings). Under the Plan, the Holding Company cannot proceed with any offering related to any Other Capital Raising Transactions without the approval of the Superintendent, who must also approve the final terms of any Other Capital Raising Transactions. The total proceeds raised in all Other Capital Raising Transactions will not exceed one-third of the combined total proceeds raised in the Initial Public Offering and all Other Capital Raising Transactions.

The Plan provides that the proceeds from the Initial Public Offering, together with the proceeds from any Other Capital Raising Transactions, net of underwriting commissions and related expenses, must be used as follows:

(i) the Holding Company will contribute to MetLife an amount equal to the sum of (x) the amount required to fund the paying of cash and crediting of policy credits pursuant to the Plan and (y) an amount equal to the amount required to reimburse MetLife for the cash payments to be made by MetLife's Canadian branch to the holders of policies included in the Canadian business sold to a Canadian mutual insurer; and

(ii) the Holding Company will contribute to MetLife an amount equal to the amount of fees and expenses incurred by MetLife in connection with the Reorganization, to the extent required by the undertaking delivered by the Holding Company to the Superintendent in accordance with the New York Statute.

If any additional proceeds are raised in the Initial Public Offering and any Other Capital Raising Transactions, those proceeds, net of underwriting commissions and related expenses, shall be used as follows:

(A) the Holding Company will retain an amount not exceeding $240 million, or such greater amount as the Superintendent may approve, for working capital, payment of dividends on the common stock of the Holding Company and other general corporate purposes;

(B) the Holding Company will retain an amount not exceeding $100 million, or such greater amount as the Superintendent may approve, to pay the fees and reimburse the expenses of the Trustee and Custodian; and

(C) to the extent that such net proceeds exceed the aggregate amounts identified in clauses (A) and (B), and to the extent of any amounts retained by the Holding

Company pursuant to clause (A) and (B) that are not used for the purpose stated in each such clause, the Holding Company will contribute to MetLife any remaining amounts to be used for the general corporate purposes of MetLife or to repay debt incurred in connection with MetLife's acquisition of GenAmerica Corporation.

The plan requires that the Initial Public offering, together with any Other Capital Raising Transactions completed on the plan effective date, must raise proceeds, net of underwriting commissions and related expenses, in an amount at least equal to the amount paid by MetLife to fund mandatory cash payments pursuant to the plan and policy credits to policyholders and to pay fees and expenses incurred by MetLife related to the demutualization, as well as to reimburse MetLife for amounts to be paid by its Canadian branch to certain former Canadian policyholders.

The Trust. The Plan requires MetLife to establish the Trust for the exclusive benefit of the Beneficiaries to hold the shares of stock allocated to them under the Plan. The New York Statute expressly permits the use of a trust structure in connection with a demutualization. In connection with their approval of the Plan, both the Superintendent and a minimum of two-thirds of the Eligible Policyholders that vote will have approved of the establishment of the Trust. Under the unique circumstances of this Reorganization, there are particularly compelling reasons for the establishment of the Trust. MetLife estimates that it has over 11 million policyholders, many of whom will be allocated a small number of shares under the Plan. If all of them were individually to hold shares of stock in the new Holding Company, the Holding Company would have several times the number of stockholders as that of the largest publicly held U.S. corporation. The Trust is designed to give policyholders benefits of stock ownership -- namely, the ability to participate in any appreciation of their allocated shares of Common Stock and the opportunity to sell those shares or to purchase additional shares on a commission-free basis through the Purchase and Sale Program -- while helping the Holding Company efficiently manage the administration of Beneficiary accounts and the costs associated with such a large number of stockholders. Among other things, the Trust Agreement provides that the right to vote the Trust Shares will be exercised by the Trustee, generally acting upon the recommendation and direction of the Board of Directors of the Holding Company; as a consequence, the Holding Company will avoid the costs of mailing Annual Stockholder Reports to the Beneficiaries, except in connection with a solicitation on a Beneficiary Consent Matter. These voting provisions will also help ensure that a quorum is obtained on matters put to a stockholder vote. In addition, the Trust is intended, through the Purchase and Sale Program, to permit Beneficiaries to sell their allocated shares or to purchase additional shares on a commission-free basis.

The terms of the Trust are set out in the Plan and the Trust Agreement. Under the Plan and the Trust Agreement, each Trust Eligible Policyholder will be allocated a number of Interests equal to the number of shares of MetLife Common Stock allocated to the Trust Eligible Policyholder in accordance with the Plan. The Trust Shares will be held in the name of the Trustee, on behalf of the Trust, which shall have legal title over the Trust Shares. As a result of the Reorganization, the Trust will initially own on behalf of the Beneficiaries more than 25% of the Common Stock of the Holding Company.

As a general rule, Beneficiaries will be prohibited from selling, transferring, assigning, pledging or otherwise disposing of their Interests; however, Interests may be transferred

(i) from the estate of a deceased Beneficiary to one or more beneficiaries taking by operation of law or pursuant to testamentary succession,

(ii) to the spouse or issue of a Beneficiary or to an entity, selected by a Beneficiary, provided that transfers to such entity are deductible for Federal income, gift and estate tax purposes under Sections 170, 2055 and 2522 of the Internal Revenue Code of 1986, as amended, or to a trust established for the exclusive benefit of one or more of the following: (x) Beneficiaries, (y) individuals described in this clause (ii), or (z) entities described in this clause (ii),

(iii) to a trust established to hold Interests on behalf of an employee benefit plan,

(iv) if the Beneficiary is not a natural person, by operation of law to the surviving entity upon the merger or consolidation of such Beneficiary into another entity, to the purchaser of substantially all the assets of such Beneficiary or to the appropriate persons upon the dissolution, termination or winding up of such Beneficiary,

(v) by operation of law as a consequence of the bankruptcy or insolvency of such Beneficiary or the granting of relief to such Beneficiary under the Federal bankruptcy laws, or

(vi) from a trust holding an insurance policy on behalf of the insured person under such policy, to such persons as shall be required pursuant to the terms of such

trust.[4] A transferee of Interests will become subject to the Trust Agreement. Interests will be held in the name of the Custodian, which shall keep a record of the Interests of the Beneficiaries on a book-entry system maintained by the Custodian. Interests may not be held by a Beneficiary through a nominee or in "street name." Wilmington Trust Company will be the initial Trustee and CMSS the initial Custodian. The Interests will not be represented by certificates or other evidence of ownership.[5]

The Trustee will prepare and deliver to the Custodian an annual report regarding the status of the Trust Shares and any dividends and distributions it has received on the Trust Shares, as well as any interest accrued thereon from investments made in accordance with the Trust Agreement. Based upon that report, the Custodian will promptly prepare and mail an annual report to each Beneficiary regarding the status of such Beneficiary's Interests and any dividends and distributions received by the Trustee with respect to such Interests, as well as any such accrued interest. Those reports (which are expected to be provided in connection with the annual dividend check mailings to Beneficiaries) will also inform the Beneficiaries of the availability of the Annual Stockholder Reports on the Holding Company's website or by mail upon request at the Holding Company's expense; of the availability of the Holding Company's and the Trust's filings under the Exchange Act on the Holding Company's and the SEC's websites or by mail upon request at the Holding Company's expense; of their rights to participate in the Purchase and Sale Program and

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4. In addition, if the Board of Directors of the Holding Company determines that there is, at any time, a material risk that the assets of the Trust may be characterized as "plan assets" under United States Department of Labor Reg. § 2510.3-101 (the "Plan Asset Regulations"), the Board may direct the Trustee to distribute to the Custodian, for distribution to one or more Beneficiaries, a number of Trust Shares (not to exceed the total number of such Beneficiaries' Interests) as the Board may determine to be necessary or appropriate to ensure that the assets of the Trust will not be so characterized as "plan assets".

5. The Trust is designed to be a voting trust under Delaware law. Delaware law does not specifically define the term voting trust. We have been advised by MetLife's special Delaware counsel that the Trust is valid under Delaware law, even though the Trust does not meet all of the requirements of Section 218 of the Delaware General Corporation Law, which validates the use of certain forms of voting trusts. Section 218 expressly provides that it does not invalidate a voting or other arrangement which is not otherwise illegal, and before the enactment of Section 218, case law recognized the validity of voting trusts. Ringling Bros.-Barnum & Bailey Combined Shows, Inc. v. Ringling, 29 Del. Ch. 610, 622, 53 A.2d 441, 447 (Del. 1947).

where to obtain information about the Program; of the expected date of the Holding Company's annual meeting and deadline for submission of stockholder proposals, and when the Annual Stockholder Reports are expected to become available; and of the aggregate amount of dividends and interest paid to all Beneficiaries in that dividend distribution. No other accounting is expected to be made by the Trust, except upon the termination and winding-up of the Trust.

Importantly, Beneficiaries that do not desire to hold Interests may choose (i) to receive cash instead at the Effective Date or, through the Purchase and Sale Program, after the completion of the Initial Public Offering, or (ii) to withdraw all, but not less than all, of their allocated shares of Common Stock at any time beginning one year after the Effective Date. As discussed above, the Plan provides that Eligible Policyholders may elect, at the time of the Policyholders' Vote, to receive cash for their allocated shares at the Effective Date at the IPO Price, subject to the limits on the amounts that are available to provide cash to group Eligible Policyholders allocated more than 25,000 shares.

In addition, the Plan provides that Beneficiaries may instruct the Program Agent to withdraw their allocated shares from the Trust for sale through the Purchase and Sale Program, beginning on the later of (i) the termination of any stabilization arrangements and trading restrictions in connection with the distribution of the offering and (ii) the closing of all underwriters' over-allotment options that have been exercised and the expiration of all unexercised options. Beneficiaries allocated less than 1,000 shares of Common Stock will also be entitled to purchase in the Purchase and Sale Program additional shares to bring their Interests up to 1,000 shares, subject to a minimum of $250 per purchase (or such lesser amount that would cause the Beneficiary to hold the 1,000 maximum number of Interests), beginning on the first trading day following the 90th day after the Effective Date. The number of Interests allocated to Beneficiaries will be adjusted for any shares of Common Stock purchased or sold in the Purchase and Sale Program such that the Interests held by a Beneficiary will always equal the number of Common Shares allocated to the Beneficiary. Beneficiaries will not be restricted from holding shares acquired outside of the Trust by virtue of their holding Interests in the Trust. Accordingly, Common Stock may be purchased and sold by Beneficiaries in the public market outside the Trust and any stock so purchased will not be subject to the Trust's provisions.

Beginning one year after the Effective Date, Beneficiaries may also withdraw all, but not less than all, of their allocated shares of Common Stock at any time by providing written notice to the Trustee. Prior to the date withdrawals may commence, the Trust will mail notice to Beneficiaries informing them of their withdrawal rights, together with a

copy of the prior year's annual report mailed to stockholders (or, if the withdrawal date is within one month of the expected mailing of the Holding Company's annual report, the Trust will delay mailing until such time as it may include the current year's annual report). Beneficiaries withdrawing their shares will receive them in book-entry form, to the extent permitted by law, unless the Beneficiary requests a certificate, in which case a certificate will be provided.

The Trust Agreement provides that the Trustee will have the exclusive and absolute right in respect of the Trust Shares to vote, assent or consent the Trust Shares at all times during the term of the Trust. However, the Trustee will have no discretion in voting the Trust Shares. On all matters brought for a vote before the stockholders of the Holding Company, with the exception of a Beneficiary Consent Matter, the Trustee will vote in accordance with the recommendation given by the Board of Directors of the Holding Company to its stockholders or, if no such recommendation is given, as directed by the Board.[6] On all Beneficiary Consent Matters, proxies which provide voting instructions will be voted as described herein. The Trustee will engage in "mirror voting" with respect to any stockholder vote that involves a Beneficiary Consent Matter -- that is, the Trustee will vote all of the Trust Shares in favor of, in opposition to or abstain from the matter in the same ratio as the Interests of the Beneficiaries that returned voting instructions to the Trustee indicated preferences for voting in favor of, in opposition to or abstaining from such matter. As a result, Trust Shares for which no instructions have been received by the Trustee will be voted in the same proportion as Trust Shares for which instructions have been received. The voting provisions described above will last through the life of the Trust. Beneficiaries wishing to make a stockholder proposal in connection with a meeting of the Holding Company's stockholders may do so in accordance with Rule 14a-8 of the Exchange Act. The Trust also contains provisions allowing Beneficiaries to instruct the Custodian to withdraw their allocated Trust Shares to participate in any tender or exchange offer for the Common Stock and to make any cash or share election, or perfect any dissenter's rights, in connection with a merger of the Holding Company.

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6. The Amended and Restated Certificate of Incorporation of the Holding Company provides that while the Trust is in existence, each director of the Holding Company shall, in exercising his or her duties as a director, take the interests of the Beneficiaries into account as if they were holders of the Trust Shares, except to the extent that any such director determines, based on advice of counsel, that to do so would violate his or her duties as a director under Delaware law.

If a stockholder vote involves a Beneficiary Consent Matter, then the Trustee, through the Custodian, will solicit voting instructions from all of the Beneficiaries. If the matter involves a contested election for directors of the Holding Company, promptly after receipt of a contesting stockholder's request, the Holding Company will inform the contesting stockholder of the number of Beneficiaries to whom solicitation materials must be mailed (in accordance with the contesting stockholder's designation) and of the estimated cost of mailing a proxy statement, instruction card or other communication to all the Beneficiaries (or to a group of Beneficiaries designated by the contesting stockholder in a manner that is available or retrievable under the Custodian's security holder data system), including, to the extent known or reasonably available, the estimated costs of the Custodian to request instructions from the Beneficiaries in connection with such matter. If the Custodian shall have received sufficient copies of any proxy statement, instruction card, return envelope, mailing envelope or other proxy materials, together with payment of estimated postage and reasonable expenses to effect the mailing of such materials and such security as the Custodian may reasonably request to cover expenses in excess of that estimate, from a contesting stockholder by such time that is sufficient to enable the Custodian to complete such mailing within the requirements of applicable law and the By-Laws of the Holding Company, then the Custodian will cause the mailing of the proxy materials to the Beneficiaries, or a group of Beneficiaries designated by the contesting stockholder, as soon as reasonably practicable after receiving the materials, payment and security. With respect to a Beneficiary Consent Matter that is subject to Rule 14a-7 of the Exchange Act, the Holding Company will mail to its stockholders holding Common Stock outside of the Trust the contesting stockholder's materials in accordance with Rule 14a-7 and promptly provide the Custodian with any materials it receives from the contesting stockholder for distribution to the Beneficiaries in accordance with the Trust Agreement (as opposed to providing a list of stockholders and Beneficiaries to the contesting stockholder for mailing). The Holding Company will comply with Rule 14a-7 in connection with non-Beneficiary Consent Matters.

The Holding Company will agree in the Trust Agreement that any proxy and other materials provided by it will meet the requirements of the Exchange Act and that it will reimburse or advance the Trustee and the Custodian for their fees and expenses for mailing these materials. All proxy materials provided by the Holding Company will include the financial statements required under Regulation S-X of the Exchange Act. In addition, such materials will include the annual audited financial statements included in the current annual report (or, if the proxy materials are not being distributed in connection

with an annual meeting, the prior-year's annual report), even if not otherwise required to be provided under the Exchange Act.[7]

Proxy solicitation materials, annual reports and information statements received by the Custodian in connection with any matter not involving a Beneficiary Consent Matter will be made available by the Holding Company to Beneficiaries for their information on a website maintained by the Holding Company or by mail upon request and at the Holding Company's expense, but voting instructions to the Trustee will not be solicited and, if instructions are received, they will not be binding on the Trustee. Beneficiaries will also be informed annually (which is expected to be done in connection with the annual dividend check mailings to Beneficiaries) of the availability of the Annual Stockholder Reports on the Holding Company's website or by mail upon request at the Holding Company's expense; of the availability of the Holding Company's and the Trust's filings under the Exchange Act on the Holding Company's and the SEC's websites or by mail upon request at the Holding Company's expense; of their rights to participate in the Purchase and Sale Program and where to obtain information about the Program; of the expected date of the Holding Company's annual meeting and deadline for submission of stockholder proposals, and when the Annual Stockholder Reports are expected to become available; and of the aggregate amount of dividends and interest paid to all Beneficiaries in that dividend distribution. Beneficiaries that telephone the toll-free number in order to participate in the Purchase and Sale Program or to obtain further information will be informed that the Annual Stockholder Reports are available on the website or by mail upon request. Except for the one-time mailing by the Trust at the time withdrawals may commence or in connection with a Beneficiary Consent Matter, such materials will not otherwise be disseminated to the Beneficiaries.

In addition, except in connection with a Beneficiary Consent Matter, none of the Holding Company, the Trust, the Trustee or Custodian, any of their respective affiliates, or their respective officers, directors or employees will be required to inquire as to the beneficial ownership of the Trust Shares in connection with a vote or consent of Holding Company stockholders, including whether any Trust Shares are held by beneficial owners

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7. The Trust Agreement permits notices and other communications to be mailed to Beneficiaries by electronic media, e-mail or other electronic means, if the Beneficiary has previously consented. All such communications will comply with all applicable releases issued by the Commission regarding dissemination of materials by electronic means.

or requesting information to be provided with respect to consenting and non-objecting beneficial owners under the Exchange Act.

The Trust Agreement provides that regular cash dividends, if any, collected or received by the Trustee with respect to the Trust Shares will be distributed by the Custodian semi-annually to the Beneficiaries within 90 days after receipt by the trustee. Distribution of all other cash dividends will be made by the Custodian to the Beneficiaries on the first business day following the 30th day after the Trust receives the dividends. Alternatively, the Trustee may arrange with the Holding Company for the direct payment by the Holding Company of such cash dividends to the Beneficiaries. The Trust Agreement further provides that pending such distribution, cash dividends may be invested in short-term obligations of or guaranteed by the United States, or any agency or instrumentality thereof, and in certificates of deposit of any bank or trust company having a combined capital and surplus not less than $500,000,000. Notwithstanding these provisions, the Holding Company currently expects to pay annual dividends directly to the Beneficiaries without any interim investment. Dividends or other distributions in Common Stock will be allocated to the Beneficiaries and held by the Trustee as Trust Shares. Generally, all other distributions by the Holding Company to its stockholders will be held and distributed by the Trustee to the Beneficiaries in proportion to their Interests.

The Trustee shall have only the powers set forth in the Trust Agreement and the Purchase and Sale Program procedures. In performing its duties under the Trust Agreement, the Trustee will be required to act as a fiduciary in the best interests of the Beneficiaries, with a duty of undivided loyalty to the Beneficiaries and a duty to exercise care and prudence in the administration of the Trust's business affairs. The Holding Company will pay fees to the Trustee and the Custodian and reimburse them for their expenses under the Trust.

The Trust will terminate on the 90th day after the date on which the Trustee shall have received notice from the Holding Company that the number of Trust Shares held by the Trust is equal to 10% or less of the number of issued and outstanding shares of Common Stock of the Holding Company, or on the date on which the last Trust Share shall have been withdrawn, distributed or exchanged. The Trust may be terminated earlier:

(i) on the 90th day after the date on which the Trustee receives written notice from the Holding Company, given in the Holding Company's discretion at any time, that the number of Trust Shares is 25% or less of the number of issued and outstanding shares of Common Stock;

(ii) on the date on which the Trustee receives written notice from the Holding Company that the Board of Directors of the Holding Company has determined, as a result of any amendment of, or change (including any announced prospective change) in the laws (or any regulations thereunder) of the United States or any State, Commonwealth or other political subdivision or authority thereof or therein, or any official administrative pronouncement or judicial decision interpreting or applying such law or regulation, or any changes in the facts or circumstances relating to the Trust, that maintaining the Trust is or is reasonably expected to become burdensome to the Holding Company or the Beneficiaries;

(iii) on the date on which any rights issued under a stockholder rights plan adopted by the Holding Company and held by the Trust become separately tradeable from the Trust Shares to which they relate; or

(iv) on the date on which there is an entry of a final order for termination or dissolution of the Trust or similar relief by a court of competent jurisdiction.

The Trust also contains a rule against perpetuities clause causing termination under certain circumstances.

Upon termination of the Trust, the remaining Trust Shares will be distributed in book entry form to each Beneficiary, if book entry shares are permitted by applicable law, together with the Beneficiary's proportionate share of all unpaid distributions and dividends and interest earned thereon. The Trust Agreement provides that the Holding Company may, in its discretion, offer to purchase such shares at the market price of the Common Stock at the time of the purchase. If the Holding Company so offers to purchase Trust Shares, notice of the offer will be distributed to the Beneficiaries prior to the distribution of the assets of the Trust upon termination of the Trust. Beneficiaries that elect to have the Trust accept such offer with respect to their Interests will receive cash for all or part of their Interests, in accordance with the terms of the offer. The Holding Company will comply with all applicable provisions of the Exchange Act with respect to any such purchase.

The Trust Agreement may be amended from time to time by the Trustee, the Custodian, the Holding Company and MetLife, without the consent of any Beneficiary, (i) to cure any ambiguity, correct or supplement any provision therein that may be inconsistent with any other provision therein, or to make any other provision with respect to matters or questions arising under the Trust Agreement, which shall not be inconsistent with the other provisions of the Trust Agreement, provided that the action does not

adversely affect the interests of the Beneficiaries, (ii) to modify, eliminate or add to any provisions of the Trust Agreement to such extent as shall be necessary to ensure that the Trust will be classified for United States federal income tax purposes as a grantor trust at all times or to ensure that the Trust will not be required to register as an investment company under the Investment Company Act of 1940, as amended, or (iii) to reflect the effect of a merger or consolidation in which the Holding Company is not the surviving corporation and the other company into which the Holding Company is merged or consolidated assumes its obligations under the Trust Agreement. The Trust Agreement may also be amended with the consent of Beneficiaries representing more than one-half of the Interests, provided that no such amendment or waiver shall, without the consent of each Beneficiary affected thereby, reduce the Interests or otherwise eliminate or materially postpone the right of any Beneficiary to receive dividends or other distributions or to make elections under the Purchase and Sale Program or to withdraw Trust Shares. Any such amendment made prior to the first anniversary of the Effective Date will require the prior approval of the Superintendent.

The terms of the Trust and the Plan, including the relative risks and benefits of holding Interests and investing in stock versus cash, the voting rights of Beneficiaries and the provisions for disclosure of information, the Purchase and Sale Program procedures, the ability of Beneficiaries to purchase and sell shares of Common Stock in the public market outside of the Trust, the Trust termination provisions and the fee and expense reimbursement provisions of the Trust will be set forth in the Policyholder Information Booklet. In addition, the Policyholder Information Booklet will disclose the effect that the Trust will have on stockholder votes, including the effective control by the Board of Directors of the Holding Company over non-contested elections and other non-Beneficiary Consent Matters.

The Purchase and Sale Program. Following the completion of the Initial Public Offering and lasting until the termination of the Trust, each Beneficiary will have the right, subject to limited exceptions described below, at any time to withdraw the Beneficiary's allocated shares for sale at prevailing market prices or, beginning on the first trading day following the 90th day after the Effective Date, to purchase additional shares, at prevailing market prices on a commission-free basis, under the Purchase and Sale Program. The key provisions of the Purchase and Sale Program are described below.

As noted above, beginning one year after the Effective Date, each Beneficiary may withdraw the Beneficiary's allocated shares of Common Stock at any time, to hold such shares directly or to dispose of them as they see fit. Beneficiaries may also purchase additional shares of Common Stock (and sell these shares) on the open market without the

restrictions set forth in the Trust Agreement. MetLife desires to give policyholders the benefit of selling their shares or purchasing additional shares on a commission-free basis through the Purchase and Sale Program. MetLife believes that the Purchase and Sale Program will promote a more orderly market for the Common Stock while benefitting Beneficiaries by giving them the opportunity to sell their allocated shares or to purchase additional shares on a commission-free basis.

Under the Purchase and Sale Program, each Beneficiary may have Trust Shares equal in number to the Beneficiary's Interests withdrawn for sale through the Purchase and Sale Program by giving instructions to the Program Agent. If the Beneficiary holds 199 or fewer Interests, all of the Beneficiary's Interests must be withdrawn for sale. If the Beneficiary holds more than 199 Interests, full or partial withdrawals for sale may be made. However, partial withdrawals for sale may only be in 100-share increments (for example, 200 shares may be withdrawn for sale, but not 250). Following any partial withdrawal for sale, the Beneficiary must still hold at least 100 Interests. If a Beneficiary will hold less than 100 Interests after the partial withdrawal for sale, a full withdrawal for sale must be made. For the first 300 days following the Effective Date, a Beneficiary holding more than 25,000 Interests will be subject to the volume limitations described below.

In addition, Beneficiaries allocated less than 1,000 shares of Common Stock will also be entitled to purchase additional shares in the Purchase and Sale Program to bring their Interests up to 1,000 shares, subject to a minimum of $250 per purchase (or such lesser amount that would cause the Beneficiary to hold the 1,000 maximum number of Interests). The Holding Company will pay the commissions and related charges of Beneficiaries that purchase or sell shares through the Purchase and Sale Program.

The Purchase and Sale Program will be administered by the Program Agent or by a service organization acting on behalf of the Program Agent. Beneficiaries will be entitled to initiate sales of Trust Shares through the Purchase and Sale Program by written request to the Program Agent or orally or electronically through a toll-free telephone number maintained by the Program Agent and staffed by representatives of the Program Agent or the service organization.[8] Upon a sale of shares in the program, the Trustee's book-entry position in the shares will be decreased and the number of Interests allocated to the Beneficiary decreased accordingly.

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8. The phone operators will be strictly instructed not to provide recommendations or advice, and they will be closely monitored and supervised.

Beneficiaries will be able to initiate a purchase by sending funds, together with written notice of the purchase, to a bank lock box. The check will be deposited by bank employees into a non-interest bearing Trust account maintained at the Bank. All purchase instructions will be processed and supervised by CMFS using its employees, many of whom will also be employees of CMSS. Upon a purchase of shares in the program, the Trustee's book-entry position in the shares will be increased and the number of Interests allocated to the Beneficiary increased accordingly.

All sale and purchase instructions received on a particular business day will be combined and processed together by CMFS (each, a "Batch"). CMFS will first satisfy any purchase instructions out of sale instructions received under the Purchase and Sale Program, first offsetting against sale instructions received from Beneficiaries holding no more than 25,000 Interests ("Small Trust Beneficiaries") and then against sale instructions received from Beneficiaries holding more than 25,000 Interests ("Large Trust Beneficiaries"). If there are more shares covered by sale instructions from Large Trust Beneficiaries than the remaining shares covered by purchase instructions, then the shares to be satisfied out of those sale instructions will be allocated among the Large Trust Beneficiaries on a pro rata basis. The satisfaction of purchase instructions out of sale instructions will be made at a share price equal to the opening price on the trading day following the day the Batch is formed.

If sale instructions exceed purchase instructions, all or a portion of the excess shares will be made available for purchase by the Holding Company as described below; if the Holding Company does not so purchase all of such excess shares, CMFS will place an order with one or more executing brokers, which may include CMFS (the "Brokers"), to sell the excess shares. In the event that purchase instructions exceed sale instructions, CMFS will place an order with one or more of the Brokers to purchase sufficient shares to satisfy the deficiency.

CMFS and the Brokers will process purchase and sale instructions for a Batch on the trading day following the day the Batch is formed, provided, however,

(a) if there has occurred any act of God or nature, mechanical or electrical breakdown, computer failure, failure or unavailability of the Federal Reserve Bank wire, facsimile, Internet, telex, or other transaction or communications system or power supply, in each case the effect of which is such as to make it, in the judgment of CMFS, after taking into account all commercially reasonable means of doing so, impracticable to process purchase and sale instructions under the Purchase and Sale Program, or

(b) if trading in any equity securities of the Holding Company has been suspended or materially limited by the Commission or the NYSE, or if trading generally on the NYSE or has been suspended or materially limited, or

(c) if a banking moratorium has been declared by either Federal or New York authorities,

then instructions will not be processed during the pendency of such events. Instructions will be processed by the close of the NYSE on the trading day following the expiry of such events.

Notwithstanding the foregoing, if, during the first 300 days after the Effective Date, the number of shares to be sold in a Batch (after satisfying purchase instructions out of sale instructions as described above and sales to the Holding Company as described below) on behalf of Large Trust Beneficiaries exceeds the lesser of (i) 1/20th of 1% of the number of shares of Common Stock outstanding and (ii) 25% of the average daily trading volume for the 20 trading days (or such shorter period, if fewer than 20 trading days have elapsed since the Effective Date) preceding such day (the "Daily Trading Limit"), CMFS will process instructions on behalf of the Large Trust Beneficiaries through market orders for only a number of shares equal to the Daily Trading Limit for that day. Shares submitted for sale by Large Trust Beneficiaries exceeding the Daily Trading Limit in a Batch are referred to herein as the "Surplus Shares."

If there are Surplus Shares in a Batch, the shares covered by sale instructions from Large Trust Beneficiaries shall be allocated between the shares to be sold within the Daily Trading Limit (and thus not subject to the limits described below) and Surplus Shares subject to these limits on a pro rata basis.

CMFS will process the Surplus Shares in accordance with one or more of the following options:

(i) CMFS shall include all of the Surplus Shares not sold in accordance with paragraph (ii) or (iii) below in the Batch formed on the next succeeding trading day. These Surplus Shares will be deemed to be included in that next trading day's Batch (and no longer will be included in the original trading day's Batch) for purposes of determining the price and date at which the related sale instructions are processed. The Surplus Shares, together with other shares to be sold on behalf of Large Trust Beneficiaries in the next day's Batch, will be subject to the Daily Trading Limit applicable to that Batch. If the total number of Surplus

Shares and the other shares to be sold on behalf of Large Trust Beneficiaries in the next day's Batch exceeds the Daily Trading Limit on that day, then the Surplus Shares shall be sold before the other shares to be sold on behalf of Large Trust Beneficiaries in that Batch. This priority will continue in any succeeding trading day such that if shares are to be sold on that trading day on behalf of Large Trust Beneficiaries from more than one Batch, the shares will be sold in the order in which the Batches were formed.

(ii) (a) If the Batch is formed within 90 days of the Effective Date, CMFS may request Goldman, Sachs & Co. and Credit Suisse First Boston Corporation (which are expected to be the Holding Company's lead managing underwriters for the Initial Public Offering) (the "Initial Investment Banks") to act exclusively as joint agents to sell all or a portion of the Surplus Shares at market clearing prices. The Initial Investment Banks will not be obligated to accept the request, and the Initial Investment Banks will be deemed to have accepted such a request if and only if both Initial Investment Banks agree to act on a joint basis.

(b) If the Batch is formed more than 90 days after the Effective Date, CMFS may request any nationally recognized brokerage firm to act as agent to sell all or a portion of the Surplus Shares at market clearing prices.

Any institution acting as agent as described in paragraph (ii) will either cross the Surplus Shares which it has agreed to sell on the NYSE or will sell the shares off exchange, in which case the agent will have a general obligation to obtain the best price reasonably available in the circumstance. Sales effected in accordance with paragraph (ii) will be processed on the trading day following the day the Batch is formed.

(iii) CMFS may sell all or a portion of the Surplus Shares in a block trade.

(a) If the Batch is formed within 90 days of the Effective Date, CMFS may request bids for a fixed number of shares (determined by CMFS in its sole discretion) from each of the Initial Investment Banks and one other nationally recognized brokerage firm. The block of shares will be sold to the firm submitting the highest bid. If more than one firm submits the same bid and such bid is the highest bid, CMFS will request new bids from each of the firms previously submitting the highest bid until one becomes the highest. If no one bid becomes the highest, then CMFS will sell the block to one of the

firms submitting the highest bids, randomly selected by CMFS (provided that CMFS will alternate between firms in any subsequent tied-bid or use other equitable procedures to ensure that no firm is favored if there is more than one occasion in which there is a tied-bid).

(b) If the Batch is formed more than 90 days after the Effective Date, CMFS may request bids from any three nationally recognized brokerage firms selected by CMFS in its sole discretion. The block of shares will be sold to the firm submitting the highest bid. If more than one firm submits the same bid and such bid is the highest bid, CMFS will request new bids from each of the firms previously submitting the highest bid until one becomes the highest. If no one bid becomes the highest, then CMFS will sell the block to one of the firms submitting the highest bids, randomly selected by CMFS (provided that CMFS will alternate between firms in any subsequent tied-bid or use other equitable procedures to ensure that no firm is favored if there is more than one occasion in which there is a tied-bid).

Notwithstanding the foregoing, no institution will be obligated to submit a bid for any Surplus Shares if requested by CMFS pursuant to paragraph (iii), and CMFS will not be obligated to accept any bid it receives. Sales effected in accordance with paragraph (iii) will be processed on the trading day following the day the Batch is formed.

Subject to paragraph (i) above, CMFS may determine which option or options to use in its sole discretion. If more than one option is used, the Surplus Shares will be allocated among the Large Trust Beneficiaries on a pro rata basis. The limitations set forth above apply only to sales on behalf of Large Trust Beneficiaries and do not apply to Small Trust Beneficiaries.

If instructions in more than one Batch are to be processed on any given trading day, CMFS will process instructions in the order that the Batches are formed. Subject to the requirements, the timing of processing instructions and the frequency of transaction intervals will be subject solely to the control of CMFS and the Brokers.

The Brokers will effect all transactions in connection with the Program in the open market on the floor of the New York Stock Exchange (the "NYSE") in the ordinary course of their business, except as described in this letter with respect to sales on behalf of Large Trust Beneficiaries or sales to the Holding Company. Except as described above, the Brokers will effect brokers' transactions solely as agent. The Brokers may also cross,

solely on an agency basis, sales and purchase orders in Holding Company common stock submitted by their customers with sale and purchase instructions received by CMFS. All such crossing transactions will be effected by the Brokers on the floor of the NYSE and the Brokers will not conduct negotiations off the floor of the NYSE with respect to such transactions.

A Broker may be an affiliate of the Program Agent but will not be an affiliate of the Trustee or the Holding Company. Neither the Trustee, the Holding Company nor their respective "affiliates," as that term is used in Rule 144 under the Securities Act will be eligible to effect sales through the Purchase and Sale Program, except that (i) directors and officers of MetLife and (ii) any subsidiary of MetLife that owns a policy on behalf on any employee benefit plan, that receive shares in the Reorganization as policyholders of MetLife, and that might be considered "affiliates" may sell shares through the Purchase and Sale Program subject to the restrictions set forth in Rule 145 under the Securities Act as described in Section G of this letter. In this respect, the Program Agent will request appropriate information from the Holding Company and the Trustee to identify control persons and will structure its procedures and records to prevent such persons' participation.

The Plan and the Trust Agreement generally permit the Holding Company, in its discretion, to purchase shares withdrawn from the Trust for sale through the Purchase and Sale Program; however, no such repurchase will be permitted while the Holding Company is otherwise engaged in a distribution as defined in Regulation M under the Exchange Act. CMFS will notify the Holding Company of the number of shares available for purchase on any trading day, as determined by CMFS, no later than 1/2 hour after the open of the NYSE on that trading day, and the Holding Company will notify CMFS no later than one hour after the open of the NYSE on that trading day of the number of shares it wishes to purchase. Shares sold to the Holding Company will be sold at a purchase price equal to the average of the high and low prices on the day of sale. Shares will be deemed to be purchased first from Small Trust Beneficiaries and, second, from Large Trust Beneficiaries. If not all of the shares covered by sale instructions received from Large Trust Beneficiaries are purchased by the Holding Company, the shares that are purchased shall be allocated among the Large Trust Beneficiaries on a pro rata basis. If any shares in a Batch remain to be sold after the first trading day, the remaining shares, together with shares in any subsequent Batch, will be available for purchase by the Holding Company in accordance with these provisions. Any repurchase of shares by the Holding Company from the Purchase and Sale Program will comply with volume limitations set forth in Rule 10b-18 under the Exchange Act.

If the only transactions that occur in the Batch are sale instructions that are offset against purchase instructions under the Purchase and Sale Program, the price at which sales and purchases shall be processed will be the opening price on the trading day following the day the Batch is formed. If CMFS places a purchase order, all purchase instructions in the Batch will be assigned the same price per share. Such purchase price will be the volume weighted average price per share of the shares in the Batch purchased on the day the purchases in the Batch occur (including any purchases offset against sales instructions as described above). If CMFS places a sales order, all sale instructions in the Batch will be assigned the same price per share. Such sale price will be the volume weighted average price per share of the shares in the Batch sold on the day the sales in the Batch occur (including any sales to the Holding Company and sales offset against purchase instructions as described above). For purposes of determining the prices of purchases and sales in a Batch, the prices will be those reported on the New York Stock Exchange Composite Tape on the date the purchase and sale is made, except for the prices of shares sold to the Holding Company, which shall be the priced determined as described above.

Upon settlement of a purchase transaction, CMFS will promptly (i) transmit to the Custodian a confirmation statement prepared by CMFS, and (ii) deliver the acquired shares to the Custodian, which will deposit them as Trust Shares in the Trust. The Custodian will input the price paid for the shares on its records and update the Beneficiary's account to reflect the increase in Interests. The Custodian will promptly mail revised beneficiary statements to the Beneficiaries, showing the revised number of Interests and the price per share of Trust Shares acquired, but in any event no later than four trading days after the date for the last transaction effected in the Batch. The Custodian will also mail a check to the Beneficiary for any excess of funds used to acquire up to the 1,000 Interest maximum for that Beneficiary within four trading days, unless the check is for more than $1,000, in which case the Custodian may delay mailing for up to 14 days in order to determine that the check deposited by the Trust Beneficiary has cleared.

Upon settlement of a sale transaction, CMFS will promptly transmit to the Custodian a confirmation statement prepared by CMFS and the funds received from the sale. The Custodian will update the Beneficiary's account to reflect the reduction in Interests, and will promptly mail revised beneficiary statements to the Beneficiaries, showing the revised number of Interests and the price per share of Trust Shares sold, but in any event no later than four trading days, after the date for the last transaction effected in the Batch. The Custodian will also mail a check for the funds received to the Beneficiary within the four trading days.

On or before the Effective Date, the Holding Company will mail Trust Eligible Policyholders a brochure that contains a summary of the Purchase and Sale Program, including information on how to make purchases and sales through the Program, the expected commencement dates for purchases and sales, Plan limitations on the number of shares that may be purchased and sold, tax consequences from purchasing and selling shares through the Program, and information on how to obtain purchase and sale instruction forms, instructions to make checks payable to the "MetLife Purchase Program" for purchases, an explanation on how instructions are combined into a Batch and processed, and further information on the Program. The brochure shall indicate that transfers of shares purchased on behalf of a Beneficiary paying by check through the Program may be restricted until the check has cleared. The brochure will also be available to Trust Eligible Policyholders and other Beneficiaries upon request in writing or through the toll-free number maintained by the Program Agent, and will be posted for the duration of the Trust on the Holding Company's website. The Trust will mail a written notice to Beneficiaries each year (which is expected to be done in connection with the annual dividend check mailings to Beneficiaries) informing them of the of the availability of the Annual Stockholder Reports on the Holding Company's website or by mail upon request at the Holding Company's expense; of the availability of the Holding Company's and the Trust's filings under the Exchange Act on the Holding Company's and the SEC's websites or by mail upon request at the Holding Company's expense; of their rights to participate in the Purchase and Sale Program and where to obtain information about the Program; of the expected date of the Holding Company's annual meeting and deadline for submission of stockholder proposals, and when the Annual Stockholder Reports are expected to become available; and of the aggregate amount of dividends and interest paid to all Beneficiaries in that dividend distribution. Beneficiaries that telephone the toll-free number in order to participate in the Purchase and Sale Program or to obtain further information will be informed that the Annual Stockholder Reports are available on the website or by mail upon request at the Holding Company's expense.

The brochure mailed to Beneficiaries will be plain and factual in tone and approach, and describe all material features of the Purchase and Sale Program. It will contain no information specifically describing the business, financial condition or results of operations of the Holding Company. Readers will not be encouraged or discouraged to engage in any purchases or sales, and no advice or recommendations will be included in the information or be otherwise given by or on behalf of the Holding Company or the Trustee during the administration of the program. Instead, readers will be informed specifically that they are to make independent investment decisions based on their own judgment and research. All information regarding the Purchase and Sale Program

provided by the Trust will be printed and distributed to Beneficiaries at the Holding Company's expense.

In addition, the brochure will include a prominent statement to the following effect: "The Purchase and Sale Program is administered by the Program Agent. The Purchase and Sale Program is not administered by the Holding Company or the Trust." The Purchase and Sale Program also will indicate that the shares of Common Stock held in the Purchase and Sale Program on behalf of Beneficiaries are not subject to protection under the Securities Investor Protection Act.

The Program Agent will establish a Purchase and Sale Program call center, staffed with employees of the Program Agent, to answer inquiries about the Purchase and Sale Program and through which sale transactions can be effected. No recommendation or solicitation will be made by the Program Agent or these employees, nor will any assurance be given by them about the price that will be received for shares sold or the price that will be paid for purchasing additional shares. In addition, no purchase instruction will be accepted by the call center.

Informational Activities. MetLife intends to use the Associates to inform Eligible Policyholders of the Plan. The Associates may (i) contact Eligible Policyholders to ensure that they have received the notice of the Policyholders' Vote and the Policyholder Information Booklet, (ii) answer any questions Eligible Policyholders may have in connection with the notice of the Hearing, notice of the Policyholders' Vote, the Policyholder Information Booklet, the mechanics of the Plan or the Policyholders' Vote, and (iii) discuss with Eligible Policyholders the Reorganization. The Associates will not be compensated, directly or indirectly, for their efforts in connection with such activities, except to the extent that call center personnel have been employed specifically to perform the call center function.[9]

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9. MetLife expects that the demutualization call center will be staffed with employees of the Program Agent or of an agent engaged by the Transfer Agent. Such employees will be compensated on an hourly or salaried basis.

In discussions with Eligible Policyholders concerning the Plan, the Associates will be specifically instructed in writing and through other procedures to be implemented by MetLife to refrain from:

(a) using written materials other than the notice of the Hearing, notice of the Policyholders' Vote, Policyholder Information Booklet or other documents prepared by MetLife for use in connection with the Policyholders' Vote, or making any revisions to such documents;

(b) making any statements not derived from the Policyholder Information Booklet or other documents approved by MetLife for use in connection with the Policyholders' Vote;

(c) discussing the potential market value of Common Stock or advising Eligible Policyholders on whether or not to receive cash in respect of their allocated shares at the time of the Initial Public Offering; or

(d) discussing with Policyholders their personal plans to invest or not invest in Common Stock.

MetLife will communicate these restrictions to its insurance agency sales force, brokers, dealers and other distributors of its insurance products, as well as its officers, directors and employees, through official bulletins from MetLife's senior management. MetLife will designate persons to assist Associates with inquiries related to the Reorganization.

CMSS, as conversion agent to the Reorganization, will establish a demutualization call center to answer questions about the Reorganization. CMSS intends to use a servicing organization to assist it administering the call center. The call center will be staffed with employees of CMSS or this servicing organization, many of which, due to the unprecedented size of the transaction and the expected number of calls, will have been hired specifically for that purpose. CMSS, MetLife and the servicing organization will provide special training to such persons about issues related to the Reorganization, including adherence to the above restrictions.

The demutualization call center will be operated separately from the Purchase and Sale Program call center described above, although it will have the same toll-free number. However, since the Purchase and Sale Program will commence shortly after the Effective Date, it is likely that the two call centers will overlap. Employees of the

demutualization call center will be instructed to direct callers with inquiries about the Purchase and Sale Program (other than questions relating to the nature of the Purchase and Sale Program that are relevant to the decision on whether or not to vote for the Plan) to the Purchase and Sale Program call center, which is expected to be accessible at the same toll-free number by selecting a different option at the beginning of the call.

During the period prior to the Reorganization, including the period when Eligible Policyholders will be asked to vote on the Plan, MetLife's insurance agency sales force, brokers, dealers and other distributors of its insurance products, as well as its officers, directors and employees, will go about their normal activities, subject to the restrictions set forth above. MetLife anticipates that such activities may well include general discussion of the effects that the Reorganization may have on MetLife.

DISCUSSION

A. Application of Section 3(a)(10) of the Securities Act to Exchange of Policyholders' Membership Interests for MetLife Common Stock, Common Stock and Interests

Absent an exemption or exclusion from the registration provisions of the Securities Act, the securities issued pursuant to the Plan would need to be registered under Section 5 of the Securities Act. For the reasons set forth below, it is our view that such securities are not required to be registered because of the exemption from registration provided by Section 3(a)(10) of the Securities Act.[10] We note that the staff has previously taken no-action positions involving Section 3(a)(10) in the context of reorganizations comparable to the MetLife Reorganization.[11]

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10. The securities to be issued under the Plan include the Series A Junior Participating Preferred Stock purchase rights associated with the Common Stock that will be distributed in accordance with the Holding Company's Stockholders' Rights Plan. It is our opinion that those rights may be issued to the Trust on behalf of Beneficiaries in reliance on the exemption provided by Section 3(a)(10) under the Securities Act for the same reasons discussed above relating to the Common Stock.

11. See, e.g., John Hancock Financial Services, Inc. (Nov. 8, 1999), Standard Ins. Co. (Jan. 26, 1999), Farm Family Mut. Ins. Co., 1996 SEC No-Act. LEXIS 410 (April 2, 1996); Blue Cross and Blue Shield of Virginia, 1996 SEC No-Act. LEXIS 554

(continued...)

Section 3(a)(10) provides an exemption from the registration requirements of the Securities Act for, in relevant part:

> any security which is issued in exchange for one or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash, where the terms and conditions of such issuance and exchange are approved, after a hearing upon the fairness of such terms and conditions at which all persons to whom it is proposed to issue securities in such exchange shall have the right to appear, by any court, or by any official or agency of the United States, or by any State or Territorial banking or insurance commission or other governmental authority expressly authorized by law to grant such approval.

In Securities Act Release No. 312,[12] the Commission's General Counsel stated that the Section 3(a)(10) exemption depends, among other things, upon satisfaction of the following conditions:

(i) The approving authority must be expressly authorized by law to hold a hearing on the exchange, although it is not necessary that the hearing be mandatory;

(ii) Adequate notice of the hearing must be given to all persons to whom it is proposed to issue the securities in the exchange; and

(iii) If the approval of a state governmental authority is involved, that agency must be expressly authorized by law to approve the fairness of the terms and conditions of the proposed exchange.

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11. (...continued)
(June 14, 1996); Guarantee Mut. Life Co., 1995 SEC No-Act. LEXIS 461 (April 13, 1995); State Mut. Life Assurance Co. of America, 1995 SEC No-Act. LEXIS 414 (March 23, 1995); Equitable Life Assurance Soc'y of the United States, 1992 SEC No-Act. LEXIS 234 (Feb. 20, 1992) ("Equitable I"); Empire Mut. Ins. Co., 1987 SEC No-Act. LEXIS 2866 (Dec. 21, 1987); California Mut. Ins. Co., 1986 SEC No-Act. LEXIS 1748 (Feb. 14, 1986); Home Service Mut. Ins. Co., 1981 SEC No-Act. LEXIS 4239 (Nov. 9, 1981); Beacon Mut. Indem. Co., 1980 SEC No-Act. LEXIS 3885 (Nov. 3, 1980).

12. 1 Fed. Sec. L. Rep. (CCH) ¶¶ 2181-2184 (Mar. 15, 1935).

In Staff Legal Bulletin No. 3 (CF), 1997 SEC No-Act. LEXIS 755 (July 25, 1997) (revised October 20, 1999), the Commission's staff stated that in its view the conditions for satisfying the Section 3(a)(10) exemption include the following:

(i) The securities must be issued in exchange for securities, claims, or property interests; they cannot be offered for cash;

(ii) A court or authorized governmental entity must approve the fairness of the terms and conditions of the exchange;

(iii) The reviewing court or authorized governmental entity must (a) find, before approving the transaction, that the terms and conditions of the exchange are fair to those who will be issued securities and (b) be advised before the hearing that the issuer will rely on the Section 3(a)(10) exemption based on the court's or authorized governmental entity's approval of the transaction;

(iv) Before approval, the court or authorized governmental entity must hold a hearing to approve the fairness of the terms and conditions of the transaction;

(v) A governmental entity must be expressly authorized by law to hold the hearing, although it is not necessary that the law require the hearing;

(vi) The fairness hearing must be open to everyone who is proposed to be issued securities in the exchange;

(vii) Adequate notice must be given to all those persons;

(viii) There cannot be any improper impediments to the appearance by those persons at the hearing.

For the reasons stated below, we believe that the securities to be issued pursuant to the Plan will satisfy each of these conditions. We note that the New York Statute has previously been the subject of a no-action letter from the staff in connection with the demutualization of The Equitable Life Assurance Society of the United States in 1992.[13]

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13. See Equitable I, supra note 11.

The Plan provides that the shares of MetLife Common Stock allocated as consideration under the Plan to Trust Eligible Policyholders will be issued to the Trust, and that Interests will be allocated to Trust Eligible Policyholders equal to the number of such shares. Then, the Trust will, by operation of the Plan, immediately exchange its shares of MetLife Common Stock for an equal number of shares of Common Stock.

This structure is consistent with the requirements for the exemption from registration provided by Section 3(a)(10). The MetLife Common Stock will be issued in exchange for the Policyholders' Membership Interests, which have been recognized by the staff as exchangeable under Section 3(a)(10).[14] Likewise, the Common Stock and Interests (a "security" as defined under Section 2(a)(1) of the Securities Act) will be issued in exchange for the MetLife Common Stock. Each step is a necessary and integral step to the receipt by Trust Eligible Policyholders of Interests in exchange for their Policyholders' Membership Interests.

Under the Plan, each step will be consummated pursuant to the New York Statute. As noted above, the New York Statute requires the Superintendent to hold a public hearing on the Plan. The Department has been recognized by the staff as an authorized governmental entity.[15] A notice of the Hearing, together with a summary of the Plan, will be mailed to Eligible Policyholders (unless MetLife has reasonable belief that the most recent mailing address of an Eligible Policyholder on the records of MetLife is no longer valid), which includes the entire class of persons to whom it is proposed that the securities will be issued under the Plan, and will be published as described above. The notice and the accompanying materials sent to each Eligible Policyholder will state that any Eligible Policyholder will have the right to appear and be heard at the Hearing, and set out the procedures to be followed in order to exercise such rights. Therefore, "all persons

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14. See John Hancock Financial Services, supra note 11 (permitting reliance on Section 3(a)(10) in an exchange of policyholders' membership interests in a mutual insurance company for securities); Standard Ins. Co., supra note 11; Farm Family Mut. Ins. Co., supra note 11 (same); Blue Cross and Blue Shield of Virginia, supra note 11 (same); Guarantee Mut. Life Co., supra note 11 (same); State Mut. Life Assurance Co. of America, supra note 11 (same); Equitable I, supra note 11 (same); Empire Mut. Ins. Co., supra note 11 (same); California Mut. Ins. Co., supra note 11 (same); Home Service Mut. Ins. Co., supra note 11 (same); Beacon Mut. Indem. Co., supra note 11 (same).

15. See Equitable I, supra note 11.

to whom it is proposed to issue securities" under the Plan will receive adequate notice of the Hearing.

After the Hearing, the New York Statute requires that the Superintendent approve the Plan only if he finds "the proposed reorganization, in whole and in part, does not violate [the New York Insurance Law], is fair and equitable to the policyholders and is not detrimental to the public and that, after giving effect to the reorganization, the reorganized insurer will have an amount of capital and surplus the superintendent deems to be reasonably necessary for its future solvency." The New York Statute and the Plan focus on the effect of the Plan on the Eligible Policyholders, in their capacity as policyholders of a mutual insurance company, and on the terms and conditions of the exchange of their Policyholders' Membership Interests for consideration in the form of stock held in the Trust, cash or policy credits. The Hearing record also will include opinions delivered by MetLife's financial and actuarial advisors as to certain financial and actuarial matters relating to the Plan, and opinions of MetLife's special counsel or Internal Revenue Service rulings as to certain tax matters arising out of the consideration payable under the Plan.

Furthermore, the Superintendent will be advised before the hearing that the Holding Company will rely on the Section 3(a)(10) exemption for the securities issued to Eligible Policyholders under the Plan based on the Superintendent's approval of the Plan. The issuance of the securities is an integral component of the Plan as a whole. Accordingly, in making his or her determination that the reorganization will be "fair and equitable to the policyholders," the Superintendent will also need to conclude that the issuance of MetLife Common Stock and Common Stock and the allocation of the Interests, as contemplated and required to be taken under the Plan, meets that same standard. Based on the foregoing, the Superintendent's determination with respect to the Plan necessarily will meet the requirement of Section 3(a)(10) that the terms and conditions of the issuance of securities be approved by the Superintendent, after a hearing at which all persons to whom it is proposed to issue securities shall have the right to appear. Accordingly, in our opinion the securities issued pursuant to the Plan are exempt from registration pursuant to Section 3(a)(10) of the Securities Act.[16]

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16. If Section 3(a)(10) exempts from registration under the Securities Act securities issued pursuant to the Plan, it is also our view that Rule 145 under the Securities Act would not otherwise require the registration of such securities because of the language in the Preliminary Note to Rule 145, which states that "[t]ransactions for

(continued...)

B. Integration of Securities Issued to Policyholders and the Initial Public Offering

It is our view that the issuance of securities in the Reorganization should not be integrated with the Initial Public Offering. Securities Act Release No. 4552 (November 6, 1962) identifies five factors that the Commission considers relevant in determining whether offerings should be integrated. Set forth below is an analysis of each of the five factors as applied to the Initial Public Offering, on the one hand, and the Reorganization, on the other. Additionally, strong policy considerations support the conclusion that the Commission should not integrate the offerings.

1. Are the offerings part of a single plan of financing? The issuance of securities to Trust Eligible Policyholders in the Reorganization is not a financing transaction as the Holding Company will raise no new capital through the reorganization distribution.[17] By contrast, the Initial Public Offering is a financing transaction that will raise capital for the Holding Company in addition to amounts necessary to fund policy credits and make cash payments to Eligible Policyholders not receiving Interests under the Plan. Therefore, the Reorganization distribution cannot be part of a single plan of financing with the Initial Public Offering. As was the case in previous reorganizations, the Plan requires that proceeds from the Initial Public Offering fund the crediting of policy credits and the payments of cash as consideration under the Plan. The Plan provides that a portion of the proceeds may be retained by the Holding Company, with the remainder contributed to

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16. (...continued)
which statutory exemptions under the [Securities] Act, including those contained in Section [3(a)(10)], are otherwise available are not affected by Rule 145." See John Hancock Financial Services, supra note 11; Standard Ins. Co., supra note 11; Farm Family Mut. Ins. Co., supra note 11; Guarantee Mut. Life Co., supra note 11; State Mut. Life Assurance Co. of America, supra note 11; Equitable I, supra note 11; Provident Life & Accident Ins. Co., 1987 SEC No-Act. LEXIS 2371 (Aug. 24, 1987); American Bankers Ins. Group, Inc., 1980 SEC No-Act. LEXIS 3319 (May 5, 1980); see also Securities Act Release No. 5463, Fed. Sec. L. Rep. (CCH) ¶ 3058 (Part I, Illustration B).

17. See John Hancock Financial Services, supra note 11; Standard Ins. Co., supra note 11; Farm Family Mut. Ins. Co., supra note 11; Blue Cross and Blue Shield of Virginia, supra note 11; Guarantee Mut. Life Co., supra note 11; State Mut. Life Assurance Co. of America, supra note 11; Ohio Valley Bank Company/Ohio Valley Bank 1992 SEC No-Act LEXIS 897 (Aug. 27, 1992); Bayswater Realty & Capital Corp. SEC No. Action Letter, WIB File No. 050382004 (Apr. 30, 1982).

MetLife and used for general corporate purposes, as well as for the other purposes specified in the Plan. Therefore, the use of a portion of the proceeds of the Initial Public Offering to fund policy credits and cash payments to certain Eligible Policyholders does not vitiate the existence of the Section 3(a)(10) distribution of securities to Eligible Policyholders.

2. Do the offerings involve the issuance of the same class of securities? Common Stock will be issued through the Initial Public Offering to new investors and, through the Trust, to Trust Eligible Policyholders. However, the Interests themselves are a discrete class of security from a different issuer.

3. Are the offerings made at or about the same time? Although the Initial Public Offering will close simultaneously with the Effective Date, the actual offers to Eligible Policyholders and to purchasers in the Initial Public Offering will not occur at the same time. The Plan and the New York Statute provide that the Eligible Policyholders will vote on whether to approve the Plan prior to the Effective Date. Thus, there will be a significant amount of time between the offering to Eligible Policyholders, which will conclude with the Policyholders' Vote, and the offering to investors, which will conclude with closing of the Initial Public Offering, even though both issuances occur on the same date.

4. Is the same type of consideration to be received? The Holding Company will receive cash consideration in the Initial Public Offering which differs from the consideration, the extinguishment of the Policyholders' Membership Interests, received by MetLife and the Holding Company in consideration for issuing securities to Trust Eligible Policyholders in the Reorganization.

5. Are the offerings made for the same general purpose? The Initial Public Offering and the issuance of securities to Trust Eligible Policyholders will be conducted for different purposes. The Initial Public Offering will be made for the purpose of raising capital for both funding cash payments and crediting of policy credits under the Plan and for general corporate purposes and for the other purposes specified in the Plan. The issuance of securities to Trust Eligible Policyholders will not raise new capital, but will be made for the purpose of effecting the Reorganization and converting MetLife from a mutual life insurance company to a stock corporation.

In addition to the foregoing analysis, we note that the exemption from registration provided by Section 3(a)(10) of the Securities Act is based on a policy determination that the protections provided to securityholders by the registration requirements of the

Securities Act are unnecessary in the case of securities issued in an exchange offer which is found to be fair by a government authority following a public hearing. Therefore, no purpose would be served by integrating such exempt offerings with registered offerings. Accordingly, we believe that it would not be appropriate to integrate the offerings of securities in the Reorganization with the Initial Public Offering.

C. Registration of the Interests under the Exchange Act

Section 12(g) of the Exchange Act and Rule 12g-1 thereunder provide that certain "issuers" with total assets exceeding $10,000,000 and a class of "equity securities" held of record by 500 or more persons must register under the Exchange Act. An "issuer" is defined under Section 3(a)(8) as "any person who issues or proposes to issue any security." MetLife and the Trust intend that the Trust will register the Interests under a registration statement on Form 8-A under the Exchange Act. The registration statement will include descriptions of the Interests, the Common Stock and the rights issued under the stockholder rights plan adopted by the Holding Company required by Item 202(a) of Regulation S-K, including information which will be incorporated by reference from the Holding Company's registration statements on Form 8-A for the Common Stock and rights. In addition, the Trust will file, at the time of mailing of dividends and other distributions to Beneficiaries under the Trust Agreement, financial statements of the Trust only, showing the distributions received and paid by the Trust during the period ending on the financial statement date and the Trust Shares and other assets held on that date. The filing made in connection with the annual distribution of cash dividends will be on a Form 10-K, and the financial statements included therein will be audited. Any filings made in connection with distributions made at other times of the year will be on Form 8-K, with unaudited financial statements. The Trust will also file reports on Form 8-K if there is an event relating to the Trust that requires disclosure under that form.

We believe that these filings will provide Beneficiaries with adequate disclosure regarding the Interests and the Trust's operations. These filings will provide public disclosure of the Trust's assets and its operations (namely, the receipt, any investment and distribution of dividends to Beneficiaries). Information about the Holding Company itself will be publicly available through the Holding Company's Exchange Act reports. Furthermore, since the Beneficiaries alone will have the authority to determine when and if Trust Shares are to be sold on their behalf through the Purchase and Sale Program or, after one year, withdrawn from the Trust, they will not be relying on advice of the Trust or the Trustee (which is essentially a passive entity) in making investment decisions affecting their Interests that would benefit from disclosure. We do not believe that subjecting the Trust to the further periodic reporting requirements of the Exchange Act

would serve to benefit the Beneficiaries or the public. Therefore, we request confirmation that the staff will not recommend that the Commission take any enforcement action if the Interests are registered under the Exchange Act and the Trust files reports under that Act as described above.

D. Application of Section 14 of the Exchange Act and Relevant Rules to Mailings of Proxy Statements and Annual and Quarterly Reports to Beneficiaries

Section 14 of the Exchange Act and the regulations thereunder provide, in certain circumstances, that proxy material, annual reports or informational statements must be disseminated to beneficial owners of registered securities and that certain procedures be followed in connection with a stockholder vote or consent. In addition, such regulations require, in certain circumstances, that registrants and others inquire as to the beneficial ownership of its registered securities, and provide certain information responsive to that request. We request the staff's confirmation that it will not recommend that the Commission take any enforcement action if (i) no proxy soliciting materials, annual and quarterly reports or information statements are disseminated to Beneficiaries in connection with a vote or consent of stockholders of the Holding Company, except, as described in this letter, in connection with a Beneficiary Consent Matter or upon request of Beneficiaries, (ii) the procedures described in this letter for the distribution of materials in connection with a Beneficiary Consent Matter (including the procedures for requiring mailing and other expenses be reimbursed by a stockholder in certain circumstances) are followed and (iii) none of the Holding Company, the Trust, the Trustee or Custodian, any of their respective affiliates, or their respective officers, directors or employees inquires as to the beneficial ownership of the Trust Shares in connection with a vote or consent of the Holding Company's stockholders, or provides information in connection with those inquiries, except in connection with a Beneficiary Consent Matter. The relief sought in this letter applies only to the shares of Common Stock held in the Trust and not to any other shares of Common Stock outstanding. We are furthermore not seeking relief in connection with a solicitation of consents from Trust Beneficiaries to amend the Trust Agreement (except to the extent the solicitation is viewed to have been made in connection with a Beneficiary Consent Matter), to the extent that any such solicitation would be subject to the proxy rules under the Exchange Act.

As discussed above, pursuant to the terms of the Trust Agreement, Beneficiaries are entitled to instruct the Trustee on how to vote the Trust Shares only with respect to a Beneficiary Consent Matter. On all other matters, the Trustee will vote in accordance

with the recommendation given by the Board of Directors of the Holding Company to its stockholders or, if no such recommendation is given, as directed by the Board.

We note that this structure is an integral component of the Plan and the Trust Agreement and, as such, will be fully disclosed to Eligible Policyholders in connection with their consideration of the Plan. These provisions, moreover, will not go into effect unless the Plan, including the Trust Agreement, is approved by the Superintendent and by two-thirds of the Eligible Policyholders that vote. Prior to the Policyholders' Vote, the Eligible Policyholders will be mailed the Policyholder Information Booklet which will describe in detail the Trust structure and the voting mechanism under the Trust. It will disclose the distinction that will be drawn under the Plan between Beneficiary Consent Matters (upon which the Beneficiaries will direct the voting of Trust Shares) and those matters upon which the Beneficiaries, in effect, will be deemed to have authorized the Board of Directors of the Holding Company to direct the voting of Trust Shares. It will further disclose that, unless otherwise requested, Beneficiaries will be mailed the Annual Stockholder Reports only with respect to a matter upon which the Beneficiaries will direct the voting.

Absent the relief sought by this letter, Rules 14a-13, 14b-1 and 14b-2 under the Exchange Act may require the Holding Company, the Custodian (to the extent that it or its affiliates is a registered broker-dealer subject to that provision) and the Trustee, respectively, to comply with certain requirements in connection with the distribution of proxy material and annual reports to the Beneficiaries, as beneficial owners of the Trust Shares, in connection with matters that are submitted to a vote of stockholders. Regulation 14C contains comparable requirements for the distribution of information statements and annual reports. We believe that no purpose would be served by requiring the Holding Company, Custodian and Trustee to comply with these requirements in connection with matters other than Beneficiary Consent Matters. In those non-Beneficiary Consent matters, the Trustee will vote as recommended or directed by the board of directors of the Holding Company and, accordingly, Beneficiaries do not have the right to direct the voting of the Trust Shares.

As discussed above, the Trust has been structured to eliminate the costs associated with mailing the Annual Stockholder Reports to the over 10 million Beneficiaries in circumstances where they do not have the right to vote or direct the voting of the Trust Shares. Importantly, such materials will be made available to Beneficiaries on a website maintained by the Holding Company, and Beneficiaries will be able to obtain any such materials, at the Holding Company's expense, by notifying the Trustee in writing or through a toll-free number. Beneficiaries will be informed annually

(which is expected to be done in connection with the annual dividend check mailings to Beneficiaries) of the availability of the Annual Stockholder Reports on the Holding Company's website or by mail upon request at the Holding Company's expense; of the availability of the Holding Company's and the Trust's filings under the Exchange Act on the Holding Company's and the SEC's websites or by mail upon request at the Holding Company's expense; of their rights to participate in the Purchase and Sale Program and where to obtain information about the Program; of the expected date of the Holding Company's annual meeting and deadline for submission of stockholder proposals, and when the Annual Stockholder Reports are expected to become available; and of the aggregate amount of dividends and interest paid to all Beneficiaries in that dividend distribution. Beneficiaries that telephone the toll-free number in order to participate in the Purchase and Sale Program or to obtain further information will be informed that the Annual Stockholder Reports are available on the website or by mail upon request and at the Holding Company's expense. Beneficiaries desiring to receive these materials as stockholders of the Holding Company will be able to do so by selling their shares in the Purchase and Sale Program and buying new shares or, after the first anniversary of the Effective Date, withdrawing their shares from the Trust.

Furthermore, when deciding whether or not to purchase or sell their allocated shares of Common Stock through the Purchase and Sale Program, the Beneficiaries will be adequately informed, from reports filed under the Exchange Act by the Holding Company, of material events regarding the Holding Company. Like stockholders of the Holding Company, they will be able to rely on the disclosure system contemplated by the Exchange Act when making investment decisions regarding their allocated shares of Common Stock and will not need to have transmitted to them personally the Annual Stockholder Reports in order to be informed of the Holding Company's activities. Beneficiaries may always request the Annual Stockholder Reports to be mailed to them at the Holding Company's expense and, if they acquire shares outside the Trust, will also be receiving these materials as stockholders of the Holding Company.

Rule 14a-7 requires that mailings made by registrants on behalf of security holders satisfy certain requirements, including that the registrant be reimbursed for its reasonable expenses incurred in mailing materials on behalf of the requesting security holder (other than expenses of effecting the mailing, which must be tendered prior to mailing under Rule 14a-7(a)(1)). We believe that the Trust Agreement provisions comply substantially with these requirements. As noted above, the Trust Agreement contains detailed provisions for the mailing of materials on behalf of contesting stockholders to Beneficiaries, including requiring that the Custodian receive, prior to mailing, payment of estimated postage and reasonable expenses to effect the mailing of such materials and such

security as the Custodian may reasonably request to cover expenses in excess of that estimate. Due to the unprecedented number of Beneficiaries that would receive any such mailing and, as a result, the significant costs required to effect mailings to Beneficiaries, MetLife believes that the provisions in the Trust Agreement establish reasonable requirements to ensure that such materials are disseminated to Beneficiaries without imposing any undue hardship on any of the parties involved.

E. Reports Filed under Section 13(d) and 16(a) under the Exchange Act

Section 13(d). For Section 13(d) reporting purposes, a beneficial owner of a security is defined as any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares voting power (which includes the power to vote, or to direct the voting of, such security), and/or investment power (which includes the power to dispose, or to direct the disposition of, such security). See Rule 13d-3(a).

We believe that the Beneficiaries should be considered the beneficial owners of their allocated Trust Shares since they have investment power over those shares. As discussed above, the Trustee may dispose of Trust Shares only in accordance with the Beneficiaries' instructions. We believe that the power to instruct the Trustee to withdraw Trust Shares for sale through the Purchase and Sale Program or, after one year after the Effective Date, to be held or otherwise disposed of by the Beneficiary, would constitute investment power under Rule 13d-3(a). Thus, we believe that the Beneficiaries should be considered the beneficial owners of the Trust Shares allocated to them for purposes of Section 13(d) and the rules promulgated thereunder. The relief requested in this letter does not address a Beneficiary's individual obligation to file a Schedule 13D if the Beneficiary beneficially owns, directly and through the Trust, more than five percent of the outstanding shares of Common Stock.

We understand that the staff may believe that members of the Board of Directors of the Holding Company may together be considered a beneficial owner of the Trust Shares as defined under Rule 13d-3(a). As discussed above, the Trust Agreement provides that, in all cases other than a Beneficiary Consent Matter, all Trust Shares will be voted in accordance with the recommendation given by the Board to its stockholders or, if no such recommendation is given, as directed by the Board. With respect to those matters, therefore, the Board of Directors may be considered a beneficial owner of the Trust Shares for purposes of Rule 13d-3(a). We request confirmation from the staff that it will not recommend enforcement action if the filings required under Section 13(d) are made in the manner described below.

It is expected that the initial statement on Schedule 13D to be filed by the Board of Directors, reporting the acquisition of voting securities registered under Section 12 of the Exchange Act, will be filed within 10 days after such acquisition. The Schedule 13D to be filed by the Board of Directors is expected to be made as a single filing under Rule 13d-1(k)(2). The Schedule 13D will note that the Board of Directors has shared voting power over all Trust Shares with respect to matters submitted for a vote of stockholders of the Holding Company other than Beneficiary Consent Matters. The filling will be made on behalf of the board as a whole, and not the individual members, although they will each sign the statement.

The cover page to Schedule 13D and Item 5 therein each require disclosure by each reporting person of the "aggregate number and percentage of the class of securities ... beneficially owned ... by" such reporting person. Although the Board of Directors may be deemed a beneficial owner of Trust Shares, we do not believe that any individual member of the Board of Directors of the Holding Company should be considered a beneficial owner under Rule 13d-3(a). The Board may only act by majority vote and no individual member may act individually to instruct the stockholders generally or the Trustee how to vote the Trust Shares. As a result, no individual member of the Board of Directors has the power to direct the voting of the shares and, accordingly, no such person should be considered to be a beneficial owner of Trust Shares (other than those allocated to the member as an Eligible Policyholder) for Section 13(d) purposes.[18] Accordingly, it is expected that the statement on Schedule 13D to be filed by the Board of Directors will disclose only the Trust Shares held by the Trust at the time the filing is made. To the extent that any individual member would be required to file a Schedule 13D by virtue of the investment or voting power held by such member over other shares of Common Stock, that member would be expected to file a Schedule 13D with respect to those shares. The member's individual Schedule 13D would not include the shares owned by any other member of the Board of Directors.

Rule 13d-2(a) under the Exchange Act requires prompt amendment of a Schedule 13D upon a material change in facts set forth therein, including an acquisition or disposition of beneficial ownership of securities in an amount equal to one or more percent of the class. As discussed above, the initial Schedule 13D to be filed by the Board of Directors will include all of the Trust Shares held by the Trust at the time of the filing. Once the Purchase and Sale Program commences, however, the number of Trust Shares will change on a daily basis due to purchase and sale instructions made by Beneficiaries

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18. See The Southland Corp., 1987 WL 108107 (Aug. 10, 1987).

over which neither the Board nor the Trust has any control. It would be unduly burdensome to require the Board of Directors to amend the Schedule 13D every time such transactions resulted in a material increase or decrease in the number of Trust Shares. Furthermore, the information disclosed in the Board's Schedule 13D -- the number of shares over which they share voting power in connection with matters other than Beneficiary Consent Matters -- is of importance only in connection with a stockholder's meeting at which those matters are considered. Thus, it is expected, and we believe it is appropriate, that the Schedule 13D will be amended at the time of filing of the Holding Company's Quarterly Reports on Form 10-Q and Annual Reports on Form 10-K, as well as prior to any special meeting at which instructions from Beneficiaries will not be solicited. It is not expected that an amendment will be made during the periods between these filings, even if the number of Trust Shares changes by one or more percent.

Section 16(a). Section 16 applies to, among others, the beneficial owner of more than ten percent of any class of equity securities registered pursuant to Section 12 of the Act (a "ten percent beneficial owner"). For the sole purpose of determining whether a person is a ten percent beneficial owner, the term "beneficial owner" is defined in Rule 16a-1 as any person who is deemed a beneficial owner pursuant to Section 13(d) and the rules thereunder. See Rule 16a-1(a)(1). In the release promulgating Rule 16a-1(a), the Commission stated that "for purposes of determining status as a ten percent holder under Section 16, the securities beneficially owned by [a Section 13(d)] group must be included in the calculation by each individual member of the group." Ownership Reports and Trading by Officers, Directors and Principal Security Holders, Release No. 34-28869, [1990-91 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶84,709, at 81,254 n.54 (Feb. 8, 1991). As discussed above, we believe that both the Beneficiaries and the Board of Directors of the Holding Company should be deemed the beneficial owners of the Trust Shares pursuant to Rule 13d-3(a), but that the individual members of the Board of Directors should not. We request that the staff confirm that the Board of Directors may file a Form 3 reporting ownership of the Trust Shares prior to effectiveness of the registration statement for the Initial Public Offering but that each member of the Board of Directors need not include the Trust Shares (other than Trust Shares allocated to such individual member as an Eligible Policyholder) in either the member's initial statement of beneficial ownership or subsequent statements of changes of beneficial ownership or for the purpose of determining whether such member is a "ten percent holder" as defined in Rule 16a-1(a)(1) under the Exchange Act. The Form 3 and the Schedule 13D filed by the Board of Directors will disclose the number of Trust Shares held by the Trust at the time of filing, and the Holding Company's annual proxy statement will disclose the number of Trust Shares over which the Board of Directors shares voting power at the time of that statement. Moreover, changes in beneficial ownership required by Section 16(a) would

include only those changes in shares over which the member has or shares a direct or indirect pecuniary interest pursuant to Rule 16a-1(a)(2). The Board and its individual members have no direct or indirect pecuniary interest in the Trust Shares solely by virtue of the voting provisions of the Trust, and thus any statement of changes would be expected to be filed by a member of the Board of Directors only when the number of shares over which such member has a pecuniary interest (including the Trust Shares allocated to the member as an Eligible Policyholder) changes. We believe that no purpose would be served by requiring the members of the Board to include Trust Shares other than those allocated to the member in either the member's initial statement of beneficial ownership or subsequent statements of changes of beneficial ownership.

F. Purchase and Sale Program

The Purchase and Sale Program has been structured to satisfy the conditions imposed on non-registered stock purchase and sale plans that have been subject to prior releases and long-standing no-action letters.[19] We believe that the Purchase and Sale Program meets all of the substantive requirements imposed in the no-action letters regarding those plans. We therefore request confirmation that the staff will not recommend that the Commission take any enforcement action against the Holding Company, the Trust, the Trustee and Custodian, the Program Agent, CMFS or the Brokers under Section 5 of the Securities Act, Sections 13(e), 14(d) or 14(e) of the Exchange Act and Rule 10b-13 under the Exchange Act, if the Purchase and Sale Program is implemented as described herein.

Our reasons for the foregoing views are set forth below.

Securities Act Registration. The Purchase and Sale Program will operate well within the parameters and criteria set forth in long-standing no-action letters respecting appropriately-limited issuer involvement in dividend reinvestment and employee stock purchase plans, including the Securities Transfer Association and First Chicago no-action

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19. See, e.g., Securities Transfer Ass'n. Inc., SEC No-Action Letter, WSB File No. 091895010 (publicly available Sept. 14, 1995) ("Securities Transfer Association"); First Chicago Trust Company of New York, 1994 SEC No-Act. LEXIS 796 (Dec. 2, 1994) ("First Chicago"); Securities Act Release No. 5515, [1974-1975 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 79, 907 at 84, 323 (July 22, 1974); Employee Stock Purchase Plans, Securities Act Release No. 33-4790, 30 Fed. Reg. 9059 (July 13, 1965).

letters.[20] The Holding Company and the Trust will be involved in the Purchase and Sale Program only in preparing and distributing descriptive information regarding the Purchase and Sale Program in periodic Holding Company-paid mailings, in relaying inquiries and requests from Beneficiaries to the Program Agent and in paying the Program Agent's administrative and processing fees. Neither the Holding Company, the Trustee nor any of their affiliates (other than (i) directors and officers of MetLife and (ii) any subsidiary of MetLife that owns a policy on behalf on any employee benefit plan, that receive shares in the Reorganization as policyholders of MetLife and that might be considered "affiliates") will be eligible to effect purchases or sales of Common Stock through the Purchase and Sale Program. Neither the Holding Company nor the Trust will have any role in the administration of Purchase and Sale Program services or the processing of Purchase and Sale Program transactions, except to the limited degree described herein. All such functions are traditional issuer functions in dividend reinvestment and employee stock purchase plans that operate in accordance with Securities Act Release Nos. 4790 and 5515 and long-standing no-action letters.

In performing Purchase and Sale Program services, the Program Agent and CMFS will take instructions from the Beneficiaries, and CMFS will forward aggregate purchase and sale instructions to the Brokers for processing. Neither the Holding Company nor the Trust has any ability to influence or control the Brokers in respect of sales of the Common Stock through the Purchase and Sale Program or the timing or manner of execution of such sales. Accordingly, the Holding Company and the Trust will have no control or influence with respect to order or transaction processing through the Purchase and Sale Program in respect of the Common Stock.

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20. An example of appropriately-limited issuer involvement with respect to dividend reinvestment and employee stock purchase plans is where the issuer that appointed a program agent "would be involved in [such plan], at the most, only by identifying, from among the possible service features established by the [program agent], the particular services to be incorporated in the service package for that [issuer's securities], by permitting the [program agent] to include the descriptive brochure in quarterly or less frequent issuer-paid mailings, by making the brochure available to current employees either in connection with an initial announcement of the Program or at the time a new employee is hired, by processing payroll deductions to the extent Program services are made available to employees, and by paying some or all of the [program agent's] administrative and processing fees." Securities Transfer Association, supra note 19.

The Holding Company's and the Trust's activities in respect of the allocating of Interests in the Purchase and Sale Program will likewise be limited. As described above, upon purchase or sale of Common Stock for a Beneficiary under the Program, the Beneficiary's Interests will be adjusted to reflect the changed number of shares of Common Stock allocated to the Beneficiary. To the extent that the allocating of additional Interests upon a purchase of Common Stock might be deemed to be an issuance of securities subject to registration under Section 5 of the Securities Act, we request confirmation from the Staff that such issuances may be made as described herein without registration under Section 5. Such issuances, which are purely a mechanical feature resulting from the Trust structure, will only be made to reflect a purchase of an identical number of shares of Common Stock. No indicia of an offering or sale is present; on the contrary, the transaction at its basis is an investment decision by a Beneficiary to purchase stock on the open market (but without the payment of commissions or fees) without control or influence by the Holding Company or Trust. As a result, the issuance of Interests is not a transaction which would benefit from the safeguards of registration under the Securities Act.

We do not believe that the withdrawal of Trust Shares by Beneficiaries, either for sale through the Purchase and Sale Program or at any time beginning one year after the Effective Date, is subject to registration under the Securities Act. No new consideration is given, and no investment decision is made at that time. Hence, we do not believe that such withdrawal constitutes a "sale" under Section 2(3) of the Securities Act.[21]

Based on the foregoing, it is our opinion that (i) transactions in Common Stock effected on behalf of Beneficiaries through the Purchase and Sale Program as described herein would be exempt from registration under Section 4(1) or 4(4) of the Securities Act and (ii) consequently, registration under the Securities Act would not be required in respect of Purchase and Sale Program transactions (or specific securities that are the

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21. See, e.g., Invest-Tex, Inc., 1987 SEC No-Act. LEXIS 1493 (Jan. 12, 1987); Jet Florida Sys., Inc., Airport Sys., Inc., 1987 SEC No-Act. LEXIS 1490 (Jan. 12, 1987); Damson Energy Co., L.P., 1985 SEC No-Act. LEXIS 2192 (May 9, 1985).

subject of such transactions).[22] We also request confirmation that any related issuance of Interests may be made without registration under the Securities Act.

Sections 13(e) and 14(d) of the Exchange Act and Rule 13e-4. A tender offer typically involves an offer by an issuer or a third party (or group) to purchase securities for its own account. We believe that, given the fundamental differences between the Purchase and Sales Program and the types of transactions that the tender offer provisions were designed to address, the Program should not be deemed to constitute a "tender offer" within the meaning of the Exchange Act. We therefore request that the staff provide us with assurance that it will not recommend enforcement action under Sections 13(e) and 14(d) of the Exchange Act and Rule 13e-4 if the Program is conducted in the manner described herein.

No-action relief would be appropriate in this case because the Purchase and Sale Program does not involve the factors that traditionally have been considered in determining whether a tender offer exists. The factors that courts have looked to in considering whether a tender offer exists are: (1) whether an active and widespread solicitation of public shareholders is made for shares of an issuer; (2) whether the solicitation is made for a substantial percentage of the issuer's stock; (3) whether the offer to purchase is made at a premium above the prevailing market price; (4) whether the terms of the offer are firm rather than negotiable; (5) whether the offer is contingent on the tender of a fixed minimum number of shares to be purchased; (6) whether the offer is open for only a limited period of time; (7) whether offerees are subject to pressure to sell their stock; and (8) whether public announcements of an acquisition program precede or

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22. We understand that previous issuer purchase and sale programs that were the subject of no-action relief involved issuers that were subject to the reporting requirements of Sections 13(a) or 15(d) of the Exchange Act, or, in the case of a closed-end investment company, Section 30 of the Investment Company Act of 1940, for at least 90 days prior to the commencement of purchase and sale program operations for that issuer's securities. See, e.g., Securities Transfer Association, supra note 19; First Chicago, supra note 19. MetLife proposes to permit sales to commence immediately after completion of the Initial Public Offering but does not believe that doing so implicates any of the concerns addressed by such no-action request letters, since such Beneficiary sales could not be considered to be "sales" or "offers to sell" securities in violation of Section 5.

accompany the accumulation of stock.[23] These factors will not be present in the case of the proposed Program. Specifically:

- There will be no "solicitation" of sale authorizations in the sense of any of the Holding Company, the Trust or the Program Agent making any recommendation to Beneficiaries. To the contrary, the Purchase and Sale Program disclosure materials will expressly state that no such party is making any recommendation regarding the purchase or sale of Common Stock in the Program.

- Beneficiaries that sell shares through the Purchase and Sale Program will not receive any premium over the market price on the date of sale. In this regard, the "terms of the offer" will be "firm" only in the sense that Beneficiaries that sell shares in a trading day's Batch through the Purchase and Sale Program will invariably receive a price based on the price of all shares sold through the Purchase and Sale Program in that Batch.

- The Purchase and Sale Program will not be contingent upon the participation of any fixed number of Beneficiaries or the sale of any fixed number of shares of Common Stock.

- The Purchase and Sale Program will not remain open only for a fixed period of time, but rather throughout the term of the Trust.

- Beneficiaries will not be subject to any pressure to participate in the Purchase and Sale Program. The Purchase and Sale Program is being provided solely as an accommodation to Beneficiaries that may wish to purchase or sell shares of Common Stock without the payment of commissions or other expenses. As indicated above, the disclosure materials provided to Beneficiaries will merely advise them that the Purchase and Sale Program exists, without making any recommendation.

- The Purchase and Sale Program will not be preceded or accompanied by a rapid accumulation of stock. Except for purchases by the Holding Company

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23. See, e.g., SEC v. Carter Hawley Hale Stores, Inc., 760 F.2d 945, 950 (9th Cir. 1985); Wellman v. Dickinson, 475 F. Supp. 783, 823-24 (S.D.N.Y. 1979), aff'd, 682 F.2d 355 (2d Cir. 1982).

as described herein, none of the Holding Company, the Trust or the Program Agent will enter into any arrangement with the Brokers with respect to purchases of shares of Common Stock sold pursuant to the Purchase and Sale Program.

Because Rule 13e-4 was designed with a conventional issuer tender offer in mind, many of its substantive provisions are either irrelevant in the context of the Purchase and Sale Program or would lead to an anomalous result if applied literally. In order to avoid subjecting Beneficiaries to market risk, for example, the Purchase and Sale Program contemplates that the Broker-Dealer Affiliate will generally forward all purchase and sale instructions to the Brokers for execution on the next trading day. If the Purchase and Sale Program had to comply with the "withdrawal right" requirement of paragraph (f)(2) of Rule 13e-4, it would need to permit Beneficiaries to withdraw their instructions after they had been processed. Accordingly, it would not be feasible to provide a withdrawal right of the type contemplated by Rule 13e-4.

Similarly, the "best price" requirement of paragraph (f)(8)(ii) of Rule 13e-4 is designed to ensure that the issuer does not favor a selected group of shareholders by offering them a price higher than that paid to other shareholders. Applied literally in the context of the Purchase and Sale Program, it would require all Beneficiaries that sell shares through the Purchase and Sale Program to be paid the highest price received by any Beneficiary that sells through the Purchase and Sale Program. No Beneficiary on whose behalf sales are sold in any given day will receive preferential treatment under the Purchase and Sale Program, however, because the consideration paid to each Beneficiary that sells shares through the Program on any given trading day will generally be determined on the basis of a uniformly applied formula based on the market price of the subject security.[24]

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24. We believe that provisions regarding sales on behalf of Large Trust Beneficiaries likewise will ensure that they will be treated in a uniform, objective manner. As noted above, if sale instructions made by Large Trust Beneficiaries in any given Batch exceed specified volume limitations for that Batch, then the excess shares will either be deferred until the next trading day (which will be sold with the next day's Batch, subject to the volume limitations on that day) or sold on the same day other sales in the Batch are sold, through brokerage firms, acting as agent or in a block trade. These provisions have been included in order to assure that the price used to determine the selling price for all shares sold in a Batch is not adversely affected if large Beneficiaries deliver sale instructions for a large number of shares to be sold on any given day. These restrictions, however, provide objective guidelines for the sale

(continued...)

This is essentially the same condition that applies to the exemption for odd-lot tender offers under paragraph (h)(5) of Rule 13e-4.

Rule 13e-4 also contains filing, disclosure, and dissemination requirements that are designed to ensure that shareholders receive all of the information necessary to make an informed investment decision in the context of a tender offer. Paragraph (c) of Rule 13e-4 requires that an issuer or an affiliate making an issuer tender offer file with the Commission an Issuer Tender Offer Statement on Schedule 13E-4. Paragraph (d) requires that the issuer publish, send or give to security holders certain information, including the information required by Items 1 though 8 of Schedule 13E-4 or a fair and adequate summary thereof. Paragraph (e)(1) specifies the manner in which the information required by paragraph (d) may be disseminated to shareholders.

In light of the nature of the Purchase and Sale Program and the disclosures that all Trust Eligible Policyholders will receive in connection with both the demutualization and the Purchase and Sale Program, it should not be necessary to comply with the filing and disclosure requirements of Rule 13e-4. As indicated above, the Policyholder Information Booklet provided in connection with the demutualization contains comprehensive disclosures that are comparable to those contained in a registration statement. Subsequent financial information will be available through the Holding Company's public filings, which will be available on the Holding Company's website or by mail upon request of any Beneficiary. Trust Eligible Policyholders will also receive a detailed description of the Purchase and Sale Program itself, which will provide complete information regarding the terms of the Program. These documents will contain all of the information needed by Beneficiaries to make an informed decision as to whether or not to sell shares through the Purchase and Sale Program. The other line-item disclosure requirements contained in Schedule 13E-4, such as those relating to withdrawal and proration rights, the sources of funds used to make the tender offer, and persons retained to make solicitations or recommendations, are simply not applicable in the context of the Purchase and Sale Program.

With respect to the dissemination requirements of paragraph (e)(1), it is important to note that the disclosure documents described above will be sent directly to *all* Trust Eligible Policyholders. This goes beyond what is required by paragraph (e)(1),

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24. (...continued)
instructions to be processed, and will apply to all Large Trust Beneficiaries on a uniform basis.

which permits dissemination of cash issuer tender offers by long-form or summary publication.

We also believe that the ability of the Holding Company to repurchase shares does not affect our analysis. The Holding Company will not repurchase shares while it is otherwise engaged in a distribution as defined in Regulation M, and any such repurchase will be made in compliance with applicable provisions of the Exchange Act. The staff has previously issued no-action letters for odd-lot sale and round up programs where issuers were permitted to purchase shares sold in purchase and sale programs. See Shareholders Communications Corp. (available July 25, 1996). Any such purchases, furthermore, will not affect the timing and quantities of sales made by Beneficiaries through the Purchase and Sale Program. Although such purchases will necessarily reduce the number of shares sold in the Purchase and Sale Program, they will have no different effect on the market than if such purchases were made in open-market programs permitted by the Exchange Act. The fact that purchases are being made by the Holding Company on a particular day will not be disclosed to Beneficiaries and thus will have no bearing on any investment decision made by them.

We believe that the Purchase and Sale Program should be distinguished from a commission-free odd-lot sales program, which we understand the staff views as an issuer tender offer within the meaning of Section 13(e) of the Exchange Act and Rule 13e-4 thereunder, in part because the issuer obtains some indirect benefit (in the form of reduced stockholder servicing costs) from those programs. See Merrill Lynch, Pierce, Fenner & Smith Inc., 1986 SEC No-Act. LEXIS 1880 (March 7, 1986). Unlike a commission-free odd-lot program, which is structured so that odd-lot holders may sell their shares without brokerage commissions or similar costs and thereby reduce the cost to the issuer of servicing those small holders, the Purchase and Sale Program is intended not to reduce the costs to the Holding Company of servicing Beneficiaries. Indeed, it is the Trust itself, through the voting mechanisms discussed above, that is designed to result in reduced stockholder costs for the Holding Company. Instead, the Purchase and Sale Program is designed to allow Beneficiaries maximum flexibility to dispose of their allocated shares on a commission-free basis. Furthermore, unlike odd-lot programs, which are usually limited in time (and thus may be seen to create an implied pressure for the holders to sell their shares during the period in which the program is offered in order to do so at a reduced commission rate), the Purchase and Sale Program will be open indefinitely with no pressure on the Beneficiaries to sell at any given time.

Rule 10b-13 under the Exchange Act. Rule 10b-13 prohibits any person that makes a cash tender offer or exchange offer from purchasing or arranging to purchase a

security that is the subject of the offer, otherwise than pursuant to the offer. None of the Holding Company, the Trust or the Trustee or Custodian (in its capacity as such) will have any material involvement in the Purchase and Sale Program. In addition, the Program Agent and CMFS, operating in accordance with relief responsive to this request, will be acting independently of the Holding Company, and as a result would be distanced from issuer tender offers (or third-party tender offers) for Common Stock. We thus believe that purchases initiated at the request of Beneficiaries and effected through the Purchase and Sale Program should not be considered purchases effected or arranged by an issuer under Rule 10b-13 or purchases otherwise occurring in a manner inconsistent with that Rule, and we request the staff to affirm that it will not recommend enforcement action against any of the Program Agent, CMFS, the Holding Company, the Trust or the Trustee or Custodian under Rule 10b-13 if the Purchase and Sale Program is implemented and operated as described herein.

In addition, we request that an exemption be granted, or in the alternative, that the staff confirm that they will not recommend enforcement action, for open-market purchases of shares of Common Stock outside of the Purchase and Sale Program that the Holding Company or the Program Agent (or their affiliates) may make while the Purchase and Sale Program is in effect. Any such purchases will be made for purposes independent of the Purchase and Sale Program, and no purchases will knowingly be made directly from a Beneficiary. Furthermore, the Purchase and Sale Program will comply with the purposes of Rule 10b-13 (to ensure that shareholders to whom an offer is extended are treated equally, and to prevent larger shareholders from demanding greater or different consideration for the tender of their shares than that which is paid pursuant to the offer) because it will extend to all Beneficiaries and will treat all participants equally (subject to the volume limitations described in this letter). Consequently, such purchases should not raise any regulatory concerns about disparate treatment of persons to whom a tender offer is directed.

In the adopting release issued in connection with the most recent amendments to Rule 13e-4, the Commission granted a class exemption from Rule 10b-13 to permit any issuer or agent acting on behalf of an issuer in connection with an odd-lot tender offer to purchase or arrange to purchase the security that is the subject of the offer outside of the offer.[25] In so doing, the Commission noted that odd-lot tender offers do not raise the

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25. See Odd-Lot Tender Offers by Issuers, Exchange Act Release No. 38068 96-97 Fed. Sec. L. Rep. (CCH) 1985, 869 (Dec. 20, 1996).

concerns that Rule 10b-13 was designed to address.[26] We believe that the proposed Purchase and Sale Program, which will do nothing more than assist Beneficiaries in purchasing or selling shares of Common Stock on a commission-free basis, will present even less potential for abuse. Accordingly, exemptive relief would be appropriate.

Regulation M under the Exchange Act. The Purchase and Sale Program will not involve any special selling efforts or selling methods, and thus will not involve a "distribution" as defined in Rule 100 of Regulation M. Furthermore, this letter request is being made on the basis that the Brokers will be selected by CMFS, not the Holding Company, and thus the Program Agent and CMFS would meet the requirements of an "agent independent of the issuer". Accordingly, no relief is sought from Regulation M for purchases of Common Stock by the Holding Company or any other party during the pendency of the Program or for purchases of Common Stock under the Purchase and Sale Program during a distribution by the Holding Company.

G. Resales of Common Stock

Based on our review of Rules 144 and 145 under the Securities Act and the no-action positions taken by the staff with respect to the resales of securities issued without registration under the Securities Act in reliance upon Section 3(a)(10), we are prepared to advise MetLife that unregistered Trust Shares allocated to Trust Eligible Policyholders in the Reorganization will not be "restricted securities" within the meaning of Rule 144, and that Beneficiaries may elect to withdraw their allocated shares for sale, through the Purchase and Sale Program or otherwise, without registration under the Securities Act in accordance with the following guidelines:

1. Beneficiaries that are neither (i) affiliates of MetLife at the time that the Plan is submitted to Eligible Policyholders for approval nor (ii) affiliates of the Holding Company following the Reorganization may withdraw their allocated shares for sale, through the Purchase and Sale Program or otherwise, without regard to Rules 144 or 145(c) or (d) under the Securities Act.

2. Beneficiaries that are affiliates of MetLife and that become affiliates of the Holding Company following the Reorganization may withdraw their allocated shares

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26. The Commission recently codified the exemption for odd-lot offers. See Regulation of Takeovers and Security Holder Communication, Exchange Act Release No. 42055, 1999 SEC LEXIS 2291 at * 167-68 (Oct. 22, 1999).

for sale, through the Purchase and Sale Program or otherwise by the Beneficiaries, pursuant to Rule 145(d)(1).

3. Beneficiaries that are affiliates of MetLife but are not affiliates of the Holding Company after the Reorganization are persons described in Rule 145(c) and may withdraw their allocated shares for sale, through the Purchase and Sale Program or otherwise in the manner permitted by Rule 145(d)(1). In computing the holding period of Trust Shares for purposes of Rule 145(d)(2) or (d)(3), however, such persons may not "tack" the holding period of their interest in the Policyholders' Membership Interest.[27]

The fact that the Trust Shares are being withdrawn from the Trust prior to being sold should not affect the treatment of such shares under Rules 144 and 145(c) and (d). As discussed above, withdrawal of shares from the Trust is not a registrable event, and accordingly, should not affect the application of these resale rules.

H. Investment Company Act Status of Trust

Section 7(b) of the Investment Company Act of 1940, as amended (the "Investment Company Act") prohibits a depositor or trustee of any investment company organized under the laws of the United States or of a State from engaging in certain conduct in connection with the sale of a security through the means of interstate commerce unless the investment company is registered under the Investment Company Act. An "investment company" is defined in Section 3(a)(1) as "any issuer" who engages in certain securities transactions or issues face-amount certificates of the installment type. An "issuer" is defined in Section 2(a)(22) as "every person who issues or proposes to issue

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27. The staff has previously allowed resales of securities received in Section 3(a)(10) exchange offers pursuant to similar guidelines. See, e.g., John Hancock Financial Services, supra note 11; Standard Ins. Co., supra note 11; Farm Family Mut. Ins. Co., supra note 11; Blue Cross and Blue Shield of Virginia, supra note 8; Guarantee Mut. Life Co., supra note 11; State Mut. Life Assurance Co. of America, supra note 11; Equitable I, supra note 11; Citizens Security Life Ins. Co., 1990 SEC No-Act. LEXIS 907 (June 18, 1990); National Security Ins. Co., 1990 SEC No-Act. LEXIS 669 (April 12, 1990); see also Revisions to the Resale Provisions Applicable to Securities Acquired in Registered Business Combinations, Securities Act Release No. 6508, [1983-1984 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 83,489, at 86,453 n.1 (Feb. 10, 1984); see also St. Ives Holding Co., Inc., SEC No-Act. (July 22, 1987); Staff Legal Bulletin No. 3 (CF), 1997 SEC No-Act. LEXIS 755 (July 25, 1977).

any security, or has outstanding any security which it has issued." Because the Interests may be securities, and because the Trust primarily holds Trust Shares, it is possible that the Trust comes within the definition of "investment company" in Section 3(a)(1).

We believe, however, that the Trust is excluded from regulation as an investment company by Section 3(c)(12) of the Investment Company Act. That section excludes from the definition of investment company any "voting trust the assets of which consist exclusively of securities of a single issuer which is not an investment company." The Trust fits within this definition. It is a voting trust whose assets will consist entirely of Trust Shares. The Trust is a single-purpose trust and will not engage in any other business or activity other than voting and holding the Trust Shares and certain closely-related activities, such as receiving and distributing cash dividends and registering the Trust Shares under the Exchange Act. In addition, as described above, the Trustee will vote Trust Shares on all issues presented to stockholders. Thus, the Trust is consistent with the commonly-understood meaning of the term voting trust. For example, one accepted meaning of the term is a "device whereby two or more persons owning stock with voting powers divorce voting rights from ownership, retaining to all intents and purposes the latter in themselves and transferring the former to trustees in whom voting rights of all depositors in the trust are pooled." Black's Law Dictionary 1577 (6th ed. 1990).[28] This describes the essence of the Trust, in which Beneficiaries retain their economic ownership interest in the Trust Shares, but transfer to the Trustee voting rights. The fact that the Trustee votes Trust Shares as to matters other than Beneficiary Consent Matters as instructed by the Board of Directors of the Holding Company in no way affects the status of the Trust as a voting trust, because a voting trust agreement may provide for such an arrangement in that it may define the rights of the parties and define and limit the trustee's duties and powers. See 5 Fletcher Cyc. Corp. §2091.10 (rev. perm. ed. 1996). In sum, the Trust is a single-purpose vehicle that is intended to give policyholders the economic benefits of stock ownership, while transferring voting rights away from them, thus

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28. Delaware law does not specifically define the term voting trust. We have been advised by MetLife's special Delaware counsel that the Trust is valid under Delaware law, even though the Trust does not meet all of the requirements of Section 218 of the Delaware General Corporation Law, which validates the use of certain forms of voting trusts. Section 218 expressly provides that it does not invalidate a voting or other arrangement which is not otherwise illegal, and before the enactment of Section 218, Delaware case law generally recognized the validity of voting trusts. Ringling Bros.-Barnum & Bailey Combined Shows, Inc. v. Ringling, supra note 5.

enabling the Holding Company to efficiently manage the administration of Beneficiary accounts and the costs associated with its large number of stockholders.

The voting trust exception has rarely been interpreted, either by the Commission or by the courts. In Broadway and 58th Street Corporation,[29] the Commission found it unnecessary to address the application under Section 6(c) of the Investment Company Act by trustees of a voting trust, since the trust was excepted under Section 3(c)(14) (since redesignated Section 3(c)(12)). In Greater Iowa Corporation v. McLendon, the court, in dicta, stated that a trust with substantial cash and with "wide investment powers, including power to manage real estate," could not rely on the voting trust exception.[30] The Trust will not have substantial cash. It will temporarily have cash to the extent there are cash dividends paid on the Trust Shares and the Custodian will distribute those dividends promptly. It will not invest the proceeds pending distribution.

I. The Trust's Ownership of the Trust Shares Will Not Result an Assignment of Advisory Contracts

Section 15(a)(4) of the Investment Company Act, in effect, requires that all investment advisory contracts with registered investment companies provide, in substance, for their automatic termination in the event of an assignment.[31] For the reasons discussed below, we believe that in connection with the Trust's ownership of the Trust Shares, the ability of the Board of Directors of the Holding Company to instruct the Trustee to vote the Trust Shares as to matters other than Beneficiary Consent Matters, will not result in a change of control of MetLife or its affiliated investment advisers and that therefore no "assignment" of advisory contracts of MetLife or its affiliated investment advisers will have been effected.

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29. 12 S.E.C. 1128 (1943)

30. 378 F.2d 783, 793 (8th Cir. 1967).

31. MetLife is registered with the Commission as an investment adviser under the Advisers Act. In addition, MetLife, directly or indirectly, owns controlling interests in the 29 other investment advisers registered with the Commission listed in Exhibit B. In addition, MetLife expects to own, directly or indirectly, a controlling interest in other investment advisers listed in Exhibit B in connection with its proposed acquisition of GenAmerica Corporation. MetLife and these firms serve as adviser to registered investment companies, as well as institutional and individual clients. Management of these firms will not change due to the Reorganization generally or as a result of the Trust's ownership of Common Stock.

Section 2(a)(4) of the Investment Company Act defines "assignment" to include any direct or indirect transfer of a controlling block of the assignor's outstanding voting securities. Section 2(a)(9) defines "control" to mean the power to exercise a controlling influence over the management or policies of the company and also provides that any person who owns beneficially more than 25% of the voting securities of a company shall be presumed to control such company.[32] Section 2(a)(42) defines "voting security" as any security "presently entitling the owner or holder thereof to vote for the election of directors of a company." Rule 2a-6 provides that a transaction that does not result in a change of actual control or management of the investment adviser of an investment company is not an assignment for purposes of Section 15(a)(4).

We are mindful of the policy position recently taken by the staff of the Division of Investment Management that it will no longer respond to routine no-action or interpretive requests regarding whether a proposed arrangement would materially amend an adviser relationship between an adviser and a fund requiring stockholder approval under Section 15(a) of the Investment Company Act.[33] Accordingly, we are not seeking the staff's views with respect to the Reorganization generally, but rather are requesting the staff's concurrence that no "assignment" will occur by virtue of the Trust owning more than 25% of the outstanding Common Stock of the Holding Company, due to the unique nature and purpose of the Trust and the provisions of the Trust Agreement concerning voting of Trust Shares. We believe that this question is novel and is appropriate for interpretive relief.

The Division of Investment Management has considered whether an assignment might occur due to changes with respect to a voting trust only once, in Babson Organization, Inc., 1973 No-Act. LEXIS 2249 (April 26, 1973). There the staff, without explanation, refused to provide no-action assurances as to the absence of an assignment upon the dissolution of a voting trust holding shares of an adviser. The trust involved in

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32. The Investment Advisers Act of 1940, as amended, has nearly identical definitions of "assignment" and "control", albeit without the presumption provided by Section 2(a)(9). In light of the Division's position in American Century Cos., Inc./J.P. Morgan & Co., Inc., 1997 SEC No-Act LEXIS 1107 (Dec. 23, 1997), regarding assignment questions under the Investment Advisers Act, we are not seeking the Division's views under that Act.

33. The Division has stated that it will address only no-action letters presenting novel or unique issues. American Express Fin. Corp., 1998 SEC No-Act. LEXIS 993 (Nov. 17, 1998); American Century Cos., Inc/J.P. Morgan & Co., Inc., supra note 32.

Babson, however, was very different from the Trust, in that the trustees did not receive voting instructions from others. Moreover, although in Babson there was a great deal of overlap between the identity of the directors of the adviser and the identity of the trustees, there were some differences. Finally, the Babson letter preceded the Commission's adoption of Rule 2a-6 under the Investment Company Act and Rule 202(a)(1)-1 under the Investment Advisers Act. Accordingly, we request your confirmation that, given the subsequent adoption of Rule 2a-6 and the Division's interpretations of that rule,[34] Babson would not necessarily be decided the same way today. Moreover, we note that we are not asking the Division to make factual determinations as to actual control or management. Rather, the question we raise turns on the effect of the provisions in the Trust Agreement.

Although, as described above, the Trust Agreement provides that the Trustee will have the right to vote, assent or consent the Trust Shares, the Trustee will have no discretion in doing so. On all matters brought for a vote before the stockholders of the Holding Company, except for Beneficiary Consent Matters, the Trustee will vote in accordance with the recommendation given by the Board of Directors of the Holding Company to its stockholders or, if no such recommendation is given, as directed by the Board. For a Beneficiary Consent Matter, the Trustee will solicit instructions from all of the Beneficiaries and will vote, assent or consent all of the Trust Shares in favor of or in opposition to such matter or abstain from voting on such matter in proportion to the instructions received from the Beneficiaries that give such instructions. Thus, in any contested election of directors of the Holding Company, the vote of the Trust Shares is in the discretion of the Beneficiaries.[35]

It is therefore clear from the provisions of the Trust Agreement that the Trust will have no "power to exercise a controlling influence over the management or policies" of the Holding Company or MetLife and its affiliated investment advisers within the meaning of the definition of "control" provided by Section 2(a)(9) of the Investment Company Act. The presumption of control, which under that section is triggered by

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34. Zurich Ins. Co., 1998 SEC No-Act. LEXIS 811 (Aug. 31, 1998).

35. See Benham Management Corp., 1983 SEC No-Act. LEXIS 2623 (March 7, 1983) (founder and controlling stockholder of a fund adviser transferred a controlling interest to a trust, of which he and his wife were co-trustees; to address the concern that appointing the wife as co-trustee, thus giving her the right to vote a controlling interest in the shares, was a change in control, the co-trustees agreed to amend the trust agreement to provide that the controlling stockholder had the sole right to vote the shares as long as he was living.)

beneficial ownership of more than 25% ownership of the voting securities, is not triggered by the Trust's ownership of more than 25% of the voting securities of the Holding Company because the Trust does not beneficially own the Trust Shares.[36] Accordingly, the Trust's ownership will not result in an assignment.

In addition, the ability of the Board of Directors of the Holding Company to instruct the Trustee as to how to vote on uncontested elections of directors and other matters not requiring a Beneficiary consent is not a change in the "control" of MetLife and its affiliated investment advisers. Particularly important to this analysis are the provisions of New York law regarding voting rights of policyholders. In this regard, the procedures for Beneficiary participation in an election of directors of the Holding Company are comparable to those that MetLife is currently subject to as a New York mutual life insurance company. New York insurance law applicable to MetLife provides that in an uncontested election no proxies are required to be solicited (although insurance companies may distribute ballots if they wish), write-in votes are not permitted and directors are elected by a plurality of the votes cast.

Thus, in uncontested elections, MetLife's directors are currently elected in accordance with the recommendation of MetLife's Board. Although we are not aware of any judicial or administrative interpretation as to whether this power vests in the Board "control" within the meaning of Section 2(a)(9), we believe it does. The provisions of the Trust Agreement, however, operate so that the Board's power in uncontested elections effectively will be the same after the Effective Date and thus the Board will continue to have control.

As a result, we believe that the policyholder's voting rights to elect the members of the Board effectively will not change as a result of the Reorganization, and thus there will be no change in actual control or management. Accordingly, in our opinion, there will be no assignment of advisory contracts as a result of the Reorganization. As the Commission noted when it proposed Rule 2a-6, investment advisers "may be involved in

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36. In this regard, Rule 13d-3 under the Exchange Act provides that beneficial ownership is determined by reference to investment power and voting power. See also Calvary Holdings, Inc. v. Chandler, 948 F.2d 59 (1st Cir. 1991), which holds in an analogous context that the mere power to vote shares as record owner does not confer beneficial ownership for purposes of Rule 13d-3. The Trustee, on behalf of the Trust, has neither investment power nor discretionary voting power with respect to the Trust Shares.

certain transactions -- particularly, modifications of corporate structure" that may involve a transfer of a controlling block of voting securities but no change in actual control.[37] In further interpreting the rule last year, the Division of Investment Management noted:

> Rule 2a-6 may apply to any transaction, provided that there is no change in actual control or management of the investment adviser. The [rule is] not limited to nominal reorganizations such as changes in an adviser's domicile or legal form. We believe that the Commission's admonition that Rule 2a-6 be construed narrowly in light of investor protection concerns applies not to the type of transaction involved, but to whether there is a change in actual control or management as a result of the transaction. The legislative history of the * * * Investment Company Act indicates that the assignment [provisions of the Act were] meant to address concerns about fiduciaries trafficking in investment advisory contracts. In our view, if there is no change in the actual control or management of an investment adviser, the investor protection concerns associated with the trafficking of advisory contracts are not implicated.[38]

We believe that the Reorganization is exactly the type of transaction for which Rule 2a-6 was intended and it is our opinion that MetLife and its affiliated investment advisers may rely on Rule 2a-6 in connection with the Reorganization. Although the Reorganization is not merely a change in corporate form (in this case from a New York mutual life insurance company to a Delaware corporation acting as a holding company) because of the role of the Trust, the Trust's ownership of 25% of the outstanding voting securities of the Holding Company will not result in a change in actual control or management of MetLife or its affiliated investment advisers. The provisions of the Trust Agreement do not vest "control" in the Trust or the Trustee and thus will not result in a change of actual control or management of MetLife or its affiliated investment advisers. Also, the ability of the Board of Directors to instruct the Trustee how to vote on matters other than Beneficiary Consent Matters will not result in a change in actual control or management. Accordingly, we seek the staff's concurrence with our opinion that the Trust's ownership of more than 25% of the Common Stock will not result in an assignment of any advisory contracts under the Investment Company Act.

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37. Exemptions for Certain Investment Advisers and Principal Underwriters of Investment Companies, Investment Company Act Release No. 10809, 1979 SEC LEXIS 953 (Aug. 6, 1979).

38. Zurich Insurance Company, supra note 34.

J. Informational Activities

For the reasons set forth below, we believe that the activities of the Associates in connection with promoting the Plan will not result in the Associates being "engaged in the business of effecting transactions in securities for the account of others," and, therefore, that these activities will not cause the Associates to be brokers.[39]

First, we are of the view that the vote taking place in the Policyholders' Vote will not involve a "transaction in securities" for purposes of Section 3(a)(4) of the Exchange Act. An Eligible Policyholder's vote for or against the Plan is not fundamentally a decision about purchasing or selling a security (i.e., a "transaction in securities"), although most Eligible Policyholders will receive Common Stock (to be held through the Trust) in the Reorganization if the Plan is approved. Moreover, the issue on which Eligible Policyholders will be asked to vote -- whether MetLife should convert to a stock form of ownership or remain a mutual company -- is a question of corporate organization required to be submitted to a policyholder vote under the New York Statute. The decision before Eligible Policyholders, therefore, is not whether they should acquire Common Stock, but whether they should approve the conversion of the issuer of their insurance policies to a more flexible ownership structure which will facilitate raising additional equity capital from sources unavailable to it as a mutual company. This is the central focus of the Plan, the Hearing and the vote on the Plan.

Second, we believe that if the Associates recommend voting in favor of the Plan, they will not, in any event, be "effecting transactions" for purposes of Section 3(a)(4). The Associates' primary function will be to help Eligible Policyholders understand the Plan and the consequences of the Reorganization. No Associate will receive any compensation in connection with activities related to the vote on the Plan (except to the extent that call center personnel have been employed specifically to perform the call center function), or be in a position to handle customer funds or securities. Importantly, the Associates'

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39. Section 15(a)(1) of the Exchange Act provides that it "shall be unlawful for any broker or dealer which is either a person other than a natural person or a natural person not associated with a broker or dealer which is a person other than a natural person . . . to make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security . . . unless such broker or dealer is registered in accordance with" Section 15(b) of the Exchange Act.

activities will be strictly limited and supervised. While discussing the Plan with Eligible Policyholders, the Associates will be instructed by MetLife not to discuss the potential market value of Common Stock or advise policyholders on whether or not to express a preference for Common Stock rather than cash. In fact, the Associates will be directed to limit any discussion about the Reorganization to statements that can be found in, or derived from, the Policyholder Information Booklet or other related approved documents. In effect, the Associates will be mere conduits of public information about the Plan and the Reorganization between MetLife and Eligible Policyholders for purposes of a vote of corporate reorganization, and will not be "effecting" any transaction in securities.

Third, none of the Associates will be "engaged in the business" of soliciting securities transactions within the meaning of Section 3(a)(4) by virtue of recommending that Eligible Policyholders approve the Plan. The phrase "engaged in the business" "connotes a certain regularity of participation in purchasing and selling activities rather than a few isolated transactions."[40] MetLife's conversion from a mutual company to a stock company and the Associates' activities in connection therewith are, by their nature, one-time, extraordinary events. Moreover, the Associates (other than the call center personnel) have not been hired solely to recommend that Eligible Policyholders vote in favor of the Plan, but have other substantial, full-time duties related to the insurance business of MetLife. Although certain Associates are licensed with the NASD, we believe these Associates should not be regarded as anything other than full-time insurance agents for purposes of determining whether they are "engaged in the business" of acting as brokers by recommending approval of the Plan in discussions with Eligible Policyholders.

We are not aware of any previous occasion on which the staff has advised any person who proposed to engage in limited activities in connection with the solicitation of consents to an exchange offer that such person would be a broker, or required such a person to register as a broker-dealer. Indeed, the staff has issued no-action letters to companies engaged in demutualizations in which the staff assured the companies that their officers, employees and agents would not be regarded as brokers for purposes of Section 15(a) of the Exchange Act if they solicited acceptances of the offer without

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40. Louis Loss, Fundamentals of Securities Regulation 604 (2d ed. 1988).

receiving any special remuneration.[41] We believe the staff's positions in these prior no-action letters are consistent with granting no-action relief here.

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Based on the foregoing, we request confirmation that the staff will not recommend that the Commission take any enforcement action against MetLife, the Holding Company, the Program Agent, CMFS, the Trust, the Trustee or Custodian, any of their respective affiliates, officers, directors or employees or any Associates:

(i) if in the transaction that will result in MetLife's Reorganization, (a) MetLife issues shares of MetLife Common Stock to the Trust, (b) the Trust exchanges such shares of MetLife Common Stock for an equal number of shares of Common Stock (including the preferred stock purchase rights associated with the Common Stock that will be distributed pursuant to the Holding Company's Stockholder Rights Plan), and (c) the Trust allocates Interests to Trust Eligible Policyholders, in each case without registering such shares and Interests under the Securities Act, in reliance on the exemption from registration provided by Section 3(a)(10) thereunder;

(ii) if the issuance of shares of MetLife Common Stock and Common Stock and the allocation of the Interests to and on behalf of the Trust Eligible Policyholders is not integrated with the Initial Public Offering;

(iii) if the Interests are registered under the Exchange Act and the Trust files reports under that Act as described herein;

(iv) if (a) no proxy soliciting materials, annual and quarterly reports or information statements are disseminated to Beneficiaries in connection with a vote or consent of stockholders of the Holding Company, except, as described in this letter, in connection with a Beneficiary Consent Matter or upon request of Beneficiaries, (b) the procedures described in this letter for the distribution of materials in connection with a Beneficiary Consent Matter (including the procedures for requiring mailing and other expenses be reimbursed by a stockholder in certain circumstances) are followed and (c) none of the Holding Company, the Trust, the Trustee or Custodian, any of their respective affiliates, or their respective officers, directors or employees inquires

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41. See, e.g., Guarantee Mut. Life Co., supra note 11; The Equitable Life Assurance Soc'y of the United States, 1992 SEC No-Act. LEXIS 314 (Feb. 28, 1992).

as to the beneficial ownership of the Trust Shares in connection with such vote or consent, or provides information in connection with those inquiries, except in connection with a Beneficiary Consent Matter;

(v) if the Board of Directors of the Holding Company provide the information required by Schedule 13D pursuant to Section 13(d) of the Exchange Act and by Section 16 of the Exchange Act in the manner described herein;

(vi) under Section 5 of the Securities Act, Sections 13(e), 14(d) or 14(e) of the Exchange Act and Rules 10b-13 and 13e-4 under the Exchange Act, if the Purchase and Sale Program is implemented as described herein;

(vii) if Trust Shares may be withdrawn from the Trust without compliance with the registration provisions of the Securities Act;

(viii) if Beneficiaries that elect to withdraw their allocated shares may sell such shares, either through the Purchase and Sale Program or otherwise, in accordance with the resale guidelines described in Section G herein;

(ix) if the Trust is not registered under the Investment Company Act; and

(x) if the Associates recommend approval of the Plan in discussions with Eligible Policyholders under the circumstances described in this letter without MetLife, the Holding Company or the Associates registering as brokers with the Commission pursuant to Section 15(a) of the Exchange Act.

In addition, we seek the staff's concurrence with our conclusion that the Trust's ownership of more than 25% of the Common Stock will not result in an assignment of any investment company advisory contracts of MetLife or its affiliated investment advisers.

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Because of the importance of the reorganization to MetLife, we would appreciate hearing from you at your earliest convenience. If you should have any questions or would

like additional information about the matters addressed in this letter, please telephone the undersigned at (212) 909-6655.

Sincerely,

James C. Scoville

Attachment

cc: Ira Friedman, Esq.
Metropolitan Life Insurance Company

*92652 McKinney's Insurance Law § 7312

MCKINNEY'S CONSOLIDATED LAWS OF NEW YORK ANNOTATED INSURANCE LAW CHAPTER 28 OF THE CONSOLIDATED LAWS ARTICLE 73--CONVERSION TO DIFFERENT TYPE OF INSURER

Current through L.1999, chs. 6-13.

§ 7312. Reorganization of a domestic mutual life insurer into a domestic stock life insurer

(a) Definitions. As used in this section, the following terms shall have the following meanings:

(1) "Mutual life insurer" means a domestic mutual life insurer.

(2) "Policyholder" means a person, as determined by the records of a mutual life insurer, who is deemed to be the "policyholder" of a policy or annuity contract which is of a type described in paragraphs one, two or three of subsection (a) of section one thousand one hundred thirteen of this chapter for purposes of paragraph three of subsection (a) of section four thousand two hundred ten of this chapter.

(3) "Policyholders' membership interest" means and includes all policyholders' rights as members arising under the charter of the mutual life insurer or this chapter or otherwise by law including, but not limited to, the rights to vote and to participate in any distribution of surplus whether or not incident to a liquidation of the mutual life insurer. The term "policyholders' membership interest" does not include rights, including without limitation the right to participate in the distribution of surplus, expressly conferred upon the policyholders by their policies or contracts other than any right to vote.

(4) "Plan of reorganization" means a plan of conversion or conversion and merger in accordance with this section.

(5) "Reorganized insurer" means the domestic stock life insurer into which a mutual life insurer has been reorganized in accordance with this section.

(6) "Statement date" means the December thirty-first immediately prior to the date the plan of reorganization was adopted.

(7) "Person" means an individual, partnership, firm, association, corporation, joint-stock company, trust, any similar entity or any combination of the foregoing acting in concert.

(b) Demutualization. Any other provision of this chapter to the contrary notwithstanding, upon compliance with the requirements of and completion of the proceedings prescribed by this section and with the written approval of the superintendent, a mutual life insurer may either (1) reorganize into a domestic stock life insurer or (2) reorganize as part of a plan of reorganization in which a majority or all of the common shares of the domestic stock life insurer is acquired by another institution which may be an institution organized for such purpose. As part of the reorganization, the mutual life insurer may merge with a domestic stock insurer, provided that the merging insurers shall comply with the provisions of this chapter applicable to their participation in such a merger.

*92653 (c) Plan of reorganization. A plan of reorganization must: (1) demonstrate a purpose and specify reasons for the proposed reorganization; (2) be in the best interest of the mutual life insurer and its policyholders; (3) be fair and equitable to policyholders; (4) provide for the enhancement of the operations of the reorganized insurer; and (5) not substantially lessen competition in any line of insurance business.

(d) Reorganization. The proposed reorganization shall be accomplished by a plan

which must be fair and equitable to the policyholders and must comply with the terms and conditions set forth in paragraph one, two or four of this subsection provided however, that a mutual life insurer which has surplus to policyholders, excluding contingently repayable obligations of the mutual life insurer under section one thousand three hundred seven of this chapter, of less than fifty million dollars and which has industrial insurance in force must comply with the terms and conditions set forth in paragraph one, two, three or four of this subsection. Nothing herein contained shall be deemed to give any class of policyholders priority with respect to the assets of any such reorganized insurer in liquidation, other than as expressly stated in paragraph two of this subsection.

(1) (A) The mutual life insurer's participating business comprised of its participating policies and contracts in force on the effective date of reorganization shall be operated by the reorganized insurer as a closed block of participating business in accordance with paragraph five of this subsection except that, at the option of the mutual life insurer, some or all classes of group policies and contracts may be excluded from the closed block of participating business and in such event such group policies and contracts shall continue to be eligible to receive dividends based on the experience of such class or classes; (B) subject to the provisions of subparagraph (D) of this paragraph, the plan of reorganization provides that the policyholders' membership interest will be exchanged for all of the common shares of the reorganized insurer or its parent company, if any, or for either, or a combination of (i) the common shares of the reorganized insurer or its parent company, if any, and (ii) consideration equal to the proceeds of the public sale in the market of such common shares by the issuer thereof or by a trust or other entity existing for the exclusive benefit of the policyholders and established solely for the purpose of effecting the reorganization to which such common shares are issued by the issuer on the effective date of reorganization, such consideration to be distributed to policyholders during a process of reorganization specified in the plan and not to last more than ten years after the effective date of reorganization or until notification of the death of a policyholder or the death of the insured, whichever occurs first; (C) the consideration to be given to the policyholders is allocated among the policyholders in a manner which is fair and equitable to policyholders and which may take into account the estimated proportionate contribution of each class of participating policies and contracts to the aggregate consideration being given to policyholders; (D) unless such issuance within a shorter or longer period is disclosed in the plan of reorganization, the issuer of such common shares has not issued and does not issue within two years of the effective date of the reorganization (i) any of its common shares, (ii) any securities convertible, with or without consideration, into such common shares or carrying any warrant or right to subscribe to or to purchase common shares, or (iii) any warrants or rights to subscribe to or purchase such common shares or other securities described in item (ii) of this subparagraph, except for the issue of common shares to or for the benefit of the policyholders pursuant to the reorganization and the issue of stock in anticipation of options for the purchase of common shares being granted to officers or employees of the reorganized insurer or its holding company, if any, pursuant to this chapter and a plan approved by the superintendent; (E) the issuer shall use its best efforts to encourage and assist in the establishment of a public market for such common shares within two years of the effective date of the reorganization (or such longer period as may be disclosed in the plan of reorganization); (F) within one year after the offering of stock other than the initial distribution, but no later than six years after the effective date of the reorganization the insurer, under a plan approved by the superintendent, which he finds not to be harmful to the reorganized insurer, shall offer to make available to policyholders who received and retained shares of stock with minimal values on reorganization, a procedure to dispose of those shares of stock at market value without brokerage commissions or similar fees; and (G) the costs and expenses of the reorganization shall be borne by the insurer but no costs and expenses

incurred in any manner in connection with the reorganization shall be charged to the closed block.

*92654 (2) (A) The mutual life insurer's participating business comprised of its participating policies and contracts in force on the effective date of the reorganization shall be operated by the reorganized insurer as a closed block of participating business in accordance with paragraph five of this subsection except that, at the option of the mutual life insurer some or all classes of group policies and contracts may be excluded from the closed block of participating business and in such event such group policies and contracts shall continue to be eligible to receive dividends based on the experience of such class or classes; (B) the reorganized insurer or its parent corporation is to issue and sell shares of one or more classes of stock having a total offering price equal to the estimated value in the public market of the mutual life insurer; (C) the policyholders' equity is equal to the excess of (i) the amount of the mutual insurer's assets accumulated from the operations of participating policies and contracts in force on the effective date of the reorganization, over the sum of (ii) the amount of assets allocated to the closed block of participating business and (iii) an amount equal to the statutory reserves and other statutory liabilities attributable to any group participating policies and contracts in force on the effective date of reorganization and not included in the closed block of participating business, provided however, that the policyholders' equity cannot be less than the amount of the policyholders' preference account. The amount of the policyholders' equity shall be determined as of the statement date and adjusted by the estimated percentage change in the mutual insurer's total assets, as reported in its statutory statements, between the statement date and the effective date of the reorganization. Any determination of policyholders' equity shall include adjustments for any events or matters deemed by the superintendent appropriate, which have a material effect on policyholders' equity and occurred within seven years prior to the statement date; (D) the plan of reorganization provides that the policyholders' membership interest will be exchanged for consideration equal to (i) the policyholders' equity, (ii) nontransferable preemptive subscription rights to purchase all of the shares of such issuer, (iii) ten percent of the proceeds net of underwriting commissions and fees raised by the insurer upon the sale of its initial offering of shares, and (iv) the establishment of a policyholders' preference account for the benefit of policyholders existing on the effective date of reorganization, and for the benefit of the future policyholders of the reorganized insurer, in the event of a subsequent complete liquidation of the reorganized insurer, such policyholders' preference account having the terms described below in this paragraph; (E) the consideration to be given to the policyholders is allocated among the policyholders in a manner which is fair and equitable to policyholders and which may take into account the estimated proportionate contribution of each class of participating policies and contracts to the aggregate consideration being given to policyholders; (F) at the option of the mutual life insurer, any common shares of the reorganized insurer or its parent company, if any, included in the policyholders' consideration, other than those acquired as a result of a policyholder exercising any preemptive subscription rights, may be placed in a trust or other entity existing for the exclusive benefit of the policyholders and established solely for the purpose of effecting the reorganization to which such common shares are issued by the issuer on the effective date of reorganization, such consideration or the proceeds of the sale of such consideration to be distributed to policyholders during a process specified in the plan and not to last more than ten years after the effective date of reorganization or until notification of the death of the policyholder or the death of the insured, whichever occurs first; (G) the issuer shall use its best efforts to encourage and assist in the establishment of a public market for such common shares within two years of the effective date of the reorganization; (H) within one year after the offering of stock other than the initial distribution, but no later than six years after the effective date of the reorganization the insurer, under a plan approved by the superintendent which he finds not to be harmful to the reorganized insurer, shall

offer to make available to policyholders who received and retained shares of stock with minimal values on reorganization, including but not limited to shares acquired by policyholders exercising their preemptive subscription rights, a procedure to dispose of those shares of stock at market value without brokerage commissions or similar fees; (I) the costs and expenses of the reorganization shall be borne by the insurer, however if the reorganization is effected, no costs and expenses incurred in any manner in connection with the reorganization shall be charged to the participating business in force on the effective date of reorganization. Costs and expenses shall include but not be limited to legal fees, appraisal fees, printing and/or mailing costs; (J) notwithstanding subparagraph (I) of this paragraph, if the plan of reorganization provides for or permits a person to directly or indirectly acquire in any manner the beneficial ownership of five percent or more of the voting securities of such reorganized insurer or of any institution which owns a majority or all of the voting securities of the reorganized insurer, or if the superintendent determines that a person will control, as defined in paragraph sixteen of subsection (a) of section one hundred seven of this chapter, such reorganized insurer or any institution which owns a majority or all of the voting securities of the reorganized insurer then, unless the superintendent determines that it is in the policyholders' interest to waive all or part of this condition, the mutual life insurer shall not, directly or indirectly, pay for any of the costs or expenses of a proposed reorganization whether or not such reorganization is effected and in no event shall any of the costs and expenses *92654 incurred in any manner in connection with the reorganization be charged to the participating business in force on the effective date of reorganization. Costs and expenses shall include but not be limited to legal fees, appraisal fees, printing and/or mailing costs; (K) the policyholders' preference account referred to above shall be equal to the excess of the amount of the mutual insurer's total admitted assets over the sum of (i) the total amount of assets allocated to the closed block of participating business and (ii) the policyholders' equity and (iii) statutory reserves and liabilities attributed to policies and contracts not included in the closed block of participating business. The policyholders' preference account shall be calculated as of the statement date and adjusted appropriately to reflect any changes in the components used in determining the amount of the policyholders' preference account between the statement date and the effective date of reorganization; (L) a mutual life insurer whose policyholders' equity is paid in the form of stock may show, as a write-in item labeled "Reorganization surplus" immediately following "Capital paid up" on the annual statement of the reorganized insurer, a negative amount equal to the excess of the policyholders' equity which was paid in the form of stock over its unassigned surplus on the date of reorganization; and (M) the policyholders' preference account shall be so designated and shown as a footnote to the surplus of the reorganized insurer in all of its published and filed statements. In the event of a subsequent complete liquidation of the reorganized insurer, and only in such event, the policyholders' preference account shall be allocated among the then policyholders in a manner found by the superintendent to be fair and equitable to policyholders, first to policyholders having participating policies and contracts in force on the effective date of the reorganization and then to all other policyholders of the reorganized insurer. The function of the policyholders' preference account shall be solely to establish a priority on liquidation and its existence shall not operate to restrict the use or application of the surplus of the reorganized insurer except that the reorganized insurer, after complying with all other requirements of this chapter, cannot declare or pay a cash dividend on, or repurchase any of, its shares if, after such declaration or payment, the amount of net preference assets of the reorganized insurer is less than the amount of the policyholders' preference account. For this purpose, the net preference assets shall be equal to the insurer's total admitted assets less the sum of (i) the assets in the closed block of participating business (ii) the statutory reserves and liabilities with respect to business not in such closed block and (iii) the reorganized insurer's capital and paid in surplus.

(3) (A) The mutual life insurer's participating business comprised of its participating policies and contracts in force on the effective date of the reorganization shall be operated by the reorganized insurer as a closed block of participating business, for policyholder dividend purposes only, to which shall be allocated admitted assets of the mutual life insurer in an amount equal to the statutory reserves and statutory liabilities of the mutual life insurer; (B) the consideration to be given in exchange for the policyholders' membership interest shall be equal to the statutory surplus of the mutual life insurer; (C) the amount of statutory reserves and statutory liabilities and statutory surplus shall be determined as of the statement date and adjusted by the estimated percentage change in the mutual insurer's total admitted assets between the statement date and the effective date of reorganization. Any determination of statutory surplus shall include adjustments for any events or matters deemed by the superintendent appropriate, which have a material effect on policyholders' consideration and occurred within seven years prior to the statement date; (D) the consideration shall be allocated among the policyholders in a manner which is fair and equitable to the policyholders and which may take into account the estimated proportionate contribution of each class of participating policies and contracts to the aggregate consideration being given to policyholders; (E) the reorganized insurer or its parent corporation is to issue and sell shares of one or more classes of stock having a total offering price equal to the estimated value in the market of the mutual life insurer; (F) the costs and expenses of the reorganization shall be borne by the insurer; however, if the plan of reorganization provides for or permits a person to directly or indirectly acquire in any manner the beneficial ownership of five percent or more of any class of a voting security of such reorganized insurer or of any institution which owns a majority or all of the voting securities of the reorganized insurer, or if the superintendent determines that a person will control, as defined in paragraph sixteen of subsection (a) of section one hundred seven of this chapter, such reorganized insurer or any institution which owns a majority or all of the voting securities of the reorganized insurer then, unless the superintendent determines that it is in the policyholders' interest to waive all or part of this condition, the mutual life insurer shall not, directly or indirectly, pay for any of the costs or expenses of a proposed reorganization whether or not such reorganization is effected. Costs and expenses shall include but not be limited to legal fees, appraisal fees, printing and/or mailing costs; and (G) none of the assets, including the revenue therefrom, allocated in accordance with subparagraph (A) of this paragraph shall revert to the benefit of the stockholders of the reorganized insurer.

*92655 (4) (A) Any method approved by the superintendent under which the policyholders' membership interest is converted into or exchanged for consideration determined by the superintendent to be fair and equitable to policyholders and meeting the requirements of this section; (B) the consideration to be given to the policyholders is allocated among the policyholders in a manner which is fair and equitable; (C) unless the superintendent determines that it is in the policyholders' interest to waive all or part of this condition, the mutual life insurer does not, directly or indirectly, pay for any of the costs or expenses of a proposed reorganization whether or not such reorganization is effected. Costs and expenses shall include but not be limited to legal fees, appraisal fees, printing and/or mailing costs; and (D) in determining whether any reorganization is fair and equitable, the superintendent shall be guided by the legitimate economic interests of participating policyholders as delineated in this section.

(5) (A) When the mutual life insurer's participating business comprised of its participating policies and contracts in force on the effective date of the reorganization shall be operated by the reorganized insurer as a closed block of participating business in accordance with paragraphs one and two of this subsection, then it shall be so operated for the exclusive benefit of such policies and contracts included therein, for policyholder dividend purposes only; (B) to such closed block shall be allocated assets of the

mutual life insurer in an amount which together with anticipated revenue from such business is reasonably expected to be sufficient to support such business including, but not limited to, provisions for payment of claims, expenses and taxes, and to provide for continuation of current payable dividend scales, if the experience underlying such scales continues and for appropriate adjustments in such scales if the experience changes; (C) the amount of such assets shall be determined as of the statement date and brought forward to the effective date of the reorganization using methods which would have been used had the closed block been established on the statement date with appropriate recognition of new issues; and (D) none of the assets, including the revenue therefrom, allocated in accordance with subparagraph (B) of this paragraph shall revert to the benefit of the stockholders of the reorganized insurer.

(6) If any amount of the policyholders' consideration for certain classes of policies or contracts is to be paid in the form of increased annual dividends to the policyholders in those classes, that amount is to be added to the assets previously allocated in accordance with paragraph three or five of this subsection and is to be paid out to those classes in a fair and equitable manner.

(e) Adoption of plan of reorganization. (1) A mutual life insurer seeking to reorganize under this section shall, by action of three-fourths of its entire board of directors, adopt a plan consistent with the provisions of this section and that it finds is fair and equitable to the policyholders. The board of directors of the mutual life insurer, in selecting one of the methods described in subsection (d) of this section, shall set forth the basis for their selection. The plan of reorganization shall set forth (A) a demonstration of the purpose for the proposed reorganization; (B) the form of the reorganization; (C) the proposed charter of the reorganized insurer set out in accordance with section one thousand two hundred one of this chapter and its proposed by-laws which shall provide for the removal of the word "mutual" from the name of the company; (D) the manner and basis by which the reorganization shall take place; (E) the consideration to be given to the policyholders in exchange for their policyholders' membership interest or the manner of converting the policyholders' membership interest into securities or other consideration; (F) the method of allocating the consideration among policyholders; (G) the method of operation of the mutual life insurer's participating business comprised of its participating policies and contracts in force on the effective date of the reorganization; and (H) a plan of operation for the reorganized insurer including actuarial projections for a ten-year period and a statement indicating its intentions with regard to issuing any nonparticipating business. If the reorganized insurer proposes to continue to issue for delivery in this state participating policies or contracts, the plan of reorganization shall so specify. In such event, upon the superintendent's approval of the plan of reorganization pursuant to this section, the superintendent shall, in accordance with section four thousand two hundred thirty-one of this chapter, issue a revocable permit to the reorganized insurer authorizing it to issue participating policies and contracts in this state. The plan of reorganization may contain any other conditions and provisions which the board of directors of the mutual life insurer may deem necessary or advisable in connection with the proposed reorganization.

*92656 (2) The consideration to be given in exchange for the policyholders' membership interest or into which such membership interest is to be converted may consist of cash, securities of the reorganized insurer or securities of another institution or institutions, a certificate of contribution, additional life insurance or annuity benefits, increased dividends or other consideration or any combination of such forms of consideration. The consideration, if any, given to any class or category of policyholder need not be the same as the consideration given to any other class or category of policyholder. The certificate of contribution referred to above shall be repayable in five years and bear annual interest at the published monthly average, as defined in section three thousand two hundred six of this

chapter, for the calendar month ending two months before the effective date of reorganization.

(3) The policyholders who shall be entitled to notice of and to vote upon the proposal to approve the plan of reorganization and to notice of the public hearing required by this section shall be the policyholders whose policies or contracts are in force on the date of adoption of the plan of reorganization. Each such policyholder whose policy has been in force on such date shall be entitled to the consideration, if any, provided for such policyholder in the plan based on such policyholder's membership interest determined pursuant to this section but only to the extent that such policyholder's membership interest arose from policies or contracts that shall be in force on the effective date of the reorganization and shall have been in force on the date of adoption of the plan and for this purpose disregarding any changes in status of, or premiums in excess of those required on, such policies or contracts occurring or made after the date of adoption of the plan.

(4) Upon adoption of the plan of reorganization, it shall be duly executed by the chairman of the board, the president or a vice president and attested by the secretary or an assistant secretary of the mutual life insurer under such insurer's corporate seal and shall be submitted to the superintendent with a copy of the resolutions adopting such plan and finding that it is fair and equitable to the policyholders, accompanied by a certificate of adoption of such resolutions subscribed by such officers and affirmed by them as true under penalties of perjury and under the seal of the mutual life insurer.

(f) Amendment or withdrawal of plan. The mutual life insurer may, by action of a majority of the entire board of directors, at any time before the plan of reorganization becomes effective as provided by this section (1) amend the plan of reorganization; or (2) withdraw the plan of reorganization. On adoption of an amendment it shall be duly executed by the chairman of the board, the president or a vice president and attested by the secretary or an assistant secretary of the mutual life insurer under such insurer's corporate seal and shall be submitted to the superintendent with a copy of the resolutions adopting such amendments subscribed by such officers and affirmed by them as true under penalties of perjury and under the seal of the mutual life insurer. In case of an amendment, all references in this section to the plan of reorganization shall be deemed to refer to the plan as amended. No amendment made after any public hearing required by this section or after approval by the policyholders as provided in this section shall change the plan in a manner which the superintendent determines is materially disadvantageous to any of the policyholders unless a further public hearing is held on the plan as amended if the amendment is made after the public hearing, or the plan as amended is submitted for reconsideration by the policyholders if the amendment is made after the plan has been approved by the policyholders, under the conditions and procedures determined by the superintendent in accordance with this section.

*92657 (g) Additional information. Upon submission to him of the plan of reorganization, the superintendent may request any additional documents or information and may examine the mutual life insurer or any of its affiliates, to the extent he may determine to be necessary to enable him to make the findings required by this section for the approval by him of the plan of reorganization. If the reorganized insurer proposes to continue to issue for delivery in this state participating policies or contracts, the superintendent may also request such information or agreements relative thereto as he may require pursuant to section four thousand two hundred thirty-one of this chapter.

(h) Consultants and certifications. (1) The superintendent may appoint one or more qualified disinterested persons or institutions as consultants to advise him on any matters related to the reorganization. The appointment of a consultant shall be in writing and shall set forth the duties and responsibilities of the consultant. Copies of such appointment shall be given to the consultant and concurrently to the mutual life insurer.

(2) If the plan of reorganization satisfies the conditions set forth in paragraph one or two of subsection (d) of this section, the superintendent shall appoint one or more qualified and disinterested actuaries for the purpose specified in paragraph three of this subsection. Such actuary shall be a member of the American Academy of Actuaries, and shall be knowledgeable and experienced as to the matters to be certified.

(3) Such actuary shall certify in writing as to (A) in the case of a plan of reorganization pursuant to paragraph two of subsection (d) of this section, the amount of the mutual insurer's assets accumulated from the operations of participating policies and contracts in force on the effective date of the reorganization and (B) in the case of a plan of reorganization pursuant to paragraphs one or two of subsection (d) of this section, the reasonableness and sufficiency of the asset allocation referred to in subparagraph (B) of paragraph five of subsection (d) of this section. Such certification shall be in form satisfactory to the superintendent and shall be made in accordance with professional standards and practices generally accepted by the actuarial profession and such other factors as such actuary in his professional judgment believes are reasonable and appropriate at the time such certification is made. Any such certification shall be accompanied by a memorandum of the actuary, in form satisfactory to the superintendent, describing the calculations made in support of such certification and the assumptions used in such calculations.

(4) The consultant and the actuary may request of the mutual life insurer access to its books and records and the furnishing by it of any other information in its possession, to the extent it may reasonably be deemed necessary to make the valuations and certifications contemplated by this subsection, or to advise the superintendent on any matters related to the reorganization. The consultant and the actuary shall report to the superintendent any instance in which the mutual life insurer fails to provide any information requested by them. The consultant and the actuary shall not, under judicial process or otherwise, be obligated or permitted to divulge to any one except the superintendent any information not otherwise publicly available which is so obtained by them. The consultant and the actuary shall receive reasonable compensation and shall be reimbursed for reasonable expenses incurred in performing their duties.

*92658 (5) The report of the consultant and the certification of the actuary shall be made to the superintendent. In making the determinations contemplated by this section, the superintendent shall not be bound by any findings, conclusions, certifications or recommendations made by the consultant or the actuary. All information obtained by the superintendent pursuant to this section, including without limitation information obtained through examinations by him, the report of the consultant, the certification of the actuary, the memorandum of the actuary and other information secured by the consultant or the actuary and turned over to the superintendent, are hereby specifically exempted, as contemplated by paragraph (a) of subdivision two of section eighty-seven of the public officers law, from disclosure by the superintendent under said section eighty-seven of such law. Such exemption shall not preclude or exempt the superintendent from disclosure of such information pursuant to judicial process under provisions of law other than said section eighty-seven of the public officers law, nor prohibit any disclosure which in the opinion of the superintendent, and after an opportunity for the insurer to be heard, the superintendent deems should be made public for the benefit of the insurer, its policyholders or the public. If the department intends to make any report or certification public, then such report or certification shall be made available to the company at least fifteen days prior to such public disclosure.

(6) Nothing contained in this section shall be construed to exclude any person or employee or member of an institution from the category of "disinterested person" solely because such individual is a policyholder of the insurer or that such person or institution is to be one of the underwriters of any shares to be sold pursuant to

the plan of reorganization.

(i) Public hearing. The superintendent shall hold a public hearing upon the fairness of the terms and conditions of the plan of reorganization, the reasons and purposes for the mutual life insurer to demutualize, and whether the reorganization is in the interest of the mutual life insurer and its policyholders, and not detrimental to the public. Notice stating the time, place and purpose of the hearing shall be mailed by the mutual life insurer to each policyholder entitled to notice of the hearing in accordance with paragraph three of subsection (e) of this section, at his last known address as shown on the records of the mutual life insurer; such notice shall be mailed at least thirty days before the date of the hearing. Such notice shall be preceded or accompanied by a true and complete copy of the plan, or by a summary thereof approved by the superintendent, and such other explanatory information as the superintendent shall approve or require. In addition, the mutual life insurer shall give notice of the time, place and purpose of the hearing by publication in three newspapers of general circulation, one in the county in which the insurer has its principal office and two in other cities within or without this state approved by the superintendent. Such newspaper publications shall be made not less than fifteen days nor more than sixty days before the hearing, and shall be in a form approved by the superintendent.

(j) Approval of plan by superintendent. The superintendent shall after the public hearing required by subsection (i) of this section approve the plan of reorganization if he finds that the proposed reorganization, in whole and in part, does not violate this chapter, is fair and equitable to the policyholders and is not detrimental to the public and that, after giving effect to the reorganization, the reorganized insurer will have an amount of capital and surplus the superintendent deems to be reasonably necessary for its future solvency. If approval is denied, the denial shall be in writing setting forth a statement of the reasons therefor and the mutual life insurer shall have the right to a hearing before the superintendent within thirty days of the date of such denial. The superintendent shall not disapprove of a plan of reorganization for the reason that the mutual life insurer selected one of the methods provided for in subsection (d) of this section rather than another. The superintendent shall approve or disapprove the plan in writing on or before sixty days after the conclusion of the public hearing required by subsection (i) of this section.

*92659 (k) Approval by policyholders. (1) A proposal to approve the plan of reorganization shall be submitted to policyholders. Notice stating the date, time and place for voting on such proposal shall be mailed by the mutual life insurer to each policyholder entitled to notice of and to vote on the proposal in accordance with paragraph three of subsection (e) of this section, at his last known address as shown on the records of the mutual life insurer; such notice shall be mailed at least thirty days before the date of the action. Such notice may be combined with notice of the public hearing required by this section. Such notice shall be preceded or accompanied by a true and complete copy of the plan, or by a summary thereof approved by the superintendent, and such other explanatory information as the superintendent shall approve or require.

(2) Each policyholder entitled to vote on the proposal shall be entitled to cast one vote, unless otherwise provided in the charter or by-laws of the mutual life insurer, on the proposal, either in person or by mail or by proxy, irrespective of the number or amount of the policies or contracts he holds. Any proxy shall be revocable at any time except to the extent that, at the time of exercise, the power conferred thereby has been exercised. All votes shall be by written ballot cast in person or by mail by policyholders entitled to vote or by proxy agents duly appointed by policyholders entitled to vote. The voting on the proposal shall be held at the home office of the mutual life insurer. The polls shall be opened at ten o'clock in the forenoon and remain open until four o'clock in the afternoon of the day fixed for such voting, at which time they shall be closed. The proposal to approve the plan of reorganization may be adopted by the affirmative vote of two-thirds of

all votes cast by policyholders entitled to vote.

(3) The superintendent shall have power to supervise and direct and prescribe rules governing the procedure for the conduct of the voting on the proposal to such extent, consistent with the provisions of this section, as he deems necessary to insure a fair and accurate vote. Such powers shall include, but not be limited to, power to supervise and regulate (A) the determination of policyholders entitled to notice of and to vote on the proposal; (B) the giving of notice of the proposal; (C) the receipt, custody, safeguarding, verification and tabulation of proxy forms and ballots; and (D) the resolution of disputes.

(4) The superintendent shall appoint as inspectors an adequate number of personnel of the insurance department or other competent and disinterested persons and may appoint, if necessary, expert accountants and other assistants and may authorize the procurement of stationery and supplies necessary for conducting the voting on the proposal and canvassing the votes. The inspectors shall have power to determine all questions concerning the verification of the ballots and proxies, the ascertainment of the validity thereof, the qualifications of the voters and the canvass of the vote, and with respect thereto shall act under such rules as shall be prescribed by the superintendent. Any disagreement among the inspectors shall be reported to and shall be resolved by the superintendent. Any determinations by the inspectors or the superintendent shall be subject to judicial review.

***92660** (5) Representatives of the policyholders, including representatives of policyholders favoring or opposing the approval of the plan, shall be entitled to be present during the casting, verification and canvassing of the proxies and ballots and shall be entitled to examine and object to any such proxy or ballot. The superintendent or the inspectors may limit the number of persons representing any interested person or group and may specify fair and reasonable procedures for the examination of and presentation of objections to the proxies and ballots. Costs and expenses incurred in providing such representation shall not be a charge upon or paid from the funds of the mutual life insurer or the person responsible for the costs and expenses of the reorganization.

(6) Neither the mutual life insurer nor any officer, agent or employee thereof shall knowingly omit, from any list of policyholders entitled to notice of and to vote on the proposal, the name of any policyholder required to be included therein, or shall, in connection with any such list, knowingly omit to give the name and address, as last shown on the records of the mutual life insurer, of any policyholder. No person shall conceal or withhold or aid or abet any other person in concealing or withholding any proxy or ballot from the authorized custodians thereof or from the inspectors. No policyholder shall sell or offer to sell any vote or proxy for any sum of money or anything of value other than the consideration provided for in the plan or reorganization if such plan becomes effective.

(7) All ballots and proxies received by the inspectors shall immediately upon the completion of the canvass be placed in sealed packages and shall be preserved by the inspectors for a period of four years, subject to the order of any court having jurisdiction of any proceedings relating thereto, and then shall be turned over to the mutual life insurer, or the reorganized insurer if the reorganization has become effective.

(8) The conduct of the voting on the proposal shall at all times, on petition of the superintendent or of any person or persons whose rights may be affected, be subject to the supervision and control of the supreme court in the judicial district in which the mutual life insurer has its home office.

(9) The inclusion by the mutual life insurer of the name of any person in any list of policyholders required by this section shall not be construed as an admission by such insurer of the validity of any policy or contract and no such list shall be competent evidence against such insurer in any action or proceeding in which the question of the validity of any policy or contract or of any claim under it is involved.

(10) The provisions of section four thousand two hundred ten of this chapter shall not apply to the action by policyholders pursuant to this section.

(11) Upon the conclusion of the vote, the mutual life insurer shall submit to the superintendent (A) a certified copy of the plan of reorganization, subscribed by the chairman of the board, the president or any vice president and attested by the secretary or an assistant secretary of the mutual life insurer; (B) a certificate, subscribed by the chairman of the board, the president or any vice president and attested by the secretary or assistant secretary of the mutual life insurer, or subscribed by the person or persons, if any, designated by the superintendent to supervise the giving of notice of the date for action on the proposal, to the effect that such notice was given in accordance with this section to all policyholders entitled to such notice; and (C) a certificate subscribed by the inspectors of the results of the vote, as evidenced by valid ballots received before the polls were closed. Each such certificate shall be affirmed as true under the penalties of perjury by the person or persons subscribing the same and, in the case of a certificate signed by officers of the mutual life insurer, shall be affirmed under the corporate seal of the mutual life insurer.

*92661 (l) Effective date of reorganization. When the superintendent has given his approval of the plan of reorganization as provided in subsection (j) of this section and certification of approval of the plan has been made to the superintendent as provided in subsection (k) of this section, a copy of the plan of reorganization, with the superintendent's approval endorsed thereon, shall be filed in the office of the superintendent. A copy of such plan certified by the superintendent shall also be filed by the mutual life insurer in the office of the clerk of the county where the principal office of the mutual life insurer is located. The plan of reorganization shall take effect in accordance with its terms on the date when the filings required by this subsection have been made or on such later date, if any, as may have been specified in or determined in accordance with said plan or pursuant thereto. The superintendent shall issue an amended certificate of authority to the reorganized insurer and such license, if any, as may be required under section one thousand two hundred four of this chapter for the sale of its securities as specified in its plan of reorganization.

(m) Corporate existence. Upon the reorganization of the mutual life insurer in the manner herein provided, the reorganized insurer shall be deemed a continuation of the corporate existence of the mutual life insurer or, in the case of a merger, of the company specified in the plan of reorganization as the continuing company, which may be either the mutual life insurer or the domestic stock life insurer with which it is merged. All the rights, franchises and interests of the mutual life insurer and, in the case of a merger, of the domestic stock insurer, in and to every species of property, real, personal and mixed, and things in action thereunto belonging, shall be deemed transferred to and vested in the continuing company, without any other deed or transfer; and simultaneously therewith such continuing company shall be deemed to have assumed all of the obligations and liabilities of the mutual life insurer and, in the case of a merger, of the domestic stock insurer, other than obligations and liabilities with respect to the policyholders' membership interest eliminated by the plan of reorganization.

(n) Actions and proceedings. No action or proceeding pending at the time of the reorganization to which the mutual life insurer may be a party shall be abated or discontinued by reason of such reorganization, but the same may be prosecuted to final judgment in the same manner as if the reorganization had not taken place, or the reorganized insurer may be substituted in place of such mutual life insurer by order of the court in which the action or proceeding may be pending.

(o) Directors and officers. The directors and officers of the mutual life insurer, unless otherwise specified in the plan of reorganization, shall serve as directors and officers of the reorganized insurer until new directors and officers have been duly elected and qualified pursuant to the charter and

by-laws of the reorganized insurer.

(p) Costs and expenses. (1) The mutual life insurer shall deliver to the superintendent at the time of submission of the plan of reorganization a written undertaking in form and substance satisfactory to the superintendent and signed by the mutual life insurer, and by such other persons as the superintendent may require, specifying the manner in which all costs and expenses incurred in any manner in connection with the plan of reorganization shall be paid or reimbursed. Such undertaking shall provide for the payment or reimbursement of all expenses incurred by the superintendent or the department in connection with the plan of reorganization, other than normal operating expenses of the department.

*92662 (2) Such undertaking, other than a reorganization pursuant to paragraph one of subsection (d) of this section, shall also provide that no payment of costs and expenses by the mutual life insurer or the reorganized insurer shall, after giving effect to any reimbursement or contribution received by such insurer with respect thereto, have the effect of reducing the consideration, other than the policyholders' preference account referred to in paragraph two of subsection (d) of this section, to be paid to the policyholders pursuant to the plan of reorganization. The requirements of this paragraph may be waived in a reorganization pursuant to paragraphs three and four of subsection (d) of this section if the superintendent determines that it is in the policyholders' interest to do so.

(3) The said undertaking shall apply to costs and expenses incurred prior to the submission of the plan of reorganization as well as those incurred thereafter and shall be binding whether or not the plan of reorganization takes effect. The consideration to be given to policyholders pursuant to the plan shall not be deemed a cost or expense of the reorganization subject to this subsection nor to such undertaking.

(q) Notice of proposed reorganization. Notice of the pendency of the proposed reorganization and of the effect thereof shall be given by the mutual life insurer in a manner satisfactory to the superintendent to all persons to whom the mutual life insurer delivers policies or contracts which are issued after the date on which the plan of reorganization is adopted by the mutual life insurer and before the plan takes effect or is withdrawn. Such persons shall have the right, unless the laws of their domiciliary state gives other rights, to rescind such policies or contracts, and to be refunded any amounts paid with respect thereto, by written notice to such insurer or its agent given within ten days of their receipt of the aforesaid notice given by such insurer.

(r) Effect of reorganization. If the plan of reorganization takes effect, the rights of all policyholders thereafter shall be as specified in their policies or contracts, in the charter of the reorganized insurer and in the plan of reorganization, except for the elimination of the right to vote, if any, and they shall have no rights under the charter of the mutual life insurer. The reorganized insurer shall thereafter be subject to all laws, rules and regulations applicable to domestic stock life insurers and shall not be subject to any laws, rules or regulations of this state applicable to domestic mutual insurers and not to domestic stock life insurers.

(s) Failure to give notice. If the mutual life insurer complies substantially and in good faith with the requirements of this section with respect to the giving of any required notice to policyholders, its failure in any case to give such notice to any person or persons entitled thereto shall not impair the validity of the actions and proceedings taken under this section or entitle such person to any injunctive or other equitable relief with respect thereto, but this subsection shall not impair any claim for damage such person or persons would otherwise have due to such failure.

*92663 (t) Limitation of actions; security. (1) Any action challenging the validity of or arising out of acts taken or proposed to be taken under this section must be commenced within one year after a copy of the plan of reorganization, with the

superintendent's approval endorsed thereon, shall be filed in the office of the superintendent or six months from the effective date of the reorganization, whichever is later, or if the plan of reorganization is withdrawn, within six months of such withdrawal.

(2) In any action arising out of acts taken or proposed to be taken under this section, the mutual life insurer of the reorganized insurer shall be entitled at any stage of the proceedings before final judgment to petition the court to require plaintiff or plaintiffs to give security for the reasonable expenses, including attorneys' fees, which may be incurred by it in connection with such action and by any other parties defendant in connection therewith or for which the mutual life insurer or the reorganized insurer may become liable under this chapter, under any contract or otherwise by law, to which security the mutual life insurer or the reorganized insurer shall have recourse in such amount as the court having jurisdiction of such action shall determine upon the termination of such action. The amount of security may thereafter from time to time be increased or decreased in the discretion of the court having jurisdiction of such action upon showing that the security provided has or may become inadequate or excessive.

[(3) Repealed]

[(4) Repealed]

(u) Modification or exchange of existing policies. Nothing in this section shall preclude either the mutual life insurer or the reorganized insurer, on compliance with all applicable requirements of this chapter, from offering at any time or from time to time to any class or category of policyholders to modify their policies or contracts or to exchange their policies or contracts for other policies or contracts in the manner set forth in the offer.

(v) Prohibitions on certain offers to acquire and acquisitions of shares. Prior to, and for a period of five years following the date when the distribution of consideration to the policyholders in exchange for their membership interests is completed pursuant to such plan of reorganization, no person, other than the reorganized insurer or an institution referred to in subsection (b) of this section that is a part of the plan of reorganization as provided by said subsection (b) or an institution that is formed, with the approval of the superintendent, subsequent to the effective date of the reorganization in order to acquire all of the common shares of the reorganized insurer in a transaction where holders of common shares of the reorganized insurer receive all of the common shares of such institution on a basis that is proportionate to the number of common shares of the reorganized insurer held by each such holder, shall directly or indirectly offer to acquire or acquire in any manner the beneficial ownership of five percent or more of any class of a voting security of such reorganized insurer or of any institution which owns a majority or all of the voting securities of the reorganized insurer, without the prior approval of the superintendent. In the event of any violation of this subsection, or of any action which, if consummated, might constitute such a violation, (1) all voting securities of the reorganized insurer or of such institution acquired by any person in excess of the maximum amount permitted to be acquired by such person pursuant to this subsection shall be deemed to be non-voting securities of the reorganized insurer or of such institution, as the case may be, and (2) such violation or action may be enforced or enjoined, as the case may be, by appropriate proceeding commenced by the reorganized insurer, such institution or the superintendent, the attorney general or any policyholder or stockholder of the reorganized insurer or such institution on behalf of the reorganized insurer or such institution in the supreme court in the judicial district in which the reorganized insurer has its home office or in any other court having jurisdiction, and such court may issue any order, injunctive or otherwise, it finds necessary to cure such violation or to prevent such action. For the purposes of this subsection, the term "beneficial ownership", with respect to any security, means the sole or shared power to vote, or direct the voting of, such security and/or the sole or shared power to

dispose, or direct the disposition, of such security; the term "voting security" includes voting securities as defined in paragraph forty-five of subsection (a) of section one hundred seven of this chapter, any preorganization certificate or subscription (including subscription rights issued pursuant to a plan of reorganization), or any security convertible (with or without consideration) into any such security, or carrying any warrant or right to subscribe for or purchase any such security, or any such warrant or right; the term "offer" includes every offer to buy or acquire, solicitation of an offer to sell, tender offer for, or request or invitation for tenders of, a security or interest in a security for value; and the term "person" means an individual, group, firm, corporation, partnership, association, joint stock company, trust, any similar entity or any combination of the foregoing acting in concert.

*92664 (w) Prohibited transactions by officers, directors or employees. (1) Prior to, and for a period of five years following the date when the distribution of consideration to the policyholders in exchange for their membership interests is completed pursuant to such plan of reorganization, no officer, director or employee of the mutual insurer or of the reorganized insurer, including family members and their spouses, shall directly or indirectly offer to acquire or shall acquire in any manner the beneficial ownership of any securities of the reorganized insurer or of the institution referred to in subsection (b) of this section unless the acquisition is (A) made pursuant to a stock option plan approved by the superintendent; (B) made pursuant to the plan of reorganization; (C) made by employees, including their family members and their spouses, from a broker or dealer registered with the Securities and Exchange Commission at the then quoted prices on the date of purchase; or (D) made by officers or directors, including their family members and their spouses, at least two years after the initial public offering from a broker or dealer registered with the Securities and Exchange Commission at the then quoted prices on the date of purchase.

(2) For purposes of this subsection, the term "beneficial ownership", with respect to any security, means the sole or shared power to vote, or direct the voting of, such security and/or the sole or shared power to dispose, or direct the disposition, of such security.

(3) For purposes of this subsection, the term "securities", includes voting securities as defined in section one hundred seven of this chapter, any preorganization certificate or subscription (including subscription rights issued pursuant to a plan of reorganization), or any security convertible (with or without consideration), into any such security, or carrying any warrant or right to subscribe for or purchase any such security, or any such warrant or right.

(4) For purposes of this subsection, the term "family member", includes a brother, sister, spouse, ancestor or descendant of the officer, director or employee of the mutual insurer or of the reorganized insurer.

(5) No officer, director or employee shall receive any fee or other consideration, other than regular salary, director fees, or consideration as a policyholder in connection with any proposed reorganization. This paragraph, however, shall not prohibit the mutual life insurer from compensating in cash any firm with which one of its directors is associated for services rendered in connection with any proposed reorganization.

(x) Effect on department personnel. Notwithstanding subsection (a) of section two hundred four of this chapter, the superintendent, any deputy or other employee of the department shall be permitted to receive and exercise any rights received as a policyholder in connection with a reorganization.

CREDIT(S)

1999 Electronic Update

(Added L.1988, c. 683, § 5; amended L.1988, c. 684, § 2; L.1992, c. 24, § 1.)

<<INSURANCE LAW>>

< Laws 1984, Chapter 367, § 1 >

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

1999 Electronic Update

1992 Amendments. Subsec. (t), par. (1). L.1992, c. 24, § 1, inserted reference to par. (3). See Effective Date of Amendment by L.1992, c. 24 note below.

Subsec. (t), par. (3). L.1992, c. 24, § 1, added par. (3) relating to the 30-day commencement period for an action against the superintendent or other body or officer acting pursuant to this section. See Effective Date of Amendment by L.1992, c. 24 note below.

*92665 Subsec. (t), par. (4). L.1992, c. 24, § 1, added par. (4) relating to article 78 judicial review for actions taken pursuant to this section. See Effective Date of Amendment by L.1992, c. 24 note below.

1988 Amendment. Subsec. (d), par. (4), subpar. (D). L.1988, c. 684, § 2, eff. Sept. 1, 1988, added subpar. (D).

Effective Date of Amendment by L.1992, c. 24; Expiration. L.1992, c. 24, § 2, provided: "This act [amending this section] shall take effect immediately [eff. Mar. 27, 1992] and shall expire and be deemed repealed on January 1, 1993, upon which date the provisions of law amended by this act shall revert to the text as set out prior to its effective date."

Effective Date. Section effective Sept. 1, 1988, pursuant to L.1988, c. 683, § 7.

Legislative Findings. Section 1 of L.1988, c. 683; amended L.1988, c. 684, § 1, eff. Sept. 1, 1988, provided:

"The legislature hereby finds that it is in the interest of the state to maintain a financially sound and competitive life insurance industry in this state and to provide statutory authority for domestic mutual life insurance companies that find it in the best interest of the company and its policyholders to convert to stock form to do so pursuant to this legislation. In doing so, the legislature is cognizant that two separate state-appointed commissions examined, among other things, the issue of conversion from mutual form and both recommended that mutual life insurance companies should be allowed to demutualize. Each recognized that flexibility of corporate form can be an important factor in an environment of rapidly changing economic conditions.

"With the proposal of this legislation, the legislature provides for the demutualization of life insurance companies in accordance with provisions specific enough for the insurer to plan sufficiently for a major reorganization of its corporate form, and standards broad enough to assure the state that any such reorganization must be fair and equitable to its policyholders in both substance and detail. In setting forth several detailed methods of conversion, the legislature intends to give guidance to insurers seeking to reorganize by offering three specific conversion methods; by also authorizing any fair and equitable method of reorganization approved by the superintendent of insurance, either completely different from the three specific methods enumerated or any variant thereof, the legislature recognizes the complexity of the process and the need for flexibility. Moreover, notwithstanding the relative inexperience with life insurance company demutualizations, the legislature hereby recognizes that the state's authority is broad enough, in requiring that any reorganization be fair and equitable, to bring within the scope of its regulatory review and approval any concepts related to demutualization, unanticipated as of the effective date of this legislation, that could materially affect a reorganization."

*92666 Separability of Provisions. Section 6 of L.1988, c. 683, provided: "In the event any part of this act [adding this section and provisions set out as notes under this section and amending sections 1106, 4210, and 4219] should be declared invalid by any court of competent jurisdiction, such declaration shall not affect the validity of any of the remaining portions of this act which shall continue in force".

REFERENCES

CROSS REFERENCES

Reorganization of domestic life insurance companies, see Insurance Law § 7315.

Exhibit B

Registered Investment Advisers Controlled by MetLife

AEW Advisors, Inc.
AEW Capital Management, L.P.
AEW Management and Advisors, L.P.
Back Bay Advisors, L.P.
Capital Growth Management Limited Partnership
Fulcrum Financial Advisors
Graystone Partners, L.P.
Harris Associates, L.P.
Jurika & Voyles, L.P.
Loomis, Sayles & Company, L.P.
MetLife Securities, Inc.
Metric Capital Corporation
Nathan & Lewis Securities, Inc.
New England Funds Management, L.P.
Nvest Associates, Inc.
Nvest, L.P.
New England Portfolio Advisors, Inc.
New England Securities Corporation
Reich & Tang Asset Management, L.P.
Security First Investment Management Corporation
Snyder Capital Management, L.P.
SSR Realty Advisors, Inc.
State Street Research & Management Company
The New England Investment Advisors Inc.
Vaugham, Nelson, Scarborough & McCullough, L.P.
VNSM Trust Company
Westpeak Investment Advisors, L.P.

The following are registered investment advisers controlled by GenAmerica Corporation, which MetLife has agreed to acquire:

Conning Asset Management Company
Cova Investment Advisory Corporation
Cova Investment Allocation Corporation
Walnut Street Advisers, Inc.