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MetLife®

July 1, 2010

**BY EMAIL: comments@fdic.gov**

Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Attention: Comments

**Re: Treatment by the Federal Deposit Insurance Corporation as Conservator or Receiver of Financial Assets Transferred by an Insured Depository Institution in Connection With a Securitization or Participation After September 30, 2010 (RIN 3064-AD53)**

Ladies and Gentlemen:

## Introductory Remarks

Historically, the securitization market has played an instrumental role in making financing available to American consumers and companies. This financing, whether in the form of credit card financing, auto loans, mortgage loans, etc., has been a pillar of U.S. economic growth during the last 30 years.

As of the end of 2009, existing transactions in the securitization market had provided over $11 trillion dollars in financing to the U.S. economy. However, this number is rapidly declining. The current state of affairs in the securitization market is preventing it from contributing to U.S. economic recovery at a very critical time.

We are encouraged that the FDIC, other regulators and Congress recognize that fundamental changes to certain practices are needed to ensure the securitization market's long-term sustainability as a major financing source for the economy.

MetLife, Inc. and its insurance affiliates are large investors in the securitization market, purchasing securities primarily to fund its core insurance products, which provide critical financial protection for over 70 million customers worldwide. MetLife Bank (collectively referred to herein with MetLife, Inc. and its insurance affiliates as "MetLife") also participates in the securitization market both as an originator and servicer of conforming and non-conforming forward and reverse mortgage loans. As of December 31, 2009, the general accounts of MetLife's insurance companies held approximately $73 billion of structured finance securities comprising $44 billion of residential mortgage-backed securities, $16 billion of commercial-backed securities and $13 billion of asset-backed securities. The vast majority of these securities were rated A or higher.

As a significant investor in the securitization market, MetLife supports fundamental changes to certain practices in order to ensure the securitization market's long-term sustainability as a major financing source for the economy and as a viable investment alternative for MetLife's general accounts to support many of the insurance products that we sell to our customers. MetLife believes that many of the requirements in the NPR will go a long way toward restoring investor confidence in this market. With renewed investor confidence, securitization can once again become a source of financing that would foster economic growth.

MetLife welcomes the opportunity to submit this letter in response to the FDIC's request for comment regarding its Notice of Proposed Rulemaking entitled "Treatment by the Federal Deposit Insurance Corporation as Conservator or Receiver of Financial Assets Transferred by an Insured Depository Institution in Connection With a Securitization or Participation After September 30, 2010" (the "NPR"), as well as the proposed revisions to 12 CFR §360.6 set forth therein (the "Proposed Rule"). We greatly appreciate the concern that the FDIC has devoted to repairing and revitalizing the IDI-sponsored securitization market.

As you know, on February 22, 2010, MetLife submitted a letter in response to the FDIC's request for comment on the proposals set forth in its Advance Notice of Proposed Rulemaking (the "ANPR") entitled "Treatment by the Federal Deposit Insurance Corporation as Conservator or Receiver of Financial Assets Transferred by an Insured Depository Institution in Connection With a Securitization or Participation After March 31, 2010" (the "February Comment Letter"). In that letter, we highlighted our key concerns with the ANPR:

- We stated that, as a threshold matter, the FDIC should confirm that any breach of the securitization safe harbor's ongoing requirements imposed on IDIs should not jeopardize the securitization safe harbor treatment for the securitization investors of such IDI.
- We also stated that overly prescriptive requirements could adversely affect the securitization market.
- We stressed the need for careful coordination on securitization matters among the FDIC, other regulators, FASB and Congress so that the resulting regulatory and accounting framework will stand as one consistent model for the entire industry and not conflict with other applicable law or accounting principles.
- In order to address servicer conflicts of interest in real-estate related securitizations, we requested that the FDIC should prohibit a servicer or its affiliates from owning junior liens or subordinated interests in assets supporting a securitization vehicle (other than amounts necessary to meet the 5% minimum credit risk retention if the servicer is also the sponsor).
- We recommended that the FDIC use the rulemaking process as a way to set forth a basis for standardization of key terms in securitizations.
- We requested that the FDIC should not apply the securitization safe harbor's requirements to transactions that are issued, guaranteed or supported by a Federal agency (such as Ginnie

Mae) or any Government Sponsored Enterprise (such as Freddie Mac and Fannie Mae) ("Federal Agencies and GSEs").

- We provided responses to the specific questions asked by the FDIC.

**<u>Overview of MetLife Comments</u>**

1. <u>Breach of the Safe Harbor Requirements Should Not Affect Investors</u>

As described in this response letter (this "Response Letter"), MetLife continues to strongly believe that it would be fundamentally unfair for investors in a securitization to be required to bear the risk that such securitization may lose eligibility for the safe harbor (and the related protections contained in paragraph (d) of the Proposed Rule) after initial issuance because a securitization fails to comply with the conditions contained in paragraphs (b) and (c) of the Proposed Rule. Securitization investors have no way of knowing that a securitization qualifies for safe harbor treatment at issuance. Moreover, securitization investors have no way of ensuring that an IDI or other transaction parties would be in compliance with the disclosure, documentation and recordkeeping, compensation and origination and retention requirements related to a particular securitization issuance. Accordingly, MetLife believes it is important for the FDIC to de-link investors from this risk by adding two requirements to the proposed regulation:

- First, any IDI sponsoring a securitization that intends to qualify for the safe harbor should be required to furnish a legal opinion to investors that confirms eligibility for the safe harbor and to include related disclosure, representations, warranties and covenants from the IDI in the offering materials and securitization documents.

- Second, the FDIC should confirm in the proposed regulation that any breach of the ongoing requirements imposed by paragraphs (b) and (c) of the Proposed Rule on an IDI or other transaction parties would not jeopardize the securitization safe harbor for securitization investors and the related protections contained in paragraph (d) of the Proposed Rule regarding repudiation, reclamation, monetary default and relief from the automatic stay.

The FDIC and other banking authorities through their ongoing regulatory oversight of IDIs should monitor for any violations of the safe harbor's requirements and have the authority to impose fines, penalties and sanctions, including prohibiting future securitization issuances. However, securitization investors should not lose the benefit of the safe harbor because of a breach of the safe harbor's requirements by parties that they do not control. To provide otherwise would put too much of the burden on investors, a burden impractical to protect against or price in by investors. In this regard, we believe the U.S. Court of Appeals for the Eleventh Circuit's recent ruling in *Bank of America vs. Colonial Bank*[1] provides a stark reminder of the type of subjective risk that investors would be exposed to vis-à-vis the FDIC if the ongoing conditions in paragraphs (b) and (c) of the Proposed

[1] *Bank of America National Association v. Colonial Bank* (No. 09-14739) (11th Cir. 2010).

Rule are not de-linked from safe harbor eligibility following initial issuance. Therefore, unless this issue is clarified, it is likely that investors and credit rating agencies would treat new securitizations as being linked to the credit of the related IDI. Clearly, this would hamper the revival of the securitization market and inappropriately constrain the availability of credit.

2. Application to Federal Agencies and Government Sponsored Enterprises

We believe the Proposed Rule remains unclear as to whether it applies to transactions issued, guaranteed or supported by Federal Agencies and GSEs. Accordingly, we continue to believe that the FDIC should clarify that the Proposed Rule does not apply to any transactions involving Federal Agencies and GSEs (such as a sale or swap of whole loans by an IDI to a GSE in connection with the creation of participation certificates by the GSE) because any such agency or GSE already has direct recourse to IDIs when eligibility and other requirements of an applicable Federal program are violated. The Federal Agencies and GSEs should be left with the discretion to manage their programs and not be tied to the requirements of the ANPR (such as the 5% risk retention requirement), unless they choose to specifically adopt them.

3. Bond Ownership Transparency

Currently, it is very difficult to determine who the bondholders are in securitizations because the bonds are typically held by custodians or brokers in “street name” via DTC. Unfortunately, holding bonds in street name makes any communication with the bondholder group very difficult and time consuming. To properly address this issue, MetLife requests that the FDIC should mandate that one party to each securitization transaction (i.e., the trustee) have, on a real-time basis, knowledge of the legal names and contact information for each *beneficial owner* of securitization obligations to be used by such party in limited instances involving investor communication or collective investor action, while respecting investor confidentiality concerns. (For more information on this concern and our discussion on investor rights generally under paragraph (b)(3) of the Proposed Rule, please see our response to Question 6 below).

4. Coordination with SEC on New Regulation AB

In light of the SEC’s comprehensive proposal to amend Regulation AB, MetLife believes the FDIC should coordinate closely with the SEC before finalizing the Proposed Rule. Otherwise, a potential unintended consequence may be that the Proposed Rule’s requirements could be more onerous for an IDI sponsor when compared with the requirements of New Regulation AB on a non-depository sponsor.

**MetLife Responses to FDIC's Solicitation of Comments**

1. Does the Proposed Rule treatment of participations provide a sufficient safe harbor to address most needs of participants? Are there changes to the Proposed Rule that would expand protection different types of participations issued by IDIs?

2. Is there a way to differentiate among participations that are treated as secured loans by the 2009 GAAP Modifications? Should the safe harbor consent apply to such participations? Is there a concern that such changes may deplete the assets of an IDI because they would apply to all participations?

**Response to Q1 and Q2**: MetLife is the purchaser of senior, pari passu and subordinate interests in (i) commercial mortgage and mezzanine loans, and (ii) subscription line loans and lines of credit to entities investing in real estate. MetLife's interests in such commercial loans are evidenced by either a note or a participation certificate, depending on the transaction. MetLife believes that an interest in a commercial loan that is evidenced by its own separate note should be acknowledged to be a true legal sale that can not be avoided, disaffirmed, repudiated, recovered, reclaimed or recharacterized by the FDIC as conservator or receiver of an IDI. In addition, MetLife believes that the Proposed Rule's safe harbor for participations should apply to all such participation interests in loans, regardless of whether the transfer or assignment of the interest in the loan by the IDI to MetLife satisfies the conditions for sale accounting treatment under GAAP.

It is unclear whether the definition of "participation" contained in the Proposed Rule would include an interest that is evidenced by a note. In particular, it is not clear whether a subordinate note (such as a B note) would be considered a participation in a financial asset (the financial asset being the entire loan as evidenced by the A note (which may or may not be securitized) and the B note). Due to uncertainty under FAS 166/167, we are not sure where control lies in such an A/B Note structure and whether a transaction that was previously considered a sale would now be considered a financing. If such B note was considered a participation, it would not be entitled to the protection of the safe harbor, even though the securitized A note may be entitled to such protection. Taking into account this uncertainty and our concerns, our recommendation is that the Proposed Rule should be clarified as follows:

- The safe harbor for participations (set forth in paragraph (d)(1) of the Proposed Rule) should be modified to provide that: "With respect to transfers of financial assets made in connection with participations, the FDIC as conservator or receiver shall not, in the exercise of its statutory authority to disaffirm or repudiate contracts, reclaim, recover, or recharacterize as property of the institution or the receivership any such transferred financial assets, even if such transfer does not satisfy the conditions for sale accounting treatment set forth by generally accepted accounting principles". The purpose of this change is to include senior and subordinate participations in the safe harbor, even though they do not satisfy the conditions for sale accounting treatment set by GAAP.

- The Proposed Rule's definition of "participations" should be modified to provide that the characteristics of a "participating interest" do not include any interest in a financial asset that is evidenced by its own note. The purpose of this change is to exclude from the Proposed Rule interests in loans that are evidenced by their own note.

3. Is the transition period to September 30, 2010, sufficient to implement the changes required by the conditions identified by Paragraph (b) and (c)? In light of New Regulation AB, how does this transition period impact existing shelf registrations?

   **<u>Response to Q3</u>**: In order to promote market stability, MetLife believes it is important for the changes required under the conditions identified by Paragraphs (b) and (c) of the Proposed Rule to be as consistent as possible with the final version of New Regulation AB. (We note that SEC's comment period on New Regulation AB ends on August 2, 2010).

4. Does the capital structure for RMBS identified by paragraph (b)(1)(ii)(A) provide for a structure that will allow for effective securitization of well-underwritten mortgage loan assets? Does it create any specific issues for specific mortgage assets?

   **<u>Response to Q4</u>**: As we indicated in our February Comment Letter, MetLife does not believe that strict limitations on capital structure or tranching should be adopted, so long as adequate disclosure of the capital structure, interactions among the various tranches and other relevant information are provided to investors so that they can make an informed investment decision. If limitations are necessary, a straightforward approach would be to limit the number of tranches to one tranche per credit rating of subordinate bonds (i.e. eliminate "hyper-tranching" where there are multiple tranches for each credit rating notched by +/-). In addition, we believe that time tranching for senior bonds is appropriate for market efficiency and prudent asset-liability management. This approach could reduce loss severity to each of the subordinate tranches, reduce potential conflicts and may improve alignment of interests. In contrast, more stringent requirements on capital structure could reduce innovation, efficiencies of scale, liability matching and other financial benefits for market participants and the ultimate borrowers.

5. Do the disclosure obligations for all securitizations identified by paragraph (b)(2) meet the needs of investors? Are the disclosure obligations for RMBS identified by paragraph (b)(2) sufficient? Are there additional disclosure requirements that should be imposed to create needed transparency? How can more standardization in disclosures and in the format of presentation of disclosures be best achieved?

   **<u>Response to Q5</u>**: MetLife believes that ongoing disclosure in the form required by New Regulation AB is appropriate for all publicly-registered deals (Forms SF-1 and SF-3) and all deals relying on SEC Rule 144A. Imposing such requirements will greatly enhance the quality of investor decision making relating to securitizations. (In fact, we would like to draw the FDIC's attention to the fact that there is no requirement in New Regulation AB for a deal registered on

Form SF-1 to be subject to ongoing disclosure if such deal has less than 300 registered holders.[2] This is due to limitations contained in §15(d) of the Securities Exchange Act of 1934, as amended. Therefore, the FDIC's ongoing disclosure requirements in paragraph (b)(2) of the Proposed Rule will be helpful to investors insofar as an IDI is the sponsor). In contrast, for purely private offerings made under SEC Regulation D or Section 4(2) of the Securities Act of 1933, MetLife believes it is appropriate to allow the issuer, sponsor and investors to negotiate the terms of any required ongoing disclosure.

6. Do the documentation requirements in paragraph (b)(3) adequately describe that rights and responsibilities of the parties to the securitization that are required? Are there other or different rights and responsibilities that should be required?

**Response to Q6**: No, MetLife does not believe that the documentation requirements in paragraph (b)(3) of the Proposed Rule adequately describe the required rights and responsibilities of the parties to a securitization. We believe such rights and obligations should be improved in a number of respects:

Strengthening Representations, Warranties and Audit Rights. MetLife recommends that representations, warranties and covenants should be strengthened to address issues investors have encountered in the recent past in obtaining information or cooperation from trustees, sponsors administrators and servicers in securitization transactions. Audit and inspection rights should be strengthened to make it easier for investors to direct trustees to verify compliance with applicable representations and warranties and ongoing covenants under the securitization documents and provision of adequate information to support loan modifications by the servicer. On too many occasions, servicers or sponsors have delayed providing access to loan files and other information.

Standardizing Representations, Warranties and Remedies. In addition, MetLife believes that standardization of representations and warranties and remedies for breaches would increase efficiency and transparency of securitizations. For example, in many non-agency RMBS securitizations, the representations and warranties are generally made only by the newly-formed securitization vehicle itself (rather than also being made by the sponsor on a joint and several basis).

Enhanced Due Diligence/Put Back Rights. We believe the FDIC should require securitization documents to include triggers that require a forensic review of asset-level representations and warranties during the life of a securitization by an independent due diligence firm so that put-back rights can be exercised in a timely manner vis à vis the sponsor. Appropriate triggers would include: (a) all early payment defaults; (b) all loans that become seriously delinquent (i.e., 60 days delinquent); (c) all loans for which the servicer or trustee suspects a breach; (d) all loans for which 5% or more of bondholders suspect a breach and direct the trustee to request investors to vote on directing the trustee to require the forensic review described above. In addition, we believe that

[2] Most publicly offered securitizations have less than 300 "registered holders" because bonds issued in such securitizations are held in "street name" by custodians via DTC. For more on this critical issue and its impact on securitizations, please see our discussion of "Bond Ownership Transparency" in our response to Question 6 below.

independent arbitration may be an efficient means of resolving any disputes involving put-back rights.

Streamlined Voting Rights. The vast majority of securitization transactions require a 25%-in-interest voting threshold to be achieved for investors to direct the trustee to take permitted actions and a majority or super-majority-in-interest of investors to vote to approve particular actions. Because the identity of investors is often unknown (as discussed in the paragraph below), it is extraordinarily difficult for investors to take coordinated action to protect their rights. Likewise, it is easy for others to frustrate the exercise of such rights by investors. Accordingly, we believe the FDIC should streamline the exercise of investor voting rights in securitizations by amending paragraph (b)(3) of the Proposed Rule to require securitization documents to include the following investor protections:

- Investors Initiating Action: 5%-in-interest of investors (who are not affiliated with the sponsor or servicer) would be permitted to direct the trustee to take action under the securitization documents. Pertinent examples include directing the trustee to poll investors as to whether to (a) pursue inspections, examinations and audits for securitization document compliance; (b) obtain adequate information to support loan modifications by the servicer; or (c) trigger an independent review of representations and warranties so that put-back rights can be exercised in a timely manner.

- Voting on Action Initiated by Investors: After action has been initiated by a 5%-in-interest investor vote, the securitization documents should be required to contain either (x) a majority-in-interest voting threshold on the action to be decided upon (where the denominator is based on the interests held by the investors who actually voted on the matter (subject to a reasonable quorum for the vote)) or (y) a negative consent where a failure to object is deemed to be approval of the action that has been initiated by the requisite 5%-in-interest of investors.

- Impose Reasonable Time Constraints and Cooperation Covenants on Trustees, Servicers and Sponsors: Under all circumstances, trustees, servicers and sponsors must be placed under reasonable time constraints and be subject to reasonable cooperation covenants so as not to hinder or delay investors from initiating action, voting on action or otherwise exercising their rights under the securitization documents. On too many occasions, servicers or sponsors have delayed providing access to loan files and other information.

Bond Ownership Transparency. MetLife also requests that the FDIC require securitization documentation to include a mechanism to provide transparency regarding investors who beneficially own securitization obligations. Currently, it is very difficult to determine who the bondholders are in securitizations because the bonds are held by custodians or brokers in “street name” via DTC. Unfortunately, holding bonds in “street name” makes any communication to and among bondholders very difficult and time consuming, and, as a practical matter, is likely to have a material adverse effect on the ability of investors to exercise any substantive protections or rights that are contained in the documentation. This technical issue causes problems for the marketplace because there is no means of quickly communicating with all investors in a securitization. (Of course, we recognize that bonds must be held in street name for convenience of trading, to eliminate safekeeping issues related to physical securities and to deal with investor confidentiality issues). Therefore, there is currently no single party that knows who all of the investors are in a particular securitization. To address this issue, MetLife believes the FDIC should mandate securitization documents to require that one party to each transaction (i.e., the trustee) have, on a real-time basis, knowledge of the legal names and contact information for each *beneficial owner* of securitization obligations to be used by such party in limited instances involving investor communication or collective investor action, while respecting investor confidentiality concerns.

Improved Governance of Securitizations -- Removal and Replacement of Servicers. In CMBS transactions, the owner of the most subordinate bonds (which may only represent 3% of a securitization's capital) has the right to direct or advise the special servicer on material decisions or to remove and replace the special servicer. (Frequently, such holder is affiliated with the special servicer, which results in a conflict of interest). In order to improve governance of securitizations and alignment of interest between investors and special servicers, we request that the FDIC require securitization documents to include a provision permitting a majority-in-interest of a securitization's obligations to (a) direct or advise the special servicer on material decisions (and/or to have the right to appoint (and to replace) an operating adviser to carry out such function vis à vis the special servicer) and (b) remove and replace the special servicer. (For our suggestions regarding removal of servicer conflicts of interest (including in RMBS transactions), please see our response to Question 9 below).

Improved Governance of Securitizations -- Ownership Restrictions.

- CMBS. In CMBS transactions, special servicers and their affiliates should not be permitted to own the junior-most subordinated bonds of the securitization ("B-pieces"), B Notes, or mezzanine debt on the underlying first mortgage that they are servicing or to purchase defaulted loans or foreclosed REO properties from the CMBS trust.

- RMBS. Among the many servicer conflicts of interest that exist in RMBS transactions, the most problematic relates to ownership of second liens by the servicer or its affiliates. RMBS servicers should not be permitted to own the second-lien investments in securitizations for which they are servicing first-lien investments (other than as may be required for purposes of 5% risk retention). Currently, many servicers (or their affiliates) hold second-lien mortgages on the properties for which they service the related securitized first-lien mortgages. The conflict arises when the servicers act to maintain the value of their (or their affiliates') second-lien investments at the expense of the first-lien. In many instances, the servicer may modify the first lien mortgage while leaving the second lien untouched. This allows the servicer/second-lien holder to facilitate the ability of the borrower to pay the second lien while the value of the first-lien is reduced. An additional complication arising from servicer-owned second-liens is that the servicer might refuse a short-sale offer in order to keep its second-lien outstanding to the detriment of the first-lien holder. (This result is unfair because the second lien by definition is completely subordinated to the first lien and should be completely written down before anything is done to modify the first lien).

7. Do the documentation requirements applicable only to RMBS in paragraph (b)(3) adequately describe the authorities necessary for servicers? Should similar requirements be applied to other asset classes?

**<u>Response to Q7</u>**: No, MetLife believes that the documentation requirements applicable only to RMBS in paragraph (b)(3) of the Proposed Rule are too broad. By providing servicers with the authority to modify loans to address "reasonably foreseeable defaults" (rather than "imminent defaults"), servicers would be given too much leeway to potentially adversely affect securitization investors in RMBS and CMBS. We are deeply concerned with the virtually unfettered discretion that paragraph (b)(3) of the Proposed Rule would provide servicers to change terms of the underlying loans coupled with the servicers' inherent economic conflicts of interest in the securitization transactions.

In both RMBS and CMBS, we believe there are insufficient objective criteria or guidelines to determine "reasonably foreseeable default" under the REMIC rules. We believe the following guidance should be applied:

<u>RMBS</u>

With respect to RMBS, we recommend that the FDIC require securitization documents to contain specific criteria that define "reasonably foreseeable default" to ensure that borrowers who can afford their homes do not receive unnecessary modifications. Currently, the GSEs and some servicers already have various criteria in place to evaluate potential defaults to determine whether a borrower should receive a loan modification. These criteria include, but are not limited to, the following:

- <u>Evaluation of cash reserves</u>. For example, this means that a borrower with cash reserves that are equal to or greater than the outstanding principal amount of its mortgage should not be eligible to receive a loan modification.

- <u>Checking availability of reserves to service housing debt</u>. This means that a borrower should not be eligible to receive a loan modification if the borrower has cash reserves in an amount that is several times greater than the monthly payment on its mortgage.

- <u>Requiring proof of hardship for greater than 12 months</u>. By way of example, this means that a borrower should not be eligible to receive a loan modification while in between jobs, but still fully capable of earning a good living.

The above criteria are examples of straightforward measures that are already part of the information servicers generally request from borrowers who claim hardship. In fact, the Government Accountability Office ("GAO") testimony before the Committee on Oversight and Government Reform, House of Representatives on March 25, 2010 recommended that the Home Affordable Modification Program ("HAMP") implement criteria for imminent default to improve clarity and reduce issuer-to-issuer and loan-to-loan variations.

CMBS

With respect to CMBS, we recommend that the FDIC require securitization documents to require the following principles to be taken into account when evaluating the issue of "reasonably foreseeable default":

- Short Time Period. Applicable time period as to which "reasonably foreseeable default" is determined should be relatively short (such as no more than 6 to 12 months prior to the loan's maturity date).

- Objective Evidence. The special servicer must determine that a default is "reasonably foreseeable", based on objective evidence of the relevant facts and circumstances. However, representation letters from the borrower or its affiliates should be specifically excluded as a form of objective evidence for these purposes.

- Transparency. The special servicer's periodic reporting to CMBS investors should be required to include pool and loan-level reporting regarding any modifications granted due to any "reasonably foreseeable defaults", including a narrative description of the basis under which it determined that each "reasonably foreseeable" default that resulted in a modification was likely to occur.

- Market Interest Rates. Special servicers sometimes make loan modification decisions using discount rates that vary from fair market rates. The use of non-market rates can result in decisions that are not in the collective best interest of the CMBS investors. To the extent permitted by a CMBS trust's pooling and servicing agreement, the special servicer should be required to use fair market discount rates (that reflect investor opportunity cost) to determine if a modification is warranted based on the present value of the payoff of the commercial mortgage in question.

We would also like to draw the FDIC's attention to the fact that CMBS special servicers are often able to collect fees directly from the borrowers outside the CMBS trust in order to perform a "work-out" for the borrower. Special servicers in CMBS should not be allowed to separately collect fees from borrowers, unless such fees are for the benefit of the CMBS trust because this creates the incentive to acquiesce to borrower demands irrespective of the economic effect to the CMBS trust. (For more on the incentive fee conflict issues, please see our response to Question 10 below).

Workout/Loss Mitigation Decisions

MetLife believes that specificity, transparency and standardization of the NPV calculation and related assumptions are needed to protect investors, as well as to create market efficiencies. The discount rate for the NPV calculation should be based on the risk-adjusted market rate of the asset or, in other words, the rate reflecting the opportunity cost to investors. For RMBS, the rate would be the prevailing Freddie Mac Survey Rate plus a market level risk spread. For CMBS, the appropriate rate would be the blended rate of the Barclays CMBS Investment Grade Index.

Consolidation Impact

In addition, a clearer definition of "reasonably foreseeable default" may also have the positive effect, from an accounting perspective, of reducing the amount of discretionary control servicers are able to exercise over accounts and thereby further reduce the likelihood of consolidation for portions of the securitization retained by sponsors.

8. Are the servicer advance provisions applicable only to RMBS in paragraphs (b)(3)(ii)(A) effective to provide effective incentives for servicers to maximize the net present value of the serviced assets? Do these provisions create any difficulties in application? Are similar provisions appropriate for other asset classes?

**Response to Q8:** Yes, with respect to RMBS, MetLife believes it is prudent to limit servicer advances to three periods, as proposed in paragraph (b)(3) of the Proposed Rule. This is an important limitation because it mitigates the risk that the servicer will use its advances as a way to provide what is tantamount to a senior financing arrangement to a borrower that does not benefit the RMBS trust.

For CMBS, we do not think it is necessary to impose a strict limit of three periods on such advances. This is because CMBS transactions usually contain an additional structural element, known as an "appraisal reduction feature", that mitigates the risk that a servicer will provide too many advances. In CMBS transactions, servicer advances may continue until the point of final resolution of the loan only if "appraisal reductions" are performed properly. Typically, if an appraisal reduction has occurred, the servicer has the discretion to choose to be reimbursed for the related servicing advances either immediately or over time. Instead, there should be a standard in place that allows the servicer to be reimbursed only over a period of no less than twelve months in order not to cause "interest shortfalls" to a substantial amount of bonds in the CMBS trust's capital structure.

9. Is the limitation on servicer interest applicable only to RMBS in paragraph (b)(3)(ii)(C) effective to minimize servicer conflicts of interest? Does this provision create any difficulties in application? Are similar provisions appropriate for other asset classes?

**Response to Q9**: No, MetLife does not believe that the limitation on servicer interest proposed in paragraph (b)(3)(ii)(B) of the Proposed Rule would be effective to minimize RMBS servicer conflicts of interest or that a similar provision would minimize servicer conflicts of interest in CMBS. In general, we believe servicer conflicts of interest issues should be addressed through a combination of standardization and industry best practices. Please see our responses to Questions 6 and 7 above for further discussion of these significant issues.

10. Are the compensation requirements applicable only to RMBS in paragraph (b)(4) effective to align incentives of all parties to the securitization for the long-term performance of the financial assets? Are these requirements specific enough for effective application? Are there alternatives that would be more effective? Should similar provisions be applied to other asset classes?

**Response to Q10**: No, the compensation requirement should cover rating agencies, deal underwriters and third-party advisors. Moreover, the compensation requirement should relate to ABS, RMBS and CMBS. With respect to rating agencies, deal underwriters and third party advisors, MetLife generally supports the requirements described in paragraph (b)(4)(i) of the Proposed Rule and suggests fees and compensation be limited to 50% payable at initial issuance of the obligations and the remainder payable (i) over a five year period or on maturity of the obligations if earlier and (ii) contingent on the rating agency performing, at a minimum, annual surveillance of transactions with applicable ratings actions (i.e., affirmations, upgrades, downgrades, etc.).

With respect to servicer incentive fees contained in paragraph (b)(4)(ii) of the Proposed Rule, MetLife may be supportive of requiring such incentives in securitization documentation, but any such incentives should be narrowly tailored because the servicers will likely be paid outside the securitization trust. We believe appropriate protection could be achieved for investors by amending the Proposed Rule to require servicers to make the appropriate NPV calculation for the particular asset sector. While our concern relates to securitizations generally, servicer incentives will most heavily impact real-estate related securitizations, such as RMBS and CMBS. (For more specifics on our suggestions for appropriate NPV calculations, please refer to the subheading "Workout/Loss Mitigation Decisions" in our response to Question 7 above).

11. Are the origination or retention requirements of paragraph (b)(5) appropriate to support sustainable securitization practices? If not, what adjustments should be made?

**Response to Q11**: MetLife believes that risk retention requirements are a cornerstone of any effort to support sustainable securitization practices. However, we believe the types of risk retention permitted by paragraph (b)(5)(i)(A) of the Proposed Rule are too broad in order to achieve this goal. To more closely align the interests of sponsors and investors and to improve the likelihood of responsible underwriting by market participants, the risk retention requirement should be narrowly tailored so that the sponsor must be required to retain no less than 5% of each credit tranche transferred or sold to investors (i.e., a "vertical strip"). Accordingly, we believe that the FDIC should delete the alternative risk retention language contained in the current draft of the Proposed Rule that would permit an IDI to retain a "representative sample" of the securitized financial assets equal to no less than 5% of the financial assets at transfer. In our view, a requirement permitting the retention of "representative samples" may lead to a number of complexities, including (a) the proper definition of "representative" assets; (b) violation of such retention requirement by sponsors will result in the loss of the safe harbor for investors; and (c) investors will not have the ability to ensure that sponsors will maintain the appropriate exposure for the life of the securitized transaction. In contrast, we believe a narrowly-tailored requirement that sponsors retain a 5% vertical strip (when combined with the put back-reserve fund required in paragraph (b)(5)(ii) of the Proposed Rule), will help to create a sustainable securitization market by making market participants more likely to engage in responsible underwriting.

We continue to encourage the FDIC to collaborate with the FASB and the SEC to ensure that the 5% retention requirement would not be considered a potentially significant variable interest for evaluating consolidation requirements pursuant to Statement of Financial Accounting Standards 167 (now Codification Topic 810).

12. Is the requirement that a reserve fund be established to provide for repurchases for breaches of representations and warranties an effective way to align incentives to promote sound lending? What are the costs and benefits of this approach? What alternatives might provide a more effective approach?

**Response to Q12**:

Yes, MetLife supports the establishment of a reserve fund to provide for repurchases for breaches of representations and warranties in the non-agency market. (The reserve fund should not apply to the Federal Agency and GSE market because those entities can enforce put-back obligations against IDIs under the terms of their own programs), We believe 5% is an appropriate amount. However, we support a 5-year time period for the reserve fund (rather than a 1-year duration) because a 5-year time period seems to be a more appropriate duration to assure that there is adequate time to discover and act upon breaches of representations and warranties on underlying loans. In order to enhance the economics for issuers while retaining sufficient funds for put-backs, it may be reasonable to step-down the 5% reserve fund after an initial two year period (e.g. two years with the full 5% reserve fund, followed by a 10% reduction on the 2$^{nd}$ anniversary, a 20% reduction on the 3$^{rd}$ anniversary, a 20% reduction on the 4$^{th}$ anniversary and the 50% remainder released on the 5$^{th}$ anniversary).

In addition, we believe it is prudent for the FDIC to require that securitization documents contain provisions requiring an independent third-party to review an underlying loan's representations and warranties if certain triggers are met, such as 60-day delinquency of such loan. For more detail on this suggestion, please see our response to Question 6 above.

13. Is retention by the sponsor of a 5 percent “vertical strip” of the securitization adequate to protect investors? Should any hedging strategies or transfers be allowed?

**Response to Q13**: Yes, MetLife believes that the sponsor’s retention of a 5 percent “vertical strip” (i.e., no less than 5% of each credit tranche transferred or sold to investors) under paragraph (b)(5)(i)(A) of the Proposed Rule is adequate to protect investors. In our view, such a requirement will more closely align the interests of sponsors and investors and will make it more likely that market participants will engage in responsible underwriting. In contrast, we believe that the FDIC should eliminate the alternative risk retention language contained in paragraph (b)(5)(i)(A) of the Proposed Rule that would permit a sponsor to retain a “representative sample” of the securitized financial assets equal to no less than 5% of the financial assets at transfer. In our view, a requirement permitting the retention of “representative samples” would not result in a sufficient alignment of interests between sponsors and investors and does not make it likely that market participants would engage in more responsible underwriting. (For more on our concern with the use of “representative samples”, please see our response to Question 11 above).

With regard to hedging strategies and transfers, credit risk hedges or transfers specific to a particular retained security should not be permitted during the life of the securitization because any such strategies would be very likely to undermine the risk retention requirement. However, macro hedges and currency and interest rate hedges should be allowed at any time.

14. Do you have any other comments on the conditions imposed by paragraphs (b) and (c)?

**Response to Q14**: Please see the portion of this Response Letter entitled “Overview of MetLife Comments” for a discussion of significant issues in this regard.

15. Is the scope of the safe harbor provisions in paragraph (d) adequate? If not, what changes would you suggest?

16. Do the provisions of paragraph (d)(4) adequately address concerns about the receiver's monetary default under the securitization document or repudiation of the transaction?

17. Could transactions be structured on a de-linked basis given the clarification provided in paragraph (d)(4)?

18. Do the provisions of paragraph (e) provide adequate clarification of the receiver's agreement to pay monies due under the securitization until monetary default or repudiation?

**Response to Q15 – Q18**: With respect to paragraph (d)(4)(ii) of the Proposed Rule, MetLife agrees that outstanding par value of the obligations is generally an appropriate measure of damages in connection with a repudiation.

*    *    *

Thank you in advance for providing us with the opportunity to comment on the NPR and the Proposed Rule. If you have any questions concerning the views or recommendations we have expressed in this Response Letter, please feel free to contact either me (at 973.355.4227; cscully@metlife.com) or Kristin Smith of our Government and Industry Relations Department (at 202.466.6224; ksmith4@metlife.com).

Very truly yours,

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