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MetLife®

November 18, 2010

By e-mail to: comments@fdic.gov

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

Re: Notice of Proposed Rulemaking Implementing Certain Orderly Liquidation Authority Provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act

Ladies and Gentlemen:

MetLife[1] appreciates the opportunity to comment on the notice of proposed rulemaking (the "**NPR**") issued on October 19, 2010 by the Federal Deposit Insurance Corporation (the "**FDIC**") to implement certain provisions of the orderly liquidation authority contained in Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "**Act**").

This letter is narrowly focused on Section 380.2 (regarding the treatment of similarly-situated creditors) and Section 380.6 (regarding liens on insurance company assets) of the FDIC's proposed rule (the "**Proposed Rule**"). We reserve the right to provide additional commentary on the broader questions posed by the FDIC on or before the January 18, 2011 deadline.

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[1] MetLife, the largest life insurer in the United States, offers life insurance, annuities, auto and home insurance, retail banking and other financial services to individuals, as well as group insurance and retirement and savings products and services to corporations and other institutions. Through its subsidiaries and affiliates, MetLife holds leading market positions in the United States, Japan, Latin America, Asia Pacific, Europe and the Middle East, serving 90 million customers worldwide As of September 30, 2010, MetLife held more than $10 billion of debt securities issued by financial holding companies, including investments in 15 of the 18 U.S. financial holding companies that, like MetLife, were subject to the federal Supervisory Capital Assessment Program stress tests in 2009.

<u>Section 380.2 --- Disparate Treatment of Similarly-Situated Creditors</u>

By granting the FDIC discretion to provide disparate treatment to contractually and structurally *pari passu* creditors of a covered financial company, the Act injects significant risk, uncertainty and volatility into the very financial markets that it is intended to stabilize. We respectfully submit that the Proposed Rule does little to minimize these risks and uncertainties, and may perhaps even exacerbate them.

Title II of the Act provides a mechanism for the FDIC to seize, manage and liquidate a failing financial company deemed to pose a significant systemic risk to the financial stability of the United States. The FDIC has broad authority under the Act to wind up the affairs of the covered company in a manner that "maximizes asset value, minimizes losses, mitigates risk, and minimizes moral hazard."

The basic priority scheme for creditor distributions under the Act generally mirrors that of the United States Bankruptcy Code (the "**Bankruptcy Code**"), and requires that similarly-situated creditors be treated similarly. The Act further mandates that all creditors of a class must receive no less than what they would have received in a chapter 7 proceeding under the Bankruptcy Code (although the statute does not state when, by whom or how bankruptcy liquidation value will be calculated).

Notwithstanding these general rules, Section 210(b)(4) of the Act affords the FDIC significant discretion to prefer certain creditors of a company in receivership over other similarly-situated creditors if it is necessary to (1) "maximize the value of the assets;" (2) to initiate and continue operations "essential to implementation of the receivership and any bridge financial company;" (3) to "maximize the present value return from the sale or other disposition of the assets;" or (4) to "minimize the amount of any loss" on the sale or other disposition. Further, Sections 210(d)(4) and (h)(5)(E) of the Act permits the FDIC to make "additional payments" to certain creditors if it is determined that such payments are necessary or appropriate to minimize the losses from the orderly liquidation of the covered financial company.

In an apparent effort to address concerns raised by institutional fixed income investors about the breadth of the FDIC's discretion, Section 380.2 of the Proposed Rule clarifies that certain categories of stakeholders in a covered financial company will never receive preferential payments pursuant to Sections 210(b)(4), 210(d)(4) or 210(h)(5)(E) under any circumstances. Specifically, Section 380.2(b) provides that the FDIC shall not permit shareholders, subordinated debtholders or long-term, unsecured senior debtholders of a covered financial company to recover more than others in their respective classes. Conversely—and as made clear in the Notice of Proposed Rulemaking memorandum accompanying the Proposed Rule (the "**Memorandum**")—holders of short-term, unsecured debt <u>may</u> receive additional payments or credits when the FDIC's Board of Directors, by majority vote, determines such payments or credits are "necessary" and provided that the statutory requirements have been satisfied.

Thus, while clarifying that the FDIC may not, for political reasons or otherwise, make "additional payments" to one long-term bondholder to the disadvantage of another,[2] Section 380.2 by implication elevates short-term (364-day) unsecured senior debt of a covered financial company above longer-term (365-day) unsecured senior debt, allowing for the potential that the former may be preferred at the direct expense of the latter. MetLife submits that this is both inequitable and unnecessary.

The implementation of Section 380.2 of the Proposed Rule, as drafted, will create distortions and increased risks in the bond market—reducing demand for and increasing costs of longer-term paper, limiting access to the capital markets for systemic financial companies, and driving the price for existing long-term debt downward. The market can reasonably expect negative credit rating consequences for long-term senior unsecured bonds issued by financial institutions, based upon the potential subordination to ostensibly *pari passu* short-term debt. Indeed, in an October 22, 2010 report, Fitch Ratings acknowledged the differentiation between short and long term senior debt implicit in the Proposed Rule, and ominously concluded that "[s]hould this carve out provision remain as part of the final rules, Fitch would need to consider how best it would rate the segregated obligations."

These uncertainties, and the risk that senior unsecured bonds may receive priority based solely on maturity, might precipitate a flight from long-term debt at the first sign of distress, which could itself hasten the collapse of a failing financial institution. Furthermore, such volatility could have a contagion effect on the markets generally, negatively impacting the ability of other large financial institutions to raise capital.

In short, we believe that the unintended consequences of drawing an arbitrary class distinction between longer and shorter term unsecured debtholders are potentially significant. Fortunately, such differentiation is entirely unnecessary to address the fundamental concerns that Sections 210(b)(4), 210(d)(4) and 210(h)(5)(E) of the Act were designed to cover.

It is our understanding that the FDIC carved out its broad discretionary authority to prefer some creditors over others in order to preserve the ability of a covered financial company to continue key operations, services and transactions that will maximize value of the firm's assets and avoid a disorderly collapse in the market place. As cited in the Memorandum, examples of operations that may be essential to the implementation of the receivership or a bridge company include "the payment of utility and other service contracts and contracts with companies that provide payments processing services."

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[2] It nevertheless remains unclear when the FDIC will exercise its discretion, which creditors may benefit from disproportionate recoveries and, importantly, what form the preferential treatment may take. For instance, the Proposed Rule fails to clarify whether this prohibition against the provision of "additional payments" to unsecured long-term bondholders would prevent the FDIC from transferring a lower coupon series of long-term unsecured bonds to a bridge financial company, while leaving a higher coupon series of long-term unsecured bonds behind. MetLife requests that the FDIC confirm market expectation that similarly-situated long-term bonds will accorded equal treatment under Title II.

MetLife believes that the FDIC can both (a) avoid the unintended negative market impact described above and (b) address its valid concerns about maintaining essential business operations, by expressly limiting the application of Sections 210(b)(4), 210(d)(4) and 210(h)(5)(E) of the Act to creditors that **"provide essential services related to the business operations of the receivership or any bridge financial company."** Similar to the administrative priority status conferred upon "critical vendors" in a chapter 11 proceeding, the FDIC, by majority vote of the Board, may elect to grant "additional payments" or other credits to creditors that provide essential ongoing services that it deems vital to business operations. This would allow the receivership or bridge financial company to preserve and maximize the value of its assets and operations for the benefit of creditors, without rewriting the absolute priority rule and disrupting general market expectations.

<u>Section 380.6 --- Liens on Insurance Company Assets</u>

With respect to Proposed Rule 380.6, we wish to clarify that any necessary lien on the assets of an insurance company or a covered subsidiary of an insurance company will only be permitted to the extent of the funds actually extended to the insurance company or the covered subsidiary of the insurance company, respectively. Further, any lien taken by the FDIC may only be placed on the assets of the entity that actually received the funds, and not on the assets of an affiliate or a subsidiary of that entity. This will ensure that any secured claim afforded the FDIC due to its lien in the state insurance insolvency proceeding involving the insurance company will not diminish the amount of other unencumbered assets of the insurance company that support policyholder claims. Similarly, any secured claim afforded the FDIC due to its lien on assets of a covered subsidiary of an insurance company will not diminish the equity value of the covered subsidiary that will inure to the benefit of the insurance company (as shareholder) and ultimately its policyholder-claimants.

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MetLife thanks the FDIC for the opportunity to comment on the NPR. Should you have any questions, please do not hesitate to call John Rosenthal (Senior Managing Director, Core Securities) at 973-355-4777 or Kristin Smith (Vice President, Government Affairs and Industry Relations Department) at 202-466-6224.

Respectfully Submitted,

Steven A. Kandarian

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Executive Vice President and
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Cc: Mr. Michael H. Krimminger
FDIC Special Advisor for Policy
Office of the Chairman

Mr. Robert E. Feldman
Executive Secretary, FDIC