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August 27, 2010

FINANCIAL ACCOUNTING STANDARDS BOARD
401 Merritt 7, PO Box 5116

Letter of Comment No.:
File Reference Number: 1840-100

Norwalk, Connecticut 06856-5116 Attention: Technical Director

Re: Proposed Accounting Standards Update

Contingencies (Topic 450)

Disclosure of Certain Loss Contingencies

Thank you for giving us the opportunity to comment on the prior Exposure Draft Related to the Proposed Statement of Financial Accounting Standards, Disclosure of Certain Loss Contingencies -- An Amendment of FASB Statement Nos. 5 and 141 (R) issued in June 2008 (the "June 2008 Exposure Draft"), and to participate in the roundtable discussions at the Financial Accounting Standards Board's (the "FASB") offices in March of 2009. We also appreciate the opportunity to submit this comment letter on behalf of MetLife, Inc. ("MetLife") in response to the current Exposure Draft of the Proposed Accounting Standards Update for Contingencies (Topic 450), Disclosure of Certain Loss Contingencies issued in July 2010 (the "Exposure Draft"). As both a preparer and user of financial statements, MetLife supports loss contingency disclosure requirements that allow financial statement users to understand the nature, magnitude and timing of material loss contingencies.

We are pleased that the FASB has revised its initial proposal for loss contingency disclosures in some respects to respond to feedback received during the *June 2008 Exposure Draft* and roundtable periods. We agree with the principle reflected in the *Exposure Draft* that it is typically difficult for a company to provide detailed qualitative disclosure in the early stages of a lawsuit, which may span several disclosure periods. For example, motion to dismiss practice, which is prior to the parties' exchange of information pertaining to the claims at issue, can sometimes span several years. We also agree with the *Exposure Draft's* focus on disclosure of publicly available and non-privileged quantitative information. Both users and preparers of financial statements are united in their interest in preventing disclosure of prejudicial information that would affect the value of the contingency itself by increasing the cost of resolving class action and other litigation and thereby harming the interests of shareholders and other investors.

We remain concerned that the *Exposure Draft* requires the disclosure of "claim amounts." In our experience, claim amounts are not predictive of potential exposure or cost of resolution, and plaintiffs' counsel may attempt to use a requirement to disclose claim amounts offensively to extract a higher payment. For example, class action plaintiffs' counsel may inflate claim

amounts to make public companies consider a quick settlement rather than face disclosure of a baseless but high claim amount that could cause concern to investors unfamiliar with litigation tactics.

We also do not agree with the proposed adjustment of the disclosure threshold to include "remote" loss contingencies. The standard proposed for that disclosure threshold provides too little guidance on which remote contingencies should be disclosed, and calls for speculation regarding the possible impact of events that are unlikely to occur. Companies could be subject to unfair criticism and liability from those who have the benefit of hindsight when a small minority of the numerous remote contingencies ultimately results in losses. We refer you to the comment letter submitted by the American Council of Life Insurers, which reflects our concerns with respect to these and other aspects of the proposal.

Below are our responses to certain Questions for Respondents outlined in the *Exposure Draft*. These responses further illustrate our most significant concerns.

**Question 1:** Are the proposed disclosures operational? If not, please explain why.

#### Response:

The proposed disclosures would be difficult to operationalize. The proposed guidance broadens the disclosure threshold, thereby including certain asserted remote loss contingencies with a potential severe impact. It also increases the amount and types of qualitative and quantitative disclosures, including a tabular reconciliation of recorded liabilities.

It would be difficult for management to develop a consistent process to identify which remote contingencies meet the threshold (as discussed above). Management would need to exercise considerable judgment and develop support for its position in making such assessments. This would require increased dialogue with various interested parties, including inside and outside accountants and counsel. Further, once management identifies and decides which contingencies meet the disclosure threshold, sharing the supporting documentation that was used to evaluate those contingencies and the judgment applied could result in a waiver of the attorney-client privilege or work-product protection.

Similarly, the proposed quantitative information would require management to consistently evaluate more information and make more judgments on a greater number of contingencies. Further, management would need to establish a reporting process, develop frameworks for making consistent judgments and documenting such judgments, as well as the bases for aggregation, with the sensitivity noted above. In addition, these processes must be developed within an adequate internal control framework. Management would require more frequent and detailed communications with internal and outside counsel, as well as increased interaction with inside and outside accountants.

Developing a cohesive process that satisfies the needs of interested parties to comply on a timely basis with the increased requirements and judgments noted above would require additional resources, would be costly to implement and would add operational complexity.

Question 3: The June 2008 FASB Exposure Draft, Disclosure of Certain Loss Contingencies, had proposed certain disclosures based on management's predictions about a contingency's resolution. The amendments in this proposed Update would eliminate those disclosure requirements such as estimating when a loss contingency would be resolved and the entity's maximum exposure to loss. Do you agree that an explicit exemption from disclosing information that is "prejudicial" to the reporting entity is not necessary because the amendments in this proposal Update would:

- a) Not require any new disclosures based on management's predictions about a contingency's resolution
- b) Generally focus on information that is publicly available
- c) Relate to amounts already accrued in the financial statements
- d) Permit information to be presented on an aggregated basis with other similar loss contingencies?

*If not, please explain why.* 

#### Response:

We disagree with the conclusion in Question 3 and address our commentary to a significant area of concern in the *Exposure Draft*: the unfairly prejudicial requirements of including the accrual amount for each recognized matter and a detailed quarterly Tabular Reconciliation of Recognized (Accrued) Loss Contingencies within loss contingency disclosures.

The disclosure of amounts accrued for each recognized material loss contingency, as well as a quarterly detailed tabular reconciliation for recognized loss contingencies, conflicts with the *Exposure Draft's* focus on disclosure of public and non-privileged quantitative information. Together, these proposals require public companies to disclose quantitative information that is most prejudicial when defending a class action and other litigation: the amount accrued for the particular matter and any increase in the specific accrual because of a particular event in a lawsuit.

In light of this prejudice, we propose that, if accrual disclosure is required, companies be provided flexibility to aggregate accrual amounts for all of the preparers' litigation and regulatory matters so that a specific accrual number cannot be traced to a specific class action lawsuit, commercial dispute or regulatory matter. We also believe that the tabular reconciliation should be required for only annual financial statements. This would help limit plaintiffs' counsel's ability to associate the changes with specific developments in a case during that reporting period. We suggest limiting the table to the following: (1) the carrying amount of the accruals at the beginning and end of the period, (2) the overall increase in accruals for both changes in estimates and new loss contingencies, and (3) the overall decrease in accruals for both changes in estimates/derecognitions and payments.

We further propose that a prejudicial exemption be retained. This should be available for situations such as when a company has so few material contingent liabilities that--even with

aggregation--disclosure would provide opposing counsel with sufficient information to infer the accrual numbers for each matter and the amount of any corresponding adjustments, or when disclosure of even the aggregated numbers would result in a waiver of the attorney-client privilege or work-product protection or otherwise make the non-aggregated numbers subject to discovery.

Without these modifications, we anticipate the disclosure required by the *Exposure Draft* would itself impact the outcome of the loss contingency by providing plaintiffs' counsel with an unfair tactical advantage. For example, since a company's disclosure of litigation and regulatory loss contingencies is limited to matters that meet the materiality standard, there are typically a small number of matters included within the loss contingency footnote of financial statements. Absent aggregation, we and other public companies would be prejudiced as publication of our accruals would prevent us from negotiating settlements that are less than or perhaps even equal to the publicly disclosed accrual amounts. Plaintiffs' counsel would assume that the company is willing to settle at an amount equal to or greater than the publicly disclosed accrual. The disclosure of accrual amounts for each lawsuit would therefore cause significant harm to investors by increasing litigation costs, as preparers would no longer be able to reach settlements below established accruals.

The sample disclosures starting on page "22" of the *Exposure Draft* illustrate this point well. In period 4, Entity A set an accrual of \$50,000 for a lawsuit that it then resolved for \$125,000 in period 5. What would happen if Entity A set an accrual of \$150,000 for the lawsuit in period 4 and disclosed this number in its publicly filed financial statements? Setting accruals for litigation and regulatory loss contingencies is a matter of judgment rather than a mathematical certainty. Reasonable teams of attorneys, accountants and auditors might come to different but equally appropriate conclusions. If an accrual of \$150,000 were set and publicly disclosed, Entity A would have great difficulty resolving that lawsuit for less than \$150,000 in period 5. The plaintiff, Entity B, would see the \$150,000 accrual as the starting point for settlement negotiations. In this way, this disclosure requirement could quickly negatively impact Entity A's investors.

While addressing the sample disclosure, we note that many of the lawsuits that meet the materiality standard for large public companies like MetLife are purported class action lawsuits challenging a particular product or business line. These types of lawsuits often pose untested legal theories and ever-changing claims that are not as straightforward as the commercial breach of contract dispute used in the example. If plaintiff's counsel's expert's "damages" analysis were to be included in disclosures, as is done in this example, the resulting disclosure would most often be more misleading to investors than not making the disclosure at all. This is because, in the class action context, plaintiffs' experts often calculate billions of dollars in damages in cases that are ultimately resolved for immaterial amounts.

With respect to the detailed, quarterly tabular reconciliation, to the extent that a company increases its accrual for a pending material litigation based upon developments--such as evidence obtained during discovery, a ruling on summary judgment motion practice or a court's ruling in a similar case-- a plaintiff's counsel easily will be able to determine that the increase is associated with recent developments in the case his or her firm is handling. Moreover, if a plaintiffs' law

firm that repeatedly sues a company were to see a large liability reduction after the company reached a settlement, the company might not be able to reach a similar resolution in the future, thereby thwarting a fair settlement for investors the next time.

No amount of disclosure about pending litigation can give investors the same level of knowledge as management who make the strategy and settlement decisions. In fact, too much disclosure would weaken the protections offered by the attorney-client and work-product privileges, both of which protect litigants' interests. This would only harm investors by increasing the cost of disposition. Therefore, we generally support disclosure of qualitative information about the claims and annual aggregated accrual amounts and tabular reconciliation-excluding the claim amounts and remote contingencies. This disclosure model satisfies the FASB's goal of providing financial statement users with an understanding of the nature and magnitude of the material loss contingencies.

Finally, we ask that a prejudicial exemption be retained, including for circumstances when a company has so few loss contingencies that its accruals and adjustments for each such matter would be easily identifiable to plaintiffs' counsel or when disclosure would result in a waiver of the attorney-client privilege or work-product protection. This modification to the *Exposure Draft* would satisfy the balance between disclosure and prejudice. It would allow MetLife and other preparers to reach the best possible resolutions of these litigation and regulatory matters, without exposing public companies to increased litigation risks and costs, so as to protect shareholder value.

**Question 4:** Is the proposed effective date operational? If not, please explain why.

#### Response:

We do not believe the proposed effective date is operational given that the expected release of the final standard would not be until early in the fourth quarter of 2010. This would not be enough time for management, accountants, and legal counsel to prepare a framework for disclosure that would both satisfy management's need to keep prejudicial information confidential and provide users with meaningful information. We reiterate the timing concerns highlighted in our response to Question 1 relating to the identification, substantiation, and presentation of a tabular reconciliation and internal and external discussions of remote contingencies with a potential severe impact. In addition, companies will need time to develop adequate financial reporting controls.

**Question 6:** Do you agree that nonpublic entities should be exempt from the tabular reconciliation disclosures required in the amendments in this proposed Update? If not, please explain why. Are there any other aspects of the amendments that should be applied differently to nonpublic entities? If so, please identify and explain why.

#### Response:

We request that the FASB specifically exclude companies that only meet the third criterion listed below from the definition of "public company" for purposes of the Accounting

Standards Update. We believe there is some confusion regarding the definition of "public company" since the *Exposure Draft* only provided a text description rather than a link to the master glossary. Using the FASB's codification glossary, it appears that the intended definition of a "public company" is as follows:

An entity that meets any of the following criteria:

- a. Its debt or equity securities are traded in a public market, including those traded on a stock exchange or in the over-the-counter market (including securities quoted only locally or regionally).
- b. It is a conduit bond obligor for conduit debt securities that are traded in a public market (a domestic or foreign stock exchange or an over-the-counter market, including local or regional markets).
- c. Its financial statements are filed with a regulatory agency in preparation for the sale of any class of securities.

MetLife is concerned about the broad and possibly unintended scope of criterion (c) of this definition. Like many large publicly-held companies in the insurance industry, MetLife has subsidiary insurance companies that sponsor registered separate accounts that issue variable insurance products (variable annuities and variable life insurance policies). These subsidiary insurance companies are wholly-owned by MetLife, either directly or indirectly, and do not issue publicly-traded debt or equity securities. The variable annuities and variable life insurance policies that are issued by the registered separate accounts of such subsidiary insurance companies are registered with the SEC, pursuant to the registration requirements of SEC Forms N-4 and N-6, respectively. Variable product registration statements are required to include audited financial statements of the sponsoring insurance company, but these financial statements need not be included in the variable product prospectuses that are provided to customers. addition, such companies are not required to file periodic reports with the SEC under the Securities Exchange Act of 1934, such as reports on Form 10-K or 10-Q, that contain audited financial statements (unless the company issues registered securities other than variable insurance products).

We request that the FASB clarify that the definition of "public company" for purposes of the Accounting Standards Update so that it would not include companies that only meet the third criterion listed above. Alternatively, at a minimum, we would request that this definition exclude insurance companies that file financial statements with the SEC solely in their capacity as sponsors of registered separate accounts that issue variable insurance products. A purchaser of a variable annuity or a variable life insurance policy of one of MetLife's subsidiary insurance companies is not purchasing equity or debt securities in that company, and therefore is extremely unlikely to be interested in the litigation-related loss contingencies of that company unless they reach such a magnitude that they call into question the company's solvency and hence its ability to meet its insurance guarantees. In addition, we believe that requiring these subsidiary insurance companies to include the detailed qualitative and quantitative disclosures that have been proposed would be burdensome and unnecessary, and would have a prejudicial effect on such companies. Due to a lower population of loss contingencies at many of these companies,

they may not be able to aggregate contingencies with others of a similar type or class. Finally, we note that any loss contingencies involving subsidiary insurance companies that meet the disclosure threshold for the publicly-held holding company would continue to be included in the loss contingency disclosures of the holding company, so the clarification we request would not impose any reduction in relevant information available to the capital markets.

Please be advised that we would be interested in participating in a public roundtable meeting on this *Exposure Draft*. Please do not hesitate to contact us if you have any questions regarding the comments raised herein. Thank you for this opportunity.

Very truly yours,

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