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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

|                                      |   |                                      |
|--------------------------------------|---|--------------------------------------|
| _____                                | : |                                      |
| In re                                | : | CV 00 2258 (TCP)                     |
| METLIFE DEMUTUALIZATION LITIGATION   | : |                                      |
| _____                                | : | <b>SECOND CONSOLIDATED,</b>          |
|                                      | : | <b>AMENDED AND SUPPLEMENTAL</b>      |
| This Document Relates To All Actions | : | <b><u>CLASS ACTION COMPLAINT</u></b> |
| _____                                | : |                                      |

Plaintiffs, on behalf of themselves and all others similarly situated, allege upon information and belief, except for allegations pertaining to them which are made on personal knowledge:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction under § 22 of the Securities Act of 1933 (the “Securities Act”), 15 U.S.C. §§ 77v, § 27 of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. § 78aa, and 28 U.S.C. § 1331 (federal question jurisdiction). The claims asserted arise under § 12(a)(2) of the Securities Act, 15 U.S.C. § 77l(a)(2) and § 10(b) of the Exchange Act, 15 U.S.C. § 78j(b).

2. Venue is proper under § 22 of the Securities Act, § 27 of the Exchange Act and 28 U.S.C. § 1391(b) because defendants reside, transact business or are found in this judicial district.

3. In connection with the acts alleged herein, defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including the United States mails and facilities of a national securities exchange.

### **PLAINTIFFS**

4. Mary A. DeVito owns a participating whole life insurance policy (#860 363 538 PR) issued by Metropolitan Life Insurance Company on or about March 20, 1986.

5. Kevin L. Hymms owns a participating whole life life insurance policy (#917 108 616 PR) issued by Metropolitan Life Insurance Company on or about November 4, 1991.

6. Darren F. Murray owns a participating whole life insurance policy (#926 709 689 A) issued by Metropolitan Life Insurance Company on or about July 27, 1992.

7. Harry S. Purnell, III owns a participating whole life insurance policy (#627 100 448 A) issued by Metropolitan Life Insurance Company on or about November 1, 1962.

8. Kathy Vanderveur owns a participating whole life insurance policy (#540 708 126 M) issued by Metropolitan Life Insurance Company on or about July 1, 1954.

9. Michael A. Giannattasio owns participating whole life insurance policies originally issued by New England Mutual Life Insurance Company on various dates. He became a MetLife policyholder when New England Mutual Life Insurance Company merged into Metropolitan Life Insurance Company in about 1995.

## **DEFENDANTS**

10. Until April 2000, Metropolitan Life Insurance Company (“MetLife Co.”) was a mutual life insurance company organized under New York law, with executive offices located at

One Madison Avenue, New York, New York. In April 2000, MetLife Co. became a stock insurance company organized under New York law.

11. MetLife, Inc. is a Delaware corporation organized to own all shares of MetLife Co. MetLife, Inc. has executive offices at One Madison Avenue, New York, New York. MetLife Co. and MetLife, Inc. are sometimes collectively referred to herein as “MetLife.”

### **CLASS ACTION ALLEGATIONS**

12. Plaintiffs bring this action as a class action under Rules 23(a), (b)(1) and (b)(3), F.R. Civ. P., on behalf of themselves and all other persons who were participating MetLife Co. policyholders on or about September 28, 1999, for whom MetLife calculated a positive actuarial equity share (“participating policyholders”) and whose rights as participating policyholders were exchanged for shares of stock in MetLife Co., pursuant to defendants’ plan (“Demutualization Plan” or “Plan”), excluding defendants, their officers, directors, subsidiaries and affiliates (the “Class Members”). Based upon the number of shares MetLife issued to each plaintiff, MetLife calculated a positive actuarial equity share for each plaintiff.

13. Under the Plan, MetLife Co. shares issued to participating policyholders were exchanged for beneficial interests in a trust (the “MetLife Policyholder Trust” or “Trust”), cash or policy credits. The transaction is described by defendants in materials consisting of the “Chairman’s Letter,” “Ballot and Personalized Information Cards,” “Read Me First” brochure, and two booklets entitled, respectively, “Policyholder Information Booklet Part One” and “Policyholder Information Booklet Part Two” (collectively the “Prospectus”).

14. The members of the Class number in the millions and are so numerous that joinder of all Members is impracticable. The names of the Class Members presently are unknown to plaintiffs, but can be ascertained from defendants' records.

15. The prosecution of separate actions by individual Class Members would create the risk of inconsistent or varying adjudications.

16. Questions of law or fact common to the Members of the Class predominate over any questions that may affect individual Class Members and include the following:

- a. whether defendants violated § 12(a)(2) of the Securities Act;
- b. whether defendants violated § 10(b) of the Exchange Act;
- c. whether the Prospectus contains untrue statements of material fact and/or omits from disclosure material facts necessary in order to make statements in the Prospectus not misleading;
- d. whether defendants made untrue statements of material fact and omitted to disclose material facts intentionally with conscious disregard of the truth or recklessly; and
- e. whether Class Members have been injured and, if so, the appropriate remedy, including damages and the amount thereof, and/or rescission.

17. Plaintiffs' claims are typical of the claims of Class Members because plaintiffs, like each Class Member, sustained damages in the same way from defendants' wrongful conduct.

18. Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs have retained counsel experienced in class action securities litigation and have no interests that conflict with the interests of the Class.

19. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Because damages suffered by individual Class Members are relatively small in comparison to the expense and burden of prosecuting the litigation, Class Members cannot redress the wrongs done to them on an individual basis.

## **FACTS**

### **A. Participating and Non-Participating Policyholders**

20. As defined by MetLife in its Plan, “policy” means a life insurance policy, annuity contract or accident and health insurance policy, as well as each certificate issued by MetLife in connection with certain group policies or contracts.

21. A “participating policy” means a policy that provides for the right to participate in MetLife’s divisible surplus. A participating policy is a contract between MetLife and an insured or annuitant under which the policyholder pays premiums based on conservative assumptions about investment earnings, mortality and the costs of insurance. Such premiums are intentionally designed by actuaries to result in an overcharge for insurance, thereby creating a fund from which the overcharges can be repaid, together with accrued earnings on the overcharges.

22. The accumulation of the premium overcharges and the investment earnings from participating policies is called “surplus.”

23. MetLife calls the payment of surplus annually to participating policyholders a “dividend.” MetLife calls the surplus set aside for payment of dividends “divisible surplus.”

24. By both law and contract, prior to demutualization MetLife was required each year to apportion the surplus derived from participating policies among all participating policies,

and to distribute annually to each participating policyholder that policyholder's proportionate contribution to MetLife's surplus, with MetLife retaining only such sums as were necessary for the operation of its business.

25. Each participating policyholder had the right, in the event MetLife were liquidated, to a distribution of the surplus and any other net assets of the company in proportion to his or her contribution to the surplus and net assets of MetLife.

26. MetLife also had non-participating policyholders. Non-participating policyholders did not have any rights to the payment of dividends and did not have rights to any distribution of surplus or any other net assets in the event of MetLife's liquidation.

27. Both participating and non-participating policyholders had the right to vote for the Board of Directors and to vote to approve or disapprove the Demutualization Plan.

#### **B. The Demutualization Plan**

28. The demutualization of a mutual insurance company results in the exchange of the rights of participating policyholders in surplus and the other net assets of that company for the rights of stockholders in a stock company. The right to participate annually as a policyholder in divisible surplus, and the right to share in distribution of surplus and other net assets in a liquidation, are surrendered upon demutualization, except to the extent of policyholder dividends paid from designated assets in what MetLife calls a "closed block."

29. Although demutualization terminates the right of both participating and non-participating policyholders to vote for the board of directors, after demutualization, policyholders continue to have voting rights if they remain shareholders. In fact, as

shareholders, the policyholders have voting rights on a broader range of matters than before demutualization.

30. On or about September 28, 1999, the Board of Directors of MetLife Co. approved the Demutualization Plan and urged policyholders to read and rely upon the statements made in the Prospectus and to vote to approve the Plan. Approval of the Plan would make MetLife the then-largest demutualization in United States history.

31. The Prospectus was mailed to policyholders beginning on November 24, 1999. MetLife completed the mailing on December 21, 1999.

32. The Demutualization Plan explained that if the policyholders voted in favor of the Plan and the New York Superintendent of Insurance approved the Plan, MetLife Co. would convert from a mutual company into a stock company and that after demutualization MetLife Co. would become a subsidiary of MetLife, Inc.

33. To achieve this result, policyholders would exchange mutual company membership rights for approximately 700,000,000 shares in MetLife Co. The shares of MetLife Co. would then be transferred to the Trust and exchanged by the Trust for an equal number of shares of MetLife, Inc. Policyholders would receive, in exchange for the MetLife, Inc. shares, beneficial interests in the Trust, or cash or policy credits in lieu of Trust interests. The cash MetLife used to fund cash payments and policy credits to policyholders came from the proceeds of an initial public offering of MetLife, Inc. shares ("IPO").

34. Before the Plan was consummated, MetLife stated that it would be demutualized through the following sequence of events:

- a. At 12:01 a.m. on the date the Plan becomes effective, MetLife Co. will become a stock life insurance company, the membership interests of its policyholders will be extinguished, and in exchange

for their membership interests the policyholders become entitled to receive shares of MetLife Co. common stock.

- b. The Trust will be established.
- c. MetLife Co. will issue to the Trust the shares of its newly-issued common stock to which Trust Eligible Policyholders were entitled. MetLife represented to the Internal Revenue Service that this stock issuance would constitute 100% of MetLife Co.'s common stock.
- d. The Trust Eligible Policyholders will become Trust beneficiaries.
- e. The Trust will exchange with MetLife, Inc. the newly-issued shares of MetLife Co. common stock for an equal number of shares of MetLife, Inc., which the Trust will continue to hold for the benefit of the MetLife Co. policyholders.
- f. MetLife Co. will become a wholly owned subsidiary of MetLife Inc.

35. MetLife defined an "Eligible Policyholder" as any owner of a MetLife policy on the date the Plan was adopted. All Eligible Policyholders were entitled under the Plan to receive consideration in exchange for relinquishing rights as mutual company policyholders in MetLife Co.

36. MetLife defined a "Trust Eligible Policyholder" as an Eligible Policyholder who was to receive as consideration shares of common stock of MetLife Co. (after conversion of that company from mutual to stock ownership), to be exchanged for an equal number of shares of common stock of MetLife, Inc. (to be held in the Trust).

37. The MetLife demutualization plan was the first, and remains the only, demutualization plan under which a trust was established to hold the shares of stock issued to policyholders.

38. Certain MetLife Co. policyholders were required to receive policy credits instead of MetLife Inc. shares; others were required to receive cash and some could elect to receive cash instead of common stock.

39. The Plan provided that the IPO and certain other capital raising transactions would take place as part of the Plan to generate funds to raise capital for the company and to pay any policyholders required or electing to receive cash. The IPO was the seventh largest IPO ever held in the United States.

40. Defendants did not register the stock issued by MetLife, Co. to policyholders or the stock issued by MetLife, Inc. in exchange for MetLife, Co. shares, or the beneficial interests issued by the Trust, under § 5 of the 1933 Act, based upon an SEC no-action letter. See 1999 WL 1063264 (November 17, 1999).

41. The latest date by which policyholders could submit ballots to vote on the Plan was in early February 2000. On February 18, 2000, MetLife Co. reported that, of more than 10,000,000 policyholders, nearly 2,800,000 policyholders voted and that 93% of the votes were to approve the Demutualization Plan.

42. In March 2000, after the policyholder vote to approve the Plan, MetLife modified the Plan to sell a total of 60,000,000 shares in a private placement, half to Credit Suisse First Boston (“CSFB”), through one of its affiliates, and half to Banco Santander. MetLife had an equity ownership interest in both CSFB and Banco Santander. Members of MetLife’s board of directors also were members of the boards of CSFB and Banco Santander.

43. CSFB was one of two investment banking firms advising MetLife on the sale of shares in the IPO, underwriting the sale of those shares, and underwriting the sale of 8% security

units as another capital raising transaction relating to the demutualization. Banco Santander was MetLife's joint venture partner in marketing insurance in Spain. Both CSFB and Banco Santander were prohibited from acquiring any MetLife shares in the IPO.

44. In a meeting of MetLife's Board before the Prospectus was issued, MetLife described CSFB and Banco Santander as its "strategic partners" and "two companies in which we have equity positions" that had made "expressions of interest" in making a substantial investment in MetLife.

45. The Plan, as modified after the vote, was approved on April 4, 2000, by the New York Superintendent of Insurance with some conditions not relevant to this action.

46. On April 4, 2000, after the Superintendent approved the Plan, as modified, MetLife, Inc. announced that it was proceeding immediately with:

- a. the exchange of policyholder membership interests for shares of stock, cash and policy credits;
- b. the sale, through the IPO, of 202,000,000 shares of MetLife, Inc. stock priced at \$14.25 per share underwritten by CSFB and another financial advisor;
- c. the sale of 60,000,000 MetLife, Inc. shares to CSFB and Banco Santander in a private placement at the IPO price of \$14.25 per share; and
- d. the sale of 8% equity units underwritten by CSFB that were to be converted into approximately 52,000,000 MetLife, Inc. shares in three years based upon a price linked to the IPO price.

These transactions closed by April 7, 2000.

47. After demutualization, MetLife, Inc. represented it had allocated 701,520,307 shares to eligible policyholders and that 494,466,664 shares had been issued to the MetLife Policyholder Trust under the Demutualization Plan. The difference between the shares allocated

to policyholders and the shares issued to the Trust, approximately 204,000,000 shares, represents the shares MetLife purchased from policyholders receiving cash in lieu of shares or to fund policy credits. MetLife also stated that, simultaneously with demutualization, a total of 232,300,000 shares were sold in the IPO, 60,000,000 shares were sold in the private placement, and 20,125,000 8% equity security units were sold.

48. MetLife represented that total gross proceeds raised by issuing stock and the equity security units exceeded \$4.6 billion. Net proceeds exceeded \$4.4 billion.

49. MetLife represented that an estimated \$408 million was used to reimburse MetLife Co. for policy credits made for 28,660,022 shares, \$2.55 billion was used to reimburse MetLife Co. for 178,956,813 shares purchased for cash and \$321 million was used to reimburse MetLife Co. for payments made by its Canadian branch to certain Canadian policyholders. Cash and policy credits distributed to policyholders in lieu of stock were based on the IPO price of \$14.25 per share.

50. At the conclusion of the transaction, the percentage ownership of MetLife, Inc. was 65.3% for the Trust, 26.7% for purchasers in the IPO and 8% for the purchasers in the private placement. In addition, the 8% equity security units added an additional 52,000,000 shares to be issued in May 2003, creating immediate dilution and reduction of the ownership percentages of all other shareholders.

51. After demutualization, MetLife purchased, and its “strategic partners” CSFB and Banco Santander sold, MetLife shares at a price almost double the IPO price of \$14.25 per share.

52. From April 2000 to June 30, 2002, MetLife bought back approximately 85 million shares it issued in the demutualization at an aggregate cost of approximately \$2.4 billion,

or an average price per share of \$28.24. Including the 178,912,823 shares purchased for \$2.55 billion on demutualization, through June 30, 2002 MetLife purchased a total of 264 million shares of its common stock for \$4.45 billion.

53. On August 7, 2001, Banco Santander, through its affiliate, Santusa Holding, S.L., sold, for \$28.25 per share, 25 million of the 30 million shares that Banco Santander purchased in the private placement at the IPO price of \$14.25 per share, for a gross profit of \$14 per share or \$350 million. MetLife, Inc. purchased 10 million of the 25 million shares at the \$28.25 price.

54. After September 11, 2001, CSFB, through one of its affiliates, also sold some of the shares CSFB purchased in the private placement at a price that exceeded \$25 per share with per share profits comparable to those of Banco Santander.

### **C. The Prospectus Was False, Misleading and Omitted Material Information**

55. To make an informed decision on whether to approve the Plan, participating policyholders needed material information that was omitted from the Prospectus, including:

- a. the dollar value of their contributions to MetLife's surplus (i.e., the actuarial equity shares of participating policyholders);
- b. the dollar value of the right to vote as a MetLife policyholder;
- c. the valuation methodology MetLife used to determine that each non-participating policyholder and each policyholder without a positive actuarial equity share should be allocated ten shares (or \$142.50 at the IPO price);
- d. that the value of the shares MetLife allocated to voting rights (ten shares per policyholder, or an aggregate of approximately 110,000,000 shares) was much greater than the actual value of those rights;
- e. that MetLife calculated the actuarial contributions of participating policyholders to MetLife's surplus at approximately \$15.34 billion;

- f. that MetLife determined that the aggregate value of the shares exchanged based upon the actuarial contributions would be less than the \$15.34 billion calculated for the contributions to MetLife's surplus, and less than GAAP book value of approximately \$15 billion;
- g. that MetLife allocated one \$14.25 share of MetLife, Inc. to each participating policyholder for each \$26 that such policyholder had contributed to the aggregate \$15.34 billion of contributions to MetLife's surplus (or a total of 590,000,000 shares at an aggregate IPO price of \$8.4 billion);
- h. that MetLife calculated, and had been advised by its outside experts, that the value of the shares issued to participating policyholders, pursuant to the Plan, would be materially less than both \$26 per share and the participating policyholders' aggregate \$15.34 billion contribution to MetLife's surplus;
- i. that participating policyholders would receive as little as 54¢ for each dollar of contribution to surplus at the estimated IPO price;
- j. that the Plan restricted the assets allocated to the payment of dividends to the assets in the closed block, thereby modifying the dividend rights of participating policyholders;
- k. the costs of administering the Trust compared to the "associated costs" entailed in managing a corporation with more than 10,000,000 shareholders;
- l. a comparison of the "associated costs" in managing a corporation with more than 10,000,000 shareholders with the diminution, if any, in the value of MetLife shares as a by-product of the Trust;
- m. the economic value of shareholders rights, as beneficiaries of the Trust, and the costs associated with the organizational structure;
- n. the economic value of the rights of a shareholder in a Delaware corporation (without the Trust) and the costs associated with exercising those rights;
- o. that, as a beneficiary of the Trust, a policyholder does not have the rights available to a policyholder under New York Insurance Law nor those of a stockholder under Delaware corporate law;

- p. that shareholders in the reorganized company would not have the right to inspect the shareholder list;
- q. that MetLife was entertaining a sale of a material number of shares to companies in which it held an equity interest and which it considered to be business partners and joint venture parties, companies on whose respective boards MetLife board members sat and that one of these companies was advising MetLife on the sale of equity in MetLife in the proposed demutualization; and
- r. that policyholders would not receive, in exchange for their membership interests, 100% of MetLife's value after taking into consideration the IPO and other capital raising transactions that were integral to the Plan.

In short, without the foregoing material information, it was not possible for participating policyholders to make an informed decision to approve or disapprove the Demutualization Plan.

56. The Prospectus was false and misleading in expressly and impliedly representing that:

- a. the shares offered in exchange for the actuarial contributions of participating policyholders (*i.e.* the variable component) would be equivalent in value to those contributions when MetLife knew that those shares would be less valuable;
- b. participating policyholder benefits and dividend eligibility would not be diminished in any way when MetLife knew that the assets from which dividends were payable would be reduced and limited to the closed block assets;
- c. the closed block would protect participating policyholder dividend expectations without disclosing that the closed block also imposed limitations on future dividends;
- d. MetLife allocated ten shares per policyholder, multiplied by the IPO price of \$14.25 per share, to compensate for loss of voting rights, even though MetLife had not determined whether voting rights had any material value or if so, the dollar value of voting rights;
- e. MetLife had no opinion on what the public market value of MetLife, Inc. shares would be after the IPO on a fully distributed

basis, even though MetLife had been advised by its financial advisors to expect that the market price of its shares would be materially higher than the IPO price;

- f. policyholders would receive 100% of MetLife's value in exchange for their membership interests when MetLife knew that the IPO and other capital raising transactions that were integral to the Plan would immediately dilute the value received by policyholders; and
- g. MetLife did not choose to demutualize under method 2, as described in New York Ins. Law § 7312(d)(2), because that method "does not provide for Eligible Policyholders to receive consideration in the form and manner provided in this Plan," but because method 2 would provide for consideration to the participating policyholders of materially greater value than provided in the Plan, consisting of the actuarial equity shares (approximately \$15.34 billion) plus 10 percent of the proceeds of an IPO.

**D. The Variable and Fixed Share Allocations.**

57. The Prospectus states that participating policyholders would be fairly compensated in the exchange of their membership interests by receiving a variable number of shares calculated based upon their actuarial contributions to MetLife's surplus plus a fixed number of shares based upon their right to vote as policyholders.

58. Undisclosed to participating policyholders was the fact that they would not receive fair value for their membership interests, that they would not receive shares equivalent in value to their actuarial contributions, and that shares allocated on a fixed basis, with a value between \$1.5 billion and \$2.5 billion, were allocated on an arbitrary basis that gave a windfall to non-participating policyholders and participating policyholders who had not contributed and would not contribute to MetLife's surplus, i.e., those without a positive actuarial equity share.

59. The Prospectus represented (see, e.g., Policyholder Information Booklet Part One at 80) that MetLife would make "reasonable determinations of the dollar amounts of the

Actuarial Contributions . . .” to MetLife’s surplus and that each participating policyholder would receive shares proportionate to his or her contribution to the sum of all actuarial contributions.

60. MetLife calculated that the actuarial contributions of participating policyholders totaled approximately \$15.34 billion.

61. Based upon the number of shares offered as consideration for the actuarial contributions (590,000,000 shares) and the IPO range stated in the Prospectus for each share (\$14 to \$24 per share) MetLife intended, but participating policyholders were not told, that participating policyholders would receive as little as 54¢ for each dollar of actuarial contribution. Participating policyholders ended up receiving 55¢ for each dollar of actuarial contribution at the IPO price of \$14.25 per share.

62. The Prospectus did not disclose the disparity between the actuarial contributions and the consideration offered in exchange for them. The Prospectus did not disclose the dollar amount of the actuarial contributions or that MetLife did not intend to pay consideration equivalent to the dollar value of these contributions.

63. As for the right to vote, under New York Insurance Law §§ 4210 and 4231, as well as the MetLife policies and contracts, all policyholders had the right to vote, but only participating policyholders had an interest in and right to participate in the distribution of surplus.

64. The Demutualization Plan allocated ten shares of stock, valued by MetLife in the Prospectus as being worth \$15 to \$24 per share (the IPO price was \$14.25 per share) (see, e.g., Policyholder Information Booklet Part Two at 11), to each policyholder without regard to whether the policyholder was a participating policyholder who had contributed to, and had the

right to participate in the distribution of, MetLife Co. surplus or a non-participating policyholder with no interest in and no right to participate in the distribution of MetLife Co. surplus or a participating policyholder who had not contributed and would not contribute to that surplus.

65. Based upon the number of policyholders (more than 11,000,000), the aggregate value of ten shares (at \$14.25 per share) issued to each policyholder for voting rights (110,000,000 shares or 16% of all MetLife Co. shares issued) is \$1.568 billion. The aggregate value of 110,000,000 shares or 16% of all shares issued to policyholders, based on \$15.34 billion that MetLife calculated for total actuarial contributions, is \$2.41 billion.

66. MetLife's internal documents disclose that the fixed allocation was paid only to compensate policyholders for surrendering the right to vote as policyholders. Neither MetLife nor any outside advisor, however, ever valued the right to vote.

67. The Prospectus represents that the allocation of ten shares to each policyholder is fair, and is determined based upon actuarial concepts and standards of practice. The Prospectus failed to disclose that the allocation was not fair and was not based on actuarial concepts and standards of practices, but rather was based on an arbitrary rule of thumb.

68. MetLife provided three opinion letters on the value of the consideration offered to policyholders. Two of them (from CSFB and Goldman Sachs) specifically do not consider the fairness of the Demutualization Plan to any individual policyholder or class of policyholders. The third letter (from PricewaterhouseCoopers) acknowledges that shares are allocated based upon each participating policyholder's "past and future contributions to MetLife surplus," but does not disclose the disparity between the value of the contributions and the value of the shares. PricewaterhouseCoopers also acknowledges that "a fixed number of shares of common stock [is

allocated to each policyholder] without regard to the contribution [to surplus] of that policyholder . . .” based on “intangible membership rights independent of their actuarial contributions,” and opines that applying “actuarial concepts and standards,” the allocation is “appropriate.” Neither PricewaterhouseCoopers nor MetLife ever valued the right to vote or any other intangible rights, and did not use actuarial concepts or standards to value such rights.

69. The ten share allocation provided a windfall to non-participating policyholders and policyholders without a positive actuarial equity share because the value of the right to vote was much less than \$1.568 billion or \$2.41 billion and the value of the shares allocated to the right to vote reduced the compensation allocated to participating policyholders with a positive actuarial equity share.

70. The three opinion letters, and the Prospectus generally, failed to disclose, and indeed concealed, that the variable number of shares would not be equivalent in value to the actuarial contributions and that the fixed allocation of ten shares to each policyholder was arbitrary.

71. The consideration allocated on both a fixed and variable basis was not fair, and the statements in the Prospectus that they were fair are false.

#### **E. Limitations on Dividends.**

72. The Prospectus states that policy benefits will not be reduced in any way due to the demutualization. This representation is false and fails to disclose that the assets from which participating policy liabilities and dividends will be paid are reduced after demutualization.

73. Before demutualization, MetLife paid dividends annually to participating policyholders based upon the annual earnings and all surplus generated by participating policies.

74. Before demutualization, the assets accumulated from the premiums paid by participating policyholders were divided into an operating segment and a surplus segment.

75. The operating segment consisted of assets with a value equal to the liabilities of the participating policies. Accumulated assets in excess of the value of the operating segment assets were allocated to the surplus segment.

76. In paying dividends annually before demutualization, MetLife paid all earnings from the operating segment (sometimes minus a small spread of 15 to 25 basis points) and regularly added additional amounts from the surplus segment to pay as dividends to participating policyholders.

77. Under the Demutualization Plan, MetLife established a closed block of assets. The Prospectus represented that the closed block assets would be used to pay all liabilities of the participating policyholders' policies, including dividends.

78. The Prospectus presented the closed block as only a protection to participating policyholders and failed to disclose that the closed block constituted a limitation on the dividends that would be paid because the assets used to establish the closed block have a value which is only about 85% of the liabilities of participating policies, materially less than the assets in the pre-demutualization operating segment, which had a value of 100% of the liabilities, and without even taking surplus into account.

79. MetLife failed to disclose to policyholders that the closed block would remove billions of dollars from the experience of participating policyholders in determining the amount of annual dividends to pay and that, as a result of demutualization, the policy benefits in terms of dividends would be materially less than before demutualization.

80. MetLife represented in the Prospectus that the closed block assets should be adequate to meet policyholders' "reasonable dividend expectations" by maintaining the 1999 dividend scale. This statement was misleading because MetLife had reduced the dividend scale five times during the 1990's, with two small increases in 1999 and 2000, so that the scale was about 37% lower in 1999 than in 1991.

81. MetLife failed to disclose that the closed block locked in the historically lower 1999 dividend scale and eliminated the contractual and New York statutory obligation to pay dividends based on all earnings and surplus accruing on participating policies and contracts. Under the Plan, MetLife was no longer obligated to increase the dividend scale when earnings improved and surplus increased. MetLife replaced these obligations with the discretion to use its general funds "to moderate or avoid the need for any dividend reductions" in the event the cash flows on the closed block assets were not sufficient to maintain the 1999 dividend scale for a particular year.

82. MetLife nowhere discloses in the Prospectus that by voting for the Plan participating policyholders are thereby consenting to modify the contractual obligation to pay dividends, or that they are agreeing to a modification of MetLife's obligation to pay dividends based on all earnings and surplus.

83. The Prospectus is wholly misleading and false in representing that policy benefits will not change in any way whatsoever. They necessarily are changed and reduced materially as a result of the Demutualization Plan.

**F. The Policyholders' Trust.**

84. The MetLife Demutualization is the first and only such transaction which established a policyholders' trust to hold the shares of stock issued to policyholders.

85. The Prospectus fails to disclose that the Trust deprives policyholders of rights they would have as shareholders. The Trust does not grant policyholders either the rights they have under New York Insurance Law or the rights of a stockholder under Delaware Corporation Law.

86. The Prospectus describes the rights that a policyholder will have as a beneficiary of the Trust (see, e.g., Policyholder Information Booklet Part One at 17), but omits material information. Key to the Trust is that the Trustee may act in a way that is not for the benefit of the policyholder-beneficiaries. The Board of Directors is given authority to instruct the Trustee how to vote on most matters. Although policyholders can contest elections to the Board of Directors, under the Demutualization Plan any policyholder wanting to nominate a slate must pay the expense of soliciting votes from Trust beneficiaries. The cost of mailing to 10,000,000 policyholders is significant and, as a result, no individual policyholder would be able to incur the costs of contesting an election. Other than in a contested election, under the Demutualization Plan a policyholder will have no vote on how MetLife is managed or by whom.

87. In contrast, under New York Insurance Law § 4210(h) and (i), a petition signed by one-tenth of one percent of policyholders (about 10,000 policyholders for MetLife) can nominate a slate to fill vacancies in the Board of Directors. The statute also requires that MetLife pay the costs of a contested election, an obligation that the Prospectus does not mention. Also, whether or not contested, policyholders may vote for the Board of Directors.

88. The Prospectus also fails to disclose that although, under Delaware General Corporation Law § 220, a shareholder has the right to inspect and make copies of the shareholder list, a trust beneficiary has no such right to inspect and make copies of the shareholder list.

89. Also omitted from the Prospectus is any disclosure that, by establishing the Trust with rules that insulate MetLife's Board from the shareholder votes, the value of the policyholders' beneficial interests in the Trust and the underlying MetLife, Inc. stock is lower than it otherwise would be.

90. The justification MetLife offers in the Prospectus for establishing the Trust is to reduce the administrative effort and the "associated costs" entailed in managing a corporation with more than 10,000,000 shareholders. (See Policyholder Information Booklet Part One at 25.) No information is provided by MetLife about what these costs would be. And such costs, whatever they may be, are nowhere compared in the Prospectus to the diminution in the value of MetLife shares that is a byproduct of the Trust. What is described is the establishment of a system to administer the Trust. (See, e.g., Policyholder Information Booklet Part One at 26-33.)

#### **G. Statutes of Limitations**

91. The claims in this consolidated amended and supplemental complaint relate back to the date on which the initial complaints were filed because the claims arise out of the conduct, transaction and occurrence set forth in the original pleadings. The original complaints were filed less than three years after the securities were sold to plaintiffs and less than one year after the discovery of the facts constituting the violations alleged. Alternatively, this consolidated amended and supplemental complaint is filed less than five years after the violations of the

securities laws alleged, and less than two years after the discovery of the facts constituting the violations.

**FIRST CLAIM FOR RELIEF**  
**Under § 12(a)(2) of the Securities Act**

92. Section 12(a)(2) of the Securities Act, 15 U.S.C. § 77l(a)(2), provides that any person who offers or sells a security (whether or not exempted by the provisions of Section 3, 15 U.S.C.S. § 77c, by the use of any means or instruments of transportation or communication in interstate commerce or of the mails, by means of a prospectus or oral communication which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements in the light of the circumstances under which they were made not misleading, and who does not sustain the burden of proof that he did not know and, in the exercise of reasonable care, could not have known, of such untruth or omission, is liable to the person purchasing such security from him to recover the consideration paid, with interest thereon upon tender of the security, or for damages.

93. Defendants are offerors and/or sellers of securities, including MetLife Co. stock, MetLife, Inc. stock, and beneficial interests in the Trust to plaintiffs and the other Class Members.

94. Defendants offered and sold securities by means of the Prospectus which includes untrue statements of material facts and omits to state material facts necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading. Plaintiffs and the other Class Members did not know of such untruths or omissions.

95. The allegations in paragraphs 1 through 91 are incorporated by reference. Each untrue statement and omission alleged violated § 12(a)(2).

96. Plaintiffs and the other Class Members were injured because the membership interests they exchanged had a value greater than the consideration they received.

97. Plaintiffs and other Class Members who still own securities they received from defendants may rescind and recover from defendants the consideration they paid, and hereby tender those securities to defendants, or if they no longer own securities they received from defendants, they may recover the damages they sustained.

**SECOND CLAIM FOR RELIEF**  
**Under § 10(b) and Rule 10b-5**

98. Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5, prohibit fraudulent activities in connection with securities transactions. Section 10(b) makes it unlawful:

To use or employ, in connection with the purchase or sale of any security . . . any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

15 U.S.C. § 78j(b). Rule 10b-5 specifies the following actions among the types of behavior proscribed by the statute:

To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading . . . .

17 C.F.R. § 240.10b-5.

99. In 1995, Congress amended the 1934 Act through passage of the PSLRA. See Private Securities Litigation Reform Act of 1995, Pub.L. No. 104-67, 109 Stat. 737 (codified at 15 U.S.C. §§ 77k, 77l, 77z-1, 77z-2, 78a, 78j-1, 78t, 78u, 78u-4 and 78u-5). This statute requires that:

In any private action arising under this chapter in which the plaintiff alleges that the defendant –

(A) made an untrue statement of a material fact; or

(B) omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances in which they were made, not misleading;

the complaint shall specify each statement alleged to have been misleading, the reason or reasons why the statement is misleading, and, if an allegation regarding the statement or omission is made on information and belief, the complaint shall state with particularity all facts on which that belief is formed.

15 U.S.C. § 78u-4(b)(1):

100. The PSLRA also requires that:

In any private action arising under this chapter in which the plaintiff may recover money damages only on proof that the defendant acted with a particular state of mind, the complaint shall, with respect to each act or omission alleged to violate this chapter, state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind.

15 U.S.C. § 78u-4(b)(2). The requisite strong inference of fraudulent intent may be established either (a) by alleging facts that constitute strong circumstantial evidence of conscious misbehavior or recklessness, or (b) by alleging facts to show that defendants had both motive and opportunity to commit fraud.

101. The allegations in paragraphs 1 through 91 are incorporated by reference.

102. Defendants acted with conscious disregard of the truth, and at least recklessly, because the facts that make the statements untrue and those that were omitted are facts about which defendants had actual knowledge from internal analyses and calculations that defendants made in preparing the Prospectus.

103. MetLife made untrue statements of material fact and omitted to state material facts necessary to make statements relating to the reason it did not demutualize using the method in New York Insurance Law § 7312(d)(2), not misleading, as described below:

a. The Prospectus (Policyholder Information Booklet Part One at 67) states:

*3.2 Basis for Choice of Method.*

\* \* \*

(b) The method described in Section 7312(d)(2) does not provide for Eligible Policyholders to receive consideration in the form and manner provided in this Plan . . . .

b. This statement is false and misleading, and omits the material fact that MetLife decided, after internal discussion and analysis, that § 7312(d)(2) was not an advantageous method for MetLife because it required MetLife to pay more to participating policyholders: their actuarial contributions to surplus (i.e., their actuarial equity shares), plus 10% of the funds raised in an IPO – total consideration of more than \$15.34 billion and almost double the consideration that participating policyholders actually received, valued at the IPO price. Thus, under this statutorily prescribed method, participating policyholders would have received significantly greater consideration than that provided by the Plan. The Prospectus, however, was intentionally crafted to convey the false and misleading impression that the Plan was providing greater consideration for policyholders than what was available under § 7312(d)(2).

c. The fact that statements in the Prospectus are contradicted by MetLife's internal discussion and analysis gives rise to a strong inference that the false and misleading statement was made knowingly, either intentionally or with conscious disregard for the truth, or recklessly.

104. MetLife made untrue statements of material fact and omitted to state material facts necessary to make statements relating to the value of the consideration offered in exchange for those interests not misleading, as described below:

a. The Prospectus states (in Policyholder Information Booklet Part One at 18-19 and 81) that MetLife would allocate shares based on an actuarial formula that takes into account a participating policy's past and estimated future contributions to MetLife's surplus and that the compensation received would be calculated by multiplying the total number of shares allocated by the IPO price, thereby expressly and impliedly representing that the compensation received would be the fair value equivalent of the actuarial contributions.

b. These statements were false and misleading, and omit the fact that MetLife had calculated the actuarial contributions of participating policyholders (i.e., their actuarial equity shares), at approximately \$15.34 billion, that the past contributions to MetLife's surplus were approximately \$5 billion, that the present value of the expected future contributions was approximately \$10 billion, and that at the IPO price range stated in the Prospectus, \$14 to \$24 per share, and the number of shares allocated based on actuarial contributions, participating policyholders would receive much less than their actuarial contributions. At the IPO price of \$14.25 per share, participating policyholders received, in fact, consideration of only \$8.4 billion, \$1.6 billion less than what MetLife calculated was the present value of their expected future contributions to MetLife's surplus.

c. The fact that statements in the Prospectus representing an equivalence between the value of consideration offered to policyholders in exchange for actuarial contributions are contradicted by MetLife's internal discussion and analyses gives rise to a

strong inference that the false and misleading statements and omissions were made knowingly, either intentionally or with conscious disregard for the truth, or recklessly.

105. MetLife made untrue statements of material fact and omitted to state material facts necessary to make statements made relating to policyholder benefits and dividends not misleading, as described below.

a. The Prospectus states that:

It is important that you understand that your current insurance policy or policies or annuity contract or contracts will remain in force. Policy values, benefits and dividend eligibility will not be diminished, in any way, by the demutualization.

The language quoted is from MetLife's letter advising policyholders to vote "yes" and approve the Demutualization Plan. Language substantially similar to that quoted appears throughout the Prospectus.

b. The quoted statement is false and misleading because the Prospectus omits the fact that policyholders surrender the right to annual distributions of dividends paid out of MetLife's surplus and the fact that the Plan limits the assets from which dividends are payable to participating policyholders, as discussed at a meeting of MetLife's Board of Directors on or about June 21, 1999:

The variable component [of consideration] is compensation for surrendering the right to participate in the future in the surplus of the Company, beyond dividends and participation projected through the Closed Block and the Plan. Of course, dividends will continue if and as declared by the Board, but any additional rights to participate in divisible surplus in the future are being surrendered upon conversion.

c. The fact that statements in the Prospectus are contradicted by MetLife's internal statements gives rise to a strong inference that the false and misleading statements and

omissions were made knowingly, either intentionally or with conscious disregard for the truth, or recklessly.

106. MetLife made untrue statements of material fact or omitted to state material facts necessary to make statements made relating to the Closed Block not misleading, as described below.

a. The Prospectus states that:

Policy dividends will continue to be paid as declared. In addition, MetLife will set up and operate an accounting mechanism, which is called a Closed Block, to insure that policyholders' reasonable dividend expectations will be met for certain individual Policies eligible in 1999 for dividends.

The language quoted is from Policyholder Information Booklet Part One at 8. Language substantially similar to that quoted appears throughout the Prospectus.

b. This statement is false and misleading and omits the fact that the Closed Block limits the dividends payable to participating policyholders, as MetLife's Board of Directors discussed at a meeting on or about June 21, 1999, as stated in paragraph 105(b) above.

c. The fact that statements in the Prospectus are contradicted by MetLife's internal statements gives rise to a strong inference that the false and misleading statements were made knowingly, either intentionally or with conscious disregard for the truth, or recklessly.

107. MetLife had the opportunity to commit fraud because it controlled all disclosures made to policyholders relating to the Demutualization Plan and, therefore, was in a position to mislead them.

108. MetLife had the motive to commit fraud because:

a. During the 1990's, MetLife recognized in internal documents and at internal meetings that its current products were priced thinly at best, that what it had been selling

was clearly subtracting value from the company, that the losses from such products were approximately \$200 million per year, and that it was hiding the losses by allocating to the subsidized products earnings, assets and surplus accumulated for the benefit of older participating policyholders. MetLife also recognized that as older participating policies terminated and went off its books, there would remain only those products that were being subsidized, and that the system by which MetLife was covering up these losses would collapse.

b. As a result, MetLife needed new sources of capital. The Demutualization Plan provided one such source because it freed up earnings, assets and surplus that, as a mutual company, MetLife was restricted from transferring elsewhere in the company. Although MetLife concluded that it would take two to three years to demutualize, because of its pressing financial needs, and in order to prevent disclosure of its subsidized products, it decided to complete the Plan in half the time and to issue a false and misleading Prospectus.

109. Plaintiffs and the other Class Members have been injured and are entitled to recover from MetLife the damages they sustained, including the \$1.6 billion difference between MetLife's calculation of the present value of their expected future contributions to MetLife's surplus (approximately \$10 billion) minus the value of the consideration they received at the IPO price (approximately \$8.4 billion).

#### **PRAYER FOR RELIEF**

WHEREFORE, plaintiffs pray for judgment as follows:

A. Certifying this action as a class action under Rule 23 of the Federal Rules of Civil Procedure;

B. Adjudging that defendants violated § 10(b) of the Exchange Act and § 12(a)(2) of the Securities Act and awarding plaintiffs and the other Class Members rescission or damages, as each may be entitled, together with interest;

C. Awarding plaintiffs the costs and disbursements of the action, including expert fees and attorneys' fees, and such other and further relief as the Court deems just.

Dated: April 2, 2004

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