

Metropolitan Life Insurance Company  
1095 Avenue of the Americas  
New York, New York 10036

**MetLife®**

**David H. LaRocca**  
Senior Counsel  
Legal Department  
Tel 212 578-4826  
Fax 212 448-8323

March 16, 2009

Via Overnight Federal Express

Mark Langer  
Clerk, United States Court of Appeals for the District of Columbia Circuit  
333 Constitution Avenue, NW  
Washington, DC 20001

**Re: American Equity Investment Life Insurance Company, et al. v. Securities and Exchange Commission, No. 09-1021 (consolidated with No. 09-1056)**

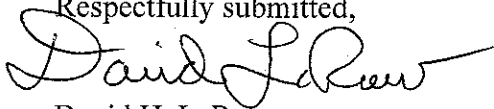
Dear Mr. Langer:

Enclosed are one original and four copies of MetLife, Inc.'s Motion For Leave To File Brief As *Amicus Curiae* In Support Of Respondent United States Securities And Exchange Commission for filing in *American Equity Investment Life Insurance Company, et al. v. Securities and Exchange Commission*, No. 09-1021 (consolidated with No. 09-1056).

Also enclosed is a self-addressed stamped envelope. Please send me a copy of a file-stamped version of the Motion For Leave.

Please contact me with questions at 212-578-4826.

Respectfully submitted,



David H. LaRocca

Enclosures

cc: Michael A. Conley, Senior Special Counsel  
Securities and Exchange Commission  
100 F. Street, N.E.  
Washington, DC 20549  
(By FedEx overnight mail)

Eugene Scalia  
GIBSON, DUNN & CRUTCHER LLP  
1050 Connecticut Ave., N.W.  
Washington, DC 20036  
(By FedEx overnight mail)

Julia A. McDonough  
BRYAN CAVE LLP  
700 Thirteenth Street, N.W.  
Washington, DC 20005  
(By FedEx overnight mail)

Kenneth W. Sukhia  
SUKHIA LAW GROUP, PLC  
2846 Remington Green Circle  
Tallahassee, Florida 32308  
(By FedEx overnight mail)

James F. Jordan  
JORDEN BURT, LLP  
1025 Thomas Jefferson Street, N.W.  
Suite 400 East  
Washington, DC 20007  
(By FedEx overnight mail)

Deborah Zuckerman  
[dzuckerman@aarp.org](mailto:dzuckerman@aarp.org)  
(Via email by agreement)

Steven Hall  
[sh@nasaa.org](mailto:sh@nasaa.org)  
(Via email by agreement)

**ORAL ARGUMENT SCHEDULED FOR FRIDAY, MAY 8, 2009**  
**No. 09-1021 (Consolidated with No. 09-1056)**

**IN THE UNITED STATES COURT OF APPEALS**  
**FOR THE DISTRICT OF COLUMBIA CIRCUIT**

---

AMERICAN EQUITY INVESTMENT LIFE INSURANCE COMPANY, *et al.*,  
*Petitioners,*

v.

SECURITIES AND EXCHANGE COMMISSION,  
*Respondent.*

**On Petition for Review of Final Rule of the**  
**United States Securities and Exchange Commission**

---

**METLIFE, INC.'S**  
**MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE* IN**  
**SUPPORT OF RESPONDENT UNITED STATES SECURITIES AND**  
**EXCHANGE COMMISSION**

Paul Cellupica  
Michael Lacek  
MetLife, Inc.  
1095 Avenue of the Americas  
New York, New York 10036

Attorneys for *Amicus Curiae*  
MetLife, Inc.

MetLife, Inc. (“MetLife”) submits this motion for leave to file a brief as *Amicus Curiae* in support of Respondent United States Securities and Exchange Commission pursuant to Federal Rule of Appellate Procedure 29 and Circuit Rule 29. Attached as addendums to this motion are MetLife’s certificate of parties and amici, pursuant to Circuit Rules 27(a)(4) and 28(a)(1)(A), and disclosure statement, pursuant to Federal Rule of Appellate Procedure 26 and Circuit Rules 27(a)(4) and 26.1.

## ARGUMENT

### **I. MetLife Is A Leading Provider Of Annuity Products**

MetLife is a leading provider of insurance, employee benefits and financial services with operations throughout the United States and the Latin America, Europe and Asia Pacific regions. Through its subsidiaries and affiliates, MetLife reaches more than 70 million customers around the world and is the largest life insurer in the United States (based on life insurance in-force). The MetLife companies offer life insurance, annuities, auto and home insurance, retail banking and other financial services to individuals, as well as group insurance and retirement & savings products and services to corporations and other institutions.

As a significant participant in the annuity market, MetLife has a considerable interest in the regulation of annuities. MetLife has been closely monitoring the Securities and Exchange Commission’s (“SEC’s”) consideration

and proposal of Rule 151A. In this regard, MetLife submitted its own comment letter and joined in another comment letter with four other insurance companies in support of Rule 151A, during the SEC comment period on the rule.

## **II. MetLife's Interest In This Matter**

MetLife strongly supports the federal regulation of indexed annuities pursuant to Rule 151A. MetLife believes there is no principled reason for indexed annuities to be regulated differently than variable annuities under the securities laws. Indexed annuities have a number of characteristics of securities, such as the way in which investment risk above a guaranteed minimum is borne by investors, and they are marketed as ways for investors to participate in stock market gains, similar to variable annuities. Despite their similarities, variable annuities are regulated under the federal securities laws, like mutual funds and other investments directly tied to the performance of the stock market, while indexed annuities are regulated under a patchwork system of state law and issuer self-regulation.

MetLife also shares the SEC's concerns that because indexed annuities are complex investments, many investors who purchase these products may not understand their features and risks. Recent studies, regulatory actions and litigation suggests that unscrupulous salespeople and companies, driven by high commissions, have engaged in unsuitable sales and marketing of indexed annuities to the detriment of consumers, especially seniors. These unsuitable sales practices

tarnish the reputation of all annuity products and the insurance industry as a whole. While some states have begun to more aggressively regulate indexed annuities, varying state regulation is not as effective as the well-developed federal securities laws in curbing abuses with respect to indexed annuities. Rule 151A will ensure there is a level playing field for indexed annuities and variable annuities, increase competition in the market for these annuities, and promote the fair and efficient sales and marketing of annuity products.

### **III. An Amicus Brief From MetLife Is Desirable And Relevant**

MetLife's opinion with respect to Rule 151A is both desirable and relevant to this matter. Pursuant to Circuit Rule 29(a), MetLife will focus its argument on points that the SEC is unlikely to develop in the same manner. In particular, as a participant in the annuity market, MetLife is uniquely positioned to comment on the similarities between variable annuities and indexed annuities, the insurance risk assumed by consumers of indexed annuities, and sales practices and marketing regarding indexed annuities. MetLife believes this market perspective will be valuable to the Court in its consideration of this matter.

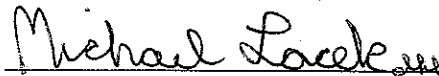
### **CONCLUSION**

Accordingly, MetLife respectfully requests that the Court grant it leave to file a joint *amicus curiae* brief along with the North American Securities Administrators Association, Inc. and AARP. Respondent SEC and Petitioners

American Equity Investment Life Insurance Company, BHC Marketing, Midland National Life Insurance Company, Western Life Insurance Company, OM Financial Life Insurance Company, and Tucker Advisory Group, Inc. have consented to MetLife's participation as *amicus curiae*. While the National Association of Insurance Commissioners indicated it would not oppose this motion, it refused to affirmatively consent to MetLife's participation as *amicus curiae*.

Dated: March 16, 2009

Respectfully submitted,



Michael Lacek (Bar No. 32447)

Paul Cellupica

MetLife, Inc.

1095 Avenue of the Americas

New York, New York 10036

Attorneys for *Amicus Curiae* MetLife,  
Inc.

## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26 and Circuit Rule 26.1,

MetLife, Inc. states as follows:

MetLife, Inc. is a leading provider of insurance, employee benefits and financial services with operations throughout the United States and the Latin America, Europe and Asia Pacific regions. MetLife, Inc. has no parent corporation and no publicly held corporation owns 10% or more of MetLife, Inc.'s stock.

## CERTIFICATE AS TO PARTIES AND AMICI

Except for the North American Securities Administrators Association, Inc. and AARP, which intend to file a brief as *amici* in support of Respondent, and Phillip Roy Financial Services, Inc., Phillip R. Wasserman, and Allianz Life Insurance Company, which have submitted briefs as proposed *amici* in support of Petitioners, all parties, intervenors and amici appearing in this Court are listed in the Opening Brief of Petitioners American Equity Investment Life Insurance Company, BHC Marketing, Midland National Life Insurance Company, Western Life Insurance Company, OM Financial Life Insurance Company, and Tucker Advisory Group, Inc. and Opening Brief of Petitioner NAIC.

## CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this motion was caused to be served upon the following attorneys of record for the parties and *amici* on March 16, 2009:

Michael A. Conley, Senior Special Counsel  
Securities and Exchange Commission  
100 F. Street, N.E.  
Washington, DC 20549  
*(By FedEx overnight mail)*

Eugene Scalia  
GIBSON, DUNN & CRUTCHER LLP  
1050 Connecticut Ave., N.W.  
Washington, DC 20036  
*(By FedEx overnight mail)*


Julia A. McDonough  
BRYAN CAVE LLP  
700 Thirteenth Street, N.W.  
Washington, DC 20005  
*(By FedEx overnight mail)*

Kenneth W. Sukhia  
SUKHIA LAW GROUP, PLC  
2846 Remington Green Circle  
Tallahassee, Florida 32308  
*(By FedEx overnight mail)*

James F. Jordan  
JORDEN BURT, LLP  
1025 Thomas Jefferson Street, N.W.  
Suite 400 East  
Washington, DC 20007  
*(By FedEx overnight mail)*

Deborah Zuckerman  
[dzuckerman@aarp.org](mailto:dzuckerman@aarp.org)  
*(Via email by agreement)*

Steven Hall  
[sh@nasaa.org](mailto:sh@nasaa.org)  
*(Via email by agreement)*

  
David LaRocca