UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

DIVISION OF
TRADING AND MARKETS

July 19, 2016

Ms. Holly H. Smith
Sutherland Asbill & Brennan LLP
700 Sixth Street, NW, Suite 700
Washington, DC 20001-3980

Re: MML Investors Services, LLC
MetLife Securities, Inc.
Thrivent Investment Management, Inc.

Dear Ms. Smith:

This responds to your May 31, 2016 letter on behalf of MML Investors Services, LLC ("MMLISI"); MetLife Securities, Inc. ("MSI"); and Thrivent Investment Management, Inc. ("TIMI") (each, a "Firm" and together, the "Firms"), requesting that the staff of the Division of Trading and Markets ("Staff") not recommend enforcement action to the Securities and Exchange Commission ("Commission") if each Firm transmits customer checks to each Firm's carrying broker-dealer in a manner consistent with the Commission's Exemptive Order for checks received for purchases of deferred variable annuities and the Staff's "no-action" letter issued for subscription-way sales.[1]

I understand that you have made the following representations with respect to the Firms. Each of the Firms is registered with the Commission as a broker-dealer under Section 15(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and each is a member of the Financial Regulatory Authority, Inc. ("FINRA"). Each of the Firms is primarily engaged in the retail distribution of multiple types of financial instruments. None of the Firms maintain proprietary positions for sales to customers. Each Firm introduces customer accounts to its carrying broker-dealer on a fully-disclosed basis pursuant to a written agreement with the carrying broker-dealer.[2]

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[1] See Order Granting a Conditional Exemption to Broker-Dealers From Requirements in Rules 15c3-l and 15c3-3 Under The Securities Exchange Act of 1934 To Promptly Transmit Customer Checks For The Purchase of Deferred Variable Annuity Contracts, Exchange Act Release No. 34-56376 (Sept. 7, 2007) ("Variable Annuity Exemptive Order"); and letter issued to NYLIFE Securities LLC, by Mark M. Attar, Senior Special Counsel, Division of Trading and Markets, Commission, dated March 12, 20 15 ("NYLIFE Letter").

When a new customer wishes to open an account with a Firm, they often fund the new account by providing a registered representative of the Firm with a check payable to the Firm's carrying broker and intended to be deposited into the customer's new account at the carrying broker-dealer. The registered representative then forwards the account opening documentation to one of the Firm's Offices of Supervisory Jurisdiction ("OSJ"), which are responsible for ascertaining in a timely manner whether all documentation is complete and complies with applicable regulatory requirements, including FINRA's "Know Your Customer" and "Suitability" (if applicable) rules, as well as anti-money laundering rules. If any documentation is missing, incomplete, or unclear, reviewers at the OSJ may need to contact the registered representative and/or the customer. If and when all requirements are met, , a registered principal of the Firm accepts the business on behalf of the introducing broker-dealer and the Firm establishes an account for the customer with the carrying broker-dealer. Customer checks are then sent on an overnight or next-day basis to each Firm's carrying broker-dealer.

You represent that the Firms' request for relief is "based on the difficulty, if not impossibility," of collecting the required information from the customer, reviewing and approving such information in a designated OSJ, and then forwarding the customer's check to the carrying broker-dealer by noon of the next business day following receipt, given that the Firms cannot forward checks made payable to a carrying broker-dealer until an account for the customer can be or has been approved and established because the Firms' agreements with each Firm's respective carrying broker-dealer obligates each Firm to comply with applicable FINRA rules, including FINRA Rule 2090,[3] FINRA Rule 4512,[4] FINRA Rule 3110(b),[5] FINRA Rule 3310,[6] and FINRA

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[2] See also FINRA Rule 4311 (Carrying Agreements), requiring, among other things, that FINRA member firms enter into an agreement for the carrying, on an omnibus or fully disclosed basis, of any customer account in which securities transactions can be effected.

[3] Pursuant to FINRA Rule 2090, each FINRA member firm is required to use reasonable diligence, in opening and maintaining every customer account, to know and retain the essential facts concerning every customer and concerning the authority of each person acting on behalf of each customer. FINRA has stated that in order for a member firm to know the essential facts regarding a customer, the firm must collect information to (a) effectively service the customer's account, (b) act in accordance with any special handling instructions for the account, (c) understand the authority of each person acting on behalf of the customer, and (d) comply with applicable laws, regulations and rules. See FINRA Rule 2090, Supplementary Material .01.

[4] Pursuant to FINRA Rule 4512, each member firm is required to maintain the customer's name and residence and to make reasonable efforts to obtain, prior to the settlement of the initial transaction in an account, the customer's tax identification or Social Security number, the occupation of the customer, the name and address of the customer's employer, and whether the customer is an associated person of another FINRA member.

Rule 2111.[7]

Pursuant to paragraph (k)(2)(ii) of Exchange Act Rule 15c3-3, an SEC-registered broker-dealer is exempted from the requirements of that rule provided that it serves as an introducing broker or dealer (i.e., does not hold customers' funds or securities), clears all transactions with and for customers on a fully disclosed basis with a clearing broker or dealer, and promptly transmits all customer funds and securities to the clearing broker-dealer which carries all of the accounts of such customers and maintains and preserves such books and records pertaining thereto pursuant to the requirements of Exchange Act Rules 17a-3 and 17a-4 as are customarily made and kept by a clearing broker-dealer. The Commission has interpreted the term "promptly transmits" to require that "transmission or delivery is made no later than noon of the next business day after the receipt of such funds or securities" and has interpreted the term "receipt" to mean the time at which a check or other negotiable instrument is first received by a registered representative of a broker-dealer.[8] Consequently, in order to rely on an exemption from SEC Rule 15c3-3 pursuant to paragraph (k) of the rule, a broker-dealer must forward checks made payable to a carrying broker-dealer by noon of the next business day following a registered representative's receipt of such a check from a customer.

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[5] Pursuant to FINRA Rule 3110(b), a member firm is required, among other things, to adopt written procedures to supervise its business and the activities of its associated persons. Such procedures must be reasonably designed to achieve compliance with applicable securities laws and FINRA rules. FINRA Rule 3110(b) also requires that a registered principal of the member firm review all transactions of the member firm related to the investment banking or securities business of the member firm; a member may use a risk-based review system to comply with the rule's requirement that a registered principal review all transactions relating to the investment banking or securities business of the member.

[6] Pursuant to FINRA Rule 3310 each member firm is required to implement an anti-money laundering program in compliance with the Bank Secrecy Act and implementing regulations adopted by the Department of the Treasury. As part of their compliance with the Bank Secrecy Act, a FINRA member firm must establish a customer identification program and obtain for each natural person who applies to open an account, the person's name, date of birth, address and identification number. See 31 CFR 1023.220. In addition, the broker-dealer opening the account must compare the information collected from the potential customer to lists of known or suspected terrorists, such as the Treasury Department's Office of Foreign Assets Control Specially Designated Nationals and Blocked Persons list. See 31 CFR 1023.220.

[7] Pursuant to FINRA Rule 2111 (Suitability), if a member firm's registered representative recommends a transaction or investment strategy involving a security or securities, the member firm is required to collect information sufficient to ascertain the customer's investment profile. See also FINRA Rule 3110, Supplementary Material .05, stating that a member is not required to conduct detailed reviews of each transaction if a member is using a reasonably designed risk-based review system that provides a member with sufficient information that permits the member to focus on the areas that pose the greatest numbers and risks of violation.

[8] See Exchange Act Release No . 3151 l (Nov. 24, 1992), note 11; 17 CFR 240. 15c3- 1 (c)(9); and FINRA Interpretations of Financial and Operational Rules – Rule 15c3-3(k)(2)(ii)/015, available at http://www.finra.org/sites/default/files/sea-rule-l 5c3-3-interpretations.pdf (definition of "promptly transmit").

You state that the Commission has provided similar relief in the past in recognition of the difficulty of complying with the prompt transmission provision in cases where a broker-dealer is presented with checks made payable to a third party. You cite the Variable Annuity Exemptive Order, which exempts, subject to specified conditions, broker-dealers from any additional requirements of Rule 15c3-3 due solely to a failure to promptly transmit a check made payable to an insurance company for the purchase of a deferred variable annuity product.[9] You also cite the NYLIFE Letter, in which the Staff granted "no-action" relief to a broker-dealer that receives checks made payable to third parties received in connection with sales of securities on a subscription-way basis provided that, among other things, a registered principal performs a suitability review in accordance with FINRA Rule 2111.[10]

Based on your representations, the Staff will not recommend enforcement action to the Commission if any of the Firms, or any other broker-dealer in similar circumstances, fails to transmit to the carrying broker-dealer a customer's check payable to the carrying broker-dealer by noon of the next business day after receipt, if the purpose for holding the check is to complete the broker-dealer's account opening process in compliance with applicable FINRA rules, and the broker-dealer:

1. Establishes policies and procedures reasonably designed to ensure that customer checks are safeguarded;
2. Ensures that a registered representative of the member who takes possession of a check made payable to the carrying broker-dealer promptly transmits such checks to an OSJ of the member for processing;
3. Causes a registered principal to perform a review in accordance with FINRA Rule 2090 and determine whether to approve the account for opening within seven business days after an OSJ of the member receives a complete and correct application to open an account with the carrying broker-dealer, including a check made payable to the carrying broker-dealer;

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[9] These conditions include a requirement that the transaction in question is subject to the principal review requirements of NASD Rule 2821 (now FINRA Rule 2330), which requires, among other things, that prior to transmitting a customer's application for the purchase of a deferred variable annuity to an issuer, but in no case later than seven business days after an OSJ receives a complete and correct application, a registered principal must review and determine whether to approve a recommendation that a customer purchase or exchange a deferred variable annuity. See Variable Annuity Exemptive Order (issued in conjunction with approval of NASD Rule 2821).

[10] See NYLIFE Letter, which requires that such review be performed within seven business days after an OSJ receives a complete and correct application. See also supra, note 7.

4. Transmits the check to the carrying broker-dealer no later than noon of the business day following the date the registered principal determines whether to approve the opening of an account with a carrying broker-dealer;
5. Maintains a copy of each such check and creates a record of the date the check was received from the customer and the date the check was transmitted to the carrying broker-dealer if the customer's account opening request is approved, or returned to the customer if rejected; and
6. Discloses to customers its process for handling customer checks payable to a carrying broker-dealer in conjunction with the requested opening of a new account with the Firm and the Firm's carrying broker-dealer.

You should be aware that this is a staff position with respect to enforcement only and does not purport to express any legal conclusions regarding the application of the federal securities laws. This position is based solely on the foregoing description. Factual variations could warrant a different response, and any material change in the facts must be brought to the Staff's attention. This position may be withdrawn or modified if the Staff determines that such action is necessary for the protection of investors, in the public interest, or otherwise in furtherance of the securities laws.

Sincerely,

Michael A. Macchiaroli
Associate Director

SUTHERLAND

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May 31, 2016

Michael A. Macchiaroli
Senior Associate Director
Division of Trading and Markets
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: Request for "No-Action" Relief from SEC Rule 15c3-3 for Checks Made Payable to a Carrying Broker-Dealer

Dear Mr. Macchiaroli:

This letter is submitted on behalf of three broker-dealers: MML Investors Services, LLC ("MMLISI"); MetLife Securities, Inc. ("MSI"); and Thrivent Investment Management, Inc. ("TIMI") (each, "a Firm" and together, "the Firms"),[1] for the purpose of confirming that staff of the Division of Trading and Markets ("Staff") will not recommend enforcement action to the Securities and Exchange Commission ("Commission"), and will not subject the Firms to any additional requirements of SEC Rule 15c3-3, if each Firm promptly transmits customer checks to each Firm's carrying broker-dealer, consistent with the Commission's Exemptive Order for checks received for purchases of deferred variable annuities and the Staff's "no-action" letter issued for subscription-way sales.[2]

Each of the Firms is registered with the Commission as a broker-dealer under Section 15(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and each is a member of FINRA. MMLISI has 88 Offices of Supervisory Jurisdiction ("OSJ") located throughout the United States and approximately 1100 branch offices. MSI has approximately 143 retail OSJs located throughout the United States and approximately 736 retail branch offices. TIMI has 1461 branch offices, including 27 OSJs. Each of the Firms is primarily engaged in the

[1] MMLISI is an affiliate of the Massachusetts Mutual Life Insurance Company ("MassMutual"); MSI is an affiliate of the Metropolitan Life Insurance Company; TIMI is an affiliate of Thrivent Financial for Lutherans and wholly-owned by Thrivent Financial Holdings, Inc.

[2] See Exchange Act Release No. 34-56376 (Sept. 7, 2007), Order Granting a Conditional Exemption to Broker-Dealers From Requirements in Rules 15c3-1 and 15c3-3 Under The Securities Exchange Act of 1934 To Promptly Transmit Customer Checks For The Purchase of Deferred Variable Annuity Contracts (hereafter, the "Variable Annuity Exemptive Order"); and letter issued to NYLIFE Securities LLC, by Mark M. Attar, Senior Special Counsel, Division of Trading and Markets, Securities and Exchange Commission, dated March 12, 2015 (hereafter, the "NYLIFE Letter"); see also FINRA Regulatory Notice 15-23, "Subscription-Way Transactions," in which FINRA provides relief from the requirement to promptly transmit funds in connection with sales of securities on a subscription-way basis under applicable FINRA rules (hereafter, "Regulatory Notice 15-23").

retail distribution of multiple products, including mutual funds, variable annuity and variable life insurance contracts, Section 529 plans, debt securities and securities traded on U.S. exchange-listed and over-the-counter markets. None of the Firms maintain proprietary positions for sales to customers. Each Firm introduces customer accounts to its carrying broker-dealer on a fully-disclosed basis pursuant to a written agreement with the carrying broker-dealer.[3]

Each of the Firms has a field force of registered representatives located in geographically dispersed locations who routinely initiate the opening of new accounts with the carrying broker-dealer on behalf of the Firm's customers. In anticipation of a successful account opening, customers will often fund the new account by providing the Firm with a check payable to the Firm's carrying broker. The customer may elect to purchase a security or make another type of investment at the time they open an account or at a later date.

Each carrying broker-dealer is responsible for the safeguarding of funds and securities under Securities Exchange Act Rule 15c3-3 for customers whose accounts are introduced to the carrying broker-dealer on a fully-disclosed basis.[4]

The "Promptly Transmit" Requirement Under SEC Rule 15c3-3

As SEC-registered broker-dealers, the Firms are required to comply with Securities Exchange Act Rule 15c3-3. Broker-dealers that do not hold customers funds and securities are generally exempted from the requirements of Rule 15c3-3, pursuant to paragraph (k) of the rule, provided, however, that the broker-dealer, with respect to its agency transactions, promptly transmits all funds and delivers all securities to the party to whom those funds and securities are owed (the "prompt transmission provision"). For many years, the Commission has taken the position that Rule 15c3-3 requires transmission of customer funds and securities by noon of the next business day after receipt in order to be considered "prompt," and also has interpreted Rule 15c3-3 to mean that "receipt" for purposes of the prompt transmission provision begins on the day a check or other negotiable instrument is first received by a registered representative of a broker-dealer.[5] These interpretations of the prompt transmission provision mean that in order to rely on an exemption from SEC Rule 15c3-3, the Firms must forward checks made payable to a carrying broker-dealer by noon of the next business day following a registered representative's receipt of such a check from a customer.[6]

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[3] This letter seeks relief only with respect to customer accounts introduced to a carrying firm on a fully-disclosed basis. Each Firm also maintains customer accounts not introduced to a carrying broker-dealer (for example, accounts for customers whose purchases are limited to variable annuity and/or variable life insurance contracts).

[4] See also FINRA Rule 4311 (Carrying Agreements), requiring, among other things, that FINRA member firms enter into an agreement for the carrying, on an omnibus or fully disclosed basis, of any customer account in which securities transactions can be effected.

[5] See Release No. 34-31511 (Nov. 24, 1992), note 11; SEC Rule 15c3-1(c)(9); and Interpretations of Financial and Operational Rules, available at http://www.finra.org/sites/default/files/sea-rule-15c3-3-interpretations.pdf at p. 2523 (definition of "promptly transmit"). See also NYLIFE Letter, supra n.2.

[6] See SEC Rule 15c3-3(k)(2)(ii), providing an exemption from Rule 15c3-3 to a broker-dealer who, as an introducing broker-dealer, clears all transactions with and for customers on a fully disclosed basis with a clearing

Compliance with the Prompt Transmission Provision Conflicts with the Firms' Account Opening and Supervisory Obligations

FINRA Rule 2090 (Know Your Customer) requires every FINRA member firm to use reasonable diligence, in regard to opening and maintaining every account, to know and retain the essential facts concerning every customer and concerning the authority of each person acting on behalf of each customer.[7]

FINRA has stated that in order for a FINRA member firm to know the "essential" facts regarding a customer, a firm must collect information to (a) effectively service the customer's account, (b) act in accordance with any special handling instructions for the account, (c) understand the authority of each person acting on behalf of the customer, and (d) comply with applicable laws, regulations and rules.[8] Other FINRA rules also require FINRA member firms to collect, process and maintain certain information from the customer. For example, FINRA Rule 4512 (Customer Account Information) requires each member firm to maintain the customer's name and residence and to make reasonable efforts to obtain, prior to the settlement of the initial transaction in an account, the customer's tax identification or Social Security number, the occupation of the customer, the name and address of the customer's employer, and whether the customer is an associated person of another FINRA member. Additional information collection and other responsibilities apply to discretionary,[9] margin,[10] and option accounts.[11] Further account opening responsibilities are found in FINRA's anti-money laundering rule, FINRA Rule 3310, which requires each member firm to implement an anti-money laundering program in compliance with the Bank Secrecy Act and implementing regulations adopted by the Department of the Treasury.[12]

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broker-dealer, and who promptly transmits all customer funds and securities to the clearing broker-dealer which carries all of the accounts of such customers and maintains and preserves such books and records pertaining thereto as are customarily made and kept by a clearing broker-dealer, pursuant to SEC Rules 17a-3 and 17a-4. See also SEC Rule 17a-5, which makes a distinction for purposes of the annual independent audit requirement between broker-dealers who are fully subject to Rule 15c3-3 and those who rely on an exemption from Rule 15c3-3 pursuant to paragraph (k) of the Rule.

[7] See also SEC Rule 17a-3(a)(17), requiring broker-dealers to collect certain information from natural person customers, and maintain an account record indicating whether the account has been signed by the associated person responsible for the account, and approved or accepted by a registered principal of the broker-dealer.

[8] See FINRA Rule 2090 (eff. July 9, 2012), Supplementary Material .01.

[9] See FINRA Rule 4512(a)(3).

[10] See FINRA Rule 4210(d) (Margin Requirements), requiring member firms to adopt procedures to review the limits and types of credit extended to customers.

[11] See FINRA Rule 2360(Options) at (b)(11), requiring delivery of the Options Disclosure Document to each customer at or prior to the time a customer's account is approved for options trading; and (b)(16), imposing requirements on the opening of accounts.

[12] As part of their compliance with the Bank Secrecy Act, a FINRA member firm must establish a customer identification program and obtain for each natural person who applies to open an account, the person's name, date of birth, address and identification number. See 31 C.F.R. § 1023.220. In addition, the broker-dealer opening the account must compare the information collected from the potential customer to lists of known or suspected terrorists, such as the Treasury Department's Office of Foreign Assets Control Specially Designated Nationals and Blocked Persons list. See 31 C.F.R. § 1023.220.

FINRA member firms are also responsible for supervising the account opening process and reviewing securities transactions, pursuant to FINRA Rule 3110. Rule 3110(b) requires, among other things, that a member firm adopt written procedures to supervise its business and the activities of its associated persons; such procedures must be reasonably designed to achieve compliance with applicable securities laws and FINRA rules. Rule 3110(b) also requires that a registered principal of the member firm review all transactions of the member firm related to the investment banking or securities business of the member firm; a member may use a risk-based review system to comply with Rule 3110(b)'s requirement that a registered principal review all transactions relating to the investment banking or securities business of the member.[13]

To comply with these rules, each Firm needs to collect and process, among other things, information sufficient to identify the type of account the customer wants to establish (e.g., cash, margin, discretionary or non-discretionary); the legal and beneficial owner(s) of the account; the nationality and residency of each account owner; and the customer's employment status. If a registered representative recommends a transaction or investment strategy involving a security or securities, a Firm also must comply with FINRA Rule 2111 (Suitability), which requires the Firm to collect information sufficient to ascertain the customer's investment profile.[14]

Each of the Firms typically collects the information required by applicable FINRA rules by asking the customer to complete and return account opening documentation to a registered representative, working in a Firm-authorized location. A customer's payment to initially fund the account at the carrying broker-dealer, if made by check, is either hand delivered to the registered representative by the customer or mailed by the customer to the customer's registered representative, at a branch office or OSJ, if the registered representative works in an OSJ.

Each Firm must process the account opening documentation before it can forward the application, with the check, to the Firm's carrying broker-dealer. Each Firm's account opening process is centralized in designated OSJs; accordingly, registered representatives must send account opening documentation, together with checks, to these OSJs. Once received at the designated OSJ, a review process is undertaken to ascertain whether all documentation is complete and complies with applicable regulatory requirements, including FINRA Rule 2090 and FINRA Rule 2111 (if applicable), as well as anti-money laundering rules. If any of the documentation is missing, incomplete, or unclear, the reviewers at the OSJ may need to contact the registered representative and/or the customer, which increases the time needed by the OSJ to complete its review of the customer's account application. When and if all requirements are met, a registered principal of the Firm accepts the business on behalf of the introducing broker-dealer and the Firm establishes an account for the customer with the carrying broker-dealer. Customer checks are then sent on an overnight or next-day basis to each Firm's carrying broker-dealer.

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[13] See FINRA Rule 3110, Supplementary Material .05, stating that a member is not required to conduct detailed reviews of each transaction if a member is using a reasonably designed risk-based review system that provides a member with sufficient information that permits the member to focus on the areas that pose the greatest numbers and risks of violation.

[14] See FINRA Rule 2111(a) and Supplementary Material .04 (Customer's Investment Profile) and .06 (Customer's Financial Ability).

The Firms' request for relief is based on the difficulty, if not impossibility, of collecting the required information from the customer, reviewing and approving such information in a designated OSJ, and then forwarding the customer's check to the carrying broker-dealer by noon of the next business day following receipt. The Firms cannot forward checks made payable to a carrying broker-dealer until an account for the customer can be or has been approved and established because the Firms' agreements with each Firm's respective carrying broker-dealer obligates each Firm to comply with applicable FINRA rules.

Analogous Precedent

Both the Commission and FINRA have recognized, in similar circumstances, the difficulty of complying with the prompt transmission provision in cases where a broker-dealer is presented with checks made payable to a third party. In conjunction with approving NASD Rule 2821 (now FINRA Rule 2330), the Commission issued the Variable Annuity Exemptive Order exempting, subject to specified conditions, broker-dealers from any additional requirements of Rule 15c3-3 due solely to a failure to promptly transmit a check made payable to an insurance company for the purchase of a deferred variable annuity product. More recently, in the NYLIFE Letter, Staff granted "no-action" relief to a broker-dealer that receives checks made payable to third parties received in connection with sales of securities on a subscription-way basis.[15] In granting relief in the circumstances described in the NYLIFE Letter, Staff noted that the process of having a registered principal of a broker-dealer review and either approve or disapprove the recommended sale of a security on a subscription-way basis prior to sending the customer's application and check to the issuer takes longer than is permitted by the prompt transmission provision.[16]

The relief granted in the NYLIFE Letter was conditioned on the broker-dealer:

1. Establishing policies and procedures reasonably designed to ensure that each check is safeguarded and that a registered representative of the member who recommends a sale of a security on a subscription-way basis promptly prepares and forwards a complete and correct application package to an OSJ of the member regarding such security;

2. Causing a registered principal to perform a suitability review in accordance with FINRA Rule 2111 and determine whether he or she approves of each recommended subscription-way sale within seven business days after an OSJ of the member receives a complete and correct application package;

3. Transmitting the check no later than noon of the business day following the date the registered principal reviews and determines whether he or she approves the transaction;

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[15] FINRA also issued, in Regulatory Notice 15-23, limited relief pursuant to which a broker-dealer may hold a customer check payable to an issuer or an appropriate third-party payee acting on behalf of the issuer, for up to seven business days from the date that an OSJ receives a complete and correct application package for the purchase of securities on a subscription-way basis, provided the broker-dealer complies with conditions set forth in Regulatory Notice 15-23.

[16] NYLIFE Letter at p. 4.

4. Maintaining a copy of each such check and creating a record of the date the check was received from the customer and the date the check was transmitted to the issuer if approved, or was returned to the customer if rejected; and

5. Disclosing to customers its process for handling customer checks payable to issuers for subscription-way transactions in advance of each transaction.

The Commission also has recognized that there are broker-dealers that may hold customer checks made payable to third parties for limited periods of time and under the prompt transmission provision, are subject to SEC requirements that apply to broker-dealers who deposit customer money into the broker-dealer's own account and hold customer funds and securities for extended periods of time. For example, in amendments to SEC Rule 17a-5 adopted by the Commission in 2013, the Commission stated that broker-dealers with extremely limited custodial activities, including holding customer checks made out to a third party for limited periods of time, could seek exemptive relief under Section 36 of the Exchange Act from an obligation to submit a Compliance Report to the Commission under Rule 17a-5.[17] For the reasons discussed in this letter, the Firms fit within this category of broker-dealers that do not hold customer funds and securities but rather, as described in this letter, receive checks made payable to third parties.

Request for Relief

In trying to comply with applicable FINRA rules, including FINRA Rules 2090, 2111, 3110, 3310, and 4512, the Firms' circumstances are very similar to those described in the Variable Annuity Exemptive Order and the NYLIFE Letter. Specifically, the Firms' account opening procedures, which must be reasonably designed to comply with FINRA rules, conflict with the prompt transmission provision. The Firms have concluded that to comply with these rules for accounts introduced to a carrying broker-dealer, the Firms need to review account opening documentation and determine whether to accept or reject such an account prior to the time a check made payable to a carrying broker-dealer is forwarded to the carrying broker-dealer. However, as noted, this process takes longer to complete than is permitted by the prompt transmission provision.

Accordingly, we request that Staff of the Division not recommend enforcement action to the Commission nor subject the Firms to any additional requirements of Rule 15c3-3 due solely to a failure to transmit to the carrying broker-dealer a check payable to the carrying broker-dealer by noon of the next business day after receipt, if the purpose for holding a customer's check is to complete each Firm's account opening process in compliance with applicable FINRA rules, and each Firm:

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[17] See SEC Release No. 34-70073; File No. S7-23-11 (Broker-Dealer Reports) (July 30, 2013), at p.21 and fn. 78. The relief requested in this letter, if granted, would obviate the need for relief under Section 36, with each Firm anticipating being able to meet the requirements to file an Exemption Report under Rule 17a-5 in the future on the basis of relief being granted under this letter, the Variable Annuity Exemptive Order and the NYLIFE Letter. The Firms anticipate being subject to SEC Rule 15c3-3(k)(2)(ii) with respect to the activities described in this letter if this request for no-action relief is granted.

1. Establishes policies and procedures reasonably designed to ensure that customer checks are safeguarded and that a registered representative of the member who takes possession of a check made payable to a carrying broker-dealer promptly transmits such checks to an OSJ of the member for processing;

2. Causes a registered principal to perform a review in accordance with FINRA Rule 2090 and determine whether he or she approves the account for opening within seven business days after an OSJ of the member receives a complete and correct application to open an account with a carrying broker-dealer, including a check made payable to a carrying broker-dealer;

3. Transmits the check no later than noon of the business day following the date the registered principal determines whether he or she approves the opening of an account with a carrying broker-dealer;

4. Maintains a copy of each such check and creates a record of the date the check was received from the customer and the date the check was transmitted to the carrying broker-dealer if the customer's account opening request is approved, or returned to the customer if rejected; and

5. Discloses to customers its process for handling customer checks payable to carrying broker-dealers in conjunction with the requested opening of a new account with the Firm and the Firm's carrying broker-dealer.

Sincerely,

Holly H. Smith

HHS/nr

cc: Thomas K. McGowan, SEC
Joseph I. Levinson, SEC
Mary Block, MassMutual
Robert Rosenthal, MassMutual
Marc Cohn, MetLife
Jennifer Lewis, MetLife
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