

06-01-1998

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FORM PTO-1594

RECORDATION



U.S. DEPARTMENT OF COMMERCE  
Patent and Trademark Office

1-31-92

Tab settings

100723444

MRD 4-27-98

To the Honorable Commissioner of Patents and Trademarks, Please record the attached original documents or copy thereof

1. Name of conveying party(ies):

New England Mutual Life Insurance Company

- Individuals
- General Partnership
- Corporation Massachusetts
- Other

- Association
- Limited Partnership

Additional name(s) of conveying parties attached?  Yes  No

2. Name and address of receiving party(ies)

Metropolitan Life Insurance Company  
One Madison Avenue  
New York, New York 10010

- Individual(s) citizenship
- Association
- Limited Partnership
- Corporation New York
- Other

If assignee is not domiciled in the United States, a domestic representative designation is attached  
 Yes  No

(Designations must be a separate document from Assignment)

Additional name(s) & address(es) attached?  Yes  No

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other
- Merger
- Change of Name

Execution date: August 16, 1995

4. Application number(s) or registration number(s):

A. Trademark Application Nos.

75-149,564 75-149,639 74-727,754  
75-149,640 75-149,860 74-718,029  
74-697,634 75-026,601

B. Trademark registration Nos.

1,784,421 2,086,852 1,792,911  
2,131,959 1,425,945 2,023,156

Additional Numbers attached?  Yes  No

5. Name and address of party to whom correspondence concerning document should be mailed:

Andrea H. Scheidt, Esq.  
KENYON & KENYON  
One Broadway  
New York, New York 10004

6. Total number of applications and registrations involved: 1

7. Total fee (37 C.F.R. 3.41) ..... \$ 365.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

11-0600

(Attach duplicate copy of this page if paying by deposit account)

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9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Katherine Meyer  
Name of Person Signing

[Signature]  
Signature

4-23-98  
Date

Total Number of pages comprising cover sheet:

OMB No. 0651-0011 (exp. 4/94)

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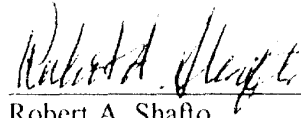
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**CERTIFICATE OF ADOPTION  
OF THE  
AMENDED AND RESTATED  
AGREEMENT AND PLAN OF MERGER  
BETWEEN  
METROPOLITAN LIFE INSURANCE COMPANY  
AND  
NEW ENGLAND MUTUAL LIFE INSURANCE COMPANY**

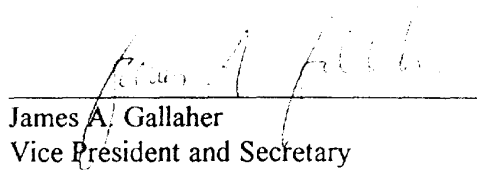
The undersigned, Robert A. Shafto, Chairman of the Board, President and Chief Executive Officer, and James A. Gallaher, Vice President and Secretary, of New England Mutual Life Insurance Company ("The New England"), hereby certify as follows:

1. That attached hereto is an exact and true copy of the Amended and Restated Agreement and Plan of Merger by and between The New England and Metropolitan Life Insurance Company ("MetLife") dated as of August 16, 1995 (the "Agreement").
2. That the Agreement was submitted to the members of The New England for their approval and adoption at a special meeting of policyholders, on July 22, 1996, commencing at 2:00 p.m.
3. That said special meeting of policyholders was duly called pursuant to a notice mailed and published as provided and required by Massachusetts Insurance law and the By-laws of The New England.
4. That the Agreement was submitted to a vote of the members, with all votes, whether in person or by proxy, having been cast by approximately 3:30 p.m. on July 22, 1996, and the votes cast in favor of adoption of the Agreement totaled 1,104,393, and the votes cast against totaled 89,985.
5. That the Agreement was duly adopted by the members of The New England as the votes in favor of adoption represented no less than two-thirds of all votes cast by members represented at the meeting in person or by proxy.

IN WITNESS WHEREOF, the undersigned have executed this certificate and affixed the corporate seal of The New England hereto this 7<sup>th</sup> day of August 1996; and affirm under the penalties of perjury, each for himself, that the same is true in all respects.



Robert A. Shafo  
Chairman, President and  
Chief Executive Officer



James A. Gallaher  
Vice President and Secretary

(SEAL)

CERTIFICATE OF ADOPTION  
OF THE AMENDED AND RESTATED AGREEMENT AND PLAN OF MERGER  
BETWEEN  
METROPOLITAN LIFE INSURANCE COMPANY  
AND  
NEW ENGLAND MUTUAL LIFE INSURANCE COMPANY

The undersigned, Harry P. Kamen, Chairman, President and Chief Executive Officer, and Christine N. Markussen, Vice-President and Secretary, of Metropolitan Life Insurance Company ("MetLife"), hereby certify as follows:

1. That attached hereto is an exact and true copy of the Amended and Restated Agreement and Plan of Merger by and between MetLife and New England Mutual Life Insurance Company dated as of August 16, 1995 (the "Agreement").


2. That the Agreement was submitted to the members of MetLife for their approval and adoption at a special meeting of policyholders, on July 30, 1996, commencing at 10:00 a.m.

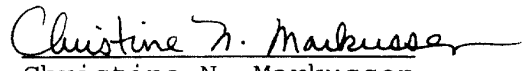
3. That said special meeting of policyholders was duly called pursuant to a notice published as provided and required by the New York Insurance Law, which notice included a summary of the Agreement approved by the Superintendent of Insurance of the State of New York.

4. That the Agreement was submitted to a vote of the members, with all votes, whether in person or by proxy, having been cast between 10:00 a.m. and 4:00 p.m. on July 30, 1996, and the votes cast in favor of the adoption of the Agreement totalled one hundred twenty-five thousand two hundred eighty-two (125,282) and the votes cast against totalled seven thousand two hundred twenty-seven (7,227).

5. That the Agreement was duly adopted by the members of MetLife, as the votes in favor of adoption represented no less than two-thirds of all votes cast by members represented at the meeting in person or by proxy.

IN WITNESS WHEREOF, the undersigned have executed this certificate and affixed the corporate seal of MetLife hereto this 8th day of August, 1996; and affirm under the penalties of perjury, each for himself/herself, that the same is true in all respects.

  
\_\_\_\_\_  
Harry P. Kamen  
Chairman, President and  
Chief Executive Officer

  
\_\_\_\_\_  
Christine N. Markussen  
Vice-President and  
Secretary

(SEAL)

AMENDED AND RESTATED  
AGREEMENT AND PLAN OF MERGER

by and between

METROPOLITAN LIFE INSURANCE COMPANY

and

NEW ENGLAND MUTUAL LIFE INSURANCE COMPANY

Dated as of August 16, 1995

AGREEMENT AND PLAN OF MERGER

TABLE OF CONTENTS

(Not Part of the Agreement)

	<u>Page</u>
ARTICLE I DEFINITIONS	
Section 1.1	Definitions . . . . . 2
ARTICLE II THE MERGER	
Section 2.1	The Merger . . . . . 28
Section 2.2	Effective Time . . . . . 29
Section 2.3	Charter and Bylaws of the Surviving Company . . . . . 30
Section 2.4	Board of Directors and Officers . . 30
ARTICLE III RELATED MATTERS	
Section 3.1	Member Approvals . . . . . 31
Section 3.2	Combined No-Action Letter . . . . . 33
Section 3.3	NELICO AND NEIC Boards of Directors . . . . . 35
ARTICLE IV REPRESENTATIONS AND WARRANTIES OF TNE	
Section 4.1	Organization and Qualification . . 35
Section 4.2	Capitalization of TNE Subsidiaries. . . . . 39
Section 4.3	Authority Relative to this Agreement . . . . . 41
Section 4.4	No Violation . . . . . 42
Section 4.5	SAP Statements . . . . . 44
Section 4.6	GAAP Statements . . . . . 45
Section 4.7	Reserves . . . . . 47
Section 4.8	Absence of Certain Changes or Events . . . . . 48
Section 4.9	No Undisclosed Liabilities . . . . . 49
Section 4.10	Taxes and Tax Returns . . . . . 50
Section 4.11	Litigation . . . . . 58
Section 4.12	Compliance with Law . . . . . 59
Section 4.13	Employee Benefit Plans; ERISA . . . 63

	<u>Page</u>
Section 4.14 Assets . . . . .	69
Section 4.15 Environmental Matters . . . . .	88
Section 4.16 Contracts . . . . .	91
Section 4.17 Investment Management Matters . . . . .	97
Section 4.18 Insurance Issued by TNE Insurers . . . . .	110
Section 4.19 Cancellations . . . . .	112
Section 4.20 Operations Insurance . . . . .	112
Section 4.21 Labor Relations and Employment . . . . .	114
Section 4.22 Personnel . . . . .	115
Section 4.23 Warranties . . . . .	115

ARTICLE V  
REPRESENTATIONS AND WARRANTIES OF METLIFE

Section 5.1 Organization and Qualification . . . . .	117
Section 5.2 Authority Relative to this Agreement . . . . .	118
Section 5.3 No Violation . . . . .	119
Section 5.4 SAP Statements . . . . .	121
Section 5.5 GAAP Statements . . . . .	122
Section 5.6 Reserves . . . . .	123
Section 5.7 Absence of Certain Changes or Events . . . . .	124
Section 5.8 No Undisclosed Liabilities . . . . .	124
Section 5.9 Litigation . . . . .	125
Section 5.10 Compliance with Law . . . . .	126
Section 5.11 Insurance Issued by MetLife . . . . .	128
Section 5.12 Warranties . . . . .	129

ARTICLE VI  
CERTAIN COVENANTS

Section 6.1 TNE Conduct of Business Pending the Merger . . . . .	130
Section 6.2 NEIC Entities Conduct of Business Pending the Merger . . . . .	141
Section 6.3 MetLife Conduct of Business Pending the Merger . . . . .	145
Section 6.4 Reasonable Efforts; Cooperation with Respect to Private Letter Ruling . . . . .	147
Section 6.5 Access and Information . . . . .	150
Section 6.6 Approvals and Filings . . . . .	152
Section 6.7 Satisfaction of Section 15 of the Investment Company Act . . . . .	154
Section 6.8 Advisory Contract Consents . . . . .	156

	<u>Page</u>
Section 6.9	Compliance with Section 15(f) of the Investment Company Act by MetLife . . . . . 157
Section 6.10	Notification of Certain Other Matters . . . . . 158
Section 6.11	Indemnification . . . . . 160
Section 6.12	Supplemental Disclosure . . . . . 161
Section 6.13	No Solicitations . . . . . 162
Section 6.14	Dividend Policy . . . . . 164
Section 6.15	Statement of Operating Principles . 165
Section 6.16	Exclusivity . . . . . 165
Section 6.17	Covenants of Surviving Company . . 166

ARTICLE VII  
CONDITIONS

Section 7.1	Conditions to Obligation of TNE to Effect the Merger . . . . . 169
Section 7.2	Conditions to Obligation of MetLife to Effect the Merger . . . 174

ARTICLE VIII  
TERMINATION

Section 8.1	Termination . . . . . 179
Section 8.2	Effect of Termination . . . . . 179

ARTICLE IX  
MISCELLANEOUS

Section 9.1	Survival of Representations and Warranties . . . . . 180
Section 9.2	Fees and Expenses . . . . . 180
Section 9.3	Notices . . . . . 181
Section 9.4	Amendments . . . . . 183
Section 9.5	No Waiver . . . . . 183
Section 9.6	Brokers . . . . . 183
Section 9.7	Publicity . . . . . 184
Section 9.8	Interpretation . . . . . 185
Section 9.9	Headings . . . . . 188
Section 9.10	Nonassignability . . . . . 188
Section 9.11	Parties in Interest . . . . . 188
Section 9.12	Counterparts . . . . . 188
Section 9.13	Governing Law; Jurisdiction . . . . 189
Section 9.14	Entire Agreement; Statements as Representations . . . . . 189
Section 9.15	Severability . . . . . 190



	<u>Page</u>
Section 9.16 Specific Performance . . . . .	190
Section 9.17 Survival of Certain Covenants . . . . .	191

SIGNATURES

MetLife Charter and By-laws . . . . .	EXHIBIT A
Dividend and Surplus Principles and Practices . . . . .	EXHIBIT B
Form of IRS Ruling or Opinion of Dewey Ballantine, Special Counsel to TNE . . . . .	EXHIBIT C
Form of Opinion of counsel to MetLife . . . . .	EXHIBIT D
Form of Opinion of counsel to TNE and NEIC . . . . .	EXHIBIT E
Form of IRS Ruling or Opinion of Skadden, Arps, Slate, Meagher & Flom, Special counsel to MetLife . . . . .	EXHIBIT F
Severance Terms . . . . .	EXHIBIT G
NELICO Charter . . . . .	EXHIBIT H
NELICO By-laws . . . . .	EXHIBIT I
NELICO Officers . . . . .	EXHIBIT J
TNE Subsidiaries to be transferred to NELICO . . . . .	EXHIBIT K

AMENDED AND RESTATED  
AGREEMENT AND PLAN OF MERGER

AMENDED AND RESTATED AGREEMENT AND PLAN OF  
MERGER dated as of August 16, 1995 by and between METRO-  
POLITAN LIFE INSURANCE COMPANY, a New York mutual life  
insurance company ("MetLife"), and NEW ENGLAND MUTUAL  
LIFE INSURANCE COMPANY, a Massachusetts mutual life  
insurance company ("TNE") (MetLife and TNE being herein-  
after sometimes collectively referred to as the "Constit-  
uent Companies").

WHEREAS, the Board of Directors of MetLife and  
the Board of Directors of TNE deem it advisable and in  
the best interests of the policyholders of their respec-  
tive companies to effect the merger of TNE with and into  
MetLife (the "Merger") upon the terms and subject to the  
conditions set forth herein, including, but not limited  
to, receipt of all required approvals of Governmental  
Entities (as defined in Section 1.1 hereof).

WHEREAS, the Constituent Companies intend that  
the Merger qualify, for federal income tax purposes, as a  
reorganization under Section 368(a)(1)(A) of the Code (as  
hereinafter defined).

WHEREAS, on August 16, 1995, the parties hereto  
signed the original Agreement and Plan of Merger and such

parties desire to amend and restate such Agreement as of such date.

WHEREAS, this Amended and Restated Agreement and Plan of Merger is being executed on June 7, 1996, as of August 16, 1995.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements set forth herein, MetLife and TNE hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. When used in this Agreement, the following words or phrases have the following meanings:

"Additional MetLife SAP Statements" shall have the meaning set forth in Section 5.4 hereof.

"Additional TNE GAAP Statements" shall have the meaning set forth in Section 4.6 hereof.

"Additional TNE SAP Statements" shall have the meaning set forth in Section 4.5 hereof.

"Advisers Act" shall mean the Investment Advisers Act of 1940, as amended, and the rules and regulations of the SEC promulgated thereunder.

"Affiliate" shall mean a Person that directly, or indirectly through one or more intermediaries, con-

trols, is controlled by or is under common control with another Person or beneficially owns or has the power to vote or direct the vote of 25% or more of the voting stock (or of any other form of general partnership, limited partnership or voting equity interest in the case of a Person that is not a corporation) of such other Person. For purposes of this definition, "control", including the terms "controlling" and "controlled", means the power to direct the management and policies of a Person, directly or indirectly, whether through the ownership of voting securities, by contract or credit arrangement, as trustee, partner or executor or otherwise. Notwithstanding the foregoing, CGM shall not be deemed to be an Affiliate of TNE.

"Affiliated Person" shall have the meaning set forth in Section 2(a)(3) of the Investment Company Act.

"Agreement" shall mean this Amended and Restated Agreement and Plan of Merger, including all Exhibits.

"Annual Statements" shall mean the annual statements filed pursuant to state insurance Laws, in conformity with SAP, in an insurer's domiciliary state.

"Assets" shall mean all rights, titles, franchises and interests in and to every species of property, real, personal and mixed, and chooses in action thereunto

belonging, including, but not limited to, Investment Assets, Intellectual Property, Contracts, Licenses, privileges and all other assets whatsoever, tangible or intangible, including, but not limited to, with respect to an insurer, assets held in any separate account.

"Associated Person" shall mean (1) with respect to a registered investment adviser, a "person associated with" such adviser as defined in Section 202(a)(17) of the Advisers Act and (2) with respect to a registered broker or dealer, a "person associated with" such broker or dealer as defined in Section 3(a)(18) of the Exchange Act.

"Business" shall mean, as to a Person, the business, operations, activities and affairs of such Person.

"CERCLIS" shall mean the Comprehensive Environmental Response, Compensation, and Liability Information System.

"CGM" shall mean Capital Growth Management Limited Partnership, a Massachusetts limited partnership in which NEIC has a limited partnership interest as described in Section 4.17(o) hereof.

"CGM LP Units" shall have the meaning set forth in Section 4.17(o) hereof.

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Combined No-Action Letter" shall have the meaning set forth in Section 3.2 hereof.

"Computer Software" shall mean any and all computer software consisting of sets of statements or instructions to be used, directly or indirectly, in a computer, including, but not limited to, the following, where applicable: (i) all source code, object code and natural language code therefor and all component modules thereof, (ii) all versions thereof, (iii) all screen displays and designs thereof and (iv) all user, technical, training and other documentation relating to any of the foregoing.

"Condition" shall mean, as to a Person, the financial condition, Business, results of operations (which, with respect to an insurer, shall mean its net gain from operations before payment of dividends to policyholders and federal income taxes), prospects and/or properties or other Assets of such Person.

"Confidentiality Agreement" shall mean the letter agreement, dated January 10, 1995, between MetLife and TNE.

"Consent or Filing" shall have the meaning set forth in Section 4.4(b)(vii) hereof.

"Constituent Companies" shall have the meaning set forth in the preamble to this Agreement.

"Contract" shall mean a contract, agreement, commitment, indenture, note, bond, mortgage, license, lease, assignment, arrangement or understanding, whether written or oral, including, but not limited to, an Insurance Contract or an Investment Advisory Related Agreement.

"Copyrights" shall have the meaning set forth in the definition of Intellectual Property.

"Covered General Account Liability" shall mean any Liability which arises out of the operation of a TNE Insurer's general account or for which a TNE Insurer's general account is otherwise expressly responsible pursuant to any Contract.

"Covered Separate Account Liability" shall mean any Liability (i) which is incurred by any separate account of any TNE Insurer prior to the date hereof, (ii) which arises in connection with any TNE Real Estate Joint Venture that is a Subsidiary of such TNE Insurer, and (iii) which pertains to an Environmental Claim or with

respect to any other Liability of which TNE or any TNE Subsidiary has Knowledge.

"Custodian/Transfer Agent Agreements" shall have the meaning set forth in the definition of Investment Advisory Related Agreement.

"Distribution and Selling Agreements" shall have the meaning set forth in the definition of Investment Advisory Related Agreement.

"Effective Time" shall have the meaning set forth in Section 2.2 hereof.

"Environmental Claim" shall mean any written notice or, to the Knowledge of TNE or of any of the TNE Subsidiaries, any oral notice received by TNE, a TNE Subsidiary or a TNE Joint Venture from a Person alleging actual or potential Liability (including, but not limited to, potential Liability for any investigatory cost, cleanup cost, governmental response cost, natural resources damage, property damage, personal injury or penalty) arising out of, based on or resulting from (a) the presence, transport, disposal, discharge, or release, of any Hazardous Substance at any location, whether or not owned by TNE, a TNE Subsidiary or a TNE Joint Venture or (b) circumstances forming the basis of any violation, or alleged violation, of any Environmental Law.



"Environmental Laws" shall mean all Laws and administrative or judicial interpretations thereof, relating to pollution or protection of human health or the environment (including, but not limited to, ambient air, surface water, ground water, land surface or subsurface strata), including, but not limited to, Laws relating to emissions, discharges, releases or threatened releases of Hazardous Substances, or otherwise relating to the manufacture, processing, distribution, use, existence, treatment, storage, disposal, transport, recycling, reporting or handling of Hazardous Substances.

"ERISA" shall have the meaning set forth in Section 4.13(a) hereof.

"ERISA Affiliate" shall have the meaning set forth in Section 4.13(a) hereof.

"ERISA Plans" shall have the meaning set forth in Section 4.13(a) hereof.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

"Excluded Properties" shall have the meaning set forth in Section 4.15(a) hereof.

"Exeter" shall have the meaning set forth in Section 4.10(r) hereof.

"Financial Statements" shall mean balance sheets, statements of income and statements of cash flows, including, but not limited to, all notes, schedules, exhibits and other attachments thereto, whether consolidated, combined or separate or audited or unaudited.

"GAAP" shall mean generally accepted accounting principles applied on a consistent basis.

"GAAP Financial Statements" shall mean Financial Statements prepared in accordance with GAAP.

"Governing Advisory Authorities" shall have the meaning set forth in Section 4.17(d) hereof.

"Governmental Approvals" shall mean the Consents or Filings identified or described in Section 4.4(b) of the TNE Disclosure Schedule or Section 5.3(b) of the MetLife Disclosure Schedule.

"Governmental Entity" shall mean any government, any state or other political subdivision thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including the SEC or any other government authority, agency, department, board, commission or instrumentality of the United States, any foreign government, any state of the United States or any political

subdivision thereof, and any court, tribunal or arbitrator(s) of competent jurisdiction, and any governmental or non-governmental self-regulatory organization, agency or authority (including, but not limited to, the NASD, the Commodity Futures Trading Commission, the National Futures Association and the Investment Management Regulatory Organisation Limited).

"Ground Leased Properties" shall have the meaning set forth in Section 4.14(a)(iii)(D) hereof.

"Hazardous Substances" shall mean chemicals, pollutants, contaminants, hazardous wastes, toxic or hazardous substances regulated under any Environmental Law, including, but not limited to, asbestos or asbestos-containing materials, polychlorinated biphenyls, pesticides and oils, petroleum and petroleum products as those terms are defined in the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. §§ 300.1 et seq. and other Environmental Laws.

"HSR Act" shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

"Indemnitee" shall have the meaning set forth in Section 6.11 hereof.

"Insurance Contract" shall mean any Contract of insurance, including, but not limited to, insurance contracts (as defined in Section 1101 of the New York Insurance Law or Section 2 of the Massachusetts Insurance Law, as the case may be), reinsurance Contracts, and funding agreements (as defined in Section 3222 of the New York Insurance Law).

"Insurance License" shall mean a License granted by a Governmental Entity to transact an insurance or reinsurance business.

"Intellectual Property" shall mean all domestic and foreign registered, unregistered, and pending (i) marks, names, trade names, trade dress, trademarks, service marks, assumed names and logos (collectively, the "Trademarks"), trade secrets, copyrights (including, but not limited to, those in databases and Computer Software, and all embodiments or fixations thereof) (collectively, the "Copyrights"), patents (the "Patents"), Computer Software, inventions, processes, protected formulae, know-how, concepts, ideas, designs, as well as related systems, data files, documentation, manuals, business plans, strategies, information, customer lists, policy forms, training materials, underwriting manuals and all other intellectual property and all applications, regis-

trations and grants therefor and (ii) all licenses and distribution and other agreements relating to any of the foregoing.

"Investment Advisory Contracts" shall have the meaning set forth in the definition of Investment Advisory Related Agreements.

"Investment Advisory Related Agreements" shall mean all agreements and arrangements of the following types, to which any TNE Asset Management Company is a party or by which it or its respective properties are bound or affected and which are currently actively in effect, as amended, supplemented, waived or otherwise modified: (i) written agreements and arrangements for the performance of investment advisory, investment sub-advisory or investment management services with respect to securities, real estate, commodities, currencies or any other asset class for clients or on behalf of third parties ("Investment Advisory Contracts"); (ii) written agreements and arrangements for the distribution of shares of each TNE Group Fund or funds underlying variable annuities, variable life insurance or other similar products or the maintenance of shareholder accounts for any of the foregoing products ("Distribution and Selling Agreements") or the marketing of investment advisory or

investment management services or the maintenance of accounts for such services ("Solicitation Agreements"); (iii) written trust agreements, custody arrangements, transfer agent agreements, fund administration agreements, and similar services agreements with respect to any of the foregoing ("Custodian/Transfer Agent Agreements"); (iv) all other written agreements and arrangements of a similar nature that are material to the Condition of any TNE Material Asset Management Company or of TNE or of TNE and the TNE Subsidiaries taken as a whole and (v) all oral Contracts relating to or with respect to any of the foregoing of which TNE or any of the TNE Subsidiaries have Knowledge.

"Investment Assets" shall mean bonds, notes, debentures, mortgage loans, collateral loans and all other instruments of indebtedness, stocks, partnership or joint venture interests and all other equity interests (including, but not limited to, equity interests in Subsidiaries or other Affiliates), real estate and leasehold and other interests therein, certificates issued by or interests in trusts, cash on hand and on deposit, personal property and interests therein and all other assets acquired for investment purposes.

"Investment Company Act" shall mean the Investment Company Act of 1940, as amended, and the rules and regulations of the SEC promulgated thereunder.

"Investment Company Advisory Related Agreement" shall mean an Investment Advisory Related Agreement relating to any TNE Group Fund.

"IRS" shall mean the Internal Revenue Service or any successor agency.

"Knowledge" shall have the meaning set forth in Section 9.8 hereof.

"Law" shall mean common law or any law, ordinance, rule or regulation enacted or promulgated, or Order issued or rendered, by any Governmental Entity.

"Liability" shall mean a liability, obligation, claim or cause of action (of any kind or nature whatsoever, whether absolute, accrued, contingent or other, and whether known or unknown), including, but not limited to, any liability, obligation, claim or cause of action arising pursuant to or as a result of a Contract.

"License" shall mean a license, certificate of authority, permit or other authorization to transact an activity or business, whether granted by a Governmental Entity or by any other Person.

"Lien" shall mean a lien, mortgage, deed of trust, deed to secure debt, pledge, assessment, security interest, lease, sublease, charge, claim, levy or other encumbrance of any kind.

"Losses" shall mean all losses, claims, damages, costs, expenses, liabilities and judgments, including, but not limited to, court costs and attorneys' fees.

"Massachusetts Commissioner" shall mean the Commissioner of Insurance of the Commonwealth of Massachusetts.

"Massachusetts Insurance Law" shall mean Chapter 175 of the General Laws of the Commonwealth of Massachusetts, as amended, and the rules and regulations promulgated thereunder.

"Meeting Notices" shall have the meaning set forth in Section 3.1(b) hereof.

"Member" shall mean, as to MetLife, each Policyholder of MetLife entitled to vote upon the Agreement as provided in Section 7104 of the New York Insurance Law, and, as to TNE, each Person entitled to vote upon the Agreement as provided in Section 19B of the Massachusetts Insurance Law.

"Merger" shall have the meaning set forth in the preamble to this Agreement.



"MetLife" shall have the meaning set forth in the preamble to this Agreement.

"MetLife Disclosure Schedule" shall mean the disclosure schedule, dated August 16, 1995, previously delivered by MetLife to TNE.

"MetLife GAAP Financial Statements" shall have the meaning set forth in Section 5.5 hereof.

"MetLife Group Fund" shall mean each investment company (as defined in the Investment Company Act without regard to the exclusion provided by Section 3(c)(1) thereof) and each insurance company separate account for which or for any series of which any MetLife Affiliate acts as investment adviser or manager (including as subadviser or submanager), or for which MetLife serves as depositor whether or not registered with the SEC and whether or not organized in the U.S. or any state thereof.

"MetLife Insurer" shall mean MetLife and each MetLife Subsidiary that is authorized to transact an insurance or reinsurance business.

"MetLife Subsidiaries" shall mean State Street Research & Management Company, MetLife Funding, Inc., MetLife Capital Corporation, State Street Research In-

vestment Services, Inc. and Metropolitan Property and Casualty Insurance Company.

"NASD" shall mean the National Association of Securities Dealers, Inc. or any successor entity.

"NEIC" shall mean New England Investment Companies, L.P., a Delaware limited partnership.

"NEIC Entities" shall mean NEIC, NEIC, Inc. and all of the Subsidiaries of NEIC.

"NEIC GP Units" shall have the meaning set forth in Section 4.2 hereof.

"NEIC, Inc." shall mean New England Investment Companies, Inc., a Massachusetts corporation and the general partner of NEIC.

"NEIC LP Units" shall have the meaning set forth in Section 4.2 hereof.

"NEIC Units" shall have the meaning set forth in Section 4.2 hereof.

"NELICO" shall mean NEVLICO after such time as NEVLICO shall be redomiciled to Massachusetts and its name changed to New England Life Insurance Company.

"NEVLICO" shall mean New England Variable Life Insurance Company, a Delaware insurance corporation.

"New York Insurance Law" shall mean Chapter 27 of the Consolidated Laws of the State of New York, as

amended, and the rules and regulations promulgated thereunder.

"New York Office" shall mean the office of the clerk of New York County, State of New York.

"New York Superintendent" shall mean the Superintendent of Insurance of the State of New York.

"NPL" shall mean the National Priority List.

"NYSE" shall mean The New York Stock Exchange, Inc. or any successor entity.

"Order" shall mean an order, writ, ruling, judgment, directive, injunction or decree of any arbitrator or Governmental Entity.

"Patents" shall have the meaning set forth in the definition of Intellectual Property.

"Payment Default" shall have the meaning set forth in Section 4.14(a)(ii) hereof.

"PBGC" shall mean the Pension Benefit Guaranty Corporation or any successor entity.

"Permits" shall have the meaning set forth in Section 4.14(a)(iii)(F)(6) hereof.

"Permitted Liens" shall mean, as to any Person, (a) Liens for Taxes, assessments and governmental charges or levies not yet due and payable; (b) Liens imposed by Law, such as materialmen's, mechanics', carriers',

workmen's and repairmen's Liens and other similar Liens arising in the ordinary course of business securing obligations that (i) are not overdue for a period of more than 30 days or (ii) are being contested in good faith (and for which adequate reserves have been provided); (c) Liens related to deposits to secure policyholder obligations as required by the insurance departments of the various states; (d) pledges or deposits to secure obligations under workers' compensation laws or similar legislation or to secure public or statutory obligations; (e) Liens expressly disclosed in the notes to the GAAP Financial Statements or SAP Statements of such Person; (f) restrictions on transfer imposed by federal and state securities laws with respect to unregistered securities subject thereto; (g) Liens arising out of judgments or awards with respect to which an appeal or proceeding for review is being prosecuted in good faith (and for which adequate reserves have been provided); and (h) to the extent the same do not (x) render title to the property encumbered thereby unmarketable and (y) individually or in the aggregate, materially adversely affect the value or use of such property for its current purposes, or with respect to vacant land, its anticipated purposes: (i) survey exceptions, (ii) reciprocal easement agreements,

(iii) other customary non-monetary encumbrances on title to real property and (iv) such other liens, charges and encumbrances on real property.

"Person" shall mean an individual, corporation, partnership, association, joint stock company, limited liability company, Governmental Entity, business trust, unincorporated organization or other legal entity.

"Plans" shall have the meaning set forth in Section 4.13(a) hereof.

"Policyholder" shall have the meaning set forth in Section 4210(a)(3)(A) of the New York Insurance Law.

"Proceedings" shall mean actions, suits, hearings, claims, investigations (of which the Person whose Knowledge is the subject of the representation or warranty has Knowledge) and other similar proceedings.

"Prospectus" shall have the meaning set forth in Section 4.17(m) hereof.

"Proxy Statement" shall have the meaning set forth in Section 3.1(a) hereof.

"Quarterly Statements" shall mean the quarterly statements filed pursuant to state insurance Laws, in conformity with SAP.

"Reorganization Proposal" shall have the meaning set forth in Section 6.13 hereof.

"Ruling Request" shall have the meaning set forth in Section 6.4(b) hereof.

"SAP" shall mean statutory accounting practices required or permitted by applicable insurance Governmental Entities applied on a consistent basis.

"SAP Statements" shall mean Annual Statements and Quarterly Statements.

"SEC" shall mean the United States Securities and Exchange Commission or any successor agency.

"Securities Act" shall mean the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

"Solicitation Agreements" shall have the meaning set forth in the definition of Investment Advisory Related Agreements.

"Staff" shall have the meaning set forth in Section 3.2 hereof.

"Statement of Operating Principles" shall mean the document concerning the operations of NELICO and NEIC dated May 15, 1996 jointly prepared by TNE and MetLife.

"Subadvised Fund" shall mean any TNE Group Fund with respect to which no TNE Subsidiary has any relationship other than that of a subadviser or submanager.

"Subsidiary" of a Person shall mean an Affiliate of such Person fifty percent (50%) or more of the voting stock (or of any other form of general partnership, limited partnership or voting equity interest in the case of a Person that is not a corporation) of which is beneficially owned by the Person directly or indirectly through one or more other Persons. Notwithstanding the foregoing, CGM shall not be deemed to be a Subsidiary of TNE.

"Surviving Company" shall have the meaning set forth in Section 2.1 hereof.

"Taking" shall mean a taking or voluntary conveyance of all or part of any real property, or any interest therein or right accruing thereto or use thereof, as the result of or in settlement of, any condemnation or other eminent domain proceeding, whether or not the same shall have actually been commenced.

"Taxes" shall mean all income, gross income, gross receipts, estimated, premium, sales, use, transfer, franchise, profits, withholding, payroll, employment, disability, excise, severance, ad valorem, property and windfall profits taxes, and all other taxes or similar charges of any kind whatsoever thereon or applicable thereto, together with any interest and any penalties,

additions to tax or additional amounts imposed with respect to any of the foregoing, or in respect of a failure to comply with any requirement relating to any Tax Return, in each case imposed by any taxing authority (domestic or foreign) upon MetLife or any MetLife Subsidiary or TNE or any TNE Subsidiary, as the case may be, including, but not limited to, all amounts imposed as a result of being a member of an affiliated or combined group.

"Tax Returns" or "Returns" shall mean all Tax returns, declarations, reports, estimates, information returns and statements required to be filed or provided to any Person under federal, state, local or foreign Laws.

"TNE" shall have the meaning set forth in the preamble to this Agreement.

"TNE Asset Management Companies" shall have the meaning set forth in Section 4.1(c)(i) hereof.

"TNE Audited Subsidiaries" shall mean the TNE Subsidiaries for which audited GAAP Financial Statements are provided to MetLife pursuant to Section 4.6 hereof.

"TNE Borrower Loan Documents" shall have the meaning set forth in Section 4.14(a)(iii)(C) hereof.



"TNE Broker-Dealer" shall mean each TNE Subsidiary that conducts activities of a broker or dealer, as such terms are defined in Section 3(a) of the Exchange Act.

"TNE Disclosure Schedule" shall mean the disclosure schedule, dated August 16, 1995, previously delivered by TNE to MetLife.

"TNE Filings" shall have the meaning set forth in Section 4.6 hereof.

"TNE GAAP Financial Statements" shall have the meaning set forth in Section 4.6 hereof.

"TNE Group Fund" shall have the meaning set forth in Section 4.17(c) hereof.

"TNE Group of Funds" shall have the meaning set forth in Section 4.17(c) hereof.

"TNE Insurer" shall mean TNE and each TNE Subsidiary that transacts or is authorized to transact an insurance or reinsurance business.

"TNE Investment Adviser" shall mean TNE and each TNE Subsidiary that conducts activities of an investment adviser, as such term is defined in Section 2(a)(20) of the Investment Company Act and Section 202(a)(11) of the Investment Advisers Act of 1940, as amended.

"TNE Joint Venture" shall mean any partnership or joint venture in which TNE or a TNE Subsidiary owns an interest, either direct or indirect, and in which the aggregate investment (including, but not limited to, through equity contributions, loans, guarantees or other commitments) of TNE and of the TNE Subsidiaries therein exceeds or may be required to exceed Five Million Dollars (\$5,000,000). Notwithstanding the foregoing, CGM shall not be deemed to be a TNE Joint Venture.

"TNE JV Agreements" shall mean all documents and amendments thereto establishing and governing the TNE Joint Ventures, including, but not limited to, all organizational documents.

"TNE Landlord Leases" shall have the meaning set forth in Section 4.14(a)(iii)(B) hereof.

"TNE Landlord Property" shall mean (i) real property which is leased by TNE, a TNE Subsidiary or a TNE Joint Venture, in each case to a tenant, for lease or rental payments that aggregate Five Hundred Thousand Dollars (\$500,000) or more annually and (ii) real property which is subleased by TNE, a TNE Subsidiary or a TNE Joint Venture, in each case to a subtenant, for lease or rental payments that aggregate Five Hundred Thousand Dollars (\$500,000) or more annually.

"TNE Lender Loan Documents" shall have the meaning set forth in Section 4.14(a)(iii)(E) hereof.

"TNE Material Asset Management Companies" shall mean NEIC, Copley Real Estate Advisors, Inc., Copley Advisors, Inc., Loomis, Sayles & Company, L.P., Back Bay Advisors, L.P., Reich & Tang Asset Management, L.P., Reich & Tang Distributors, L.P., New England Securities Corporation, New England Funds, L.P. and TNE Advisers, Inc. and any other TNE Asset Management Company with One Billion Dollars (\$1,000,000,000) or more under management.

"TNE Material Owned Real Property" shall mean TNE Real Property owned in fee having an admitted asset value of One Million Dollars (\$1,000,000) or more.

"TNE Real Estate Joint Venture" shall mean any TNE Subsidiary which only owns real property or only owns real property and manages such real property.

"TNE Real Property" shall mean all real property (including, but not limited to, real property held by the TNE Insurers in separate accounts) in which TNE, a TNE Subsidiary or a TNE Joint Venture owns or holds a direct or indirect interest, either wholly or in part, including, but not limited to, real property (i) owned by TNE, a TNE Subsidiary or a TNE Joint Venture in fee

(including, but not limited to, real property acquired by reason of foreclosure or a deed in lieu thereof), (ii) in which TNE, a TNE Subsidiary or a TNE Joint Venture owns or holds a leasehold interest or (iii) encumbered by a Lien granted or assigned to TNE, a TNE Subsidiary or a TNE Joint Venture; provided, however, that the TNE Real Property will not include credit tenant loans properly shown on Schedule D of the SAP Statements of TNE (this proviso shall not be applicable with respect to Sections 4.9, 4.11 and 4.15 hereof).

"TNE Subsidiaries" shall mean the Subsidiaries of TNE and, without limiting the generality of the foregoing, shall include (i) Mercadian Capital L.P. (and any Affiliate thereof as to which TNE or a TNE Subsidiary has guaranteed any obligations or owns any interest) and (ii) the NEIC Entities. References in this Agreement to Subsidiaries of TNE shall include all of the TNE Subsidiaries. Notwithstanding the foregoing, CGM shall not be deemed to be a TNE Subsidiary.

"TNE Tenant Leases" shall have the meaning set forth in Section 4.14(a)(iii)(D) hereof.

"TNE Transfer Agents" shall have the meaning set forth in Section 4.17(h) hereof.

"TNE Variable Contracts" shall have the meaning set forth in Section 3.2 hereof.

"Trademarks" shall have the meaning set forth in the definition of Intellectual Property.

"Treasury Regulations" shall mean the regulations promulgated by the U.S. Department of the Treasury pursuant to the Code.

## ARTICLE II

### THE MERGER

Section 2.1 The Merger. Upon the terms of this Agreement and subject to the satisfaction of the conditions set forth herein, at the Effective Time, TNE shall be merged with and into MetLife in accordance with the applicable provisions of the Laws of the State of New York and the Commonwealth of Massachusetts and the separate existence of TNE shall thereupon cease, and MetLife, which shall be the surviving company (hereinafter sometimes referred to as the "Surviving Company"), shall continue its corporate existence under the Laws of the State of New York under the name "Metropolitan Life Insurance Company". From and after the Effective Time, the Surviving Company shall possess all the Assets and other rights, privileges, immunities, powers and purposes of each of the Constituent Companies and shall be liable

for all of the Liabilities of the Constituent Companies, all to the full extent provided in Section 7112 of the New York Insurance Law and Section 19B of the Massachusetts Insurance Law.

Section 2.2 Effective Time. As soon as is practicable following the execution of this Agreement, the Secretary of TNE shall file with the Massachusetts Commissioner documentary evidence thereof, in such form as he may require, showing the effective date when the Merger shall become effective. As soon as is practicable after the satisfaction of the conditions set forth in Article VII hereof and on the effective date of the Merger as shown in the filing by the Massachusetts Commissioner with the Secretary of State of the Commonwealth of Massachusetts of a certificate in accordance with Section 19B of the Massachusetts Insurance Law, and no later than 21 days after the New York Superintendent has approved this Agreement (unless the New York Superintendent approves a later effective date), MetLife shall file with the New York Office a copy of this Agreement with the approval of the New York Superintendent endorsed thereon and such other documents in such form as required by, and executed and acknowledged in accordance with, the relevant provisions of the New York Insurance Law and

upon such filing with the New York Office, the Merger shall become effective (the "Effective Time"). TNE shall give MetLife reasonable advance notice of the effective date to be shown in the filing made in accordance with Section 19B of the Massachusetts Insurance Law. Upon the terms and subject to the conditions of this Agreement, the parties hereto will use all reasonable efforts to assure that the filings contemplated hereby are made, and the Effective Time is, as soon as is practicable.

Section 2.3 Charter and Bylaws of the Surviving Company. Following the Effective Time, the charter of MetLife, as in effect immediately prior to the Effective Time, shall be the charter of the Surviving Company until thereafter changed or amended as provided therein or by Law. The bylaws of MetLife, as in effect immediately prior to the Effective Time, shall be the bylaws of the Surviving Company until thereafter changed or amended as provided therein or by Law. Copies of MetLife's charter and bylaws are attached hereto as Exhibit A.

Section 2.4 Board of Directors and Officers. Except as set forth in the following sentence, the directors of MetLife immediately prior to the Effective Time shall be the directors of the Surviving Company immedi-

ately following the Effective Time, each of such directors to hold office, subject to the applicable provisions of the charter and bylaws of the Surviving Company, until his or her successor is duly elected and qualified, or his or her earlier death, resignation or removal. Promptly following the Effective Time, two individuals who are presently directors of TNE and who are not officers, employees or otherwise affiliated with TNE will be appointed to the Board of Directors of the Surviving Company. The officers of MetLife immediately prior to the Effective Time shall be the officers of the Surviving Company at and immediately following the Effective Time, each of such officers to hold their respective office, subject to the applicable provisions of the charter and bylaws of the Surviving Company, until his or her successor is duly elected and qualified, or his or her earlier death, resignation or removal.

### ARTICLE III

#### RELATED MATTERS

Section 3.1 Member Approvals. (a) Each of MetLife and TNE shall take all actions necessary in accordance with applicable Law and its charter and bylaws to convene a meeting of its Members as promptly as practicable to consider and vote upon this Agreement.



MetLife and TNE shall jointly determine a mutually satisfactory means of satisfying the notice, meeting and other Member approval requirements of applicable Law. Subject to their duties under applicable Law, each of the Board of Directors of MetLife and the Board of Directors of TNE shall recommend that the Members of its respective company vote in favor of this Agreement and each of MetLife and TNE shall use its best efforts to solicit proxies or ballots, as the case may be, from its Members in favor of this Agreement and shall take all other actions reasonably necessary or advisable to secure the votes of its Members which are required in order to approve this Agreement and effect the Merger including, but not limited to, the preparation of a proxy statement (the "Proxy Statement"), if applicable, to provide information to their Members regarding the Merger and solicit their votes.

(b) MetLife and TNE shall jointly and promptly prepare, and each of MetLife and TNE shall use its best efforts to have the New York Superintendent and the Massachusetts Commissioner approve, their respective notices of meetings (the "Meeting Notices") setting forth the time, place and purpose of the Members' meetings referred to in Section 3.1(a) hereof, which Meeting

Notices shall include a copy of this Agreement, if required, or a summary thereof. Promptly after receipt of approval by the New York Superintendent and the Massachusetts Commissioner of the Meeting Notice, (i) MetLife shall promptly comply with the provisions of Section 7104 of the New York Insurance Law, (ii) TNE shall promptly comply with the provisions of Section 19B of the Massachusetts Insurance Law, and (iii) both parties shall promptly comply with all other applicable Laws with respect to the publication or mailing to their respective Members of the applicable Meeting Notice.

Section 3.2 Combined No-Action Letter.

MetLife and TNE shall jointly file a no-action request letter with the Office of Insurance Products of the Division of Investment Management of the SEC (the "Combined No-Action Letter"). The Combined No-Action Letter shall request that the staff of the Office of Insurance Products of the Division of Investment Management of the SEC (the "Staff") advise MetLife and TNE that it would not recommend that the SEC take any enforcement action against MetLife and TNE or their Subsidiaries under Section 5 of, and Rule 145 under, the Securities Act and under Sections 8 and 11 of the Investment Company Act if, following the consummation of the Merger, the Surviving

Company and its respective Subsidiaries continue to sell variable annuity or variable life insurance contracts covered by existing registration statements without filing new registration statements under the Securities Act covering the sale of such securities. The Combined No-Action Letter shall also request that the Staff advise MetLife and TNE that it would not recommend any enforcement action if, after the consummation of the Merger, the Surviving Company continues to rely on prior exemptive orders granted to TNE or its Subsidiaries from certain provisions of the Investment Company Act for certain of their separate accounts. The Combined No-Action Letter shall include, to the extent necessary, the following MetLife and TNE representations: (1) a post-effective amendment to each registration statement or a newly filed registration statement, as appropriate, for each of the registered variable annuity and variable life insurance contracts of TNE and any applicable TNE Subsidiary (the "TNE Variable Contracts") will be filed under the Securities Act in a timely manner to ensure that such amendment or registration statement will become effective on or before the Effective Time; (2) the owners of the TNE Variable Contracts will receive a prospectus that reflects the Surviving Company's sponsorship of the sepa-

rate accounts; and (3) post-effective amendments under the Investment Company Act will be filed to reflect the change of sponsorship of TNE's separate accounts and the post-merger nature of the Surviving Company.

Section 3.3 NELICO AND NEIC Boards of Directors. Immediately following the Merger, MetLife shall take such action as is necessary in order that (i) the Board of Directors of NELICO shall initially be comprised of 14 members, 8 of whom shall be persons who are currently serving as outside directors of TNE, 1 of whom shall be the Chairman of the Board of NELICO and the remaining 5 of whom shall be designated by MetLife, (ii) the current president of NEVLICO will become the Chief Executive Officer of NELICO and (iii) the Board of Directors of the general partner of NEIC shall be comprised of an odd number of directors, one of whom shall be the Chief Executive Officer of NEIC, a simple majority of whom shall be designated by MetLife, and the remainder of whom shall be independent of MetLife.

#### ARTICLE IV

##### REPRESENTATIONS AND WARRANTIES OF TNE

TNE represents and warrants to MetLife as follows:

Section 4.1 Organization and Qualification.

(a) TNE is a mutual life insurance company duly organized, validly existing and in good standing under the Laws of the Commonwealth of Massachusetts and has full corporate power, authority and legal right to conduct its Business as it is currently being conducted. Each of the TNE Subsidiaries is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or formation and has full power, authority and legal right to conduct its Business as it is currently being conducted. Each of TNE and of the TNE Subsidiaries is duly qualified to do business, and is in good standing, in the respective jurisdictions where the character of its Assets owned or leased or the nature of its Business makes such qualification necessary, except for failures to be so qualified or in good standing which would not, individually or in the aggregate, have a material adverse effect on the Condition of TNE or of TNE and the TNE Subsidiaries taken as a whole. The TNE Subsidiaries listed in Section 4.1(a) of the TNE Disclosure Schedule are the only TNE Subsidiaries which are, individually or in the aggregate, material to the Condition of TNE or of TNE and the TNE Subsidiaries taken as a whole.

(b) Each TNE Insurer is listed in Section 4.1(b) of the TNE Disclosure Schedule. Each TNE Insurer

possesses an Insurance License in each jurisdiction in which such TNE Insurer is required to possess an Insurance License. All such Insurance Licenses, including, but not limited to, authorizations to transact reinsurance, are listed and described in Section 4.1(b) of the TNE Disclosure Schedule and are in full force and effect without amendment, limitation or restriction, other than as described in Section 4.1(b) of the TNE Disclosure Schedule, and neither TNE nor any TNE Insurer has knowledge of any event, inquiry or Proceeding which could reasonably be expected to lead to the revocation, amendment, failure to renew, limitation, suspension or restriction of any such License.

(c) (i) Each Subsidiary and other Affiliate of TNE which is engaged in the business of serving as an investment adviser, custodian, transfer agent, broker-dealer or fund administrator is listed in Section 4.1(c)(i) of the TNE Disclosure Schedule (collectively, the "TNE Asset Management Companies"), along with a brief description of the nature of each TNE Asset Management Company's Business and a listing of all Licenses it possesses which are material to its Business. TNE is not required to be registered as a broker-dealer with the SEC or in any jurisdiction.

(c) (ii) Each TNE Asset Management Company is a corporation, partnership or trust duly organized, validly existing and in good standing under the laws of such entity's jurisdiction of organization. Each TNE Asset Management Company has the requisite corporate, partnership or trust power and authority, as the case may be, to carry on its Business as now conducted, except for such powers and authorities for which the failure to have such power and authority do not, individually or in the aggregate, have a material adverse effect on the Condition of any TNE Material Asset Management Company or of TNE or of TNE and the TNE Subsidiaries taken as a whole.

(c) (iii) Each TNE Asset Management Company is duly qualified or licensed to do business and is in good standing in each of the jurisdictions specified in Section 4.1(c)(iii) of the TNE Disclosure Schedule, which includes each jurisdiction in which the nature of its business or the properties owned or leased by it makes such qualification or licensing necessary, except for such jurisdictions where the failure to so qualify or be licensed, individually or in the aggregate, does not have and would not have a material adverse effect on the Condition of any TNE Material Asset Management Company, of TNE or of TNE and the TNE Subsidiaries taken as a whole. TNE has delivered or will deliver prior to the

Effective Time to MetLife true, complete and correct copies of the certificates of incorporation, by-laws and other organizational documents of each TNE Asset Management Company in effect on the date hereof.

Section 4.2 Capitalization of TNE Subsidiaries. All of the outstanding shares of capital stock (or of any other form of equity interest in the case of a TNE Subsidiary that is not a corporation, including, but not limited to, all of the outstanding units of general partnership interest in NEIC ("NEIC GP Units") and limited partnership interest in NEIC ("NEIC LP Units" and, together with NEIC GP Units, the "NEIC Units")) of each of the TNE Subsidiaries have been validly issued and are fully paid and, except in the case of partnership interests, nonassessable and, except as set forth in Section 4.2 of the TNE Disclosure Schedule, are owned by either TNE or another of the TNE Subsidiaries, free and clear of all Liens. Except as set forth in Section 4.2 of the TNE Disclosure Schedule, there are no outstanding subscriptions, options, warrants, calls, rights, convertible securities, obligations to make capital contributions or advances, or voting trust arrangements, stockholders' agreements or other agreements, commitments or understandings of any character relating to the issued or unissued capital stock (or of any other form of equity



interest in the case of a TNE Subsidiary that is not a corporation, including any issued or unissued NEIC Units) of any of the TNE Subsidiaries or securities convertible into, exchangeable for or evidencing the right to subscribe for any shares of such capital stock (or of any other form of equity interest in the case of a TNE Subsidiary that is not a corporation, including, but not limited to, any NEIC Units), or otherwise obligating TNE or any such TNE Subsidiary to issue, transfer or sell any such capital stock (or any such other form of equity interest in the case of a TNE Subsidiary that is not a corporation, including, but not limited to, any NEIC Units) or other securities. The name, jurisdiction of incorporation or organization and percentages of outstanding capital stock (or of any other form of equity interest in the case of a TNE Subsidiary that is not a corporation) owned, directly or indirectly, by TNE, with respect to each TNE Subsidiary and the amount and percentage of outstanding NEIC GP Units and NEIC LP Units owned, directly or indirectly, by NEIC, Inc. and TNE, respectively, with respect to NEIC are set forth in Section 4.2 of the TNE Disclosure Schedule. Section 4.2 of the TNE Disclosure Schedule sets forth all of the direct voting equity interests in any Person (other than other TNE Subsidiaries) owned by TNE or any TNE Subsidiary

where such interest represents more than ten (10%) of the outstanding voting equity in such Person, other than any such interests having an admitted asset value of less than One Million Dollars (\$1,000,000).

Section 4.3 Authority Relative to this Agreement.

(a) TNE has full power, authority and legal right to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly approved and authorized by the Board of Directors of TNE. Except for the approval of this Agreement by the Members of TNE, no other corporate proceedings on the part of TNE are necessary to authorize this Agreement and the transactions contemplated hereby. The affirmative vote of two-thirds of all the votes cast by Members of TNE who are present and voting at the meeting called pursuant to Section 3.1(a) hereof is the only vote of Members of TNE necessary to approve this Agreement and the transactions contemplated hereby.

(b) This Agreement has been duly and validly executed and delivered by TNE and (assuming this Agreement is a legal, valid and binding obligation of MetLife)

constitutes a legal, valid and binding agreement of TNE enforceable against TNE in accordance with its terms.

Section 4.4 No Violation.

(a) Except as set forth in Section 4.4(a) of the TNE Disclosure Schedule, the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby will not (i) constitute a breach or violation of or default under the charter or the bylaws (or similar organizational documents) of TNE, any of the TNE Subsidiaries or any of the TNE Joint Ventures, (ii) violate, conflict with, or result in a breach of any provisions of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, or accelerate the performance required by, or result in a right of termination or acceleration under, or result in the creation of any Lien upon any of the Assets of TNE, of any of the TNE Subsidiaries or of any of the TNE Joint Ventures under, any of the terms, conditions or provisions of any Contract to which TNE, any such TNE Subsidiary or any such TNE Joint Venture is a party or to which it or any of its Assets may be subject or (iii) constitute a breach or violation of or default under any Law or License to which TNE, any of the TNE Subsidiaries or any of the TNE Joint Ventures is subject, other than,

in the case of clauses (ii) and (iii), events or other matters that would not individually or in the aggregate have a material adverse effect on the Condition of TNE or of TNE and the TNE Subsidiaries taken as a whole.

(b) Except for (i) the filing of this Agreement with and the approval of such by the Massachusetts Commissioner under the Massachusetts Insurance Law and such other applications, registrations, declarations, filings, authorizations, Orders, consents and approvals as may be required under the Laws of other jurisdictions listed in Section 4.4(b) of the TNE Disclosure Schedule, (ii) the approval of the Meeting Notice by the Massachusetts Commissioner as contemplated by Section 3.1(b) hereof, (iii) consents, approvals and notices contemplated by Sections 6.7 and 6.8 hereof and Section 4.4(b) of the TNE Disclosure Schedule that are required under the Investment Company Act and the Advisers Act, (iv) the approval of this Agreement by the Members of TNE as contemplated by Section 3.1(a) hereof, (v) consents, authorizations, approvals, filings, notices or exemptions in connection with compliance with the applicable provisions of state and federal securities Laws (including, but not limited to, an affirmative response to the filing of the Combined SEC No-Action Letter) relating to the regulation of broker-dealers, investment companies and investment

advisers and the rules and regulations of the NASD and the NYSE, (vi) receipt of the private letter ruling or tax opinion referred to in Section 7.1(g) hereof and (vii) the filings required under the HSR Act and the expiration or other termination of any waiting period applicable to the Merger under such act, no consent, approval, notice, Order or authorization of, or registration, application, declaration or filing with, any Person (collectively, "Consent or Filing") is required with respect to TNE, any TNE Subsidiary, any TNE Joint Venture or any TNE Group Fund in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, except for such Consents or Filings the failure of which to make or obtain would not, individually or in the aggregate, prevent or be a material impediment to the consummation of the transactions contemplated hereby.

Section 4.5 SAP Statements. TNE has previously delivered to MetLife true, complete and correct copies of the audited SAP Statements of each TNE Insurer for each of the years ended December 31, 1992, 1993 and 1994. TNE has also furnished to MetLife true, complete and correct copies of the SAP Statements filed by or on behalf of each TNE Insurer for the three months ended March 31, 1995 and the six months ended June 30, 1995.

In addition, prior to the Effective Time TNE will have delivered to MetLife true, complete and correct copies of (i) the audited SAP Statements of TNE and NEVLICO for the year ended December 31, 1995 and (ii) the unaudited SAP Statements of TNE and NEVLICO for the quarter ended March 31, 1996 (collectively, the "Additional TNE SAP Statements"). Each of the SAP Statements was (or, in the case of the Additional TNE SAP Statements, will have been) in compliance in all material respects with applicable Law when filed, and was (or, in the case of the Additional TNE SAP Statements, will have been) prepared in accordance with SAP, and each presents fairly (or, in the case of the Additional TNE SAP Statements, will present fairly) in all material respects the separate financial condition, assets, liabilities, surplus and other funds and results of operations of the Person covered thereby as at the dates or for the periods covered thereby, in conformity with SAP, subject, in the case of unaudited interim SAP Statements, to normal year-end audit adjustments and, in the case of all unaudited SAP Statements, to the absence of interrogatories or footnote disclosure to the extent required or permitted.

Section 4.6 GAAP Statements. TNE has provided to MetLife, or will (with respect to any TNE Real Estate Joint Venture held by a separate account of TNE) provide

within 15 calendar days after the date hereof, true, complete and correct copies of the (i) audited GAAP Financial Statements for each of the TNE Audited Subsidiaries, other than the TNE Insurers, for the years ended December 31, 1992, 1993 and 1994, (ii) unaudited GAAP Financial Statements for each of the TNE Subsidiaries that do not have audited GAAP Financial Statements for the years ended December 31, 1992, 1993 and 1994, other than those TNE Subsidiaries that do not regularly prepare GAAP Financial Statements (which Subsidiaries are set forth on Section 4.6 of the TNE Disclosure Schedule, as may be amended within 15 calendar days after the date hereof with respect to any TNE Real Estate Joint Venture held by a separate account of TNE) and (iii) unaudited GAAP Financial Statements for each of the TNE Subsidiaries, other than the TNE Insurers and those TNE Subsidiaries that do not regularly prepare interim Financial Statements, for the three months ended March 31, 1995 and the six months ended June 30, 1995 (collectively, the "TNE GAAP Financial Statements"). In addition, prior to the Effective Time TNE will have delivered to MetLife true, complete and correct copies of (i) the audited GAAP Financial Statements for NEIC for the year ending December 31, 1995 and (ii) the unaudited GAAP Financial Statements for NEIC for the quarter ended March 31, 1996

(collectively, the "Additional TNE GAAP Statements"). Each of the TNE GAAP Financial Statements was (or, in the case of the Additional TNE GAAP Statements, will have been) prepared in accordance with GAAP, and each presents fairly (or, in the case of the Additional TNE GAAP Statements, will present fairly) in all material respects the financial condition, results of operations and cash flows of the Person covered thereby as at the dates or for the periods covered thereby, in conformity with GAAP, subject, in the case of the unaudited interim GAAP Financial Statements, to normal year-end audit adjustments and, in the case of all unaudited GAAP Financial Statements, to the absence of footnote disclosure to the extent required or permitted. TNE has previously made available to MetLife true, complete and correct copies of all filings made by TNE, any TNE Subsidiary or any TNE Group Fund with the SEC since December 31, 1992 (collectively, the "TNE Filings"). As of their respective dates, the TNE Filings did not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

Section 4.7 Reserves. The aggregate actuarial reserves and other actuarial amounts held in respect of



Liabilities with respect to Insurance Contracts of each TNE Insurer as established or reflected in its December 31, 1994 Annual Statement: (a) (i) were determined in accordance with generally accepted actuarial standards consistently applied, (ii) were fairly stated in accordance with sound actuarial principles and (iii) were based on actuarial assumptions that are in accordance with or more conservative than those specified in the related Insurance Contracts; (b) met the requirements of the insurance Laws of such TNE Insurer's state of domicile and all other applicable jurisdictions in all material respects; and (c) were adequate at such date (under generally accepted actuarial standards consistently applied on the basis of facts or circumstances known or which reasonably should have been known at such date) to cover the total amount of all reasonably anticipated matured and unmatured Liabilities of such TNE Insurer under all outstanding Insurance Contracts pursuant to which such TNE Insurer has any Liability. Management of TNE reasonably believes that each TNE Insurer owns Investment Assets of sufficient kind, quality and other characteristics to meet the requirements of all applicable Laws.

Section 4.8 Absence of Certain Changes or Events. Except as set forth in Section 4.8 of the TNE

Disclosure Schedule, since December 31, 1994, each of TNE and the TNE Subsidiaries has conducted its Business only in the ordinary course of business consistent with past practice and there has not occurred any change (other than changes of general application to the life insurance industry or changes in ratings) which, individually or in the aggregate, has had or may reasonably be expected to have a material adverse effect on the Condition of TNE or of TNE and the TNE Subsidiaries taken as a whole.

Section 4.9 No Undisclosed Liabilities.

Except as reflected in the Financial Statements delivered to MetLife pursuant to Sections 4.5 and 4.6 hereof (other than, with respect to any Financial Statement of a TNE Subsidiary which was provided to MetLife pursuant to Section 4.6 hereof after the date hereof, any Covered Separate Account Liability or Covered General Account Liability) or as set forth in Section 4.9 of the TNE Disclosure Schedule or as to any Liability of a TNE Real Estate Joint Venture that does not regularly prepare GAAP Financial Statements, other than a Covered Separate Account Liability or a Covered General Account Liability, neither TNE nor any of the TNE Subsidiaries has any Liabilities, other than (i) those Liabilities specifically covered by another representation or warranty made by TNE in this Agreement, (ii) those arising since the date

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of the applicable Financial Statement in the ordinary course of business consistent with past practice or (iii) those other than in the ordinary course of business consistent with past practice which may reasonably be expected, (A) individually, not to have an adverse effect of more than One Million Dollars (\$1,000,000) on the Condition of TNE or of TNE and the TNE Subsidiaries taken as a whole or (B) in the aggregate not to have an adverse effect of more than Ten Million Dollars (\$10,000,000) on the Condition of TNE or of TNE and the TNE Subsidiaries taken as a whole.

Section 4.10 Taxes and Tax Returns. TNE is the common parent of an affiliated group (within the meaning of Section 1504(a) of the Code) with respect to which an election under Section 1504(c)(2) has been in effect for all taxable years beginning with the taxable year that ended on December 31, 1993, which includes all of the TNE Subsidiaries that are "includible corporations" within the meaning of Section 1504(b) of the Code (without regard to subsection (b)(2) thereof) and TNE has filed a consolidated Tax Return for federal income tax purposes on behalf of such affiliated group for all taxable years beginning with the taxable year that ended on December 31, 1993. Except as set forth in Section 4.10 of the TNE Disclosure Schedule:

(a) all material Tax Returns required to be filed or provided to any Person by TNE or any of the TNE Subsidiaries have been timely filed (taking into account any extensions of time for filing such Tax Returns) with the appropriate Governmental Entity, or provided to the appropriate Person, and such Tax Returns were (and, as to Tax Returns not required to be filed or provided as of the date hereof, will be) true, complete and correct in all material respects, other than those Tax Returns the failure of which to be so filed or provided or to be true, complete and correct in all material respects, as the case may be, would not have a material adverse effect on the Condition of TNE or of TNE and the TNE Subsidiaries taken as a whole;

(b) each of TNE and the TNE Subsidiaries has timely paid or made adequate provision on its books and records in accordance with GAAP or SAP, as the case may be, for the payment of all Taxes due and payable for periods covered by such Tax Returns, except to the extent that the failure to so timely pay or make adequate provision would not have a material adverse effect on the Condition of TNE or of TNE and the TNE Subsidiaries taken as a whole;

(c) the accruals and reserves reflected in the audited Financial Statements of TNE and of the TNE Sub-

sidiaries for the year ended December 31, 1994 and the unaudited Financial Statements of TNE and of the TNE Subsidiaries for the six months ended June 30, 1995 are adequate to cover all Taxes that are required to be accrued through the dates therein for such Financial Statements to be in accordance with GAAP or SAP, as the case may be, except to the extent that the failure to so adequately accrue and reserve would not have a material adverse effect on the Condition of TNE or of TNE and the TNE Subsidiaries taken as a whole;

(d) there are no outstanding deficiencies, assessments or written proposals for the assessment of any amount of Taxes proposed, asserted or assessed against TNE or any of the TNE Subsidiaries, except for such Taxes the amount of which would not have a material adverse effect on the Condition of TNE or of TNE and the TNE Subsidiaries taken as a whole;

(e) TNE and each of the TNE Subsidiaries have complied (and until the Effective Time will comply) in all material respects with all applicable Laws relating to information reporting and to the withholding of Taxes (including, but not limited to, information reporting and withholding of Taxes pursuant to Sections 1441, 1442, 3402, 3405, 3406, 6041, 6045, 6047, 6049, 6050I, 6050J, 6051 and 6052 of the Code or similar provisions under any

foreign laws) and have, within the time and in the manner prescribed by Law, paid over to the proper Governmental Entities all amounts required to be so withheld and paid over under all applicable Laws the violation of which could reasonably be expected to have a material adverse effect on the Condition of TNE or of TNE and the TNE Subsidiaries taken as a whole;

(f) for all taxable years through the taxable year that ended on December 31, 1992, TNE and all TNE Subsidiaries that were life insurance companies filed separate consolidated federal income tax returns and the statute of limitations for the assessment of federal income taxes with respect to such tax returns has expired for all years through the taxable year that ended on December 31, 1983;

(g) for all taxable years through the taxable year that ended on December 31, 1992, those TNE Subsidiaries that were not life insurance companies filed separate consolidated federal income tax returns and the statute of limitations for the assessment of federal income taxes with respect to such tax returns has expired for all years through the taxable year that ended on December 31, 1990;

(h) the statute of limitations for the assessment of state, local and foreign income or premium taxes

has expired for each applicable Tax Return of TNE and any of the TNE Subsidiaries showing a liability for Taxes in excess of Five Hundred Thousand Dollars (\$500,000) or such Tax Return has been examined by the appropriate taxing authorities for the period shown on Section 4.10 of the TNE Disclosure Schedule;

(i) no federal, state, local or foreign audits or other administrative proceedings or court proceedings are presently pending with regard to any material amounts of Taxes or material Tax Returns of TNE or any of the TNE Subsidiaries;

(j) no power of attorney that is currently in force has been granted by TNE or any of the TNE Subsidiaries with respect to any matter relating to any material amount of Taxes of TNE or any of the TNE Subsidiaries;

(k) none of TNE or any of the TNE Subsidiaries is a party to any Contract or arrangement that, separately or in the aggregate, could, by reason of the transactions contemplated by this Agreement, give rise to the payment of any "excess parachute payment" within the meaning of Section 280G of the Code;

(l) none of TNE or any of the TNE Subsidiaries owns a residual interest in a real estate mortgage investment conduit, as defined in Sections 860D and 860G(a)(2) of the Code;



(m) NEIC is (and as of the Effective Time, will be) an "existing partnership" within the meaning of Section 10211(c) of the Revenue Act of 1987;

(n) each TNE Group Fund or series thereof registered under the Investment Company Act as a management company qualifies, and has qualified for each year during which it was a management company under the Investment Company Act, as a regulated investment company under Sections 851 and 852 of the Code;

(o) the investments made by any segregated asset account supporting each variable contract (within the meaning of Section 817(d) of the Code but which do not qualify as pension plan contracts under Section 818(a) of the Code) issued by TNE or any TNE Subsidiary were, for each year of the segregated asset account's existence, adequately diversified within the meaning of Treasury Regulation Section 1.817-5(b);

(p) for all tax years for which the statute of limitations has not yet expired, TNE and each of the TNE Subsidiaries have, in all material respects, computed their respective tax reserves in accordance with the requirements of Sections 807, 811, 818 and 846 of the Code (or the predecessors of such Sections), in each case as in effect with respect to the years in question;

(q) for all tax years for which the statute of limitations has not yet expired, TNE and each of the TNE Subsidiaries that filed for federal income tax purposes as a life insurance company (whether on the consolidated federal income tax return of the TNE consolidated group or otherwise) has qualified as a life insurance company under Section 816 of the Code;

(r) TNE has filed a timely and valid election under Section 953(d) of the Code to treat Exeter Reassurance Company Ltd. ("Exeter") as a domestic corporation for the tax year ended December 31, 1994, and Exeter will be an includible corporation and will be included as a member of the TNE consolidated group for such year in accordance with Section 1504(c)(2) of the Code and Section 1.1502-47 of the Treasury Regulations;

(s) each life insurance contract issued by TNE or any TNE Subsidiary (whether developed by, administered by, or reinsured with any unrelated third party) qualifies as a life insurance contract under the federal income tax law as in effect as of the date of the issuance of such contract (or material modification thereof), other than those life insurance contracts the failure of which to so qualify would not have a material adverse effect on the Condition of TNE or of TNE and the TNE Subsidiaries taken as a whole;

(t) each annuity issued by TNE or any TNE Subsidiary (whether developed by, administered by, or reinsured with any unrelated third party), other than certain deferred annuities issued to non-natural persons to the extent affected by the provisions of Section 72(u) of the Code, qualifies as an annuity under the federal income tax law as in effect as of the date of issuance of such annuity (or material modification thereof), other than those annuities the failure of which to so qualify would not have a material adverse effect on the Condition of TNE or of TNE and the TNE Subsidiaries taken as a whole;

(u) each annuity contract issued by TNE or any TNE Subsidiary (whether developed by, administered by, or reinsured with any unrelated third party) which is provided under or connected with a plan described in Section 401(a), 403(a) or 403(b) of the Code or which is an individual retirement annuity or provided under an individual retirement account or annuity, satisfies the federal income tax laws applicable to such annuity contract, other than those contracts, annuities or accounts the failure of which to satisfy such laws would not have a material adverse effect on the Condition of TNE or of TNE and the TNE Subsidiaries taken as a whole;

(v) there are no "hold harmless", tax sharing or indemnification agreements respecting the Tax qualifi-

cation or treatment of any product or plan sold, issued or administered by TNE or any TNE Subsidiary (whether developed by or reinsured with any unrelated third party), other than certain indemnity agreements running to various school districts and other municipal bodies in connection with tax sheltered retirement annuities issued by TNE or any of its Subsidiaries to school teachers and other municipal employees, which agreements have been issued in the ordinary course of business and are consistent with industry practice, that could give rise to a Liability that would have a material adverse effect on the Condition of TNE or of TNE and the TNE Subsidiaries taken as a whole; and

(w) to the Knowledge of each of TNE or of any of the TNE Subsidiaries, there are no currently pending federal, state, local or foreign audits or other administrative or judicial proceedings with regard to the Tax treatment of any product or plan sold, issued or administered by TNE or any TNE Subsidiary (whether developed by or reinsured with any unrelated third party), that could give rise to a Liability that would have a material adverse effect on the Condition of TNE or of TNE and the TNE Subsidiaries taken as a whole.

Section 4.11 Litigation. Except (i) as set forth in Section 4.11 of the TNE Disclosure Schedule and

(ii) any Proceeding which is not reasonably expected to give rise to a Liability in excess of Five Hundred Thousand Dollars (\$500,000), there are no Proceedings pending or, to the Knowledge of TNE or any of the TNE Subsidiaries, threatened against, relating to, involving or otherwise affecting TNE or any TNE Subsidiary or any TNE Joint Venture before any Governmental Entity or arbitrator which, individually or in the aggregate, may reasonably be expected to have a material adverse effect on the Condition of TNE or of TNE and the TNE Subsidiaries taken as a whole. Neither TNE nor any TNE Subsidiary is subject to any Order, except for Orders which, individually or in the aggregate, do not and would not reasonably be expected to have a material adverse effect on its Condition.

Section 4.12 Compliance with Law.

(a) Except as set forth in Section 4.12(a) of the TNE Disclosure Schedule, neither TNE, any TNE Subsidiary nor any TNE Joint Venture is in violation (or, with notice or lapse of time or both, would be in violation) of any term or provision of any Law applicable to it or any of its Assets, the result of which violation, individually or in the aggregate, has or may reasonably be expected to have a material adverse effect on the Condition of TNE or of TNE and the TNE Subsidiaries taken as a

whole. Without limiting the generality of the foregoing: each of TNE, the TNE Subsidiaries and the TNE Joint Ventures has filed or caused to be filed, in compliance in all material respects with all applicable Laws, all reports, statements, documents, registrations, filings or submissions which were required by Law to be filed by it, except for any such filing where the failure to so file, individually or in the aggregate, would not reasonably be expected to have a material adverse effect on the Condition of TNE or of TNE and the TNE Subsidiaries taken as a whole. All of the Investment Assets of each TNE Insurer comply in all material respects with the investment provisions of its jurisdiction of domicile and the applicable Laws of each of the other jurisdictions which require compliance therewith, except to the extent that the failure to comply with such investment provisions does not have and would not be reasonably expected to have a material adverse effect on the Condition of TNE or of TNE and the TNE Subsidiaries taken as a whole. TNE has delivered to MetLife all reports (including, but not limited to, draft reports) reflecting the results of examinations of the affairs of each TNE Insurer (including, but not limited to, market conduct examinations) issued by insurance Governmental Entities for any period ending on a date on or after January 1, 1992; except as

set forth in Section 4.12(a) of the TNE Disclosure Schedule, all deficiencies or violations in such reports for any prior period have been resolved in all material respects. Except as set forth in Section 4.12(a) of the TNE Disclosure Schedule, all outstanding Insurance Contracts issued or assumed by any TNE Insurer are, to the extent required by Law, on forms and at rates approved by the insurance Governmental Entities of the jurisdictions where issued or have been filed with and not objected to by such authorities within the periods provided for objection.

(b) Except as set forth in Section 4.12(b) of the TNE Disclosure Schedule, neither TNE nor any TNE Subsidiary is a party to any Contract with or other undertaking to, or is subject to any Order by, or is a recipient of any presently applicable supervisory letter or other written communication of any kind from, any Governmental Entity which (i) currently materially adversely affects or is reasonably likely to materially adversely affect the conduct of its Business, (ii) other than with respect to TNE Joint Ventures, relates materially and adversely to its reserve adequacy, or its investment or underwriting practices or policies or its sales practices or policies, or (iii) may reasonably be expected to have a material adverse effect on the Condition of TNE or of

TNE and the TNE Subsidiaries taken as a whole, nor, to the Knowledge of TNE or of any of the TNE Subsidiaries, has TNE or any of the TNE Subsidiaries been notified by any Governmental Entity that it is contemplating issuing or requesting (or is considering the appropriateness of issuing or requesting) any such Order, Contract, undertaking, letter or other written communication.

(c) Each TNE Asset Management Company, where applicable, is registered with the SEC, under applicable state Laws and with each other Governmental Entity with which it is required to register in order to conduct its Business as now conducted, and is in compliance in all material respects with all applicable Laws thereunder, except for any failures to register or comply which would not reasonably be expected to have a material adverse effect on the Condition of any TNE Material Asset Management Company, of TNE or of TNE and the TNE Subsidiaries taken as a whole. Each TNE Broker-Dealer is a member organization in good standing with all Governmental Entities and such other organizations in which its membership is required in order to conduct its Business as now conducted and is in compliance in all material respects with all applicable regulations, rules and requirements of such Governmental Entities and organizations, except for any failures to register or comply



which would not reasonably be expected to have a material adverse effect on the Condition of any TNE Broker-Dealer, any TNE Material Asset Management Company or TNE or of TNE and the TNE Subsidiaries taken as a whole.

(d) TNE has implemented procedures and programs which are reasonably designed to provide assurance that each of TNE, the TNE Insurers and their respective agents and employees are in compliance in all material respects with all applicable Laws, including, but not limited to, advertising, licensing and sales Laws. TNE has previously provided MetLife with a true, complete and correct copy of TNE's compliance program and procedures and, except as previously disclosed to MetLife, TNE has no Knowledge of any noncompliance therewith in any material respect.

Section 4.13 Employee Benefit Plans; ERISA.

(a) Section 4.13(a) of the TNE Disclosure Schedule contains a true, complete and correct list of each bonus, deferred compensation, incentive compensation, split dollar, tuition assistance, legal services, salary contribution, travel or accident disability, severance or termination pay, hospitalization or other medical, life or other insurance, supplemental unemployment benefits, profit-sharing, pension, or retirement plan, program, agreement or arrangement (whether written

or oral, whether formal or informal), and each other employee benefit plan, program, agreement or arrangement, sponsored, maintained or contributed to or required to be contributed to by TNE or any TNE Subsidiary or by any trade or business, whether or not incorporated (an "ERISA Affiliate"), that together with TNE or any TNE Subsidiary would be deemed a "single employer" within the meaning of section 4001 of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), for the benefit of any employee or terminated employee of TNE or any ERISA Affiliate (the "Plans") including, but not limited to, any such Plan that is an "employee benefit plan," as that term is defined in section 3(3) of ERISA (the "ERISA Plans").

(b) With respect to each Plan, TNE has heretofore provided to MetLife true, complete and correct copies of each of the following documents:

- (i) a copy thereof;
- (ii) a copy of the most recently prepared annual report and actuarial report, if any;
- (iii) a copy of the most recently prepared Summary Plan Description, if any;
- (iv) if the Plan is funded through a trust or any third party funding vehicle, a

copy of the trust or other funding agreement  
and the latest financial statements thereof;  
and

(v) the most recent determination  
letter received from the IRS with respect to  
each Plan intended to qualify under section  
401(a) of the Code.

(c) No liability under Title IV of ERISA has  
been incurred by TNE, or any TNE Subsidiary or any ERISA  
Affiliate that has not been satisfied in full, and no  
condition exists that presents a risk to TNE or any TNE  
Subsidiary or any ERISA Affiliate of incurring a liability  
under such Title, other than liability for premiums  
due to the PBGC (which premiums have been paid when due).

(d) The PBGC has not instituted Proceedings to  
terminate any ERISA Plan and no condition exists that  
presents a risk that such proceedings will be instituted.

(e) With respect to each ERISA Plan subject to  
Title IV of ERISA, the present value of accrued benefit  
obligations under such Plan as set forth in the most  
recent actuarial report prepared by such Plan's actuary  
with respect to such Plan, based upon the actuarial as-  
sumptions used for funding purposes in such actuarial  
report did not exceed, as of the valuation date of such

report, the then current value of the assets of such plan allocable to such accrued benefit obligations.

(f) To the knowledge of TNE or of any of the TNE Subsidiaries, neither TNE nor any ERISA Affiliate nor any TNE Subsidiary, nor any ERISA Plan, nor any trust created thereunder, nor any trustee or administrator thereof has engaged in a transaction in connection with which TNE or any TNE Subsidiary or any ERISA Affiliate, or any Person dealing with any ERISA Plan or any such trust could be subject to either a civil liability assessed pursuant to section 409 or 502 of ERISA or a tax imposed pursuant to section 4975 or 4976 of the Code.

(g) No ERISA Plan which is subject to Title IV of ERISA or any trust established thereunder has incurred any "accumulated funding deficiency" (as defined in section 302 of ERISA and section 412 of the Code), whether or not waived, as of the last day of the most recent fiscal year of each ERISA Plan ended prior to the Effective Time; and all contributions required to be made with respect thereto (whether pursuant to the terms of any ERISA Plan or otherwise) on or prior to the Effective Time have been timely made.

(h) Except as specifically set forth in Section 4.13(h) of the TNE Disclosure Schedule, no ERISA Plan is a "multiemployer pension plan," as defined in

section 3(37) of ERISA or a multiple employer plan defined in Section 413(c) of the Code.

(i) Each Plan has been operated and administered in all respects in accordance with its terms and applicable Law, including, but not limited to, ERISA and the Code.

(j) Each ERISA Plan intended to be "qualified" within the meaning of section 401(a) of the Code has either received or applied to the Internal Revenue Service for a favorable determination letter from the IRS, other than with respect to Plans implemented on January 1, 1995 as to which determination letters have not yet been requested, stating that such Plan is so qualified and the trusts maintained thereunder are exempt from taxation under section 501(a) of the Code and, to the knowledge of TNE or of any TNE Subsidiary, no condition exists which presents a risk that such letter would be revoked or such favorable determination would not be obtained, as applicable.

(k) Except as specifically set forth in Section 4.13(k) of the TNE Disclosure Schedule, the consummation of the Merger will not solely by its occurrence (i) entitle any current or former employee or officer of TNE, a TNE Subsidiary or any ERISA Affiliate to severance pay, unemployment compensation or any other payment,

except as expressly provided in this Agreement or (ii) accelerate the time of payment or vesting, or increase the amount of compensation due any such employee or officer or (iii) provide any such officer or employee with additional or enhanced rights to trigger (by termination of employment or otherwise) his right to receive any of the compensation referred to in items (i) or (ii) above.

(l) To the knowledge of TNE and of the TNE Subsidiaries, there are no pending, threatened or anticipated claims by or on behalf of any Plan, by any employee or beneficiary covered under any such Plan, or otherwise involving any such Plan (other than routine claims for benefits). To the knowledge of TNE and of the TNE Subsidiaries, no facts or circumstances exist which present a risk that any such claims would be made.

(m) Except as specifically set forth in Section 4.13(m) of the TNE Disclosure Schedule, no Plan providing medical or death benefits (whether or not insured) with respect to current or former employees continues such coverage or provides such benefits beyond their date of retirement or other termination of service (other than coverage mandated by section 601 of ERISA, the cost of which is fully paid by the former employee or his or her dependents).

(n) The representations and warranties contained in this Section 4.13 shall be deemed breached only to the extent that any noncompliance with such representations and warranties, individually or in the aggregate, has had or may reasonably be expected to have a material adverse effect on the Condition of TNE or of TNE and the TNE Subsidiaries taken as a whole.

Section 4.14 Assets.

(a) Except as set forth in Section 4.14(a) of the TNE Disclosure Schedule:

(i) All Assets disposed of by TNE and each TNE Subsidiary since December 31, 1994 were disposed of at prices reasonably believed to be fair market value in arm's length transactions in the ordinary course of business consistent with past practice. A list of such disposed Assets which, individually or in a series of related transactions, were (A) disposed of for more than Twenty Five Million Dollars (\$25,000,000) or (B) resulted in a gain or loss on disposition of Three Million Dollars (\$3,000,000) or more from their admitted asset value is set forth in Section 4.14(a)(i) of the TNE Disclosure Schedule. TNE has previously provided to MetLife a true, complete and cor-

rect listing of all Investment Assets acquired by TNE or any TNE Insurer since June 30, 1995.

(ii) Each of TNE and the TNE Subsidiaries owns and has good title to all Assets that are disclosed or otherwise reflected in its June 30, 1995 Quarterly Statement or unaudited GAAP Financial Statements for the six months ended June 30, 1995, and all such Assets are owned by such Persons free and clear of all Liens, other than Permitted Liens. There are no Payment Defaults, or to the Knowledge of TNE or any of the TNE Subsidiaries, any other defaults which can be reasonably expected to result in a Payment Default (each a "Potential Payment Default"), except (a) as set forth in Section 4.14(a)(ii) of the TNE Disclosure Schedule, (b) for Payment Defaults of thirty (30) days' or less duration, and (c) for Payment Defaults of more than thirty (30) days but less than sixty (60) days' duration which are not set forth in Section 4.14(a)(ii) of the TNE Disclosure Schedule, and Potential Payment Defaults of which TNE or any of the TNE Subsidiaries have Knowledge, to the extent such Payment Defaults and Potential Payment Defaults



covered by this clause (c) do not exceed Thirty Million Dollars (\$30,000,000) in the aggregate. As used herein, "Payment Default" shall mean a default in the payment on any of the bonds, notes, debentures and other evidences of indebtedness that constitute Investment Assets having an admitted asset value of One Million Dollars (\$1,000,000) or more and which are disclosed or otherwise reflected in TNE's or any TNE Subsidiaries' June 30, 1995 Quarterly Statement or unaudited GAAP Financial Statements for the six months ended June 30, 1995. Neither TNE nor any of the TNE Subsidiaries has actual knowledge of any pending or threatened bankruptcy, reorganization, insolvency, moratorium or similar event or proceeding by any issuer, guarantor or other Person responsible for making payment with respect to any such Investment Assets as of the date of this Agreement.

(iii) (A) TNE has provided MetLife with (x) a true, complete and correct list of all TNE Material Owned Real Property and (y) all material documents and has provided all information in its possession relating thereto.

TNE, the TNE Subsidiaries and the TNE Joint Ventures own, as the case may be, and have good and marketable fee title to such TNE Material Owned Real Property, free and clear of all Liens, other than Permitted Liens. Other than as set forth in Section 4.14(a)(iii)(A) of the TNE Disclosure Schedule or as may affect TNE Material Owned Property having an admitted value of less than Ten Million Dollars (\$10,000,000), there are no outstanding options to purchase or rights of first refusal granted at less than fair market value, net of brokerage commissions, at the time of grant affecting the TNE Material Owned Property.

(iii)(B) TNE has provided to MetLife all material documents relating to TNE Landlord Property including, but not limited to, leases, subleases and rental or occupancy agreements relating thereto (all such leases, subleases and rental or occupancy agreements, collectively, the "TNE Landlord Leases"). With respect to the TNE Landlord Leases, TNE hereby represents and warrants to MetLife as follows: (1) each of the TNE Landlord Leases is in full force and effect, and, to the Knowledge of TNE

or any of the TNE Subsidiaries, constitutes a legal, valid and binding obligation of each Person that is a party thereto; and (2) true, complete and correct copies of the rent rolls showing tenant name, square footage, annual base rent and term, with respect to the TNE Landlord Leases, as of the date hereof, have been previously made available to MetLife. Except as set forth in Section 4.14(a)(iii)(B) of the TNE Disclosure Schedule, neither TNE, the TNE Subsidiaries nor the TNE Joint Ventures are and, to the Knowledge of TNE or any of the TNE Subsidiaries, no other party to the TNE Landlord Leases is, in material violation, breach or default of any of the TNE Landlord Leases or, with notice or lapse of time or both, would be in material violation, breach or default of any of the TNE Landlord Leases, except for such breaches, violations or defaults, which, with respect to any TNE Landlord Lease, would not reasonably be expected to have an adverse effect of One Million Dollars (\$1,000,000) or more; and no action has commenced and, to the Knowledge of TNE or any of the TNE Subsidiaries, no notice has been given

or received for the purpose of terminating any of the TNE Landlord Leases.

(iii)(C) TNE has provided MetLife with a true, complete and correct list, as of June 30, 1995, of all TNE Real Property owned or leased by TNE, a TNE Subsidiary or a TNE Joint Venture which is encumbered by a Lien granted by TNE, a TNE Subsidiary or a TNE Joint Venture, as the case may be, or which is otherwise encumbered by a mortgage, deed of trust or deed to secure debt, which list sets forth the amount of the debt secured by such Liens on a property by property basis. TNE has provided MetLife with all material documents relating to such TNE Real Property, including, but not limited to, all mortgages, deeds of trust and deeds to secure debt (collectively, the "TNE Borrower Loan Documents"). With respect to such TNE Real Property, TNE hereby represents and warrants to MetLife as follows: (1) each of TNE, the TNE Subsidiaries and the TNE Joint Ventures, as the case may be, owns and holds good and marketable fee or leasehold title to such TNE Real Property, free and clear of all Liens, other than Permitted Liens; (2) to the

Knowledge of TNE or of any of the TNE Subsidiaries, each of the TNE Borrower Loan Documents is in full force and effect and constitutes a legal, valid and binding obligation of each Person that is a party thereto; (3) except as set forth in Section 4.14(a)(iii)(C) of the TNE Disclosure Schedule, all funds greater in amount than Five Hundred Thousand Dollars (\$500,000) to be disbursed pursuant to the TNE Borrower Loan Documents have been disbursed to the borrower thereunder; and with respect to any undisbursed funds set forth in Section 4.14(a)(iii)(C) of the TNE Disclosure Schedule, neither TNE nor any of the TNE Subsidiaries have Knowledge of any condition which will permit the lender thereunder to not disburse such unadvanced funds as contemplated by the TNE Borrower Loan Documents; and (4) except as set forth in Section 4.14(a)(iii)(C) of the TNE Disclosure Schedule, neither TNE, the TNE Subsidiaries nor the TNE Joint Ventures are, and, to the Knowledge of TNE or of any of the TNE Subsidiaries, no other party to the TNE Borrower Loan Documents is, in material violation, breach or default of any of the TNE Borrower

Loan Documents or, with notice or lapse of time or both, would be in material violation, breach or default of any of the TNE Borrower Loan Documents, except for such violations, breaches or defaults which, individually or in the aggregate, would not reasonably be expected to have an adverse effect of Five Million Dollars (\$5,000,000) or more.

(iii)(D) TNE has provided MetLife with a true, complete and correct list of all TNE Real Property subject to leases or leases pursuant to which TNE, a TNE Subsidiary or a TNE Joint Venture leases real property and all rental or occupancy agreements including, but not limited to, all ground leases relating thereto providing for annual rental payments to be paid by or on behalf of TNE, the TNE Subsidiaries and the TNE Joint Ventures in excess of Five Hundred Thousand Dollars (\$500,000) (the "TNE Tenant Leases"), clearly indicating which of such TNE Real Property is ground leased ("Ground Leased Properties"). With respect to such TNE Real Property, TNE hereby represents and warrants to MetLife as follows: (1) each of TNE, the TNE Subsidiaries and the TNE Joint

Ventures, as the case may be, owns and holds good and insurable (and, in the case of the Ground Leased Properties, marketable) leasehold interest in such TNE Real Property, free and clear of all Liens, other than Permitted Liens; (2) to the Knowledge of TNE or of any of the TNE Subsidiaries, each of the TNE Tenant Leases is in full force and effect and constitutes a legal, valid and binding obligation of each Person that is a party thereto; (3) TNE, the TNE Subsidiaries and the TNE Joint Ventures enjoy the quiet and peaceful possession of the TNE Real Property subject to the terms of the TNE Tenant Leases and Permitted Liens; (4) except as set forth in Section 4.14(a)(iii)(D) of the TNE Disclosure Schedule, neither TNE, the TNE Subsidiaries nor the TNE Joint Ventures are and, to the Knowledge of TNE or of any of the TNE Subsidiaries, no other party to any of the TNE Tenant Leases is, in material violation, breach or default of any of the TNE Tenant Leases or, with notice or lapse of time or both, would be in material violation, breach or default of any of the TNE Tenant Leases, except for any such violation, breach or default

which, with respect to any TNE Tenant Lease, would not reasonably be expected to have an adverse effect of Two Hundred and Fifty Thousand Dollars (\$250,000) or more; and (5) no action has commenced to terminate and, to the knowledge of TNE or of any of the TNE Subsidiaries, no notice has been given or received for the purpose of terminating any of the TNE Tenant Leases.

(iii)(E) TNE has provided MetLife with a true, complete and correct list, as of June 30, 1995, of all TNE Real Property encumbered by a Lien granted or assigned to TNE, a TNE Subsidiary or a TNE Joint Venture, which list sets forth the amount of the debt obligation secured by such Liens on a property by property basis. TNE has provided MetLife with all material documents relating to such TNE Real Property, including, but not limited to, all mortgages, deeds of trust and deeds to secure debt (collectively, the "TNE Lender Loan Documents"). With respect to such TNE Real Property, TNE hereby represents and warrants to MetLife as follows: (1) each of the TNE Lender Loan Documents is in full force and effect and,



to the Knowledge of TNE or of any of the TNE Subsidiaries, constitutes a legal, valid and binding obligation of each Person that is a party thereto; (2) except as set forth in Section 4.14(a)(iii)(E) of the TNE Disclosure Schedule, all funds to be disbursed pursuant to the TNE Lender Loan Documents have been disbursed, and there is no requirement for future advances thereunder; (3) except as set forth in Section 4.14(a)(iii)(E) of the TNE Disclosure Schedule, none of TNE, the TNE Subsidiaries and the TNE Joint Ventures are, and, to the Knowledge of TNE or of any of the TNE Subsidiaries, no other party to the TNE Lender Loan Documents is, in material violation, breach or default of any of the TNE Lender Loan Documents or, with notice or lapse of time or both, would be in material violation, breach or default of any of the TNE Lender Loan Documents, except for such violations, breaches or defaults which

- (i) individually or in the aggregate would not reasonably be expected to result in a loss of Five Million Dollars (\$5,000,000) or more,
- (ii) have not existed for 60 days or more and
- (iii) relate to loans which TNE has no reason

to believe are not collectible in full pursuant to the original terms thereof; and (4) each loan made pursuant to the TNE Lender Loan Documents as of the date originally made did not exceed the fair market value of the subject property.

(iii)(F) (1) No portion of the TNE Real Property has been damaged, destroyed or injured by fire or other casualty involving damages or injury in excess of Two Hundred and Fifty Thousand Dollars (\$250,000) in amount which is not now restored or in the process of being restored so that the TNE Real Property is or within a reasonable time period will be suitable for the use for which it was intended; (2) no Taking has been commenced or, to the knowledge of TNE or of any of the TNE Subsidiaries, is contemplated or threatened, against any material portion of the TNE Real Property which interferes with, or is reasonably likely to interfere with, the use of such portion of the TNE Real Property and which interference has caused or is reasonably likely to cause a diminution in value in excess of Five Hundred Thousand Dollars (\$500,000); (3) the TNE Mate-

rial Owned Real Property (and, with respect to the assets managed by Copley Real Estate Advisors, Inc., to the actual knowledge of the Vice President in charge of investment strategy, with respect to the home office, to the actual knowledge of the Second Vice President in charge of home office property, and, with respect to any other TNE Real Property, to the actual knowledge of the Vice President in charge of the asset management group), other than unimproved land, is in all material respects in good operating condition and repair, ordinary wear and tear excepted, and is suitable for its current use; with respect to the unimproved land, neither TNE nor any of the TNE Subsidiaries has Knowledge of any circumstances or conditions which would reasonably be expected to prevent the development of any material portion thereof as currently contemplated; (4) the TNE Real Property has adequate rights of access to physically open, dedicated public rights of way; (5) there are no pending or, to the Knowledge of TNE or of any of the TNE Subsidiaries, proposed special or other assessments for public improvements or otherwise

affecting the TNE Material Owned Real Property, nor are there any contemplated improvements to the TNE Material Owned Real Property that may result in such special or other assessments, payable by TNE, the TNE Subsidiaries or the TNE Joint Ventures which, with respect to any TNE Material Owned Real Property would or would reasonably be expected to exceed Two Hundred and Fifty Thousand Dollars (\$250,000); and (6) all material certificates, permits, licenses, approvals, authorizations, registrations and franchises, including, but not limited to, certificates of occupancy (collectively, the "Permits"), necessary in order to use and operate the TNE Real Property for its current use, have been obtained and are in full force and effect and not subject to any revocation, amendment, release, suspension, forfeiture or the like; no appeals with respect to the same are pending from any material adverse ruling, order, decision or determination of any Governmental Entity; and the present and/or contemplated use and operation of the TNE Real Property does not conflict with or violate any such Permit other than appeals, conflicts or viola-

tions which, individually or in the aggregate, would not reasonably be expected to have an adverse effect of Five Million Dollars (\$5,000,000) or more on TNE or TNE and the TNE Subsidiaries taken as a whole.

(iii) (G) Except as set forth in Section 4.14(a) (iii) (G) of the TNE Disclosure Schedule, TNE, the TNE Subsidiaries and the TNE Joint Ventures, as applicable, are the insureds under effective title policies: (1) with respect to such TNE Real Property owned by TNE, a TNE Subsidiary or a TNE Joint Venture, for an amount at least equal to the fair market value of the subject property as of the date the same was acquired by TNE or the applicable TNE Subsidiary or a TNE Joint Venture; and (2) with respect to each loan evidenced by a TNE Lender Loan Document, for an amount at least equal to the current outstanding balance thereunder.

(iv) each of TNE and the TNE Subsidiaries owns good and indefeasible title to, or has a valid leasehold interest in or has a valid right under Contract to use, all personal property that is material to the conduct of its Business, free and clear of all Liens, other

than Permitted Liens; and, in the aggregate, all personal property is in good operating condition and repair, ordinary wear and tear excepted, and is suitable and adequate for its current uses.

(b) Except as set forth in Section 4.14(b) of the TNE Disclosure Schedule, neither TNE, a TNE Subsidiary nor a TNE Joint Venture owns any interest in real property (which, for purposes of this subsection (b) shall include, but not be limited to, any leasehold, the terms of which provide for rental payments exceeding Five Hundred Thousand Dollars (\$500,000) annually or fee interest in real property) located within the District of Columbia, the State of Connecticut, the State of New York, the Commonwealth of Pennsylvania or the State of Vermont.

(c) No sales or brokerage commission or fee or other compensation is or will be payable in connection with any of the TNE Real Property as a result of the consummation of the transactions contemplated hereby and, except as set forth in Section 4.14(c) of the Disclosure Schedule, no Contract to which TNE, any TNE Subsidiary or any TNE Joint Venture is a party contains any provision which restricts any of them from conducting real estate activities in a specified area.

(d) (A) Section 4.14(d) (A) of the TNE Disclosure Schedule sets forth a true, complete and correct list of all material (i) proprietary Computer Software, (ii) registered Copyrights, (iii) Patents, (iv) to the Knowledge of TNE or of any of the TNE Subsidiaries, registered and unregistered Trademarks, and (v) applications, registrations and grants, and all licenses, distribution agreements, assignments and other Contracts for or under any such item referred to in the foregoing clauses (A) (i) through (v) above, which are owned by TNE or any TNE Subsidiary; (B) Section 4.14(d) (B) of the TNE Disclosure Schedule identifies (i) all Intellectual Property not owned by TNE or any TNE Subsidiary but which is material to and used in the Business of TNE or any TNE Subsidiary, and (ii) each license, distribution agreement, assignment and other Contract entered into by TNE or any TNE Subsidiary with respect to such Intellectual Property referred to in clause (B) (i); (C) either TNE or a TNE Subsidiary, as identified in Section 4.14(d) (B) of the TNE Disclosure Schedule, is a party to such licenses, distribution agreements, assignments or other Contracts; (D) either TNE or a TNE Subsidiary, as identified on Section 4.14(d) (A) of the TNE Disclosure Schedule, is listed in the records of the appropriate agency as the sole and exclusive owner of record for each registration,

grant and application listed in Section 4.14(d)(A) of the TNE Disclosure Schedule; (E) all registration and maintenance fees that have become due and payable in respect of any Intellectual Property referred to in subclause (A) hereof prior to the date hereof have been paid and, to the Knowledge of TNE or of any of the TNE Subsidiaries, no act has been done or omitted to be done by any such party to impair or dedicate to the public or entitle any Governmental Entity to cancel, forfeit, modify or hold abandoned any of the Intellectual Property listed in Section 4.14(d)(A) of the TNE Disclosure Schedule and, to the Knowledge of TNE or of any of the TNE Subsidiaries, all such Intellectual Property is valid; (F) subject to the Proceedings identified in Section 4.11 of the TNE Disclosure Schedule, each of TNE and the TNE Subsidiaries owns or otherwise has the right to use, (i) free and clear of any royalty or other payment obligations (except for such payments in respect of Licenses to use such Intellectual Property which (a) are separately listed in Section 4.14(d)(F)(i) of the TNE Disclosure Schedule, or (b) are for off-the-shelf software licensed by TNE or a TNE Subsidiary other than pursuant to a master purchase or discount license agreement), and (ii) free and clear of any claims of infringement or other violation or alleged infringement or other alleged violation and other



Liens, any and all Computer Software and other Intellectual Property (except for such other Intellectual Property the unavailability of which would not, individually or in the aggregate, have a material adverse effect on the Condition of TNE or of TNE and the TNE Subsidiaries taken as a whole) that is used in or necessary for the conduct of its Business; (G) the Merger will not result in a material adverse effect on any license, distribution agreement, assignment or other Contract with respect to the Computer Software and other Intellectual Property (except for such other Intellectual Property the unavailability of which would not, individually or in the aggregate, have a material adverse effect on the Condition of TNE or of TNE and the TNE Subsidiaries taken as a whole); (H) neither TNE nor any TNE Subsidiary has received any notice of any conflict or claimed conflict with or violation or infringement of, and to the Knowledge of TNE or of any of the TNE Subsidiaries, neither TNE nor any TNE Subsidiary is in conflict with or violation or infringement of, any asserted rights of any other Person with respect to any Intellectual Property; and (I) the Computer Software used in the conduct of the Business of TNE or of any TNE Subsidiary is either: (i) owned by TNE or such TNE Subsidiary, as the case may be, as the result of internal development thereof by an employee of

TNE or such TNE Subsidiary; or (ii) developed on behalf of TNE or of a TNE Subsidiary by a consultant or contractor and all ownership rights therein have been assigned or otherwise transferred to or vested in TNE or such TNE Subsidiary, as the case may be; or (iii) licensed or acquired from a third party pursuant to a written license, assignment or other Contract which is in full force and effect and of which TNE or a TNE Subsidiary is not and has not been in material breach.

Section 4.15 Environmental Matters.

(a) Except as set forth in Section 4.15(a) of the TNE Disclosure Schedule, each of TNE and the TNE Subsidiaries is, and, to the Knowledge of each of TNE and of the TNE Subsidiaries, all TNE Real Property (including all owners or operators thereof) are, in substantial compliance in all material respects with all applicable Environmental Laws, which compliance includes, but is not limited to, the possession of all Licenses required under Environmental Laws and compliance with the terms and conditions thereof, other than such TNE Real Property in respect of which the failure to comply with applicable Environmental Laws is not reasonably expected to give rise to a material adverse effect (which shall include, but not be limited to, the costs of further investigation, clean-up and related oversight, fines, penalties

and third party claims) exceeding Five Hundred Thousand Dollars (\$500,000) in any individual case and Ten Million Dollars (\$10,000,000) in the aggregate during the five-year period commencing on the date hereof (in the aggregate, the "Excluded Properties"). Except as set forth in Section 4.15(a) of the TNE Disclosure Schedule, neither TNE nor any TNE Subsidiary has received, nor do they have Knowledge of, any communication (written or oral), whether from a Governmental Entity, citizens' group, employee or otherwise, that alleges that TNE or any TNE Subsidiary or any TNE Real Property (including any owner or operator thereof) other than Excluded Properties is not in such compliance, and, to the Knowledge of each of TNE and of the TNE Subsidiaries, there are no circumstances that may prevent or interfere with such compliance in the future. Neither TNE nor any TNE Subsidiary has been notified by, nor do they have Knowledge of any notification by, any Governmental Entity that any such License will be modified, suspended or revoked or cannot be renewed in the ordinary course of business consistent with past practice.

(b) Except as set forth in Section 4.15(b) of the TNE Disclosure Schedule, there is no Environmental Claim pending or, to the Knowledge of each of TNE and of the TNE Subsidiaries, threatened against TNE, any TNE

Subsidiary, any TNE Real Property (including any owner or operator thereof) or any Person whose Liability for any Environmental Claims TNE, any TNE Subsidiary or TNE Joint Venture has or may have retained or assumed either contractually or by operation of Law and there are no facts existing on the date hereof which could reasonably be expected to result in any such Environmental Claim.

(c) To the Knowledge of each of TNE and of the TNE Subsidiaries, there have been no releases, spills, leaks or discharges of Hazardous Substances at, from or to any TNE Real Property (other than Excluded Properties and those properties set forth in Section 4.15(b) of the TNE Disclosure Schedule) which required or may require investigation or cleanup pursuant to applicable Environmental Laws and none of the TNE Real Property (i) is listed or proposed for listing on any list maintained by any Governmental Entity of sites that may require investigation or cleanup, including, but not limited to the CERCLIS or the NPL; (ii) other than Excluded Properties and those properties set forth in Section 4.15(b) of the TNE Disclosure Schedule, is the subject of any investigation or cleanup or (iii) is subject to any restrictions on ownership, occupancy, use or transferability under any Environmental Law.

Section 4.16 Contracts. Section 4.16 of the TNE Disclosure Schedule contains a true, complete and correct list of all of the following Contracts (true, complete and correct copies of all such written Contracts, including, but not limited to, all amendments, guarantees and other documents relating thereto, having been made available to MetLife), currently in force or operative in any respect, to which TNE or any TNE Subsidiary is a party or by which any Assets of TNE or of any TNE Subsidiary are or may be bound, as such Contracts may have been amended to the date hereof:

(a) all employment, consultation, retirement, termination, sign-on, severance, buy-out or other Contracts of a similar type (other than those (i) pursuant to the provisions of any Plan set forth in Section 4.13(a) of the TNE Disclosure Schedule, (ii) which may be terminated on notice of sixty (60) days or less without penalty or premium or (iii) which provide for compensation of One Hundred and Fifty Thousand Dollars (\$150,000) or less per year).

(b) all agency, brokerage or other Contracts of a similar nature (i) which have payment, commission, loan, compensation or other material terms which vary materially from those contained in the standard agency or brokerage Contract utilized by TNE or the TNE Subsidiar-

ies and (ii) pursuant to which payments, commissions, loans or other compensation were made during 1994 or are expected to be made in 1995 in excess of Two Hundred and Fifty Thousand Dollars (\$250,000);

(c) all consultation or other Contracts with (including, but not limited to, loans or advances to) any trustee, director or officer of TNE or trustee, director or officer of any of TNE's Subsidiaries or any other Person (i) of which any such trustee, director or officer is a trustee, director or officer or (ii) in which any such trustee, director or officer has a direct or indirect beneficial ownership interest (other than, with respect to clause (ii), a publicly traded company in which such trustee, director or officer beneficially owns no more than five percent (5%) of any class of the outstanding voting securities);

(d) all Contracts with any Person including, but not limited to, any Governmental Entity, containing any provision or covenant (i) limiting the ability of TNE or any TNE Subsidiary to engage in any Business, to compete with any Person, to do business with any Person or in any location or to employ any Person or (ii) limiting the ability of any Person to compete with TNE or any TNE Subsidiary;

(e) the TNE JV Agreements;

(f) (i) all Contracts relating to the borrowing by TNE, any TNE Subsidiary or any TNE Joint Venture of (x) Three Million Dollars (\$3,000,000) or more in the ordinary course of business consistent with past practice (other than mortgage loans entered into in the ordinary course of business which are described in Section 4.14(a)(iii)(c) hereof), or (y) Five Hundred Thousand Dollars (\$500,000) or more not in the ordinary course of business consistent with past practice, (ii) all Contracts relating to the direct or indirect guarantee by TNE, any TNE Subsidiary or any TNE Joint Venture of any obligation of any Person for, or contract to service the repayment by any Person of, borrowed money in excess of Five Hundred Thousand Dollars (\$500,000) or more, (iii) all Contracts relating to any other Liability of TNE, any TNE Subsidiary or any TNE Joint Venture in respect of indebtedness for borrowed money or other financial or performance obligation of any Person for an amount of Five Hundred Thousand Dollars (\$500,000) or more (other than indebtedness relating to repurchase obligations (exclusive of such obligations with respect to real property or mortgages related thereto) to which TNE or any TNE Subsidiary or any TNE Joint Venture is a party, entered into pursuant to existing master repurchase agreements or similar agreements, incurred in the ordi-

nary course of business consistent with past practice, and other than indebtedness specifically covered by another representation or warranty made by TNE in this Agreement), including, but not limited to, any Contract relating to or containing provisions with respect to (A) the maintenance of compensating balances that are not terminable by TNE or any TNE Subsidiary without penalty upon not more than ninety (90) days' notice, (B) any lines of credit, (C) the payment for property, products or services of any other Person even if such property, products or services are not conveyed, delivered or rendered or (D) any obligation to satisfy any financial or performance obligation or covenants, including, but not limited to, take-or-pay, keep-well, make-whole or maintenance of working capital, capital or earnings levels or financial ratios or to satisfy similar requirements;

(g) all Contracts with any Person containing any provision or covenant relating to the indemnification or holding harmless by TNE or any TNE Subsidiary of any Person which might reasonably be expected to result in an adverse effect to TNE or any of the TNE Subsidiaries of One Million Dollars (\$1,000,000) or more;

(h) all Contracts relating to the future disposition (including, but not limited to, restrictions



on transfer or rights of first refusal) or acquisition of any Investment Assets in an amount of Five Million Dollars (\$5,000,000) or more, including, but not limited to, investments in Affiliates, or of any interest in any business enterprise, all Contracts relating to the future disposition of Assets of TNE or of any TNE Subsidiary used in the conduct of its Business in an amount of Five Million Dollars (\$5,000,000) or more, and all Contracts requiring TNE or any TNE Subsidiary to purchase any Investment Assets in an amount of Five Million Dollars (\$5,000,000) or more other than, in each case, notes or debt securities having a maturity date of 90 days or less from date of purchase which have an aggregate principal outstanding of Fifty Million Dollars (\$50,000,000) or less and which were entered into in the ordinary course of business, consistent with past practice;

(i) all other Contracts (other than Insurance Contracts or Contracts which are the subject of (whether excluded or included) another subsection of this Section 4.16 or of Section 4.13, 4.14, 4.17 or 4.20 and other than Contracts which are terminable on notice of 90 days or less without penalty, damage or adverse effect) that involve the payment or potential payment, pursuant to the terms of such Contracts, by or to TNE of One Million Dollars (\$1,000,000) or more, or by or to any TNE Subsid-

iary of an amount in excess of three percent (3%) of its statutory surplus in the case of a TNE Insurer or Two Hundred Thousand Dollars (\$200,000) in the case of a TNE Asset Management Company or 3% of its net worth in the case of any other Person as at June 30, 1995 (or in the case of any Person for which Financial Statements as at June 30, 1995 are not regularly prepared, as at December 31, 1994), within any twelve-month period including the date hereof; and

(j) all Contracts with any officers, directors or trustees of TNE or of any TNE Subsidiary with terms less favorable to TNE or such TNE Subsidiary, as the case may be, than could have been obtained from an unaffiliated Person.

Each of the Contracts listed in Section 4.16 of the TNE Disclosure Schedule is in full force and effect and (assuming each such Contract is a valid and binding obligation of the other parties thereto) constitutes a legal, valid and binding obligation of each of TNE and of the TNE Subsidiaries to the extent that it is party thereto and, to the Knowledge of TNE or of any of the TNE Subsidiaries, of each other Person that is a party thereto. Except as set forth in Section 4.16 of the TNE Disclosure Schedule, neither TNE nor any TNE Subsidiary is, and, to the Knowledge of TNE or of any of the TNE

Subsidiaries, no other party to such Contract is, in material violation, breach or default of any such Contract or, with notice or lapse of time or both, would be in material violation, breach or default of any such Contract. Except as set forth in Section 4.16 of the TNE Disclosure Schedule, neither TNE nor any TNE Subsidiary is a party to or bound by (i) any material Contract that was not entered into in the ordinary course of business consistent with past practice or (ii) that has or may reasonably be expected to have a material adverse effect on the Condition of TNE or of TNE and of the TNE Subsidiaries taken as a whole.

Section 4.17 Investment Management Matters.

(a) TNE and NEIC have provided MetLife with a true, complete and correct list, as of August 16, 1995, of all Investment Company Advisory Related Agreements and will provide on a periodic basis an updated list from the time of signing of this Agreement until the consummation of the Merger. Except as listed in Section 4.17(a) of the TNE Disclosure Schedule, to the Knowledge of TNE or of any of the TNE Material Asset Management Companies, there are no amendments, modifications, supplements or waivers of any Investment Company Advisory Related Agreements. TNE has provided to MetLife true, complete and correct copies of all written Investment Company Advisory

Related Agreements and accurate descriptions of all material terms of any such oral Contracts. Except as listed in Section 4.17(a) of the TNE Disclosure Schedule, neither TNE nor any TNE Subsidiary nor any TNE Asset Management Company is a party to any oral agreement or arrangement for the performance of investment advisory or investment management services with respect to securities, real estate, commodities, currencies or any other asset class for clients or on behalf of third parties. There are no Investment Company Advisory Related Agreements that are oral Contracts.

(b) Except as disclosed in Section 4.17(b) of the TNE Disclosure Schedule and excluding any failure as of the Effective Time to obtain consents with respect to the Contracts referred to in Section 7.2(g) below, all Investment Advisory Related Agreements are in full force and effect, except to the extent that any failure to be in full force and effect would not have a material adverse effect on the Condition of any TNE Material Asset Management Company or of TNE or of TNE and the TNE Subsidiaries taken as a whole, and there does not exist under any Investment Advisory Related Agreement any event of default on the part of any TNE Asset Management Company or any event or condition that, after notice or lapse of time or both, would constitute an event of default

thereunder on the part of any TNE Asset Management Company which may reasonably be expected to have a material adverse effect on the Condition of any TNE Material Asset Management Company or of TNE or of TNE and the TNE Subsidiaries taken as a whole.

(c) Section 4.17(c)(1) of the TNE Disclosure Schedule sets forth a true, complete and correct list, as of the date hereof, of each investment company (as defined in the Investment Company Act without regard to the exclusion provided by Section 3(c)(1) thereof) and each insurance company separate account for which or for any series of which any TNE Asset Management Company acts as investment adviser or manager (including as subadviser or submanager) or for which TNE or NEVLICO serves as depositor whether or not registered with the SEC and whether or not organized in the U.S. or any state thereof (each a "TNE Group Fund" and, collectively, the "TNE Group of Funds"). Except as described in Section 4.17(c)(2) of the TNE Disclosure Schedule, each TNE Group Fund is, and at all times required under applicable Law during the past five years has been, and immediately following consummation of the transactions contemplated hereby will be, duly registered with the SEC as an investment company under the Investment Company Act or with the applicable

Governmental Entity under the Laws of any foreign jurisdiction.

(d) During the past five years, except as set forth in Section 4.17(d) of the TNE Disclosure Schedule, each TNE Asset Management Company has properly administered, in all material respects, in accordance with the terms of the governing documents, prospectuses or other offering documents, instructions of clients and applicable Law ("Governing Advisory Authorities"), all accounts for which it acts as a fiduciary, including, but not limited to, accounts for which it serves as a trustee, agent, custodian, personal representative, guardian, conservator or investment adviser. Except as set forth in Section 4.17(d) of the TNE Disclosure Schedule, neither TNE, nor any of its Subsidiaries or other Affiliates nor any of their respective directors, officers or employees has committed any material breach of Governing Advisory Authorities with respect to any such fiduciary account, and the accountings for each such fiduciary account are true, complete and correct in all material respects and accurately present the assets of such fiduciary account.

(e) Each TNE Group Fund that is required by Law to do so has adopted a written code of ethics, complete and accurate copies of which have been provided to MetLife. Such codes comply in all material respects with

Section 17(j) of the Investment Company Act and Rule 17j-1 thereunder. The policies of each TNE Asset Management Company with respect to avoiding conflicts of interest are as set forth in the most recent Form ADV or policy manual thereof, as amended, true, complete and correct copies of which have been delivered to MetLife. To the Knowledge of TNE or of any of the TNE Material Asset Management Companies, other than as set forth in Section 4.17(e) of the TNE Disclosure Schedule, there have been no violations or allegations of violations of such codes or policies that have occurred or been made that would have a material adverse effect on the Condition of any TNE Material Asset Management Company or of TNE or of TNE and the TNE Subsidiaries taken as a whole.

(f) TNE, its Subsidiaries and other Affiliates that are required, and each of their officers, independent contractors, subagents, consultants and employees who are required by reason of the nature of their employment by TNE, a TNE Subsidiary or such Affiliate, to be registered or appointed as an investment adviser, investment adviser representative, broker-dealer agent, broker-dealer, registered representative, sales person, insurance agent or insurance producer, commodity trading adviser, commodity pool operator or real estate broker or salesman with the SEC or the securities commission or

insurance department of any state or any self-regulatory body or other Governmental Entity or any insurer, is duly registered or appointed as such and such registration or appointment is in full force and effect, except where the failure to be so registered or appointed or to have such registration in full force and effect would not have a material adverse effect on the Condition of any TNE Material Asset Management Company or of TNE or of TNE and the TNE Subsidiaries taken as a whole. Except as set forth in Section 4.17(f) of the TNE Disclosure Schedule, none of such Persons has been enjoined, indicted, convicted or made the subject of any consent decree or administrative order on account of any violation of applicable Law in connection with such Person's actions in any of the foregoing capacities or, to the Knowledge of each such entity, any enforcement or disciplinary proceeding alleging any such violation since January 1, 1990.

(g) Neither TNE, any TNE Subsidiary nor any TNE Asset Management Company that is an investment adviser, depositor or principal underwriter to a registered investment company is ineligible pursuant to Section 9(a) or 9(b) of the Investment Company Act to serve as such an investment adviser, depositor or principal underwriter, and no Affiliate or Affiliated Person of any such TNE



Asset Management Company who serves or acts in the capacity of employee, officer, director or member of an advisory board of a registered investment company is ineligible pursuant to such Section 9(a) or 9(b) so to serve or act. No TNE Asset Management Company that is registered under the Advisers Act, and no Affiliate or Associated Person thereof, has, to the Knowledge of TNE or any TNE Subsidiary, committed any act or omission that would constitute grounds for any order by the SEC pursuant to Section 203(e) of the Advisers Act. No TNE Asset Management Company that is registered as a broker or dealer under the Exchange Act, and no Affiliate or Associated Person thereof, has, to the Knowledge of TNE or any TNE Subsidiary, committed any act or omission that would constitute grounds for any order by the SEC pursuant to Section 15(b)(4) or 15(b)(6) of the Exchange Act.

(h) New England Funds, L.P. and Fundtech Services L.P. (the "TNE Transfer Agents") are the only entities owned by TNE or any TNE Subsidiary which are required to be registered as a transfer agent under the Exchange Act. Each TNE Transfer Agent is, and at all times required under applicable Law during the past five years has been, duly registered as a transfer agent under the Exchange Act. No TNE Asset Management Company, other than the TNE Transfer Agents, is or has been a "transfer

agent" within the meaning of the Exchange Act, or is required to be registered, licensed or qualified as a transfer agent under the Exchange Act or any other applicable Law, or is subject to any material liability or disability by reason of any failure to be so registered, licensed or qualified, except for any such failure that would not have a material adverse effect on the Condition of any TNE Material Asset Management Company or of TNE or of TNE and the TNE Subsidiaries taken as a whole.

(i) Neither TNE nor any TNE Subsidiary during the past five years has been required to be registered, licensed or qualified as a trust company in any state where the conduct of its business may require such registration, licensing or qualification.

(j) Each Investment Advisory Contract and each Distribution and Selling Agreement subject to Section 15 of the Investment Company Act has been duly approved at all times in compliance in all material respects with Section 15 of the Investment Company Act and all other applicable Laws. Each such Investment Advisory Contract and each such Distribution and Selling Agreement has been performed by the relevant TNE Asset Management Company in accordance with the Investment Company Act and all other applicable Laws, except for such failures of performance which, individually or in the aggregate, are not reason-

ably expected to have a material adverse effect on the Condition of any Material TNE Asset Management Company or of TNE or of TNE and the TNE Subsidiaries taken as a whole. Each Distribution and Selling Agreement, Solicitation Agreement and Custodian/Transfer Agent Agreement has been entered into and performed by the relevant TNE Asset Management Company in compliance with applicable Laws, except for such violations which, individually or in the aggregate, are not reasonably expected to have a material adverse effect on the Condition of any TNE Material Asset Management Company or of TNE or of TNE and the TNE Subsidiaries taken as a whole.

(k) (i) Except as set forth in Section 4.17(k) (i) of the TNE Disclosure Schedule, the shares or other ownership interests of each TNE Group Fund (other than any Subadvised Fund) are duly and validly issued, fully paid and nonassessable and are qualified for public offering and sale, or an exemption therefrom is in full force and effect, in each jurisdiction where required and to the extent required under applicable Law; (ii) all outstanding shares or other ownership interests of each TNE Group Fund (other than any Subadvised Fund) that were required to be registered under the Securities Act have been sold pursuant to an effective registration statement filed thereunder; and (iii) each TNE Group Fund (other

than any Subadvised Fund) has for the past five years been operated and is currently operating in compliance in all material respects with applicable Law, including but not limited to, the Code, the Securities Act and the Investment Company Act, except for such instances of non-compliance which, individually or in the aggregate, are not reasonably expected to have a material adverse effect on the Condition of any TNE Material Asset Management Company or of TNE or of TNE and the TNE Subsidiaries taken as a whole, is not subject to any stop order or similar order restricting its distribution and, assuming the consents referred to in Sections 6.7 and 6.8 are obtained, consummation of the transactions contemplated hereby will not result in a material violation of any such Laws. With respect to each Subadvised Fund, neither TNE nor any TNE Subsidiary has actual knowledge of any fact that would make any of the representations in the foregoing sentence inaccurate as to such Subadvised Fund.

(1) Each TNE Group Fund (other than any Subadvised Fund) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and has the requisite corporate, trust or partnership power and authority to own its properties and to carry on its business as it is now conducted, and is qualified to do business in each jurisdiction where it

is required to do so under applicable Law, except for such power, authority and qualification, the failure to have or obtain which would not reasonably be expected to have a material adverse effect on the Condition of any TNE Material Asset Management Company or of TNE or of TNE and the TNE Subsidiaries taken as a whole. With respect to each Subadvised Fund, neither TNE nor any TNE Subsidiary has actual knowledge of any fact that would make any of the representations in the foregoing sentence inaccurate as to such Subadvised Fund.

(m) Each prospectus (which term, as used in this Agreement, shall include any related statement of additional information and any private placement memorandum, collectively, "Prospectus") as amended or supplemented, relating to any TNE Group Fund (other than any Subadvised Fund) and all supplemental advertising and marketing material relating to any TNE Group Fund (other than any Subadvised Fund) or any Investment Advisory Related Agreement for the past three years, as of their respective filing or mailing dates, complied with applicable Law, including, but not limited, to the Code, the Securities Act, the Investment Company Act and the Advisers Act, applicable state laws and, where applicable, the rules of the NASD, except for such instances of non-compliance which, individually or in the aggregate, are

not reasonably expected to have a material adverse effect on the Condition of any TNE Material Asset Management Company or TNE or of TNE and the TNE Subsidiaries taken as a whole. With respect to each Subadvised Fund, neither TNE nor any TNE Subsidiary has actual knowledge of any fact that would make any of the representations in the foregoing sentence inaccurate as to such Subadvised Fund.

(n) All advertising or marketing materials relating to each TNE Group Fund (other than any Subadvised Fund) or any Investment Advisory Related Agreement during the past three years that are required to be filed with the NASD or any other Governmental Entity have been or will be timely filed therewith, except for such failures to file which, individually or in the aggregate, would not reasonably be expected to have a material adverse effect on the Condition of any TNE Material Asset Management Company or of TNE or of TNE and the TNE Subsidiaries taken as a whole. With respect to each Subadvised Fund, neither TNE nor any TNE Subsidiary has actual knowledge of any fact that would make any of the representations in the foregoing sentence inaccurate as to such Subadvised Fund. TNE has made available to MetLife true, correct and complete copies of all such materials for the past three years.

(o) Except as set forth in Section 4.17(o) of the TNE Disclosure Schedule, with respect to CGM, neither TNE nor any TNE Subsidiary has actual knowledge of any fact that would make any of the representations contained in Article IV inaccurate as to CGM or any fact that would result in CGM or TNE violating any provision of this Article IV as if CGM were a TNE Subsidiary. The amount and percentage of outstanding units of limited partnership interest owned, directly or indirectly, by NEIC with respect to CGM ("CGM LP Units") is set forth in Section 4.17(o) of the TNE Disclosure Schedule, and are owned by NEIC free and clear of all Liens. Except for the CGM LP Units owned by NEIC, neither TNE nor any TNE Subsidiary owns, directly or indirectly, any other equity interest including any general and limited partnership interests, in CGM. NEIC's ownership of CGM LP Units is strictly a passive investment, and neither TNE nor any TNE Subsidiary directs or exercises or will, at any time prior to the Merger, direct or exercise any influence, directly or indirectly, over CGM, its policies, management, operations or conduct of Business. Neither TNE nor any TNE Subsidiary will engage in, or will at any time prior to the Merger engage in, any conduct that would result in TNE or any of the TNE Subsidiaries controlling, or being deemed to be a "control person" with respect to, CGM

under any applicable federal or state securities Law. As applied to this Section 4.17(o), Article IV shall not be deemed to include Sections 4.1(b), 4.5, 4.7 and 4.18.

Section 4.18 Insurance Issued by TNE Insurers.  
Except as set forth in Section 4.18 of the TNE Disclosure Schedule:

(a) since December 31, 1994 no form of Insurance Contract written by any TNE Insurer has been amended in any material respect and no sales of Insurance Contracts using any new forms have been commenced other than changes to forms which are not, in the aggregate, material;

(b) since January 1, 1992 all benefits claimed by any Person under any Insurance Contract of any TNE Insurer have or will have in all material respects been paid (or provision for payment thereof has been made) in accordance with the terms of the Contracts under which they arose, and such payments were not delinquent and were paid (or will be paid) without fines or penalties, except for any such claim for benefits of less than Five Hundred Thousand Dollars (\$500,000) for which the affected TNE Insurer reasonably believes there is a reasonable basis to contest payment and is taking (or is preparing to take) such action;



(c) the underwriting standards utilized and ratings applied by each TNE Insurer with respect to Insurance Contracts outstanding as of the date hereof have been provided to MetLife and, with respect to any such Contract reinsured in whole or in part, conform in all material respects to the standards and ratings required pursuant to the terms of the related reinsurance, coinsurance or other similar Contracts and TNE has provided MetLife with copies of all underwriting policies and procedures for each TNE Insurer;

(d) TNE has provided MetLife with a copy of all investment policies and procedures for TNE and each TNE Insurer; and

(e) to the Knowledge of TNE or of any of the TNE Subsidiaries: (i) all amounts recoverable under reinsurance, coinsurance or other similar Contracts to which any TNE Insurer is a party (including, but not limited to, amounts based on paid and unpaid Losses) are fully collectible, except for such amounts which are less than Five Hundred Thousand Dollars (\$500,000) in the aggregate in cases where the reinsurer or co-insurer, as the case may be, is reasonably expected to be able to meet its obligations under such reinsurance, co-insurance or other similar Contract, and (ii) no insurance agent or broker, at the time such agent or broker wrote, sold or

produced business for any TNE Insurer, violated (or with notice or lapse of time or both would have violated) any term or provision of any Law or Order applicable to any aspect (including, but not limited to, the writing, sale or production) of the Business of any TNE Insurer, the result of which violations, individually or in the aggregate, has or may reasonably be expected to have a material adverse effect on the Condition of NEVLICO or of TNE or of TNE and the TNE Subsidiaries taken as a whole.

Section 4.19 Cancellations. Except as set forth in Section 4.19 of the TNE Disclosure Schedule, since December 31, 1994 no Person or group of Persons acting in concert has requested (or, to the Knowledge of TNE or of any of the TNE Subsidiaries, threatened to request) or received, or given notice (or to, the Knowledge of TNE or of any of the TNE Subsidiaries, threatened to give notice) of its intent to withdraw, funds in excess of Five Million Dollars (\$5,000,000) under any group pension Contract or any other Insurance Contract to which a TNE Insurer is a party or to which TNE or any TNE Subsidiary provides management, advisory, administrative or other services.

Section 4.20 Operations Insurance. TNE has previously provided MetLife with a true, complete and correct list of all liability, property, workers compen-

sation, directors and officers liability, and other similar Insurance Contracts that insure the Business or properties of TNE or any TNE Subsidiary or affect or relate to the ownership, use, or operations of any Assets of TNE or any TNE Subsidiary and that have been issued to TNE or any TNE Subsidiary (including, but not limited to, the names and addresses of the insurers, the expiration dates thereof, any deductible amounts in respect thereof, and the annual premiums and payment terms thereof) and a description of all claims thereunder or, to the Knowledge of TNE or of any of the TNE Subsidiaries, any events which have occurred and may be covered thereunder, in either case in excess of Two Hundred and Fifty Thousand Dollars (\$250,000) per incident since January 1, 1992 through the date hereof. All such insurance is in full force and effect. To the Knowledge of TNE or of any of the TNE Subsidiaries, all notices of reportable incidents with respect to such insurance occurring during the last five years have been given in writing to appropriate carriers on a basis sufficiently timely to preserve the right of recovery of such insurance. Except as set forth in Section 4.20 of the TNE Disclosure Schedule, to the Knowledge of TNE or of any of the TNE Subsidiaries, no party to any Insurance Contract has stated an intent or

threatened to terminate or materially increase the premium in respect of any such Insurance Contract.

Section 4.21 Labor Relations and Employment.

Except to the extent set forth in Section 4.21 of the TNE Disclosure Schedule, (i) there is no labor strike, material labor dispute, slowdown, stoppage or lockout actually pending, or to the Knowledge of TNE or of any of the TNE Subsidiaries, threatened against or affecting TNE or any of the TNE Subsidiaries, and during the past three years there has not been any such action; (ii) to the Knowledge of TNE or of any of the TNE Subsidiaries, there are no union claims to represent the employees of the Business, and there are no current union organizing activities among the employees of TNE or of any of the TNE Subsidiaries; (iii) neither TNE nor any of the TNE Subsidiaries is a party to or bound by any collective bargaining or similar agreement with any labor organization, or work rules or practices agreed to with any labor organization or employee association, applicable to employees of TNE or of any TNE Subsidiary; and (iv) true, complete and correct copies of all written personnel policies, rules or procedures applicable to employees of the Business have heretofore been made available to MetLife.

Section 4.22 Personnel. TNE has provided MetLife in writing, as of a date not more than five days prior to the date of this Agreement, information reasonably requested by MetLife regarding the employment status of (i) the executive officers, appointed actuary and chief auditor of the TNE Insurers and (ii) the executive officers and the principal portfolio and investment managers of NEIC and its material subsidiaries and, to the extent not otherwise included, any TNE Material Asset Management Company.

Section 4.23 Warranties. (i) The representations and warranties of TNE contained herein, and the information provided by TNE contained in the TNE Disclosure Schedule and in any certificate or document heretofore furnished to MetLife by TNE in connection herewith do not on the date provided and the date hereof and (ii) any further information which may be provided to MetLife by TNE after the date hereof for inclusion in the TNE Disclosure Schedule, any certificate or document furnished to MetLife by TNE hereunder after the date hereof and the Meeting Notice and the Proxy Statement (if applicable), will not on the date such information, certificate or document is given or, with respect to the Meeting Notice and Proxy Statement (if applicable), on the date mailed or published and the date of the meeting relating

thereto, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements herein or therein not misleading in light of the circumstances in which made. The information provided by TNE contained herein, in the TNE Disclosure Schedule, in the Meeting Notice, in the Proxy Statement (if applicable) and in such other documents or certificates fairly presents and will (on the date provided and, with respect to the Meeting Notice and the Proxy Statement (if applicable), on the date such document is mailed or published and the date of the meeting relating thereto) fairly present the information purported to be shown herein and therein and is and will be (on the date provided and, with respect to the Meeting Notice and the Proxy Statement (if applicable) on the date such document is mailed or published and the date of the meeting relating thereto) accurate in all material respects. There is no fact which TNE has not disclosed to MetLife which has, or so far as TNE can reasonably foresee is likely to have, a material adverse effect on the Condition of TNE or of TNE and the TNE Subsidiaries taken as a whole or the ability of TNE to perform its obligations under this Agreement.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF METLIFE

MetLife represents and warrants to TNE as follows:

Section 5.1 Organization and Qualification.

MetLife is a mutual life insurance company duly organized, validly existing and in good standing under the Laws of the State of New York and has full corporate power, authority and legal right to conduct its Business as it is currently being conducted. Each of the MetLife Subsidiaries is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or formation and has full corporate power, authority and legal right to conduct its Business as it is currently being conducted. Each of MetLife and the MetLife Subsidiaries is duly qualified to do business, and is in good standing, in the respective jurisdictions where the character of its Assets owned or leased or the nature of its Business makes such qualification necessary, except for failures to be so qualified or in good standing which would not, individually or in the aggregate, have a material adverse effect on the Condition of MetLife or of MetLife and the MetLife Subsidiaries taken as a whole. MetLife possesses an Insurance License in each jurisdiction in which MetLife is required to possess

an Insurance License. All such Insurance Licenses, including, but not limited to, authorizations to transact reinsurance, are listed and described in Section 5.1 of the MetLife Disclosure Schedule and are in full force and effect without amendment, limitation or restriction, other than as described in Section 5.1 of the MetLife Disclosure Schedule, and MetLife does not have Knowledge of any event, inquiry or Proceeding which could reasonably be expected to lead to the revocation, amendment, failure to renew, limitation, suspension or restriction of any such License.

Section 5.2 Authority Relative to this Agreement.

(a) MetLife has full power, authority and legal right to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly approved and authorized by the Board of Directors of MetLife. Except for the approval of this Agreement by the Members of MetLife, no other corporate proceedings on the part of MetLife are necessary to authorize this Agreement and the transactions contemplated hereby. The affirmative vote of two-thirds of all the votes cast by Members of MetLife who vote in person (by ballot or



otherwise) or by proxy on this Agreement is the only vote of Members of MetLife necessary to approve this Agreement and the transactions contemplated hereby.

(b) This Agreement has been duly and validly executed and delivered by MetLife and (assuming this Agreement is a legal, valid and binding obligation of TNE) constitutes a legal, valid and binding agreement of MetLife enforceable against MetLife in accordance with its terms.

Section 5.3 No Violation.

(a) Except as set forth in Section 5.3(a) of the MetLife Disclosure Schedule, the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby will not (i) constitute a breach or violation of or default under the charter or the bylaws of MetLife or any MetLife Subsidiary, (ii) violate, conflict with, or result in a breach of any provisions of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, or accelerate the performance required by, or result in a right of termination or acceleration under, or result in the creation of any Lien upon any of the Assets of MetLife or any MetLife Subsidiary under, any of the terms, conditions or provisions of any Contract to which

MetLife or any MetLife Subsidiary is a party or to which it or any of its Assets may be subject or (iii) constitute a breach or violation of or default under any Law or License to which MetLife or any MetLife Subsidiary is subject other than, in the case of clauses (ii) and (iii), events or other matters that would not individually or in the aggregate have a material adverse effect on the Condition of MetLife or of MetLife and the MetLife Subsidiaries taken as a whole.

(b) Except for (i) the Governmental Approvals set forth in Section 5.3(b) of the MetLife Disclosure Schedule, (ii) the approval of the Meeting Notice by the New York Superintendent as contemplated by Section 3.1(b) hereof, (iii) the approval of this Agreement by the Members of MetLife as contemplated by Section 3.1(a) hereof, (iv) the filing of this Agreement with the New York Office as contemplated by Section 2.2 hereof, (v) consents, authorizations, approvals, filings or exemptions in connection with compliance with the applicable provisions of state and federal securities Laws (including, but not limited to, an affirmative response to the filing of the Combined No-Action Letter) relating to the regulation of broker-dealers and investment advisers and the rules of the NASD, (vi) receipt of the private letter ruling or tax opinion referred to in Section 7.2(i)

hereof and (vii) the filings required under the HSR Act and the expiration or other termination of any waiting period applicable to the Merger under such act, no Consent or Filing of or with any Person is required with respect to MetLife or any MetLife Subsidiary or any MetLife Affiliate or MetLife Group Fund in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, the failure to obtain or do which would, individually or in the aggregate, have a material adverse effect on the Condition of MetLife or of MetLife and the MetLife Subsidiaries taken as a whole or prevent the consummation of the transactions contemplated hereby.

Section 5.4 SAP Statements. MetLife has previously delivered to TNE true, complete and correct copies of its audited SAP Statements for each of the years ended December 31, 1992, 1993 and 1994. MetLife has also furnished to TNE true, complete and correct copies of its SAP Statements for the three months ended March 31, 1995 and for the six months ended June 30, 1995. In addition, prior to the Effective Time MetLife will have delivered to TNE true, complete and correct copies of (i) its audited SAP Statement for the year ending December 31, 1995 and (ii) its unaudited SAP Statement for the quarter ended March 31, 1996 (collec-

tively, the "Additional MetLife SAP Statements"). Each of the SAP Statements was (or, in the case of the Additional MetLife SAP Statements, will have been) in compliance in all material respects with applicable Law when filed, and was (or, in the case of the Additional MetLife SAP Statements, will have been) prepared in accordance with SAP, and each presents fairly (or, in the case of the Additional MetLife SAP Statements, will present fairly) in all material respects the financial condition, assets, liabilities, surplus and other funds and results of operations of MetLife as at the dates or for the periods covered thereby, in conformity with SAP, subject, in the case of unaudited interim SAP Statements, to normal year-end audit adjustments and, in the case of all unaudited SAP Statements, to the absence of interrogatories or footnote disclosure to the extent required or permitted.

Section 5.5 GAAP Statements. MetLife has previously delivered to TNE true, complete and correct copies of the (i) audited GAAP Financial Statements for each of the MetLife Subsidiaries, other than the MetLife Insurers, for the years ended December 31, 1992, 1993 and 1994 and (ii) unaudited GAAP Financial Statements for each of the MetLife Subsidiaries, other than MetLife Insurers, for the three months ended March 31, 1995 and

for the six months ended June 30, 1995 (collectively, the "MetLife GAAP Financial Statements"). Each of the MetLife GAAP Financial Statements was prepared in accordance with GAAP, and each presents fairly in all material respects the financial condition, results of operations and cash flows of the Person covered thereby as at the dates or for the periods covered thereby, in conformity with GAAP, subject, in the case of unaudited interim GAAP Financial Statements, to normal year-end audit adjustments, and in the case of all unaudited GAAP Financial Statements, to the absence of footnote disclosure to the extent required or permitted.

Section 5.6 Reserves. The aggregate actuarial reserves and other actuarial amounts held in respect of Liabilities with respect to Insurance Contracts of MetLife as established or reflected in the 1994 Annual Statement of MetLife: (a) (i) were determined in accordance with generally accepted actuarial standards consistently applied, (ii) were fairly stated in accordance with sound actuarial principles and (iii) were based on actuarial assumptions that are in accordance with or more conservative than those specified in the related Insurance Contracts; (b) met the requirements of the New York Insurance Law and other applicable jurisdictions in all material respects; and (c) were adequate at such date (under

generally accepted actuarial standards consistently applied on the basis of facts or circumstances known or which reasonably should have been known at such date) to cover the total amount of all reasonably anticipated matured and unmatured Liabilities of MetLife under all outstanding Insurance Contracts pursuant to which MetLife has any Liability. Management of MetLife reasonably believes that MetLife owns Investment Assets of sufficient kind, quality and other characteristics to meet the requirements of all applicable Laws.

Section 5.7 Absence of Certain Changes or Events. Except as set forth in Section 5.7 of the MetLife Disclosure Schedule, since December 31, 1994, each of MetLife and the MetLife Subsidiaries has conducted its Business only in the ordinary course of business, consistent with past practice, and there has not occurred any change (other than changes of general application to the life insurance industry or changes in ratings) which, individually or in the aggregate, has had or may reasonably be expected to have a material adverse effect on the Condition of MetLife or of MetLife and the MetLife Subsidiaries taken as a whole.

Section 5.8 No Undisclosed Liabilities. Except as reflected in the Financial Statements delivered to TNE pursuant to Sections 5.4 and 5.5 hereof or as set

forth in Section 5.8 of the MetLife Disclosure Schedule, neither MetLife nor any of the MetLife Subsidiaries has any Liabilities, other than (i) those Liabilities specifically covered by another representation or warranty made by MetLife in this Agreement, (ii) those arising in the ordinary course of business consistent with past practice or (iii) those other than in the ordinary course of business consistent with past practice which may reasonably be expected, individually or in the aggregate, not to have a material adverse effect on the Condition of MetLife or of MetLife and the MetLife Subsidiaries taken as a whole.

Section 5.9 Litigation. Except (i) as set forth in Section 5.9 of the MetLife Disclosure Schedule and (ii) any Proceeding which is not reasonably expected to give rise to a Liability in excess of Five Million Dollars (\$5,000,000), there are no Proceedings pending or, to the Knowledge of MetLife or any of the MetLife Subsidiaries, threatened against, relating to, involving or otherwise affecting MetLife or any MetLife Subsidiary before any Governmental Entity or arbitrator which, individually or in the aggregate, may reasonably be expected to have a material adverse effect on the Condition of MetLife or of MetLife and the MetLife Subsidiaries taken as a whole. Neither MetLife nor any MetLife Subsidiary

is subject to any Order, except for Orders which, individually or in the aggregate, do not and would not reasonably be expected to have a material adverse effect on the Condition of MetLife or of MetLife and the MetLife Subsidiaries taken as a whole.

Section 5.10 Compliance with Law.

(a) Except as set forth in Section 5.10(a) of the MetLife Disclosure Schedule, neither MetLife nor any MetLife Subsidiary is in violation (or, with notice or lapse of time or both, would be in violation) of any term or provision of any Law applicable to it or any of its Assets, the result of which violation, individually or in the aggregate, has or may reasonably be expected to have a material adverse effect on the Condition of MetLife or of MetLife and the MetLife Subsidiaries taken as a whole.

(b) Except as set forth in Section 5.10(b) of the MetLife Disclosure Schedule, all outstanding Insurance Contracts issued or assumed by MetLife are, to the extent required by Law, on forms and at rates approved by the insurance Governmental Entities of the jurisdictions where issued or have been filed with and not objected to by such authorities within the periods provided for objection, except where the failure to do so would not have a material adverse effect on the Condition of



MetLife or of MetLife and the MetLife Subsidiaries taken as a whole.

(c) MetLife has implemented procedures and programs which are reasonably designed to provide assurance that MetLife and its sales representatives and employees are in compliance in all material respects with all applicable Laws, including but not limited to, advertising, licensing and sales Laws.

(d) Except as set forth in Section 5.10(d) of the MetLife Disclosure Schedule, neither MetLife nor any MetLife Subsidiary is a party to any Contract with or other undertaking to, or is subject to any Order by, or is a recipient of any presently applicable supervisory letter or other written communication of any kind from, any Governmental Entity which (i) currently materially adversely affects or is reasonably likely to materially adversely affect the conduct of its Business, (ii) relates materially and adversely to its reserve adequacy or its investment or underwriting practices and policies or its sales practices or policies, or (iii) may reasonably be expected to have a material adverse effect on the Condition of MetLife or of MetLife and the MetLife Subsidiaries taken as a whole nor, to the Knowledge of MetLife or of any of the MetLife Subsidiaries, has MetLife or any MetLife Subsidiary been notified by any

Governmental Entity that it is contemplating issuing or requesting (or is considering the appropriateness of issuing or requesting) any such Order, Contract, undertaking, letter or other written communication.

Section 5.11 Insurance Issued by MetLife.

Except as set forth in Section 5.11 of the MetLife Disclosure Schedule:

(a) all benefits claimed since January 1, 1992 by any Person under any MetLife Insurance Contract have in all material respects been paid (or provision for payment thereof has been made) in accordance with the terms of the Contract under which they arose, and such payments were not delinquent and were paid (or will be paid) without fines or penalties, except for any such claim for benefits of less than Five Hundred Thousand Dollars (\$500,000) for which MetLife reasonably believes there is a reasonable basis to contest payment and is taking (or is preparing to take) such action; and

(b) to the Knowledge of MetLife or any of the MetLife Subsidiaries, no insurance agent or broker, at the time such agent or broker wrote, sold or produced business for MetLife, violated (or with notice or lapse of time or both would have violated) any term or provision of any Law or Order applicable to any aspect (including, but not limited to, the writing, sale or produc-

tion) of the Business of MetLife, the result of which violations, individually or in the aggregate, has or may reasonably be expected to have a material adverse effect on the Condition of MetLife or of MetLife and the MetLife Subsidiaries taken as a whole.

Section 5.12 Warranties. (i) The representations and warranties of MetLife contained herein, and the information provided by MetLife contained in the MetLife Disclosure Schedule and in any certificate or document heretofore furnished to TNE by MetLife in connection herewith do not on the date provided and on the date hereof and (ii) any further information which may be provided to TNE by MetLife after the date hereof for inclusion in the MetLife Disclosure Schedule, any certificate or document furnished to TNE by MetLife hereunder after the date hereof and the Meeting Notice and the Proxy Statement (if applicable), will not on the date such information, certificate or document is given or, with respect to the Meeting Notice and Proxy Statement (if applicable), on the date mailed or published and the date of the meeting relating thereto, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements herein or therein not misleading in light of the circumstances in which made. The information provided by MetLife con-

tained herein, in the MetLife Disclosure Schedule, in the Meeting Notice, in the Proxy Statement (if applicable) and in such other documents or certificates fairly presents and will (on the date provided and, with respect to the Meeting Notice and the Proxy Statement (if applicable), on the date such document is mailed or published and the date of the meeting relating thereto) fairly present the information purported to be shown herein and therein and is and will be (on the date provided and, with respect to the Meeting Notice and the Proxy Statement (if applicable), on the date such document is mailed or published and the date of the meeting relating thereto) accurate in all material respects. There is no fact which MetLife has not disclosed to TNE which has, or so far as MetLife can reasonably foresee is likely to have, a material adverse effect on the Condition of MetLife or of MetLife and the MetLife Subsidiaries taken as a whole or the ability of MetLife to perform its obligations under this Agreement.

#### ARTICLE VI

##### CERTAIN COVENANTS

Section 6.1 TNE Conduct of Business Pending the Merger. MetLife and TNE agree that it is their mutual intention that, at all times up to and including the Effective Time, TNE and the TNE Subsidiaries (other

Governmental Entity that it is contemplating issuing or requesting (or is considering the appropriateness of issuing or requesting) any such Order, Contract, undertaking, letter or other written communication.

Section 5.11 Insurance Issued by MetLife.

Except as set forth in Section 5.11 of the MetLife Disclosure Schedule:

(a) all benefits claimed since January 1, 1992 by any Person under any MetLife Insurance Contract have in all material respects been paid (or provision for payment thereof has been made) in accordance with the terms of the Contract under which they arose, and such payments were not delinquent and were paid (or will be paid) without fines or penalties, except for any such claim for benefits of less than Five Hundred Thousand Dollars (\$500,000) for which MetLife reasonably believes there is a reasonable basis to contest payment and is taking (or is preparing to take) such action; and

(b) to the Knowledge of MetLife or any of the MetLife Subsidiaries, no insurance agent or broker, at the time such agent or broker wrote, sold or produced business for MetLife, violated (or with notice or lapse of time or both would have violated) any term or provision of any Law or Order applicable to any aspect (including, but not limited to, the writing, sale or produc-

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Governmental Entity that it is contemplating issuing or requesting (or is considering the appropriateness of issuing or requesting) any such Order, Contract, undertaking, letter or other written communication.

Section 5.11 Insurance Issued by MetLife.

Except as set forth in Section 5.11 of the MetLife Disclosure Schedule:

(a) all benefits claimed since January 1, 1992 by any Person under any MetLife Insurance Contract have in all material respects been paid (or provision for payment thereof has been made) in accordance with the terms of the Contract under which they arose, and such payments were not delinquent and were paid (or will be paid) without fines or penalties, except for any such claim for benefits of less than Five Hundred Thousand Dollars (\$500,000) for which MetLife reasonably believes there is a reasonable basis to contest payment and is taking (or is preparing to take) such action; and

(b) to the Knowledge of MetLife or any of the MetLife Subsidiaries, no insurance agent or broker, at the time such agent or broker wrote, sold or produced business for MetLife, violated (or with notice or lapse of time or both would have violated) any term or provision of any Law or Order applicable to any aspect (including, but not limited to, the writing, sale or produc-

tained herein, in the MetLife Disclosure Schedule, in the Meeting Notice, in the Proxy Statement (if applicable) and in such other documents or certificates fairly presents and will (on the date provided and, with respect to the Meeting Notice and the Proxy Statement (if applicable), on the date such document is mailed or published and the date of the meeting relating thereto) fairly present the information purported to be shown herein and therein and is and will be (on the date provided and, with respect to the Meeting Notice and the Proxy Statement (if applicable), on the date such document is mailed or published and the date of the meeting relating thereto) accurate in all material respects. There is no fact which MetLife has not disclosed to TNE which has, or so far as MetLife can reasonably foresee is likely to have, a material adverse effect on the Condition of MetLife or of MetLife and the MetLife Subsidiaries taken as a whole or the ability of MetLife to perform its obligations under this Agreement.

#### ARTICLE VI

##### CERTAIN COVENANTS

Section 6.1 TNE Conduct of Business Pending the Merger. MetLife and TNE agree that it is their mutual intention that, at all times up to and including the Effective Time, TNE and the TNE Subsidiaries (other



incur any indebtedness for money borrowed in the aggregate for TNE and the TNE Subsidiaries in excess of Twenty Million Dollars (\$20,000,000) for any such indebtedness having a maturity of 90 days or less or Two Million Dollars (\$2,000,000) for any such indebtedness having a maturity of more than 90 days, (iv) agree to any merger, consolidation, demutualization, acquisition, redomestication, sale of all or a substantial portion of its Assets, bulk or assumption reinsurance arrangement or other similar reorganization, arrangement or business combination, (v) prior to notifying MetLife, enter into any partnership, joint venture or profit sharing Contract, other than as envisioned by the Statement of Operating Principles, (vi) make any change in its dividend scale prior to discussing such change with MetLife, (vii) enter into any Contract limiting the ability of TNE or of any TNE Subsidiary to engage in any Business, to compete with any Person or to do business with any Person, (viii) enter into any Contract relating to the direct or indirect guarantee of any obligation of any Person in respect of indebtedness for borrowed money or other financial obligation of any Person other than in the ordinary course of business consistent with past practice, (ix) enter into any Contract that could materially and adversely affect the consummation of the transactions

contemplated hereby or (x) modify any Contract with respect to the subject of any of the foregoing clauses;

(d) TNE shall not permit any TNE Subsidiary to issue or sell any shares of or interests in, or rights of any kind to acquire any shares of or interests in, or to receive any payment based on the value of, the capital stock of or other equity interests in or any securities convertible into shares of any capital stock of or other equity interests in any TNE Subsidiary, other than the issuance of Class A or Class B Participating Common Stock of Omega Reinsurance Corporation to agents of TNE in the ordinary course of business consistent with existing agreements and arrangements;

(e) Except (i) as set forth in Section 6.1(e) of the TNE Disclosure Schedule, (ii) in the ordinary course of business consistent with past practice, or (iii) as required by the terms of agreements or plans already in effect, applicable Law or as envisioned in the Statement of Operating Principles, TNE shall not, and shall not permit any TNE Subsidiary to (i) increase in any material manner the compensation of its directors or executive officers or enter into any Contract relating to the borrowing of money by its directors or executive officers, (ii) pay or agree to pay any pension, retirement allowance or other employee benefit not required by

the current terms of any existing plan, agreement or arrangement to any director or executive officer, (iii) adopt, enter into, terminate or amend, any pension, profit-sharing, bonus, incentive, deferred compensation, field compensation, group insurance, severance pay, termination, vacation, retirement or other employee benefit plan, agreement or arrangement, (iv) enter into, adopt or increase any indemnification or hold harmless arrangements with any directors, officers or other employees or agents of TNE or any TNE Subsidiary or any other Person, (v) enter into any Contract with any officer, director or trustee of TNE or of any TNE Subsidiary with terms less favorable to TNE or any TNE Subsidiary than could have been obtained from an unaffiliated Person or (vi) appoint or elect any new executive officer of TNE or of any TNE Subsidiary or any person other than the incumbent person to be the appointed actuary or chief auditor of TNE;

(f) Other than in the ordinary course of business consistent with past practice, TNE shall not, and shall not permit any TNE Subsidiary to, make any expenditures or commitments for expenditures for the purchase or lease of any products or services or group of products or services (other than with respect to Investment Assets) which in one or a series of related transac-

tions exceed Two Hundred and Fifty Thousand Dollars (\$250,000) or which in the aggregate for TNE and the TNE Subsidiaries taken as a whole exceed Two Million and Five Hundred Thousand Dollars (\$2,500,000), except for expenditures relating to this Agreement and the consummation of the transactions contemplated hereby, expenditures made to the Persons identified in Section 9.2(b) hereof and expenditures required to be made pursuant to existing Contracts to which TNE or any TNE Subsidiary is a party thereto, which Contracts are set forth in Section 4.16 of the TNE Disclosure Schedule;

(g) Other than in the ordinary course of business consistent with past practice or in connection with the redemption of outstanding guaranteed investment contracts in the exercise of TNE's reasonable judgment, TNE shall not, and shall not permit any TNE Subsidiary to, waive any rights with a value in excess of One Hundred Thousand Dollars (\$100,000) or any other rights which are material to any Contract or make any payment, direct or indirect, of any Liability in excess of One Hundred Thousand Dollars (\$100,000) before the same comes due in accordance with its terms, in each case, including, but not limited to, any provision of any Insurance Contract to permit a cash-out thereof;

(h) TNE shall not, and shall not permit any TNE Subsidiary or TNE Joint Venture (with respect to TNE Real Property) to, other than pursuant to the operation of separate accounts in the ordinary course of business, consistent with existing strategies, (a) sell, lease, mortgage, encumber or otherwise grant any interest in or dispose of any of its Assets which, individually or in the aggregate, are material to the Condition of TNE or of TNE and the TNE Subsidiaries taken as a whole, except at fair market value and in the exercise of reasonable business judgment and, in addition, in the case of Liens, for Permitted Liens and Liens not individually in excess of Five Hundred Thousand Dollars (\$500,000) and not aggregating in excess of Two Million Dollars (\$2,000,000) or (b) restructure, amend, modify or otherwise affect any Investment Asset or any Contract relating thereto which is material to the Condition of TNE or of TNE and the TNE Subsidiaries taken as a whole, except in the exercise of reasonable business judgment and, in either case described in clauses (a) and (b), only in accordance with the statement of investment policy set forth in Section 6.1(h) of the TNE Disclosure Schedule attached hereto; and TNE shall furnish to MetLife a monthly report, in detail reasonably acceptable to MetLife, of all such transactions or other changes (other than changes in

market values or ordinary course changes such as interest payments, maturities, etc.) affecting Investment Assets of TNE or any TNE Subsidiary which took place since the last such report;

(i) TNE agrees that it shall not, nor shall it permit any TNE Subsidiary to, other than pursuant to the operation of separate accounts involved in real estate in the ordinary course, consistent with existing strategies, make any equity real estate investments (other than through restructuring or foreclosure or pursuant to commitments existing at the date hereof or to protect the value of existing investments in the exercise of reasonable business judgment) and that neither TNE nor any TNE Subsidiary shall take any action, other than in the exercise of reasonable business judgment and following discussion with MetLife, which results, individually or in the aggregate, in (i) the realization of any gross capital loss or losses in an amount of Ten Million Dollars (\$10,000,000) or more or (ii) an adverse impact on the surplus of TNE or of a TNE Subsidiary in an amount of Ten Million Dollars (\$10,000,000) or more.

(j) Other than in the ordinary course of business consistent with past practice, TNE shall not, and shall not permit any TNE Subsidiary or TNE Joint Venture (with respect to TNE Real Property) (other than

TNE Joint Ventures that are not controlled, directly or indirectly, by TNE, provided that in such cases TNE shall use all commercially reasonable efforts to cause such entities to comply with the provisions of this Section) to, enter into any material Contract or amend or waive any material provision of any material Contract which would involve the payment by TNE or any TNE Subsidiary of Five Hundred Thousand Dollars (\$500,000) or more;

(k) Other than in the ordinary course of business consistent with past practice, TNE shall not, and shall not permit any TNE Subsidiary to, settle or compromise any claim in any action, proceeding or investigation which could result in an expenditure for TNE and the TNE Subsidiaries in excess of One Million Dollars (\$1,000,000) other than any settlement or compromise with respect to federal income taxes for the taxable years ending December 31, 1984 through the taxable year ending December 31, 1991, provided however, that no such settlement or compromise with respect to such taxes shall be entered into by TNE or any TNE Subsidiary without the consent of MetLife, which consent shall not be unreasonably withheld;

(l) TNE shall not, and shall not permit any TNE Subsidiary to, in a single transaction or in a series of related transactions, (i) cede reinsurance with re-

spect to business for which the reserves held with respect to Liabilities exceed Ten Million Dollars (\$10,000,000), except in accordance with existing reinsurance agreements or in the ordinary course of business consistent with past practice, or (ii) assume reinsurance (by way of indemnity or assumption) pursuant to any Contract to which TNE is not a party on the date hereof or, if pursuant to any Contract to which TNE is a party on the date hereof, only in the ordinary course of businesses consistent with past practice;

(m) TNE shall, and shall cause each TNE Subsidiary to, maintain uninterrupted its existing insurance coverage of all types in effect or procure substantially similar substitute insurance policies with financially sound and reputable insurance companies in at least such amounts and against such risks as are currently covered by such policies if such coverage is available; and

(n) Neither TNE nor any TNE Subsidiary shall agree, in writing or otherwise, to take any of the actions prohibited by the foregoing clauses (a) through (m).

Nothing in this Section 6.1 shall be deemed (i) to prevent TNE from providing capital to NEVLICO in accordance with the Statement of Operating Principles or (ii) to prevent TNE from taking any actions required by



existing agreements governing TNE's separate accounts, provided that such actions would not result in Liability to, or other adverse impact on, TNE's general account.

Section 6.2 NEIC Entities Conduct of Business Pending the Merger. MetLife and TNE agree that it is their mutual intention that the Business of the NEIC Entities shall be conducted in accordance with the Memorandum dated April 6, 1995 (the "Memorandum") of the Chairman of the Board and Chief Executive Officer of MetLife, to the Chairman of the Board and Chief Executive Officer of NEIC, following the Effective Time and, to the extent relevant, prior to the Effective Time. Notwithstanding the foregoing, TNE covenants and agrees, at all times up to and including the Effective Time, unless MetLife shall otherwise consent in writing, which consent shall not be unreasonably withheld (MetLife agreeing that it will use its best efforts to respond to any request for consent received under this Section 6.2 of Article VI within five (5) business days, or sooner as circumstances may require, after receipt of such request), or as otherwise expressly permitted or contemplated by this Agreement:

(a) TNE shall not permit any NEIC Entity to conduct its business in a manner which it believes is inconsistent with the mutual intention stated in the Memorandum

and is not in furtherance of the transactions contemplated hereby;

(b) TNE shall not permit any NEIC Entity to take any action, or engage in any activity, that could jeopardize the status of NEIC as an existing partnership for purposes of Section 10211(c) of the Revenue Act of 1987;

(c) TNE shall cause each NEIC Entity to use all reasonable efforts to preserve intact its present business organization and preserve its regular services to and maintain its significant business relationships with underwriters, brokers, investment customers, suppliers and all others having business dealings with it to the end that its goodwill and ongoing Business shall not be impaired in any material respect;

(d) TNE shall not permit any NEIC Entity to enter into any Contract limiting the ability of TNE and the TNE Subsidiaries, other than the NEIC Entities, to engage in any Business, to compete with any Person, to do business with any Person or in any location or to employ the employees or agents of any Person;

(e) TNE shall not permit any NEIC Entity to enter into any Contract that could materially and adversely affect the consummation of the transactions contemplated hereby;

(f) TNE shall not, and shall not permit NEIC or any other NEIC Entity to, sell or issue any interests in, or rights of any kind to acquire any interests in, or to receive any payment based on the value of, any NEIC GP Units or NEIC LP Units or other equity interests in or any equity interests convertible into NEIC GP Units or NEIC LP Units or other equity interests of NEIC, as a result of which the ownership of TNE and NEIC, Inc. together will fall below forty (40) percent of the NEIC Units then outstanding and TNE shall not permit NEIC, Inc. to exchange or transfer any NEIC GP Units; provided, however, that (i) if NEIC takes any such action which would result in the ownership of TNE and NEIC, Inc. together falling below fifty percent (50%) of the NEIC Units then outstanding, TNE shall, at MetLife's request, and after consultation with NEIC, promptly contribute a sufficient number of NEIC Units to NEIC, Inc. so as to cause the total number of NEIC Units owned by NEIC, Inc. to constitute at least one-third (1/3) of the NEIC Units outstanding, and (ii) unless MetLife consents in writing, TNE shall, after making such contribution, cause NEIC, Inc. to take such actions as are necessary to prevent the ownership of NEIC, Inc. from falling below one-third (1/3) of the NEIC Units outstanding at any time;

(g) TNE and NEIC shall notify and consult with MetLife prior to making any commitment on any proposal for the acquisition of any material interest in any Person or the sale or disposition of any material interest in any NEIC Entity provided that neither TNE, NEIC nor any NEIC Entity shall be permitted to acquire, sell or dispose of any material interest or take any action that would change the character of TNE's investment in NEIC;

(h) TNE shall cause each NEIC Entity to maintain uninterrupted its existing insurance coverage of all types in effect or procure substantially similar substitute insurance policies with financially sound and reputable insurance companies in at least such amounts and against such risks as are currently covered by such policies if such coverage is available at commercially reasonable rates;

(i) TNE shall not permit NEIC, Inc. to make any amendments to its charter or bylaws or permit any NEIC Entity to make or propose any amendments to its charter or bylaws or limited partnership agreement, as the case may be, that could be inconsistent with TNE's obligations under clause (a); and

(j) TNE shall not and shall not permit any TNE Subsidiary or any NEIC Entity to agree, in writing or

otherwise, to take any of the actions prohibited by the foregoing clauses (a) through (i).

Section 6.3 MetLife Conduct of Business Pending the Merger. MetLife covenants and agrees that, at all times up to and including the Effective Time, unless TNE shall otherwise consent in writing, which consent will not be unreasonably withheld (TNE agreeing that it will use its best efforts to respond to any request received from MetLife arising under this Article VI within five (5) business days after the receipt of such request), or as otherwise expressly permitted or contemplated by this Agreement:

(a) MetLife shall conduct its Business in a manner which MetLife reasonably believes is not inconsistent with the consummation of the transactions contemplated hereby, and MetLife shall use all reasonable efforts to preserve intact its present business organization and preserve its regular services to, and maintain its significant business relationships with, policyholders, insureds, agents, underwriters, brokers, investment customers, suppliers and all others having business dealings with it to the end that its goodwill and ongoing Business shall not be impaired in any material respect;

(b) MetLife shall not make or propose to make any change in its dividend practices or policies appli-

cable to its ordinary life insurance business in the United States;

(c) MetLife shall not make any change in its dividend scale applicable to its ordinary life insurance business in the United States prior to discussing such change with TNE;

(d) MetLife shall not (i) amend its charter or bylaws in a manner which would be inconsistent with the consummation of the transactions contemplated hereby, (ii) agree to any merger in which it is not the surviving entity or any consolidation, demutualization, redomestication, sale of all or substantially all of its Assets or any other similar reorganization, arrangement or business combination or (iii) enter into or modify any Contract in a manner that will or is reasonably likely to materially and adversely affect the consummation of the transactions contemplated hereby;

(e) MetLife shall maintain uninterrupted its existing insurance coverage of all types in effect or procure substantially similar substitute insurance policies with financially sound and reputable insurance companies in at least such amounts and against such risks as are currently covered by such policies if such insurance coverage is available, except for insurance coverage the failure to so keep in effect would not have a materi-

al adverse effect on the Condition of MetLife or of MetLife and the MetLife Subsidiaries taken as a whole;

(f) MetLife (i) will not dispose of or terminate the MetLife brokerage operation, (ii) will not make any acquisition or organizational change inconsistent with the role that the Statement of Operating Principles envisions for NEVLICO following the Merger and (iii) in general shall otherwise conduct its Business in a manner which is consistent with its intent to proceed in good faith in the manner set forth in the Statement of Operating Principles; and

(g) MetLife shall not agree, in writing or otherwise, to take any of the actions prohibited by the foregoing clauses (a) through (f).

Section 6.4 Reasonable Efforts; Cooperation with Respect to Private Letter Ruling. (a) Upon the terms and subject to the conditions herein provided, each of the parties hereto agrees to use all reasonable efforts to take, or cause to be taken, all action, to do, or cause to be done, and to assist and cooperate with the other party hereto in doing or causing to be done, all things necessary, proper or advisable to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by this Agreement, including, but not limited to, (i) the actions set forth

in Article III hereof, (ii) the obtaining of all necessary actions or nonactions, waivers, consents and approvals from all appropriate Governmental Entities and other Persons and the making of all necessary registrations and filings, (iii) the obtaining of the opinions and the Combined No-Action Letter referred to in Section 3.2, (iv) the resolution of all organizational and human resources issues relating to the transactions contemplated hereby, including, but not limited to, conveying information to employees and agents and counseling such individuals and (v) the defending of any Proceedings challenging this Agreement or the consummation of the transactions contemplated hereby, the defense of which shall, at the request of either TNE or MetLife, be conducted jointly by MetLife and TNE on a basis that is satisfactory to both TNE and MetLife.

(b) As promptly as practicable after the date hereof, MetLife shall prepare a request for a private letter ruling from the IRS with respect to the matters set forth as items (1) through (4) and (11) through (15) of Exhibit F hereof, and such other matters as to which MetLife and TNE shall agree (with such request for a private letter ruling, together with any exhibits, attachments or supplements, referred to herein as the "Ruling Request"). Prior to the filing of the Ruling Request,



MetLife shall submit to TNE, for TNE's review and comment, draft copies of the proposed Ruling Request, and, as soon as practicable thereafter, TNE shall advise MetLife of any recommended changes to the proposed Ruling Request, and MetLife and TNE shall consult in good faith to resolve any disagreements that may arise with respect to the incorporation of TNE's recommended changes, if any, to the Ruling Request. TNE and MetLife will cooperate in taking all reasonable steps necessary for the submission of the Ruling Request, including the execution of powers of attorney authorizing their respective counsels to represent them with respect to the Ruling Request, declarations of the accuracy of the statements made in the Ruling Request, and any other documentation necessary or appropriate for the submission of the Ruling Request. MetLife and TNE shall jointly submit the Ruling Request, and shall be joint signatories with respect to such Ruling Request. MetLife shall draft any responses to any request for additional information or analysis requested by the IRS. Prior to the filing of any such response, MetLife shall submit a draft of such response to TNE for TNE's review and comment, and as soon as practicable thereafter, TNE shall advise MetLife of any recommended changes to the proposed response, and MetLife and TNE shall consult in good faith to resolve any disagreements

that may arise with respect to the incorporation of TNE's recommended changes, if any, to the proposed response. MetLife shall be designated in the Ruling Request as the party with primary responsibility for discussions with the IRS relating thereto, and MetLife shall notify TNE of any in-person meeting scheduled with the IRS to discuss the Ruling Request, and shall provide TNE with an opportunity to participate in any such meeting. MetLife will also notify TNE of, and shall provide TNE with an opportunity to participate in, any other communications with the IRS to the extent that such communications pertain to the tax consequences of the transactions contemplated hereby to TNE, any TNE Subsidiary or any policyholders of TNE or of any TNE Subsidiary.

(c) TNE will, and will cause the NEIC Entities to, and cooperate with MetLife to, take any actions reasonably requested by MetLife to prevent a possible termination and reconstitution of NEIC for federal income tax purposes as a result of the Merger and to prevent or minimize any expenses as a result thereof.

Section 6.5 Access and Information. Each of MetLife and TNE shall (i) afford to the other and the other's accountants, legal counsel and other advisers full access, during normal business hours through the period immediately prior to the Effective Time, to all of

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its and its Subsidiaries' and, to the extent reasonably available, its Affiliates' Assets, books, Contracts, commitments and records (including, but not limited to, TNE's Tax Returns, but excluding any documents relating to active litigation to which MetLife, TNE or any of their respective Subsidiaries is a party which are subject to the attorney-client privilege) and TNE Real Property (including, but not limited to, access for environmental testing), provided that each party hereto shall indemnify the other, on customary terms, for any tortious actions taken by such party or its agents or representatives on the other's real property in connection with such access, and (ii) during such period, each of MetLife and TNE shall furnish promptly to the other all such information concerning its Business, Assets and personnel or that of any of its Subsidiaries or other Affiliates, as the other may reasonably request. Neither party will use any such information to the detriment of the other party and each will be bound by the provisions of the Confidentiality Agreement in respect of such information; provided, however, that, after the Effective Time the Confidentiality Agreement shall be null and void and of no further force and effect and the Surviving Company may disclose any such information.

As promptly as practicable after the date hereof (but in no event later than October 15, 1995), TNE shall deliver to MetLife a true, complete and correct list of all Contracts (other than Contracts which are terminable on notice of 90 days or less without penalty, damage or other adverse effect) to which any separate account of TNE is a party or to which it or any of its Assets may be subject (including, but not limited to, TNE JV Agreements, loan documents and documents relating thereto for borrowings, guarantees, master leases, ground leases and title insurance policies) pursuant to which a consent or approval may be required from any third party in connection with the Merger or which would be accelerated or terminated as a consequence of the Merger, and TNE and MetLife will cooperate in obtaining the necessary consents under such Contracts and in minimizing the economic consequences of any terminations or accelerations under such Contracts.

Section 6.6 Approvals and Filings. Each of MetLife and TNE shall timely provide, and shall cause their respective Subsidiaries and other Affiliates to timely provide, information reasonably requested by the other party for use in connection with any application or notification that may be made to applicable Governmental Entities in connection with the transactions contemplated

hereby. Each of MetLife and TNE shall make, and cause their respective Subsidiaries and other Affiliates, where applicable, to make, all filings, as soon as reasonably practicable, including, but not limited to, those under the HSR Act, the Securities Act, the Exchange Act, the Investment Company Act and the Advisers Act, required in order to facilitate prompt consummation of the Merger and the other transactions contemplated by this Agreement. In addition, each of TNE and MetLife shall use, and shall cause its Subsidiaries and other Affiliates (where applicable) to use, their respective best efforts, and shall cooperate fully with each other: (i) to comply as promptly as reasonably practicable with all requirements of Governmental Entities applicable to the Merger and the other transactions contemplated herein; and (ii) to obtain as promptly as reasonably practicable all permits, orders or other consents of Governmental Entities and consents of all third parties necessary for the consummation of the Merger at the Effective Time and the other transactions contemplated herein. Each of MetLife and TNE shall use, and shall cause their respective Subsidiaries and other Affiliates (where applicable) to use, their respective best efforts to provide such information and communications to Governmental Entities as such Governmental Entities may request. Each of MetLife and

TNE shall promptly deliver to the other party copies of all documents proposed to be filed with Governmental Entities by it or its Subsidiaries and other Affiliates with respect to the transactions contemplated hereby in advance of such filings and shall consult with the other regarding such filings before making any such filings and each shall provide the other with copies of all such documents which are filed with Governmental Entities and copies of all correspondence to and from such Governmental Entities in connection therewith. TNE also shall submit to MetLife for its prior approval copies of all descriptions of the transactions contemplated hereby or of MetLife or any MetLife Subsidiaries which are proposed for inclusion in any material to be sent to its and its Subsidiaries' advisory clients pursuant to Sections 6.7 and 6.8 hereof.

Section 6.7 Satisfaction of Section 15 of the Investment Company Act. (a) TNE shall, and shall cause each entity listed on Section 6.7(a) of the TNE Disclosure Schedule to, use its and their best efforts to solicit and obtain the approval of the board of trustees, directors or similar governing body of any TNE Group Fund that is registered under the Investment Company Act for which any TNE Asset Management Company serves as investment adviser or manager (including as subadviser or

submanager) to (i) approve, and to solicit their respective shareholders as promptly as reasonably practicable with regard to the approval of, new Investment Advisory Contracts with the applicable TNE Asset Management Company acting as investment adviser or subadviser for such TNE Group Fund, to be effective at the Effective Time, all to the extent required by, and consistent with all requirements of the Investment Company Act applicable thereto; provided, however, that such new Contracts shall be identical in all material respects to the existing Contracts and (ii) nominate and elect, or to the extent required in order to satisfy the conditions of Sections 15(f) and 16(b) of the Investment Company Act applicable thereto, solicit their respective shareholders as promptly as reasonably practical with regard to the election of, the individuals listed in Section 6.7(a) of the TNE Disclosure Schedule and such other individuals as may be necessary to satisfy the conditions of Sections 15(f) and 16(b) of the Investment Company Act.

(b) TNE shall, and shall cause each of the applicable TNE Asset Management Companies to, use its best efforts to ensure the satisfaction of the conditions set forth in Sections 15(f) and 16(b) of the Investment Company Act with respect to each TNE Group Fund that is registered under the Investment Company Act for which any



TNE Asset Management Company serves as investment adviser or manager (including as subadviser or submanager).

Section 6.8 Advisory Contract Consents. As soon as reasonably practicable, TNE shall, and shall cause each of the applicable TNE Asset Management Companies to, inform its and their noninvestment company advisory clients of the transactions contemplated by this Agreement and shall, in compliance with the Advisers Act and any other applicable Law, request such clients' consent as may be necessary to effect the assignment of their Investment Advisory Related Agreements. MetLife agrees that TNE may satisfy this obligation, insofar as it relates to noninvestment company advisory clients (other than collective investment arrangements managed by a TNE Asset Management Company as to which the governing instruments or applicable Law require any different or supplemental procedure, in which case such different or supplemental procedures must be followed), by providing each such client with the notice contemplated by the first sentence of this Section 6.8 and obtaining either a new investment advisory agreement with such client effective at the Effective Time or such client's consent in the form of an actual written consent or in the form of an implied consent and complying with any other requirements including, but not limited to, to the extent appli-

cable, the disclosure requirements of Rule 204-3 of the Advisers Act. It is understood that such implied consent may be obtained by requesting written consent as aforesaid and informing such client in writing at least sixty (60) days in advance of the Effective Time of: (i) the transactions contemplated hereby and TNE's intention to complete such transactions so as to result in a statutory assignment of such Investment Advisory Related Agreements, (ii) TNE's (or the applicable TNE Asset Management Company's) intention to continue the advisory services, pursuant to the existing Investment Advisory Related Agreement with such client after the Effective Date if such client does not terminate such Investment Advisory Related Agreement prior to the Effective Time; and (iii) the fact that the consent of such client will be implied if such client continues to accept such advisory services without termination.

Section 6.9 Compliance with Section 15(f) of the Investment Company Act by MetLife. MetLife shall conduct its Business and shall cause each of its Subsidiaries and other Affiliates to conduct their respective Businesses so as to assure that, insofar as is within their control, all of the conditions of Section 15(f) of the Investment Company Act with respect to each TNE Group Fund shall be satisfied.

Section 6.10 Notification of Certain Other Matters. MetLife and TNE shall promptly notify each other whenever MetLife (or any MetLife Subsidiary) or TNE (or any TNE Subsidiary) has Knowledge of:

(i) any notice of, or other communication relating to, a default or event which, with notice or lapse of time or both, would become a default, received by such party, any of its Subsidiaries or any of its Joint Ventures subsequent to the date of this Agreement and prior to the Effective Time, in the case of TNE under any Contract of a type required to be disclosed pursuant to Section 4.16 hereof to which TNE or any TNE Subsidiary or TNE Joint Venture is a party or by which any of them or any of their respective Assets may be subject or bound or, in the case of either MetLife or TNE, under any Contract pursuant to which a default thereunder would have a material adverse effect on the Condition of MetLife or of MetLife and the MetLife Subsidiaries taken as a whole or of TNE or of TNE and its Subsidiaries taken as a whole, respectively;

(ii) the occurrence of any event which, with notice or lapse of time or

both, may reasonably be expected to result in a default in the case of TNE, under any Contract to which TNE, any TNE Subsidiary or any TNE Joint Venture is a party or, in the case of either MetLife or TNE, under any Contract pursuant to which a default thereunder would have a material adverse effect on the Condition of MetLife or of MetLife and the MetLife Subsidiaries taken as a whole or of TNE or of TNE and its Subsidiaries taken as a whole, respectively;

(iii) any notice or other communication from or to any Person alleging that the consent of such Person is or may be required in connection with the execution of this Agreement or the consummation of the transactions contemplated hereby;

(iv) any notice or other communication from or to any Governmental Entity in connection with this Agreement or the transactions contemplated hereby; and

(v) any change or other event which may have a material adverse effect on the Condition of such party or of such party and its Subsidiaries taken as a whole, or the oc-

currence of an event or development, other than one affecting the life insurance industry generally which, so far as reasonably can be foreseen at the time of its occurrence, is likely to result in any such change.

Section 6.11 Indemnification.

MetLife agrees that all rights to indemnification now existing in favor of the employees, directors, agents or officers of TNE (individually, an "Indemnitee"), with respect to any Losses based on, arising, in whole or in part, out of, or otherwise in respect of, any action which is taken, or matter existing or occurring on or prior to the Effective Time, as provided in TNE's charter or bylaws or otherwise existing under Law on the date hereof shall survive the Merger; provided, however, that the foregoing is not meant to and shall not create or give any Person any additional right to indemnification not otherwise existing on or prior to the Effective Time. MetLife agrees to use reasonable efforts to obtain directors and officers insurance on substantially the terms presently in effect covering directors and officers of TNE and of each of the TNE Subsidiaries, with respect to any Losses based on, arising, in whole or in part, out of, or otherwise in respect of, any action which is taken, or matter existing or occurring on or prior to the

Effective Time, and to continue such insurance until the sixth anniversary of the Effective Time, provided that such insurance is available on commercially reasonable terms (including cost). If such insurance is not available on such terms, MetLife shall indemnify such persons to the same extent as the present indemnification and insurance arrangements, subject to any limitations on such indemnity under applicable law.

Section 6.12 Supplemental Disclosure. (a) Each of MetLife and TNE shall have the continuing obligation promptly to supplement or amend the MetLife Disclosure Schedule or the TNE Disclosure Schedule, as the case may be, with respect to (i) any material matter hereafter arising including, but not limited to, the Harris Acquisition as provided below, and (ii) any material matter hereafter discovered which, in the case of a matter being disclosed pursuant to clause (i) hereof if existing at the date hereof or, in the case of a matter being disclosed pursuant to clause (ii) hereof, if known at the date hereof would have been required to be set forth or described therein; provided, however, that for the purpose of the rights and obligations of the parties hereunder, any such supplemental or amended disclosure by any party for a matter being disclosed pursuant to clause (ii) hereof shall not be deemed to have been disclosed as

of the date hereof unless so agreed to in writing by the other party.

(b) NEIC has entered into a Partnership Admission Agreement dated June 22, 1995 with Harris Associates, Inc. and Harris Associates, L.P. ("Harris") relating to the acquisition by NEIC of the business of Harris (the "Harris Acquisition"). TNE has made representatives of NEIC available to discuss the Harris Acquisition and the business of Harris with representatives of MetLife. TNE hereby agrees that it and NEIC will, between the date hereof and the Effective Time, (1) make available to MetLife such additional information relating to Harris and the Harris Acquisition in the possession of TNE or NEIC as MetLife may reasonably request and (2) notify MetLife, promptly upon the occurrence of any of the following events, that such event has occurred: (x) that the Harris Acquisition has been consummated, (y) that NEIC, Harris or Harris Associates, Inc. has exercised any right not to consummate the Harris Acquisition or (z) that NEIC has waived the satisfaction of any covenant or condition that, in the absence of such waiver, would constitute a basis for NEIC not to consummate the Harris Acquisition.

Section 6.13 No Solicitations. TNE shall not, nor shall TNE permit any TNE Subsidiary to, nor shall it

authorize or permit any of its officers, directors or employees or any investment banker, financial advisor, attorney, accountant, actuary or other Person retained by it or on its behalf or by or on behalf of any TNE Subsidiary, to: (a) solicit or encourage (including, but not limited to, by way of furnishing information), or take any action to facilitate or pursue, any inquiries or the making of any proposal which constitutes, or may reasonably lead to, any Reorganization Proposal, (b) except as required by applicable law, participate in any discussions or negotiations regarding or furnish to any Person other than MetLife (and its representatives) any information with respect to, or otherwise cooperate in any way with, or assist or participate in or facilitate any efforts or attempts by any Person with respect to, any proposal which constitutes, or may reasonably lead to, any Reorganization Proposal, or (c) agree to, approve or endorse any Reorganization Proposal. TNE shall, and shall cause each TNE Subsidiary and each officer, trustee, director, employee, investment banker, financial advisor, attorney, accountant, actuary or other Person retained by it or on its behalf or by or on behalf of any TNE Subsidiary, to immediately cease and terminate any existing activities, discussions or negotiations regarding the making of any proposal which constitutes, or may



reasonably lead to, any Reorganization Proposal. TNE shall promptly advise MetLife of all inquiries or proposals relating to any Reorganization Proposal however preliminary, and shall communicate to MetLife the full and complete details of any such inquiry or proposal, including, but not limited to, the identity of all Persons involved. As used in this Agreement, "Reorganization Proposal" shall mean any proposal for, or to discuss, a merger, consolidation, acquisition, sale of all or a substantial portion of Assets, demutualization, bulk or assumption reinsurance arrangement involving all or a substantial portion of insurance Liabilities or other reorganization, arrangement or business combination involving TNE or any TNE Subsidiary (other than any NEIC Entity, but including NEIC, Inc.) or any proposal or offer for, or to discuss, the acquisition in any manner of a substantial equity interest in, or a substantial portion of the Assets or Business or any line of business of, TNE or of any TNE Subsidiary, other than the transactions contemplated by this Agreement.

Section 6.14 Dividend Policy. MetLife and TNE agree that the general principles and practices guiding the dividend policy for the Surviving Company are as set forth in Exhibit B hereto.

Section 6.15 Statement of Operating Principles. MetLife and TNE intend that the Surviving Company proceed in good faith to conduct its business in the manner set forth in the Statement of Operating Principles. However, both parties recognize that MetLife retains all prerogatives of a parent company insofar as any of its Subsidiaries are concerned, that MetLife has the right, but no present intention, to alter, amend or deviate from such Statement of Operating Principles and that no term or provision of this Agreement shall limit such right. It is recognized and agreed by TNE and MetLife that the Statement of Operating Principles is not a binding and enforceable agreement and that no Person (including, but not limited to, the parties hereto) has the right to enforce all or any part of the Statement of Operating Principles against MetLife, TNE or any other Person as if it were a binding agreement.

Section 6.16 Exclusivity. MetLife hereby agrees that it will not directly or through any of its directors, officers, employees, agents or advisers , (i) discuss with any third party a possible merger in which MetLife is not the surviving entity or any proposal which would be an alternative to or otherwise inconsistent with a merger with TNE or which would violate the covenants set forth in Section 6.3 hereof, (ii) consider proposals

from any third party for a possible merger in which MetLife is not the surviving entity or any proposal which would be an alternative to or otherwise inconsistent with a merger with TNE or which would violate the covenants set forth in Section 6.3 hereof or (iii) discuss with any third party, or consider any third party proposal for, any transaction which would materially and adversely affect the ability of MetLife and of TNE to merge or to perform the covenants in Section 6.17 hereto or which would violate the covenants set forth in Section 6.3, unless and until this Agreement has been terminated pursuant to Article VIII.

Section 6.17 Covenants of Surviving Company.

(a) The compensation, employee benefit, severance and management incentive plans and programs of NELICO after the Effective Time will be established by their respective executive officers and boards of directors, with consultation as appropriate with MetLife.

(b) Any Person who was actively employed by TNE immediately prior to the Effective Time and who (a) is employed on or after the Effective Time by the Surviving Company or NELICO and (b) receives notice not later than ninety days after the Effective Time that his or her employment will be terminated not later than June 30, 1997 (other than Persons who are being transferred be-

tween the Surviving Company and NELICO or any other Subsidiary of the Surviving Company) shall be entitled to severance payments from the Surviving Company or NELICO, as the case may be, in accordance with the terms set forth in Exhibit G hereto.

(c) The charter and bylaws of NELICO immediately after the Effective Time shall be in the respective forms attached hereto as Exhibits H and I. Promptly after the Effective Time, the Surviving Company shall cause a special meeting of the board of directors of NELICO (the composition of which shall be as set forth in Section 3.3 hereof) to be held and shall use its best efforts to have NELICO elect the Persons listed on Exhibit J hereto to the offices indicated for them.

(d) Promptly after the Effective Time, the TNE Subsidiaries set forth on Exhibit K will be contributed to NELICO.

(e) The Surviving Company shall pay or cause to be paid any real property transfer or gain taxes to which the TNE policyholders may be subject as a result of the Merger.

(f) Although on the date hereof MetLife is not actively considering demutualization, if the Surviving Company were to seek to demutualize, the Surviving Company would submit a plan of demutualization to the New York

Insurance Department which provides for all of its policyholders, including, but not limited to, those policyholders who formerly were TNE policyholders and who became Surviving Company policyholders as a result of the Merger, to be treated fairly and equitably under such plan. In furtherance of any plan of demutualization, the Surviving Company would want to use the fairest method to allocate value among its classes of policyholders. If the Surviving Company were to demutualize under the New York Insurance Law in effect on the date hereof and under actuarial theory and practice as it exists on the date hereof, the Surviving Company would use the "historical/prospective" method of equity share calculation referred to by the Society of Actuaries Task Force in its paper reported in Volume XXXIX (1987) of the Transactions of the Society of Actuaries to measure policyholder contributions subject to the approval of the New York Insurance Department; provided, however, that in the future, the Surviving Company would consider any other method of calculating policyholder contribution which, at the time a demutualization plan is being developed, is considered preferable to the historical/prospective method as the method which most fairly determines policyholder equity shares, subject to the approval of the New York Insurance Department. Further, if the Surviving

Company were to demutualize, extraordinary losses or expenses arising from the activities of TNE prior to the Merger but not arising from participating insurance operations, such as extraordinary litigation losses and extraordinary expenses relating to TNE separate accounts, including without limitation, certain litigation (or any settlement thereof) with the Washington State Investment Board, and payments, if any, made to any of TNE's senior officers under the employment security agreements approved by the TNE Board of Directors, would not, in determining the equity shares of policyholders, be chargeable solely to TNE policyholders who become Surviving Company policyholders as a result of the Merger, but would be taken into account proportionately in the calculation of the equity shares of all MetLife policyholders (including, but not limited to, such TNE policyholders).

## ARTICLE VII

### CONDITIONS

Section 7.1 Conditions to Obligation of TNE to Effect the Merger. The obligations of TNE to effect the Merger shall be subject to the fulfillment at or prior to the Effective Time of the following conditions, any one or more of which may be waived by TNE, but only to the extent permitted by Law:

(a) this Agreement shall have been approved and adopted by the requisite votes of the respective Members of MetLife and of TNE;

(b) all Governmental Approvals or other approvals from any Governmental Entities required to be obtained prior to the Effective Time shall have been obtained and not rescinded or adversely modified or limited, other than Governmental Approvals the absence of which would have no material adverse effect on the Condition of TNE or of TNE and the TNE Subsidiaries taken as a whole or the Condition of MetLife or of MetLife and the MetLife Subsidiaries taken as a whole or the consummation of the transactions contemplated hereby;

(c) all waiting periods under the HSR Act applicable to the Merger shall have expired or been terminated;

(d) (i) MetLife shall have performed and complied in all material respects with all obligations, covenants and agreements required to be performed and complied with by it under this Agreement at or prior to the Effective Time and (ii) the representations and warranties of MetLife contained in this Agreement shall be true and correct in all material respects when made, except as otherwise contemplated or permitted by this Agreement and except as to (i) any breach of which TNE or

any of its advisers, as a result of information obtained during the course of their examination of MetLife, the MetLife Subsidiaries, the MetLife Joint Ventures, the MetLife Group of Funds and other Affiliates of MetLife in connection with the transactions contemplated by this Agreement, had actual knowledge on the date hereof and (ii) any other breaches thereof which in the aggregate (taking into account any representation which, by virtue of Section 9.8(b) hereof, is deemed not to be qualified as to material adverse effect) would reasonably be expected to result in actual present losses and actual future losses (valued on a discounted basis using the applicable U.S. Treasury strip curve rates) to MetLife and the MetLife Subsidiaries not exceeding Seven Hundred and Fifty Million Dollars (\$750,000,000), and (iii) TNE shall have received a certificate dated the Effective Time of the Chairman of the Board, the President, a Senior Executive Vice President or an Executive Vice President of MetLife as to the satisfaction of this condition;

(e) (i) no Order or Law entered, promulgated or enacted by any Governmental Entity shall be in effect which would prevent the consummation of the Merger or the other transactions contemplated hereby, (ii) no Proceeding brought by a Governmental Entity shall have been com-



menced and be pending which seeks to restrain, prevent or materially delay or restructure the transactions contemplated hereby or which otherwise questions the validity or legality of the Merger and (iii) no approval by any Governmental Entity in connection with the Merger and the transactions contemplated hereby shall have been granted which would impose conditions which would significantly impair, in TNE's reasonable opinion, the ability of TNE to realize the benefits of the Merger and of the other transactions contemplated hereby;

(f) all consents, approvals and waivers of any Person required to consummate the transactions contemplated hereby shall have been obtained which, if not obtained, would, individually or in the aggregate, have a material adverse effect on the Condition of MetLife or of MetLife and the MetLife Subsidiaries taken as a whole or the Condition of TNE or of TNE and the TNE Subsidiaries taken as a whole, or which would prevent the consummation of the transactions contemplated hereby;

(g) TNE shall have received a private letter ruling from the IRS substantially to the effect of items (1) through (3) of Exhibit C hereto and shall have received either a private letter ruling from the IRS or an opinion of Dewey Ballantine that is dated as of the Effective Time, which opinion shall be based, among other

things, upon reasonably requested representation letters of TNE and MetLife, substantially to the effect of items (4) through (12) of Exhibit C hereto, provided however, that in determining whether a ruling or opinion, as the case may be, is substantially to the effect of any item of Exhibit C, any income or gain recognized by a policyholder, or any adjustment to the basis of a policy, relating to the payment by TNE or MetLife of any real property transfer or gains tax to which the TNE policyholders may be subject as a result of the Merger shall not be taken into account;

(h) TNE shall have received on the date of the mailing or publication of the Meeting Notice from Morgan Stanley & Co. Incorporated an opinion, in customary form, dated such date, to the effect that the Merger is fair to TNE and the policyholders of TNE from a financial point of view;

(i) TNE shall have received an opinion of counsel to MetLife, dated the Effective Time, substantially as set forth in Exhibit D hereto; and

(j) the Combined No-Action Letter shall have been obtained in form and substance reasonably satisfactory to TNE and all related filings and mailings referred to in Section 3.2 hereof shall have been made.

Section 7.2 Conditions to Obligation of MetLife to Effect the Merger. The obligations of MetLife to effect the Merger shall be subject to the fulfillment at or prior to the Effective Time of the following conditions, any one or more of which may be waived by MetLife, but only to the extent permitted by Law:

(a) this Agreement shall have been approved and adopted by the requisite votes of the respective Members of MetLife and of TNE;

(b) all Governmental Approvals or other approvals from any Governmental Entities required to be obtained prior to the Effective Time shall have been obtained and not rescinded or adversely modified or limited, other than Governmental Approvals the absence of which would not have a material adverse effect on the Condition of TNE or of TNE and the TNE Subsidiaries taken as a whole or the Condition of MetLife and the MetLife Subsidiaries taken as a whole or the consummation of the transactions contemplated hereby;

(c) all waiting periods under the HSR Act applicable to the Merger shall have expired or been terminated;

(d) (i) TNE shall have performed and complied in all material respects with all obligations, covenants and agreements required to be performed and complied with

by it under this Agreement at or prior to the Effective Time and (ii) the representations and warranties of TNE contained in this Agreement shall be true and correct in all material respects when made, except as otherwise contemplated or permitted by this Agreement and except as to (A) any breach of which MetLife or any of its advisers as a result of information obtained during the course of their examination of TNE, the TNE Subsidiaries, the TNE Joint Ventures, the TNE Group of Funds and other Affiliates of TNE in connection with the transactions contemplated by this Agreement, had actual knowledge on the date hereof and (B) any other breaches thereof which in the aggregate (taking into account any representation which, by virtue of Section 9.8(b) hereof, is deemed not to be qualified as to material adverse effect) would reasonably be expected to result in actual present losses and actual future losses (valued on a discounted basis using the applicable U.S. Treasury strip curve rates) to TNE and the TNE Subsidiaries not exceeding One Hundred Million Dollars (\$100,000,000), and (C) MetLife shall have received a certificate dated the Effective Time of the Chairman of the Board, the President or an Executive Vice President of TNE as to the satisfaction of this condition;

(e) (i) no Order or Law shall be in effect which would prevent the consummation of the Merger or the other transactions contemplated thereby, (ii) no Proceeding brought by a Governmental Entity shall have been commenced and be pending which seeks to restrain, prevent or materially delay or restructure the transactions contemplated hereby or which otherwise questions the validity or legality of the Merger and (iii) no approval by any Governmental Entity in connection with the Merger and the transactions contemplated hereby shall have been granted which would impose conditions which would significantly impair, in MetLife's reasonable opinion, the ability of MetLife to realize the benefits of the Merger and of the other transactions contemplated hereby;

(f) all consents, approvals and waivers of any Person required to consummate the transactions contemplated hereby shall have been obtained which, if not obtained, would, individually or in the aggregate, have a material adverse effect on the Condition of MetLife or of MetLife and the MetLife Subsidiaries taken as a whole or the Condition of TNE or of TNE and the TNE Subsidiaries taken as a whole, or which would prevent the consummation of the transactions contemplated hereby;

(g) TNE or the appropriate TNE Asset Management Companies shall have obtained actual or, in

MetLife's reasonable opinion, deemed consents from, or entered into new investment advisory agreements with, accounts representing not less than eighty percent (80%) of the dollar amount of assets under management by the TNE Asset Management Companies as of the date of this Agreement in accordance with Sections 6.7 and 6.8 hereof; provided, however, that (i) consents from and new investment advisory agreements with any TNE Insurers with regard to general account assets and assets under management by Copley Real Estate Advisors, Inc. and Copley Advisors, Inc. and (ii) the dollar amount of general account assets of the TNE Insurers managed by the TNE Asset Management Companies and assets under management by Copley Real Estate Advisors, Inc. and Copley Advisors, Inc., in each case shall not be counted for the purposes of calculating the percentage under this subsection;

(h) the Combined No-Action Letter shall have been obtained in form and substance reasonably satisfactory to MetLife and all related filings and mailings referred to in Section 3.2 shall have been made;

(i) MetLife shall have received a private letter ruling from the IRS substantially to the effect of items (1) through (4) of Exhibit F hereto, and shall have received either a private letter ruling from the IRS or an opinion of Skadden, Arps, Slate, Meagher & Flom that

is dated the Effective Time, which opinion shall be based, among other things, upon reasonably requested representation letters of TNE and MetLife, substantially to the effect of items (5) through (15) set forth on Exhibit F hereto, provided however, that in determining whether a ruling or opinion, as the case may be, is substantially to the effect of any item of Exhibit F, any income or gain recognized by a policyholder, or any adjustment to the basis of a policy, relating to the payment by TNE or MetLife of any real property transfer or gains tax to which the TNE policyholders may be subject as a result of the Merger shall not be taken into account;

(j) MetLife shall have received on the date of the mailing or publication of the Meeting Notice from CS First Boston Corporation an opinion, in customary form, dated such date, to the effect that the Merger is fair to MetLife and the policyholders of MetLife from a financial point of view; and

(k) MetLife shall have received an opinion of counsel to TNE and NEIC, dated the Effective Time, substantially as set forth in Exhibit E hereto.

ARTICLE VIII

TERMINATION

Section 8.1 Termination. This Agreement may be terminated and the Merger abandoned at any time prior to the Effective Time, whether before or after approval of the Merger by the Members of MetLife or of TNE:

(a) by mutual consent of the Board of Directors of MetLife and the Board of Directors of TNE;

(b) by the Board of Directors of MetLife or the Board of Directors of TNE if the Merger shall not have occurred on or before August 30, 1996; provided that the right to terminate this Agreement under this Section 8.1(b) shall not be available to any party whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure of the Merger to have been consummated on or before such date;

(c) by either the Board of Directors of MetLife or the Board of Directors of TNE if the number of votes in favor of this Agreement cast by the Members of MetLife or of TNE required for the consummation of the Merger shall not have been obtained at the meetings of Members or at any adjournment thereof duly held for such purpose.

Section 8.2 Effect of Termination. In the event of the termination of this Agreement by either



MetLife or TNE, as provided above, this Agreement shall thereafter become void and, except as provided in Section 9.2(a) hereof, there shall be no Liability on the part of any party hereto against the other party hereto, or its directors, officers, employees, policyholders or agents, except that any such termination shall be without prejudice to the rights of either party hereto arising out of the willful breach by any other party of any representation or warranty or any covenant or agreement contained in this Agreement.

#### ARTICLE IX

##### MISCELLANEOUS

Section 9.1 Survival of Representations and Warranties. None of the representations and warranties in this Agreement shall survive the Effective Time.

Section 9.2 Fees and Expenses.

(a) If the Merger is not consummated, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs or expenses, except for expenses incurred in connection with the printing, mailing and solicitation of proxies from policyholders and consents under investment advisory agreements and all filing fees and related expenses which shall be borne equally by MetLife and TNE.

(b) The firms of Skadden, Arps, Slate, Meagher & Flom, CS First Boston Corporation, Milliman and Robertson, Fugro Environmental Consultants, Dames & Moore Environmental Consultants, Vista Environmental Information Inc. and Deloitte & Touche L.L.P. are acting as advisers to MetLife in connection with this Agreement and the transactions contemplated hereby and the firms of Dewey Ballantine, Ropes & Gray, Morgan Stanley & Co. Incorporated and Coopers & Lybrand are acting as advisers to TNE in connection with this Agreement and the transactions contemplated hereby. Such firms each will receive reasonable and customary compensation for their services and will be reimbursed for certain reasonable out-of-pocket expenses. In addition, MetLife has agreed to indemnify CS First Boston Corporation and TNE has agreed to indemnify Morgan Stanley & Co. Incorporated against certain liabilities and expenses in connection with its services. Such firms and certain shareholders, employees and other Persons associated with such firms may be directors, trustees and/or Members of MetLife or TNE.

Section 9.3 Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given, upon receipt, if mailed by registered or certified mail, postage prepaid, return

receipt requested, overnight delivery, confirmed facsimile transmission or hand delivered, as follows:

(a) If to MetLife, to:

Metropolitan Life Insurance Company  
One Madison Avenue  
New York, New York 10010

Attention: General Counsel  
Facsimile No.: (212) 578-3916

with a copy to:

Skadden, Arps, Slate, Meagher & Flom  
919 Third Avenue  
New York, New York 10022

Attention: Kenneth J. Bialkin, Esq.  
Facsimile No.: (212) 735-2000

(b) If to TNE, to:

New England Mutual Life Insurance  
Company  
501 Boylston Street  
Boston, Massachusetts 02116-3700

Attention: H. James Wilson, Esq.  
Facsimile No.: (617) 578-5603

with a copy to:

Dewey Ballantine  
1301 Avenue of the Americas  
New York, New York 10019

Attention: Jeff S. Liebmann, Esq.  
Facsimile No.: (212) 259-6333

or to such other address as the Person to whom notice is given may have previously furnished to the other party in writing in accordance herewith.

Section 9.4 Amendments. This Agreement may be amended by the parties hereto, at any time before or after the approval of this Agreement by the Members of MetLife or of TNE, but after such approval no amendment or modification shall be made which in any way materially adversely affects the rights of such Members without the further approval of such Members. This Agreement may not be amended, modified or supplemented except by written agreement of the parties hereto and with the approval of the New York Insurance Department and the Massachusetts Division of Insurance.

Section 9.5 No Waiver. Nothing contained in this Agreement shall cause the failure of either party to insist upon strict compliance with any covenant, obligation, condition or agreement contained herein to operate as a waiver of, or estoppel with respect to, any such covenant, obligation, condition or agreement by the party entitled to the benefit thereof.

Section 9.6 Brokers. TNE represents and warrants that no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated hereby based upon arrangements made by or on behalf of TNE, except for TNE's financial advisor, Morgan Stanley & Co. Incorporated, whose fees shall be paid by

TNE. MetLife represents and warrants that no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated hereby based upon arrangements made by or on behalf of MetLife, except for MetLife's financial advisor, CS First Boston Corporation, whose fees shall be paid by MetLife.

Section 9.7 Publicity. So long as this Agreement is in effect, each of the parties hereto (a) shall not, and shall cause its Affiliates not to, issue or cause the publication of any press release or other announcement to any non-affiliated Person with respect to this Agreement or the transactions contemplated hereby without the consent of the other party, which consent shall not be unreasonably withheld or delayed; provided, however, that nothing contained herein or in the Confidentiality Agreement shall (i) limit the right of each of the parties hereto and their Affiliates to make a legally required filing or communication (provided, however, that, to the extent possible, such party shall consult with the other party before making such filing or communication) or to respond to any communications initiated by any non-affiliated Person, including, but not limited to, any rating agency or Governmental Entity or (ii) prohibit either party hereto (or its Affiliates) from

initiating communications with, and making presentations to, any rating agency or Governmental Entity relating to the transactions contemplated hereby if such party gives prior notice thereof to the other party hereto, or (iii) prohibit MetLife or TNE or any of their respective Affiliates from communicating to any third party information in any way relating to the Merger that has been made known to the general public, other than in violation of this Agreement, prior to the time of such communication, (b) shall cooperate fully with the other party hereto with respect to issuing or publishing any press release, or other announcement or other written communication to any non-affiliated Person and preparing written and oral communications to the employees and agents of each party hereto with the purpose of effectuating the Merger in the best interests of the respective Members of MetLife and TNE and (c) shall promptly notify the other party of any announcements which are made to affiliated Persons and any communications received from and responses provided to non-affiliated Persons, in either case, with respect to this Agreement or the transactions contemplated hereby.

Section 9.8 Interpretation. (a) For purposes of this Agreement, a Person's "Knowledge" shall mean (i) actual knowledge or reason to know (assuming for such

purposes that reasonable inquiry has been made) by any officer of such Person with the title of Senior Vice President or higher (or, if not a corporation, any person holding a similar title or position) or (ii) the actual Knowledge of any vice president (or, if not a corporation, any person holding a similar title or position) of such Person with respect to any matter or matters within the scope of such person's responsibilities.

(b) As to any representations or warranties of either of the parties hereto which are qualified as to a material adverse effect (1) on the Condition of any Person or of such Person and its Subsidiaries taken as a whole, (2) on the ability of such Person or a Subsidiary of such Person to carry on its Business as now conducted, (3) based upon a monetary amount, individually or in the aggregate, as the case may be, (4) on the conduct of such Person's Business, (5) on the ability of such Person to perform its obligations under the Agreement or consummate the transactions contemplated hereby or (6) on specified items or matters set forth therein, and which are not violated as a result of such qualification, for purposes of Sections 7.1 and 7.2 hereof such representations shall be deemed not to be so qualified to the extent that the aggregate of all violations of all representations which are so qualified (assuming that such representations are

not so qualified) would have a material adverse effect on the Condition of such party or of such party and its Subsidiaries taken as a whole.

(c) References to materials "provided" to a party or "made available" to a party (or similar phrases) shall mean that such materials were brought to such party for its review or that such person was admitted or invited to the room in which such material was located, was specifically made aware of the presence of such materials and was given full access thereto.

(d) Except for the representations and warranties set forth in Sections 4.11 and 4.15 hereof, TNE shall not be deemed to have breached any representation or warranty set forth in Article IV hereof with respect to any Liability (other than a Liability related to underlying TNE Real Property as opposed to the ownership and management of such property) which may arise as the result of the ownership by a TNE Real Estate Joint Venture of any TNE Real Property or the management by a TNE Real Estate Joint Venture of any TNE Real Property it owns except to the extent, in the case of each TNE Real Property, that such Liability exceeds the lesser of (a) One Million Dollars (\$1,000,000) or (b) 25% of the admitted asset value of such TNE Real Property.



(e) Notwithstanding anything in Article I to the contrary, for purposes of the representations and warranties set forth in Sections 4.9, 4.11 and 4.15 hereof, the dollar limits in Article I shall be ignored, as if each such dollar limit was zero.

Section 9.9 Headings. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 9.10 Nonassignability. This Agreement shall not be assigned by either party hereto by operation of Law or otherwise without the prior written consent of the other party hereto.

Section 9.11 Parties in Interest. This Agreement shall be binding upon and inure solely to the benefit of the parties hereto and their permitted assigns, and nothing in this Agreement, expressed or implied, is intended to confer upon any other Person (including but not limited to, any policyholder or employees of TNE, MetLife or their Subsidiaries) any rights or remedies of any nature under or by reason of this Agreement, except as expressly provided in Section 6.11 hereof.

Section 9.12 Counterparts. This Agreement may be executed in counterparts each of which shall be deemed

to constitute an original and constitute one and the same instrument.

Section 9.13 Governing Law; Jurisdiction.

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York, except to the extent that the Massachusetts Insurance Law shall be held to govern the terms of the Merger, without regard to its conflict of laws rules. Each of the parties hereto submits to the jurisdiction of the state and Federal courts sitting in the Borough of Manhattan, State and County of New York, in any action or proceeding arising out of or relating to this Agreement and that all claims in respect of the action or proceeding may be heard or determined in any such court.

Section 9.14 Entire Agreement; Statements as Representations. This Agreement (including the dividend policy for the Surviving Company as set forth on Exhibit B hereto) and the Confidentiality Agreement constitute the entire agreement between the parties hereto and supersede all prior agreements and understandings, oral or written, between the parties hereto with respect to the subject matter hereof and thereof. All statements contained in this Agreement or in the MetLife Disclosure Schedule or the TNE Disclosure Schedule or in any schedule, certificate, list or other document delivered pursu-

ant to this Agreement shall be deemed representations and warranties as such terms are used in this Agreement.

Section 9.15 Severability. If any provisions hereof shall be held invalid or unenforceable by any court of competent jurisdiction or as a result of future legislative action, such holding or action shall be strictly construed and shall not affect the validity or effect of any other provision hereof; provided, however, that the parties shall use reasonable efforts, including, but not limited to, the amendment of this Agreement, to ensure that this Agreement shall reflect as closely as practicable the intent of the parties hereto.

Section 9.16 Specific Performance. Each of the parties hereto acknowledges and agrees that the other party hereto would be irreparably damaged in the event any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. Accordingly, each of the parties hereto agrees that they each shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions thereof in any action instituted in any court of the United States or any state thereof having subject matter jurisdiction,

in addition to any other remedy to which MetLife or TNE may be entitled, at law or in equity.

Section 9.17. Survival of Certain Covenants.

The provisions of Sections 6.11, 6.14 and 6.17 hereof shall survive the Effective Time.

IN WITNESS WHEREOF, this Agreement has been  
duly executed and delivered by the duly authorized offi-  
cers of MetLife and of TNE as of the date first above  
written.

METROPOLITAN LIFE INSURANCE  
COMPANY

By *Harry P. Kerner*  
Its: President

ATTEST:

By *Christine N. Markusse*  
Its: Secretary

NEW ENGLAND MUTUAL LIFE  
INSURANCE COMPANY

By *Robert H. Skiff*  
Its: President

ATTEST:

By *James A. Pillsbury*  
Its: Secretary

## CHARTER OF METROPOLITAN LIFE INSURANCE COMPANY

This is to certify that Metropolitan Life Insurance Company, a corporation duly organized and existing under and by virtue of the laws of the State of New York, does hereby amend its charter pursuant to Sections 1206 and 1208 of the Insurance Law of the State of New York, so as to continue to be a corporation of said State for the purposes named in its existing charter and in its charter as hereby amended, and that its charter as so amended is as follows:

### ARTICLE I

#### CORPORATE NAME

The name of the corporation shall continue to be "Metropolitan Life Insurance Company." The corporation may use, in the transaction of any or all of its business and affairs in Canada, including the exercise of any or all of its rights, such name or such name expressed in the French language. Such name when so expressed shall be "La Métropolitaine, compagnie d'assurance vie."

### ARTICLE II

#### PLACE OF BUSINESS

The corporation shall be located and have its principal place of business in the Borough of Manhattan, The City of New York, in the State of New York.

### ARTICLE III

#### BUSINESS OF THE CORPORATION

The business of the corporation and the kinds of insurance to be undertaken by it are to make insurance upon the lives and the health of persons, and every insurance appertaining thereto; and to grant, purchase or dispose of annuities; and to make insurance against injury, disablement or death resulting from traveling or general accident, and against disablement resulting from sickness, and every insurance appertaining thereto, as heretofore authorized by and under its charter, and such business and kinds of insurance as may be authorized by and under paragraphs 1, 2 and 3 of Section 1113(a) of the Insurance Law of the State of New York, together with such reinsurance business (in addition to reinsurance of the kinds of insurance business hereinabove stated) as may be permitted to the corporation by Section 1114 of said Law, and together with any other kind or kinds of business to the extent reasonably ancillary or necessarily or properly incidental to the kinds of insurance business which the corporation is so authorized to do. The corporation shall also have the general rights, powers and privileges now or hereafter granted by the Insurance Law of the State of New York or any other law to mutual life insurance companies having power to do the kinds of business hereinabove referred to and any and all other rights, powers and privileges of a corporation, as the same may now or hereafter be declared by applicable law.

### ARTICLE IV

#### CORPORATE POWERS

**SECTION 1.** The corporate powers of the corporation shall be exercised by a Board of Directors, by committees thereof and by such officers and agents as the Board of Directors or such committees may empower.

**SECTION 2.** The Board of Directors shall consist of not less than thirteen Directors nor more than thirty Directors as may be determined by the Board of Directors by resolution adopted by a majority of the then authorized number of directors and shall include not less than two of the principal officers of the corporation.

**SECTION 3.** The Board of Directors shall have power to make and prescribe such bylaws, rules and regulations for the transaction of the business of the corporation and the conduct of its affairs, not inconsistent

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with the laws of the State of New York or this charter, as may be deemed expedient, and to amend or repeal such bylaws, rules and regulations.

SECTION 4. The Board of Directors shall have power to declare, by bylaw, what number of Directors, not less than one-third of the authorized number of Directors, shall constitute a quorum for the transaction of business.

## ARTICLE V

### ELECTION OF DIRECTORS

SECTION 1. The Directors of the corporation shall be elected by the policyholders as prescribed by law, voting by ballot alone and not by proxy. The officers of the corporation shall be elected or appointed as provided in the bylaws of the corporation.

SECTION 2. An annual election of Directors shall be held on the second Tuesday of April in each year at the Home Office of the corporation, in the Borough of Manhattan, in The City of New York, in the manner prescribed by law. The Directors shall be divided into three classes, as nearly equal in number as may be, so that each class shall be elected for terms of three years and the terms of office of only one class shall expire at each annual election of Directors, and as the respective terms of office of Directors shall expire, their successors shall be elected for terms of three years, except as otherwise contemplated by this Section 2. Any newly created directorships or any decrease in directorships shall be so apportioned by the Board of Directors among the classes as to make all classes as nearly equal in number as may be. Whenever the number of Directors is increased by the Board of Directors and any vacancies resulting from the newly created directorships are filled by the Board of Directors, there shall not be any classification of the additional Directors until the next annual election of Directors.

SECTION 3. Vacancies in the Board of Directors, including vacancies resulting from any increase in the authorized number of Directors, may be filled by the Board of Directors.

## ARTICLE VI

### LIABILITY OF DIRECTORS

No Director shall be personally liable to the corporation or any of its policyholders for damages for any breach of duty as a Director; provided, however, that the foregoing provision shall not eliminate or limit:

(i) the liability of a Director if a judgment or other final adjudication adverse to the Director establishes that the Director personally gained in fact a financial profit or other advantage to which he or she was not legally entitled or establishes that the Director's acts or omissions were in bad faith or involved intentional misconduct or were acts or omissions (a) which the Director knew or reasonably should have known violated the New York Insurance Law or (b) which violated a specific standard of care imposed on Directors directly, and not by reference, by a provision of the New York Insurance Law (or any regulations promulgated thereunder), or (c) which constituted a knowing violation of any other law; or

(ii) the liability of a Director for any act or omission prior to the adoption of this Article VI by the corporation.

## ARTICLE VII

### MUTUAL COMPANY

The corporation shall continue to be a mutual company without capital stock.

## ARTICLE VIII

### DURATION

The duration of the corporation shall be perpetual.

# BYLAWS OF METROPOLITAN LIFE INSURANCE COMPANY

## ARTICLE I

### BOARD OF DIRECTORS

#### Regular Board Meetings

SECTION 1.1 Regular meetings of the Board for the transaction of any business shall be held at the Home Office of the Company on the fourth Tuesday of each month, unless another date or place is fixed in any written notice of any such regular meeting given in the manner required by Section 1.2 of these Bylaws for a special meeting. Except as otherwise required by law or these Bylaws, notice of regular meetings need not be given. The first regular meeting of the Board following the second Tuesday of April of each year and any adjournment or adjournments of such meeting shall be known as the Annual Organization Meeting. The Board may cancel any regular meeting of the Board, other than the Annual Organization Meeting; provided, however, that the number of regular meetings of the Board held in each calendar year shall not be less than the number required by law.

#### Special Board Meetings, Waiver of Notice

SECTION 1.2 Special meetings of the Board shall be held whenever called by the chief executive officer or by any three directors. Notice of each such special meeting shall be mailed to each director at such director's residence or usual place of business or other address filed with the Secretary to the Board for such purpose, or shall be sent to such director by any form of telecommunication, or be delivered or given to such director personally or by telephone, not later than the second day preceding the day on which such meeting is to be held. Notice of any meeting of the Board need not, however, be given to any director who submits a signed waiver of notice whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice. Every such notice shall state the time and place but, except as otherwise required by law or these Bylaws, need not state the purpose of the meeting.

#### Participation by Telephone

SECTION 1.3 Any one or more members of the Board or any committee thereof may participate in any meeting of the Board or such committee by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting of the Board or such committee for quorum and voting purposes.

#### Action Without a Meeting

SECTION 1.4 If in the opinion of the chief executive officer an emergency exists requiring the immediate taking of any action which is required or permitted to be taken by the Board or any committee thereof, such action may be taken without a meeting if all members of the Board or such committee consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consents thereto by the members of the Board or such committee shall be filed with the minutes of the proceedings of the Board or committee.

#### Number, Quorum and Adjournments

SECTION 1.5 The authorized number of directors of the Company shall be such number, not less than thirteen nor more than thirty, as may be determined by a majority of the authorized number of directors immediately prior to any such determination. One-third of the authorized number of directors shall constitute a quorum for the transaction of business. Except as otherwise provided by law or these Bylaws, the vote of a majority of the directors present at the time of the vote, if a quorum is present at such time, shall be the act of the Board. A majority of the directors present, whether or not a quorum shall be present, may adjourn any meeting. Notice of the time and place of an adjourned meeting of the Board shall be given if and as determined by a majority of the directors present at the time of the adjournment. TRADEMARK



#### **Presiding Officer**

**SECTION 1.6** The Board shall determine who among the officer directors, and in what order, shall preside at meetings of the Board. In the event of the absence or disability of all such officer directors, the Board shall select one of its members present to preside.

#### **Secretary to the Board**

**SECTION 1.7** The chief executive officer shall designate an officer of the Company to keep the minutes of the meetings of the Board and to act as Secretary to the Board.

#### **Board Vacancies**

**SECTION 1.8** Any vacancy in the Board, including any vacancy resulting from an increase in the authorized number of directors, may be filled, until the next annual election of directors, at any regular or special meeting of the Board by the favorable vote of a majority of the remaining directors.

#### **Nominations**

**SECTION 1.9** The nominees on the administration ticket required by law for the annual election of directors shall be nominated by the Board at any regular or special meeting.

## **ARTICLE II**

### **COMMITTEES**

#### **Standing Committees**

**SECTION 2.1** The Board shall have the following standing committees, each consisting of not less than three directors as shall be determined by the Board:

- Insurance and Executive Committee**
- Investment Committee**
- Nominating and Compensation Committee**
- Audit Committee**
- Corporate Social Responsibility Committee**
- International Committee**

No member of the Audit Committee or the Nominating and Compensation Committee may be an officer director and the number of officer directors on any other committee shall be less than a quorum of such committee.

#### **Designation of Members and Chairmen of Standing Committees**

**SECTION 2.2** At the Annual Organization Meeting each year the Board, by resolution adopted by a majority of the then authorized number of directors, shall designate from among the directors the members of the standing committees and from among the members of each such committee a chairman thereof, who shall serve as such, at the pleasure of the Board, so long as they shall continue in office as directors until the next Annual Organization Meeting and thereafter until the appointment of their successors. The Board may by similar resolution designate one or more directors as alternate members of such committees, who may replace any absent member or members at any meeting of such committees, but no officer director may be designated as an alternate member of the Audit Committee or the Nominating and Compensation Committee. Vacancies in the membership or chairmanship of any standing committee may be filled in the same manner as original designations at any regular or special meeting of the Board, and the chief executive officer may designate from among the remaining members of any standing committee whose chairmanship is vacant a chairman who shall serve until a successor is designated by the Board.

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#### **Notices of Times of Meetings of Standing Committees and Presiding Officers**

SECTION 2.3 Meetings of each standing committee shall be held upon call of the chief executive officer, or upon call of the chairman of such standing committee or two members of such standing committee. Meetings of each standing committee may also be held at such other times as it may determine. Meetings of a standing committee shall be held at such places and upon such notice as it shall determine or as shall be specified in the calls of such meetings. Any such chairman, if present, or such member or members of each committee as may be designated by the chief executive officer shall preside at meetings thereof or, in the event of the absence or disability of any thereof or failing such designation, the committee shall select from among its members present a presiding officer. Meetings of a standing committee may be attended by directors who are not members of such committee unless the chairman of such committee requests otherwise.

#### **Quorum**

SECTION 2.4 At each meeting of any standing committee there shall be present to constitute a quorum for the transaction of business at least one-third of the members but in no event less than three members at least one of whom is not an officer director. Any alternate member who is replacing an absent member shall be counted in determining whether a quorum is present. The vote of a majority of the members present at a meeting of any standing committee at the time of the vote, if a quorum is present at such time, shall be the act of such committee.

#### **Standing Committee Minutes**

SECTION 2.5 Each of the standing committees shall keep minutes of its meetings which shall be reported to the Board at its regular meetings and, if called for by the Board, at any special meeting.

#### **Insurance and Executive Committee**

SECTION 2.6 The Insurance and Executive Committee may, to the extent permitted by law, exercise all powers of the Board during intervals between meetings of the Board; shall exercise general supervision of the dividend and surplus policies and practices of the Company; and shall provide advice with respect to the Company's operations involving its insurance, annuities and related products and services, including the planning, marketing and financial results relating thereto.

#### **Investment Committee**

SECTION 2.7 The Investment Committee shall exercise general supervision and management of the assets of the Company, including purchases and sales thereof; shall determine the manner of designating depositories for all monies received by the Company, which shall be deposited in the name of the Company; and shall determine the manner of disposition of funds of the Company so deposited.

#### **Nominating and Compensation Committee**

SECTION 2.8 The Nominating and Compensation Committee shall exercise general supervision of compensation and personnel administration and the activities carried on by the Company in the interest of the health, welfare and safety of its employees; shall make recommendations to the Board with respect to the filling of vacancies on the Board and the composition of any administration ticket; shall nominate persons for election by the Board as President and election or appointment by the Board of all other principal officers and such other officers as the Committee may determine; may elect or appoint officers as provided in Section 3.2 of these Bylaws; and shall evaluate the performance and compensation of the principal officers and such other officers as the Committee may determine.

#### **Audit Committee**

SECTION 2.9 The Audit Committee shall exercise general supervision of accounting and auditing controls over cash, securities, receipts, disbursements and other financial transactions; shall make such examinations thereof as it may deem necessary through certified public accountants or otherwise; shall review the financial condition of the Company, the scope and results of the independent audit and any internal audits; shall recommend the selection of independent certified public accountants; and in respect to such matters may require such reports from the officer in charge of auditing for the Company as it may deem necessary or desirable. The

Audit Committee shall also exercise general supervision of the Company's policies on ethical business conduct and compliance therewith.

#### **Corporate Social Responsibility Committee**

SECTION 2.10 The Corporate Social Responsibility Committee shall exercise general supervision of the Company's charitable contributions, public benefit programs, and other corporate responsibility matters.

#### **International Committee**

SECTION 2.11 The International Committee shall exercise general supervision over the Company's international activities and shall provide advice with respect to international business, economic and political developments as such developments relate to the Company's international activities.

#### **Special Committees**

SECTION 2.12 The Board may, by resolution adopted by a majority of the then authorized number of directors, designate special committees, each consisting of three or more directors of the Company, which committees, except as otherwise prescribed by law, shall have and may exercise the authority of the Board to the extent provided in the resolutions designating such committees. Nothing herein shall be deemed to prevent the chief executive officer from appointing one or more special committees of directors for the purpose of advising the chief executive officer; provided, however, that no such committee shall have or may exercise any authority of the Board.

### **ARTICLE III**

#### **OFFICERS**

##### **Chief Executive Officer**

SECTION 3.1 The Board shall determine who among the officer directors, and in what order, shall act as chief executive officer.

Subject to the control of the Board and to the extent not otherwise prescribed by these Bylaws, the chief executive officer shall supervise the carrying out of the policies adopted or approved by the Board, shall exercise a general supervision and superintendence over all the business and affairs of the Company and shall possess such other powers and perform such other duties as may be incident to the office of chief executive officer.

##### **President and Other Officers**

SECTION 3.2 At the Annual Organization Meeting each year the Board shall elect from among its members a President who shall hold office until the next Annual Organization Meeting and until the election of a successor. If a vacancy occurs in the office of the President for any reason, such vacancy shall be filled by the Board at a regular or special meeting of the Board.

In addition to the President, the Board shall elect or appoint such other officers as may be determined for the conduct of the business of the Company, except that officers of the rank of Vice-President and below may be elected or appointed by the Nominating and Compensation Committee. Officers other than the chief executive officer shall have such powers and perform such duties as may be assigned to them by these Bylaws or by or pursuant to authorization of the Board or the chief executive officer.

All officers shall hold office at the pleasure of the Board.

**ARTICLE IV**  
**EXECUTION OF PAPERS**

**Instruments**

**SECTION 4.1** Any officer, or any employee designated for the purpose by the chief executive officer, shall have power to execute all instruments in writing necessary or desirable for the Company to execute in the transaction and management of its business and affairs (including, without limitation, contracts and agreements, transfers of bonds, stocks, notes and other securities, proxies, powers of attorney, deeds, leases, releases, satisfactions and instruments entitled to be recorded in any jurisdiction, but excluding, to the extent otherwise provided for in these Bylaws, authorizations for the disposition of the funds of the Company deposited in its name and policies, contracts, agreements, amendments and endorsements of, for or in connection with insurance or annuities) and to affix the corporate seal.

**Disposition of Funds**

**SECTION 4.2** All funds of the Company deposited in its name shall be subject to disposition by check or other means, in such manner as the Investment Committee may determine.

**Policies**

**SECTION 4.3** All policies, contracts, agreements, amendments and endorsements, executed by the Company as insurer, of, for or in connection with insurance or annuities shall bear such signature or signatures of such officer or officers as may be designated for the purpose by the Board.

**Facsimile Signatures**

**SECTION 4.4** All instruments necessary or desirable for the Company to execute in the transaction and management of its business and affairs, including those set forth in Sections 4.2 and 4.3 of these Bylaws, may be executed by use of or bear facsimile signatures as and to the extent authorized by the Board or a committee thereof. If any officer or employee whose facsimile signature has been placed upon any form of instrument shall have ceased to be such officer or employee before an instrument in such form is issued, such instrument may be issued with the same effect as if such person had been such officer or employee at the time of its issue.

**ARTICLE V**

**GENERAL**

**Indemnification of Directors and Officers**

**SECTION 5.1** To the full extent permitted by the laws of the State of New York, the Company shall indemnify any person made or threatened to be made a party to any action or proceeding, whether civil or criminal, by reason of the fact that such person, or such person's testator or intestate,

- 1) is or was a director or officer of the Company, or
- 2) serves or served another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise in any capacity at the request of the Company, and also is or was a director or officer of the Company against judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys' fees, actually and necessarily incurred in connection with or as a result of such action or proceeding, or any appeal therein.

**ARTICLE VI**

**AMENDMENT OF BYLAWS**

**Amendments**

**SECTION 6.1** These Bylaws or any of them may be amended, altered or repealed by the Board at any regular or special meeting if written notice setting forth the proposed amendment, alteration or repeal shall have been mailed to all directors at least five days before the meeting; provided, however, that Section 5.1 of these Bylaws may not be amended, altered or repealed by the Board so as to affect adversely any then existing rights of any director or officer.

## MetLife and The New England

Dividend and Surplus Principles and Practices

The following is a statement of the principles and practices that Metropolitan Life Insurance Company ("MetLife") intends to apply in determining the amount of dividends that will be paid by MetLife with respect to all of its participating policies, including those originally issued by New England Mutual Life Insurance Company ("TNE"), following the merger (the "Merger") of TNE with and into MetLife.

I. MetLife's General Dividend Principles and Practices

The following are the significant principles and practices that MetLife currently applies in determining the amount of dividends that it will pay with respect to all of its participating policies. These principles are of general application and will continue to be used by MetLife after the Merger with respect to all of its participating policyholders. (Additional principles specifically applicable to participating policies originally issued by TNE are described in Section II of this statement.)

The amount of surplus retained by MetLife must make reasonable provision for the various contingencies that might arise, given that MetLife's obligations can run for decades into the future. In addition, because of changing needs of the public served by MetLife, surplus is needed to provide for entry into new businesses as well as growth in existing businesses. The amount of retained surplus should also demonstrate MetLife's financial strength to present and prospective policyholders, to regulators and to the financial markets. In sum, the desired amount of retained surplus at any point in time will be a matter of achieving a balance between MetLife's financial strength and its competitive position, recognizing as constraints the minimum required for solvency and the maximum permitted by law and further recognizing the effects of the tax law.

In accordance with New York Insurance Law, MetLife ascertains each year the aggregate surplus generated by its operations during the preceding year. Based on such information, as well as such surplus and earnings projections as it deems appropriate, the MetLife Board of Directors (the "Board") determines the portion of such surplus to be retained by MetLife to meet projected financial needs, subject to statutory limitations, and the total amount of surplus to be paid to participating policyholders (the "divisible surplus").

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The following basic principles and Board process with respect to dividends and surplus are designed to carry out the foregoing:

- a. All MetLife general account assets must be available to meet all MetLife general account obligations. No portion of these assets may be used solely to benefit any particular group or class of policyholders.
- b. Dividends are to be allocated among participating policyholders on a fair and equitable basis using the contribution principle. Once the amount of surplus to be distributed to policyholders within a given line of business has been determined, the distribution among policyholders of the line is to be based on the contribution principle, which provides that the distribution among policies shall be in the same proportion as the policies are considered to have contributed to the divisible surplus. The contribution principle is applied in accordance with the Actuarial Standards Board's Actuarial Standard of Practice No. 15, Dividend Determination and Illustration for Participating Individual Life Insurance Policies and Annuity Contracts ("ASOP 15").
- c. Surplus accumulation and surplus distribution (through dividends to policyholders) are interdependent and integrated within MetLife's pricing systems. The amount to be distributed will, of course, take appropriate account of other surplus needs as further discussed below.
- d. Surplus should be accumulated in order to make adequate provision for contingencies, including both adverse trends in experience as well as more abnormal events which occur relatively infrequently. MetLife must maintain sufficient surplus to enable it to meet all of its obligations with a reasonable degree of certainty.
- e. Surplus must provide the base for MetLife's future growth, including any temporary surplus reduction that may arise from the sale of new business and any capital needs for expansion.
- f. The current and potential impact of all of MetLife's businesses is important in considering MetLife's accumulated surplus and in determining divisible surplus.
- g. In analyzing surplus adequacy, MetLife recognizes statutory accounting requirements, particularly with respect to the statutory balance sheet and statutory solvency (including risk based capital requirements). For pricing and the determination of levels of retained earnings, however, MetLife also considers financial measures adjusted to a basis that is deemed more suitable for management purposes.

- h. Decisions regarding the accumulation or distribution of surplus and surplus earnings and the apportionment of divisible surplus among classes of participating policyholders rest entirely within the sound business judgment of the Board, subject to the qualification that the Board cannot unfairly discriminate among classes of policyholders or act in a manner which constitutes bad faith, willful negligence or abuse of discretion. The state law applicable to the declaration of dividends by MetLife is principally set forth in New York Insurance Law §§ 1211 and 4231.

Dividend and surplus matters are presented to the Board on several occasions each year, as outlined below:

- v. An estimate of financial results for the current calendar year is presented at the July meeting of the Insurance and Executive Committee of the Board (all but two of whose current members are outside directors). This estimate covers all lines of business in order to preview the total earnings picture. At the same time, for personal lines, where significant lead time is required in adjusting dividend scales, advance notification is given of any dividend scale change which it is anticipated will be recommended for the following year.
- w. At the October Board meeting, a revised estimate of financial results for all lines is presented. In addition, dividend recommendations for the next year are made and dividends are preliminarily approved for all personal lines - which include the cases where an actual dividend payment will be due as early as the following January 1.
- x. For all group lines, recommendations on dividends to be credited in the new calendar year may be presented to the Board as early as December.
- y. Actual overall financial results for the completed calendar year, covering all lines of business, are presented to the Board at its February meeting in the next succeeding year. The financial results also are the basis for presenting any remaining dividend or interest rate recommendations and confirming or possibly revising any such action taken previously.
- z. The Insurance and Executive Committee of the Board meets periodically to discuss financial results and related dividend recommendations prior to their presentation at full Board meetings.

## II. Effects upon Former TNE Participating Policyholders

In this Section II are described the post-Merger dividend principles and practices specifically applicable to participating policies originally issued by TNE.

### A. The TNE Policy Segment

Creation and Allocations. At the time of the Merger, MetLife will establish the "TNE Policy Segment" within MetLife's general account. The TNE Policy Segment will be maintained for at least ten years following the Merger.

The TNE Policy Segment will be established and maintained for the purpose of determining the dividends payable by MetLife with respect to Historic TNE Policies. As used herein, the term "Historic TNE Policies" means all participating policies and contracts of MetLife in effect from time to time after the Merger that were either (1) originally issued by TNE before the Merger or (2) issued by MetLife during a transition period after the Merger but sold by the sales force of agents and general agents of New England Life Insurance Company ("NELICO"). (NELICO, the former New England Variable Life Insurance Company, is a subsidiary of TNE that, after the Merger, will conduct an insurance business under the New England name as a subsidiary of MetLife.) For as long as the TNE Policy Segment is maintained, the assets in the Segment will be managed with the goal of maximizing the economic value thereof for the benefit of the holders of Historic TNE Policies.

To create the TNE Policy Segment, all TNE general account assets will be allocated at the time of the Merger between the TNE Policy Segment and corporate surplus. This process must be fair to all MetLife policyholders, including (but not limited to) the holders of the Historic TNE Policies.

Real estate owned and occupied by TNE and its investment in NELICO will be allocated to corporate surplus. Certain of TNE's investments undertaken to fulfill its social responsibilities in Massachusetts will be contributed to NELICO as well as TNE's investments in certain subsidiaries. Any further contributions to NELICO will come from corporate surplus.

Premiums and annuity considerations deferred and uncollected that are associated with TNE's general account participating policies as well as the policy loans associated with those policies will be allocated to the TNE Policy Segment.

The remaining TNE general account assets will be proportionally allocated (either by means of a pro rata sharing of individual assets or by assigning individual assets so as to produce portfolios with similar characteristics with a view to achieving substantially the same result as a pro rata allocation) based on December 31, 1995 book values (i.e., before any adjustments in the value of these assets that may be made to conform to the policies and practices MetLife employs in valuing its general



account assets generally ("conforming adjustments")), with further adjustments as mutually agreed upon by MetLife and TNE to facilitate asset management and accounting. The total value (determined as of December 31, 1995 and in the manner provided in this paragraph) of the assets allocated, at the time of the Merger, to the TNE Policy Segment will be equal to the sum of (1) the amount of all general account liabilities (including the full dividend liability and the after-tax amount of any Voluntary Investment Reserves on real estate and mortgages that have been recognized by TNE for dividend purposes) associated with all TNE participating policies and contracts in effect at the time of the Merger plus (2) \$150 million of cash or bonds (this \$150 million is referred to herein as the "Additional Assets"). All of the assets that at the time of the Merger are allocated to the TNE Policy Segment (including the Additional Assets) will be assets that, prior to the Merger, were held in TNE's general account.

MetLife intends that, over time, the dividends it pays with respect to Historic TNE Policies will be based upon not only the net income on the assets in the TNE Policy Segment (including the Additional Assets), but will also include an amount representing (on an after-tax-basis to MetLife) the value of the Additional Assets. MetLife and TNE believe that, as a result of the dividend approach described herein, the cumulative amount of dividends (or interest credits) payable by MetLife in the years following the Merger to TNE participating individual life policyholders and group pension contractholders who currently receive dividends (or interest credits) will be higher than the cumulative amount that TNE would pay such policyholders and contractholders in the absence of the Merger. (The above reference to dividends which would otherwise have been received does not mean illustrated dividends, but means dividends which would have been based on actual TNE investment, mortality and expense experience and on actual TNE after-tax target levels of surplus contribution.)

Extraordinary losses or expenses arising from the activities of TNE prior to the Merger but not arising from participating insurance operations, such as extraordinary litigation losses and extraordinary expenses relating to TNE separate accounts, including without limitation, the litigation (or any settlement thereof) with the Washington State Investment Board described in footnote 12 of the TNE financial statements included as Exhibit G to the TNE Proxy Statement dated as of June 10, 1996, and payments, if any, made to any of TNE's senior officers under employment security agreements approved by the TNE Board of Directors, will not be allocated to the participating insurance policies in the TNE Policy Segment except to the extent that such extraordinary losses or expenses are, in MetLife's judgment, so great that their effect should be taken into account in the experience of all participating lines of business of MetLife.

Determination of Earned Rates. For purposes of determining earned rates on the assets in the TNE Policy Segment, all realized capital gains and losses not already recognized for dividend purposes on real estate and mortgages owned by the TNE

Policy Segment will be allocated to the TNE Policy Segment but amortized over the longer of five years following realization or the period from realization through ten years following the date of the Merger. Unrealized capital gains and losses on all assets in the TNE Policy Segment will not be taken into account in determining dividends for ten years following the date of the Merger, except that changes in the admitted value of the TNE Policy Segment's interest in New England Investment Companies, L.P. ("NEIC") will be treated as a realized gain (or loss) and amortized in the manner described in the previous sentence. For purposes of the previous sentence, the admitted value of NEIC will be determined using the same rules and methodology as used by TNE at the date of Merger without regard to changes that may be made after the Merger in the method of valuation of NEIC for any other purpose including the preparation of statutory financial statements.

Neither conforming adjustments made in connection with the Merger in the value of the assets allocated to the TNE Policy Segment nor adjustments to the value of these assets because of changes in accounting basis will be taken into account in determining earned rates of the assets in the TNE Policy Segment until ten years following the date of the Merger. At that time all such adjustments, to the extent that the adjusted assets then remain in the TNE Policy Segment and further to the extent indicated by then current appraisals, would be assessed against the TNE Policy Segment but would be amortized over a five year period.

Management of Real Estate in the TNE Policy Segment. The ongoing management of equity real estate assets in the TNE Policy Segment will be driven by the maximization of economic value. MetLife is commencing a property by property review with CREA, Limited Partnership ("CREA"), a subsidiary of NEIC and the current manager, which will continue to manage these properties under MetLife's supervision after the Merger. The review will lead to a special report on the properties which is planned to be presented to the Investment Committee of the Board by March 1997. With this report, the MetLife Directors will have available to them a specific business plan for properties of significant size (the aggregate book value of the 50 largest properties equals 70% of the aggregate book value of all such properties) which will include an appraisal, an operating budget, and a strategic plan for each such property. MetLife intends to recommend to the Board that one of the new MetLife Directors (who is currently a Director of TNE) be appointed to the Investment Committee of the MetLife Board. Until such time as the special report to the Board is prepared, it is likely that any recommendations to sell such real estate assets in the TNE Policy Segment would be made by CREA.

B. Post-Merger Dividends for TNE Participating Individual Life Policyholders

Generally. After the Merger, the basic principles described in Section I above will continue to be followed with respect to all MetLife policies, including Historic TNE Policies. Furthermore, it is expected that the dividend methodology currently used

by TNE to allocate investment income, expenses, mortality, policy loan impacts, surrenders, etc., will continue to be used by MetLife with respect to the TNE Policy Segment. Listed under "TNE Dividend Practices" below are certain practices relating to the dividend methodology currently used by TNE that MetLife intends to use with respect to the participating individual life policies in the TNE Policy Segment as long as the TNE Policy Segment is maintained. Existing TNE factors and dividend classes will, however, continue to be used only as long as warranted, and adjustments to smooth the transition between dividend scales and other appropriate adjustments may be made as recognized by ASOP 15. Nevertheless, there is no plan to merge the dividend classes and experience factors of MetLife and TNE for at least ten years.

TNE Dividend Practices. TNE currently determines dividends for participating individual life insurance policies on the basis of recent mortality, expense, investment income and tax experience, less a contribution to surplus. Dividends are calculated using a generalized dividend formula of the type described in the paper, "An Expanded Financial Structure for Ordinary Dividends" by Donald D. Cody (Transactions of the Society of Actuaries, Vol. XXXIII, p. 313). After the formula-driven dividend rate is determined, an algorithm is applied to smooth dividends. MetLife and TNE believe that the use of this dividend methodology for TNE participating individual life insurance policies after the Merger is reasonable and that the current target level of surplus contribution used by TNE is appropriate under currently foreseeable circumstances. Certain dividend practices relating to this methodology are as follows:

- a. Investment experience reflects a combination of the portfolio rate and investment generation methods. Investment income earned on assets with a value equal to statutory liabilities, including the dividend liability, is considered in analyzing investment experience.
- b. Mortality rates used in the dividend formula to set claims charges to be assessed to each policy are based on an organized set of internally consistent factors and vary by issue age, duration and underwriting classification. TNE bases these rates primarily on its own experience but draws on industry and outside experience as well when its own experience is not sufficient to provide statistically credible results.
- c. Termination factors, for reasons other than death, are reflected in the dividend formula. These factors, which vary by issue age, duration, policy type and underwriting classification, are based primarily on TNE experience.
- d. Direct policy costs are assessed against the policies which generated them. Indirect costs are allocated using generally accepted allocation principles. Expense factors are normally based on the anticipated level of continuing expenses.

- e. TNE has an explicit charge in its dividend formula to provide for a contribution to meet its surplus objectives. It establishes these objectives on an after tax basis, assuming a current tax rate on income and a normalized differential earnings rate designed to smooth fluctuations in that rate.
- f. Profits from non-participating riders attached to individual policies are taken into account in establishing the appropriate level of contribution to surplus and currently provide an additional credit in the dividends for individual participating policies.
- g. There is direct recognition of policy loans at the individual policy level for most blocks of policies.
- h. TNE does not take into account profits and losses from other lines of business, including extraordinary gains and losses (such as extraordinary litigation losses and extraordinary expenses relating to TNE separate accounts in the determination of dividends for individual participating policies except to the extent that extraordinary gains and losses are so great that their effect must be taken into account in the experience of all TNE participating lines of business.
- i. TNE pays terminal dividends on permanent participating policies which have been in force for at least 15 years.
- j. TNE pays first year dividends.

Process for Developing Post-Merger Dividends for TNE Participating Individual Life Policyholders. The process for developing the recommended allocation of divisible surplus to TNE participating individual life policyholders will include the following steps:

- a. For the various experience factors that affect dividends (e.g., mortality, policy persistency, expenses, investment results and taxes), actual experience will be monitored in aggregate and by experience factor class by conducting periodic experience studies.
- b. The results of these experience studies will be documented, along with any additional analysis that is done to evaluate the credibility of the results and to form a judgment as to whether there are actual or reasonably anticipated material differences in the experience of the various experience factor classes.
- c. Dividend experience factors will be established and documented for all experience factor classes based on the experience studies and the additional analysis noted above.

- d. The contribution to surplus will be established and documented for all experience factor classes. As noted above, MetLife believes that TNE's current after-tax target level of surplus contribution is appropriate under currently foreseeable circumstances.
- e. The process described in this subsection will provide a demonstrable link between the aggregate experience by class and the dividends for that class. For example, a clearly documented link will exist between the actual aggregate experience that forms the basis for the experience studies and the translation of that experience into dividends.
- f. MetLife may utilize scale management as recognized by ASOP 15 to address discontinuities in dividends during the transition from one dividend scale to another.
- g. The actuaries responsible for the applicable business units, working with MetLife's corporate actuaries, will determine the experience factors, and the MetLife Chief Actuary will make dividend recommendations to the MetLife Board. Senior actuarial management of MetLife will provide an annual actuarial opinion (the "MetLife Opinion") in the form of the attached Exhibit B regarding post-Merger Dividends for TNE individual participating life policies.
- h. A qualified firm will be engaged by MetLife to (1) perform an annual review of the assertion by senior financial officers of MetLife that MetLife has complied with the requirements of this statement regarding the creation of, allocations to and the determination of earned rates, of the TNE Policy Segment and (2) periodically render an opinion (the "Review Opinion") (see Exhibit C) to the MetLife Board that such assertion is fairly stated in all material respects.

C. Effect of Merger on Policyholders

The Merger is expected to benefit all MetLife policies (including Historic TNE Policies) by facilitating technology access, entry into a broader marketplace segment, more adequate ratings, and, over time, expense reduction. All participating policyholders will be treated equitably with respect to the expected benefits of the Merger. MetLife anticipates that the proposed Merger and its expected financial effects will not have any adverse effect on dividends to MetLife policyholders. In addition, costs incurred to facilitate the Merger will not affect the dividends payable on participating policies, except indirectly through their effect on MetLife's surplus generally.

Form of Tax Ruling or Opinion

On the basis of facts, representations and assumptions set forth in such ruling or opinion, as the case may be, which are consistent with the state of facts existing at the Effective Time:

(1) The MetLife proprietary interests received by TNE policyholders in the Merger are continuing equity interests for determining whether the continuity of interest requirement under Section 1.368-1(b) of the Treasury Regulations is satisfied.

(2) Provided that the terms and conditions of the contracts remain the same, the assumption by MetLife pursuant to the Merger of liabilities under life insurance or annuity contracts issued by TNE on or before the date of such assumption will not be treated as the issuance of new life insurance or annuity contracts for purposes of Sections 72(s), 7702 and 7702A.

(3) The assumption by MetLife, as a result of the Merger, of TNE's life insurance, annuity and other insurance contracts will not cause such contracts to be treated as newly issued or otherwise cause a change in their treatment for purposes of all provisions of the Code applicable to plans qualified under Sections 401(a), 403(a), 403(b) and 408.

(4) NEIC will not lose its status as an "existing partnership" for purposes of Section 10211(c)(2) of the Revenue Act of 1987, P.L. 100-647, solely by reason of the termination of NEIC pursuant to Section 708(b)(1)(B) as a result of the Merger.

(5) None of TNE, MetLife or any other partner will recognize income or gain under Sections 707(a)(2), 704(c)(1)(B) or 737 solely by reason of the termination of NEIC pursuant to Section 708(b)(1)(B) as a result of the Merger.

(6) The Merger will be treated for federal income tax purposes as a reorganization within the meaning of Section 368(a)(1)(A).

(7) No gain or loss will be recognized by the policyholders of TNE on the exchange of proprietary interests in TNE for proprietary interests in MetLife pursuant to the Merger.

(8) The basis of a proprietary interest in MetLife received by a TNE policyholder pursuant to the Merger will be equal to such policyholder's basis in the proprietary interest in TNE exchanged therefor.

(9) The holding period of a proprietary interest in MetLife received by a TNE policyholder pursuant to the Merger will include the period during which the proprietary interest in TNE exchanged therefor was held, provided the proprietary interest in TNE was held as a capital asset on the date of the Merger.

(10) MetLife's assumption, pursuant to the Merger, of TNE's liabilities under the life insurance or annuity contracts issued by TNE on or before the date of such assumption will have no effect on the date each contract was issued, entered into, purchased, or came into existence, for purposes of sections 72(e)(4), 72(e)(5), 72(e)(10), 72(e)(11), 72(q), 72(u), 72(v), 101(f) and 264(a)(4).

(11) MetLife's assumption of these contracts will not require retesting or the starting of new test periods under sections 264(c)(1), 7702(f)(7)(B)-(E) and 7702A(c)(3)(A).

(12) For purposes of section 72(b) and (c)(4), the proposed assumption involving annuity contracts with annuity starting dates on or before the Merger will not cause those contracts to be treated as having annuity starting dates after the date of the Merger.

Legal Opinions

Skadden, Arps, Slate, Meagher & Flom and MetLife's General Counsel shall deliver opinions to TNE, in customary form (including customary exclusions, materiality exceptions and the like), as to the following matters, in each case in form and substance reasonably acceptable to TNE:

A. Skadden, Arps:

1. MetLife has the corporate power and authority to execute the Merger Agreement and consummate the transactions contemplated thereby. The Merger Agreement has been duly executed and delivered by MetLife and is a valid and binding obligation of MetLife, enforceable against MetLife in accordance with its terms.

2. The execution, delivery and performance of the Merger Agreement will not violate any statute, rule, regulation (including, but not limited to, statutes, rules and regulations relating to the regulation of insurance companies, investment companies or investment advisors) applicable to MetLife or any of the MetLife Subsidiaries.

3. Upon the filing of the Merger Agreement with the approval of the New York Superintendent with the New York Office and the filing by the Massachusetts Commissioner with the Secretary of State of the Commonwealth of Massachusetts of a certificate in accordance with Section 19B of the Massachusetts Insurance Law, the Merger will become effective in accordance with the provisions of New York Insurance Law.

4. The information statement sent to MetLife's policyholders does not contain an untrue statement of a material fact or omit to state any material fact required to be stated therein.



B. MetLife's General Counsel:

1. MetLife is a mutual life insurance company duly organized, validly existing and in good standing under the laws of New York. MetLife has the corporate power and authority to carry on its business, and is licensed and in good standing in each jurisdiction where it is required to be so licensed and in good standing.

2. No consents, approvals or filings are necessary for the execution, delivery and performance of the Merger Agreement, other than those which have been made and obtained, and such execution, delivery and performance will not violate (i) the charter and bylaws of MetLife, (ii) any statute, rule, regulation or license (including, but not limited to, statutes, rules and regulations relating to the regulation of insurance companies and investment companies) applicable to MetLife or any of the MetLife Subsidiaries or (iii) any agreement applicable to MetLife, any of the MetLife Subsidiaries or any of their respective properties and assets.

3. The information statement sent to MetLife's policyholders does not contain an untrue statement of a material fact or omit to state any material fact required to be stated therein.

Legal Opinions

Dewey Ballantine, Ropes & Gray and TNE's General Counsel shall deliver opinions to MetLife, in customary form (including customary exclusions, materiality exceptions and the like), as to the following matters, in each case in form and substance reasonably acceptable to MetLife:

C. Dewey Ballantine:

1. TNE has the corporate power and authority to execute the Merger Agreement and consummate the transactions contemplated thereby. The Merger Agreement has been duly executed and delivered by TNE and is a valid and binding obligation of TNE, enforceable against TNE in accordance with its terms.

2. The execution, delivery and performance of the Merger Agreement will not violate any statute, rule or regulation (including, but not limited to, statutes, rules and regulations relating to the regulation of insurance companies) applicable to TNE or any of the TNE Subsidiaries (other than the NEIC Entities).

3. Upon the filing of the Merger Agreement with the approval of the New York Superintendent with the New York Office and the filing by the Massachusetts Commissioner with the Secretary of State of the Commonwealth of Massachusetts of a certificate in accordance with Section 19B of the Massachusetts Insurance Law, the Merger will become effective in accordance with the provisions of Massachusetts Insurance Law.

4. The information statement sent to TNE's policyholders does not contain an untrue statement of a material fact or omit to state any material fact required to be stated therein.

D. Ropes & Gray:

1. The execution, delivery and performance of the Merger Agreement will not violate any statute, rule, regulation (including, but not limited to, statutes, rules and regulations relating to the regulation of investment companies and investment advisors) applicable to the NEIC Entities.

2. No proxy statement sent to any mutual funds shareholder in connection with the transactions contemplated by the Merger Agreement contains an untrue statement of a material fact or omits to state any material fact required to be stated therein. [Ropes & Gray opinion would cover only those proxy statements which Ropes & Gray participates in the preparation of, other appropriate outside counsel to opine as to other proxy statements.]

E. TNE's General Counsel:

1. TNE is a mutual life insurance company duly organized, validly existing and in good standing under the laws of Massachusetts. TNE has the corporate power and authority to carry on its business, and is licensed and in good standing in each jurisdiction where it is required to be so licensed and in good standing.

2. No consents, approvals or filings are necessary for the execution, delivery and performance of the Merger Agreement, other than those which have been made and obtained, and such execution, delivery and performance will not violate (i) the charter and bylaws of TNE, (ii) any statute, rule, regulation or license (including, but not limited to, statutes, rules and regulations relating to the regulation of insurance companies and investment companies) applicable to TNE or any of the TNE Subsidiaries or (iii) any agreement applicable to TNE, any of the TNE Subsidiaries or any of their respective properties and assets.

3. The information statement sent to TNE's policyholders does not contain an untrue statement of a material fact or omit to state any material fact required to be stated therein.

Form of Tax Ruling or Opinion

On the basis of facts, representations and assumptions set forth in such ruling or opinion, as the case may be, which are consistent with the state of facts existing at the Effective Time:

(1) The MetLife proprietary interests received by TNE policyholders in the Merger are continuing equity interests for determining whether the continuity of interest requirement under Section 1.368-1(b) of the Treasury Regulations is satisfied.

(2) Provided that the terms and conditions of the contracts remain the same, the assumption by MetLife pursuant to the Merger of liabilities under life insurance or annuity contracts issued by TNE on or before the date of such assumption will not be treated as the issuance of new life insurance or annuity contracts for purposes of Sections 72(s), 7702 and 7702A.

(3) The assumption by MetLife, as a result of the Merger, of TNE's life insurance, annuity and other insurance contracts will not cause such contracts to be treated as newly issued or otherwise cause a change in their treatment for purposes of all provisions of the Code applicable to plans qualified under Sections 401(a), 403(a), 403(b) and 408.

(4) MetLife will not have any net premiums within the meaning of Section 848(d) solely as a result of the Merger, MetLife will succeed to any capitalized balances of specified policy acquisition expenses as determined by TNE as of the date of the Merger and such balances will continue to be amortized by MetLife under TNE's amortization period.

(5) NEIC will not lose its status as an "existing partnership" for purposes of Section 10211(c)(2) of the Revenue Act of 1987, P.L. 100-647, solely by reason of the termination of NEIC pursuant to Section 708(b)(1)(B) as a result of the Merger.

(6) None of TNE, MetLife or any other partner will recognize income or gain under Sections 707(a)(2), 704(c)(1)(B) or 737 solely by reason of the termination of NEIC pursuant to Section 708(b)(1)(B) as a result of the Merger.

(7) The Merger will be treated for federal income tax purposes as a reorganization within the meaning of Section 368(a)(1)(A).

(8) No gain or loss will be recognized by the policyholders of TNE on the exchange of proprietary interests in TNE for proprietary interests in MetLife pursuant to the Merger.

(9) The basis of a proprietary interest in MetLife received by a TNE policyholder pursuant to the Merger will be equal to such policyholder's basis in the proprietary interest in TNE exchanged therefor.

(10) The holding period of a proprietary interest in MetLife received by a TNE policyholder pursuant to the Merger will include the period during which the proprietary interest in TNE exchanged therefor was held, provided the proprietary interest in TNE was held as a capital asset on the date of the Merger.

(11) For the first year ending after the Merger, (i) MetLife will include in its reserves at the beginning of such year, for purposes of Sections 807(a) and (b), the ending balances of the reserves described in Section 807(c) that TNE held immediately before the transfer, and (ii) MetLife will not take into premium income under Section 803(a) any amount with respect to TNE's assets transferred to MetLife.

(12) For the taxable year ending on the close of the date of the Merger, (i) TNE will include in its reserves as of the close of such year, for purposes of Section 807(a) and (b), the ending balances of the reserves described in Section 807(c) that TNE held immediately before the transfer, and (ii) TNE will not be entitled to a deduction under Section 805(a)(6) for transferring assets to MetLife in consideration of the assumption by MetLife of liabilities under TNE's insurance and annuity contracts.

(13) MetLife's assumption, pursuant to the Merger, of TNE's liabilities under the life insurance or annuity contracts issued by TNE on or before the date of such assumption will have no effect on the date each contract was issued, entered into, purchased, or came into existence, for purposes of sections 72(e)(4), 72(e)(5), 72(e)(10), 72(e)(11), 72(q), 72(u), 72(v), 101(f) and 264(a)(4).

(14) MetLife's assumption of these contracts will not require retesting or the starting of new test periods under sections 264(c)(1), 7702(f)(7)(B)-(E) and 7702A(c)(3)(A).

(15) For purposes of section 72(b) and (c)(4), the proposed assumption involving annuity contracts with annuity starting dates on or before the Merger will not cause those contracts to be treated as having annuity starting dates after the date of the Merger.

June 30, 1995

**Proposed Terms of Severance Pay Plan  
for  
TNE Employees Not Covered by Employment Contract**

- **Term** - Plan effective from signing of definitive transaction agreement until 90 days following closing of transaction (the "Term"); the Severance Pay Plan described below will remain in effect for 90 days following the closing of the transaction.
- **Eligible Employees** - all TNE employees other than those with individual employment or severance agreements; standard exclusions for part-time and temporary employees who are not eligible for benefits under current TNE welfare plans; (approximately 2,450 total covered employees)
- **Covered Terminations** - for employees who are terminated or receive notice of termination during the Term of the Plan, except where NEL CEO (or his designee) determines termination is performance-related or for cause
- **Severance Payment**
  - (i) 1.5 weeks of base salary per year of service; plus
  - (ii) 1 week of base salary per salary grade, contingent on signing a waiver and release of claims;
  - (iii) minimum benefit of 4 weeks of base salary; maximum benefit of 52 weeks of base salary
  - (iv) paid as weekly salary continuation for the number of weeks determined pursuant to (i), (ii) and (iii) above ("Severance Pay Period").
- **Retirement Supplement** - for employees who are at least age 50 at the effective date of termination, employee would receive, in lieu of the severance payment described above, an additional 5 years of age and 5 years of service credit applied toward his pension plan benefit and toward eligibility for retiree medical benefits [ "automatic" nature of this feature subject to review of comparative values or will be based on formula to be agreed upon]
- **Welfare Benefits** - if Employee receives the severance payment described above, continuation of coverage under medical, dental and life insurance plans over the applicable Severance Pay Period on the same basis as active

employees; if Employee receives the Retirement Supplement described above, welfare benefits will commence immediately and be the same as those provided from time to time under the NEL retiree medical plan to early retirees or to retirees at the normal retirement date, as the case may be, depending on the individual's status during the period any such benefits are being provided; if medical or dental benefits obtained from new employer, continuation coverage benefits offset by new benefits received; COBRA period begins after end of Severance Pay Period

- **Outplacement Support** - support appropriate to position and circumstances of termination will be provided
- **Severance Benefits Following Term** - for terminations following the 90 day Term of the Plan, the NEL Board will have the authority to implement an ongoing severance pay plan comparable either to the existing TNE severance pay plan or to MetLife's existing severance pay plan, at the discretion of the NEL Board



# The Commonwealth of Massachusetts

William Francis Galvin  
Secretary of the Commonwealth  
One Ashburton Place, Boston, Massachusetts 02108-1512

## ARTICLES OF ORGANIZATION (General Laws, Chapter 156B)

Examiner

Name  
Approved

### ARTICLE I

The exact name of the corporation is:

New England Life Insurance Company

### ARTICLE II

The purpose of the corporation is to engage in the following business activities:

See pages 2A-2B of Schedule A attached hereto.

C  
P  
M  
R.A.

*Note: If the space provided under any article or item on this form is insufficient, additions shall be set forth on one side only of separate 8 1/2 x 11 sheets of paper with a left margin of at least 1 inch. Additions to more than one article may be made on a single sheet so long as each article requiring each addition is clearly indicated.*

P.C.

**ARTICLE III**

State the total number of shares and par value, if any, of each class of stock which the corporation is authorized to issue.

WITHOUT PAR VALUE		WITH PAR VALUE		
TYPE	NUMBER OF SHARES	TYPE	NUMBER OF SHARES	PAR VALUE
Common:		Common:	50,000	\$125.00
Preferred:		Preferred:		

**ARTICLE IV**

If more than one class of stock is authorized, state a distinguishing designation for each class. Prior to the issuance of any shares of a class, if shares of another class are outstanding, the corporation must provide a description of the preferences, voting powers, qualifications, and special or relative rights or privileges of that class and of each other class of which shares are outstanding and of each series then established within any class.

N/A

**ARTICLE V**

The restrictions, if any, imposed by the Articles of Organization upon the transfer of shares of stock of any class are:

N/A

**ARTICLE VI**

Other lawful provisions, if any, for the conduct and regulation of the business and affairs of the corporation, for its voluntary dissolution, or for limiting, defining, or regulating the powers of the corporation, or of its directors or stockholders, or of any class of stockholders:

See pages 6A-6C of Schedule A attached hereto.

\*\*If there are no provisions state "None".

Note: The preceding six (6) articles are considered to be permanent and may ONLY be changed by filing appropriate Articles of Amendment.

TRADEMARK

REEL: 1733 FRAME: 0234

ARTICLE VII

The effective date of organization of the corporation shall be the date approved and filed by the Secretary of the Commonwealth. If a later effective date is desired, specify such date which shall not be more than thirty days after the date of filing.

ARTICLE VIII

The information contained in Article VIII is not a permanent part of the Articles of Organization.

a. The street address (post office boxes are not acceptable) of the principal office of the corporation in Massachusetts is:

501 Boylston Street, Boston, Massachusetts

b. The name, residential address and post office address of each director and officer of the corporation is as follows:

	NAME	RESIDENTIAL ADDRESS	POST OFFICE ADDRESS
President:	Robert A. Shafto	526 Grove St., Needham, MA	(Same)
Treasurer:	Chester R. Frost	18 West Palm Dr., Walpole, MA	(Same)
Clerk:	James A. Gallaher	29 Larch Circle, Belmont, MA	(Same)

Directors:

See Schedule B attached hereto

c. The fiscal year (i.e., tax year) of the corporation shall end on the last day of the month of: December

d. The name and business address of the resident agent, if any, of the corporation is:

ARTICLE IX

By-laws of the corporation have been duly adopted and the president, treasurer, clerk and directors whose names are set forth above, have been duly elected.

IN WITNESS WHEREOF AND UNDER THE PAINS AND PENALTIES OF PERJURY, I/we, whose signature(s) appear below as incorporator(s) and whose name(s) and business or residential address(es) are clearly typed or printed beneath each signature do hereby associate with the intention of forming this corporation under the provisions of General Laws, Chapter 156B and do hereby sign these Articles of Organization as incorporator(s) this \_\_\_\_\_ day of \_\_\_\_\_, 1996

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Note: If an existing corporation is acting as incorporator, type in the exact name of the corporation, the state or other jurisdiction where it was incorporated, the name of the person signing on behalf of said corporation and the title he/she holds or other authority by which such action is taken.

TRADEMARK

REEL: 1733 FRAME: 0235

THE COMMONWEALTH OF MASSACHUSETTS

ARTICLES OF ORGANIZATION

(General Laws, Chapter 156B)

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I hereby certify that, upon examination of these Articles of Organization, duly submitted to me, it appears that the provisions of the General Laws relative to the organization of corporations have been complied with, and I hereby approve said articles; and the filing fee in the amount of \$ \_\_\_\_\_ having been paid, said articles are deemed to have been filed with me this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_.

*Effective date:* \_\_\_\_\_

**WILLIAM FRANCIS GALVIN**

*Secretary of the Commonwealth*

**FILING FEE:** One tenth of one percent of the total authorized capital stock, but not less than \$200.00. For the purpose of filing, shares of stock with a par value less than \$1.00, or no par stock, shall be deemed to have a par value of \$1.00 per share.

**TO BE FILLED IN BY CORPORATION**

**Photocopy of document to be sent to:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

**Article 2. Corporate Purposes**

The corporation, which was organized on September 12, 1980, under the laws of the State of Delaware, has elected, for the purpose of continuing its existence without interruption, to become domesticated and reincorporated as a Massachusetts corporation effective as of the date of the closing of the transactions (the "Closing Date") contemplated by that certain Agreement and Plan of Merger by and between the corporation's parent, New England Mutual Life Insurance Company, a Massachusetts mutual insurance company ("TNE"), and Metropolitan Life Insurance Company, a New York mutual insurance company ("MetLife"), dated as of August 16, 1995, as amended, pursuant to which TNE will be merged with and into MetLife. Upon the taking of effect of these Articles of Organization, the corporation shall be and continue to be possessed of all privileges, franchises and powers to the same extent as if it had been originally incorporated under the laws of the Commonwealth of Massachusetts (including without limitation the privilege of transacting the kinds of insurance now or hereafter described in or permitted by Clauses 6th, 15th and 16th of Section 47 and Sections 47A and 54G of Chapter 175 of the General Laws of The Commonwealth of Massachusetts and any acts in amendment thereof or in addition thereto, and such other kinds of insurance as may be permitted now or hereafter to be transacted by insurance corporations organized or authorized to transact any of the kinds of insurance now or hereafter described or permitted by said Clauses of Section 47 and Sections 47A and 54G, and including any form of insurance which may be permitted by paragraphs (b) and (g) of Section 51 of said Chapter 175, and any acts in amendment thereof or in addition thereto, thus including the authority pursuant to said Clauses of Section 47 and Sections 47A and 54G; and including, pursuant to the provisions of paragraph (g) of said Section 51, authority to write such other form or forms of insurance coverage not included in the provisions of said Clauses of Section 47 and Sections 47A and 54G, and not contrary to the law, as the Massachusetts Commissioner of Insurance, in his or her discretion, may authorize and license subject to such terms and conditions as he or she may from time to time prescribe) and all privileges, franchises and powers belonging to said corporation, and all property, real, personal and mixed, and all debts due on whatever account, all certificates of authority, agent appointments, outstanding insurance policies, capital structure, and choses in action, shall be and the same are hereby ratified, approved, confirmed and assured to the corporation, with like effect and to all intents and purposes as if it had been originally incorporated under the laws of the Commonwealth of Massachusetts. Without limitation of the foregoing, the corporation shall be given recognition as a domestic insurance company of the Commonwealth of Massachusetts for all purposes, from and after September 12, 1980, the date of its initial authorization as an insurer under the laws of the State of Delaware.

The Board of Directors may permit the issuance of participating policies, and may permit the policyholders of the corporation from time to time to participate in the profits of its operations through the payment of dividends. The Board of Directors shall have the power to make

reasonable classification or classifications of policies and to take such other action, in accordance with the law, as may be necessary or desirable to carry into effect any participation by policyholders in the profits of the operations of the corporation. No policyholder shall have any right to participate in the profits of the operations of the corporation unless and until the Directors of the corporation, in the exercise of their discretion, affirmatively authorize such participation, and then only to the extent so authorized.

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## Article 6. Other Lawful Provisions

6.1 The corporation may carry on any business, operation or activity referred to in Article 2 to the same extent as might an individual, whether as principal, agent, contractor or otherwise, and either alone or in conjunction or a joint venture or other arrangement with any corporation, association, trust, firm or individual.

6.2 The corporation may carry on any business, operation or activity through a wholly or partly owned subsidiary.

6.3 The corporation may be a partner in any business enterprise which it would have power to conduct by itself.

6.4 Any amendment of the by-laws of the corporation shall require either (1) the affirmative vote of the holders of a majority of the shares of common stock of the corporation then outstanding, or (2) the written consent of all of the holders of common stock of the corporation then outstanding.

6.5 Meetings of the stockholders may be held anywhere in the United States.

6.6 The directors may, by affirmative vote of a Supermajority (as defined from time to time in the by-laws of the corporation) of the directors then in office, specify the manner in which the accounts of the corporation shall be kept and may determine what constitutes net earnings, profits and surplus, what amounts, if any, shall be reserved for any corporate purpose, and what amounts, if any, shall be declared as dividends. Unless the board of directors otherwise specifies by resolution adopted by affirmative vote of a Supermajority (as defined from time to time in the by-laws of the corporation) of the directors then in office, the excess of the consideration for any share of its capital stock with par value issued by it over such par value shall be surplus. The board of directors may, by affirmative vote of a Supermajority (as defined from time to time in the by-laws of the corporation) of the directors then in office, allocate to capital stock less than all of the consideration for any share of its capital stock without par value issued by it, in which case the balance of such consideration shall be surplus. All surplus shall be available for any corporate purpose, including the payment of dividends.

6.7 The purchase or other acquisition or retention by the corporation of shares of its own capital stock shall not be deemed a reduction of its capital stock. Upon any reduction of capital or capital stock, no stockholder shall have any right to demand any distribution from the corporation, except as and to the extent that the stockholders shall have provided at the time of authorizing such reduction.

6.8 The directors shall have the power, by affirmative vote of a Supermajority (as defined from time to time in the by-laws of the corporation) of the directors then in office, to fix from time to time their compensation. No person shall be disqualified from holding any office by

reason of any interest. In the absence of fraud, any director, officer or stockholder of this corporation individually, or any individual having any interest in any concern which is a stockholder of this corporation, or any concern in which any of such directors, officers, stockholders or individuals has any interest, may be a party to, or may be pecuniarily or otherwise interested in, any contract, transaction or other act of the corporation, and

- (1) such contract, transaction or act shall not be in any way invalidated or otherwise affected by that fact;
- (2) no such director, officer, stockholder or individual shall be liable to account to the corporation for any profit or benefit realized through any such contract, transaction or act; and
- (3) any such director of the corporation may be counted in determining the existence of a quorum at any meeting of the directors or of any committee thereof which shall authorize any such contract, transaction or act, and may vote to authorize the same;

provided, however, that any contract, transaction or act in which any director or officer of the corporation is so interested individually or as a director, officer, trustee or member of any concern which is not a subsidiary or affiliate of the corporation, or in which any directors or officers are so interested as holders, collectively, of a majority of shares of capital stock or other beneficial interest at the time outstanding in any concern which is not a subsidiary or affiliate of the corporation, shall be duly authorized or ratified by a Supermajority (as defined from time to time in the by-laws of the corporation) of the directors who are not so interested, to whom the nature of such interest has been disclosed and who have made any findings required by law;

the term "interest" including personal interest and interest as a director, officer, stockholder, shareholder, trustee, member or beneficiary of any concern;

the term "concern" meaning any corporation, association, trust, partnership, firm, person or other entity other than the corporation; and

the phrase "subsidiary or affiliate" meaning a concern in which a majority of the directors, trustees, partners or controlling persons is elected or appointed by the directors of the corporation, or is constituted of the directors or officers of the corporation.

To the extent permitted by law, the authorizing or ratifying vote of the holders of shares representing a majority of the votes of the capital stock of the corporation outstanding and entitled to vote for the election of directors at any annual meeting or a special meeting duly called for the purpose (whether such vote is passed before or after judgment rendered in a suit with respect to such contract, transaction or act) shall validate any contract, transaction or act of the corporation, or of the board of directors or any committee thereof, with regard to all stockholders of the



corporation, whether or not of record at the time of such vote, and with regard to all creditors and other claimants under the corporation; provided, however, that

- A. with respect to the authorization or ratification of contracts, transactions or acts in which any of the directors, officers or stockholders of the corporation have an interest, the nature of such contracts, transactions or acts and the interest of any director, officer or stockholder therein shall be summarized in the notice of any such annual or special meeting, or in a statement or letter accompanying such notice, and shall be fully disclosed at any such meeting;
- B. the stockholders so voting shall have made any findings required by law;
- C. the stockholders so interested may vote at any such meeting except to the extent otherwise provided by law; and
- D. any failure of the stockholders to authorize or ratify such contract, transaction or act shall not be deemed in any way to invalidate the same or to deprive the corporation, its directors, officers or employees of its or their right to proceed with or enforce such contract, transaction or act.

If the corporation has more than one class or series of capital stock outstanding, the vote required by this paragraph shall be governed by the provisions of the Articles of Organization applicable to such classes or series.

No contract, transaction or act shall be avoided by reason of any provision of this paragraph 6.8 which would be valid but for such provision or provisions.

6.9 A director of the corporation shall not be liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent that exculpation from liability is not permitted under the Massachusetts Business Corporation Law as in effect at the time such liability is determined. No amendment or repeal of this paragraph 6.9 shall apply to or have any effect on the liability or alleged liability of any director of the corporation for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

6.10 The corporation shall have all powers granted to corporations by the laws of The Commonwealth of Massachusetts, provided that no such power shall include any activity inconsistent with the Business Corporation Law or the general laws of said Commonwealth.

IN WITNESS WHEREOF AND UNDER THE PENALTIES OF PERJURY, the undersigned, constituting the president, Secretary and a majority of the board of directors, have hereto signed our names this \_\_\_ day of \_\_\_\_\_ in the year 1996.

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

Schedule B to Articles of Organization  
New England Life Insurance Company

DIRECTORS OF NEW ENGLAND LIFE INSURANCE COMPANY

<u>Director</u>	<u>Address</u>
Ted Athanassiades	4436 Province Line Road Princeton, NJ 08540
Susan Comstock Crampton	127 Tarbox Road Jericho, VT 05465
Edward Alan Fox	RR 67-15 Harborside, ME
George J. Goodman	141 Fairway Drive Princeton, NJ 08540
Paul Edward Gray	100 Memorial Drive Cambridge, MA
Evelyn Erika Handler	2199 Jackson Street San Francisco, CA
Philip K. Howard	24 Gramercy Park New York, NY 10003
Harry P. Kamen	200 East 78th Street New York, NY 10021
Bernard A. Levanthal	580 Park Avenue New York, NY 10021
Thomas John May	107 Margery Lane Westwood, MA
Roy Wright Menninger, M.D.	85 Pepper Tree Lane Topoka, KS
Robert Austin Shafto	526 Grove Street Needham, MA
Rand Newman Stowell, Jr.	West Side Road Weld, ME
Alexander Buel Trowbridge	1823 23rd Street, NW Washington, DC 20008

BY-LAWS

of

## NEW ENGLAND LIFE INSURANCE COMPANY

## Section 1. ARTICLES OF ORGANIZATION

The name and purposes of the corporation shall be as set forth in the Articles of Organization. These By-laws, the powers of the corporation and of its directors and stockholders, or of any class of stockholders if there shall be more than one class of stock, and all matters concerning the conduct and regulation of the business and affairs of the corporation shall be subject to such provisions in regard thereto, if any, as are set forth in the Articles of Organization as from time to time in effect.

## Section 2. STOCKHOLDERS

2.1. Annual Meeting. The annual meeting of stockholders shall be held at 10:00 A.M. on the [third Tuesday in March] in each year (unless that day be a legal holiday at the place where the meeting is to be held in which case the meeting shall be held at the same hour on the next succeeding day not a legal holiday) or at such other date and time as shall be determined from time to time by the board of directors. Purposes for which an annual meeting is to be held, additional to those prescribed by law, by the Articles of Organization or by these By-laws, may be specified by the president or by the directors.

2.2. Special Meetings. A special meeting of the stockholders may be called at any time by the president or by the directors. A special meeting of the stockholders shall be called by the secretary upon the written request, stating the purpose of the meeting, of stockholders who together own of record 25% or more of the outstanding stock of any class entitled to vote at such meeting. Each call of a meeting shall state the place, date, hour and purposes of the meeting.

2.3. Place of Meetings. All meetings of the stockholders shall be held at the principal office of the corporation in Massachusetts or, to the extent permitted by the Articles of Organization, at such other place within the United States as shall be fixed by the president or the directors. Any adjourned session of any meeting of the stockholders shall be held at the same city or town as the initial session, or within Massachusetts, in either case at the place designated in the vote of adjournment.

2.4. Notice of Meetings. A written notice of each meeting of stockholders, stating the place, date and hour and the purposes of the meeting, shall be given at least seven days before the meeting to each stockholder entitled to vote thereat and to each stockholder who, by law, by the Articles of Organization or by these By-laws, is entitled to notice, by leaving such notice with him or at his residence or usual place of business, or by mailing it, postage prepaid, addressed to such stockholder at his address as it appears in the records of the corporation. Such notice shall be given by the secretary or an assistant secretary or by an officer designated by the directors. Whenever notice of a meeting is required to be given to a stockholder under any provision of the Business Corporation Law of the Commonwealth of Massachusetts or of the Articles of Organization or these By-laws, a written waiver thereof, executed before or after the meeting by such stockholder or his attorney thereunto authorized and filed with the records of the meeting, shall be deemed equivalent to such notice.

2.5. Quorum of Stockholders. At any meeting of the stockholders, a quorum as to any matter shall consist of a majority of the votes entitled to be cast on the matter, except when a larger quorum is required by law, by the Articles of Organization or by these By-laws. Stock owned directly or indirectly by the corporation, if any, shall not be deemed outstanding for this purpose. Any meeting may be adjourned from time to time by a majority of the votes properly cast upon the question, whether or not a quorum is present, and the meeting may be held as adjourned without further notice.

2.6. Action by Vote. When a quorum is present at any meeting, a plurality of the votes properly cast for election to any office shall elect to such office, and a majority of the votes properly cast upon any question other than an election to an office shall decide the question, except when a larger vote is required by law, by the Articles of Organization or by these By-laws. No ballot shall be required for any election unless requested by a stockholder present or represented at the meeting and entitled to vote in the election.

2.7. Voting. Stockholders entitled to vote shall have one vote for each share of stock entitled to vote held by them of record according to the records of the corporation, unless otherwise provided by the Articles of Organization. The corporation shall not, directly or indirectly, vote any share of its own stock.

2.8. Action by Writing. Any action required or permitted to be taken at any meeting of the stockholders may be taken without a meeting if all stockholders entitled to vote on the matter consent to the action in writing and the written consents are filed with the records of the meetings of stockholders. Such consents shall be treated for all purposes as a vote at a meeting.

2.9. Proxies. To the extent permitted by law, stockholders entitled to vote may vote either in person or by proxy. Except to the extent permitted by law, no proxy dated more than six months before the meeting named therein shall be valid. Unless otherwise specifically limited by their terms, such proxies shall entitle the holders thereof to vote at any adjournment of such meeting but shall not be valid after the final adjournment of such meeting.

### Section 3. BOARD OF DIRECTORS

3.1. Number. At the annual meeting of stockholders such stockholders as have the right to vote for the election of directors shall fix the number of directors at not less than seven nor more than twenty directors and shall elect the number of directors so fixed. The number of Directors may be increased or decreased to any number permitted by law at any time or from time to time only by vote of a majority of the stockholders having the right to vote thereon. No director need be a stockholder.

3.2. Tenure. Except as otherwise provided by law, by the Articles of Organization or by these By-laws, each director shall hold office until the next annual meeting of the stockholders and thereafter until his successor is duly elected and qualified, or until he sooner dies, resigns, is removed or becomes disqualified.

3.3. Powers. Except as reserved to the stockholders by law, by the Articles of Organization or by these By-laws, the business of the corporation shall be managed under the direction of the directors, who shall have and may exercise all the powers of the corporation. In particular, and without limiting the generality of the foregoing, the directors may at any time issue all or from time to time any part of the unissued capital stock of the corporation from time to time authorized under the Articles of Organization and may determine, subject to any requirements of law, the consideration for which stock is to be issued and the manner of allocating such consideration between capital and surplus.

3.4. Committees. The directors may, by vote of a Supermajority (as defined in Section 3.12 hereof) of the directors then in office, elect from their number an executive committee and other committees and delegate to any such committee or committees some or all of the powers of the directors except those which by law, by the Articles of Organization or by these By-laws they are prohibited from delegating. Except as the directors may otherwise determine, any such committee may make rules for the conduct of its business, but unless otherwise provided by the directors or such rules, its business shall be conducted as nearly as may be in the same manner as is provided by these By-laws for the conduct of business by the directors. Notwithstanding any provision herein to the contrary, no such committee shall have power or authority in reference to amending the Articles of Organization of the corporation, adopting an agreement of merger or consolidation, recommending to the stockholders the sale, lease or exchange of all or substantially all of the corporation's property and assets, recommending to the stockholders a dissolution of the corporation or a revocation of dissolution, amending these By-laws or taking any actions set forth in Section 3.12 hereof.

3.5. Regular Meetings. Regular meetings of the directors may be held without call or notice at such places and at such times as the directors may from time to time determine, provided that reasonable notice of the first regular meeting following any such determination shall be given to absent directors. A regular meeting of the directors may be held without call or notice immediately after and at the same place as the annual meeting of the stockholders.

3.6. Special Meetings. Special meetings of the directors may be held at any time and at any place designated in the call of the meeting, when called by the chairman of the board, if any, the president or the secretary, reasonable notice thereof being given to each director by the secretary or an assistant secretary, or by the officer calling the meeting.

3.7. Notice. It shall be sufficient notice to a director of a meeting of the directors (1) to send notice by mail at least four days or by telegram at least twenty-four hours before the meeting addressed to him at his usual or last known business or residence address, (2) to give notice to him in person or by telephone at least twenty-four hours before the meeting or (3) to give him notice by such other means, and within such other time, as shall be reasonable in the circumstances. Notice of a meeting need not be given to any director if a written waiver of notice, executed by him before or after the meeting, is filed with the records of the meeting, or to any director who attends the meeting without protesting prior thereto or at its commencement the lack of notice to him. Neither notice of a meeting nor a waiver of a notice need specify the purposes of the meeting.

3.8. Quorum. At any meeting of the directors, a Supermajority (as defined in Section 3.12 hereof) of the directors then in office (or such other greater number as may be required by law) shall constitute a quorum. Any meeting may be adjourned from time to time by a majority of the votes cast upon the question, whether or not a quorum is present, and the meeting may be held as adjourned without further notice.

3.9. Action by Vote. When a quorum is present at any meeting, a majority of the directors present may take any action, except when a larger vote is required by law, by the Articles of Organization or by these By-laws.

3.10. Action by Writing. Unless the Articles of Organization otherwise provide, any action required or permitted to be taken at any meeting of the directors may be taken without a meeting if all the directors consent to the action in writing and the written consents are filed with the records of the meetings of the directors. Such consents shall be treated for all purposes as a vote taken at a meeting.

3.11. Presence Through Communications Equipment. Unless otherwise provided by law or the Articles of Organization, members of the board of directors may participate in a meeting of such board by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time and participation by such means shall constitute presence in person at a meeting.

3.12. Approval of Certain Matters. Notwithstanding any provision herein to the contrary, the affirmative vote of a Supermajority of the directors then in office shall be required in order to authorize or undertake or cause the corporation to: (i) adopt or materially modify the business plan of the corporation; (ii) appoint or remove the chief executive officer; (iii) acquire, or invest or make any capital contribution in excess of Twenty-Five Million Dollars (\$25,000,000) in any subsidiary; (iv) create, incur, assume, issue or guarantee any indebtedness (directly or through any of the corporation's subsidiaries) for borrowed money in excess of Twenty-Five Million Dollars (\$25,000,000); (v) enter into any joint venture or partnership with any person or organization (other than a wholly owned subsidiary of the corporation); (vi) adopt or modify any proposal for the sale, merger, consolidation, liquidation, reorganization, rehabilitation, conservation or dissolution of, or the sale, lease, assignment or other disposition of all or substantially all of the assets of, the corporation or any of its subsidiaries; (vii) issue new shares of capital stock of the corporation or any of its subsidiaries, grant any option to acquire such stock or make any other changes in the capitalization of the corporation or any of its subsidiaries; (viii) adopt or modify any stock option plan; (ix) adopt or modify any agreement with any officer or director of the corporation; (x) elect committees of the directors and delegate powers thereto (as provided in Section 3.4 hereof); (xi) elect the chairman of the board or designate any other officer who shall have general charge and supervision of the business of the corporation (as provided in Sections 4.5 and 4.6 hereof); (xii) remove a director from office (as provided in Section 5 hereof); (xiii) fix the compensation of the directors (as provided in Article 6.8 of the Articles of Organization); or (xiv) take any of the actions set forth in Article 6.6 of the Articles of Organization. As used in these By-laws and in the Articles of Organization, a "Supermajority" shall mean sixty-five percent.

#### Section 4. OFFICERS AND AGENTS

4.1. Enumeration: Qualification. The officers of the corporation shall be a president, a treasurer, a secretary and such other officers as the directors from time to time may in their discretion elect or appoint. The corporation may also have such agents, if any, as the directors from time to time may in their discretion appoint. Any officer may be but none need be a director or stockholder. Any two or more offices may be held by the same person. Any officer may be required by the directors to give bond for the faithful performance of his duties to the corporation in such amount and with such sureties as the directors may determine.

4.2. Powers. Subject to law, to the Articles of Organization and to the other provisions of these By-laws, each officer shall have, in addition to the duties and powers herein set forth, such duties and powers as are commonly incident to his office and such duties and powers as the directors may from time to time designate.

4.3. Election. The president, the treasurer and the secretary shall be elected annually by the directors. Other officers, if any, may be elected or appointed by the board of directors at any other time.

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4.4. Tenure. Except as otherwise provided by law or by the Articles of Organization or by these By-laws, the president, the treasurer and the secretary and each other officer shall hold office until their respective successors are chosen and qualified, unless a shorter period shall have been specified by the terms of his election or appointment, or in each case until he sooner dies, resigns, is removed or becomes disqualified.

4.5. Chief Executive Officer. The chief executive officer of the corporation shall be designated by the affirmative vote of a Supermajority (as defined in Section 3.12 hereof) of the directors then in office and shall, subject to the control of the directors, have general charge and supervision of the business of the corporation. Unless the board of directors otherwise specifies, if there is no chairman of the board, the chief executive officer shall preside, or designate the person who shall preside, at all meetings of the stockholders and of the board of directors.

4.6. Chairman of the Board. The directors may, by affirmative vote of a Supermajority (as defined in Section 3.12 hereof) of the directors then in office, elect one of their number as chairman of the board. If a chairman of the board of directors is elected, he shall have the duties and powers specified in these By-laws and shall have such other duties and powers as may be determined by the directors. Unless the board of directors otherwise specifies, the chairman of the board shall preside, or designate the person who shall preside, at all meetings of the stockholders and of the board of directors.

4.7. President and Vice Presidents. The president shall have the duties and powers specified in these By-laws and shall have such other duties and powers as may be determined by the directors. Any president of a business unit of the corporation shall have the duties and powers specified in these By-laws and shall have such other duties and powers as may be determined by the directors.

Any vice presidents (including any vice presidents with designation such as "executive vice president," "senior vice president," "first vice president," "second vice president" or "assistant vice president") shall have such duties and powers as shall be designated from time to time by the directors.

4.8. Treasurer and Assistant Treasurers. Except as the directors shall otherwise determine, the treasurer shall be the chief financial and accounting officer of the corporation and shall be in charge of its funds and valuable papers, books of account and accounting records, and shall have such other duties and powers as may be designated from time to time by the directors.

Any assistant treasurers shall have such duties and powers as shall be designated from time to time by the directors.

1047669 04 (2/20/96)

4.9. Secretary and Assistant Secretary. The secretary shall record all proceedings of the stockholders in a book or series of books to be kept therefor, which book or books shall be kept at the principal office of the corporation or at the office of its transfer agent or of its secretary and shall be open at all reasonable times to the inspection of any stockholder. In the absence of the secretary from any meeting of stockholders, an assistant secretary, or if there be none or he is absent, a temporary secretary chosen at the meeting, shall record the proceedings thereof in the aforesaid book. Unless a transfer agent has been appointed, the secretary shall keep or cause to be kept the stock and transfer records of the corporation, which shall contain the names and record addresses of all stockholders and the amount of stock held by each. The secretary shall keep a true record of the proceedings of all meetings of the directors and in his absence from any such meeting an assistant secretary, or if there be none or he is absent, a temporary secretary chosen at the meeting, shall record the proceedings thereof.

Any assistant secretaries shall have such other duties and powers as shall be designated from time to time by the directors.

4.10. Certain Powers. The chief executive officer, chairman of the board, the president, any president of any business unit, or any one of the vice presidents, including any executive vice president, senior vice president, second vice president or assistant vice president, and such other employees of the corporation specifically authorized by the chief executive officer shall have authority to transfer securities, to execute releases, extensions, partial releases, and assignments without recourse of mortgages, and to execute deeds and other instruments or documents on behalf of the corporation, and whenever necessary to affix the seal of the corporation to the same. The chief executive officer, chairman of the board, the president, any president of any business unit, any executive vice president, senior vice president, vice president, second vice president or assistant vice president may, whenever necessary, delegate authority to perform any of the acts referred to in this paragraph to any person pursuant to a special power of attorney.

The treasurer shall have charge of all moneys and securities of the corporation and shall collect all proceeds from investments which the corporation's records establish to be due.

The treasurer or an assistant treasurer shall have authority to transfer securities; to execute releases, extensions, partial releases, and assignments without recourse of mortgages, to execute deeds and other instruments or documents on behalf of the corporation, and whenever necessary to affix the seal of the corporation to the same; and shall have power to vote, on behalf of the corporation, in any case where the corporation, as holder of any security, is entitled to vote.

## Section 5. RESIGNATIONS AND REMOVALS

Any director or officer may resign at any time by delivering his resignation in writing to the chairman of the board, if any, the president, the treasurer or the secretary. In addition, a director may resign by delivering his resignation in writing to a meeting of the directors. Such resignation shall be effective upon receipt unless specified to be effective at some other time. A director (including persons elected by directors to fill vacancies in the board) may be removed from office with or without cause by the vote of the holders of a majority of the shares issued and outstanding and entitled to vote in the election of directors, provided that the directors of a class elected by a particular class of stockholders may be removed only by the vote of the holders of a majority of the shares of such class. The directors may remove any officer elected by them with or without cause by the vote of a Supermajority (as defined in Section 3.12 hereof) of the directors then in office. No director or officer who is removed shall have any right to any compensation as such director or officer for any period following his removal, or any right to damages on account of such removal, whether his compensation be by the month or by the year or otherwise; unless the body acting on the removal shall in its discretion provide for compensation.

## Section 6. VACANCIES

Any vacancy in the board of directors, including a vacancy resulting from the enlargement of the board as the result of an action taken by the stockholders in accordance with Section 3.1 hereof, may be filled by the stockholders or, in the absence of stockholder action, by the directors by vote of a Supermajority (as defined in Section 3.12 hereof) of the directors then in office. The directors shall elect a successor if the office of the president, treasurer or secretary becomes vacant and may elect a successor if any other office becomes vacant. Each such successor shall hold office for the unexpired term and in the case of the president, treasurer and secretary until his successor is chosen and qualified, or in each case until he sooner dies, resigns, is removed or becomes disqualified. The directors shall have and may exercise all their powers notwithstanding the existence of one or more vacancies in their number.

## Section 7. CAPITAL STOCK

7.1. Number and Par Value. The total number of shares and the par value, if any, of each class of stock which the corporation is authorized to issue shall be as stated in the Articles of Organization.

7.2. Shares Represented by Certificates and Uncertificated Shares. The board of directors may provide by resolution that some or all of any or all classes and series of shares shall be uncertificated shares. Unless such a resolution has been adopted, a stockholder shall be entitled to a certificate stating the number and the class and the designation of the series, if any, of the shares held by him, in such form as shall, in conformity to law, be prescribed from

1097869 04 (2/20/98)

time to time by the directors. Such certificate shall be signed by the chairman of the board, if any, the president or a vice president and by the treasurer or an assistant treasurer. Such signatures may be facsimiles if the certificate is signed by a transfer agent, or by a registrar, other than a director, officer or employee of the corporation. In case any officer who has signed or whose facsimile signature has been placed on such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer at the time of its issue.

7.3. Loss of Certificates. In the case of the alleged loss or destruction or the mutilation of a certificate of stock, a duplicate certificate may be issued in place thereof, upon such conditions as the directors may prescribe.

#### Section 8. TRANSFER OF SHARES OF STOCK

8.1. Transfer on Books. Subject to the restrictions, if any, stated or noted on the stock certificates, shares of stock may be transferred on the books of the corporation by the surrender to the corporation or its transfer agent of the certificate therefor properly endorsed or accompanied by a written assignment and power of attorney properly executed, with necessary transfer stamps affixed, and with such proof of the authenticity of signature as the directors or the transfer agent of the corporation may reasonably require. Except as may be otherwise required by law, by the Articles of Organization or by these By-laws, the corporation shall be entitled to treat the record holder of stock as shown on its books as the owner of such stock for all purposes, including the payment of dividends and the right to receive notice and to vote with respect thereto, regardless of any transfer, pledge or other disposition of such stock until the shares have been transferred on the books of the corporation in accordance with the requirements of these By-laws.

It shall be the duty of each stockholder to notify the corporation of his post office address.

8.2. Record Date and Closing Transfer Books. The directors may fix in advance a time, which shall not be more than sixty days before the date of any meeting of stockholders or the date for the payment of any dividend or making of any distribution to stockholders or the last day on which the consent or dissent of stockholders may be effectively expressed for any purpose, as the record date for determining the stockholders having the right to notice of and to vote at such meeting and any adjournment thereof or the right to receive such dividend or distribution or the right to give such consent or dissent, and in such case only stockholders of record on such record date shall have such right, notwithstanding any transfer of stock on the books of the corporation after the record date; or without fixing such record date the directors may for any of such purposes close the transfer books for all or any part of such period. If no record date is fixed and the transfer books are not closed:

1097869 04 (2/20/98)

(1) The record date for determining stockholders having the right to notice of or to vote at a meeting of stockholders shall be at the close of business on the date next preceding the day on which notice is given.

(2) The record date for determining stockholders for any other purpose shall be at the close of business on the day on which the board of directors acts with respect thereto.

#### Section 9. INDEMNIFICATION OF DIRECTORS AND OFFICERS

The corporation shall, to the extent legally permissible, indemnify each of its directors and officers (including persons who serve at its request as directors, officers or trustees of another organization, or in any capacity with respect to any employee benefit plan) against all liabilities and expenses, including amounts paid in satisfaction of judgments, in compromise or as fines and penalties, and counsel fees, reasonably incurred by him in connection with the defense or disposition of any action, suit or other proceeding, whether civil or criminal, in which he may be involved or with which he may be threatened, while in office or thereafter, by reason of his being or having been such a director or officer, except with respect to any matter as to which he shall have been adjudicated in any proceeding not to have acted in good faith in the reasonable belief that his action was in the best interest of the corporation (any person serving another organization in one or more of the indicated capacities at the request of the corporation who shall have acted in good faith in the reasonable belief that his action was in the best interest of such other organization to be deemed as having acted in such manner with respect to the corporation) or, to the extent that such matter relates to service with respect to any employee benefit plan, in the best interest of the participants or beneficiaries of such employee benefit plan; provided, however, that as to any matter disposed of by a compromise payment by such director or officer, pursuant to a consent decree or otherwise, no indemnification either for said payment or for any other expenses shall be provided unless such compromise shall be approved as in the best interest of the corporation, after notice that it involves such indemnification: (a) by a disinterested majority of the directors then in office; or (b) by a majority of the disinterested directors then in office, provided that there has been obtained an opinion in writing of independent legal counsel to the effect that such director or officer appears to have acted in good faith in the reasonable belief that his action was in the best interest of the corporation; or (c) by the holders of a majority of the outstanding stock at the time entitled to vote for directors, voting as a single class, exclusive of any stock owned by any interested director or officer. Expenses, including counsel fees, reasonably incurred by any director or officer in connection with the defense or disposition of any such action, suit or other proceeding may be paid from time to time by the corporation in advance of the final disposition thereof upon receipt of an undertaking by such director or officer to repay the amounts so paid to the corporation if it is ultimately determined that indemnification for such expenses is not authorized under this section. The right of indemnification hereby provided shall not be exclusive of or affect any other rights to which any director or officer may be entitled. As used in this section, the terms "director" and "officer" include the relevant individual's heirs, executors and administrators, and an "interested" director or officer is one

1097860 04 (2/20/96)

against whom in such capacity the proceedings in question or another proceeding on the same or similar grounds is then pending. Nothing contained in this section shall affect any rights to indemnification to which corporate personnel other than directors and officers may be entitled by contract or otherwise under law.

#### Section 10. CORPORATE SEAL

The seal of the corporation shall, subject to alteration by the directors, consist of a flat-faced circular die with the word "Massachusetts", together with the name of the corporation and the year of its organization, cut or engraved thereon.

#### Section 11. FISCAL YEAR

The fiscal year of the corporation shall end on December 31.

#### Section 12. AMENDMENTS

These By-laws may be altered, amended or repealed at any annual or special meeting of the stockholders called for the purpose, of which the notice shall specify the subject matter of the proposed alteration, amendment or repeal or the sections to be affected thereby, by vote of the stockholders.

1097860 04 (1/28/96)

NEW ENGLAND LIFE INSURANCE COMPANY  
PROPOSED OFFICERS

CHIEF EXECUTIVE OFFICER:	Robert A. Shafko
PRESIDENT, NEW ENGLAND SERVICES:	Edward C. Hall
PRESIDENT, NEW ENGLAND LIFE:	Kerman F. King
PRESIDENT, NEW ENGLAND ANNUITIES:	Bruce C. Long
PRESIDENT, THE INFORMATION SERVICES:	Gregory A. Ross
PRESIDENT, NEW ENGLAND EMPLOYEE BENEFITS GROUP:	John W. Wright
EXECUTIVE VICE PRESIDENT AND CHIEF FINANCIAL OFFICER:	Robert E. Schneider
EXECUTIVE VICE PRESIDENT, PLANNING AND DEVELOPMENT:	Alexander D. Brunini
EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL:	H. James Wilson
EXECUTIVE VICE PRESIDENT AND CHIEF INVESTMENT OFFICER:	Frederick K. Zimmerman
SENIOR VICE PRESIDENTS:	David W. Allen Pauline V. Belisle Anthony J. Candito Adrian B. Corbiere Thom A. Faria Robert L. Ghegan Frederick W. Knier Eileen T. McCarthy John G. Small, Jr. Gail E. Weber
SENIOR VICE PRESIDENT AND ASSOCIATE GENERAL COUNSEL:	Daniel J. Kelliher, Jr.
SENIOR VICE PRESIDENT AND TREASURER:	Chester R. Frost
VICE PRESIDENTS:	David N. Biar James G. Beaton John H. Bergstrom, Jr. Stephanie B. Brown Cary D. Bussema Bruce T. Bygate William A. Campagna John J. Cronin

TRADEMARK

REEL: 1733 FRAME: 0255

James S. Cruickshank  
Peter F. Curran  
Richard M. Denton  
Mary V. Dexter  
Deirdre E. Duffy  
Anne Marie Faria  
John F. Guthrie, Jr.  
Charles A. Hanie  
Peter N. Harrington  
Gerald F. Hart  
Michael J. Heafy  
C. Karen Hwang  
William M. Korach  
Peter T. LeClair  
George J. Maloof  
Stephen J. McLaughlin  
James A. Medelros  
Robert F. Regan  
Kenneth J. Schweiger  
William S. Slater  
John A. Sullivan  
John R. Wright  
Robert D. Zuar

**VICE PRESIDENTS AND ACTUARIES:**

Chester T. Lewandowski  
Marshall H. Lykins  
Scott D. McInturff  
Joseph F. Thompson

**VICE PRESIDENTS AND GROUP ACTUARIES:**

Alan C. Leland, Jr.  
Kathleen R. Muleski

**VICE PRESIDENT AND PENSION ACTUARY:**

Habib H. Bokhari

**VICE PRESIDENT AND AUDITOR:**

Vernon A. Elarth

**VICE PRESIDENT AND CONTROLLER:**

James P. Bossert

**VICE PRESIDENT AND SECRETARY:**

James A. Gallaher

**VICE PRESIDENTS AND COUNSEL:**

Floyd C. Culhane, Jr.  
Anne M. Goggin  
John D. Riordan  
Ellen D. Sullivan

**FIELD VICE PRESIDENTS:**

William F. Cummings  
R. Lee Dixon  
Thomas W. Moore  
Patrick F. Norton



EXHIBIT K

TNE Subsidiaries to be transferred to NELICO

- Exeter Reassurance Company, Ltd.
- Hereford Insurance Agency, Inc.
- New England Pension and Annuity Company
- New England Securities Corporation
- Newbury Insurance Companies, Limited
- Omega Reinsurance Corporation
- TNE Advisers, Inc.
- TNE Information Services, Inc.

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REEL: 1733 FRAME: 0259

**SHORT CERTIFICATE**

**STATE OF NEW YORK  
INSURANCE DEPARTMENT**

**It is hereby certified that the annexed copy of Amended and Restated Agreement and Plan of Merger by and between NEW ENGLAND MUTUAL LIFE INSURANCE COMPANY, of Boston, MA and METROPOLITAN LIFE INSURANCE COMPANY, of New York, New York (surviving corporation) as approved by this Department August 16, 1996 pursuant to Section 7105 of the New York Insurance Law,**

**has been compared with the original on file in this Department and that it is a correct transcript therefrom and of the whole of said original.**



**In Witness Whereof, I have here-  
unto set my hand and affixed  
the official seal of this Department  
at the City of Albany, this  
30th day of March, 1998.**

*Frank M. D'Amico*

**Special Deputy Superintendent**

**TRADEMARK  
REEL: 1733 FRAME: 0260**

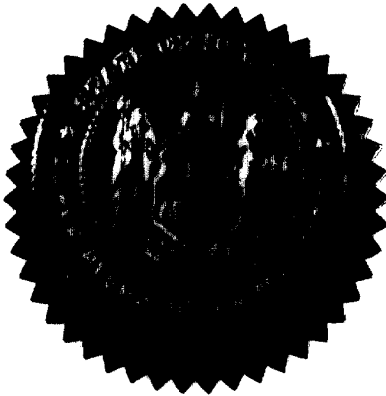


STATE OF NEW YORK  
INSURANCE DEPARTMENT  
AGENCY BUILDING ONE  
THE GOVERNOR NELSON A. ROCKEFELLER  
EMPIRE STATE PLAZA  
ALBANY, NEW YORK 12257

GEORGE E. PATAKI  
Governor

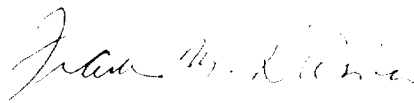
EDWARD J. MUHL  
Superintendent of Insurance

I, EDWARD J. MUHL, Superintendent of Insurance of the State of New York, DO HEREBY APPROVE the annexed Amended and Restated Agreement and Plan of Merger by and between NEW ENGLAND MUTUAL LIFE INSURANCE COMPANY, of Boston, Massachusetts, and METROPOLITAN LIFE INSURANCE COMPANY, of New York, New York, (surviving corporation), effective August 16, 1996, pursuant to Section 7105 of the New York Insurance Law.



In Witness Whereof, I have hereunto set my hand and affixed the official seal of this Department at the City of Albany, this 16th day of August 1996.

EDWARD J. MUHL  
Superintendent of Insurance

By   
Special Deputy Superintendent