Client Alert

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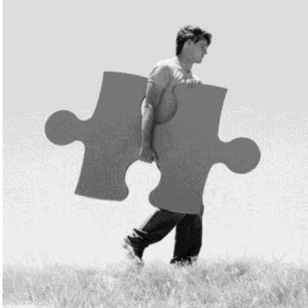

Float Like a Butterfly, Sting Like a Non-SIFI: Round One Goes to MetLife

On March 30, 2016, the U.S. District Court for the District of Columbia (the "U.S. District Court") handed down its decision regarding MetLife's challenge to the Financial Stability Oversight Committee's ("FSOC") designation of MetLife as a systemically important financial institution ("SIFI").[1] The U.S. District Court's order granted, in part, MetLife's cross motion for summary judgment with regard to three counts (Counts IV, VI (in part) and VII), but denied all of MetLife's other counts. The U.S. District Court's actual opinion remains under seal as of today's date. However, comparing the District Court's order to the counts presented in MetLife's original complaint sheds some light on the U.S. District Court's reasoning.

Below is a brief summary of the three counts in which MetLife was able to succeed on, either fully or partially:

- ***Count IV*: FSOC's Designation Failed to Assess MetLife's Vulnerability to Material Financial Distress.** Count Four, the first count that MetLife was able to fully succeed on, asserted that FSOC's designation of MetLife as a SIFI was "arbitrary and capricious" and violated the Dodd-Frank Wall Street Consumer and Protection Act (the "Dodd-Frank Act"), FSOC's regulations and the Administrative Procedure Act, because FSOC "declined to consider MetLife's vulnerability to material financial distress, instead assuming that MetLife was experiencing financial distress."[2] Accordingly, FSOC failed to satisfy its obligations under Section 113(a)(1) of the Dodd-Frank Act, which requires FSOC to "undertake a vulnerability analysis" to determine that a nonfinancial entity "could pose a threat to the financial stability of the United States."[3] In emphasizing the word "could," MetLife asserted that Section 113(a)(1) of the Dodd-Frank Act "must mean more than a purely theoretical possibility."[4] Likewise, the manner in which FSOC designated MetLife as a SIFI ran counter to FSOC's obligations established under FSOC's own interpretative guidance of Section 113 of the Dodd-Frank Act, which specifies that FSOC must consider such elements as "leverage . . . liquidity risk and maturity mismatch, and . . . existing regulatory scrutiny" in making a determination that a nonbank financial company crosses the SIFI threshold.[5]

- ***Count VI*: FSOC's Designation of MetLife Depended on Unsubstantiated, Indefinite Assumptions and Speculation that Failed to Satisfy FSOC's Statutory Obligations.** "Count Six," which MetLife was able to partially succeed on,[6] asserted that FSOC's designation of MetLife as a SIFI was "arbitrary and capricious" because it, among other things, "unreasonably" diverged from widely

[1] *See MetLife Inc, v. Financial Stability Oversight Council*, Case 1:15-cv-00045-RMC (March. 30, 2016).
[2] *See MetLife Inc, v. Financial Stability Oversight Council*, Case 1:15-cv-00045 (Jan. 13, 2015), at Paras. 96 *et seq* (referred to herein as the "MetLife Complaint").
[3] *Id.* Para. 96.
[4] *Id.*
[5] *Id.* Para. 97.
[6] It is unclear as to the specific elements of Count VI that were granted based on the sparse details contained in the U.S. District Court's order.

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accepted risk assessment principles and practices.[7] MetLife argued that FSOC, in abandoning the "well-established principles of risk analysis," including those set forth by international and U.S. federal regulatory agencies,[8] based its determination on "a fact-defying sequence of implausible events and irrational actions by market participants and state regulators."[9] For example, FSOC utilized a hypothetical stress scenario that used no objective definition for the terms "overall stress" or "weak macroeconomic environment," and assumed the underlying values that were used to determine critical macroeconomic variables.[10] Likewise, FSOC "dramatically overstated the risk to MetLife's counterparties and other market participants of material financial distress at MetLife."[11]

- ***Count VII*: FSOC Failed to Consider the Economic Impact of Designating MetLife as a SIFI**. MetLife additionally argued that FSOC's designation of MetLife as a SIFI was "arbitrary and capricious" because it failed to consider the economic impact that such a designation would have on MetLife. MetLife asserted that FSOC's analysis ran counter to the overarching intent of the SIFI designation process. By designating a nonbank financial institution as a SIFI without considering the palpable impact that such a designation would have on MetLife's stability, it "weaken[ed] the very entity that it was intended to strengthen."[12] MetLife noted that requiring it to adhere to more stringent regulatory requirements as compared to its competitors additionally placed MetLife at a "significant and potentially insurmountable competitive disadvantage." Thusly, FSOC's designation failed to take into account the economic impact that such a designation would have on MetLife's shareholders and policyholders, which MetLife argued was required pursuant to the "risk-related factor" provided under Section 113(a)(2) of the Dodd-Frank Act.[13]

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[7] MetLife Complaint, *supra* note 2 at Para. 110.
[8] *See, e.g.,* the Comprehensive Capital Analysis and Review established by the Board of Governors of the Federal Reserve System and the Basel Committee on Banking Supervision's Principles for Sound Liquidity Risk Management and Supervision.
[9] MetLife Complaint, *supra* note 2 at Para. 110.
[10] *Id.* Para. 111.
[11] *Id.* Para. 117.
[12] *Id.* Para. 131.
[13] *Id.* Para. 132-33.