



Insight

D.C. Circuit Puts FSOC Decision on Hold Pending Treasury Report

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On Wednesday, the D.C. Circuit Court granted a motion for an abeyance in the *MetLife v. FSOC* case pending the release of Treasury's FSOC-specific report. It also denied FSOC's request to hold off on the decision for only 30 days, as well as a motion from the left-leaning group Better Markets to intervene in the case as an amicus. [AAF has previously written](#) that the Court should hold off on issuing an opinion until Treasury releases its report so the Court may be fully informed in its deliberations.

Specifically, the Court ordered that “[MetLife]’s renewed motion to hold appeal in abeyance be granted, and this case remains in abeyance pending further of the court...The parties are directed to file motions to govern future proceedings in this case by November 17, 2017, or within 30 days of the issuance of the Secretary’s report on the FSOC’s designation process, whichever first occurs.”

This certainly is a step in the right direction, but it is not the end of the game. As Treasury is in the process of writing its report, it must steer clear of the last administration’s flawed policy of designating firms at arbitrary thresholds and instead move toward a more efficient policy of serving as a regulatory coordinator.

As AAF noted, in its [recent written submission to FSOC](#), “Dodd-Frank tasked FSOC with ‘facilitating regulatory coordination’ and ‘facilitating information sharing and collection’ and gave these duties just as much importance as its designation and recommendation obligations...FSOC has a statutory duty to ‘facilitate information sharing and coordination among member agencies regarding domestic financial services policy development, rulemaking, examinations, reporting requirements, and enforcement actions.’”

Further, AAF reminded FSOC to remember the ultimate goal of Title I or Dodd-Frank: ultimate financial stability. If FSOC identifies that a firm’s exposure to certain markets or extensive use of particular products poses significant counterparty risk, the firm should be allowed to remediate that problem itself, instead of automatically being put under heightened regulatory burden and oversight. Ultimate financial stability—not ultimate regulation—is the goal. An ends-focused approach would establish a tentative model of how particular nonbank firms are systemically important: insurance companies are structurally very different from asset managers, etc. FSOC’s mission is to “identify and respond to emerging threats to financial stability.” Designating firms is but one tool among many to achieve that goal.

As FSOC moves into writing its report, and while the court waits on the final product, FSOC should not lose sight of the President’s [Executive Order 13722](#) on Core Principles for Regulating the United States Financial System. FSOC should develop policies that move away from the opaque and arbitrary designation of entities, move toward a more tailored regulatory approach, and return it to its duty as a coordinating entity.