Insight

Four National Groups File in Support of MetLife's FSOC Fight

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Summary

Four groups filed Amici Curiae briefs in support of MetLife lawsuit against the Financial Stability Oversight Council (FSOC): the National Association of Insurance Commissioners (NAIC), the American Council of Life Insurers (ACLI), the Academic Experts in Financial Regulation (AEFR), and the United States Chamber of Commerce (Chamber). Their arguments took four main forms:

- FSOC did not understand the insurance industry,
- MetLife is already under rigorous supervision,
- FSOC looked narrowly at size alone and ignored a multitude of other factors, and
- FSOC did not follow standard federal agency procedures (e.g., benefit-cost analysis).

Analysis

Following MetLife's June 19th filing asking that the court rule summarily in their favor that FSOC's Systemically Important Financial Institution (SIFI) designation and its process were "arbitrary and capricious," four groups filed Amici Curiae in support of MetLife's position. The National Association of Insurance Commissioners (NAIC), The American Council of Life Insurers (ACLI), The Academic Experts in Financial Regulation (AEFR), and The United States Chamber of Commerce (Chamber), each submitted arguments on Friday that MetLife should not have been designated a SIFI for several reasons.

NAIC's argument was threefold: 1) that "FSOC failed to adequately consider the full range of regulatory tools available to state regulators at the individual entity and group level;" 2) that "FSOC failed to assess the risk of asset liquidation against existing regulatory authority to actively prevent a 'run on the bank' scenario, including early warning through risk-based capital requirements and stays on surrender activity;" and 3) that "FSOC failed to assess the risk of MetLife's ultimate failure against the deliberate, incremental process that applies to troubled companies supervised by state insurance commissioners." NAIC expressed a great deal of concern over the fact that FSOC determined MetLife to be systemically important solely for the fact that it is a "large and complex company" instead of conducting an "analysis to demonstrate that supervision by the Federal Reserve, under enhanced prudential standards that have yet to be determined, would do more to mitigate the alleged threat MetLife poses to financial stability in the U.S. than the existing robust system of state-based regulation."

ACLI was next to file and argued similarly that FSOC "arbitrarily and capriciously applied a bank-centric model to insurance companies" and disregarded existing state insurance regulation. In arguing that FSOC applied a bank-centric model to its determination of MetLife, ACLI discussed how FSOC failed to consider the fundamental differences between banks and life insurance companies. For example, and perhaps most importantly, liabilities of life insurance companies do not have the ability to be immediately called upon by the policy holder, and "life insurers assume extensively underwritten long-term risks and acquire an asset mix intended to reflect the characteristics of those risks." On the other hand, banks "do not match their assets with their long-term liabilities," and, as such, "banks are more dependent on short-term, on-demand funding, making them potentially subject to a 'run' in periods of stress."

AEFR argued a more academic perspective and discussed from its point of view how FSOC failed to consider the plausibility of risk and the relevant aspects of MetLife's insurance business as well as why FSOC should have performed a cost-benefit analysis. While AEFR's first two points were made by other amici, this was the first to bring up the value of a cost-benefit analysis. Interestingly enough, FSOC rejected outright the use of a cost-benefit analysis when determining systemic importance when it stated in its Federal Register Notice that a cost-benefit analysis is "not required…in connected with this rulemaking." As a result of FSOC arbitrarily determining that a cost-benefit analysis was not required, it sacrificed transparency of the process that is required by law as well as appropriate risk regulation that it sought to produce in the first place. As AEFR pointed out, President Clinton noted in Executive Order 12,866 that the "American people deserve a regulatory system that…improves the performance of the economy without imposing unacceptable or unreasonable costs on society" and mandated that all federal agencies "assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating." FSOC's arbitrary decision-making and failure to undertake all levels of analysis and scrutiny denied the American people of such an assessment and ultimately of that regulatory system they deserve.

The Chamber also filed a lengthy brief debating the merits of FSOC's designation procedures as well as its failure to consider, as mandated by Section 113 of Dodd-Frank, whether or not MetLife actually is vulnerable to material financial distress. As the Chamber explains, Section 113 requires FSOC to consider ten specific factors when analyzing a nonbank financial company's vulnerability to material financial distress before making a designation. FSOC "must find a realistic, rather than speculative, threat to the financial system before it may select a particular nonbank financial company for SIFI designation." In designating MetLife, FSOC created its own six factors as a means of interpreting Section 113's ten required factors and failed to give any real meaning to the requirements that it analyze the vulnerability of the company and any potential effects on other parties. In doing so, the Chamber concludes, "FSOC's interpretation effectively reads words out of the statute," and "the Court should reject it."

Unless the District Court rules in favor of either MetLife's or FSOC's motion for summary judgment, the next step is that this case will go to trial and both sides will have their opportunity to be heard. It's important to remember that it's not up to the Court to decide whether or not MetLife is in fact systemically important. Rather, it is the court's duty to determine whether FSOC followed the laws and regulations guiding the SIFI designation process. As has been explained previously, if the court finds that FSOC's decision was arbitrary and capricious, MetLife's designation will be vacated. As is clear in each of these amicus briefs and each of the filings in the case, FSOC's decision was arbitrary and capricious for a number of reasons, and MetLife's designation should be vacated.