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Complying with Dodd-Frank: Complexities Arising from *MetLife, Inc. v. FSOC*

By Samantha Vega, J.D. Candidate 2018 | April 25, 2016

The Financial Stability Oversight Council(FSOC) was established in the wake of the 2008 financial crisis in order to mitigate the risks and proffer stability to the U.S. financial system, but a U.S. District Court Judge's ruling in *MetLife, Inc. v. FSOC* on March 30, 2016, is bound to complicate the FSOC's ability to fulfill its mandate.

Section 113 of the Dodd-Frank Act enables the FSOC to identify, review, and designate certain "systemically important" non-bank financial institutions (non-bank SIFIs) as critical to the stability of the U.S. financial system. The FSOC's designation of American International Group (AIG), General Electric Capital Corporation (GE Capital), Prudential Financial, and MetLife as non-banks SIFIs brought them under the regulatory umbrella of the Federal Reserve Board of Governors. The extension of such regulation—as succinctly expressed in an *amicus* brief signed by 15 academics spanning the fields of financial regulation and administrative law—would presumably help to prevent such firms from undermining the nation's future economic stability. Increased regulation, coupled with the requirement of meeting certain debt to equity ratios (which would require many insurance underwriters to deleverage) is envisaged as a measure that could help reduce the threat of a financial contagion.

In her ruling, U.S. District Court Judge Rosemary Collyer concluded that the FSOC's designation of MetLife as a non-bank SIFI "hardly adhered to any standard when it came to assessing MetLife's threat to U.S. financial stability," ultimately deeming it "fatally flawed". She concluded that the FSOC's analysis, which posited that MetLife's "experience of financial distress" would be far too damaging to U.S. financial markets was presumptuous, arbitrary, and lacking of analytical depth given that it failed to include even a basic cost-benefit analysis: "Predictive judgement must be based on reasoned predictions; a summary of exposures is not a prediction." The FSOC might in fact not be able to predict future economic conditions, assuming such conditions can even be predicted.

In his reaction to the Judge's ruling, Treasury Secretary Jacob Lew proclaimed that the Court's decision "leaves one of the largest and most highly interconnected financial companies in the world subject to even less oversight than before the financial crisis." One need certainly not dive all too deeply into the annals of history for a reminder of the negative consequences resulting from the under-regulation of certain financial activities. But it would behoove the government to compellingly prove it.