

Banking and Finance Law Daily Wrap

Up, FINANCIAL STABILITY—FSOC spells out strategy in MetLife appeal, (Jun. 17, 2016)

By [John M. Pachkowski, J.D.](#)

The Financial Stability Oversight Council has filed its appellate brief with the U.S. Court of Appeals for the District of Columbia seeking to reverse a lower court ruling that revokes FSOC's designation of MetLife, Inc., as a non-bank systemically important financial institution (SIFI).

Under the Dodd-Frank Act and its guidance, FSOC can designate a non-bank financial company as a SIFI if the financial company's leverage, liquidity risk, and maturity mismatch will make it vulnerable to financial distress. FSOC is also required to conduct an impact analysis evaluating size, substitutability, and interconnectedness to determine the potential effect of distress.

Arbitrary and capricious. In her [unsealed court opinion](#), U.S. District Court Judge Rosemary Collyer ruled that SIFI designation was arbitrary and capricious and that FSOC acted contrary to its published guidance without explaining, or even acknowledging, the deviation. Judge Collyer also ruled that FSOC refused to consider the costs that the SIFI designation imposed on MetLife. The district court relied on the 2015 U.S. Supreme Court case [Michigan v. EPA](#), which held that the Environmental Protection Agency unreasonably interpreted provisions of the Clean Air Act when it deemed cost irrelevant to the decision to regulate power plants (see *Banking and Finance Law Daily*, [April 7, 2016](#)).

Reading into the guidance. At the appellate level, FSOC is set to [argue](#) that the lower court "read into the guidance an obligation to assess the likelihood that MetLife would experience financial distress and a requirement to identify with precision the impact that distress would have on the broader financial system during a hypothetical future crisis."

FSOC also contends that the lower court misapplied the holding in *Michigan v. EPA*, since the provisions of the Dodd-Frank Act have "no resemblance to the statute at issue in *Michigan v. EPA*." It added Dodd-Frank's focus on risk to the nation's financial stability, rather than on costs to large financial companies, and its use of language that "fairly exudes deference," thereby precludes the district court's imposition of its own, very different, interpretation.

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Companies: MetLife, Inc.

LitigationEnforcement: DistrictofColumbiaNews DoddFrankAct FinancialStability

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