Blogs
March 31, 2016
MetLife and the Cost of SIFI Designation

MetLife won the first round in its fight against designation as a nonbank systemically important financial institution ("SIFI"). The court's opinion will be under seal until at least April 6, so we do not know why the court rescinded the Financial Stability Oversight Council's ("FSOC's") designation. But connecting the dots between the order and MetLife's complaint suggests some intriguing results. **Designation May Require a Cost Benefit Analysis** The order grants MetLife summary judgment on Count VII of its complaint. Count VII objected to the SIFI designation "because FSOC failed to consider the economic effects of designation on MetLife." SIFI designation, according to this count, would place MetLife at a competitive disadvantage, causing it to "lose billions of dollars in value." The market's reaction to the order supports this allegation. MetLife's shares jumped 5% immediately upon the release of the court's order, adding over $2.3 billion to its market capitalization. Insofar as the market was discounting the stock based on some probability of SIFI designation being upheld, the anticipated loss from SIFI designation should be higher than this amount. For example, if the market consensus on SIFI designation ultimately being upheld dropped from 75% before the ruling to 25% after, the anticipated loss should be on the order of $4.6 billion. **Designation Probably Cannot Be Based on Speculative Analysis** The order also granted summary judgment on Count IV and part of Count VI. Count IV alleged "FSOC failed to assess MetLife's vulnerability to material financial distress." Count VI alleged that FSOC's conclusion that MetLife pose a threat to the financial stability of the United States "depended upon unsubstantiated, indefinite assumptions and speculation." These counts allege, in essence, that MetLife is a victim of FSOC's paranoia about runs. One basis for the designation was fear that, if MetLife became subject to material financial distress, then policyholders would cash out their policies, not only from MetLife, but from other life insurance companies. This would force insurance companies to liquidate substantial portions of their general accounts to return the cash values on the policies, which would destabilize the U.S. securities markets. The court appears to have concluded that FSOC could not simply assume a degree of financial distress sufficient to provoke a wholesale panic by policyholders. Rather than parading horribles that might conceivably lead to a financial panic, FSOC has to provide a rational basis for its designations based on actual data. **Two Paths Forward** FSOC could continue to defend its designation in two ways. First, it can appeal the order to DC Circuit and continue to defend the original designation. Alternatively, it can try to redesignate MetLife in compliance with whatever standards the district court has imposed. Although the approaches are not mutually exclusive, redesignation should render the appeal moot. Of course, FSOC could drop the matter altogether.

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