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VIA ECF

Mark Langer
Clerk of the Court
U.S. Court of Appeals for the D.C. Circuit
333 Constitution Avenue, N.W.
Room 5205
Washington, D.C. 20001

Re: *MetLife, Inc. v. Financial Stability Oversight Council*, No. 16-5086
(oral argument held Oct. 24, 2016)

Dear Mr. Langer:

Pursuant to Rule 28(j), I write on behalf of MetLife, Inc. to alert the Court to recent settlements in which financial institutions agreed to pay multi-billion-dollar penalties to the federal government. These penalties—which far exceed the exposure of any global systemically important bank ("G-SIB") to MetLife—underscore that material financial distress at MetLife would not materially impair its counterparties.

Deutsche Bank has agreed to a settlement totaling $7.2 billion, and Credit Suisse has agreed to a settlement of more than $5.2 billion, to resolve the government's claims regarding their sale of residential mortgage-backed securities. Reuters, *U.S. Hits Credit Suisse, Deutsche Bank with Toxic Debt Penalties* (Dec. 23, 2016). These settlements augment the extensive record evidence making clear that it was arbitrary and capricious for FSOC to place the heavy reliance that it did on the assertion that material financial distress at MetLife could threaten the financial stability of G-SIBs and other MetLife counterparties. FSOC disregarded MetLife's evidence that, even in the highly implausible event that these counterparties lost their full exposures to MetLife, they would not be materially impaired and the losses would not produce systemic effects. Appellee's Br. 35. The largest exposure of a G-SIB to MetLife is $3.2 billion, which is far smaller than several prior mortgage settlements (JPMorgan Chase & Co. at $13 billion and Bank of America Corporation at $16.65 billion) as well as the Deutsche Bank and Credit Suisse settlements. *See* DDCJA1657. There is no indication that any of these settlements materially impaired the settling institutions, much less threatened U.S. financial stability. Indeed, Deutsche Bank's shares rose 2% after the settlement was announced. Reuters, *supra*.

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In designating MetLife, FSOC simply ignored and never responded to this benchmark comparison, just as it never responded to MetLife's similar demonstration that in their annual "stress tests," major U.S. banks were found capable of withstanding, without systemic effects, losses many times greater than would result from loss of their MetLife exposures. FSOC cannot rely on *post hoc* rationalizations in this Court to salvage its flawed exposure analysis. *See SEC v. Chenery Corp.*, 318 U.S. 80, 93-94 (1943).

Respectfully submitted,

/s/ Eugene Scalia

Eugene Scalia

CERTIFICATE OF SERVICE

I hereby certify that, on this 23rd day of December, 2016, I electronically filed the foregoing document with the Clerk for the United States Court of Appeals for the District of Columbia Circuit using the appellate CM/ECF system. Service was accomplished by the CM/ECF system on the following counsel, who are registered CM/ECF users:

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